ADDRESS BY HIS EXCELLENCY THE RIGHT HONOURABLE SIR NINIAN STEPHEN

[On 14 December 1985, His Excellency The Right Honourable Sir Ninian Stephen, Governor General of the Commonwealth of Australia, received an honorary Doctorate of Laws Degree from the University of Melbourne.

The Melbourne University Law Review *would like to mark this occasion by publishing an extract from the address given by His Excellency on receiving his Doctorate.*

His Excellency spoke briefly of his early years of legal study which were undertaken on a part time basis at Melbourne University, while he worked as an articled clerk in a city law firm. He then continued:]

Mine was a system of legal education widely thought of at the time as not only opening the profession of the Law to those who might otherwise not be able to enter it, but also as inculcating in the young desirable habits of mind. It was said to give one a business sense, an attention to practical detail and a reverence for mechanical application of the precedents of the law, coupled with a distrust of anything remotely smacking of its philosophy. In my case the system wholly failed: my business sense remained abysmal, practical details I was always prone to sweep under the nearest carpet and principles held more appeal than precedents. . .

Our system of law is an essentially pragmatic discipline, suspicious of the academic and favouring, rather, forensic craftsmanship. There is thus no higher praise of a judge than that he runs a good court, expounding no theories of his own but intent on mastering the facts and applying to them such of the arguments of law urged on him by Counsel as seem to him to have merit. Of a barrister there is, I suppose, no higher praise than that he can skilfully assemble those facts which the existing law makes material, and then present them to the Court in such a way that they most closely conform to those aspects of the legal formulary which best assist his client's case.

It is perhaps because of this wholly pragmatic approach that a celebrated English judge once declared himself grossly insulted when described as a great jurist. Had he been called a consummate legal craftsman he would, I think, I have been very flattered. But with retired judges the case is very different; to be made Doctor of Laws by a great University is a very fine thing indeed; to be made so by one's own University, albeit forty years too late for any professional advantage, is a compliment without peer: rather like the reception of a sinner who, heresies of the past forgiven, is welcomed to the sweet yet chaste embrace of Mother Church. To this presently extended academic embrace I humbly and gladly give myself.

My life has been in the law and hence it is of the law that I speak today. And I venture to take advantage of the captive audience before me to say

something very briefly about the judiciary. Disappointing as it may be, what I will say will be in praise of them, however much less stimulating for you all that will be than some thundering denunciation of the Bench. But I must speak as I believe.

The legal system which I know best is that of the State of Victoria, my State of adoption for now well over forty years. Were that legal system to possess no other virtue at all, it could still pride itself upon one virtue which I believe to be more precious than all the rest; one which is by no means commonplace amongst the nations of the modern world. That supreme virtue is judicial independence, the freedom of judges from influences brought to bear by other organs of the State, and in particular by the Executive arm.

In almost 20 years of practice at the Victorian Bar before going on the Bench, after which it may be thought that I lost all objectivity on this subject, I knew occasional irascible and lazy judges, and prejudiced and narrow minded judges too, just as I knew far more who were equable, fair, modest, learned and industrious. But I never encountered one whom I or any of those appearing in the Superior Courts thought for a moment to be acting otherwise than independently of the government of the day and its bureaucracy. Had this not been so we barristers would surely have known; there is no greater hotbed of gossip than any barrister's chambers and no gossip more prized than that concerning the failings of judges.

I do not claim this virtue as personal to the individual judges of our Courts; it is, rather, a product of our traditions, so ingrained that each judge, on his appointment, naturally assumes that it will be so, both from his own accumulated experience at the Bar and from all he has read and been taught. Yet this quality of judicial independence is surely a great achievement of our legal system and of our society; in Australia, an achievement so complete, so well accepted and of such long-standing that we take it very much for granted, just as our judges in their judicial roles observe and preserve it as a matter of course, very much as if it were an undebated and undebateable norm.

Judicial independence cannot, of itself, be any guarantee of liberty, of freedom of the subject or of the rights of the oppressed. If laws of the land are themselves unjust or unequal, judicial independence will not protect against them, and this because of the necessary subordination of the judges to the laws which legislators make. But given just and equal laws, only an independent judiciary can ensure that in their impact on the citizen such laws do operate with that fairness which their text demands.

The independence of the judiciary then stands guard between the individual and the potentially absolute power of the organs of the modern State. One may hope that that power will, in this country, always continue to be exercised with benign intent and in accordance with law. In keeping with Australia's long tradition of Parliamentary democracy, that hope is a good deal more likely to be realized in this country than in some countries overseas. Yet should that power ever be abused and the State act against the individual without

legal sanction, only the law, administered by judges steeped in the tradition of judicial independence, can protect him, and to do so effectively and in a sustained manner the judges will need the support of a public which understands and values that independence.

Which is why a widespread understanding of the importance of true judicial independence, why its at present well entrenched existence in our country, is so much more than merely a curiosity in the present-day world. Though sadly it will remain a curiosity so long as elsewhere in the world there exist courts which are expected, as a matter of course, to surrender all independence of judgment in the face of the dictates of the regime of the day.

Just laws certainly, and perhaps also more or less entrenched safeguards of human rights, whether as constitutional guarantees or otherwise, may be first and essential steps towards human freedom and recognition of the rights of each individual. But no less important is the second step, the integrity and freedom from influence, in sum the independence, of the judiciary whose task it is to administer those laws. Only with a truly independent judiciary can freedom under the law have meaning and democracy's enacted laws prevail.

I end by saying again how honoured I am that my old University should confer this high distinction upon me.