

ANU College of Law Prize Giving address

9 March 2011

Good afternoon. Thank you, Dean Michael Coper, for extending to me the honour of addressing this prize giving.

Congratulations to all of you who have won prizes, and to your families and friends who can justly share in your achievement. As one of your teachers, I know how much we ask of the students and how hard you work, and I presume to speak on behalf of my colleagues when I express my appreciation and gratitude for your effort and engagement.

Each Wednesday, I make a point of reading the 'Higher Education' section of *The Australian* newspaper. As you know, newspapers have their different sections inserted into each other, so that the paper has to be disassembled to get the section you want. Each week, when I open the 'Higher Education' section, out falls another that has been folded into it. That section has a heading that is larger than the heading of any other: in a banner across the page it says simply: 'Wealth'.

Every time I see it, I have a little flash of the thought I had when I first saw it, a thought that, from time to time, *The Australian* would publish a section with a very large heading – or more appropriately perhaps, a very small one – that says not 'Wealth', but 'Poverty'.

Of course it won't happen. What market is there for a weekly lift-out that updates on the latest developments in being poor? The wealthy will read about wealth, as will those who aspire to be wealthy; the poor will not choose to read about their poverty, and few people aspire to be poor. A lift-out on poverty might be read to pass the time while waiting for a bus – which can be quite a while in Canberra – or out of curiosity, or out of an altruistic 'regard for others', a concern to know and understand the situation of those who are poor.

You don't have to read *The Australian* on Wednesday to know about wealth. In different ways it is the dominant, at times the exclusive, theme of almost every popular medium, particularly advertising. Much less popularly, but most

relevantly for today, wealth – and the related ideas of social standing, influence and power – are abiding features of the law that you learn.

The cases you read are concerned with the poor only to a very limited extent, and indirectly. More recent cases are concerned with regulating conduct which exploits or abuses wealth, power and influence, but the cases of the common law have for centuries been run by and for the wealthy and the wealth-makers.

The legislation you study is, to a greater extent, concerned with regulation of influence and power, but legislation is itself the product of a political process which is vastly more accessible to those with wealth, standing, influence and power than it is to those without, and it responds accordingly.

I don't make this point with a political purpose. Whether the influence of the wealthy and powerful is 'good', or 'bad', or more complex than that, and what, if any, policy or political response it calls for, is a vast and continuing debate. How you respond to the phenomena of poverty and wealth, of the powerless and the powerful, is a matter for you, and for the values that you are forming at university in the shadow, or in light, of your friends, family, teachers and experience.

I make the point about the embeddedness of wealth, power and influence in law only because it is not one that is commonly made in the teaching of law, despite many students' desire to know and understand it.

I continue to be struck, and inspired in my teaching, by the number of students who say they study law because they want to help people, because they want to make a difference. But legal education makes very little concession to this motivation for study.

Indeed, if this is your goal, what made you think of achieving it through law? It seems more obvious that a person who wants to help people would aspire to be, say, a teacher, a counsellor or a nurse. And a person who wants to make a difference would consider, say, scientific research, engineering, or international relations. But to be a lawyer?

A lawyer's ethos is the admirable, liberal commitment to serve all without fear or favour, to zealously advocate for any client. 'Regard for others' is a problematic

intrusion on a lawyer's practice, threatening to compromise a lawyer's commitment to their client's interests. 'Regard for others' is something a lawyer can pursue in their own time, but not on chargeable time.

I became involved in Australian Lawyers for Human Rights because I was frustrated by lawyers' near complete absence from policy debates about complex matters, ranging from constitutional change to compliance with international law. Lawyers understand these matters better than many people, and have the capacity to explain. But where were they? Heads down, and tails up, working for a client, without professional validation for, at the same having regard for others in their professional lives.

We can all make an argument for law as a vehicle for change, and for lawyers as agents for change. But the arguments we make are outside the doctrine of law. They come from seeing law's potential in different ways, challenging law's assumptions, comprehending the extent to which law serves the interests of the wealthy and the powerful, and is less driven by, and is less responsive to, the needs of the poor and powerless.

This role for law and lawyers is, however, rarely what you learn. The law you learn is not concerned principally with social justice. The intersection of law and social justice is a scene of tension and challenge, and a call for social justice can be a call to redress the indirect, and at times direct, consequences of law. In many ways, social justice is what law is not.

A social justice conversation in law is a realist's discussion, not only of the rules – but of who makes the rules and why; not only of the ratio of a case – but of who benefits and who misses out. A social justice conversation in law goes where the cases don't go, where the law has an unrecorded and unregarded effect, on the lives of the poor and powerless.

The ostensibly 'value-free' nature of law, and of law teaching, means that the law you learn is left to speak for itself, and it speaks subtly and insistently of the pervasive presence of wealth, power and influence.

If the law you learn is not concerned principally with social justice, why should you be? You can't be compelled to be concerned, and I am not sure you can be

persuaded to be. ‘Regard for others’ is a moral view, which I can only invite you to adopt. In my role here in the ANU College of Law, through the Law Reform and Social Justice Program, I can give you opportunities to explore that moral view, to see examples and role models, to be inspired and supported in an emerging commitment to using law to help, and to make a difference. And you should know that in our teaching, we are looking for ways to promote a regard for others in the study of law.

I was fortunate to have had a legal education which invited me to think critically about the conventions of legal doctrine and, volunteering at Redfern Legal Centre when I while still a student, I had opportunities to see examples and role models, to be inspired.

Your prize today is genuine recognition of your knowledge, intellect, and ability. It is an adornment to your transcript, which will signal to prospective employers that, in employing you, they are likely to be investing their resources well. It does not, however, signal to anyone – and maybe not yet to you – where you want to dedicate your talent, who will benefit from your knowledge, intellect, and ability.

The time is right, now, to think about who will benefit from your talents. A convenient presumption has developed – convenient for some – that the brightest graduates will go to the biggest law firms. That is a choice directed by the market, not necessarily by your own values. An alternative, is that the brightest graduates will go to meet the biggest need; that those who have ready access to standing, influence, wealth and power will choose to serve the needs of those who are forgotten, marginalised, poor and powerless.

A significant obstacle to your making that choice, if you are minded to make it, is that it is not a choice validated by the contemporary ethos of legal education. We are working here to change that, and to give you reason to feel confident that you can choose, in law, to have ‘regard to others’.

For now, however, at least for this afternoon, I trust that the burden of such a choice doesn’t rest too heavily on you, and that you relax and celebrate your achievements, in the company of family and friends.