

**ADDRESS GIVEN AT THE 50<sup>th</sup> ANNIVERSARY OF THE  
FIJI LAW SOCIETY**

***“The Role of Lawyers in Society”***

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It is a great honour to have been asked to speak today at this conference of the Fiji Law Society, held in its 50<sup>th</sup> year. It is an opportunity to reflect upon the role of practising lawyers in our societies and in the wider world order. As this society looks back over the past 50 years and forward to the next, it is time for some stocktaking.

I begin as my distinguished former colleague and international lawyer Sir Kenneth Keith would insist, with the international context in which we operate. The 1990 UN Basic Principles on the Role of Lawyers recognised that professional associations of lawyers have a vital role in upholding legal professional standards and ethics. They recognise that key to the provision of adequate legal assistance is proper education and training. Also essential is development of ethical insight and understanding of human rights in national and international law. The Basic Principles recognise that associations of lawyers have an obligation to protect their members from persecution or improper restrictions so that legal services can be provided to all in need of them. They impose on associations of lawyers the obligation to ensure that the practice of law is open to all without discrimination.

The objectives of your Society anticipate these principles. They are:

- To maintain and improve the standard of conduct and learning of the legal profession in Fiji and;
- To promote the welfare and to preserve and maintain the integrity and status of the legal profession.

The two are necessarily inter-related. When Lord Alexander of Weedon reviewed Bar standards in the United Kingdom he was clear that “the touchstone for the survival and success of the Bar will be its excellence.”<sup>1</sup> No association of lawyers can rest on its reputation and hope to maintain its integrity or its status.

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<sup>\*</sup> The Rt Hon Dame Sian Elias, Chief Justice of New Zealand.

<sup>1</sup> Quoted in Sir Thomas Bingham *The Business of Judging* (2000) 356.

What is at stake here is much more important than the comfort and stature of members of the profession. It underpins the legal order itself and the basic tenet of our constitutional government that everyone is subject to the law, as Chief Justice Coke so bravely reminded James I in the dark days at the beginning of the struggle to establish constitutional government in England. John Locke, writing later in the same century put it this way:<sup>2</sup>

Whoever has the supreme power of any Commonwealth is bound to govern by established standing laws, promulgated and known to the people, and not by extempore decrees. There must be independent and upright judges, who are to decide controversies by those laws. And all this is to be directed to no other end but the peace, safety, and public good of the people.

He was right to say that what we now express as the “rule of law” (following A.V Dicey), cannot exist without “independent and upright judges”. Independent and upright judges cannot exist without an independent and upright legal profession. That is why De Tocqueville, that close observer of the early American political system, identified the American Bar as the firmest bulwark of democracy. In more recent times in the same society Justice William O. Douglas expressed the view:<sup>3</sup>

Civil liberties survive when the Bar is alert to defend them – when the Bar is courageous, when the Bar is mindful of its responsibilities.

Some in our communities are sceptical of the role played by lawyers. They suggest, cynically, that lawyers too-frequently see what are merely threats to their self-interest as threats to independence. One commentator says that, while lawyers naturally seek to justify professional independence on broader grounds than “it’s a good deal for lawyers:”

I know perfectly well that when lawyers start talking this way about their public duties, being officers of the court and so on, most of us understand that we have left ordinary life far behind for the hazy aspirational world of the law day sermon and Bar Association after-dinner speech – inspirational, boozily solemn, anything but real.<sup>4</sup>

I believe these suggestions are dangerous and wrong, but there is sufficient truth in the gibes of self-interest to require lawyers to reflect upon their role. Unless the profession has a clear vision of its role and demonstrates dedication to the values that underpin it, it forfeits its claim to independence. There is no point in “crying wolf” whenever financial interests of legal practitioners are threatened. As Robert Hazell says, the only kind of

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<sup>2</sup> *Treatise on Civil Government* (1690) ch IX, § 131.

<sup>3</sup> Referred to in “*The Independence of the Bar*”, a report adopted at a conference on Threats to the Independence of the Bar prepared by the conference working group, 17 October 1953, published in (1953) 13 *Lawyers’ Guild Review* 158.

<sup>4</sup> Gordon “*The Independence of Lawyers*” (1988) 68 *BUL Rev* 1, 13.

professional independence that matters is the lawyer's freedom fearlessly to fight for the interests of his client.<sup>5</sup>

In our common law system effective judicial process cannot be obtained from independent judges without independent lawyers.<sup>6</sup>

The independence of the judiciary and the independence of the bar are relationships which are in counterpoise. Each assists the other in maintaining their existence.

In our system, judges must rely on counsel. If the lawyer is not objective, the system breaks down. That is why Sir Owen Dixon thought that the barrister's role was more important than the contribution made to justice by the judge.<sup>7</sup> They must be able to advocate for clients without intimidation or harassment. In addition to the necessary reliance by judges on lawyers in the judicial process, the legal profession plays an essential role in protecting the integrity of the judicial system when it is attacked and explaining it to the wider community without whose support it is fragile indeed. These are the reasons why the relationship between judges and lawyers in the legal system and in domestic protection of human rights, is recognised expressly or impliedly in key United Nations and regional human rights instruments, including the Suva Declaration adopted in August 2004.

Justice Learned Hand was right to remind us that liberty lies in the hearts of all citizens. When it dies there, "no constitution, no law, no court can save it..."<sup>8</sup> As Justice Roger Traynor was equally right to say, it is not to be assumed that liberty is dead in the hearts of men and women who are silent. He took the view that it was the responsibility of judges in application of the constitutions of their countries to carry liberty in their hearts "even when other men have ceased to" and to speak for it<sup>9</sup> - but judges are not always well placed to speak effectively for liberty or for the constitution.

In many of our societies the fundamentals of our constitutional arrangements are not widely understood. In my country with its unwritten constitution, citizens need to work hard indeed to understand the constitutional balances and checks. Your written constitution is rather more accessible. Even so, it is necessarily expressed in general terms which make its meaning in an unpopular context difficult to grasp for the uninitiated.

Even in a society as committed to the rule of law and government under the constitution as the United States, there appears to be widespread belief that judges are simply politicians in robes. It is not always understood that judges

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<sup>5</sup> Hazell "*Independence and Fusion*" in Hazell (ed) *The Bar on Trial* (1978) ch 8, 169.

<sup>6</sup> Rares SC "*The Independent Bar and Human Rights*" (2005) 26 ABR 11.

<sup>7</sup> Hon Sir Owen Dixon *Jesting Pilate* (2<sup>nd</sup> ed 1996) 245-6.

<sup>8</sup> Hand *The Spirit of Liberty* (1960) 190.

<sup>9</sup> Traynor "*Law and Social Change in a Democratic Society*" (1956) U.Ill.L.Rev. 230, 241.

owe their communities only the impartial resolution of disputes. In all societies politicians and commentators attack the motives and integrity of courts and judges in a way that is destructive of confidence in courts and ultimately of the rule of law. Such attacks, often accompanied by calls for the removal of judges, indicate a profound misunderstanding of the position of courts and the difference between them and the other branches of government.

Justice Stevens, dissenting in *Republican Party of Minnesota v White*, explained the critical difference between the work of a judge and the work of other public officials:<sup>10</sup>

In a democracy, issues of policy are properly decided by majority vote; it is the business of legislators and executives to be popular. But in litigation, issues of law or fact should not be determined by popular vote; it is the business of judges to be indifferent to unpopularity.

It is right that judges should be indifferent to unpopularity. Unpopularity of the legal process itself is not a matter we should be indifferent to because it is destructive of public confidence. Although judges have the principal responsibility to demonstrate through action their impartiality and independence in judging and although that is the best answer to misconceived criticism, they are not well placed to speak out in defence of their judgments. They can of course speak extra-judicially as to their role but there are limits to what can be said. There are dangers of descending into the fray and they are open to the suspicion that they are simply 'defending their patch'. That is why the legal profession has a responsibility to defend the legal system from misinformed criticism.

Paul Friedman, a Judge of the District Court for the District of Columbia, referred to an investigation which followed an allegation that the Chief Judge of his court had been assigning cases to judges according to their political convictions. Although the investigation resulted in a total vindication of the Chief Judge, the damage done to the court as an institution was not easily dispelled. Friedman asked "where was the Bar through all of this turmoil?"<sup>11</sup>

Lawyers know that judges cannot themselves respond publicly to criticism. It is considered unseemly; it is inconsistent with the Code of Judicial Conduct; and it would draw judges into the political thicket they must scrupulously avoid. Because we cannot defend ourselves, it falls to the Bar and its leaders to step up to the plate and defend the courts and its judges – and the independence so fundamental to the system – at times when unfair attacks or intimidation by politicians or the press take over. In the situation I have just described, there was mostly silence from the lawyers of Washington, D.C. and, frankly, it was disappointing.

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<sup>10</sup> (2002) 536 US 765, 798.

<sup>11</sup> Friedman "*Civility, Judicial Independence and the Role of the Bar in Promoting Both*" [2002] Fed. Cts. L. Rev. 4 at [21].

I hope that few would doubt his conclusion that it is a basic responsibility of the organised profession and indeed of individual lawyers, to ensure that courts are not intimidated or subjected to improper political pressure.

It is not only in explaining the judicial system to the wider community and defending it from attack that lawyers have an important role. The days when the law reports in common law jurisdictions were filled with cases about sale of goods or charter parties are past. Litigation today is in part a forum for advancing social ends through deliberative public process under claim of legal right. Most jurisdictions now operate under domestic statements of human rights which echo international commitments. All of us have been profoundly affected by this revolution. Human rights are not absolute. They conflict with other rights and interests. The legal process is in part a process for mediating these claims, which are often highly contentious. In litigation today, the judge may be called upon to identify and apply sometimes—conflicting fundamental values of the legal order to the circumstances of individual cases. Modern litigation throws up some of the more intractable moral problems of the times. Judges cannot evade hard cases if they are properly brought before them. Sometimes explaining a result which may be wildly unpopular is not easily accomplished in a judgment. The burden of further explaining decisions of the courts taken under law must be the responsibility of the legal profession because judges, having delivered judgment, cannot explain further.

All of this means that the legal system today depends upon the standing of the legal profession in the community, not simply its willingness to take on unpopular claims before the court.

It should be a matter of concern to all of us that the standing of the legal profession in most societies is not high. Your President has referred to it in Fiji.<sup>12</sup> In my own country, caricatures of lawyers as blood-sucking parasites or amoral mercenaries are staple fare. That erodes the moral authority of the profession to speak for the legal system and to explain its operation. The problem is also compounded by the circumstances of modern practice in which public service and the disinterested representation of those engaged in public controversies may no longer be seen as the clear responsibility of legal practitioners. The managing partners of legal firms do not generally like controversy if the client base of the firm is conservative. In some societies, including my own, the larger firms who represent corporate clients seem to be disengaging from the organised profession. Other factors, which may contribute to a lack of popular sympathy or respect for lawyers, may be found in doubts about its representativeness and its commitment to excellence in the provision of legal services. There may be complex cause and effect in some of these factors.

In addition, the traditional responsibility for protecting the integrity of judicial process may also be affected in some jurisdictions by the loosening of bonds

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<sup>12</sup> Leung "President's Speech" Fiji Law Society website <<http://www.fls.org.fj/speech.htm>> (last accessed 23 May 2006).

between the judiciary and the profession. In New Zealand, lacking Inns of Court or even regular Law Society conferences at which judges and members of the legal profession mix regularly, there is now comparatively little contact between the bench and the profession. There has been a trend away from the tradition that senior members of the profession, with very few exceptions, made themselves available for judicial appointment. That is a trend in other jurisdictions too. Increasingly, judges in some common law countries are now being drawn partially from the ranks of non-litigators. It is a trend that has assisted in promoting diversity on the bench. But it has affected the relationship between the practising profession and the judges. Sir Thomas Bingham, speaking in 1994, spoke of a trust between Bench and Bar, which he attributed largely to the fact that judges were drawn from the practising Bar.<sup>13</sup> He then flagged a particular concern. If commercial pressures meant that the Bench was no longer to be regarded as the culmination of a successful career at the Bar (as it has traditionally been seen), that would, he thought, have significant implications for the integrity of the system.

It is not clear, however, that these implications have been sufficiently understood for their impact upon the traditional protections for the legal system. Opportunities for interaction between practitioners and judges are not valuable because they promote cronyism or clubability. They are valuable because, as Sir Thomas Bingham pointed out, they “foster a common ethical culture”.<sup>14</sup> Any erosion of this shared ethical culture should be of concern because the standards and expectations by which the legal system operates with integrity are not matters that can be prescribed by rules alone. The point was made by Justice O'Connor, speaking for herself, Rehnquist CJ and Scalia J in *Shapero v Kentucky Bar Association*.<sup>15</sup>

One distinguishing feature of any profession, unlike other occupations that may be equally respectable, is that membership entails an ethical obligation to temper one's selfish pursuit of economic success by adhering to standards of conduct that could not be enforced either by legal fiat or through the discipline of the market. There are sound reasons to continue pursuing the goal that is implicit in the traditional view of professional life. Both the special privileges incident to membership in the profession and the advantages those privileges give in the necessary task of earning a living are a means to a goal that transcends the accumulation of wealth.

I recognise that every generation, since ancient times, has bemoaned the ethical standards of the day compared to those of times past. I think it is clear however that the ethical culture of the profession *has* changed subtly.

In her speech to the 2003 conference of this Society, Justice Catherine Branson of the Federal Court of Australia thought that the important culture of the legal profession in providing independent and fearless legal advice was

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<sup>13</sup> Sir Thomas Bingham, above n1, 356-357.

<sup>14</sup> *Ibid*, 357.

<sup>15</sup> (1988) 486 US 466, 488-489.

threatened throughout the common law world “by the growing commercialisation of legal practice”.<sup>16</sup> That is a theme that has been touched upon by your own President. This process, at least in larger societies, has been going on for a considerable time. It was remarked upon by Justice Brandeis in a speech in 1914. Brandeis regretted the fact that lawyers in the United States at the time did not seem to be held in as high regard by the people of the nation as was the case 75 or 50 years earlier. The reason he thought to be that:<sup>17</sup>

...Instead of holding a position of independence, between the wealthy and the people, prepared to curb the excesses of either, lawyers have, to a large extent, allowed themselves to become adjuncts of great corporations and have neglected the obligation to use their powers for the protection of the people...

The same theme was picked up by Chief Justice Stone of the United States Supreme Court nearly 20 years later in 1932.<sup>18</sup> He pointed out that in the past country lawyers would take clients as they came. They acted for everyone in the community, in all their legal matters. With the development of the economy, lawyers had become specialists. That, he thought, put strain upon the legal profession. The new breed of successful lawyer of the 1930s was the “proprietor or general manager of a new type of factory”, employing “mass production methods” in which the rewards were measured in profits from a successfully conducted business rather than from “the satisfactions which are to be found in a professional service more consciously directed towards the advancement of the public interest”.<sup>19</sup>

I think myself that some of these misgivings invoke a golden age that may never have existed in quite the form remembered. I query whether the clients of the small town lawyer of whom Chief Justice Stone rhapsodised provided a legal service that was as effective as it seemed in retrospect. I doubt very much that he was particularly altruistic. In Wellington, a very small town in 1841, there were five lawyers then in practice. We have been left an unflattering sketch of them.<sup>20</sup> One was described as a “flippant fool”, one was said to be “no lawyer”. Another knew the principles of the law but had no practice. Moreover he was “ambitious” and “disliked.” Another was “imperfectly educated” and although ‘good-hearted” was so inept that his cross-examinations were said to be “sure to lead to the ruin of his client.” The last one was described as a “Scotch attorney, not over-bright and abundantly

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<sup>16</sup> Hon Catherine Branson “*Judicial Independence and the Rule of Law*” (Address delivered to the Fiji Law Society Convention ‘Facing the Challenges’ Fiji Law Society website <[http://www.fls.org.fj/convention/Judge\\_Catherine\\_Branson.pdf](http://www.fls.org.fj/convention/Judge_Catherine_Branson.pdf)> (last accessed 23 May 2006).

<sup>17</sup> Brandeis “The Opportunity in the Law” in *Business – A Profession* (1933) 329, 337-339; quoted in Gordon, above n4, 2.

<sup>18</sup> Stone “The Public Influence of the Bar” [1934-1935] 48 Harv.L.Rev. 1.

<sup>19</sup> Ibid, 6-7.

<sup>20</sup> Sir Robin Cooke QC *Portrait of a Profession: The Centennial Book of the New Zealand Law Society* (1969), 23-24.

fat and idle.” They were land speculators and wheeler-dealers. Those who did not come to sticky ends, died wealthy. They certainly did not represent a golden age of professional ethics.

Even in the United States of America (where the Crown’s interference with judicial independence was one of the grievances cited in the Declaration of Independence), unswerving fidelity to the independence of the profession and to its ethical obligations has retreated at times of stress in society. The American Bar Association for example, did not protest the witch-hunts conducted against lawyers who represented communists during the McCarthy investigations. Indeed, in 1953 it floated a proposal which would have required practitioners to declare whether they had ever been members of the Communist Party and would have set up systems to investigate their fitness to continue in practice.<sup>21</sup> We can all point to times in our own societies when those who have represented unpopular litigants or have stood up for unpopular causes have been reviled instead of supported by the wider profession. In my country, for example, few lawyers were prepared to defend those charged in the 1951 waterfront strike, or conscientious objectors during the world wars. For many years Maori legal interests were not properly represented before the courts. We like to think that all of us as individuals and that our professional associations will stand up for the principle so famously declared by Thomas Erskine, but in reality it is not clear that the cabrank principle has been scrupulously applied over history.

What I think is however more important than the times when we have strayed from the ideal path, is the shared ethical belief which gives us the insight that these things were wrong. Such insights may come late. They may not come until it is no longer courageous to express them. Nor are judges immune, as we have seen with cases like *Liversidge v Anderson*<sup>22</sup> in the United Kingdom and in *Korematsu*<sup>23</sup> in the United States. We have come to view both those cases with shame. The dissenting judgments of Lord Atkins and Justice Jackson stand as beacons for all time because of their fidelity to fundamental principle. They inspire in our own troubled times when the evils of terrorism test our resolve.

At the Judicial Colloquium held in Suva in August 2004, the pressure that comes on the courts and lawyers in the time of terrorism was addressed. M. Waldman referred to the pressure to interpret law in the government’s favour, to secure convictions and uphold administrative detentions, to accept evidence in dubious circumstances, to adjust the burden of proof and to accept curtailed, abbreviated or expedited judicial procedures.<sup>24</sup> There are

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<sup>21</sup> “*The Independence of the Bar*”, above n3, 166.

<sup>22</sup> [1942] 2 AC 206.

<sup>23</sup> *Korematsu v United States* (1944) 323 US 214.

<sup>24</sup> Waldman “*The Judiciary After September 11*” in *Access to Justice in a Changing World: Collection of Papers from Judicial Colloquium in Suva, Fiji, 6-8 August 2004*, pp13-31, INTERRIGHTS website (last accessed 23 May 2006): [www.interights.org/doc/Online%20Fiji%20Colloquium%20Report.doc](http://www.interights.org/doc/Online%20Fiji%20Colloquium%20Report.doc).

challenges for all of us here. We will not find a principled way through if we do not adhere to the ethics of the profession.

This culture is the reason why lawyers still leave lucrative partnerships or barristerial practices to become judges on salaries that do not compare with their earnings in the private profession. The traditional view that professional recognition of a lawyer's skill and his or her success in public causes was as valid a measure of success as money served to reinforce the underlying ethic. That is why we should be concerned about senior members of the profession who no longer want to serve in this or other public office. Sir Thomas Bingham was right to express concern about the number of senior practitioners no longer willing to accept judicial appointment. His concern has been echoed by Chief Justice Gleeson, speaking of the New South Wales profession.<sup>25</sup> It may be a barometer of the weakening of the shared value in such service.

Such erosion of values can pick up pace. The integrity of the legal system and judicial independence can be threatened imperceptibly. Tacitus warned that the tyrannies of Augustus began in this way: "at home, all was quiet, the magistrates were undisturbed in their titles." If the profession loses focus, progressive erosion may not be detected until too late. There is no wide public constituency for protecting these values in the legal system. Most of us live in societies where civics is not adequately taught in our schools and where the public may not always be aware when basic balances are at risk. Unless the profession is willing to go into bat for the values which underpin democratic government under law, there is no obvious defender at hand.

Today, the opportunities to reinforce the ethical values that underpin much of the rule of law are more limited than in the past. The profession is much bigger. It is fragmented by specialisation. The practice of law is now highly competitive. In these circumstances it is harder to make common cause. Law schools are one of the important ways in which such values are obtained. What is learned there needs to be reinforced by professional associations and emphasised through continuing legal education programmes. Even such "book learning" will not succeed unless successful lawyers demonstrate the culture in action:<sup>26</sup>

It is the successful lawyers, the ones with power in the firms and Bar groups, who pour content into professional roles by teaching and example. This means not only rhetorically invoking the ideal of independence at Bar dinners and ethics discussions, but also rewarding it with both promotion within the firm and public honor – especially honour to those lawyers who have conspicuously foregone income to serve the ideal.

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<sup>25</sup> Hon Murray Gleeson "*Bench and Bar*" (2002) 22 ABR 95.

<sup>26</sup> Gordon, above n4, 38.

I do not think commitment to these ethical values is properly to be described as altruism. In my view it is very much in the interests of the profession to maintain its identification with these values. There are at least two reasons.

First, lawyers do not serve their clients well if they see themselves only as “value-neutral technicians”. Ultimately, that will not be good for business. Harold Williams, a former Chairman of the Security and Exchange Commission explained why when he described the Securities Bar in the United States as too much in the service of its clients:<sup>27</sup>

A counsel does disservice when, in effect, he limits his advice to whether the law forbids particular acts or to an assessment of the legal exposure, and does not share with the client his view of the possible ramifications of the various alternatives to the short- and long-term interests of the corporation and the private enterprise system. He pre-empted the opportunity for his client to make the fullest possible judgment by not providing a full range of information and advice of which he is capable and on which the client can make the most informed choice. To correct this tendency, the Bar must place greater emphasis on the lawyer’s role as an independent professional – particularly on his responsibility to uphold the integrity of the profession.

With the stock market slump of 1987 and recent spectacular failures, such as of Enron, the spotlight is coming back on the ethical and professional obligations of lawyers. Lawyers must be committed to maintain the legal framework even when doing so hurts their client’s immediate interests.

Indeed, in modern societies, often secular or with diverse beliefs, law is one of the more important sources of the principles by which society operates civilly. The deliberative discourse of law is one of the important processes by which social adjustment is achieved without disruption. Richard Posner has made the point about another landmark just past its 50<sup>th</sup> anniversary, *Brown v Board of Education*.<sup>28</sup> The Supreme Court’s about-face in *Brown* did not come from pondering over the text of the 14<sup>th</sup> Amendment, but from its understanding that the nation’s social and political climate had changed.<sup>29</sup> Lawyers translate changes in social conditions into legal dialogue. The specialisation of our profession may well be efficient and sensible but even specialists have to retain a sense of the law as a whole. Otherwise, they will lose their sense of the currents of ideas and professional competence will be blunted.

Ronald Dworkin says that the strictures and doubts which are now part of popular culture, add to the appeal of the deliberative forum provided by the

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<sup>27</sup> Williams “*Professionalism in the Corporate Bar*” (1980) 36 Bus. Law. 165-66 quoted in Gordon, above n 4, 5.

<sup>28</sup> (1954) 347 US 483.

<sup>29</sup> Posner *The Problems of Jurisprudence* (1990) 307.

courts.<sup>30</sup> So do modern statements of human rights. If any adequate overall view of law must recognise that it is a “form of institutionalised discourse or practice or mode of argument”, partly political in effect, as Neil McCormick has long argued,<sup>31</sup> then lawyers cannot be narrow technocrats if they are to properly represent their clients and adequately contribute to the necessary discourse.

The second reason why I think adhering to and maintaining the independence and obligation of the profession is critical, is because all of us like to think our work worthwhile. A drop off in the standards of courtesy, a querulousness, a jostling, a naked self-interest is a dispiriting climate for anyone to work in. That is what happens when shared values are eroded. A loss of commitment to the legal system and to law removes a real reason most of us took on legal careers. A lack of passion for the work, a loss of appetite for achieving what is right according to law are, I think, part of the turnoff for droves of able practitioners who are leaving the profession. Law is a thinking profession. If we are to embrace change, we need to be adaptable. New technology, globalisation, human rights, all create risks but also opportunities. We diminish the enjoyment of our work and the attraction of it for able young lawyers if we offer them only factory piecework.

At the end of the day, the independence of judges and lawyers is not, as Michael Kirby has said, sufficient for a just society:<sup>32</sup>

It is not much use lawyers being independent if few individuals in need can afford lawyers or if legal aid is missing or hard to find. It is not much use if the law, when accessed, is unjust and there is nothing that the judges and lawyers can do about the injustice. Or if there is no interest in law reform. Or if judges and lawyers are unrepresentative of the variety of society and ignorant about, or out of sympathy with, the legal needs of women and minorities.

Enlisting the support of the wider society for justice under law is part of the responsibility of those who practice law. It is asking a great deal for individual lawyers to undertake this work, unsupported by the profession as a whole. Organisation of the profession is essential, as the UN Principles rightly recognise. Without such organisation under a shared ethical understanding, history shows that individuals are picked off and the legal system as a whole suffers. A number of writers have demonstrated how undermining the independence and impartiality of judges and lawyers was critical in the perversion of the rule of law in Nazi Germany.<sup>33</sup> The legal process was

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<sup>30</sup> Dworkin “*The Judges’ new role: Should personal convictions count?*” (2003) JICJ 4, 12.

<sup>31</sup> McCormick “*Beyond the Sovereign State*” (1993) 56 MLR 1.

<sup>32</sup> Hon Michael Kirby “*Independence of the legal profession: Global and Regional challenges*” (2005) 26 ABR 133, 144.

<sup>33</sup> See, generally, Reifner “*The Bar in the Third Reich: Anti-Semitism and the Decline of Liberal Advocacy*” (1986-1987) McGill L.J. 96; Lippman “*They Shoot Lawyers Don’t They?: Law in the Third Reich and the Global Threat to the Independence of the Judiciary*” (1993) 23 Cal.W.Int’l L.J. 257.

politicised. Advocates and judges were purged of those who were progressive and those who were Jewish. Extraordinary tribunals displaced established courts. The judiciary acquiesced in the use of extra-judicial punishment and allowed itself to be subject to political pressure in deciding cases. Conventional principles were discarded. These are the experiences out of which the human rights instruments we have adopted in our laws have been forged. Making sure they do not happen again in our times is the role of the lawyer in society.

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