

**MACKILLOP CATHOLIC COLLEGE**  
**ASSEMBLY SPEECH BY**  
**HER EXCELLENCY PROFESSOR THE HONOURABLE KATE WARNER AC**  
**GOVERNOR OF TASMANIA**  
**MACKILLOP CATHOLIC COLLEGE, MORNINGTON**  
**THURSDAY 6 AUGUST 2020**

Good morning and thank you for inviting me to speak to you today at your school assembly.

Thank you Emma Haynes for your acknowledgement of country. Can I add to that by paying my respects to the traditional and original owners of this land: the palawa people. I acknowledge the contemporary Tasmanian Aboriginal community, who have survived invasion and dispossession, and continue to maintain their identity, culture and Indigenous rights.

I was reminded strongly about the survival and revival of Aboriginal Culture on Tuesday afternoon when I attended a screening of an episode of the animated television programme, “Little J and Big Cuz”, which is about a couple of Indigenous Australian kids with episodes such as “Goanna Ate My Homework”. What is special about the latest episode, “Pilot Bird” is that it is in palawa kani, the reconstructed Aboriginal language, one of the many examples of the ways in which Aboriginal culture is being revived.

May I also acknowledge:

- His Grace the Most Reverend Archbishop Julian Porteous;
- Father Richard Ross;
- and School Principal Mr Eammon Pollard, in your final year as Principal at MacKillop Catholic College.

Congratulations Mr Pollard on all that you have achieved here and no doubt you have a raft of future endeavours lined up – including I understand a PhD on the topic of how service education improves the wellbeing of teenagers.

When Mr Briers first contacted me, he suggested that I might wish to address the theme of this assembly, namely Mary MacKillop’s advice: “Never see a need without doing something about it.” And he added that he had seen me embody this theme many times in my life. I am flattered to think that is the case!

Mary Mackillop saw a great need to educate the poor. She recognised, to use the words of my predecessor, Peter Underwood, that “education, more than anything is the passport to a better life” and that this was something everyone deserved, including girls from poor families. Mary Mackillop showed great leadership in her life, identifying a need and responding to it, and persisting with courage.

I have been fortunate, thanks to my parents, to have been well-educated, to have been encouraged and supported to go to University. Perhaps ahead of their time, my parents wanted me to be able to support myself, to be financially independent and to have an intellectually rewarding career. I was also supported in this aim by my husband, Dick and I am grateful to him for this. By no means all of my friends’ parents or partners were so supportive of their daughters’ and wives’ careers.

As a young academic, I became interested in law reform. Teaching both criminal law and criminology at University revealed to me many flaws in the criminal justice system, particularly in relation to the way the law treated gender violence – rape and domestic violence. When I was a law student and a young academic, domestic violence was regarded as a private matter. And it was not a crime for a man to rape his wife. It was widely believed that most complaints of rape were false, and that prior sexual history was relevant to a victim’s credibility. The law reflected these beliefs in rules such as the need for corroboration of a victim’s evidence of rape.

I will explain corroboration. It meant that a man could not be found guilty of rape on the evidence of the woman alone, or at least the judge would be required to give the jury a warning that it would be dangerous to convict the accused on the evidence of the alleged victim without evidence from another source – from a person who saw it happen, for example.

Many complaints of rape just did not get to trial. Police were trained to be suspicious of rape complainants and were told there were multiple reasons why complaints were fabricated. If the allegations did get to trial, the complainant could be vigorously cross-examined (questioned by the accused’s lawyer) including about their prior sexual history which was regarded as relevant to both the issue of consent and to credibility. They could be also cross-examined about a failure to complain – at the first and it would be suggested that this showed that she was not telling the truth about the alleged rape.

So, giving evidence in a rape trial was an ordeal for the victim. At the same time, an accused person was and is not required to give evidence. So the accused did not have to submit to cross-examination but the victim did. It's not surprising then that many victims did not report rape.

I became involved in rape law reform and wrote papers and reports for the Law Reform Commission as well as journal articles advocating reform. In 1982 the Law Reform Commission recommended a series of reforms including abolition of the marital immunity rule and changes to the laws of evidence which I have described. There was a lot of opposition to the reforms – for example I can well remember a public debate I had with a prominent member of the legal profession who argued that changing the law to allow a man to be charged with rape of his wife would endanger the institution of marriage. And I appeared on television explaining the proposed changes.

The same report of the Tasmanian Law Reform Commission also recommended that homosexuality be decriminalised. This is one of the many law reform reports I have worked on.

Some of the recommendations of the Commission, such as abolition of the marital immunity rule, were accepted by the Government some five years later (1987). But it was to be another decade before homosexuality between consenting adults was decriminalised, 1997. This time it was human rights laws that facilitated this. Article 17 of the International Covenant of Civil and Political Rights deals with the right to privacy.

How this human rights law, namely the right to privacy, helped change a Tasmanian law involves a complex interplay of international human rights law, Federal Australian law and Tasmanian law. I will just say the end result was that the Tasmanian Parliament eventually passed a law which repealed the laws which made homosexuality between adult males a crime. During the passage of the 1997 legislation, I advised politicians Christine Milne and Judy Jackson, who introduced the legislation, on the technicalities of repealing the sections while retaining the ability to prosecute sexual assault of boys.

As a law academic at the University of Tasmania and as Director of the Law Reform Institute for many years, I was involved in a lot of law reform activity. And law reform does involve seeing a need for change and doing something about it or at least attempting to.

So I have been involved in such things as:

- child sexual assault law reform: making it easier to prosecute cases of child sexual assault by changing out-dated rules of evidence;
- bullying laws: investigating the adequacy of laws relating to bullying;
- physical punishment of children: should the ban on corporal punishment of children in schools be extended to banning parents using physical punishment;
- human rights and criminal procedure;
- sentencing laws: sentencing law deals with the punishment of those who break the law.

Sentencing law is a good example of an area like climate change, where there are conflicting perceptions about whether there is a genuine need for change. Media coverage of sentences for criminals often claims that a particular sentence was too lenient; that the offender has “walked free” If there is no term of imprisonment’; that judges are soft on crime; or that there is public outrage over the length of a particular sentence because it was not severe enough.

When the public are asked “Are sentences too lenient?” – a majority from 60% to 80% in western countries respond that they are (the latest Australian data, is 66% in NSW (study released in June of this year).

As a result politicians often feel there is need to respond to public opinion by promising to be tough on crime by increasing penalties and decreasing judicial discretion by introducing mandatory penalties. This is despite the fact there is no evidence that increasing penalties reduces crime – longer periods in prison do not rehabilitate offenders nor do heavier penalties deter others.

The problem is that increasing the imprisonment rate is not only ineffective in reducing crime, it is also very expensive. It costs \$302 per day to keep a person in prison and so the additional expenditure means there is less money for education, health services and public housing.

We know that higher levels of knowledge of the criminal justice system are associated with more confidence in it; and that the more detail that is known about a particular case, the less likely it is that the sentence will be seen as too lenient. I have done a lot of research on public opinion and sentencing using jurors. We have asked jurors, after they have found an offender guilty, to

suggest the sentence they think appropriate for that offender and then compared that with the judge's sentence. We have found that the majority of jurors suggest a more lenient sentence than the judge – even in the case of sex offenders and non-sexual violent offenders. In a national study of jurors we found 62% suggested the same or a more lenient sentence than the judge imposed – remember this is for sex and violent offences. On this measure of public opinion, the public is not clamouring for harsher sentences.

Since I have been Governor, I have continued my interest in criminal law and gender violence. As I am no longer directly involved in law reform, I have shifted my focus to thinking how we need to confront the underlying causes of violence against women. Those causes include gender inequality and the rigid gender stereotypes that explain why, despite huge gains for women in areas such as educational attainment, the gender pay gap persists and women continue to be disproportionately victims of violence. One woman is killed every 9 days in Australia by her partner.

There's always a role for law reform and improvements to the legal system's response, but we should not expect more from the law than to respond to violence and to hold perpetrators accountable. As a community we have a responsibility to change the culture which allows gender violence to flourish. I am sure your school is doing what it can to encourage respectful relationships. I know that it has an ethos of being caring, ethical and committed to the service of others and your community. This begins at school with your peers. Students too have a role in supporting and caring for other students who need your help. It begins with calling out behaviour and language that is disrespectful, racist, sexist or unkind. Violence to women, I believe, starts with disrespect for women. Violence, more generally, is rooted in disrespect for others.

Given St Mary MacKillop's interest in education, I would like to finish by saying something about it. Tasmania's educational attainment is an area that I have taken a particular interest in since being Governor.

So, what is the education situation in Tasmania?

- The percentage of Tasmanian adults who are functionally illiterate at 48% is 4 percentage points higher than the national average;
- A smaller proportion of Tasmania's population has a bachelor's degree or higher than any other State or Territory;

- Successful Year 12 completion rates are improving but remain at 20% below the national rate.<sup>1</sup>
- NAPLAN results are poorer, e.g. in 2018 proportionally fewer Grade 3 children were above the minimum standard for reading, writing, spelling and grammar.

Teaching law students in the University sector, I was insulated from this knowledge.

I would like to see higher levels of educational participation and attainment and its flow on effects to our economy and a great improvement in literacy and numeracy rates. It can unlock the potential that is dormant in our State.

As Chair of the Underwood Centre for Educational Attainment and in other ways, I have strongly supported a number of initiatives in our State, such as a programme called the Basics, which builds on the fact that 80% of brain development occurs in the first three years of life. A pilot of this programme has been led by two teachers, Kate Slater and Maree Thompson, who were inspired to do this program in the light of 2018 data for the Channel area showing that an increasing proportion of children were starting school with poor vocabularies and that there were increases in the proportion of children achieving below the expected grade level in reading.

Through Rosie Martin's Chatter Matters, now Connect42, (I am patron of Connect42) I have attended symposia and seminars which have focused on the problem of tackling our literacy problem. There are experts out there who can help with this goal. This was demonstrated to me when I spent some time observing a Grade 3 class at St Paul's Bridgewater where speech pathologist Rosie Martin was working with the Grade 3 teacher to address the fact that the majority of the class were struggling to reach the NAPLAN standard for reading.

And through the Underwood Centre I have been involved in supporting the Children's University, which provides educational opportunities for 8-14-year-olds outside the school at a range of some 150 learning destinations including museums, sporting clubs and other organisations – even involving Children's University students in productions such as Rosehaven. Graduation ceremonies

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<sup>1</sup> <https://www.acara.edu.au/reporting/national-report-on-schooling-in-australia/national-report-on-schooling-in-australia-data-portal/year-12-certification-rates#view1> accessed 5 August 2020.

are held in conjunction with University December graduations, with children wearing gowns and participating in the Town and Gown Parades in Hobart, Launceston and Burnie.

Through my engagement with education, I see a need to value teaching as a profession more highly we do. In closing, I would like to encourage you to think about teaching as a profession. Teachers are the most admirable and important people in the world. You don't have to do it forever, but if you're in doubt about what to do, be an amazing teacher. I am sure St Mary MacKillop would support me in saying this.

Thank you.