

UNIVERSITY COLLEGES OF AUSTRALIA FORUM DINNER
SPEECH BY
HER EXCELLENCY PROFESSOR THE HONOURABLE KATE WARNER AC
GOVERNOR OF TASMANIA
THE HENRY JONES ART HOTEL, HOBART, THURSDAY 27 SEPTEMBER 2018

Good evening and thank you for inviting me to speak at your Forum Dinner.

I begin by paying my respects to the traditional and original owners of this land—the Mouheneener 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 say thank you for inviting me to speak because it has given me the opportunity to read and ponder on some thought-provoking material. Joanna Rosewell has drawn my attention to two excellent papers on the modern role of University Colleges, one by our Vice Chancellor and former master of Ormond College, Rufus Black and the other by Ian Walker, Head of Toad Hall, a graduate residence at the ANU.

And she also referred me to *Changing the Course*, the Human Rights Commission's 2017 report relating to sexual violence on University campuses; the two Broderick reports (*Cultural Renewal at the University of Sydney Residential Colleges* and *Cultural Review of St Paul's College*), and *The Red Zone Report*, released in February this year. I also got in touch with my colleague Professor Margaret Otlowski, Pro-Vice Chancellor, Culture and Wellbeing, who sent me more material outlining the University of Tasmania's response to *Changing the Course*, including the Rosenthal and Banks Report.

I know that addressing the negative aspects of college culture highlighted by *Changing the Course*, the Broderick Reports and *The Red Zone Report* is not a usual topic for an after-dinner speech. But I do know it is very much on your agenda. And I would like to congratulate you on embracing the need to respond to what Rufus Black has described as 'an unhealthy cocktail of traditions that reflect an understanding of social relations long ago recognised as at best limiting of human development and at worse, concealing egregious violations of human decency.'¹

There does seem to be a genuine commitment to tackling this issue so colleges and campuses are free of dangerous and humiliating hazing practices, sexual harassment and sexual assault.

¹ Rufus Black, 'The Role of the College in the 21st Century University, The Sesquicentenary Lecture for St Andrew's College', 10.

I can imagine the pain that *The Red Zone Report* created with its graphic detail of the hazing and initiation rituals and of misogynistic chants and songs and sexually predatory behaviour. Added to this is the description of the wealth and privilege of many of the college students and the extravagance of some of their formals. All of this makes good copy for news media, and is easy to recycle.

Clearly this is damaging to the reputation of colleges and it is probably a vain hope that media reports of hazing practices will discuss the positives as well as the negatives of college life. It must be tempting to dismiss the negative publicity as exaggeration or of historical relevance only. However, it is an opportunity to engage in 'transformational leadership' to pick up on Rufus Black's adoption of Heifetz's term. The exposure of these practices provides a unique opportunity to address them.

There seem to be two related problems. There is first the problem of sexual assault, harassment and misogynistic practices on campus, a problem which disproportionately affects females, and secondly, the vulgar, violent, dangerous or humiliating initiation practices which college freshers can be subjected to, practices which can also include sexually predatory behaviour.

One of the many concerns with hazing and initiation practices is that they perpetuate and magnify an immature model of masculinity which celebrates domination and entitlement, reinforcing a hyper-masculine culture. Coincidentally, the same sort of concerns of elitism and hyper-masculine culture have been raised in relation to Georgetown Preparatory School, the school attended by US Supreme Court nominee Brett Kavanaugh who has been accused of sexual assault as a teenager by psychology professor Christine Blasey Ford and also by one of his Yale classmates.

The problem is a broader one than toxic college cultures, it is the general cultural support for hypermasculinity in society which underlies sexual assault which college life can normalise and magnify instead of challenging.

However, if there anything that I can usefully add to the issue, it is possibly to emphasise the need for cultural change in relation to gendered violence in Australian society in general. And here there is an opportunity for colleges to lead change in this.

Something of my background. As an academic criminal lawyer and criminologist, I have for many years been involved in law reform and was optimistic about the power of the law to help address the problem of gender and sexual violence. We hoped, for example, that by changing the definition of consent in the context of rape, by changing the coercive model of consent to a communicative model, we would be able to transform what consensual sex looks like. The hope was that

moving the perception of sexual intercourse that underlies sexual assault laws away from a coercive, possessive view of sex would make it easier to prove absence of consent and, through the educative power of the law, create greater respect for the sexual agency of women and so less sexual assault.

Sexual assault laws have not lived up to the promise. Victim surveys tell us that sexual assault rates remain high, and while the reporting rate has improved somewhat, many sexual assaults are not reported and the attrition rate from reporting to conviction is high.

Changing the law is not enough. Responding appropriately to harassment and sexual assault is not enough. We need also to tackle the underlying causes of gendered violence. Significant drivers of the problem of violence against women are the unequal distribution of power and resources between men and women and adherence to rigidly defined gender roles and identities. This provides the context in which violence-supportive attitudes are embedded. Given the association between violence-supportive attitudes towards women and beliefs about gender roles, especially males' adherence to sexist, patriarchal and or hostile attitudes to women,² it is relevant to consider research on the attitudes of young people to relationships and gender roles.

Results for respondents aged 16-24 from the National Community Attitudes Towards Violence Against Women Survey (NCAS) revealed:³

- More than 4 in 10 people agreed that rape results from men not being able to control their need for sex.
- Nearly 2 in 5 believe that a lot of times women who say they were raped led the man on and later had regrets.
- One in five believe that if a woman is raped while she is drunk or affected by drugs, then she is at least partly responsible.
- Almost 1 in 2 people believed that women often say 'no' when they mean 'yes'.
- More than 1 in 10 people believed that if a woman goes to a room alone with a man at a party, it is her fault if she is raped.

Another study with young people aged from 12 to 24 funded by the Australian Government was commissioned by Our Watch to inform a social marketing campaign on respectful relationships.⁴ It revealed that many young people are struggling to work out what healthy respectful relationships look like. Specifically, it was found that:

² Bob Pease and Michael Flood, 'Rethinking the Significance of Attitudes in Preventing Men's Violence Against Women' (2008) 43 *Australian Journal of Social Issues* 547 at 558.

³ Anita Harris et al, 'National Community Attitudes towards Violence Against Women Survey for respondents 16-24 years (2015) 37. At <https://www.vichealth.vic.gov.au/media-and-resources/publications/2013-national-community-attitudes-towards-violence-against-women-survey> accessed 24 September 2018.

⁴ Hall & Partners, *The Line Campaign: Summary of research findings*, Prepared for Our Watch, May 2015.

- 1 in 3 young people don't think that exerting control over someone else is a form of violence.
- 1 in 4 young people don't think it's serious when guys insult or verbally harass girls in the street.
- 1 in 4 young people think it's pretty normal for guys to pressure girls into sex.
- 1 in 4 don't think it's serious if a guy, who's normally gentle, sometimes slaps his girlfriend when he's drunk.
- More than one quarter of young people think it's important for men to be tough and strong.
- 16% of young people think that women should know their place.

Given these findings, it's not surprising that *The Change the Course Report*, also reported the existence of violence supportive and sexist attitudes and that the Broderick Reports and *The Red Zone Report* reveal a continuum of sexist attitudes and behaviour in University colleges starting with sexist comments, misogyny and sexual harassment.

All of the reports recommend that evidence-based education and awareness programs around gender relationships, sexual ethics and healthy and respectful relationships should be offered to all students and relevant staff in addition to having policies and procedures addressing sexual harassment, sexual assault and bullying and hazing.⁵ It seems that colleges and universities have offered such prevention programs in the past, but they have often been once-off presentations and have not always met best practice standards.

Some universities also offer online prevention programs but these are not necessarily well-known and the take-up rate can be low. Reviews of universities student safety pages have also been criticised in the past for offering well-intentioned advice which is problematic because it reinforces victim-blaming attitudes and may discourage reporting.⁶

University colleges are in an excellent position to offer and mandate best-practice respectful relationship and sexual assault prevention programs. The St Paul's report sets out details of what such a program should involve, indicating that it should be mandatory at orientation and with regular refreshers and that it should address 'individual, relational and societal causes of sexual assault.'⁷ This makes a lot of sense given that attitudes and norms about gender roles and relationships

⁵ Australian Human Rights Commission, *Change the Course*, 2017, 174; Elizabeth Broderick, *Cultural Renewal at the University of Sydney Residential Colleges*, 2017, 69; Elizabeth Broderick, Cultural Review of St Paul's College, August 2018, 87-88; End Rape on Campus Australia, *The Red Zone Report*, 2018, 140.

⁶ Nina Funnell 'Sexual assault: What is your university doing to prevent it?' ABC News 25 Feb 2017, <http://www.abc.net.au/news/2017-02-25/what-is-your-university-doing-to-prevent-sexual-assault/8295604> accessed 25 September 2018.

⁷ Broderick, 2018, n 5, 87.

are drivers of gender violence. It also recommends anti-hazing education that is also reinforced over time rather than delivered in a single presentation.⁸

Both Broderick reports recommend banning hazing through clear policies. The Red Zone Report also recommends that State governments should legislate to criminalise hazing, specifically by ‘prohibiting the act of requiring an individual to undergo any act which is likely to cause bodily danger or physical punishment to any student or other person, as a precondition or participating in a student group or organisation’; and that ‘such legislation prescribe additional penalties for hazing activities that result in actual bodily injury or death.’⁹

I think there are difficulties with this recommendation. There are precedents for criminalising hazing in some US states but this does not mean that it is an appropriate response to the problem. My first point is that the proposed offence does not seem to address the essence of hazing which in many cases is enduring a humiliating or degrading activity that does not involve any risk of bodily harm. Proscribing actual or potentially physically harmful conduct risks sending a message that this is the only kind of hazing that is objectionable and that absent a risk of physical harm, initiation rites are innocuous and even valuable traditions.

The second is that much of the sexist and misogynistic behaviour that needs to be condemned goes well beyond initiation or hazing rituals for freshers but targets all female students. Facebook pages rating students’ attractiveness is an example.

Criminalising conduct is too often used as way of being seen to deal with a social problem without effectively doing so. It should be invoked to proscribe undesirable behaviour very cautiously. The question of whether a certain form of conduct should be criminalised or not raises complex issues. Criminal law theorists have struggled for generations to come up with a comprehensive theoretical approach to determine the question and competing approaches have been suggested including liberalism, paternalism and legal moralism. However, there tends to be agreement that criminalising should be reserved for serious wrongs that cannot be dealt with in any other way and criminalising should make a contribution that other responses cannot.

Law reformers are constantly grappling with this issue. Whether or not bullying should be made a separate offence raises similar issues. Here in Tasmania the Tasmanian Law Reform Institute has recommended that the ‘course of conduct’¹⁰ offence of stalking should be amended to include certain bullying behaviours, such

⁸ Broderick, 2018, n 5, 63.

⁹ The Red Zone Report, 142.

¹⁰ This means that the conduct must at a minimum be committed on more than one occasion. From the victim’s perspective hazing is not necessarily a course of conduct but can be an isolated incident.

as acting in a way reasonably expected to cause extreme humiliation to another person.

In cases when physical harm is involved or risked, the proposed new offence of hazing may overlap with existing criminal offences. So it is always important to ask if the targeted behaviour is already a crime. If it is, then the answer may be that more resources should be allocated to policing it and the reporting of it supported and encouraged.

There are also issues with the way the proposed hazing law is framed. It is unusual to make it an element of an offence that the defendant required the victim to do something including to themselves. This raises questions of free will, autonomy and consent.¹¹

On balance I don't think hazing should be a new criminal offence. When serious harm is caused a prosecution for an existing offence is possible as consent is not generally a defence to serious physical harm. Whether there should be a more general criminal offence of intentionally or recklessly engaging in conduct that creates a substantial or real risk of serious harm (physical or mental) in those jurisdictions which do not have such an offence is worth considering.

In closing, can I again encourage you to embrace the possibilities of using this opportunity to take the lead in tackling the rigid gender roles and norms that are the drivers of gender violence. You have both a captive audience and, in your students, wonderful material to work with.

Thank you.

¹¹ This point has been made by Paul McGorry, 'Why governments should be cautious about criminalising hazing' *The Conversation* 2 March 2018.