DEVELOPMENTS IN THE LEGAL SYSTEM AND LEGAL ADMINISTRATION IN THE TERRITORY

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The general theme at the present forum is "Self-Determination". I understand that Mr. Ephraim Jubilee is to give an address on a subject related to this general theme, and when I was asked to do likewise, I felt honoured to join Mr. Jubilee and to address your forum. The subject I have chosen relates to the steps being taken for the development of an adequate legal system; the establishment of a system for the administration of the law, which will meet the needs and satisfy the aspirations of the people of the Territory.

This process relates to the future generally, rather than to the phase of pre self-determination. Such planning in the legal sphere is not directed towards any fixed point of time. It accepts self-determination as something which will materialise in the future, and which is an objective to be achieved; but because of the nature of a legal system operating under the Rule of Law, it is not a feature which limits our thinking or the range of our planning or the nature of the development of an adequate legal system. Provided the Rule of Law is supreme, the stage of development towards or the achievement of self-determination is irrelevant. The maintenance of fundamental individual freedoms - and indeed the continued supremacy of the Rule of Law, is a condition precedent to the peaceful establishment of any regime based upon self-determination.

THE NATURE AND PURPOSE OF LAW

A legal system is not just one aspect of self-determination. The law is here now. It serves the community as a whole, all the time. It operates, in the public interest by providing sanctions designed to compel people and authorities of all kinds, including the Government itself, to observe such a pattern of behaviour that in any given situation their actions will be reasonably predictable to law-abiding people, who can then concentrate on minding their own business, and going about their proper lawful affairs, without having to bear the additional responsibility of protecting and fighting for their own personal advantages. The law removes personal claims from the forum of conflict, political or physical, and substitutes a set of rules and a set of Courts, which enable claims and differences to be settled peacefully.

The basis of organized society varies from country to country and from time to time, but according to the British tradition, the foundation of society is the Rule of Law. At the present time we have fully developed institutions which are responsible for various aspects of the law. Parliament, for example, can, by going through certain established procedures, bring about a change in the law, but the law as it stands from time to time, is strictly binding on Parliament, on the Government, on the Courts, and on the people. In the result, and assuming for the moment that we have a set of laws which are ideal in character and free from any ambiguity or difficulty in interpretation, every citizen should know precisely what are his rights and duties at any given time. Like footballers with a thorough understanding of the rules of their game, the efficiency of their whole organization is then theoretically at its maximum. The community itself takes over several fundamental responsibilities from the individual.

LAW AND ORDER

In the development of a primitive community the first function to be taken over, is the common defence of the country from outside attack. In order to achieve this purpose efficiently, internal strife must be controlled. Some alternative must be found to the process of individual settlement of claims by resort to violence, or even persuasion and coercion.

This first step towards the unification of the community, applies even so far down the scale as the gregarious animals, who find by experience that the security of peaceful union outweighs the loss of the right to take individual action in relation to external violent attacks which constitute a common threat to all the members of the community.

In terms of human organization of society, the capacity of people to live together in peace so as to present a common front to outside aggression, and to meet other common problems, is the basic condition of law and order. In terms of modern organization of society, it is the Executive Government which must, within the law and subject to the Rule of Law, maintain the state of law and order, and it is a typical duty of the Police Force, and if necessary the Army, to prevent breaches of it. The maintenance of law and order is not to be confused with the supremacy of the Rule of Law.

INTERNAL DISPUTES

If then we visualize a community of people living together at peace, and in a state of law and order, it is obvious enough that individuals within the group will come into conflict with each other in relation to all sorts of domestic matters. Exclusive rights to property, including the right to exclude other people from trespassing, are fields of conflict which emerge at an early stage in any settled community.

CIVIL LIBERTIES

In the British tradition these disputes are resolved consistently with the principle that it is in the interests of the community as a whole, that the individuals comprising the community should be free; free to own property which they can withhold from anybody else and indeed from the claims of the community as a whole; free in personal liberty, to pursue any vocation and to carry on business as they see fit; free from the oppressive action of any individuals or groups of individuals who might seek to take advantage of them.

In order to establish these freedoms, it was necessary for the State to set up a system of rules, this time not to compel the individual to serve the State, but to compel the State to recognize and protect the rights and interests of the individual and to compel other individuals to do the same.

It is important again to remember, that such a recognition of the rights of the individual is to be justified wholly and solely upon the footing that it is in the interests of the community as a whole that such recognition and protection should be given.

Again it is important to remember that this does not give an individual the right to take advantage of the community which protects him. Protection of the freedom of the individual is enjoyed by each in common with a corresponding protection of the freedom of all others. Right at the very foundation of it all then, is the requirement that he who seeks protection for himself, must respect the rules of the society in which he claims protection, and must also respect the rights of every other individual in the same society.

Thus there emerges, the need for a set of rules, which so long as the community is going to live in a single social unit, must be absolutely binding on every individual. It is only when the rules have the wholehearted and active support of every member, that they can operate efficiently to protect each individual. They must embody sanctions which may be imposed upon individuals or authorities who seek to take advantage for themselves.

SANCTIONS OF THE LAW

Our task then is, to devise a system of rules and legal instruments, or perhaps at this stage we may properly term it a system of law, to define and enforce the reciprocal freedoms of individual members of this society, in which the emphasis will be upon the recognition of individual liberties and rights to property. Enforcement introduces the factor of compulsion. Persons who live within the society, but refuse to conform to the rules, must be compelled, whether they like it or not, to recognize equally with their own, the rights of others, and indeed to undertake their proper shares of civic responsibility. What those are depends upon the standards of the community itself, and means must be found to determine and express these from time to time as the circumstances require. The individual must be protected, not only from other individuals, but from any official organization which purports to act on behalf of the community as a whole. If any instrumentality of government, from a desire to achieve a greater authority, or even greater efficiency in the course of its own particular operations, attempts to whittle away individual liberties belonging to the whole community, then it is stepping on to the slippery path leading to totalitarianism. Only a community steeped in the doctrine of the Rule of Law, whose citizens are aware of the essentials of freedom under the law, is equipped to sense and obstruct this fatal process. The liberty of the subject is an ideal so deeply fixed in British social tradition, that it is difficult to conceive departures from the general

operation of the Rule of Law of any fundamental or permanent character. At least the authority of Parliament is required before any inroads can be made upon these liberties.

THE BRITISH CONSTITUTION

In England, especially after a long and bitter struggle over the liberties of the subject, Parliament emerged as the supreme authority and the only authority which can bring about direct changes in the law.

We sometimes forget that Parliament itself is a comparatively recent development in our social history. British legal organization is based on the central figure of the Monarch, and that Monarch was invested with complete and supreme power. All powers of government flow from the Monarch, and those powers were not, in origin, derived from the people.

In the course of evolution, the powers which were formerly exercised by the Monarch in person, have come to be exercised exclusively on the advice of various bodies set up for the purpose, and Parliament to this day exercises in the name of the Queen and on behalf of Her Majesty, sovereign powers which are legally vested in the Monarch. The form in which these powers are exercised, shows that a Statute becomes law in the name of the Queen "by and with the consent of Parliament".

Similarly, today, other functions of the Sovereign are exclusively exercised by and with the consent, or upon the advice, or through the agency of various authorities. These practices are established now, not only by virtue of the law, but to some extent in spite of it, by the development of constitutional conventions to the effect that legal powers may only be exercised in a particular way. Once these constitutional conventions are universally observed, a new body of law grows up round them, which ultimately compels their observance. We have therefore the curious situation where the special constitutional customs of the people take precedence over the previously established law, and the law, having accepted this position, develops to the extent of enforcing the observance of these special customs in the exercise of legal powers.

We have therefore a Constitutional Monarchy; that is, a situation where the Monarch has vested in her absolute power, but the exercise of this power is controlled for the protection of the individuals within the community, by constitutional conventions of a democratic character.

The Bill of Rights illustrates the point. William of Orange and his wife Mary, accepted the British Throne in terms of a Proclamation setting out guarantees of liberty and freedom from specified abuses of sovereign power. Since sovereign powers were not derived from the people, it was necessary to make it clear that they were to be exercised in future for the benefit of the people and the protection of liberty.

It is from an understanding of these important historical developments, that we can best form an appreciation of the extraordinary strength of the British community. Glancing quickly at the American position, we find much the same kind of people, with very strongly held notions of civil liberties derived from their own British origin. In seeking to organize their society without a Monarch who could be adopted as the source of all lawful authority, it was necessary to erect, within the community itself, institutions which could act as agents for the concept of sovereign power residing in the will of the people. The identity of this sovereign power posed many problems, and the Constitution had to contain a lot of rigid and complex provisions to guarantee the liberty of the subject. Since the authority of government was to be in the hands of separate agencies, an elaborate system of checks and balances had to be developed. Thus in America, individual liberties have been reasonably protected, but to some extent by artifice and only at very great cost.

In Great Britain the position was rather different, for the Monarch was already established as the source of all law, with authority clearly binding on the community itself and everything and everybody within the community. It was established by constitutional conventions and by the law, that the Sovereign owed a duty to the people to govern wisely and fairly, to govern honestly, and to protect the rights and liberties of the individuals, especially those individuals who suffered from any sort of legal incapacity. Widespread appreciation of and popular demand for law, made it unnecessary for the British people to resort to a fixed and written Constitution, and in consequence to this day the British community retains a flexibility in the administration of its affairs, which is the envy of the world. It must be remembered however, that this is only possible by reason of the firm foundation of universal acceptance by the British people of unquestioned respect for the law and for Parliament and other institutions.

FUTURE TERRITORY CONSTITUTION

Let us now, with this background of our own tradition in mind, look at the Territory, both now and in the foreseeable future, and see what is most likely to meet the needs of the people of the Territory. The fundamental point is whether the inhabitants of the Territory are going to seek to establish and protect individual liberties and rights to property, by the rule of law, or to surrender to some form of tyranny. The ultimate decision on the political aspects involved, is one which must be made by the inhabitants themselves, once they reach a stage at which they are capable of making such a decision.

It is to be hoped that external pressures do not rise so rapidly as to force the inhabitants of the Territory, to suffer a decision which is not the free and informed choice of all the people, or at least a majority of those who elect to live together within a democratic union. It is quite obvious that such a decision cannot be made until all the people of the Territory have lived in a state of peace and law and order and have had time to appreciate the issues involved. This means specifically, that the administration must first complete the task of bringing basic civilization, and basic education, and an awareness of the extent of the country in which they live, and of the reciprocal requirements, rights and duties of all the people who live in it, to the groups who live in various portions of the Territory. At this stage it is inevitably the case that people living in small communities unrelated to the Territory as a whole, have got to begin to see themselves as part of a large community with reciprocal rights and duties.

It is at this point that a proper legal system efficiently maintained throughout the entire Territory, is seen to be an essential unifying factor. It assists to create an awareness of the principles of the Rule of Law, and a sense of unity of outlook in these separated social groups. The Rule of Law provides a common experience shared by the newly united social groups. They make their common appeal to the ideal of natural justice the cornerstone of the Rule of Law.

Superficial examination of some of the small social groups in the Territory, might suggest that a form of social organization which does not recognize individual rights, already exists in the Territory in some places. A better understanding of the typical localized native social organization however, leads to the opposite conclusion. Although land ownership, generally speaking, is related to the clan or communal group as a whole, and in some respects provides a foundation for such society organization as exists, this operates only to give the social group a platform from which to protect itself from other groups competing with it. The individual utilization of land and other property and various individual rights and obligations, are clearly established.

However, so-called native custom, although valuable within the limits of the clan, provides no common factor as between say a native from Lumi and a Papuan from, let us say, Baniara. The customs more or less observed at home by each of them, will not provide a sanction binding on both, to ensure a standard of conduct and so engender confidence in any transaction between them, whether commercial or social.

Our own system, built up from the experience of people originally just as primitive and just as localized in their social organization as the indigenous population, can provide ready-made rules and sanctions, which can be applied to native relationships for the benefit, commercial or social, of the inhabitants of the Territory as a whole; and such rules and sanctions are adequate to protect individuals, and make it possible for them to live together and transact their legitimate business.

Under the stimulation of rapid change, in a community such as this, people, and especially those who represent sectional interests in the community, tend to become uneasy for the security of their own interests. People who prefer a state of affairs to which they themselves have been accustomed, and to which they have adapted their own course of action, may well suffer anxiety at the prospect of further changes which will require them to change their habits of thought and action. Where parochial interests are opposed to changes which are promoted in the interests of the community as a whole, or which are occurring by process of evolution within a changing society, it is commonly found that opinions expressed are not accompanied by proper understanding.

Accordingly members of the public should have the fullest information of what is going on, so that they can understand and take adequate interest in the subject, to assist the responsible authorities in arriving at proper solutions to the many problems which beset them. It is very important, in my opinion, that people should be given also, the reasons for decisions which are made.

This of course, is the policy of the law, for it is the tradition of the Judiciary, to transact all their business in public and to make public disclosure, in Court, and in response to any interested inquiry, of the evidence admitted in any proceedings, the conclusion reached by the Court, and the reasons for any decision made. In keeping with this tradition and in recognition of the genuine interest in the subject under discussion, displayed by the organizers of your present forum, I am endeavouring in this paper, at the risk of giving you an overdose of the legal background, to afford not only an outline of the changes in the Judicial System which are now taking place, but an appreciation of the context in which these changes should be understood.

Until the emergence of a rational, adequately informed and politically articulate public opinion, decisions on many fundamental questions, must be the decisions of the responsible Government itself, having full regard to its international and other obligations. But it is the duty of all of us to do all we can, by forming and expressing opinions honestly arrived at in the general interest of the whole body of the people affected, to add what we can to the pool of informed public opinion, and so assist the responsible authorities in making the necessary decisions.

Many far-reaching decisions have, of course, already been made. They had to be made long before this stage, because unless plans were made well ahead, no progress would ever be made for the over-all development of the Territory.

In matters affecting the structure of society here, until the time for self-determination comes, it is plain that the Territory Government has to be organized along lines broadly similar to those obtaining in Australia. A written Constitution of some sort is, as I believe, necessary, because the community here will consist of very many hundreds of small localized groups, intensely bound within themselves but having no common background of experience or tradition as national units.

For the present, the authority under which all organized institutions will operate, must be an authority imposed from outside by virtue of Commonwealth legislation enacted in accordance with the objectives of the United Nations Trusteeship Agreement.

THE EXISTING STRUCTURE

Much change in political development has taken place over the years, and we now have a Legislative Council vested with a law-making power corresponding broadly in function with that of a sovereign Parliament. Its membership is intended to give the greatest possible representation to the people of the Territory which practicalities permit, but at the same time its powers must be limited, so that it cannot usurp the authority of the Commonwealth Parliament, or prevent the Commonwealth from implementing decisions designed to carry out its Trusteeship obligations.

Again following the pattern of the Australian Constitution, we have an executive branch of Government which, subject to similar limitations, exercises those functions of Government which are not related to either law-making or administering justice. The central power and responsibility of government of the Territory on behalf of the Commonwealth, is vested in the Administrator, Some characteristic constitutional conventions are incorporated, requiring certain powers to be exercised in certain ways and subject to certain safeguards.

At the present time the office of Administrator carries with it the Presidency of the Legislative Council, a role which reflects the necessity, at the present stage, for the Commonwealth to maintain control over the legislative processes of the Territory.

The third province of sovereign power according to our Territorial pattern of organization is concerned with the administration of justice. This field is vested in the Judiciary, consisting of the system of Courts established, or to be established, in accordance with the Constitution. The Judicial System consists of a Supreme Court, in which the Judges have judicial tenure of office and cannot be removed except in cases of proved incapacity or misconduct, and such other Courts as may be established.

Not only the Supreme Court, but all the Courts coming within the Judicial System, are entirely independent of the Legislative Council and of the Administration.

FUNCTION OF THE COURTS

The work of the Courts, is to decide disputes arising between individuals or groups of individuals or between any branch of government and any individual or group of individuals. In the course of deciding a dispute in any jurisdiction, the Court has need to determine what is the law applicable to the facts as found by the Court.

Generally speaking, the Court's decision as to what the facts are, is binding on any party to the proceedings. The Court is the sole authority to interpret the existing law, to decide what the law is, and to decide how that law ought to be applied to the facts as found by the Court. The Court is in no way responsible for the condition in which it finds the law at any stage, for it cannot change the substance of the law, and is as much bound by the law, as it stands, as any other institution of government or any private individual.

If the law is to be changed, this can only be done by Parliament (including within the Territory the Legislative Council when it has power to pass the particular law in question), or by somebody authorized by Parliament to bring about the appropriate change.

Within the experience of our own constitutional development, the sovereign in person used to sit in the Superior Courts, and fulfil his obligations to the public to administer justice. Several centuries ago this practice was discontinued, because the Sovereign was no longer competent to deal with all the complexities involved, and trained people were, to an increasing extent, appointed as Judges. Today the Judges derive much of their legal authority directly from the prerogative powers of the Sovereign which they have inherited. Much of the ceremonial of the law, observed today by the Courts, serves to remind not only the Judges, but all who play their part in the administration of justice, and the public, that the Judges are conduoting the Royal Courts on behalf of the Sovereign. It follows that they must scrupulously observe not merely their own personal standards but set standards which in the light of legal tradition and learning might properly be expected of the Sovereign herself.

THE DYNAMIC STATE OF THE LAW

We have simplified some aspects of this story, by considering the law largely as a simple and static thing, assuming that it is suited to the needs of the community. There have been many examples in history, of powerful communities where the law was in fact fixed and static; and the disintegration of the vast power of the Medes and Persians is a familiar example of the damage that can be done by a fixed and rigid system of law.

The fact of the matter is, that the law caters for the needs of a community of human beings whose interests and activities do not remain static. The standards of Justice which the Courts observe, are the proper standards observed by the community which is served by the Courts, but these standards and all kinds of standards of conduct and responsibility between individuals, and between the instruments of government and the citizens, undergo great and continual changes.

The rate of change is greatly increased not merely by changing social habits, but by the growing level of social organization itself. As society advances, it produces more and more complex organizations, which in turn increase the rate of development, so that the changes, as the community develops in complexity, take place at a greatly increased rate.

Another factor is that changes in the law are required not only to meet the existing rate of change of social conditions.

We may perhaps, take just one illustration which has occurred within Australia during recent years. As most of us remember, Income Tax, although unpopular enough from the taxpayers' point of view, was not a very complicated subject before the Second World War. The Courts had decided a number of questions of law, but, compared with other kinds of cases, tax appeals were infrequent. When the Commonwealth, economically speaking, changed into high gear during and after the War, and relatively high rates of Income Tax were experienced, the number of tax appeals increased enormously, and in a few years became the most common cases awaiting trial before the High Court of Australia. The growing complexities of the subject, were not so much due to legal difficulties, but due to the fact that individuals found it expedient to adopt all sorts of new processes, procedures and organizations, to try to reduce their liability, and whole new fields for legal inquiry into social organization were opened. The whole practice of accounting, as established over approximately half a century by judicial decisions and the expert opinions of accountants, underwent a total change, and just after the war,

the processes of company accounting forsook some earlier fundamental concepts, and adopted as standard accounting practice, the processes required by the Income Tax authorities. Today there is a vast body of case law in this sphere, which has accumulated within a period of less than twenty years.

Changes must conform to a dynamic plan allowing for future developments conforming to the wishes of the community of the future. In addition changes must be expected to advance the present society towards equality in organization and efficiency with other countries which are also themselves changing.

Although much is unpredictable, it is possible, from our own legal experience, to predict some developments which must necessarily take place in the Territory during the next few years, to enable the emerging nation to operate efficiently as a social unit in the international sphere, and consequential developments in the law.

The existing structure and hierarchy of courts is not adequate to enable the law to play its proper role in the future. Very substantial changes, which have been planned over a period of some years, are now beginning to take shape and they give some indication of the shape of things to come.

Originally the pattern established in British Colonial Administration, was very largely followed in the Territory. Courts were set up with the primary objective of protecting settlers and their interests from the attentions of hostile natives who did not conform to the required standards of law and order. Sir Hubert Murray had to start with a native social organization a long way behind scratch, and he saw it as a long and arduous task to bring about an ordered state of society. This view seemed to accord with the general experience of the day in relation to Colonial Administration in a territory populated by tribes of savage people. The natives could not be regarded as responsible citizens observing any legal code, or obligations of any kind, to anybody outside their own particular family unit.

The initial task of the Colonial Government was, of necessity, in the nature of a military operation and the colonial forces were organized and equipped to carry out operations of this character. Of course the British, with their great traditional sense of justice, carried out these operations as peacefully as possible and quickly established courts and tribunals. But under the colonial system they saw no reason, until social development had been achieved, to create courts in the functions of which the executive had no part to play.

However in this community, it is not to be doubted that the stage of development has been reached, at which any suggestion that the executive should participate in judicial functions at any level, would only be regarded as anachronism. Even in cases where, because of practical considerations, executive officers have to perform both administrative functions and judicial functions, they should, in the performance of their judicial functions always act according to law and without regard to considerations of general expedience.

RECENT CHANGES

Considering the position in relation to recent times in the Territory, we find that after the Second World War, new concepts were emerging in relation to what are commonly termed human rights. The Trusteeship Agreement of the United Nations, differs from the former United Nations Mandate, in that it recognizes three functions of Government - Legislative, Administrative and Judicial - in place of the earlier concept of administration of territories. This represents a change in world outlook, brought about very, largely, by the international organization of the legal profession, which has always been a champion of civil liberties. In response to this growing concept, the new Commonwealth legislation, passed shortly after the war, providing for the administrative union between the two former Territories, provided for the three separate functions of Government, legislative, administrative and judicial, to be vested in the three corresponding branches of Government established by that legislation.

During the last decade or two, throughout the world, there has been a quickening of interest in the doctrine of the Rule of Law, and I think that it could be said today, with much confidence, that any constitution imposed upon a newly-emerging nation, which did not provide protection for the

individual citizen, and did not provide that Courts which were to afford that protection, were to be independent of the political organs of the State, would be against the substantial current of world thinking on these problems today.

PRESENT CHANGES

At any rate in the Territory this much is clear from recent policy statements made by the Government and by the Minister for Territories, that the Government of Australia has committed itself to the task of bringing the legal system of the Territory into line with current requirements and firmly establishing the judicial system of the Territory according to traditional British standards and to maintaining the effective Rule of Law.

There is no need to go into much detail as to the means which will need to be employed to bring about such a situation. There are involved in this project, many minor problems, requiring the closest study by lawyers both here and elsewhere. There will be a need to bring the Courts taking part in the administration of justice, to a new level of efficiency, and standards must be quickly reached, which will enable the native people, without a traditional legal background to come in, and be trained to play their part in the proper administration of the law.

As a small, but essential, part of this great project, decisions have already been taken to build, during the course of the next five years or so, quite a number of Court buildings, which will establish centres from which effective legal machinery can operate throughout the Territory, so that legal services will be, to a reasonable extent, within the reach of all the inhabitants of the Territory. In this way, legal obligations can be properly enforced, and legal protection properly extended to everybody. In this way too, people will learn to adapt themselves to a uniform standard of conduct which will be imposed, either to protect them, or to restrain them, by reference to ascertainable legal principles adopted in the interests of the growing nation as a whole.

Perhaps I should simply say, that there is no doubt of the necessity for a legal administration of undoubted integrity and a high standard of efficiency.

Expense is inevitably involved in legal administration, as all lawyers who have undertaken substantial responsibility in their profession are well aware. Nevertheless the cheapest way to attain effective administration of justice in any community, is to provide a complete system of Courts. This permits of the determination in a Court of appellate jurisdiction, of unusual questions which arise. As soon as judgment on any such question is published, all the Courts exercising local jurisdiction, are bound to comply with it and to apply it in cases that come before them, and practitioners know that they can act upon it without reference to a court at all. Similarly, when such an authoritative decision is given, the court can apply similar considerations to many other cases which come before it, so that the local development of the law can be developed in the Court of appeal against the general pattern of legal development in the Territory.

The result of such a systematic operation of the law in an established community, is easily seen, because in practice extremely few cases give rise to novel questions of law, once the fundamentals are determined by an authoritative Court. Generally speaking, it is fairly accurate to say that the points of law which do arise for determination, are nearly always questions which reflect changing conditions in the community and new situations to which older, but well-established rules of law have to be applied. In Courts of first instance, where the facts are canvassed and evidence is heard, the main function of the Court is to find out the truth and settle a dispute which cannot be resolved in any other way.

The public interest in this matter, which justifies the expense, is that disputes of all kinds, which are genuine, regardless of whether they are reasonable or not, impede the internal security and efficiency of the whole community, and give rise to conflicts and pressures likely to undermine the stability of the society as a whole. They must be disposed of, and a civilized society can adopt no more appropriate machinery than an independent court.

SOME POSSIBLE CHARACTERISTICS OF THE FUTURE SYSTEM

I feel that at this stage, I should give you all a picture of the kind of legal system which we may have in the Territory between now and the time

when the question of Self-Determination comes up for decision. I cannot at this stage, give you a completed official account of what the system may be, for authoritative decisions on the subject are yet to be made, and it is not within my province to make them. Nevertheless I have my own personal views on what kind of a system would work in practice and fully meet the needs of the inhabitants of the Territory. I do not say that these ideas will be implemented now, or at any future time, but they provide a useful sketch of appropriate legal organization.

The foundation of the judicial system is the Constitution itself, and I visualize a future Constitution of the Territory, as a written Constitution, basically similar to the present Commonwealth legislation, but not as tentative or vague in its expression. I would expect the Constitution to borrow some further features from the Constitution of the Commonwealth of Australia, and a few simplified concepts from the American Constitution. Without reproducing the artificial problems of the United States, or leaving too great a gap in the security armour of the community, I would expect to see simple provisions to the effect that the civil liberties and rights of property of the community, should be subject to the protection of the Supreme Court of the Territory, and other courts established under the Constitution, in which are vested the exclusive power to exercise judicial functions. I would then expect to find provisions establishing a hierarchy of Courts, something like the provisions of the Australian Constitution.

In order to implement the decisions of the Courts, I would like to see them equipped with officers clearly responsible to the Courts they serve, and to nobody else. At the head of the Judicial system there should be a Council of Judges exercising supervisory power over all inferior courts, in relation to the management of their business, the organization of their circuits, and attention to their general requirements.

According to the pattern already established in Western Australia, I would like to see all Magistrates afforded judicial tenure of office so that they, like Judges, will in reality feel free to exercise true independence. I would like to see every Court in the Territory exercising such a jurisdiction that its powers are equally binding upon Europeans as well as natives, and upon every individual in the community. I cannot see any justification for a Court of inferior status, or equipped with inferior facilities, to be established to attend to native problems which, in reality, give rise to some of the most important questions involved in the process of developing a civil law suited to the needs of the Territory.

The simplification of rules of procedure represents no problem to those who preside over Courts, provided that the law makes it clear that the Court is at liberty to adapt its procedures to suit the needs of each of the cases coming before it, and the parties involved in the dispute. Thus the same Court may observe several different sets of rules appropriate to different classes of cases, and even observe a desirable degree of flexibility in the observance of these rules, without in any way requiring the Court to assume anything of a rough-and-ready attitude towards its work, or to adapt itself to a lower status than that which ought to be shared by all judicial tribunals.

In the remotest areas it is still essential to distinguish between administrative directions and advice, and the binding quality of a judicial determination. From my own experience in the Territory I say without hesitation, that some magnificent work has been done by young patrol officers in overcoming the difficulties and explaining these things to primitive people. I am not now thinking of anything which occurred in the past. I think that something more obvious and more in accord with a true picture of the law, is needed, to enable these lessons to be conveyed more quickly and effectively in the future.

At the present time the Supreme Court conducts circuits at 55 or 56 different centres throughout the Territory, and in most of these places, for a long time now, there have been no Court buildings. In some places there were Court buildings made of native materials, which have quickly rotted away, and a fairly general picture today is of the Supreme Court sitting in various Clubs, Council Houses, school buildings, store sheds and very often in the offices of the District or Sub-District Administration. Field officers in some places, who have taken a special interest in the due administration of the law, have gone to much trouble to erect separate Court buildings, which are used not only by the Supreme Court but by all other Courts.

These Court buildings quickly become known as places where the local inhabitants are always welcome to come and go as they please, and see what is going on, and usually at the end of each case, receive an explanation from the presiding Judge or Magistrate, of the questions before the Court and of the Court's decision. This, of course, is part of the educational role which every Court in the Territory must play for many years to come. It is a practice of long standing, and in places where it has been consistently practised, it has obviously done a great deal of good.

In places where the Courts sit in private offices, where the local people are not accustomed to have free access, the Court sittings are characterized by a lack of local interest and support, and a lack of opportunity to increase the popular understanding of the functions of the law.

This situation will be fairly met by the Court building programme which, over the next few years will, at many places, provide every section of the public with a limited, but reasonable, chance of attending Court hearings in every jurisdiction.

I do not believe that it will always be necessary for the Supreme Court to sit at every Sub-District Headquarters, or at some of the Patrol Stations where sittings are conducted today because of the considerable volume of "first-contact" cases which now arise. I believe that, as the process of pacification and advancement proceeds, and as social organization and communications improve in efficiency, it will not be necessary for the Supreme Court to visit more than a half-dozen or so places in the Territory. These places, of course, will become major centres of legal learning and administration, and will require equipment of a kind which is to be found in all major legal centres throughout Australia and elsewhere. In the design of Court buildings to be erected in the future in these places, provision should be made for proper library and other facilities, and for the staff which will be necessary to handle the substantial volume of criminal and civil cases which will have to be transacted in these centres.

As the somewhat localized functions of the Supreme Court in the remoter areas, are fully satisfied, and the Court withdraws to conduct its sittings at larger centres, it is imperative that it should leave behind it, a thoroughly effective legal system which will carry on and answer to the changing needs of the local people. Sudden withdrawals from areas too soon in the development of the local people would do much harm, and the time for withdrawal must be gauged with great care, according to local circumstances. When the appropriate stage is reached, the village people will suffer no harm, since they will know that there will be a Magistrate conducting Courts in their area on set days, and that if any trouble or difficulty should arise, they can, by reporting the case in the appropriate way have, within a reasonable period of time, an assurance that qualified legal advice will be available to them if needed, at a cost which they can meet, and that in any case, their dispute will be dealt with without undue delay by a competent and impartial Court. They should know that every Court relies upon an established system of appeals, and that if their case is sufficiently substantial and involves difficulty, they will have an unfettered right of appeal, to the highest appellate jurisdiction if necessary. They will know also, that at the nearest major District Headquarters, all the facts relating to their case will be carefully and accurately recorded, so that if any challenge should arise involving the integrity of the Court, the situation can be fully and fairly investigated.

When the number of Court centres at which the Supreme Court will need to sit, has been reduced to a manageable level, it is likely that some intermediate jurisdiction, corresponding to Courts of General Sessions and County Courts, will emerge, to take care of those cases which involve considerable responsibility, but do not warrant the attendance of the Supreme Court. It is, as yet, too early to predict developments in this direction, since for quite some period in the future, the body of legally qualified and experienced Magistrates will probably be able to operate dual jurisdictions, and deal with these cases as well as those which are normally dealt with in a District Court. It appears likely that such an Intermediate Jurisdiction, if it should emerge, would consist of Judges stationed at the same major District Headquarters at which Supreme Court sittings are held, and that they would go on circuit and make regular visits to major Sub-District Headquarters within their District.

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These circuits would need to be co-ordinated appropriately with the circuits within a District or Sub-District of the more localized District Courts.

The general picture then, from the point of view of the village people in a remote area, would be that upon some dispute arising they would know where to report their trouble and receive promptly whatever assistance or protection might be needed from the Police. At the same time they should be told when the next Court would be held at the nearest Sub-District headquarters or Patrol Station, and they could attend the Court and if practicable the case could be dealt with immediately. If arrests were involved, a resident officer, authorized to act as a Magistrate or Justice of the Peace, could give immediate attention to the case, and either deal with it, or admit the accused to bail or remand him until the Magistrate's visiting day. If the case involved any legal problems, they could be sent to the District Prosecutor and the district representative of the Public Solicitor who, if necessary, could arrange for the case to be heard at a more convenient centre, or attend the locality where it arose on the next Court sitting day, to appear for the parties concerned. In this way every dispute, however trivial it may appear at first, will find its way into a system capable of analysing it, dealing with it, and if appropriate seeing that it goes to the appeal tribunal.

Experience has demonstrated that the natives of the Territory, however primitive their social organization, are very quick to understand why an individual should be punished for committing an act of violence against the community at large. They accept their punishment with good spirit, and usually embrace the opportunity to learn a good deal that is useful to them and their people. At the same time, I do not accept for one moment, the shallow doctrine sometimes expressed, that a native is, or thinks himself, better off in gaol than out of it, and that to him his liberty is of less importance than the benefit of regular meals and exercise. I duly concede that humane treatment and useful education, does much to minimize the hardships of loss of liberty, but we cannot suppose for one moment that any natives are incapable of appreciating the value of their freedom, especially when they lose it for any considerable period.

When the time comes for self-determination, the question will not be whether the decision is going to favour the Commonwealth of Australia, the resident Europeans, or any other race or group of people. The real test will be whether the choice which is ultimately made will be wise, whether it will be honest in every particular, and whether it will be genuinely in the interests of the inhabitants of the Territory, considered as a group of people endeavouring to live within the complex organizations of the peoples of the world.

The greatest satisfaction and, if we must think in terms of benefit, the greatest benefit likely to flow to those Europeans who are today participating in the task of advancing the Territory towards self-determination, and the nations to which they belong, will be the realization that their efforts have enabled the inhabitants of the Territory to reach such a decision with a full understanding of the responsibilities involved, and with a full confidence that they will be able to manage their own affairs in harmony with themselves and their neighbours, and in full enjoyment of whatever individual rights and liberties they may think worth preserving.

One point that I wish to make now, is that plans already being put into operation, will enable a much more efficient and effective legal system to be operating well before the inhabitants of this Territory find themselves in a position to undertake the responsibilities of self-determination. Then when the day comes for these people to exercise a free choice, they will have the best possible guarantee that the choice will in truth be free. They will have known the benefits of access to effective remedies and of the protection of their right to make a free choice without being overborne by any kind of pressure.

When they come to choose their own Constitution for the future, they will already have had actual experience of the freedom, and individual protection, afforded by Courts administering the Rule of Law in all its implications. They will have the understanding necessary to insist, if they wish, that any Constitution of the future will afford the same protection.

It will be of inestimable benefit to all concerned when that day arrives, should the indigenous people realize that the Australian Government and people, have done everything possible in a thoroughly genuine way to instil into their minds the principle that the only good government is government flowing from integrity, justice and goodwill.