

UQ Centre
The University of Queensland
St Lucia Campus
Tuesday, 8 December 2009, 2.00 pm

ADDRESS TO GRADUATES

**The Hon Justice Susan Kiefel
High Court of Australia**

Deputy Chancellor, the Honourable Justice Dr Margaret White, Acting Vice-Chancellor, Professor Michael Keniger, members of Senate, members of staff, distinguished guests, graduates, ladies and gentlemen.

It is an honour to be here today to receive the degree of Doctor of Laws *honoris causa* of this University. It is a special pleasure to receive the degree from my former colleague, the Deputy Chancellor. It is a privilege to speak to you. This is an important day for those of you who are graduating, one to be remembered. It marks the end of a lengthy period of study and is important not only to you, but to those who have supported you through those years. It does not mark the conclusion of learning in your discipline, but offers the promise of so much more.

Each of the disciplines represented here today is important to our society. Law and economics have had a lengthy connection. The law and its institutions are constructs of a society which has determined that all persons in it should live according to its rule. Those who administer it are committed to the maintenance of the principles and values which inhere in the common law and to the observance by all persons and by the government of statutes made according to law.

Economic analysis has increased in its importance in the day to day lives of citizens, for business and for the planning strategies of government. The average person has become used to concepts such as recession and inflation, even if their understanding of the factors influencing them is necessarily limited. Politics today could be said to be driven by matters economic. Great importance is placed upon economic policies and strategies in maintaining the prosperity of our country. Political parties are often defined by their economic policies. And of course we are at a point in time when the world is recovering from the shock of a global financial crisis which will probably reinforce the importance of economic analysis, even though it did not permit a forecast of the events which occurred.

The disciplines of law and economics have in common a concern for the techniques and methodology of decision-making. An understanding of economics is useful to lawyers and judges in areas such as competition law and corporations law. Lawyers practising in those areas are familiar with economic principles such as barriers to entry to markets and the possible effects of deregulation and mergers and acquisitions. The Australian Constitution contains provisions which are based upon concepts of free trade. Principal amongst them is s 92 which guarantees the protection of the freedom of trade, commerce and intercourse amongst the States. The decision last year in *Betfair Pty Ltd v*

*Western Australia*¹ was concerned with the concept of competition in a national market where e-commerce operates.

The areas of law of which I have spoken involve the application of statute law, Acts of Parliament which reflect policy decisions which are the province of government. It may be said economics has helped shape such legislation. But in the case of judge-made law, the common law, economics has been less influential. That is not to say that some academic lawyers and judges do not see a greater role for it.

Generally speaking the courts have not favoured an economic analysis in areas such as the law of negligence. Some may say that the courts are not equipped to undertake such a role in any event. But there is another dimension to judicial decision-making. It lies in the realm of what is called the policy of the law. It may be seen as reflected in the famous statement of Lord Atkin in *Donoghue v Stevenson*² that you must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour, thus invoking precepts familiar to religions and some societies.

This is an age where economic utility and the efficient use of resources assume great importance in commerce and in government policy. It would seem that everything is to be measured and a value placed upon it. The courts are not immune from the effect of numbers. The use of statistical models to determine the probability of an event or to explain a result has markedly increased. Nevertheless it is values such as duty, responsibility and freedom, which are immeasurable, that inform judicial thinking.

What is the value of a legal system and its institutions? Courts are expensive to run and their productivity difficult, if not impossible, to assess. I am sure someone can develop a model to measure some aspects of the work of courts; but the value of the courts is to be seen in its role in an orderly society which maintains respect for its laws. As the Chief Justice of New South Wales has pointed out "not everything that counts can be counted"³.

We should reflect upon the value of education, not only to today's graduates, but to society. A university education is much more than the sum of lectures, exams, research and grades. It is more than the ability it provides a person to earn a living. It enriches the person with knowledge and in doing so ensures the values of our society are maintained.

In conclusion, may I suggest that you may further benefit from a continuing association with your university through alumni groups or graduate associations.

My congratulations to the graduates on your achievements. I wish you well for the future.

¹ (2008) 234 CLR 418.

² [1932] AC 562 at 580.

³ Spigelman CJ, "The Idea of a University", speech delivered at the University of Sydney, 12 October 2002.