

OCCASIONAL ADDRESS LAW GRADUATION CEREMONY, UNIVERSITY OF QUEENSLAND

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LAW GRADUATION CEREMONY, UNIVERSITY OF QUEENSLAND The Hon Sir Gerard Brennan, AC KBE

Chief Justice of Australia

4 June 1996

Mr Chancellor, Mr Vice-Chancellor, members of Senate, members of staff, distinguished guests, ladies and gentlemen, graduates:

In a few minutes' time, we shall join in singing the traditional anthem of the Universities: Gaudeamus. Therefore, let us rejoice as the anthem bids us and for reasons that come crowding in on an occasion like this.

We rejoice at the conferring of your degree this evening. For most of you, this marks the satisfactory completion of your formal education. You came to the study of the law with varied motives. You will leave this University with diverse ambitions. But hopefully you have all gained more than a mere knowledge of the rules of the law. Hopefully you have developed, consciously or sub-consciously, the skill of conceptual analysis and a habit of intellectual detachment; hopefully you have gained a greater insight into the role of law in Australia; hopefully you have sensed the values of honesty, equality, care, respect for the rights and dignity of others, familial duty and civil responsibility which underlie and inform the laws you have studied. Hopefully, the study of law has given you instruction in the ways of our civilization and in the wisdom of our history.

We rejoice with those who have earned the degree of Master of Laws. You have found that love of the law that comes with a growing capacity for legal analysis and a growing perception of the relationship among legal principles. I rejoice with my fellow graduands on the academic achievement marked by the conferring of their degrees. I rejoice with the families and friends who have given them love and support and, I suspect, tolerance and mugs of coffee during the years of study.

I rejoice at the conferring of my own degree though not, I acknowledge, because it evidences any academic achievement. Although I take pleasure in the conferring of this honour by the University in which I first studied the law, the honour has a more important significance. It gives testimony to the respect in which the University holds the Court over which I have the honour to preside - the Supreme Court of our Federation and the keystone of the federal arch.

You rejoice this evening for reasons which have as their common theme a sense of achievement, a sense of having reached a goal that has not been reached by many, of having acquired a qualification that has been acquired by few. In a sense, you have attained by your efforts the ranks of an elite. But it is an elite which, I venture to suggest, imposes on you obligations to which others are not subject to a like extent.

Whether you enter the ranks of the practising legal profession or whether you find your destiny in some other field, each of you has become familiar with the least known of the three branches of government - the judicial branch. It does not control the instruments of state power, or state finances or state patronage. It gives nothing to which a litigant is not already entitled; it subjects to no penalty a person whose conduct has not already attracted it. It sees to the application of the law to facts and events that have already occurred. It is a branch of government that offers none of the glamour of the public stage, little of the high excitement of public controversies to be won or lost. Although personal publicity is shunned by most judges, the Courts themselves depend almost solely on public confidence in the Judges and the work they do. And it is that work, impartially and competently done, which maintains and enforces

the rule of law.

The freedom of Australian society rests on a paradox. We hold the political branches of government to account at frequent intervals so that the exercise of legislative and executive power is continually subject to the supervision of public opinion. Yet we insist that the judiciary be isolated from the clamour of the hustings in order to ensure that the application of the law proceeds fairly and inexorably.

The work of the Courts may sometimes be newsworthy, but it is seldom dramatic. And that is how it should be. The law and the judicial method are structured by principle and express the enduring values of our society. The judges are entrusted with their great powers on terms that they apply the law as it is laid down by the Parliament or as it is developed in a principled manner in accordance with the judicial method. And so our freedom depends on democratic control of Parliament and the Executive and on public confidence in the calm, impartial and competent administration of the law by the Courts.

Although the Courts are, and traditionally have been, open to the public and subject to public scrutiny and criticism, it is curious that their function seems to be so little understood. Perhaps the absence of understanding means simply that the Courts do what they are expected to do, so that further study of their function is not warranted. If that be so, it can be taken as a tribute of public confidence, albeit given without full understanding. Sometimes, the Courts are subjected to criticisms which tend to undermine public confidence when the criticisms betray a lack of understanding of the Courts' functions.

This phenomenon appears more frequently when an issue of political significance arises for decision by a Court. The players - whether they be parties whose interests are at stake, or pressure groups or politicians - proclaim their dissatisfaction or, occasionally, their agreement with what the Courts are doing or have done. The proclamations are made as though the interests, or viewpoints, or policies of the proclaimers are valid criteria against which the work of the Courts is to be judged. Nothing could be further from the truth.

As I hope you have learnt and as I am proud to have experienced through a judicial life of 20 years, the dominant characteristic of Judges is their independence. There is one duty: to find the facts and to apply the law impartially and competently. There is one conscience to be satisfied: the Judge's own. There is one aspiration: to do justice according to law. Judicial experience shows that the winds of controversy do not necessarily blow in the direction of justice or law, the applause of the uninformed critic is no guarantee of rectitude nor is that critic's condemnation a ground of misgiving. The impartial and competent application of the law to the facts is the sole valid criterion of judgment. It is an essential concomitant of the rule of law that judgment will on occasion frustrate powerful interests or pressure groups or politicians. It is important that the people served by the Courts appreciate that the law is applied in a structured process and cannot yield to exigencies of policy that find no expression in the law. The Courts have no agenda save the determination of each case according to its facts and the relevant law. So long as the true function of the Courts is understood and the distinction is made between law on the one hand and political and economic policies on the other, the freedom of society will be assured.

It is in this that the lawyer bears a heavy responsibility. The knowledge to which tonight's ceremony bears witness is held in trust for our society, to be used to scrutinize appropriately the work of the Courts, to communicate to others the necessity for an understanding of their function and for confidence in their work. That is a great undertaking which binds all of us to the doing of justice according to law. Let me remind you of what Judge Benjamin Cardozo said in speaking to New York County Lawyers:

"The tradition, the ennobling tradition, though it be myth as well as verity, that surrounds as with an aura the profession of the law, is the bond between its members and one of the great concerns of man, the cause

of justice upon earth."

Gaudeamus igitur as we commit ourselves to that cause.