



28 April 2012
Business and Law Graduation Ceremony
Guest Speech

His Honour Justice Martin Daubney

It is a great privilege for me to address this graduation ceremony, not least because we mark today a significant moment in the history of the University of Southern Queensland. This is the first occasion on which the degree of Bachelor of Laws has been awarded by this University. You can be justifiably proud of the fact that, by being awarded this degree, you are the latest inheritors of a tradition which dates back many centuries. The oldest university in the world, the University of Bologna in Italy, was originally founded as a law school in the 12th century, and served as the model for other medieval law schools. Today, this vibrant contemporary university celebrates the achievement of Australia's youngest and most dynamic law school in producing its first cohort of LLB graduates. For that, you all deserve sincere congratulations.

Graduands, this is a day of celebration for you, and just as importantly, for your families and those close to you who have supported you during the course of your studies. You, and those near and dear to you, are entitled to be filled with pride at your having attained the academic achievements which we celebrate today.

I use the word "celebrate" deliberately. This is a ceremony of celebration for each of you and for the University as a whole. Graduation ceremonies are central to the life of a university. They provide the opportunity for the university community, your teachers and mentors, to recognize your accomplishments and to acknowledge formally your change in academic status, whether that be from undergraduate to graduate or diplomate, or by the conferral of a higher degree. You can be assured that this is a day of pride for the members of the University administration and teaching staff – pride in each of your achievements and pride in their membership of this place of learning and education. You are the product of your teachers' work, and the staff of this University are people who take great pride in their work.

Your graduation ceremony is also, as you are now experiencing, a ritual steeped in tradition and laden with significant pomp and even a little circumstance. It is the current incarnation of a ceremony which has been performed in universities around the world for many hundreds of years. You are the latest inheritors of the tradition of academic graduation. The ceremony we are performing would be instantly recognizable on virtually every university campus in the world. By the robes we wear, by our formal procession under the protection of the University mace, by the ritual courtesies we extend to one another, and by the words of this ceremony itself, we are consciously associating ourselves with centuries of academic tradition. We do so not merely because it's a matter of tradition, nor merely because you have successfully completed a prescribed course of study. If your attendance at this University was just about passing exams, and nothing more, formal acknowledgement of that bald fact could be sent to you in the post or by email. This ceremony exists to affirm that each one of you is a person of learning who this University is proud to publicly claim as one of its own.

You will shortly come forward and be presented with the testamur on which is inscribed: “Bachelor of Laws”. Three short words – but I know full well how much effort each of you has put in to earn those three short words! Armed as you shortly will be with your degrees, an enormously wide spectrum of professional opportunities has been opened to you. Some of you will go into legal practice. Others of you will apply your legal knowledge in another profession, or in business, or in public administration.

What unites you, though, as you venture forth into your chosen profession is not the fact that you have all gained technical knowledge of the law. Being able to construe legislation and identify the application of particular legal principles are good and very useful outcomes from your years of study. But those talents are the product of your legal education here; they are not the substance of your legal education. The substance, or essence, of your studies has been that which is the foundation of a fair and just society, namely the rule of law. Justice in our society depends fundamentally on a deep appreciation and understanding of the rule of law. The rule of law is the light in our society which shines in protection of the innocent and in vindication of our rights in our dealings with one another and with those who govern us. And as law graduates, regardless of the profession in which you subsequently practice, each of you now has the learning and the responsibility to carry that torch and shine that light in all corners of our society.

Those of us who have had the great fortune of growing up and being educated in the common law tradition tend to use the phrase “the rule of law” with a visceral appreciation of its content. To articulate what is meant by the phrase is, however, no easy task. It is a little like describing a hippopotamus – we all know what it looks like, but finding the words to describe it takes a little effort and a lot of brain power. Thankfully, one of the greatest legal minds of recent generations devoted himself, shortly before his untimely death, to publishing an eminently readable thesis, entitled simply “The Rule of Law”. Lord Bingham suggested that the core of the principle which we understand as “the rule of law” is that all persons and authorities within the State, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts. Lord Bingham acknowledged that this was a general definition only, and subject to numerous exceptions or qualifications; there are, for example, some proceedings in which justice can only be done if they are not conducted in public. But acknowledging the existence of such exceptions, he also considered that any departure from the rule he state called for close consideration and clear justification.

In the course of his book, Lord Bingham went on to identify what he described as the ingredients of the rule of law, and did so by advancing eight principles:

(1) The law must be accessible and so far as possible intelligible, clear and predictable;

- (2) Questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion;
- (3) The laws of the land should apply equally to all, save to the extent that objective differences justify differentiation;
- (4) Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably;
- (5) The law must afford adequate protection of fundamental human rights;
- (6) Means must be provided for resolving, without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve;
- (7) Adjudicative procedures provided by the State should be fair;
- (8) The rule of law requires compliance by the State with its obligations in international law as in national law.

The good news for you today is that this is not a law lecture, and I'm not going to start analysing those constituent principles. The point I want to make is that, as I recited those principles to you, each one of them should not only have struck a chord with you, but should have provoked an immediate, instinctive affinity. "Of course, the laws of the land should apply equally to all". "Of course, the law must afford adequate protection of human rights". "Of course, ministers and public officers must exercise their powers in good faith". "Of course, adjudicative procedures should be fair". And so on. Why, you are asking, is he standing up here telling us these things we already know? Because these principles, this understanding of the rule of law, has underpinned everything you have studied here. We have the great blessing in Australia of living in a society in which the rule of law is fundamentally respected. It is respected because it is protected by people like you. But we can never take the rule of law for granted. You don't need to travel far from Australia to find countries in which the rule of law is not respected and protected as it is here. Those would be countries characterised by corruption, oppression, and fear. The observation more than 400 years ago by the English philosopher John Locke that "Wherever Law ends, Tyranny begins" holds true today.

Your mission, in whatever field of endeavour you now move into, is to ensure that the rule of law is nurtured and protected. It preserves justice in our society. It ensures we are governed responsibly. It contributes to our economic and personal well-being. It enables us to live co-operatively in peaceful community with one another.

Today is a day of great celebration for you, your families and those close to you. Celebrate loudly, or quietly, according to your preference. But please do celebrate, because each one of you can be justifiably proud of your achievements. Celebrate, too, this great milestone in the life of the University, as its law school metaphorically comes of age. Celebrate knowing that what you have learned here will be used by you to guard and protect the fundamental fairness of the society in which we live.

And thank you for affording me the privilege of sharing this day of celebration with you.