

## **OCCASIONAL ADDRESS**

**The Hon Sir Gerard Brennan, AC, KBE, BALLB (Q'ld)**

Delivered at the graduation ceremony for graduates from  
the Faculty of Law

Great Hall, City Campus, Monday 9 May 2005, 10.30am

Chancellor, today you have done me a great honour in conferring the Degree of Doctor of the University. I enjoyed in holding the office which you, Chancellor, now fill with distinction; it was a source of enlightenment and edification. And you have done great honour to my fellow graduates by conferring on them their respective degrees and awards which they – unlike myself – have earned by hard work, long hours and sheer endurance. I add my congratulations to my fellow graduates.

We thank the academic staff for their devotion, their pedagogical abilities and for the stimulus of their research. We thank the general staff for creating and maintaining the infrastructure of the University. And we express our appreciation of the warm collegiality of staff and students which gives humanity to this large institution.

Especially would I thank the members of the Council, the Vice-Chancellors and their Management Committees and close associates, remembering in particular Margaret Trask who served as Deputy Chancellor of the University. I delighted in their friendship as we experienced the challenges, the triumphs and even the occasional failures of the last six years.

At the end of a period of service in courts where integrity, independence, competence and collegiality of one's colleagues gave stimulus and enjoyment to every working day, I was privileged to enjoy the same environment in this University. It is the similarity of the curial and the University experiences which leads me to say something about the importance of critical and independent thought.

Tertiary education enriches the student with the genius of earlier generations; it encourages a quest for new knowledge and skills; it opens the mind to the different values of different cultures and the complexity of a pluralist society; it challenges assumptions. The graduate of a good tertiary institution should emerge with a capacity for critical and independent thought – an ability to question; an eagerness to inquire into the grounds for assertion or belief. A critical and independent mind thinks outside the square. Yet critical and independent thought may not be comfortable. It is not fashionable. Better to conform to majoritarian views moulded by the opinion makers in society; go with the flow; be “cool”. It is precisely in such a climate that critical and independent thought is essential not only to future progress but to the very freedoms on which progress depends.

Most of the ideas which achieve currency in our society are the product of media publication. Free media are essential but we must be wary of their pervasive influence. And that should stimulate the critical faculty and set us on a search for what lies behind the images and the stories with which we are presented. Our own thinking is flawed if we are given a distorted view of reality to think about.

Take, for it is a good example, the decision to go to war in Iraq: the most important decision a nation can make. Whatever view one may have about that decision, it was surely one which was, or ought to have been, governed by international law and basic moral principle. Yet we can remember the media build-up to the war, with little reference to law or morality. Understandably, the media retailed political assertions that we now know were false and were untested by the kind of exhaustive inquiry that could have revealed the truth about weapons of mass destruction. At the time there were few calls for the facts as distinct from the assurances, little appreciation of the destruction involved and inadequate analysis of the aftermath of invasion. International lawyers and spiritual leaders were dismissed. Ex post facto justification for the decision to go to war was the need to topple the regime of Saddam Hussein and a belief that he possessed chemical weapons and was developing a capacity to make a nuclear bomb. Now, as a people, we seem to be untroubled by these terrible events except to the extent that they may be reflected in the price of oil.

What I have said may sound political – and no doubt it is – but I am not seeking to make a political point. Rather, I take an important political issue to illustrate that there are issues – whether political, legal, social or moral – which can affect our future, our freedoms, indeed our self-respect, and which ought to be subjected to critical and independent thinking. If we abandon the use of that faculty, honed as it should be by a tertiary education, we leave ourselves and our nation in the hands of those who would mould our thoughts and our actions to the end which they deem expedient.

The ability to think for oneself is the greatest natural gift we possess. It is a hallmark of a human. You will remember Descartes' aphorism: cogito, ergo sum ("I think, therefore I am"). Our ability to think means that there is no boundary of knowledge of the natural world that cannot be extended by human thought nor anything to preclude us, if we choose, from accepting faith in the supernatural world. Diseases, drugs or circumstances which pervert the processes of thought diminish our dignity, while freedom of thought and the informed exercise of that freedom bring humankind to its most exalted state.

The freedom to express our thoughts, so long as they cause no damage or distress to others, is and must be one of our most cherished human rights. In recent years we have heard much about political correctness and we have been regaled with such denigratory terms as "chattering classes", "bleeding hearts", "fundamentalists", "rigid conservatives", "heartless ideologues" and the like. Don Watson has written a whole book about the linguistic techniques of the spin doctors. Too little objection has been made against attempts to quell the questioning mind and to ridicule the dissident. Too little credit has been given to the researchers, the non-conformists, the others whose questioning opens the door to truth and progress. We cannot aspire to be an innovative, confident and free nation if freedom of thought and expression is suppressed or impaired.

In a pluralist and secular society such as ours, it is inevitable that there be a close relationship between the media and the repositories of political and economic power. But that leaves only three other institutions of influence which might question or contradict ideas and attitudes promulgated by the popular media: the churches, the universities and the courts of law. Of course, ideas or attitudes which emanate from any of these institutions themselves require informed and critical scrutiny.

The churches have not only a wide constituency; they have a vision which invests men and women with a supernatural dignity. They proclaim a set of values which, though most of the values are shared by others, stands distinct from secular policies and aspirations. The dialectic as well as the separation between church and state is essential in a pluralist society if there be freedom to criticize current policies and to question current aspirations.

Next, Universities have a vital role to play as centres of critical and independent thought on issues falling within the disciplines they teach or research. They are the centres of both historical knowledge and dispassionate inquiry. They could neither translate past knowledge into present understanding nor could they push out the boundaries of the existing body of knowledge if they were denied the freedom to question, to hypothesise and to communicate. Intellectual growth is stimulated by curiosity, and curiosity requires the freedom to ask why. Hopefully, a student learns the freedom to think independently and critically and, having experienced that freedom, to treasure it as one of the most valuable gifts of his or her education. And that freedom is the precondition of all genuine research.

Teaching and research are at the heart of a University's function but Universities have another function: when media power is so pervasive, Universities must employ their expertise in the public interest. They must be free to use that expertise in commenting on any subject of social concern. They must enhance the community's ability to nail the fallacies, reject the false panaceas and repel the blandishments which deprive a community of its intellectual vitality. If the public needs enlightenment, it is not an option for Universities to choose silence, even if the goodwill of a paymaster – whether governmental, corporate or personal – is put at risk. To be silent then would be to abdicate the role of a University.

Then we come to the courts of law. Every law student and, it is hoped, the community generally appreciate that the rule of law depends on the competence and independence of the courts. But the courts are only the safety net for the rule of law. Law rules first in the hearts and minds of the people. Then, when expert advice is needed, law rules when legal advice is given and taken. Lawyers are the artificers of the social structure so far as it depends on the rule of law. Administration of the law depends more on the day to day work of the lawyer than it does on the work of the courts. Although the lawyer may have a modest conceit of the social value of his or her work, each application of a legal rule is a brick in the edifice of the rule of law.

So it is no less important for you, the lawyers of the future, than it is for the courts themselves, to be competent and independent in your thinking. It matters not whether you are in private practice, in a law firm or in other employment, if your legal advice is sought, your capacity for critical and independent thought is as essential as your knowledge of the relevant law. If advice be tailored to suit the client or the employer, it is not legal advice. It will often require courage to give advice based solely on your critical assessment of the material facts and your knowledge of the relevant law. You will find, however, that self-respect and professional reputation are proportionate to your demonstration of independence and competence. And so it should be, because those are the qualities that make the rule of law work.

The lawyers whom you have graduated today, Chancellor, will work hard and for long hours, but they will be relieved by many a humorous interlude and by a collegiality reminiscent of the collegiality of a University community. And they may be comforted by the words of Judge Cardozo when he was speaking to the lawyers of New York County:

“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.”

The graduates who are entering that profession and I, who have spent most of my life in it, have shared the experience of UTS. I hope that they will recall that experience with as much pleasure as I assuredly do.

Gerard Brennan