

Speech 3 December 2015, LLB graduation ceremony

Provost and Deputy Vice-Chancellor Tam, Dean Hor, members of the Faculty, distinguished guests, ladies and gentlemen, and (last but by no means least) members of the LLB graduating class of 2015,

1. It is my great privilege and honour to have been invited to address you on this happy and meaningful occasion.

2. Let me begin by congratulating each of you receiving your LLB degree today. You are now graduates of this fine institution and graduates in law. The many hours of study and dedication have paid their dividend and you are now to receive the reward of your labours. This marks a significant milestone in your lives. The English word “graduate” derives from the Latin word “*gradus*” meaning a step and today’s ceremony marks the completion of a very important step in your journey through life. To each of you I say simply, “Well done. Give yourselves a pat on the back. You deserve it.”

3. Let me also offer my congratulations to your families, some of whom will have made significant sacrifices to help you achieve the success you are celebrating today. I am sure you realise that you owe them a debt of gratitude for their support and I know that, in turn, they will derive much pride and happiness in sharing the joy of your achievement.

4. I daresay that the reason Dean Hor invited me to address you today is because I am a judge. And a judge, being someone engaged in the day-to-day practical business of the law, is doubtless a suitable person to deliver an appropriate homily that hopefully might encourage you as young law graduates to pursue a career in the law. I am happy to do so.

5. Equally, I am happy to speak to you not just as a member of the Judiciary but also as someone who has children currently studying at university. As such, in common with the parents and family members who are present here today, I can readily appreciate the sense of pride and joy they have in seeing you achieve your dreams; and (believe me!) I also know the cost and sacrifice that supporting a university student entails.

6. But, perhaps most importantly, I speak to you today from the perspective of someone who was himself once a newly graduating law student embarking on his first tentative steps into the big wide world; because I, too, was filled with the mixture of excitement and optimism at the possibilities that might transform my life from diffident student into something more purposeful; and because I, too, like some of you perhaps, felt my eager anticipation of the future tempered with a sense of anxiety at the challenges that lay ahead. For as you graduate today with your respective degrees in law, you are emerging from the nurturing and protective environment of your families and your alma mater into an increasingly challenging world.

7. But before considering those challenges, let us look at the advantages you have gained from your time at university.

8. As law graduates, you have been taught the fundamentals of legal principles and legal reasoning. You have acquired an understanding of the role of the law in the workings of society. In addition, during your degree course, you will have become skilled in the research and assimilation of large amounts of information and data. You will have been encouraged to develop strong oral and written communication skills, to present arguments in a clear and effective manner. You will approach problem solving in a reasoned and logical way.

Most importantly, you will have learned the process of applying legal principles to the facts of a particular case in order to arrive at a principled answer consistent with past precedent and fitting into the legal mosaic that guides the resolution of future disputes.

9. With these skills and attributes to hand, a world of opportunity is open to you. Some of you will proceed from here to utilise your talents as practicing lawyers, whether as solicitors or barristers. Some of you will pursue further studies and go on to a life in academia in which you in turn train the minds of future generations of law students. Yet others among you will favour other fields or careers, opting instead for a whole range of different occupations for which a law degree, and the discipline that employers know is necessary to acquire that qualification, makes you eminently suitable and desirable.

10. So what are some of the challenges?

11. One of the most important challenges those of us involved in the law today in Hong Kong face is the need to safeguard the rule of law. And the fact that this year marks the 800th anniversary of Magna Carta therefore provides a highly relevant and auspicious context to your graduation. That document, you will recall, is identified by Lord Bingham in his seminal book on the rule of law as the historical starting point in its development¹ and as establishing the principles of justice and freedom embodied in our modern understanding of the rule of law. Whether that claim is literally accurate is not what actually matters, since the real significance of the document, as Lord Bingham and, more

¹ Tom Bingham, *The Rule of Law* (2010, Allen Lane), p.10.

recently, Lord Hoffmann, have both pointed out, is that people believe that this is what it represents.²

12. As students in the Faculty of Law, you hardly need reminding of the value of the rule of law in Hong Kong since the Cheng Yu Tung Tower proclaims in very tangible form the statement that: “*The Rule of Law is the cornerstone of the prosperity and stability of Hong Kong*”. It is, I believe, the most important of the many distinguishing features of our great and unique city. Given its value, you will not have been surprised to have heard it said on many occasions and by many different speakers that we must be constantly vigilant to protect the rule of law.

13. And that has never been truer than now. For within the last few weeks, we have seen shocking images of barbaric acts of terrorism in various parts of the world: over the skies of Egypt and in Paris, Beirut and Bamako. These wanton acts of violence and senseless loss of life are difficult to comprehend. They fill us with a sense of shock and anger and sadness.

14. At times like this and in such exceptional circumstances it is natural to wonder if more extreme measures should be taken to combat this evil menace that threatens us all. Should we not use all means at our and the law’s disposal to protect ourselves? After all, no less a statesman than the Roman orator Cicero said, “The safety of the people is the supreme law.”³ More prosaically, in the latest instalment of the Mission Impossible movie franchise, one of IMF Agent Ethan Hunt’s repeated lines is, “Desperate times, desperate measures”, as he resorts to ever more astonishing strategies to stay one step ahead of, and eradicate, his enemies.

² *Ibid.* at p.12-13; Lord Hoffmann, *Magna Carta: The Power of a Constitutional Fiction* (speech at Cumberland Lodge, 24 June 2015).

³ Cicero, *De Legibus* (Book III, Part III, sub. VIII): *Ollis salus populi suprema lex esto.*

15. In a Hollywood blockbuster that certainly makes for exciting action and drama as the forces of good battle those of evil. But it is as well to remember that is not reality and we must be careful, in any reaction to terrorism, to respect the hard-fought liberties we treasure and to protect the rule of law.

16. In his book, Lord Bingham tracks the change in attitude and tactics towards global terrorism in the US and Britain in response to the attacks of 9/11 in the US and the London bombings of 7/7.⁴ These include: detention without charge or trial; erosion of fair hearing guarantees; the condonation of torture; and excessive surveillance. But is the use of waterboarding as an interrogation technique something to be encouraged? Similarly, is a “watchlist” of all Muslims really a rational and proportionate response to the admittedly very real threat to public security? Yet these are measures that, very recently, one would-be state leader appears to have proposed.

17. As a counterpoint to Cicero’s assertion, Lord Bingham proffers the adage, attributed to Benjamin Franklin, that “he who would put security before liberty deserves neither.” Or, as Lord Bingham himself puts it so eloquently but simply: “We cannot commend our society to others by departing from the fundamental standards which make it worthy of commendation.”⁵

18. Another aspect of the rule of law I would like to remind you of is the need to balance respect for the rights of others. A number of our fundamental rights guaranteed under the Bill of Rights and the Basic Law are not absolute. Such rights include the protection of privacy and the freedom of expression and of association. These rights are qualified and may be subject to necessary

⁴ Tom Bingham, *The Rule of Law* (2010, Allen Lane), Chapter 11.
⁵ *Ibid.* at p.136.

restrictions in the interests of, among other things, the protection of the rights and freedoms of others.

19. There has been an increasing trend in public discourse recently when this qualification has, quite clearly, been forgotten by some. All too often, a single view of what is the right answer to a social or political issue is put forward as the only right answer to that issue. This unitary view is aggressively asserted and brooks no alternative point of view. Worse, when someone tries to express a different point of view, opponents of that view obstruct its very expression.

20. This trend is just as prevalent overseas as it is in Hong Kong and is a hallmark of our increasingly polarised society. In the US recently, at one of its most prestigious universities, a lecturer's moderately expressed exception to an advisory note about Halloween costumes that she regarded demonstrated unnecessary over-sensitivity resulted in demands for her to resign and she was hounded and subjected to foul-mouthed abuse. Whether she was right or wrong is not the point. The point is that measured and rational debate on issues on which people may disagree is a hallmark of a free society and consistent with the values underpinning the rule of law.

21. This tendency to suppress any alternative view is, or should be, the antithesis of what you have been taught at law school. You were here to be taught how to think, not what to think. You may be right, your opponent may be wrong, but the rational analytical approach which by now will, or should, be second nature to you will at least allow for the holding of an alternative view. Your opponent's argument may be a crackpot idea, or it may even damage the rule of law itself. If so, by all means say so but at least allow it to be aired. If it really is so foolish or contrary to principle, it will soon be seen to be just that. As Evelyn Beatrice Hall, the English writer and biographer of Voltaire, wrote,

“I disapprove of what you say, but I will defend to the death your right to say it.”⁶

22. So it is important to acknowledge that, in some cases, there may be two or more opposing, but reasonable, arguments on a particular legal issue. In such cases, it is the task of the courts to provide an impartial forum in which those arguments can be fairly ventilated and then resolved in accordance with established legal principles in an open and transparent manner, with the reasoned judgment explaining why one view rather than another has prevailed.

23. And remember, too, a good lawyer should always be prepared to admit when he is wrong. You will not always be right – hopefully you will be right more often than you are wrong – but you will never be able to avoid being wrong sometimes. If you are so inflexible as to be unprepared to be persuaded to change your mind, you will be unlikely to make a good lawyer.

24. After four years of studying law at this university I doubt any of you will suffer from that vice. On the contrary, I am conscious that this graduating class of 2015 represents the future of Hong Kong and that your generation will, in time, go on to become the leaders of, and significant contributors to, our community, whether as successful barristers or solicitors or in-house counsel, or as captains of industry or lions of the commercial jungle, as learned academics, influential politicians or wise and effective administrators. I expect I may even be looking at a future Chief Justice and many of her judicial colleagues.

25. To each and every one of you, I wish you every success in your future careers and much joy as you celebrate your graduation today.

⁶ Evelyn Beatrice Hall, *The Friends of Voltaire* (1906).

26. Thank you for listening.

Hong Kong, 3 December 2015