

Graduation 2006 Honorary Graduate - Oration

Oration for Honorary Graduan The Right Honourable Sir Philip Otton PC

Orator: Peter Luther

Chancellor, the Senate has resolved that the degree of Doctor of the University be conferred upon THE RIGHT HONORABLE SIR PHILIP OTTON

The particular occasion of this award is Sir Philip's completion, at the end of November 2005, of a five-year term of office as the University's Visitor. Sir Philip is the latest in a line of distinguished judges to fill this role, having succeeded Lord Slynn of Hadley in December 2000.

Those attending this ceremony - who comprise, no doubt, an audience of entirely happy and contented staff and students - may welcome a little more information about the functions of a University Visitor. In brief, the Visitor has been the individual charged with ensuring that the University's own body of law - its Charter, Statutes, Ordinances and Regulations - is properly applied by the officers of the institution, and dealing with the complaints of students and staff who allege that this has not been the case. The jurisdiction of Visitors over universities (and other charitable foundations) is centuries old; the earliest case to discuss it, and to confirm its extent and exclusivity, I quote here - "his determinations are final, and examinable in no other court whatsoever" - is the case of Philips and. Bury in 1694. I should reassure any members of the audience who may still feel an instinctive desire to take notes that it is not necessary to do so! I can provide the reference to that case later if required! There have been many tributes to the value of the Visitor's jurisdiction in over three centuries of judicial consideration. To call a witness of the highest authority, the great Lord Mansfield said in 1757 that, "the visitorial power, if properly exercised, without expence [sic] or delay is useful and convenient to colleges" Members of the audience should perhaps be advised here that senior judges rarely express unbridled enthusiasm, and that words such as "useful" and "convenient" are indeed high praise!

To take another example from a much more modern case, *Thomas v. University of Bradford* in 1987, one of the members of the Court of Appeal, in a judgment which later received the approval of the House of Lords, roundly rejected the suggestion that the Visitor was an unwelcome survivor from the past - "like a ghost", to borrow a phrase used in a very different context by another great judge, "standing in the path of justice clanking his medieval chains" - in favour of the view that "within its proper limits the jurisdiction of the visitor is wholly beneficial - so much so that, if a visitor did not exist, it might have been necessary to invent him". Sir Philip, as our Visitor, has been part of this long tradition. It is a tradition that, for us, will end with him, for he is not only the latest in the line; he is the last. The establishment of a nationwide complaints system for students, run by the Office of the Independent Adjudicator for Higher Education (which became fully operational from 1st January 2005), coupled with the availability of alternative ways for members of staff to pursue grievances, means that this University will have no future Visitors. We can only hope that the interests of our students will be as well served in the future by the Office of the Independent Adjudicator as they have been in the past by Sir Philip and his predecessors.

This ceremony is not simply a way of saying "thank you" to Sir Philip for his five years as our Visitor; it also recognises a long and distinguished career in the law - a career which is by no means over. Sir Philip graduated from Birmingham University in 1954 with the degree of Bachelor of Law, and was called to the bar, as a barrister of Gray's Inn, in 1955. In 1975, he became Queen's Counsel, and, after a spell as a Recorder of the Crown Court, he was appointed to the

Queen's Bench Division as a Judge of the High Court in 1983. He moved up to the Court of Appeal in 1995, and sat as a Lord Justice of Appeal until 2001. His judgments – and the sheer quantity of these between 1983 and 2001 means that it would be invidious to select any particular examples - will be familiar to many of the audience today from the published text of the Law Reports; they are distinguished by their clarity, their conciseness, and their humanity. Among many honours and distinctions, and this doesn't pretend to be comprehensive list, Sir Philip has been President of the Society of Construction Law and President of the Personal Injury Bar Association; he is an Honorary Fellow of the Institute of Judicial Administration at Birmingham University, and is a Fellow of the Chartered Institute of Arbitrators. Since stepping down from full-time work in the Court of Appeal, Sir Philip has continued to sit as a judge in the Privy Council, and has occasionally returned to the Court of Appeal. He has been appointed by the Prime Minister as a Surveillance Commissioner, under the Regulation of Investigatory Powers Act, and, away from the law, he has been Chairman of the Royal Brompton and Harefield Hospital NHS Trust and Chairman of the National Heart and Lung Institute. He remains very active as a mediator and arbitrator. He has acted as arbitrator in an impressive array of disputes - covering oil, gas and energy, telecommunications, insurance, and other aspects of commercial law.

For those who can still bear to think of football, he is also a Convenor of the FA Premier League. And in that context, he chaired FA Premier League disciplinary proceedings against Dennis Wise, and if I may be permitted an aside, is one of few people to have emerged unscathed from an encounter with the aforementioned Mr Wise. And in 2005 he chaired the high-profile proceedings against Ashley Cole, Jose Mourinho and Chelsea Football Club, in which it was alleged that the Premier League's rules relating to what is colloquially called "tapping-up" - the making of improper approaches by the officers of a club to a player under contract to another club - had been breached. Sir Philip takes a keen interest in issues surrounding the legal regulation of sport, and has argued cogently for better practices and procedures. In this context, in a public lecture in 2004, Sir Philip lamented the revolution in sport over the last fifty years that has taken us from the "Corinthian ethic" to the situation for which he borrowed a memorable line from George Orwell, which I will in turn borrow:

"Serious sport has nothing to do with fair play. It is bound up with hatred, jealousy, boastfulness, disregard of the Rules and sadistic pleasure in witnessing violence; in other words it is WAR minus the shooting."

The regulation of the activities of an educational institution such as this, through Sir Philip's tenure of the office of Visitor, must (one hopes) have been a calmer affair - but we are enormously grateful to Sir Philip for having acted as the guardian of "fair play" for our staff and students.

Chancellor, I present to you THE RIGHT HONORABLE SIR PHILIP OTTON