

Central District of the Supreme Court  
St Paul's Cathedral, Rockhampton

24 July 2000

Chief Justice's Homily

I sincerely thank the Dean and Chapter for allowing me this opportunity to address you.

I was recently asked to explain the significance of this traditional annual service. The answer is simple enough. The service provides an opportunity for all branches of the legal profession – the judges and magistrates, barristers, solicitors, court staff, academics and students, together with the Attorney-General if available, to confirm publicly, in a unified way, commitment to the delivery of justice according to law; and to do so in surroundings which for many of us carry particular additional significance.

Then I was challenged about those surroundings: why meet together at this time in a church? Is that not unduly bending to a mere segment of the community, by no means universal, inappropriately acknowledging a belief certainly not shared by all, and ultimately eroding a desirable separation between Church and State? Now for one who happens to hold to that particular belief, meeting this challenge dispassionately was marginally difficult.

Of course much of what we do in the courts depends for its foundation on the notion of a supreme being. Note for example the oaths most witnesses still take on bibles, and the oaths of office similarly taken by judicial officers and new practitioners. In addition, the law we apply reflects moral values still largely coincident with those basing Christian ideals: as a striking if obvious example, there is Lord Atkin's neighbour principle, still fundamental to the concept of negligence, drawn in 1934 from Our Lord's second great commandment. And one notes by way of support that the Legislative Assembly begins its daily sessions with Christian prayer. These, and other circumstances, combine to provide ample warrant for our joining together for this purpose today in this particular spiritual place.

The third question from my persistent challenger predictably focussed on our garb. Why do those who promote accessibility of justice, seeking to demystify the process appropriately to the year 2000, parade on such an occasion in regalia which matured into its current form in England as long ago as the 17<sup>th</sup> century? In fact, the robes of judges and the bar gown date back in some form or other as far as the 15<sup>th</sup> century! A glib response would invite comparative attention to the dress

of the clergy, the academics, the police service: "uniforms" are not uncommon. A more substantial answer is that the people expect their legal profession to retain interesting tradition. One especially should not too readily discard what forms part of the distinctive and enriching symbolism of an institution the judiciary - so significant as to constitute the people's third arm of government.

And so we join together to confirm the significance of our role; our demeanour is consistent with the depth of that significance; and we join for good and sufficient reason in this place of Christian worship.

A fortnight ago the service in Brisbane took place for the first time in the Greek Orthodox Church of St George, illustrating our immutable commitment to render justice according to law to all people, in an inclusive sense. The priest admonished us to avoid sterile, mechanical application of the law, not to ignore that our goal is justice, albeit justice according to law. The Beatitudes pronounced by Christ in the Sermon on the Mount, of which we have this morning been reminded, make that theme of a fortnight ago just as relevant today. The Beatitudes epitomise what I believe the central justification for the legal profession, and that is fostering the common good, the matter upon which I wish briefly to dwell this morning.

The scope of the "common good", as an ethical and jurisprudential notion, is reasonably well known, notwithstanding post-modernist coyness. St Thomas Aquinas, credited as its foremost proponent, said that "as parts of the full life of a community, all human beings fall into subordination to the common happiness in a way properly expressed in law". The idea was originally expressed by Aristotle. He emphasised "friendship", a concept then somewhat stronger than the modern relationship, as the "supreme virtue of social and political life". St Thomas Aquinas expanded that notion of friendship to encompass Christian ideals, primarily love of God and neighbour.

How does this concept of the common good impact upon legal practice? Put simply, the legal profession is, must be, primarily concerned with serving the public interest. That is indeed the necessary essence of any "profession": it is what distinguishes a profession from other callings or the provision of services. Of the legal profession in particular, one notes that in the interests of the common good, the community has devised a set of rules, being the law, which Dean Roscoe Pound uncontroversially described, however, as "merely the skeleton of the social order". In other words, the law delineates the limits of socially acceptable behaviour. Over time, society's legal framework, even allowing for that limitation, has nevertheless become so extensive and complicated that it is now incomprehensible to most people. Lawyers, specially trained to understand how to apply the law, have become essential to ensure that the law operates to maintain social order. They thereby advance the common good.

The nature of legal practice may regrettably spawn conflict. That may imperil the

common good. There may be conflict, for example, if a lawyer believes a certain law is unjust, but is, as is the fact, ethically (and otherwise) obliged to adhere to it. Does service of a "common good" entitle that lawyer to take steps to counter the effectiveness of the law in the interests of justice?

The ethical answer is clearly "no". The lawyer is unquestionably bound to apply the law. That is not to exclude the lawyer's agitating for change in the law. We know of many lawyers driven by strong social consciences to promote community reconsideration of arguably undesirable laws.

A more serious conflict may emerge where the purposes of an individual client are pursued without regard for the more general considerations of community justice. We were warned this occurred in the days of "bottom of the harbour" asset stripping. There are more easily detectable breaches: I regrettably came to know last year of a solicitor who even sought to suborn a witness. We have known of solicitors who have dipped into the client's money ) and the Court of Appeal strikes them off. Probably less detectable, less apparent breach of obligation does sometimes occur. I like to think it occurs infrequently. And that we emphasise the basic obligation is worthwhile in reducing that "infrequency" even further.

Of course the practical pressures of modern practice may themselves give rise to temptation. Rents are high, outgoings are relentless. But remember this profession has not resorted to contingency fees; many lawyers enhance access to justice through commendable speculative fee arrangements; pro bono work is regularly done; lawyers agitate regularly for socially desirable legislative change.

The pivotally important aspect of a lawyer's advancing the common good these days is enhancing access to justice. That is a human right of fundamental importance, of essential constitutional significance. Accessible justice is a large component of the common good. Lawyers will advance the common good if they are astute to the inaccessibility of justice in modern times, and to ways of dealing with the problem, and if they are prepared to lend their considerable weight to the taking of the necessary remedial steps.

Judges, lawyers, professional associations representing lawyers, the Attorney-General directly representing the people: we are all acutely aware of these problems; in addressing them, we directly advance the public interest, the common good. It is important that this be acknowledged in the community context: ordinary fashionable glib criticism of lawyers conveniently ignores those sorts of consideration.

We lawyers are a product of society's desire for order, and that ultimately depends on the rule of law so well established here, apparently so tenuous nearby. Lawyers are custodians of the rule of law. A lawyer's primary function is to maintain and assist in applying the complicated set of rules which society has created in the

interests of the common good. Lawyers exist, then, because of the common good, and continue to exist because they in fact continue to serve that vital public interest. Legal practice is an honourable profession essential to, and dependent upon, the common good. Despite changes within our broad community culture which have, one hopes temporarily, diverted the individual's attention inward, away from wider community concerns, the legal profession must resist the temptation to act contrary to the ideals which gave rise to its conception. I believe it does resist that temptation, and even more encouragingly, that it embraces a determination creatively to foster the public good in many ways, some of which I have sought to illustrate this morning.

May God guide us all as we go forward in this new law term conscious of our high public obligation, and with utter determination to discharge it.