

Address to the Opening of the Law Year Ecumenical Church Service
Holy Trinity Anglican Church, Mackay
Monday 4 June 2001

I sincerely thank the Rector, The reverend Lindsay Howie for allowing me this opportunity to address you.

There are some oddities about this occasion. It may seem strange to be marking the opening of the law year in June. It may to some seem equally odd to do so in this way and in this place.

The explanation for the first oddity is relatively simple. Tradition and ceremony are an important part of the practice of the law just as they are in the church whatever that church may be. We in the Queensland legal profession have celebrated the opening of the law year in the middle rather than the beginning of the legal year for about 20 years by my reckoning. There is no magic in this. When I commenced practice the opening of the law year was celebrated in a similar way on the first sitting day of each calendar year. Various suggestions have been advanced by way of justification for this curious timing. The most commonly advanced is that it reflects the traditional English date for the opening of the law year. In view of the relatively recent adoption of the midyear date it seems far more likely that it relates to the procession of judges and barristers in traditional ceremonial robes and the recognition of the folly of doing so in Brisbane in January. This year in Mackay we are celebrating the opening in the dying days of what we might describe as the first term of the law year. Our reasons for doing so are simple. This is the nearest date to that on which opening of the law year is celebrated in the Central registries on which the Supreme Court is actually sitting here in Mackay. We might, however, be excused for congratulating ourselves in celebrating the opening of the law year closer to its real opening date than any other centre.

Of more importance is why the opening of the law year is celebrated as it is, in a church. Is it not strange to be doing that in an essentially secular society where the judicial system is recognised as the third arm of government and thus of the state.

Of course, much of what takes place in the courts is prefaced on recognition of the existence of God. Most witnesses still take an oath on the bible. Judicial officers and legal practitioners still take an oath of office. By way of aside, the Legislative Assembly still commences each sitting day with Christian prayer.

To digress for a moment, Reverend Howie was very concerned as to the wisdom of allowing me free reign in what I choose to say today. He phoned my associate on no less than three occasions to remind her that the address had to be compatible with Judeo-Christian philosophy. This from a man who knows my brother is a lecturer in theology in the South Australian Uniting Church Theological College and that both my parents are pillars of the church. He plainly sees me as the prodigal son. Well, it's too late to turn back now.

I consider that the significance of this celebration in this place is deeper than the somewhat superficial trappings of oaths and prayers to which I just referred.

The gospel reading from St Matthew provides a clue to why we place so much store in this tradition. The beatitudes pronounced by Christ in the Sermon on the Mount are a traditional reading at services such as this. Jesus blessed the poor, the meek and downtrodden and promised them justice. In this way the reading challenges the relevance of the legal profession to society as a whole and epitomise its central justification. The ultimate objective of the law is, or should be, the pursuit of justice, albeit justice according to law. Carved in the stone façade above the front entrance of what I think is now the old law school at the University of Queensland in latin are Justinian's precepts. Justice features prominently. Lord Atkin in his posing the lawyer's question in *Donohue v Stevenson*, "Who is my Neighbour?" is choosing language directly referable to Judeo-Christian teaching he said: "*The rule that you are to love your neighbour becomes in law, you must not injure your neighbour...*" In Mark 12. 30-31 we are exhorted to love God and our neighbour as ourselves. Less well known is Leviticus 19.17-18 where Moses is told "*You shall not hate your brother in your heart, but you shall reason with your neighbour, lest you bear sin because of him. You shall not take vengeance or bear any grudge against the sons of your own people; but you shall love your neighbour as yourself.*" The question "Who is my neighbour?" is one lawyers continue to ask. There may be cynics who regard the pursuit by lawyers of marginal compensation cases for plaintiffs as in it purely for the money. Most plaintiff lawyers, however, know the difference between a winnable case and a try-on. My experience on the bench is that try-ons rarely, if ever, get to court. The willingness of lawyers to act pro bono in criminal cases, speculatively in civil ones and for legally aided clients generally reflects a recognition by them that lawyers have a responsibility where they are able to do so to seek out the weak and disadvantaged and endeavour to provide justice.

Our concept of justice is firmly cemented in the Judeo-Christian origins of our society. Even as our society matures into an embracing multi cultural mix of backgrounds and beliefs the philosophical underpinning of our system of law and concept of justice remains one of those features which is attractive to people of eclectic origin and binds us together. It stands in sharp contrast to the legal systems of many other countries.

The aim of the law must be the enhancement of the common good. The common good, or the concept of equal justice to all has a peculiarly Judeo-Christian origin. The Greek and Roman societies to which those of us of European descent trace the beginnings of our civilisation did not recognise the vertical nature of common good as we understand it. While they recognised the universal application of laws across a particular class of society such laws did not necessarily apply downwards.

Professor Julius Stone in his book, *Human Law and Human Justice* took this principle from the early rabbinical teachings and the teachings of Christ which largely paralleled them:

"This principle – that a man must act within the spirit as well as the letter of the law; that his heart as well as his mind must be right; that his motives and not merely his actions were to be judged – became basic to Western thought. In this way too, justice became internal to man as well as an external set of criteria of judgement. And the irreducible dignity of each man whether in pronouncing or submitting to judgement became, along with man's infirmity

and therefore his need of mercy, a precious thread in the long discourse of justice.”

Lawyers are the product of society’s desire for order. We are the custodians of the rule of law. To us falls the onerous task of ensuring that the rights of people are protected irrespective of whether those people are the very rich who can afford the best and most expensive of representation, the very poor who can ill afford any representation at all or the great body in the middle who feel abandoned – too poor to pay a lawyer his usual fee and too rich to qualify for legal aid.

A society will only be able beat its swords into plowshares and its spears into pruning hooks if it has confidence in the system by which it regulates itself. That confidence depends on the integrity of lawyers. We are familiar with the admonition of the Butcher to the rebel leader, John Cade in Shakespeare’s Henry VI Part 2, “First let’s kill all the lawyers”. Often cited in disparagement of lawyers this statement may at the same time be seen as a recognition that while the lawyers remain, the opportunity to subvert the social order and the legal system will be frustrated.

The temptation for us to act purely in self interest is high. We are all familiar with the pressures of modern practice. Wages and rents are high. We want to provide the best we are able for our families. Everybody loves an overseas holiday. I believe that the legal profession in this country has largely resisted the pressure to pursue self interest at the expense of the common good. As a profession we have a strong awareness of our neighbour and the responsibility we have to them. I like to think that in truth the good Samaritan was a lawyer. When others walk by and ignore injustice a lawyer will be found who will stand up and be counted.

Why then do we celebrate the opening of the law year in this way, in church? One answer may be that by doing so we are both recognising and acknowledging the teachings to which our concept of law owes so much. It may be that by doing so we remind ourselves of the aims to which we aspire. If we see as desirable in the practice of the law the attributes of humility, mercy, justice and truth where better should we celebrate?