



Lord Mayor's Prayer Breakfast
Brisbane City Hall
Thursday, 15 May 2014

**The Hon Paul de Jersey AC
Chief Justice**

Mr Lord Mayor, Madam Speaker, Minister Mander, Justice Mullins, Mrs Scott, Councillors, Archbishop Aspinall, other religious leaders, distinguished guests.

Particularly significantly today, I acknowledge the Turrbal and Jagera peoples, for we hope by this venture and subsequent reflection to advance the goals of reconciliation and togetherness.

I am most honoured to have the opportunity to address you. It is my legal background which explains my role today. I have been a member of the legal profession for 43 years, a judge for 29 years and Chief Justice for 16 years – actually now Australia's longest serving Chief Justice, and I have been a citizen of Queensland for 65 years. All of this means you may expect me to say something worthwhile, and I hope I will not disappoint. But it also daunts me into asking – have I done my best to advance the public interest through that long stint in public office? That is of course for others to assess.

With the character of the occasion, you may be expecting something from me which is self-revelatory. I have never concealed my claim to the Christian faith. I wear the badge unashamedly though not I hope provocatively. I will revert to that theme of my talk this morning.

The word "unashamedly" may betray a somewhat self-defensive slant. The fact is that a lot of people are uncomfortable with public declarations of Christian faith by holders of significant public office. We have seen this very recently with the appointment of Mike Baird as Premier of New South Wales. He was reportedly asked if the Bible would guide his decision-making as Premier, and responded generally, saying that he would be looking after all people in the State fairly and justly.



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Let me offer four illustrations drawn from my own experience.

I have as Chief Justice been a strong proponent of the annual ecumenical Opening of the Law Year church service. A regret as I leave office is that it has not yet occurred at the Multi-Faith Centre at Griffith's Nathan campus. Although attendance levels at this annual service are vibrant and increasing, we have been concerned that busy practitioners would not make the trek out of the city centre. I mention the service, however, because every two or three years the related publicity has attracted the ire of the humanists, who tell me the judges should be sitting – over the 9.15 to 11am slot – in court not in church. Court customarily starts by the way at 10am. The stipulation for the separation of church and State is usually invoked. I would think this public profession by the judges and the practitioners should enhance rather than diminish confidence in our discharge of our judicial and professional duty.

Second, when the appalling sex abuse scandals began to emerge in recent years, the media queried my role as Chancellor of the Anglican Diocese, essentially an honorary role, from time to time legal adviser to the Archbishop, at his instance. An occasional role. Did that not breach the separation? Of course I would not sit on a case involving the Anglican Church, and that has had no impact on court administration, and the disposition of our lists. Beyond that, I cannot conceive my being Chancellor, as is also customary in other parts of the country, has given the Anglican Church in this diocese any sort of favour or pre-eminence. I tested it at the time by asking myself whether a judge should ipso facto be denied the right to participate publicly in a service of Christian worship. Of course not.

The third of these illustrations. For the last 16 years I have been Patron in Queensland of an active non-profit organization called the Christian Lawyers Society. Many years ago, I agreed that its annual general meeting and lecture could take place in the Banco Court of the former courthouse at 304 George Street. That provoked a complaint against me to the Anti-Discrimination Commissioner, who appropriately however accepted my explanation that because the meeting was open to anyone, there was no problem.



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And then, finally, there have been occasional personal comments. “Paul”, someone once asked me, “you are intelligent. Do you really believe in the resurrection?” “Yes”, I replied. A decade or so on I wish I had with fortitude and conviction added: “and I believe in the Holy Spirit as well.” I wonder if a similar challenge would have been levelled at an Islamic judge, or a Hindu or a Buddhist or Shinto judge.

Unashamedly, but not I hope provocatively...People hate being hectored. Seeking to influence by example is likely to be the more productive.

For the last decade or so I have chaired a biennial Conference of Chief Justices of Asia and the Pacific, where we regularly address concepts such as the rule of law and judicial independence. The best way to influence better outcomes in places like China and Russia, for example, is not to present oneself or one's nation as the sole repository of the relevant wisdom, but to focus on locally secured outcomes – we are fortunate that our approach respects and secures desirable freedoms and fosters stability and progressive development. At the same time, however, one must acknowledge that a system which works well for 24 million Australian people will not necessarily translate without hitch into a regime serving billions.

What I have said so far has dwelt on how a judge of an overt religious persuasion may be perceived. That probably derives from the judicial culture. So much of contemporary life focuses on perception rather than reality. A seminal question for a judge embarking on any court proceeding may be: would a fair minded observer perceive that I may not bring an impartial mind to this matter?

But what of reality? How may a Christian orientation bear upon the actual discharge of judicial duty?

I should first remind us of a common misconception, which is that judges dispense justice. What is “just” is by definition assessed subjectively, maybe idiosyncratically. If courts were charged to deliver justice, with no qualifications, the sovereignty of the people's elected



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representatives would be eclipsed, and court outcomes would be unpredictable, even chaotic. It that were our system, the Christian ethic would likely control the determinations of a Christian judge, with rulings substantially informed by the Gospels.

But that is not our system. Our judges are charged to deliver, not justice simpliciter, but justice “according to law”, meaning the statute law enacted by the Parliaments, and the common law established by binding appellate court authority. Judges are absolutely constrained to work within that framework. If they err, they may be corrected on appeal.

Incidentally, just as the Parliament begins the day with Christian prayer, so some major developments in the common or judge-made law have been informed by Christian philosophy. The best example is the landmark case of *Donoghue v Stevenson* in the House of Lords in 1932, where the Brisbane born Lord Atkin developed the tort of negligence by drawing on Jesus’ answer to the lawyer, and the Parable of the Good Samaritan. That was the snail in the bottle of ginger beer case. Lord Atkin said: “The (biblical) rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyer’s question, Who is my neighbour? receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then, in law, is my neighbour?” And His Lordship then proceeded to provide his answer, still authoritative 80 years on, and regulating the determination of more than 50% of all civil claims.

Yes, judges deliver justice according to law. They must apply the law. That does not mean, however, that they are bereft of discretion. The resolution of many cases calls for value judgment, and that is where a judge’s personal ethical approach may be influential. Modern life throws up increasingly novel and demanding cases for court determination: turning off a life-support system, ordering the separation of conjoined twins where one will certainly die, preserving spermatozoa of a recently deceased partner, determining custody and access rights for children – all of those potentially monumental decisions involve value judgments. By guideline judgments the courts endeavour to provide a framework which will render the result more predictable, and the parliament has proceeded similarly in



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relation to the criminal sentencing discretion, for example. But there is still scope for considerable residual discretion.

Consciously or sub-consciously, in making judgments in such cases, a Christian judge may recall the Sermon on the Mount, which Melvyn Bragg described in his book on the King James Bible as “the most radical and compelling affirmation of morality”, or Micah’s admonition that we should do justly, love mercy, and walk humbly with our God.

Christ was strongly critical of those who obsessively applied or observed the law without the leaven of mercy. The Old Testament contains many praiseworthy references to upright judges, and condemnations of hypocritical judges.

Truth and compassion must inform a judge’s daily work.

The Parables suggest that if one does one’s honest best, no more is expected, and looking around a courtroom, a judge does well to remember the Gospel words, “what you did for the least of mine you did for me”.

We are all in equal measure the recipients of God’s love. A judge’s office does not elevate the judge in those stakes, and I will mention now the quality of humility.

Micah’s is a wonderfully straight-forward prescription, justice, mercy and humility, and especially when set against the alternate suggested offerings: thousands of rams, ten thousand rivers of oil, calves of a year old and so on.

But it can be deceptively simple, and one needs to work at it.

Humility in particular can be a come and go feature for those fortunate enough to be in positions of leadership. It may pay regularly to keep in mind the words of St Luke’s Magnificat: “(he) hath scattered the proud in the imagination of their hearts”. Humility I understand, by the way, to connote meekness but not weakness.



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Longevity in this demanding public office of my own carries a risk, and that is, of a diminishing perception of the significance of what you are doing. Judges should, and do, pause regularly to ponder the ramifications of their decisions – for offenders, for victims, for families and friends left behind, for communities, for lifestyles and careers, for personal corporate and community economies. Talk about the high significance of the judicial role cannot be allowed to descend to the platitudinous.

When I was at the bar, I pulled back from divorce work after a while, because with the volume of the work, I felt I was not necessarily treating each new case as unique. I have been conscious of that concern over the latter part of my 29 years sitting in the criminal court, but that concern has probably been misplaced. My attention to those cases has, if anything, increased over the years. Far from becoming easier with experience, those cases have in fact become more taxing, both legally and personally.

Yes, as a judge and as your Chief Justice, the responsibility has been of high order. In the discharge of that responsibility, I have been greatly fortified, I say unashamedly and I hope not provocatively, by my Christian faith, and I daily thank God for that. I humbly pray that we may all be similarly fortified, in both our professional and personal lives.