

**AUSTRALASIAN CHRISTIAN LEGAL CONVENTION**

**Ormond College, Melbourne**

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**OPENING ADDRESS**

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### OPENING

This Convention is to take as its inspiration the verse in Micah 6:8 which the Revised Standard Version translates in this way:

*He has showed you, O man, what is good;  
And what does the Lord require of you  
But to do justice, and to love kindness,  
And to walk humbly with your God.*

Read the verse quickly and the Lord's requirements may be thought to be slight indeed: all we need are the right attitudes. If we are acting, we should do so justly; we should be well disposed to others and not be presumptuous in our relationship with the Almighty. We should simply be nice people. The translation in the Jerusalem Bible creates that impression even more: what Yahweh asks of you is "*only this, to act justly, to love tenderly and to walk humbly with your God.*" But whichever version we read, a re-reading and a little reflection shows that the Lord's requirements are not to do with how we feel or with our outlook on life. The Lord calls us to action of the most demanding kind. We are required to act and, in acting, to do what we can to achieve justice; we are required to love and, in loving, to be kind and gentle; we are required to be the companions of God Himself, not boastful of our privileged association but conscious of His infinite goodness and responsive to His love. These requirements affect our relationship with our fellow human beings and our relationship with God.

The New Testament reverses the order of the requirements as Micah set them out: the relationship with God is primary; our relationship with our neighbour follows:

*"You shall love the Lord your God with all your heart, and with all your soul, and with all your mind... and love your neighbour as yourself." (Mt 22:37-39)*

Love is not an emotional reaction which simply wells up without consciousness of the person loved. It starts from a recognition of the existence and nature of God as revealed by Christ and of the unique dignity of each person as a child of the Father, made in the Divine image. Love is a response to that recognition; it governs thought and directs action. It demands that the things that we think and do accord with the will of our Divine companion. Yet we do not presently know in full the God with Whom we are required to walk. Being loved is a joy, but to love may be difficult when the object of our love is a God Who is only partially known to and knowable by us and when neighbours may be quite unlovable or overly demanding. Yet the commandment to love is absolute, so the first requirement is to use our hearts, souls and minds to know the God Whom we are to love.

Christians believe that God loves us unconditionally and unceasingly, but each of us realizes that love in his or her unique way. We must define our conception of God and respond to His love in order to discern and articulate what He wants of us. You have assembled here from the different parts of Australasia and from differing Christian denominations to discern and to articulate what God wants of you, individually and collectively. At the end of the Conference, you may find a concurrence on a variety of topics which Christian lawyers should be addressing but, whether that is so or not, each of you will deepen your conception of God and then acknowledge the ways in which your professional lives may help to realise your prayer: *Thy Kingdom come, Thy will be done on earth as it is in Heaven*. In this you will draw support and comfort from one another as you pray together and, in all humility, walk together on a journey of self-revelation.

I confess to a sense of anomaly in your invitation to open this Conference. The participants in this Convention are actively engaged in active practice but my professional life is largely behind me. So I have to speak not as a current practitioner of the law, but in retrospect. Retrospect is the prerogative of advancing age. It can be uncomfortable if it reveals failures “to do justice and to love kindness” but advancing age does have an advantage. It focuses the mind more intensely on the life to come when we shall know truly the God Whom we are to love – and not through a glass

darkly. Not a God Whom I have distorted by misconceptions conjured up over the years in response to the experiences and vicissitudes of life.

For me and perhaps for many Christians, faith is a gift that has been received from parents and teachers buttressed, perhaps, by an elementary study of Christian sources and surviving in a culture that is not wholly inimical to Christian belief and practice. It can be a comfortable faith provided we are comfortable. We can believe in the goodness of God provided we are the beneficiaries of temporal blessings. I know that, at the struggling beginning of life at the Bar, when energy and ambition had to be harnessed to meet the demands of family life and professional duty, prayer was often the prayer of petition – perhaps even a process of bargaining with Providence to solve the crises of both familial and professional life. If crises were resolved and professional progress was experienced, there were occasions for thanksgiving. Love of God was, to an extent, a response of gratitude. Christian faith was not hard work; rather, it was a comfort that gave security and order to the life of the time. But our God is not a good time God. His love is most valuable when all else fails: *"Come to me all you who labour and are overburdened and I will give you rest."* (Mt 11:30).

If we survive the run of the mill crises in our familial and professional lives, our sense of dependence on God may be placed in abeyance until some new crisis sends us back to Him. Faith may be acknowledged merely as the civilizing influence on our society and our Christianity may become simply a badge of admission to the body of right-thinking citizens. *"God, I thank thee that I am not like other men"*. (Luke 18:11) The tortured, pain-racked figure on the Cross recedes from consciousness and the Cross itself becomes an ornament, not a challenge. In the so-called post-Christian era, continued adherence to Christianity is not so much challenged as coated over with the values of a society that finds its fulfilment in material wealth and the successful pursuit of pleasure. It is easy to develop an increasing complacency of the spirit and a growing deafness to the cry of those who do not enjoy the same privileges. Poverty and other calamities can become the concern of others and faith may inspire little more than judicious donations from what is surplus. The way of the Cross is not the accepted way of life and, if you insist on reading Micah, then it should be read in a "feel-good" way. There is no great desire

to hear the answer to the question: *"Lord, when did we see thee hungry or thirsty or a stranger or naked or sick or in prison, and did not minister to thee?"* (Mt 25:44) And if we are sometimes pricked by the voice of conscience, it inspires the prayer of the young St Augustine: *"Not yet, O Lord, not yet!"* But ours is not a God of hedonism or selfish affluence. He commended the widow who gave her mite to the temple treasury and told us that *"If any man would come after me, let him deny himself and take up his cross daily and follow me."* (Luke 9:23)

With increasing age, the question of a future life looms larger. What does it mean to believe that we live when the body is dead? No eyes to see, no ears to hear, no hand to touch, no brain to process. Yet man has been assured that *"you will see heaven opened, and the angels of God ascending and descending upon the Son of man."* (John 1:51) How can this be? Does the recently revived discussion about science and religion present a real obstacle to belief in a life of eternal happiness when we can see the face of God? One of the arguments against religion in the letters column of the daily papers a month or so ago sought to show the scientific fallacy in believing in the Divine creation of the universe. Space and time are correlative concepts or, at least, one is meaningless without the other. Both commenced with the Big Bang. But – so the argument runs - if God was the Creator of the Universe, He must have existed before the Big Bang and "before" is a temporal concept that is inconceivable until the moment of the Big Bang when space was created. It is a splendid conundrum but it helped me to some comprehension of the notion of eternity.

Ultimate reality cannot be confined by space, nor can eternity be measured by time. Ultimate reality cannot be a material universe to be apprehended by bodily senses; it does not need to be mediated by the bodily senses in order to be known. The ultimate reality must be spiritual and can be comprehended only by the spirit – the spirit of which each of us is conscious as identifying our uniqueness and our personality; the spirit which alone can recognize the Eternal Spirit who identified Himself as *"I am Who am"*. When Christ rose from the dead, He was no longer confined by time or space – He vanished at Emmaus (Luke 24:31), He appeared to His disciples in a locked room (John 20:19) and ascended from the outskirts of Bethany into heaven (Luke 24:50-51). Yet He was recognized by, and brought joy to

the hearts of, those who saw Him with the eyes of faith. Our finite minds cannot comprehend the infinite Deity, but our knowledge of Him comes with faith. As we try to make sense of the suffering and the joys of this life and the promise of the next, faith tells us that God must be a God Who has suffered as men and women have suffered, Who loves us unconditionally despite our coldness towards and our rejections of Him, Who has given us the dignity of being His children and Who wants us to walk with Him now and in a life to come. Our God wants us to believe in Him, to love Him, to work for justice, to care for the poor and the marginalized members of our society, not to put our faith in wealth or power but gladly to bear our burdens for His sake. He wants our faith to transform our lives so that we see this life in the context of the next. Perhaps we may come to know this God if we pray with heart and soul and mind: *“I believe; help my unbelief!”* (Mark 9:24)

And if we are to walk humbly with Him, we must take seriously what Christ said:

*“Whoever would be great among you must be your servant, and whoever would be first among you must be your slave; even as the Son of man came not to be served but to serve, and to give his life as a ransom for many.”* (Mt 20:26-28).

This is the key to what He wants lawyers who are His followers to be and to do. The most immediate duty of service is owed to those to whom we are obliged to render legal services, whether in advising, representing or judging. Of course, that duty of service is owed by lawyers other than Christians. Belief in or a knowledge of God is not the only basis on which to construct a morality of legal practice. The rules of law and the ethical practices of the profession can be explained as manifestations of practical wisdom, the product of reflection on human experience. But for the Christian, the precept of service is backed by a Divine command to emulate Christ's own service to humankind.

The content of the Christian lawyer's duty of service depends on, but is not confined by, the provisions of the law itself. The lawyer's authority is derived from the law, and only from the law. It is not derived from academic achievement or from practical experience. No lawyer can practise, with all the privileges of practice,

without the law's authority; no judge can pronounce a judgment backed by the power of the State without the investment of the necessary authority by the laws of the State. The authority which lawyers have is to participate, in their respective ways, in the administration of justice according to law. It would be a mistake to construe Micah's admonition to act justly as setting the Christian lawyer on a course of action designed to achieve a better, or different, form of justice than justice according to law. We are concerned here with the exercise of an authority conferred by the lawful civil power, an authority that would be abused if it were exercised otherwise than in accordance with the condition on which it has been conferred and accepted. There is no antinomy between the duty to participate in the administration of justice according to law and the duty to act justly of which Micah speaks. On the contrary, the duty to act justly binds the Christian lawyer to act in the exercise of his or her professional authority in accordance with law.

That is no light responsibility. At the most fundamental level, there is a duty not to assume a responsibility to exercise a lawyer's authority unless the task is within the lawyer's competence. The law must be found, so we must look up the sources of law; the facts must be ascertained, so we must listen attentively to find the relevant truth; we cannot refuse to answer a reasonable call for assistance in the administration of justice according to law, so we cannot insist on unreasonable fees or decline to spend the time or to expend the effort needed to represent the client and protect the client's interests or to exercise the jurisdiction of the court; we cannot allow the procedures of the law to produce unnecessary injustice, so we cannot prosecute vexatious suits or subject clients, opponents, criminal defendants, witnesses or the public to any indignity or gratuitous embarrassment. The Christian lawyer's duties accord with and reinforce the highest ethical standards of his or her profession.

There is a further duty resting on the Christian lawyer. The law itself, being an imperfect human instrument, will sometimes be productive of injustice in an absolute sense. Justice according to law may not always be just. In such a case, what is the Christian lawyer's duty? It is not to frustrate the operation of the law, but it may be a duty to seek its amendment. I say "may be" because no step can be taken to prejudice the legal rights of a client by whose retainer the lawyer is bound. Subject to that qualification, there are two situations in which, I suggest, a lawyer has a duty

(and the Christian lawyer has a cogent duty) to work for the amendment of a law that is seen to be unjust. The first is when a common law rule which appears to be applicable to the instant case would produce what is thought to be an unjust result and the rule is open to reconsideration in an appellate court. It is entirely in accordance with the duties of a lawyer to seek, or for an appellate judge to prescribe, an abrogation or amendment of a common law rule when the present rule produces manifest injustice and when the court before which the issue has arisen has jurisdiction to prescribe that abrogation or amendment. As the history of the common law shows, the appearance of injustice – or inefficiency, which is a form of injustice - has been the stimulus for the common law's development.

Secondly, and perhaps more significantly, where the operation of statutes or regulations or government policies is productive of injustice, the duty of the Christian lawyer is to do what he or she reasonably can to secure an amendment of the relevant law or policy. A supine refusal to act when faced with injustice is hardly consistent with a duty to act justly, much less is it consistent with a duty to love kindness towards those who suffer the injustice. That does not set us off on trying to set the world to rights. Equally, it does not allow us always to leave others to reform injustice when it lies within our own power to do something about it. In this respect, lawyers who understand the legal infrastructure of our society and are aware of the legal mechanisms which can remedy particular injustices can make a special contribution to improve our society. This may involve some participation in public affairs, perhaps in the writing of a letter for publication, the making of a public statement, or engaging in a public debate. Participation in public affairs may involve moral issues on which Christians have a particular view about what is just and what is unjust.

Of course, there may be debate about what constitutes injustice in our society. For example, the debate about euthanasia (by which I mean the taking of an active step in order to cause death) shows that some of our fellow citizens would regard the law of homicide as being unjust in its application to the causing of death of some of those who are terminally ill. Is the Christian, and especially the Christian lawyer, entitled to advance religious values for consideration in this debate? Or does the existence of a pluralistic, secular society invalidate arguments based on principles

derived from religious faith? Is there some reason why Christians should refrain from public expression of Christian values touching public issues? Surely, we are all citizens in a free democracy and all – Christian and non-Christian – are entitled to advance and advocate principles in which we believe, provided they are not calculated to destroy the social cohesion of our communities. Perhaps we, and those who are not Christians, have over-reacted to the years when the values of the community were assumed to be what the clergy of the more populous denominations declared they ought to be. Perhaps we have become loath to insist that Christian sensitivities be respected and Christian values be admitted for consideration in the formation of public policies. But Christian sensitivities are entitled to respect, just as the sensitivities of other religions or legitimate associations are entitled to respect. And while Christian values cannot demand public acceptance if a majority of the community otherwise determine, their inherent worth to the community has been demonstrated through the centuries by the civilizing influence of the church and by the Christian foundation of our legal system. There is no reason why the Christian's voice should not be heard and, if Christian principles command majority support, they will be accepted.

I venture to suggest that we, as Christians, have sometimes failed our community by not expressing Christian values when their expression would have enhanced the ethos of our society. Perhaps we were silent when we could have spoken, or we mentioned Christian values apologetically or, worst of all, we demanded conformity with Christian values without demonstrating their social utility. Take a very general political example. In Australia we have become accustomed to political opinion polling and demographic studies by our political parties in order to maximize their prospects of electoral success. We have come to accept the primacy of this method in the formation of policy: pragmatism rather than principle. It makes policy captive to those who, with the assistance of their spin doctors, manipulate the public opinion of the moment. Yet the Christian, believing that each of us has a divine spark and destiny, surely believes that respect for that unique dignity must be the informing principle of political activity. That principle mandates that each person should live with freedom of conscience and in the dignity which a fair participation in the community's wealth and opportunities allows, while each is under a duty to contribute to that wealth so far as it is within his or her power. But do we evaluate

political policies by reference to that principle or do we accept the validity of the majority's self-interest as ascertained by the pollsters? Democracy without principle, we should remind ourselves, leads to tyranny.

Let me mention two issues which, in my respectful opinion, illustrate the need for Christian lawyers to contribute their views in the formation of public policy. I do not suggest that Christian lawyers should see themselves as a political pressure group but rather that individual Christian lawyers, conscious of the injunction in Micah and obedient to their duty to be witnesses to the Christian message, should contribute to public discussion when their contribution can advance justice and kindness.

Political parties campaign on a law and order policy and the public, often incensed by unbalanced media reports, clamours for heavier sentences. Then let us consider the destructive culture of our gaols. Others will know better than I the extent to which rape and other violence occur and the effect of the drug trade on young first timers. Yet the state seeks to economize on the provision of prison facilities and often farms out the custody of prisoners to those who undertake the task for profit. Yet we must acknowledge that prisoners, no less than the rest of humankind, are entitled to respect of their dignity as children of God. The crimes of His children may warrant a deprivation of their liberty but not the denigration of their humanity. We can, as we too often have, leave the question of prison reform to the appropriate authorities of the state or we may even hope that the corporations which conduct the gaols will provide adequate protection and facilities, physical and cultural, for the inmates. The responsibility of the legal profession has been too often limited to the curial process, ceasing with the closing of the steel doors. There are probably few votes in an enlightened prison policy, and that will remain the position unless the public

conscience acknowledges the inherent dignity of every person, even those who have committed grievous crimes. It is one of the failures of my generation of lawyers that we have not raised professional and public consciousness of the need to respect the dignity of offenders and those charged with offences. There has been a failure to act justly and to love kindness.

Or take the diminishing status of marriage and the family. Marriage, as the law knows it, follows the strict Christian definition: the voluntary union for life of one man and one woman to the exclusion of all others<sup>1</sup>. The commitment of the spouses to a lifetime together with all its joys and sorrows, gains and losses, their joint responsibility for the parenting of their children and the social stability – including the minimising of calls on the public purse – which the institution of marriage creates demand protection by laws affecting property, taxation, inheritance and pensions. The social principle which supports these protective laws is the desirability of assisting the parties to maintain their union and the family unit. Where common law marriages exhibit the same incidents (though there is no public ceremony) there is social justification for similar protective laws. In modern times, however, the sexual revolution has diminished the significance of marriage as a central social institution. The Christian ideal, albeit not realized in every case, has been depreciated as an old-fashioned concept.

There has been increasing pressure to equate the forming of sexual relationships, both heterosexual and homosexual, with the status of marriage and to extend to those relationships the benefits of the laws protective of the marriage

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<sup>1</sup> *Hyde v Hyde and Woodmansee* (1866) LR 1 P&D 130,133; *Family Law Act* 1975, s 43(a); *Calverley v Green* (1984) 155 CLR 242, 259-260.

institution. Rights to sexual relationships rather than the acceptance of responsibilities to spouse and children are advanced as the justification for conferring the benefit of protective laws. But if A can confer rights on B simply by entering into a sexual relationship with him or her, should not X be entitled to confer similar rights on Y simply by agreement between the two for some form of association without sexual relations?

It is not for Christians to stand in judgment on the sexual relations of others, nor to deny the human tragedies and personal insecurity that account for the disruption of many familial and other personal relationships. But when the extension of laws protective of marriage and family is in issue, there is no reason why the Christian should not seek to maintain the special position of marriage and the family – not only to uphold an institution of central significance to Christians but also to enhance the stability of society.

I mention these two issues only as illustrations of questions to which Christian lawyers may usefully contribute their views. Christians may not share the same views on these or other social issues but that is not to deny either the right of individual Christians to speak on a subject or the benefit of considering what they have to say in determining social policy. Christians, respectful of the views of others, acknowledging the unique dignity of every person and moved by a desire to see justice done should be valuable and valued citizens in our pluralistic, multi-cultural society. Participation by Christians in the life of the community should be a social benefit. And participation in the life of the community, including participation by the contemplative Orders who spend their lives in prayer for the community, is of the

essence of the Christian life. That is one of the ways in which we demonstrate love of our neighbours as ourselves. One of the purposes of Conventions of this kind is to allow the Holy Spirit in our midst to inspire us to a fuller Christian life. It is a life which can give joy and satisfaction in our professional endeavours, in which we can find comfort and strength in its trials and courage to speak when there is an occasion where speech can be beneficial to our fellows. The requirements that the verse of Micah lays upon us are substantial, but not worrisome. Indeed, they free us from concerns born of a desire for purely human respect and profit and they encourage us in the service of God and our neighbour. For one who, having the greatest part of a professional life behind him, finds himself in the committed and stimulating membership of this Convention, I can only say: *"Let your light so shine before men that they may see your good works and give glory to your Father who is in heaven".*

(Mt 5:16)