

**Address to the Auckland District Law Society's  
Annual Church Service  
on 3 Feb 1997**

**adapted version without footnotes for NZLJ**

Judge FWM McElrea, Auckland District Court.

*[NOTE - an introductory paragraph should explain that this address was given on the date and occasion noted above, at a service held at St Andrews Presbyterian Church, opposite the present High Court building in Symonds Street, Auckland, in the 150th year of that parish. In the address Judge McElrea contrasted for a Christian audience a secular and a biblical view of justice. The address was not an exercise in comparative religion. For completeness the reader should be advised that the Old Testament reading chosen was Psalm 85:4-13, and the New Testament reading was 1 Peter 3:8-16.]*

Speaking as I am to a group of Christian lawyers - practitioners, academics, judges and others - the question I want to ask is this: If we really take our Christianity seriously, what is it that should differentiate us from other lawyers? What difference should the fact that we are Christians make to the practice of our profession?

Over the holidays I read Alex Frame's award-winning biography of Sir John Salmond, *Salmond: Southern Jurist*. It raised again for me the age-old question about the relationship between law and justice. Is the true model of law (as the Austinian school contended last century) simply the command of a sovereign power backed by sanction, with no necessary moral content? Is law the measure of justice? Alex Frame shows how this "positivist" view, which does not require any "grand plan" (divine or otherwise), fitted in with Darwin's newly stated theory of the evolution of life by a process of survival of the fittest. Legal and scientific theory alike supported the Victorian emphasis on the freedom of the individual to flourish according to its strengths. Although we tend to think of the Victorians as strongly religious, they continued the process already begun in "the Age of Reason" of confining the domain of religion and making possible a secular view of the world, one which is very much in the ascendancy today. Salmond, who bridged two centuries, did not expound any religious view of law but did allow for an ethical component.

Can we take a positivist approach and say that the law is designed for a secular world, so we should apply secular values in our working life and keep our Christian values for our personal and social life? This "solution" has the appeal of consistency with the separation of Church and State, and with the principle that our laws are designed for those of any faith, or none. It is also an "easy" solution in the sense that it helps Christians to avoid crises of conscience in their working life or confrontations with the established order. (I am not saying that those who adopt this separatist view - "Don't mix law and religion" - do so because they prefer an easy life. Some will see it as a matter of firm and clear principle.)

Closely aligned with this approach is the widely held notion that justice involves the even and fair application to all citizens of rules promulgated through constitutional means. That is a respectable proposition for the secular world, and no doubt true so far as it goes. FE Dowrick's *Justice according to the English Common Lawyers* (Butterworths, London, 1961) largely describes such a "process" view of justice. But is procedural justice enough for a Christian? I suggest not.

The twin Hebrew words *tsedeq* and *tsedaqah* sometimes translated as "justice" are more often translated as "righteousness" (:Richardson A. (Ed.) *A Theological Word Book of the Bible* SCM, London, 1957, p203). In the Old Testament they mean ethical uprightness but also benevolence to the helpless, salvation for the oppressed. (ibid.) As one Jewish commentary on the scriptures explains:

"To understand the idea of justice in Israel we must bear in mind the biblical teaching that man is created in the image of God; that in every human being there is a divine spark; and that each

human life is sacred, and of infinite worth. In consequence, a human being cannot be treated as a chattel, or a thing, but must be treated as a *personality*; and, as a personality, every human being is the possessor of the right to life, honour and the fruits of his labour.”

(*Pentateuch and Haftorahs* (2nd ed) Ed. Dr J H Hertz, Soncino Press, 1975, p821 - by courtesy of Judge David Robinson.)

In fact, if we look at the biblical idea of justice we find that a separation of process from content is not possible. Certainly the duty of even-handed justice to all is laid down. King Jehoshaphat of Judah instructed his judges:

“Be careful in pronouncing judgement; you are not acting on human authority, but on the authority of the Lord, and he is with you when you pass sentence. Fear the Lord and act carefully, because the Lord our God does not tolerate fraud or partiality or the taking of bribes.” (2 Chronicles 19: 6-7; all biblical quotations use the Good News Bible translation unless otherwise stated.)

Moses had similar advice for his people: see Deuteronomy 16: 18-19. The judicial oath taken in New Zealand echoes this principle of doing right by all people, “without fear or favour, affection or ill will”.

But an equally strong biblical strain is the concept of justice as a divine and ultimately irresistible force. The Jewish commentary already mentioned notes at p820 that Isaiah uses only one Hebrew word to designate both “justice” and “victory” - ie the triumph of right in the world. Significant too is the way the prophet Amos speaks of justice:

“Spare me the sound of your songs;  
I shall not listen to the strumming of your lutes.  
*Instead let justice flow on like a river  
and righteousness like a never-failing torrent.*”  
(Amos, 5:21-24; transl. Revised English Bible.)

The same insistence on action appears in the New Testament:

“Not everyone who calls me “Lord, Lord” will enter the kingdom of heaven,  
but only those who do what my Father in heaven wants them to do.” (Mat. 7:21)

What God unmistakably requires of us is that we act as His agents in this world to help bring in His kingdom. Instead of just talking and singing about His kingdom we are to *act*. And how? By letting “justice flow on like a river”. Another translation says “let justice roll down like waters” (New Revised Standard Version). The simile conveys the image of justice as something we should thirst for - a life-giving force, originating from the creator, that feeds the land and its people. Above all else that, I believe, is what we need to understand and live out.

Next to be noted is the strong biblical connection between justice and peace. In our Old Testament reading for today the psalmist exclaims:

“Mercy and faithfulness have met;  
justice and peace have embraced. ...  
Justice shall march before him  
and peace shall follow his steps.”  
(Psalm 85:10 and 13; translation from Peter Coughlan et al, *A Christian's Prayer Book*, Geoffrey Chapman, London, 1974.)

Likewise Isaiah tells us

“The work of justice is peace;  
and the effect thereof quietness and confidence forever.”  
(Isaiah 32:17, as translated in the Jewish commentary referred to above. See also Psalm 72.)

The Mennonite writer Howard Zehr, in his seminal work on restorative justice *Changing Lenses*, emphasises the connection between justice and *shalom*, usually translated as “peace” but basically referring to a state of “all rightness” in various dimensions - physical well-being, a right relationship with others, and personal honesty or moral integrity (- p131 of *Changing Lenses* (1990) Herald Press, Scottsdale, Pa. USA). This enables Zehr to develop a biblically based view of criminal justice as peace making.

While the Greek philosophers had explained justice in terms of a harmonious arrangement of society, the Hebrew concept goes much further than this dimension of peace - it makes justice akin to holiness. The Jewish commentary already cited notes at p821:

“The oppressor, the man who tramples on others, ... is throughout Scripture held forth as *the* enemy of God and man.”

And as my own vicar the Revd Brian Jenkins has put it -

“Holiness is loving and serving and obeying God, and that is intimately and absolutely connected to loving and serving others with God’s love”  
(Sermon for the Anglican parish of St George, Epsom, 18 February 1996.)

Justice and mercy are also closely linked in biblical sources. As we have already heard in the Old Testament reading

“Mercy and faithfulness have met;  
justice and peace have embraced.”  
(Psalm 85:10)

The prophet Micah asks the well known question which links these two driving forces together:

“And what does the Lord require of you?  
To act justly and to love mercy  
and to walk humbly with your God.”  
(Micah 6:6-8, transl. New International Version.)

Of course with Christ’s coming God has provided us with a model of how we should live.

“A new commandment I give to you,  
that you love one another as I have loved you.”  
(the translation used in the Anglican New Zealand Prayer Book p 406.)

From Christ’s example we know that our God is “personal, faithful, and concerned about the underdog and about the human condition generally”: Howard Zehr (above) at p 135. Note that it is not just that we should love our neighbour as ourselves, which is to be found in the Old Testament, but that we should love others *as Christ loved* his disciples. St Paul’s great eulogy to Christian love in 1 Corinthians 13 can be our guide.

This involves a change of heart. As the Revd Brian Jenkins has said:

“The key to the reversal of a people who by almost every standard of measurement are going downhill, is **not** in law and order. Do not expect whoever governs this country to be able to reverse the crime rate, the violence, the dishonesty, the immorality, or any of those sorts of things. In order to change society, people must change - in their hearts. That’s the principle of the kingdom of God.”  
(Sermon for the Anglican parish of St George, Epsom, 7 November 1993.)

And so we see that for Jews and Christians alike, justice is part of the very nature of God. It is therefore not something we can decline to be interested in, or that allows us to say “Yes it’s important but we will leave it to the courts or the Ministry of Justice or to legislators to pursue as they see fit.” And of course judges (and litigation lawyers) are

indirectly involved in law making. It would be hard to improve on Salmond's expression of this reality in 1900:

“We must admit openly that precedents make law as well as declare it ... we must recognise a distinct law-creating power vested in them and openly and lawfully exercised ... Creative precedents are the outcome of the intentional exercise by the courts of their privilege of developing the law at the same time that they administer it.”

(J W Salmond, “The Theory of Judicial Precedents”, *Law Quarterly Review*, Vol XVI (1900) p378, cited by Alex Frame *Salmond: Southern Jurist* p59.)

Justice being of the very nature of God, we as Christians must work for its advancement in this life, here in New Zealand. As lawyers of one sort or another there are several things we can do. Can I make five brief suggestions:

1 Obviously, in our own lives we must apply those standards of honesty and integrity of which the scriptures speak, and which the profession is entitled to expect of all its members. This is usually fairly obvious, but at times may require some difficult personal decisions.

2 Christian lawyers must be prepared to uphold ethical standards in business, and to lose the client if their advice is unacceptable. They cannot see themselves merely as there to do their client's will - “a cog in the wheels of commerce”, as one lawyer put it. Advice should be given with intellectual honesty, and not tailored to what the client wants to hear.

3 We all come across situations of blatant injustice or oppression where opportunities exist for *pro bono publico* legal work. This is not limited to court work. Commercial, conveyancing or mediation skills may be needed but beyond reach. Neighbourhood Law Offices and Citizen's Advice Bureaus are two places amongst others in need of such help.

4 Because we have the privilege of knowing how the legal system works, we should be on the lookout for those areas in which it produces injustice, and work to change them. Lawyers (including academics) are uniquely placed to engage in law reform because law is their profession. They know the processes of law making and should have the intellectual skills to analyse injustice and argue for its defeat. The Law Society's various committees are one avenue for such work. The Legal Research Foundation is another. (In that context I have argued for the introduction of restorative justice processes in criminal law - see eg “Accountability in the Community: Taking Responsibility for Offending” in *Re-Thinking Criminal Justice* Vol I, LRF (1995) p61); and also in schools - see “School Discipline and Restorative Justice”, in *School Discipline and Students' Rights*, LRF (1996) p87.)

5 As educated and articulate members of the community, Christian lawyers should be looking at the values of the world around them, and where they are anti-Christ, where they promote oppression, poverty or injustice, be prepared to speak out against them, to take a stand for God's values. The rapid growth in the dehumanising and impoverishing business of gambling is one target largely untouched so far.

In all of this, without any blowing of trumpets and without seeking to proselytise, we must make it clear whose values they are that we seek to promote, and in whose name we use our talents.

“Do not be afraid of anyone, and do not worry. But have reverence for Christ in your hearts, and honour him as Lord. Be ready at all times to answer anyone who asks you to explain the hope you have in you, but do it with gentleness and respect.”

(1 Peter 3:14-16.)

Let us now say together the following *prayer of the people*:

God of peace,  
let us your people know  
that at the heart of turbulence

there is an inner calm  
that comes from faith in you.

Keep us from being content with things as they are,  
that from this central peace there may come a creative compassion,  
a thirst for justice,  
and a willingness to give of ourselves  
in the spirit of Christ.                      AMEN

(from the Anglican New Zealand Prayer Book p 464.)