



Opening of the Law Year Church Service
St Joseph's Cathedral, Rockhampton
Monday 4 August 2014

**The Hon Tim Carmody
Chief Justice**

Acknowledgements

I am very grateful to Justice McMeekin for inviting me to attend this church service to mark the opening of the law year. Robyn and I are delighted to be here.

In this brief address I would like to reflect a little on the relationship between the law and religion as the two great systems and branches of learning.

Both are distinguished and characterised by a heavy emphasis on traditions and customs.

This is due to a shared appreciation of the importance that traditions play in fostering social security, order, control and harmony.

Traditions also imply a sense of legitimacy, predictability, certainty and constancy.

Their familiarity is a balm for community concerns and anxieties.

However, the chief function in both law and religion is to carry fundamental values and knowledge from age to age.

The western legal tradition itself derives mostly from Judaeo-Christian thought.¹

Christianity, according to Professor Patrick Parkinson "... was to the formation of the western legal tradition as the womb is to human life".²

¹ P Parkinson, *Tradition and change in Australian law* (The Law Book Co Limited, 1994, Sydney) 29.



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Under the Christian doctrine of revelation the universal truth of all principles of reasoning are sourced in the word of God as revealed to humankind in the Holy Scriptures.

Therefore, modern ideas of law cannot be fully understood without studying the teachings of the Christian faith.

The Old Testament story of Adam and Eve, for example, provides a basis for the legal concepts of the rule of law and the consequence of disobedience.

Contemporary theories of crime and punishment reflect Abel's killing of Cain.

The importance of the search for truth – despite human fallibility – and the virtue of wisdom as a quality of justice in the Book of Solomon persists today.

Religious ideals and theories of natural law underpin modern equitable doctrines. The law of succession and unjust enrichment principles derive, in part, from the canon law and ecclesiastical thought.

Even in relatively recent times the Christian religion was regarded as a part of the law of the land and arguments directly from scripture were generally acceptable in the courts until the late 18th century.³

The common law rule for swearing an oath on the bible to bind the conscience of a witness to tell the truth for fear of divine retribution in this life or the next is another instance of the close association between legal and religious beliefs.⁴

Despite the influence of much broader more secular and diverse ideas and notions about the nature and place of law in the modern world the dialogue between lawyer and theologian is an ongoing one. The law of the present is still informed by the religious

² Ibid 30.

³ K Mason, *Constancy and Change* (The Federation Press, The Australian Society of Legal Philosophy: Sydney, 1990) 4.



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beliefs of the past, notwithstanding current developments and trends based on other points of view.

As the Hon Alan Demack AO, who graces us with his presence today, noted in his reflections on life as the Central judge (published in the 2011 Supreme Court History Program Yearbook under the title *Moons at my Feet*), the Church and State continue to share basic moral values and purposes.

His Honour gave as perhaps the best possible example of a common viewpoint between the two great institutions: Christ's golden rule, "that you must love your neighbour as yourself". The legal question – who is my neighbour in tort, to whom I have personal responsibility for harm done regardless of intention? – places the focus on the reasonable moral limits of that responsibility and considerations of restorative justice rather than issues of fault or retribution.

Treating others as you would be treated is not only a moral virtue but a legal obligation if not expressed in as many words. It is, in any event, a rule of decency to live by every day.

God bless and keep you all safe until we meet again for the same purpose next year.

⁴ B Chen, 'Diminution and secularisation of Oaths in Australian Courts' (2012) 13 Aust. Bar Rev. 291, 293.