

Opening of the Legal Year 2016

St. David's Cathedral Hobart.

Some years ago, I was the rector of Wellington, between Orange and Dubbo in the Central West of NSW. One fine Saturday morning I found myself driving home along the Mitchell Highway after a working visit to Canberra. It was a fine day. Mozart was playing on the radio. God was in his heaven and all was right with the world! I set myself a dozen or so car lengths behind the bloke in front of me and relaxed. Mistake! Big mistake!

Around a bend near Bakers Swamp, the Highway Patrol car swooped. The bloke in front kept on keeping on. And I was left to explain why I was speeding. As the young constable handed over the ticket, he announced without smiling that he had written on it a message for me. I carried on home, and when I got there I examined the Traffic Infringement Notice. On top, written in a neat hand, there appeared the somewhat enigmatic note 'Romans 13.1'; a reference to the beginning of the chapter from which the Chief Justice read a later portion.

Now I love the Scriptures, but I'm not the sort who carries the whole Bible in my head – so I went to my study and looked the verse up. ***'Let every person be subject to the governing authorities; for there is no authority except from God, and those authorities that exist have been instituted by God.'*** I suspect that he had been waiting a long time to catch a cleric speeding. But he did me something of a service. I have said elsewhere that since that time I have been intrigued by the relationship between the individual and the state, under God. The

Service for the Commencement of the Law Year provides a suitable opportunity to reflect on this.

On an uncritical reading of Chapter 13, the apostle Paul seems to advocate an absolute submission to the authority of the state. In Paul's terms as expressed here the state is ordained by God, and it is the duty of the subject to obey. Paul gives reasons for his assertion. First, no authority exists except from God, and all authorities that exist have been instituted by God (13:1b). Second, rulers are not a terror to good conduct but rather to bad (13:3a). Third, the authority/ruler is God's servant in three ways: for the Romans' good, to execute wrath on the wrongdoer, and for the collection of taxes (13:4a,4c,6b).

Because the authorities were instituted by God, and continue to serve both God and the state, believers must submit to their rule. Obedience to God says Paul, needs to be worked out within social structures. The beginning of today's epistle gives the summary of this teaching.

Pay to all what is due to them—taxes to whom taxes are due, revenue to whom revenue is due, respect to whom respect is due, honour to whom honour is due.

Taken by itself, it might be possible to deduce from this passage that the requirement of obedience to the state is absolute, and obedience should be unquestioning. Indeed we could easily come to this conclusion if that was all that the Bible said about the relation of citizen and state; and if the government of the day was just and kind and in no need of criticism or correction. But neither of those propositions is right. The Scriptures have much more to say about the relationship to the state than this. And

we don't need to look too far back in human history to see what evil an absolutizing of the power of the state can produce.

The Scriptures as a whole give a greater depth to our reflection. In our epistle Paul goes on to identify the glue which binds the social order together. ***Owe no one anything, except to love one another... Love does no wrong to a neighbour; therefore, love is the fulfilling of the law.*** (Romans 13.8,10) Faith in God involves appropriate relationship with the social order, but the priority to be found in that relationship is the love of neighbor.

Here Paul himself seems to suggest that there is a higher law than the law of the state, when the law of the state does not evidence love of neighbor. Jesus, when asked the question about the payment of taxes to the Roman occupiers, answers, ***Give to the emperor the things that are the emperor's, and to God the things that are God's.*** (Matthew 22.21) The authority of the state is not absolute, and the law of love, the law of God, has priority.

It's here that the rubber hits the road, so to speak, as we reflect on the place of the judiciary and legal practitioners in relation to the state. The cry for justice lies at the heart of the scriptures. For it is the presence of justice that offers the balance between the authority of the state and the demand to love neighbour.

The prophets of Israel cry for the priority of justice. Shortly the choir will sing an anthem for us based on the words of the prophet Micah.

***He has told you, O mortal, 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?*** (Micah 6.8)

A little earlier we heard the words of the prophet Amos.

***I hate, I despise your festivals,
and I take no delight in your solemn assemblies.
But let justice roll down like waters,
and righteousness like an ever-flowing stream.***
(amos5.21,24)

Justice tempered with mercy is at the core of the enterprise of the administration of the rule of law.

It is trite to observe that we live in interesting and challenging times. There are three areas which have caused me to reflect on the balance between the place of the individual and the power of the state, and I offer them for what they are worth.

The proliferation of the scourge of terror arising from the disaster of the Middle East, and the attempts of us outsiders to interfere in the affairs of others provides a particular challenge to the rule of law. If we as a society willy-nilly trade away the hard won freedoms of our democratic system of government in the pursuit of security then the terrorists have succeeded. There is an important balance which must be maintained between the protection of civil liberties and the defence of the realm. It is for the lawyers and the judges to ensure that we get this balance right.

Second the globalization of the economy and the pervasive creep of the ideology of the market society also provide their own suite of challenges. The result of the shift between having a market economy as a tool and becoming a market society as an ideology is that everything is up for sale, and this is problematical at a number of levels.

In the first place this ideological approach promotes injustice. When money can buy political influence, the best education, the best health care, and the capacity to access the system of justice, then the distribution of wealth becomes an ever increasing challenge. Globally, the gap continues to widen between the few rich and the very many poor. And the commodification of everything has sharpened the sting of inequality by making money matter more. In the second place, the market is essentially amoral. It has no view about whether one should be able to sell for example a kidney, or sex. Providing one is a consenting adult, and willing to pay the only question is, 'how much?' Markets don't discriminate between what is worthy and what is base. In the third place it is corrupting. It takes things that are beyond price, and limits their value to their monetary cost. Throughout the world, governments of all persuasions seem so to have fallen under the spell of market forces that it hard to draw lines between what is right, and what is profitable. The rule of law provides a necessary mirror against which the worst excesses of the market can be identified and controlled.

The third area which concerns me is the blurring of the doctrine of the separation of powers. It is no easy time to be a politician or a civil servant. The immediacy of the news cycle, and the constant level of critical and often simplistic analysis of policy and practice means that the machinery of government is under daily scrutiny to an extent we have

never previously known. On occasions this has led to pressure being placed on the important separation between the administration and the judiciary. It is essential that the administration of justice with mercy is conducted independently of the political process, and the lawyers and the judges have the vital task in our system of government of ensuring that these necessary boundaries are preserved.

All this brings me to reflect briefly on the reason we are gathered in this great cathedral church today. We are here to acknowledge the commencement of another law year, and to pray God's blessing on the courts and the practitioners. Paul proclaims, and I for my small part endorse, that you the judges and practitioners are a fundamental part of an order created by God for the good governing of society.

There are clearly challenges which must be faced. The difficulty in funding legal aid and the high cost of commercial litigation spring to mind immediately as barriers to the right of all people to have their proper access to the courts. No-one could have heard the speech of the Wiradjuri man Stan Grant which has received so much recent press without being deeply moved by the statistics of the rates of incarceration of indigenous persons, especially indigenous youth. Aboriginal people represent only 3% of the total population, yet more than 28% of Australia's prison population is Aboriginal and 48% of juveniles in custody are Aboriginal. These statistics point to a major systemic problem. And as an Anglican bishop I need to acknowledge that the Royal Commission into Institutional Responses to Child Sexual Abuse is presently sitting in Hobart to examine the failures of our Church in providing a safe place for vulnerable people.

I am not pretending that there are easy solutions to such challenges. Nevertheless, the rule of law with its fundamental commitment to the exercise justice with mercy lies at the heart of what it is to live in a civil society.

As we come together across the faith traditions to celebrate the beginning of this law year, can I assure you of our prayerful support for your endeavors. You have important work to do for us all. May God bless you in your vocation, and in this Commonwealth of ours may justice roll down like waters, and righteousness like an ever-flowing stream.

For Christ's sake.

The Rt. Revd. John Parkes AM

Bishop of Wangaratta