

**The Hon. Justice Derek Price AM**  
**Chief Judge of the District Court of New South Wales**  
**Opening of Law Term Short Address ‘Morality, Ethics and**  
**the Law’**  
**Monday 1 February 2016**

1. The legal profession is indeed privileged to mark the commencement of the Law Term with the ceremonies this morning at St Mary’s and St James’ and next week at the Great Synagogue and the Auburn Gallipoli Mosque. These ceremonies reflect the importance that our community attaches to Church, State and an independent legal profession.
2. But these ceremonies do more than that. To the members of the legal profession, they act as a guidepost that the practice of law is not confined to the self-interest of oneself and ones clients but is guided by morality and ethics. Professional conduct will ultimately be judged against the standards of justice, truth and fairness.
3. To judicial officers entrusted with the task of making decisions which impact upon the lives of so many, the ceremonies are a reminder that the judgments they make will ultimately not be assessed by Courts of Appeal or, heaven forbid, Ray Hadley or the Daily Telegraph, but by the Almighty. I would suggest that not one of us could claim to have the judicial wisdom of Tolstoy’s Just Judge “who could instantly discern the truth, and from whom no rogue was ever able to conceal himself.”<sup>1</sup>
4. In the Rosenkrantz Tower in Bergen, Norway there is a copy of the *Code for Bergen* which was promulgated by King Magnus (the lawmender) in 1276. The Sanctity of Life section in the Code aimed to provide protection for all men and

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<sup>1</sup> Leo Tolstoy, ‘A Just Judge’ in *Fables and Fairy Tales* (New American Library, 1962), 59.

women of the realm and included the following instructions to judges as to how to practice justice:

*“There are four ways in which a bad judge is made either from fear, in that he fears the person he is to judge, or by monetary greed, when he accepts some form of bribe, or through enmity, when he hates the person he is to judge, or through comradeship, when he wishes to help his friend.”*

5. This simple instruction to judges finds expression today in the judicial oath “to do right to all manner of people, without fear or favour, affection or ill will.”
6. Perhaps the most difficult task for judicial officers is the sentencing of offenders. There are many considerations to be taken into account which not infrequently pull in different directions: the objective gravity of the crime, denunciation and repudiation of it, the subjective features of the offender, remorse and contrition, the offender’s prospects of rehabilitation, the need for specific and general deterrence and the protection of the community. Public confidence in what judges do is influenced to a substantial degree by the sentences that are imposed.
7. Chief Justice James Spigelman in his Opening Law Term Address in 2002 said this:

*“I venture to suggest that in all of recorded history there has never been a time when crime and punishment has not been the subject of debate and difference of opinion. This is not likely to change in the future. The problem may be said to have started in the Garden of Eden when God called Adam to account for his transgression. He, of course, blamed his wife. She – more imaginatively – blamed the snake. All three were the subject of condign punishment. For millennia, theologians and others have been debating whether the punishment has had the desired effect of general deterrence and what are mankind’s prospects of rehabilitation.”<sup>2</sup>*

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<sup>2</sup> The Hon. James Spigelman, “Fairness in criminal justice: the sentencing debate” (Opening of Law

8. Legal doctrine is undoubtedly informed by moral considerations, but the relationship between law and morality has been controversial. In relatively recent times, the criminal law was criticised for overreaching in to areas of private morality which was said to distract the law from its prime function of protection of persons and property.<sup>3</sup> When I was at Law School, extramarital intercourse was punishable in the majority of the United States of America by penalties ranging from a \$10 fine for fornication to five years' imprisonment and a \$1,000 fine for adultery.<sup>4</sup> In Australia, homosexual acts between consenting adults in private was a criminal offence. The first State to decriminalise homosexuality was South Australia in 1975 and the last State was Tasmania in 1997. A matter of current debate is the question of same-sex marriage.
9. Suicide and abortion were also subject to the criminal law. Another difficult question that remains is voluntary euthanasia which brings into account fundamental questions of morality, ethics and the importance of human life.
10. Any consideration of law and morality is not confined to argument about the overreach of the criminal law. Conduct may be lawful because legislation may have been enacted to provide for it, but does it stand up to the standards of a moral society?
11. I do not wish in any way to be controversial but to merely mention laws that have been passed in this country and more recently the amendments to the Danish *Aliens Act* that impact upon people seeking asylum. Here we have the competing interests of the right of sovereign nations to protect their borders, to manage effectively the entry of persons into the country, to deter people smuggling and to ensure that those who apply through the correct channels such as the UN Refugee Agency (UNHCR) are not disadvantaged. On the other hand, do these laws conform with international human rights standards; do they give genuine asylum seekers a "fair go"?

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Term Address, 2002), 1.

<sup>3</sup> Norval Morris and Gordon Hawkins, *The Honest Politician's Guide to Crime Control* (University of Chicago Press, 1970), 2.

<sup>4</sup> *Ibid*, 16.

12. The measure of morality and ethics is not confined to these extremely difficult contemporary issues that the Western world is currently grappling with but may play some part in the future debate on taxation reform in Australia.

13. Just like Ulysses, I will endeavour to resist the siren call and not delve further into political discussion. I am grateful to the Reverend Sempell's instructions to confine my remarks on law, ethics and morality to no more than five minutes. I am pleased to do so.