The Fourteenth

ERIC SYMES ABBOTT

Memorial Lecture

delivered by

The Rt Hon Dame Elizabeth Butler-Sloss

at Westminster Abbey
on Thursday the sixth of May, 1999

and subsequently at Keble College, Oxford

The Eric Symes Abbott Memorial Trust was endowed by friends of Eric Abbott to provide for an annual lecture or course of lectures on spirituality. The venue for the lecture will vary between London, Oxford and Lincoln.

The Trustees are: the Dean of King's College London (Chairman); the Dean of Westminster; the Warden of Keble College Oxford; the Director of the Lincoln Theological Institute, University of Sheffield; the Very Reverend Dr Tom Baker; the Reverend John Robson and the Reverend Canon Eric James.

Published by
The Dean's Office,
King's College London
Tel: (0171) 848 2333
Fax: (0171) 848 2344

Who is to judge?
The role of the judiciary in ethical issues.

I feel considerable diffidence in delivering this Memorial Lecture. I am well aware of the eminence of the Dean in whose memory this lecture is given annually although I did not have the opportunity to meet him. I also have doubts as to my suitability to give a lecture more usually given by distinguished clergymen. I gain some comfort however from the fact that I am asked to speak first in Westminster Abbey. The judiciary, the Bar and solicitors have an important annual connection with the Abbey. At the beginning of the Legal Year, usually the 1st October, there is a service at which the Lord Chancellor reads the Lesson. There is also a service on the same day in Westminster Cathedral. But the main focus of the beginning of the legal year is the Abbey. To the annual Legal Service come not only practising or semi-practising members of the Church of England, but also those of other religions or no religion, brought together in these wonderful surroundings to pray together for God's blessing upon the administration of justice during the coming year.

It may not be widely known that round the country in the great cathedrals and parish churches where judges go on circuit, at least once a year also there are Legal Services, for example, in York Minster, Exeter Cathedral and Lewes Parish Church. In each place, for a brief period, the focus of the service is upon God's place in the tasks which face those engaged in various ways in the administration of justice.

I always have a problem in providing a title to a lecture before I have thought through what I want to say. The original point of my title today was directed towards certain ethical/ moral problems which have been decided in recent years by judges in the absence of any statutory framework. I shall refer to them in a moment. But as I thought more carefully of my task tonight, I realised that there are many areas of the law where judges and magistrates are asked to make decisions which require not only a knowledge of the relevant law but often more important an ability to make a fair and just decision which regulates human behaviour and involves moral judgment. I felt therefore that I should set those specific ethical problems within the wider context of the jurisdiction of the courts.

First, I should say a word about morals and ethics. I consider that they are more or less indistinguishable. I am supported in that impression by the Concise Oxford Dictionary. Ethical is explained as:- "Relating to morals especially as concerning human conduct; morally correct; honourable." Moral has a series of definitions, but the first two seem perfectly to cover the points I want to make in this lecture:- "1.a. Concerned with goodness or badness of human character or behaviour or with the distinction between right and wrong. b. Concerned with accepted rules and standards of human behaviour."

We are now said to be a secular society; even if that be the case, it is not true of our origins. The laws which we observe today are based on Judaeo-Christian teachings. As an example, four of the Ten Commandments are to be found in our current law. Those standards provided the setting in which English common law has evolved over the centuries. At a time when Parliament was less powerful the day to day affairs of the people were regulated in cases of dispute by customary law based on accepted rules and standards of behaviour and interpreted by the judges. In time the law became somewhat rigid, but the conscience of the King was entrusted to the Lord Chancellor and he presided over the High Court of Chancery. That court applied equitable principles and refused to allow actions based on unconscionable behaviour to succeed. The law of equity was merged with the courts of common law in the late 19th century. This combination of common law and equity

runs side by side with statute law and continues to fill gaps in the law and provide solutions to problems not covered by statutory law.

In the interpretation of legislation and the application of the common law, it has however long been said that the courts are courts of law and not of morals. So, if the law and the facts are clear but the outcome would seem unfair to the objective bystander, it is the duty of the court to apply the law. There was a time when most judges probably felt constrained to a relatively narrow interpretation of the law and the broad sweep of doing justice which might stretch the framework of the applicable legal principles was, by and large, eschewed. There were sound reasons for this approach. To do justice to one litigant by over-straining the legal principles was likely to do injustice to another litigant in a later case. It is said that hard cases make bad law.

The law has moved on to keep pace with changing values and the modern requirements. Lord Denning who died this year, aged 100, gave it an enormous push forward. He was an extraordinary judge who heralded enormous changes in the law and the approach of the courts to litigants. He will be remembered with affection and admiration even by those who criticised him. His appointment to the High Court Bench just after the Second World War was the start of an era of innovation. He sat in the Court of Appeal for a period longer than any judge will ever be allowed to sit in the future and his impact on all areas of the law was immense. He was responsible for much of the liberalisation and transformation of the judicial scene. He was known as the People's Judge and his use of simple English in his judgments and his superb ability when he presided in the Court of Appeal to deal firmly but kindly with litigants who had no lawyers to represent them was an example to us all. Even those litigants who failed in his court, probably the majority, went away feeling they had been well treated. It has been said that the law needs someone like Lord Denning, but one may be enough at any one time.

Since the retirement of Lord Denning, there has been a continuing modernisation which has spread throughout the law. It is nonetheless still the duty of the judges to apply the law as the cases come before them. Parliament is supreme and, subject to the Treaty of Rome and in due course the European Convention on Human Rights, judges interpret and enforce the statute law which Parliament has enacted and the common law according to the precedents which have been established.

There are however areas of the law where either the judges have intervened to fill a vacuum or Parliament has required the courts to intervene in circumstances which affect the conduct of organisations and individuals within a broad moral framework. The judges, notably Lord Denning, have been responsible for the concept and growth of administrative law by way of judicial review. The modern procedures provide for judicial intervention where there is a challenge to the abuse of power exercised by public bodies, such as Government Departments, local government and autonomous bodies. High Court judges in recent years have, through the mechanism of judicial review, set aside decisions of public bodies on the grounds of unreasonableness, irrationality or perversity. This jurisdiction has become increasingly important and has an influence on those who may be liable to be criticised, to the extent that Government Departments have for some years provided civil servants with a pamphlet entitled `The Judge over your Shoulder.`

Parliament has also, over the years, transferred to the judges the obligation to make decisions which go beyond the simple proposition of applying the law to the facts. This can be seen, for example, in the implementation by courts and tribunals of legislation on unfair dismissal, sex and racial discrimination, equal opportunities and housing. The coming into force of the Human Rights Act which will incorporate the European Convention on Human Rights into the English law, will have a profound effect on the legal scene. Judges, magistrates and lawyers in all courts will have to grapple with human rights issues based upon a code expressed in general principles. The

Articles of the Convention will have to be applied to the facts of the particular case coming before the court. In the recent Paul Sieghart Lecture, the Lord Chancellor spoke of the necessary balance between judicial activism and restraint and recognised that the way in which the new Human Rights legislation will be implemented will depend on the approach of the judges to the application of the Convention to our domestic law. There is likely to be increased tension between the Government of the day and the judges, particularly in the field of legislation, since the courts are given the power to declare that a provision of primary or secondary legislation is incompatible with a Convention right. The philosophy of the Convention is expressed in the language of rights and freedoms and the balance of competing rights. One has only, however, to look at the headings of some of the Articles for instance the right to life, prohibition of torture, right to a fair trial, and freedom of thought, conscience and religion to see the underlying moral basis of the Convention.

In certain situations judges already have a greater opportunity to do justice between the parties by balancing relevant factors and exercising a judicial discretion. In the criminal court, whether magistrates` court or Crown Court, there is at the point of sentence after conviction an obligation to balance the seriousness of the offence against the mitigating factors which may affect the way in which the offender is dealt with. In the civil jurisdiction there are many cases where the court has to exercise its discretion in the conduct or the outcome of litigation before it. The decisions made in the exercise of discretion in civil litigation require the judge to go well beyond the application of the law to a set of facts. It requires the judge to apply principles of law and practice based on moral principles.

In the family court, it is even more obvious. A court may have to decide, even today, whether it would be inequitable to disregard the conduct of one spouse in family financial disputes after divorce. Judges or magistrates have to decide with which parent a child should be placed in a dispute over the child's home. A court has to decide whether a child has suffered harm at the hands of parents and, if so, whether the harm caused is such as to disentitle the parent from the future care of that child. There is very little law in most family court decisions, but those decisions require wisdom, judgment, understanding and common sense. Many of these cases are difficult to deal with and the outcome is often finely balanced. It is often said that in family cases, there is no right or wrong decision and for children the best that may be achievable is the least bad alternative.

In recent years however the High Court of the Family Division and the two tiers of appellate courts have increasingly been asked to make decisions about medical treatment for those unable for one reason or another to do so themselves. Some of these decisions which may involve whether the patient lives or dies might be thought to lie specifically in the realm of ethical or moral dilemmas with little immediate relevance to the law. They certainly go beyond the ordinary determinations of the courts. One important reason for the increase in these difficult problems is the result of enormous strides in medical knowledge harnessed to scientific discoveries and the use of technology which enables the medical profession to keep alive those who would probably have died 20 years ago.

The High Court has always had the power to deal with children under its inherent jurisdiction through wardship. Its origin dates back to feudal times when the Crown had the rights over the children and land of tenants holding direct from the Crown. Wardship has continued down the centuries to deal with the property and person of children under the Sovereign as parens patriae. It has changed much in character but it still exists and is now assigned to the Family Division of the High Court. In recent years High Court judges have had to decide whether a child should undergo important, or irreversible surgery or life-saving treatment; whether a teenage child should have an abortion and use contraception; whether she should be sterilised, or treated for anorexia. They have considered whether children should have blood transfusions in cases of emergency, against the wishes of the parent who would normally give or refuse consent; whether a Downs Syndrome baby

with a life-threatening intestinal obstruction should be operated on against the advice of the doctors and wishes of the parents; whether a baby should have a liver transplant operation on the advice of the doctors but against the wishes of well-informed parents. These are agonising dilemmas for the parents, for the doctors and for the judges who make the decisions. Perhaps most difficult and heart-rending of all cases are those where medical science can now keep alive by artificial means children who would not otherwise live, such as children born with serious deformities, or severely brain-damaged and who may with constant care and by artificial means live a few weeks, months or years. Each case has to be decided on its own special facts with the welfare of that child the paramount consideration. Where there is a choice between life and death a judge would naturally strive to keep a child alive. But the test is the welfare of the child and there are cases where the prospects are so poor and the adverse and painful effects of constant medical intervention are so intrusive that the question arises as to the purpose of the proposed treatment and considerations of the quality of the life to be preserved. There are times when a judge has to say it is not in the best interests of the child to undergo the proposed treatment, recognising the consequences of that decision.

An area which has not yet been much explored is the increased attention paid to the wishes of older children of an age and capacity to have their views taken into account about the treatment proposed for them. The Children Act recognises the right of such children in suitable circumstances to refuse assessment or treatment. In cases such as an anorexic teenager who may die or whose health may be irreparably harmed, or a teenage boy who refuses a blood transfusion for religious reasons, the balance between the duty of the judge to make an order in the best interests of the child and the right of the older child to refuse the recommended treatment may create a serious moral dilemma for the court.

The parens patriae jurisdiction over children was until 1960 also assumed over those unable to make decisions through mental incapacity. That jurisdiction was allowed to lapse when the first of the Mental Health Acts came into force in 1960. The new legislation in England did not deal with physical health, concentrating entirely upon regulating mental health. It was not appreciated for nearly 30 years that there was no provision for dealing with the day to day physical needs of a mentally incapacitated person. In fact, relatives and friends as well as their doctors made the decisions for them, but in law, an adult cannot give consent on behalf of another adult.

The issues which have come before the High Court have involved this question of lack of capacity, whether permanent or temporary, of the individual to give the necessary consent to medical intervention. The problem arises in the context of the right of the individual to autonomy, the right to personal choice. In the field of medical and surgical intervention autonomy means that it is likely to be a trespass and generally an assault to treat or to operate on a competent adult without his consent. When one goes for instance into hospital for an operation normally one is asked to sign a consent form without which the doctors operate at their own risk. As an example, in a Canadian case, a doctor operated on a Jehovah Witness who was unconscious after a serious car accident and gave her a blood transfusion although she had signed a refusal of treatment form which was found in her handbag. The doctor saved her life. When she recovered she sued him and recovered $20,000 in damages.

Numerous dilemmas arise in the context of the treatment of adults unable, for whatever reason, to consent or refuse the proposed treatment. These raise legal issues and also moral and ethical questions which are not easy to resolve.

The problem of who can give consent on behalf of another unable to do so through permanent mental incapacity first came to light in a case in 1989 where a 35 year old woman with a mental age of 4 was a voluntary patient in a long stay hospital. As a result of her forming a close

friendship with a male patient and her inability to understand the concepts of pregnancy or childbirth, her mother and the doctors agreed that she should be sterilised. It then became obvious, for the first time, that her mother could not give a valid consent to the operation. An application was made to the High Court for a declaration that it was lawful for the doctors to operate. There was an appeal to the Court of Appeal and to the House of Lords, which decided that no one could consent on behalf of an adult, even one without capacity to make decisions. However, if it was considered to be in the best interests of the patient to have treatment including surgery, the treatment could lawfully be given. The House of Lords advised that these cases should be monitored by the courts until a well-recognised body of guidelines had been established. The effect of this case was to enable the medical and other health professionals to treat and operate on patients with permanent incapacity in the same way as patients temporarily unable to consent if it was in the patient's best interests to do so. It was an interesting example of the judges applying and extending the common law to fill a gap in a statutory framework.

A decision by a court declaring that sterilisation, although irreversible, was in the best interests of a patient would be unlikely to have, I would have thought, serious moral or ethical implications. The principles set out in the sterilisation case were however applied in a series of cases which raised far more anxious questions and the consideration whether such problems should be dealt with by the courts at all. One of the victims of the Hillsborough football disaster, just 10 years ago, was a young man, Anthony Bland. Aged 17, he went to the soccer match at Hillsborough and was crushed. He did not die but suffered catastrophic and irreversible damage to the higher centres of the brain, which left him in a condition known as persistent vegetative state, (PVS). It is a recognised medical condition sometimes known as `irreversible coma' or `brain death'. The brain stem remains alive but there is no cognitive function. There was no prospect of recovery, but if given nutrition artificially, and when necessary, antibiotics, he might survive for many years. After 3 years his devoted family agreed with the doctors that he should not continue artificially to be kept alive. The local coroner was consulted and indicated that if the hospital where he was a patient stopped the artificial nutrition or even ceased to give him antibiotics and he died, the coroner considered it might be murder. The hospital trust sought declarations that they might lawfully discontinue all life-sustaining treatment and medical support measures designed to keep him alive and thereafter need not furnish medical treatment save for the sole purpose of enabling the patient to die peacefully with the greatest dignity and the least of pain, suffering and distress.

This case went before the High Court and the two tiers of appellate courts. After extensive medical evidence and legal argument all judges in each of the courts agreed that it was lawful for the hospital to stop the artificial feeding. The problems of total loss of all cognitive faculties from PVS and withholding of medical treatment for other similar conditions have arisen, as one might expect, in other Common Law countries, such as the United States, Canada, South Africa and New Zealand. In the other jurisdictions the basis of the reasoning has not always been the same, but their conclusions have been similar to ours. The Institute of Medical Ethics and the Ethics Committee of the British Medical Association have supported the same conclusions.

It hardly needs to be said that the decision in such a case is not an easy one. One principle of the highest importance is the profound respect for the sanctity of human life which is embedded in our law and our moral philosophy, as it is in most societies in the East and the West. That is why murder has, next to treason, always been treated as the most grave and heinous of crimes. A careful distinction has, therefore, to be drawn between the Bland type of cases and mercy killings such as a deliberate overdose of morphine prescribed by a doctor to a terminally ill patient. The House of Lords, having held that a declaration was properly made, advised the medical profession to seek the advice of the courts in such cases in order to build up a recognised basis upon which such a decision might be taken.

Decisions whether treatment for adults or for children should in certain extreme circumstances be withdrawn when it was considered not to be in their best interests to continue it, raise in an acute way the question whether it is the function of a judge to make these decisions. The ethical question of the sanctity of life has to be faced with its enormously difficult implications. Lord Mustill posed the question in his speech in the House of Lords `is the issue justiciable?` If it is an issue for determination by a judge, the question may have to be answered at some time:- where does one draw the line of judicial intervention? Both Lord Mustill and Lord Browne-Wilkinson in their speeches in the Bland case considered it was imperative that the moral, social and legal issues should be considered by Parliament. These issues were then considered by a Select Committee of the House of Lords under the chairmanship of Lord Walton of Denchant which reported in 1994 and then in 1995, by the Law Commission who made detailed recommendations with a proposed draft bill.

Unless or until Parliament does bring in a statutory framework to deal with such problems, and I understand that the possibility is being considered, the question remains how the problem should be tackled. Improving medical science and technology can only make the ethical dilemmas more rather than less likely and decisions have to be made by someone in each individual case whether the treatment should be continued or discontinued. In brain-stem death cases, there appear to be clear and widely accepted medical guidelines for the circumstances in which the machines are turned off. It is to be hoped that such guidelines may be achieved in the PVS and similar cases. Clearly it would be better for a system to be put in place for treatment and for discontinuing treatment which would avoid the need to involve the High Court. But the outcome of these cases has been to allow those existing in a twilight world with no cognitative function and no prospect of recovery a dignified end which without court intervention might not have been possible. It also provides an important safeguard for those with permanent incapacity by the requirement of an application to the High Court. For the time being, as we feel our way through these ethical problems and, until either Parliament acts or the medical profession offers generally accepted guidelines, I believe that the judges should continue to monitor these cases to ensure that the best interests of the patient will always be treated as paramount.

The PVS cases place upon the judges the obligation to make difficult ethical decisions with awesome consequences. A number of cases have recently been decided which raise serious and anxious ethical questions in different but equally difficult situations. They relate to the right of a competent pregnant woman to decide whether she will or will not accept medical or surgical treatment in order to allow her unborn child to be born alive and in some instances to save her own life. The present state of the law appears clear but the consequences are disquieting and the issue is undoubtedly controversial.

In each of these cases a pregnant woman at the point of giving birth has refused to have a caesarean section operation in circumstances of emergency and serious risk to the unborn baby and herself. Reasons for refusal have included religious beliefs, needle phobia, fear and no clear reason. Hospital trusts have made applications to High Court judges for a declaration that it was lawful to carry out surgery on the pregnant woman against her will. They were all emergencies heard at very short notice with limited legal argument and in each case the judge granted a declaration that the operation could lawfully be carried out. The early decisions were not based upon clear legal principles and it would be fair, I think, to say that every judge sought to achieve an outcome whereby there would be the live birth of a healthy child. Had I been in that position in any of those cases, I cannot believe that, at that time, I would not have come to the same conclusion.

In the most recent case to come to court, the pregnant woman, Miss S, who was suffering from severe pre-eclampsia was sectioned under the Mental Health Act mainly in order to protect the unborn child and the caesarean section operation was carried out despite her clearly expressed

refusal to consent. The difficulty for everyone in that case, doctors, nurses and social worker, was that her state of physical health was such that both she and the unborn child were at serious risk of not surviving. Her reason for not agreeing to have treatment for her condition was that nature should take its course. It was difficult for the health professionals to accept the reason as reasonable, but she was competent to make the decision to refuse treatment. The Court of Appeal heard her delayed application for judicial review and appeal many months after the child was born. There was extensive legal argument and review of the case law here and abroad. Unlike the earlier cases, there was no emergency. The Court held that she should not have been sectioned under the Act; the hospital had no right to keep her and treat her against her will and the grant of the declaration by the judge was set aside. The Court set out guidelines and stated that if the woman does not have the capacity to consent or refuse the proposed operation, it is a matter for the doctors to act in her best interests as they would do in any other sort of case. It would be presumed, no doubt, that she would wish to give birth to a live child and not to put that life and, in some cases, her own life at risk. I have little doubt but that in such a case the doctors would operate.

The Court stated that, on the other hand, if the pregnant woman is competent to decide, it is her right to make the decision. This is the right of each adult to self-determination. It is a matter of personal liberty. Lord Reid, in a speech in the House of Lords in 1972 said:-

> "English law goes to great lengths to protect a person of full age and capacity from interference with his personal liberty. We have too often seen freedom disappear in other countries not only by coups d`etat but by gradual erosion: and often it is the first step that counts. So it would be unwise to make even minor concessions."

The right of Miss S to refuse treatment, however advantageous that treatment might be to the unborn child and to her, exists even at the point of birth of the child she carries. It is therefore unlawful for doctors to treat her without her consent and they cannot override her refusal to have treatment. The patient's right of choice was expressed by Lord Donaldson MR in 1993 as existing:-

> "whether the reasons for making that choice are rational, irrational, unknown or even non-existent."

The consequences of the death or brain-damage of a healthy foetus and her own death are for her and not for the court. At the time of the crisis in Miss S`s case, the fate of the unborn child took precedence over the rights of the mother. But the unborn child is not a separate entity and does not have a distinct legal personality. It has very limited protection. In particular it does not have protection from the acts or omissions of its mother. This lack of protection was vividly illustrated in a decision of the Supreme Court of Canada in October 1997 where a majority of the Court held that a mother whose two children had been permanently disabled as a consequence of her addiction to glue-sniffing could not lawfully be detained for treatment in order to protect her unborn child. Justice McLachlin said:-

> "The common law does not clothe the courts with power to order the detention of a pregnant woman for the purpose of preventing her from harming her unborn child. Nor, given the magnitude of the changes and their potential ramifications, would it be appropriate for the courts to extend their power to make such an order."

That is also the position of the English law.

This dilemma is, in my view, acutely difficult to solve. The law is clear that an unborn child has no existence separate from its mother and has, before birth, no right to sue. It does, nonetheless, have some protection, in particular from the Abortion Act. A distinction has been recognised by Parliament in the Abortion Act, between the foetus before it is viable and after it is viable. In the cases I have referred to, the foetus at the point of birth is generally viable. Should the mother be able by a refusal of consent to medical/surgical intervention to frustrate the delivery of a live child? A powerful minority judgment was given in the Canadian case by Justice Major:-

> "Where the harm is so great and the temporary remedy so slight, the law is compelled to act....Someone must speak for those who cannot speak for themselves."

The question arises whether a woman has a duty at a certain point to give birth and to submit to treatment? If such a duty were to be imposed upon her it would be a clear departure from the right of all adults to self-determination and personal liberty. If she were to be subjected to treatment against her will, she would be treated in a different manner and less fairly than a man who refused an operation would be treated. That would be discrimination. One has also to consider the degree of force that might be required for such treatment to take place and the circumstances in which force would be acceptable. The situation would be even more complicated if, as has not to my knowledge yet happened, there was a conflict over whether the mother or the child should be saved. There are difficult legal problems to overcome if the rights of an unborn child, (which do not yet exist) are to be balanced against the existing rights of the mother. I do not know what the impact of the Human Rights Convention might have on this problem. To my knowledge the European Court on Human Rights has not yet given an indication of its approach to this issue, but the European Commission ruled in 1980 that Article 2 of the Convention, (right to life), did not apply to a foetus.

The medical profession will no doubt find the law as set out in the recent cases unpalatable. It presents them with the prospect of standing by and letting a healthy foetus die. The family judges will face an equally unhappy situation if they find mothers fit to make decisions who refuse treatment and are unable to intervene to save the child and possibly also the mother. One footnote to this problem is that, in all the cases where women were operated on after a court order and without their consent, none of the mothers, except Miss S, objected to the result. In each case a healthy baby was born. In some cases the mother appeared to have been glad that the court had taken the decision that the operation should be performed. Fortunately there are not many cases like that of Miss S but the dilemma exists. I feel some unease about the present position but am uncertain whether the law should be changed. We may be in a state of evolution and I hope there may somewhere be found an acceptable solution. On the present state of the law, it is not a judicial dilemma. It is an ethical dilemma which must be resolved elsewhere either by the House of Lords in its judicial capacity restating the law or by legislation in Parliament. Lord Justice Balcombe said in 1988 (in a slightly different context): -

> "If the law is to be extended in this manner, so as to impose control over the mother of an unborn child where such control may be necessary for the benefit of that child, then under our system of Parliamentary democracy it is for Parliament to decide whether such controls can be imposed and, if so, subject to what limitations or conditions."

The problem deserves informed public discussion and I would hope some careful research both in the UK and elsewhere.

I have, I hope, given you a flavour of the scope of the moral issues which arise in cases before the courts. My title is `Who should judge?` It is particularly relevant to the specific ethical problems which I have raised. I was however reminded over 40 years ago of its relevance to the whole function of judging. I was at a Legal Service in Chester Cathedral. There were two High Court Judges in their red robes, the Lord Lieutenant, the High Sheriff, local judges, Bar and solicitors and, it seemed, half of Cheshire in the Congregation. The chaplain to the High Sheriff, a young man, gave the sermon on the text "Judge not that ye be not judged", (St Matthew ch.7 v1). He took the opportunity to suggest that it was not right for judges to sit in judgment and to make moral decisions which were more appropriately the province of God. He was clearly unhappy at a service designed to support the work of the judiciary in the courts. Not surprisingly his sermon was not a great success. Looking back on the occasion I feel that he misunderstood the purpose of the service and also the function of the judge.

The context of the quotation is from the Sermon on the Mount and I would suggest that, at least in St Matthew's version, we are given a warning rather than a prohibition. It is clear from the Old Testament the importance attached by the Jews to the laying down of the Law and the administration of justice. Solomon sat in judgment on a well-known case. Jesus did not suggest that

his fellow Jews should not obey the laws of Rome. As you will remember, when Jesus was shown the tribute money with the head and superscription of Caesar by the Pharisees he said:-

"Render therefore unto Caesar the things which are Caesar's;
and unto God the things that are God's, (St Matthew ch22 v21).

This has always seemed to me to be guidance that it is right and proper to take part in the affairs of this life as well as preparing oneself for the next life. In the time of the Caesars` the ordinary business of the community had to be regulated. Throughout the centuries people have had to obey the just laws of the country and community in which they live. The implementation and enforcement of the laws, civil as well as criminal, require judges.

Two questions may fairly be asked. The first is:- what effect, if any, do Christian beliefs have on a judge's approach to his or her work and the second is :- what is the effect on judges of accountability for the way in which they carry out their duties? I was once asked whether I believed in Christ and, if I did, how could I square that with the decisions I had to make. Much to the dismay of my earnest student interrogator, I said that I had not found there to be a conflict. That is, in my view, for two main reasons, because our common law is based on moral principles and because I believe we have obligations to fulfil in this world. Like all judges, I took two judicial oaths on appointment, the first to be faithful and bear true allegiance to the Queen and the second that I would well and truly serve the Queen in the Office of a Judge of her Majesty's High Court and I would do right to all manner of people after the laws and usages of this Realm without fear or favour, affection or ill will. I see my duties as a judge to do my best to carry out what I promised to do. For all judges, regardless of religious persuasion or absence of religious beliefs, the appointment is a full-time permanent commitment.

The place of God in one's daily life is obviously a personal and for most people a private matter. I cannot speak for other judges, but I do not consider that I am directly affected in my judicial role by my beliefs. It is obvious, however, that my standards and my views, like everyone else's, are conditioned by background and experience. Although I have not always been happy with the outcome of individual judicial decisions in which I have taken part, I have not so far been seriously tested. Since I have been on the Bench for nearly 29 years, I may have been lucky and I hope I may continue to be so. The field of legislation where moral dilemmas might arise might be, for instance, in litigation over immigration, housing or social welfare. The power of the court under the Human Rights Act to declare legislation to be incompatible with human rights may well in the future be invoked in such areas. The moral issues will no doubt be debated and the outcome will depend upon the approach of the judges to the application of the Convention. It will be an interesting time for us all.

I do not propose to say anything about accountability during tenure of office. There is provision for judges to be brought to account, both direct and indirect. The media and the public as well as colleagues and advocates scrutinise and criticise judges. It is the final moment of accountability to which I refer. Both in the Old and New Testament there are numerous references to the Day of Judgment. From the Book of Ecclesiastes (Ch12.v14) we learn:-

"For God shall bring every work into judgment, with every secret thing, whether it be good or whether it be evil."

St Paul told the Romans in his Epistle (Ch. 14:v10):-

" We shall all stand before the judgment seat of Christ."

It is not only a question of being judged at the Day of Judgment. It is how we are judged. I finish the quotation from St Matthew, Chapter 7, verse 1:-

" For with what judgment ye judge, ye shall be judged; and with what measure ye mete, it shall be measured to you again."

As I sit dealing with cases in court, I remember from time to time that I shall one day be measured for what I, myself, have done. It is not a comfortable thought but I think it spurs me from time to time to self-appraisal and is a reminder that none of us knows how soon that day will come. As Edward Fitzgerald said in his first translation of the Rubaiyat of Omar Khayyam:-

"one thing is certain, that Life flies;"