



LORD CHIEF JUSTICE  
OF ENGLAND AND WALES

**THE RT HON THE LORD JUDGE**

**OPENING OF THE NEW LEGAL YEAR  
WINCHESTER CATHEDRAL**

**12 OCTOBER 2008**

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In *Barchester Towers* Anthony Trollope complained of the preaching parson who deduced:

“False conclusions from misunderstood texts.”

As most of you are probably aware, Trollope was educated at Winchester College, and perhaps he had in mind sermons preached here in the very place where I am now standing. Perhaps it was a sermon like this which led him to the observation that:

“There is, perhaps, no greater hardship at present inflicted on mankind in civilised and free countries, than the necessity of listening to sermons. No-one but a preaching clergyman has, in these realms, the power of compelling an audience to sit silent, and be tormented.”

I am not a clergyman, and I hope that I shall not torment you. But Trollope might have overlooked the power to torment which can be caused by a pontificating judge.

My reflection today is derived from the second Lesson. It is a fundamental tenet of Christian faith since Aryanism and the Nicean Council – for every faith whether Protestant or Catholic, that Jesus was the son of God; an Omnipotent God. Yet here he is, washing feet. There is first of all the fact. Washing feet that had not been washed. More important there is the symbolism. To wash his disciples’ feet their master must have lowered himself beneath them, crouching or on his knees in front of each of them.

The story reminds us of one judicial quality which never receives the attention it fully deserves. To be the judges and magistrates our community needs we must be blessed with many attributes.

We need to be intelligent, knowledgeable about the law, but more importantly perhaps wise in the ways of the world, sensitive to others from different backgrounds to our own, fair and open minded and balanced, independent in spirit, courageous to do what is right even when it will be unpopular - perhaps indeed most of all when it will be unpopular - whether with politicians, the executive or the media.

But to all these ingredients, I add one more – judicial humility. That is the message I derive from today’s Lesson.

Like everyone vested with power and authority, and we are indeed vested with power and authority, the power to lock up an individual and deprive him or her of liberty, even for 24 hours, is a profound power.

We would be wise to remember how Montaigne put it in his great work *Essais*, which is hardly ever read these days, at its very end. It is one of my favourite quotations, and some of you will have heard it from me before.

“No matter how high the throne on which you sit, you are always sitting on your own backside.”

Although I suspect that in the original French he used a rather coarser word.

The most powerful judges in the world may indeed be the most powerful judges in the world but they are, and remain, human beings sitting on their own backsides with the capacity for error, mistake and fallibility that is part of our common humanity.

No trumpets blow for judicial modesty and humility but they are nonetheless noble judicial qualities shared by the best of judges.

And so, as we are dressed in our robes to symbolise the public importance of our function and our commitment to the community we serve in our judicial capacities, we remember that the robes themselves, like the thrones on which we sit, do not protect us from our common human fallibilities.

I need here to emphasise that I do not see humility as a rather feeble virtue; any more that I regard moderation as the product of weakness. Moderation in all things does not tell us the whole story.

As Archbishop Fenelon reminded us, we need a passion for tolerance and moderation; we need them at “white heat”. The problem with treating humility as something feeble or insipid or uncommitted is that, for judges at any rate, there is no easy route to avoid error. We are all trying, all trying desperately hard, all the time, to avoid injustice; in the words of our oaths to do “right” rather than “wrong”

It pains us all when mistakes are made. I am not talking about convictions quashed for technicalities. Every system of justice has its Kiszko moments. He was a truly innocent man convicted of murdering a small child. His innocence was positively demonstrated many years later as a result of scientific developments. Collectively we shudder at such a desperately sad miscarriage of justice.

But the route for judges and magistrates to avoid mistakes is for them to do nothing, to abjure their responsibilities, to refuse to make a decision. That however, is the coward’s way out. It is no way out for us or for the community we serve.

Day by day by day judges up and down the country are making decisions which will have a dramatic effect on the lives of fellow human beings – is this a prison case, or not? Will the young offender learn more inside prison or outside it? What will he learn inside or outside? Should a child be removed from a parent? What will the effect on the child be? For the parent, in the overwhelming majority of cases, it will be a disaster. And so on.

There is no way in which a judge can avoid making these decisions. They have to be made.

Moreover many of them have to be made when as a judge or magistrate you know that they may be heavily criticised in the media, while you as the judge or magistrate know that you

must live with your judicial conscience and you must do right in the face of any potential public criticism, even though this may be deeply disturbing not only to yourself but, perhaps more important, to your spouse and family.

Judicial humility, on its own, is not enough. And so along with judicial humility I invite consideration to this thought: that the administration of justice makes copious demands on another judicial quality, judicial fortitude.

A few pages on from today's Lesson we find in the New Testament the story of a man's fortitude. Fortitude displayed when he knew full well the horrors in store and when he would dearly have wished, and indeed in one moment of human weakness sought, to be free of the cup of anguish that lay ahead for him.

And just as judicial humility does not for one moment imply judicial weakness, judicial fortitude does not carry with it vanity or arrogance. If these qualities are examined they go together.

Today's reading reminds us all that it is possible to be both humble and strong.

In this mighty building, in a site where prayers have been offered for many hundreds of years, we are reminded that all of us – whatever our public responsibilities – whether religious, judicial or community leaders – are simply caretakers, hopefully linking the best of our nation's past and present with its future. To do that it is not only possible to be humble and strong – it is essential that we should all be humble and strong.

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