

THE ANNUAL HON BARRY O'KEEFE AM QC DUNIV (ACU) (HONORIS CAUSA)
MEMORIAL LECTURE

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"Justice, Justice ... A Shared Ethic"

Introduction

As a very young lawyer, I was sent to the Local Court in Perth, Western Australia. I now do not recall why. A criminal case was called on for hearing. No one appeared. It was called again. No one appeared. It was called a third time. The prosecutor, sitting at the bar table, put his head up from his papers and said that he last saw the accused sitting outside the courtroom. A court officer was sent outside to call the case a fourth time. After a lengthy delay, the door to the courtroom opened, an elderly stooped woman hobbled her way forwards and stood before the bench, her hands folded around a worn shopping bag. The magistrate asked her name. She told him—her voice low and quiet. The charge was read. Stealing a small item of food from a supermarket. The magistrate asked her age. She responded, "96". The magistrate listened to her story, and then, after a pause, spoke not only of law but of dignity. He dismissed the charge. In the course of his reasons, he said he thought that the prosecutor and the police might have better things to do with their time. As she left the courtroom, she turned to the magistrate and, with a look I have never forgotten, mouthed: "Thank you."

That moment has stayed with me. It was not a dramatic pronouncement. It was not a sweeping reform. It was a daily, practical expression of what our traditions call justice.

Remembering Barry O'Keefe — service and resolve

Barry O'Keefe's life offers a vivid example of what it means to live by a commitment to justice. His career—spanning advocacy, judicial service, public administration, and community engagement—was marked by a steady insistence that institutions and individuals alike must answer to higher standards. He faced threats and controversy with a steadiness that reflected a belief in the rule of law and in public service.

If we take his life as a model, perhaps the most important lesson is not the list of offices he held but the posture he embodied: a willingness to shoulder responsibility, to

1. Justice of the High Court of Australia. This is an edited version of the Annual Hon Barry O'Keefe Memorial Lecture 2026 delivered at the Australian Catholic University on 29 April 2026. The author acknowledges the assistance and wise counsel of The Hon Justice James Edelman AC, The Very Rev. Canon David Richardson AO OBE and Prof Abdullah Saeed, Sultan of Oman Professor of Arab and Islamic Studies & Redmond Barry Distinguished Professor, Asia Institute, University of Melbourne in its preparation. The author also acknowledges the assistance of Alison Lee, Annie Jiang and Priam Rangiah. Errors and misconceptions remain with the author.

protect the public interest, and to act with integrity even when it was costly. That posture is what I want to explore.

I want to reflect on a theme that binds great traditions and that also shapes the work many of us do every day: justice as a shared ethic. I will look at Judaism, Christianity, and Islam, as well as Buddhism, Jainism, Sikhism and our rich culture of our First Nations people and then draw out some common ground that might guide our public life and professional responsibilities. My aim is not to prescribe a single path but to suggest how these traditions can inform a way forward—one that is practical, humane, and attentive to the vulnerable among us.

Justice in Judaism — obligation and compassion

In the Jewish tradition, justice is not optional. Deuteronomy’s injunction—“Justice, justice shalt thou follow”—is striking in its repetition.² Rabbis read that repetition of the word justice as a call to pursue justice both in outcome and in method. Justice must be pursued with care for process as well as result.

There is a particular intimacy to the Hebrew framing: the idea that justice is *for you*—*l’cha*—reminds us that responsibility is personal. It is not merely a matter for institutions; it is also a daily practice for individuals and communities. The prophets reinforce this: Micah’s call to “act justly, love mercy, and walk humbly with God” ties justice to humility and compassion.³ Justice without mercy can harden into cruelty; mercy without justice can become sentimentality. The tradition asks us to hold both together.

A practical implication of this is the protection of the vulnerable. The Torah repeatedly instructs care for widows, orphans, and strangers.⁴ Those injunctions are not symbolic; they are concrete obligations that shape communal life. In rabbinic teaching, justice is even preferred to sacrifice—because justice reflects God’s character in the world. That is a powerful claim: ritual observance is meaningful only insofar as it is accompanied by ethical action.

Justice in Christianity — mercy, love, and communal care

Christianity inherits and transforms this. Jesus’ ministry consistently reached out to those on the margins—the poor, the sick, the excluded. In his rebukes of religious leaders who neglected “the weightier matters of the law,” he names justice, mercy, and faithfulness as central. The Sermon on the Mount reframes righteousness as a hunger and thirst for right relations, not merely private piety.⁵

Early Christian communities practiced economic sharing and mutual care in ways that made justice a lived reality. In the Book of Acts, written by Luke, a physician, his account of believers ensuring “there was not a needy person among them” is an

² *The Torah: A Modern Commentary*, Deuteronomy 16:18-20.

³ *The Torah: A Modern Commentary*, Micah 6:8.

⁴ See, eg, *The Torah: A Modern Commentary*, Deuteronomy 27:19.

⁵ Holy Bible, New International Version, Matthew 5-7.

example of justice enacted through communal solidarity.⁶ And Paul's insistence that love fulfills the law reframes justice as active care: love that seeks the good of others, that corrects injustice, and that binds communities together.⁷

For Christians, justice is inseparable from grace. We do not pursue justice to earn favour; we pursue it as a response to the mercy we have received. That theological framing can soften a purely legalistic approach and invite practices that restore dignity—feeding the hungry, welcoming strangers, advocating for the oppressed—because these acts are expressions of gratitude and discipleship.

Justice in Islam — balance, accountability, and public duty

Islam places 'Adl—justice or the embodiment of justice—at the heart of its moral vision. The Qur'an instructs believers to render trusts and to judge with fairness. Justice in Islam is comprehensive: it governs legal rulings, social relations, economic obligations, and political leadership.

A striking feature is the insistence on impartiality. Believers are exhorted to stand firm for justice even if it goes against themselves or their families.⁸ That command challenges the natural tendency to favour kin or tribe and insists that justice must transcend personal interest.

Economic justice is institutionalised through mechanisms such as zakat, which is both an act of worship and a socio-economic obligation—both a communal responsibility and a private virtue.

The Qur'an also warns against letting hatred of a people prevent one from being just.⁹ That admonition is particularly relevant in plural societies: it asks us to resist the corrosive effects of prejudice and to let fairness guide our judgments. Justice, in this framing, is both a personal discipline and a public duty—rooted in accountability before God and in concrete practices that protect the vulnerable.

Common ground — shared obligations and professional duty

Across these three traditions we find recurring themes: the protection of the vulnerable, the insistence on impartiality, the integration of mercy and fairness, and the idea that justice is a daily practice. These themes fit with the idea of religion itself, based on the Latin *ligare* (to bind), the idea that religion is binding yourself to something. But religion is not always about a G-d; the binding is often seen as binding to justice.

Outside monotheistic religions, many beliefs and traditions have different dimensions of justice at their heart. Buddhism has notions of acting rightly tempered by *Karuna* or compassion. Jainism has *ahimsa* or non-violence. Sikhism has the long standing

⁶ Holy Bible, New International Version, Acts 4:32-35.

⁷ Holy Bible, New International Version, Romans 13:8-10.

⁸ Qur'an 4:135. "O you who believe! Stand firmly for justice, as witnesses to God, even if against yourselves, your parents, or your kin..."

⁹ Qur'an 5:8.

tradition of feeding the poor and needy through the institution of Langar (meaning community kitchen) and the practice of Seva (meaning selfless service)—fundamental to their belief in and practice of equality, community service and compassion regardless of religion, caste, gender or economic status.

For the custodians of the land on which the lecture was held, their complex customs were a fundamental component of day-to-day life among their families and between neighbouring clans. A strong system of kinship provided many of the guiding laws on family structure, social and cultural interactions and environmental responsibilities.¹⁰ Kinship, amongst our Indigenous people, the world's oldest continuous living culture, has been explained in these words: "holding in our hands today our societal values of intergenerational learning, care and responsibility for our land, our families and communities. Embedded within these values are intrinsic lessons of our complex kinship structures and cultural practices. These teach us of collective leadership, collaborative and inclusive decision-making, negotiation and cooperation, the reciprocal sharing of resources, life-long education and the foundational understanding that an individual's health and wellbeing is intimately attached to the health of our country, our surrounding environments, and our families and communities."¹¹

These are not abstract ideals; they are practical commitments that shape how communities and institutions operate.

For those of us in the legal profession, these themes resonate with the oath many of us take: to do right to all manner of people according to law, without fear or favour, affection or ill-will. That oath synthesises several elements: fidelity to law, impartiality, and a moral seriousness about the consequences of our decisions. That promise asks lawyers and judges for technical skill and moral attention.

A short case study — a courtroom, a community, and a choice

Let me tell you two short stories that directly affected me and show what I mean. First, a courtroom, a community and a choice.

10 years ago whilst riding a bike on a country highway early one morning, a close friend was hit by a car being driven at around 100km per hour. The consequences were catastrophic for him and for his family. He was a country doctor. The driver was charged and pleaded guilty. He was to be sentenced in the County Court of Victoria. My friend and his partner were in court when the sentence was handed down. I went with them to support them. I sat at the back so that the judge could not see me. The issues were complex. The law offered several possible outcomes. The judge's sentencing remarks described the serious nature of the offending, acknowledged the evidence given by my friend and his family about the devastating effects of the

¹⁰ Jessica Currie, *Bo-ra-ne Ya-goo-na Par-ry-boo-go: Yesterday Today Tomorrow — An Aboriginal History of Willoughby* (Willoughby City Council, 2008), 33.

¹¹ June Oscar AO, 'Because of Her, We Can' (Speech, National Aboriginal and Torres Strait Islander Women's Conference, 9 June 2021).

incident, acknowledged that my friend was in court and wished him well for the future. It was participatory justice at its best.

The judge then proceeded to sentence the driver. There was, I think, an expectation that the driver would be sent to prison. The judge chose a different path. The driver was convicted and ordered to serve 500 hours community service. I had never heard of anyone being ordered to serve so many hours of community service. The result was not a perfect remedy for everyone. My friend and his family were disappointed. But as I reflected on the sentence that had been imposed, it was justice. And not just because the decision followed legal principles. Community service in the area the driver lived usually required him each weekend, in all weathers, to walk up and down the highway picking up rubbish with cars, caravans, milk trucks, other trucks small and large, rushing past him, close to him. The sentence recognised that justice is personal and communal. The driver was not sentenced to perform 500 hours of service for my friend. The driver was sentenced to 500 hours of service to the community. It is a reminder that justice is about fairness. The sentencing judge did not use the words "mercy" or "grace". Nor will you find such terms in our criminal sentencing legislation. But I would be surprised if you did not find words like "recognition" or "rehabilitation".

Second, I want to turn to a different corner of the world: the Children's Court at Broadmeadows in Melbourne. There, Magistrates MacPherson and Hawkins created real change with a simple idea. The Family Drug Treatment Court helps parents whose children are removed due to substance misuse or dependence. The goal is family reunification. The program includes regular drug testing. But the magistrates saw distrust, fear and lack of engagement between clients and the judicial system. So they introduced a wishing well, which they personally stock and fund. If clients attend three drug tests—regardless of the results—they choose a gift. The clients turned up, not to be judged. That simple act—the wishing well—built trust and encouraged engagement.

The wishing well reminds us that justice is not just about systems—it is about people. It is not just about the outcome: it is also about the process. A just result cannot be achieved without a proper method. The wishing well is not a sweeping reform. It's a small change with a big impact. It fostered trust and respect *and* real change not only in the administration of the justice system but in the level of trust and respect from those participating in it. Instead of crossing the street to avoid the court, the participants now voluntarily visit the court with their families.

These are examples of justice as a practice that attends to human consequences. In our legal practice, the traditions of Judaism, Christianity, Islam, Buddhism, Jainism, Sikhism and the Indigenous people of Australia—and that list is not exhaustive—teach us three key lessons:

- **Listen with attention**—not merely to arguments but to the human stories behind them. If you work in litigation, there is significant cost involved in taking a matter to trial, versus settlement. If you have a client who has mortgaged or remortgaged their house to finance the legal proceedings, those cost considerations are crucial.
- **Weigh consequences**—interpret rules with an eye to how they affect dignity. In construing statutes, the High Court has said more than once that "fairness"

or real world considerations are not only relevant but necessary considerations.¹² If you work in prosecution, you may have a victim (or complainant) who is unwilling to give evidence. As part of the public interest test in the decision to prosecute, you will need to consider their attitude to prosecution, and whether it may have an adverse physical or emotional impact upon them that is simply too great.

- **Protect the vulnerable**—prioritise remedies and procedures that reduce harm to those least able to bear it. If you volunteer in community based legal services, be conscious that you are not asking people to repeat their stories over and over. Check your system of filing or note-keeping, and rely on what is already recorded to inform your interactions.

These habits are not religious requirements for the practice of law or for public office; they are professional virtues that any ethical legal system would value. They are an ethos, a way of life, for any modern, fair and socially developed society.

A moment to reflect

Let us pause for a moment. Consider a decision you have made recently—professional or personal. Whom did it benefit most? Whom did it burden? Sometimes the reflection is uncomfortable. It is for me. But these small reflections, repeated across institutions and households, accumulate into the kind of society we build.

Challenges and tensions—where ideals meet reality

It would be naïve to suggest that the shared ethic of justice resolves all conflicts. Tensions arise: between individual rights and what is labelled the public good, between legal certainty and equitable outcomes, between competing claims for scarce resources. Religious traditions themselves have internal debates about how to balance mercy and law, ritual and ethics.

Acknowledging these tensions is not a reason for paralysis. Rather, it is an invitation to humility. We might approach hard choices with a posture of listening, with a willingness to revise policies that produce unjust outcomes, and with an openness to compromise that still preserves core principles. In public life, humility often looks like transparent reasoning, willingness to be corrected, and mechanisms for accountability.

Closing invitation—an ethic to live by

Justice, as the traditions teach, is not merely a legal doctrine or a theological abstraction. It is a way of life. It asks us to attend to the dignity of others, to resist partiality, and to make choices that enable flourishing.

When the judicial oath speaks of doing right to all manner of people, it makes plain that the judge must do right “according to law”. Sir Owen Dixon said that the Australian Constitution is “framed in accordance with many traditional conceptions, to some of

¹² See, eg, *Project Blue Sky v Australian Broadcasting Authority* (1998) 194 CLR 355 at 388-389 [91]-[92].

which it gives effect ... others of which are simply assumed.” One of those assumptions, he said, was “the rule of law”.¹³ Later he said that the rule of law was a conception “indispensable to federalism as we know it” in Australia.¹⁴ That idea, that the rule of law is indispensable to our federal compact, has been stated and restated by the High Court.¹⁵

Central elements of the rule of law are the absence of arbitrary power and universal subjection to the law.¹⁶ All of us, lawyers and non-lawyers, are subject to the law. As lawyers, whether as judge, practising lawyer or legal scholar, we are subject to the law. And that is why the judicial oath speaks of doing right “according to law”. It is an inevitable corollary of our constitutional system.

Doing right according to law is so much more than a merely mechanical task. It requires judgment and sometimes it requires courage. Almost always it requires the lawyer to recognise that they are dealing with the lives of others. Those affected by what you do will very often extend well beyond the immediate parties to any legal task which you are called on to undertake. The judge who is required to pass sentence on an offender does something that will directly affect not only the offender but all those whose lives intersect with the offender (including, in particular, those who were harmed by the offender’s conduct).

How a judge deals with any matter (civil, criminal, trial or appeal) will directly affect whether the persons most immediately affected believe that they have been dealt with justly. It will also affect the much wider class of those who are indirectly affected and will affect whether they think that the matter was dealt with justly. Attention to the dignity of others, resisting partiality (and the appearance of partiality); making choices that, so far as possible, enable others to flourish, is to do justice. Far from being inconsistent with doing justice according to law, it lies at the very heart of that idea.

Barry O’Keefe’s life reminds us that public service is a vocation that requires courage and steadiness. Our traditions remind us that justice is a daily practice. So let us, together, renew a modest commitment: to listen more carefully, to weigh consequences more thoughtfully, and to protect those who are most vulnerable. Let

¹³ *Australian Communist Party v Commonwealth* (1951) 83 CLR 1 at 193. See also *Re Bolton; Ex parte Beane* (1987) 162 CLR 514 at 520-521. See further *Plaintiff S157/2002 v The Commonwealth* (2003) 211 CLR 476 at 492 [31]; *Graham v Minister for Immigration and Border Protection* (2017) 263 CLR 1 at 24 [40], 25-26 [44]; *MZAPC v Minister for Immigration and Border Protection* (2021) 273 CLR 506 at 540 [91].

¹⁴ Dixon, “Two Constitutions Compared”, in Woinarski, *Jesting Pilate: and Other Papers and Addresses*, (2nd ed, 1997), 100-101.

¹⁵ *Garlett v Western Australia* (2022) 277 CLR 1 at 48 [128]-[129], 49 [133], 54 [150], 59-60 [168]. See also Dicey, *Lectures Introductory to the Study of the Law of the Constitution* (1885) at 215-216. See further *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 176 CLR 1 at 27-28; *Minister for Home Affairs v Benbrika* (2021) 272 CLR 68 at 131 [136]; see also 132-134 [138]-[142].

¹⁶ Dicey, *Lectures Introductory to the Study of the Law of the Constitution* (1885) at 215-216. See also Stephen, “The Rule of Law” (2003) 22(2) *Dialogue* 8 at 8; Laws, *The Constitutional Balance* (2021), pp 13, 15. See generally *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 176 CLR 1; *MZAPC v Minister for Immigration and Border Protection* (2021) 273 CLR 506; *Garlett v Western Australia* (2022) 277 CLR 1; *YBFZ v Minister for Immigration, Citizenship and Multicultural Affairs* (2024) 99 ALJR 1; *EGH19 v The Commonwealth* [2026] HCA 7.

us treat justice not as a slogan but as a habit—formed in small acts of fairness, mercy, and integrity.

Final words and blessing

As the Torah insists, as Jesus embodied, as the Qur'an commands and as the other great traditions embody: **justice, justice shall you pursue**. May we live each day according to that shared ethic—for the betterment of all society.

Post script

Shortly after the lecture was delivered, The Very Rev. Canon David Richardson AO OBE died. David was a man of intellect and faith whose life brought joy and hope to the lives of so many. When I sent him the draft for comment, his response included the immortal line "in terms of anything critical about the theological content, I can only say: NIHIL OBSAT". A nihil obstat is usually followed by an "imprimatur" (let it be printed). This is printed in the memory of The Very Rev. Canon David Richardson AO OBE, a friend who is and will be missed.