

Trevor Mwamba

The Vice – Chancellor of the University of Ghana, Professor Ernest Aryeetey;

Dean; Hugh W. Colton Professor of Law, J. Reuben Clark Law School, Brigham Young University, Professor James R. Rasband;

The Dean of the Faculty of Law, University of Ghana, Professor Kofi Quashigah;

Your Lordship Samuel Kofi Date – Bah, Justice of the Supreme Court of Gambia and the Supreme Court of Ghana;

President of the National House of Chiefs of Ghana, Professor Naa John S. Nabila;

Distinguished Assembly;

I am grateful to the University of Ghana and Co - Organisers for the invitation to me to deliver this Keynote Address.

I am honoured and humbled and delighted to be here at the University of Ghana. This eminent University is the oldest and largest of the thirteen Ghanaian universities and tertiary

institutions. Wikipedia describes this university as “One of the best universities in Africa and by far the most prestigious in West Africa.” But Wikipedia misses an important note that its prestige is also bolstered by having the former Secretary – General of the UN Dr. Kofi Annan as its Chancellor!

Last month I was at another eminent academic institution: The London School of Economics and Political Science (LSE) one of the principal social science universities in the world. I said to the staff and students there that I could proudly say I went to LSE. Now I can add to my boast the University of Ghana!

The theme of the conference: “Law and Religion in Africa: Comparative Practices, Experiences and Prospects”, is very apt at this stage of Africa’s development. The theme is profound and multifaceted as the papers which will be presented reflect.

I am sure we shall not be groping in the dark as in this parable set in an African forest. A blind rabbit and blind snake met. And since they could not make out who the other was they decided to feel each other and say who they were. So the snake went first and begun to touch the rabbit and said, “You are furry. You have long ears. You have a short

stumpy tail. Ah! You are a rabbit. The rabbit shouted enthusiastically jumping up and down, “Yes! Yes! Yes!”

Then the rabbit proceeded to touch the snake and said, “You are rather long and cold blooded. You have beady eyes. You have a forked tongue. You are slithery and have no means of self locomotion. You must be, you must be a lawyer”!

Lord Denning once advised lawyers to read works of history and literature. He cited Sir Walter Scott’s novel *Guy Mannering*. The client Colonel Mannering goes to the lawyer. He finds the rooms of the lawyer lined, not with law books, but with books of history and literature, the great authors, the classics, and a painting by Jamieson, the Scottish Van Dyke. The lawyer points to the books of history and literature and says “These are my tools of trade”. A lawyer without history or literature is a mere mechanic, a mere working mason. If he has some knowledge of these, he may venture to call himself an architect.¹

It is to, ‘These...tools of trade’ the great authors, the classics, the arts, music, culture, politics, stories of great men and

¹ Lord Denning: The Family Story

women, life happening all around us, that I turn for inspiration to address the theme of law and religion in Africa.

Let me start with a book by Dr. M. Scott Peck entitled *Gifts for the Journey*. He was once at a dinner talking to a clever lawyer about it before it was published. The lawyer wanted to know what the book was about. Peck explained that it was a mix of psychology and religion. The lawyer understood that, but wanted to know the message of the book. Peck said it was rather complicated as the book said a lot of things. The lawyer persisted. All he wanted was a few sentences getting to the heart of the matter and telling what the book was about. Peck said he couldn't do that in a few sentences, that's the reason he had written the book.

The lawyer thought it was all nonsense and he explained to Peck that in the legal profession there was a wise saying that anything worth saying can be said in two sentences or less – and if it can't be, then it is not worth listening to.

I should hastily say that this does not apply to any of us here!

Peck could not give the lawyer the two sentences he required. But thinking about it later he remembered that

Jesus had a similar experience in Jerusalem and he handled it brilliantly.

You remember a lawyer came to Jesus and said in effect: “Professor Jesus, all these parables are very nice. But what is it that you are really trying to say? What is your message? I don’t want a whole Sermon on the Mount. I just want a few concise sentences, straight and simple. What is it you are telling us we ought to learn and do?”

Jesus responded and it was really no more than a single sentence. “Love the Lord, your God with all your heart and mind and soul, and your neighbour as yourself”. That’s all he said.

Now a couple of years later, Dr Peck, finally figured out what he had been trying to say in a single sentence. And I shall tell you what it was at the next conference!

Suffice to say I too was grappling how to locate the heart of this conference given its profundity. I have settled on the following thoughts to focus on: the unity of law and religion, justice, context, and the importance of individuals moral agents.

Let’s explore the first thought on the unity of law and religion.

I should state that I speak from a Christian perspective. But the principles are applicable to other Faiths such as Judaism, Islam, Buddhism, and Hinduism.

People often think in compartments and imagine that law and religion, or politics and religion, are separate from each other.

The reality is that everything in life is interconnected. Aryeh Lev Stollman illustrates this in his enchanting book *The Illuminated Soul*, when he writes about the 'net of reality'. This net of reality weaves seemingly disparate things together and makes of them whole cloth. On its own our world seems a chaos of unrelated events to the human mind, but in fact this is not the case. This perception is only due to our limitations of observation and reason.²

Law and religion are two sides of social relations and human nature. As Harold Berman has wisely stated, "Law is not only a body of rules; it is people legislating, adjudicating, administering, negotiating – it is a living process of allocating rights and duties and thereby resolving conflicts and creating *channels of cooperation*. Religion is not only a set of doctrines and exercises; it is people manifesting a collective

² Aryeh Lev Stollman, *The Illuminated Soul*, p.196

concern for the ultimate meaning and purpose of life – it is a shared intuition of commitment to transcendent values.”³ Law ensures a society maintains cohesion and peace and hence prevents chaos. Whilst religion gives society faith to pursue transcendent values that promote the goodness in people and a community and hence seeks to prevent corruption.

The unity between law and religion is also evident in Islam and Judaism which have a sophisticated system of law, found in sacred writings. Some say the observance of law is itself a religious act. For example in ancient Israel , the law, the Torah is the religion.

The second thought, I suggest, which streams through the theme and will tacitly flow in the papers to be presented is *justice*. Both law and religion are concerned with justice.

The issue of social justice dominates the Old Testament. For example, the prophet Amos is emphatic of what God's demands for His nation Israel are, “ ... let Justice roll down

³ Harold J. Berman, The Interaction of Law and Religion, p24

like waters, and righteousness like an ever – flowing stream.”⁴

Lord Harries, former Bishop of Oxford, recently gave an Address at the Justice Service, at Chelmsford Cathedral in England, in which he said if we had to choose one word to sum up the message of the Hebrew Scriptures, the Christian Old Testament, that word would be justice.

The core theme is summed up by 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.”⁵

This is the most fundamental insight the Jewish people have given to the world, not only in Judaism itself but in its abiding legacy in Christianity and Islam.⁶

God is inseparable from justice; because *justice is the expression of love seeking to do the right thing or what is right in any given situation*. So where Justice is there is God.

⁴ Amos 5: 24

⁵ Micah 6:8

⁶ Lord Harries, Chelmsford Cathedral Justice Service, 14 October, 2012

Justice is required in all aspects of life, in our personal lives, in our family life, in our politics, in the life of the nation, in the judicial system, in the world's economic order.

Justice in 'the treatment of the citizen by the state, of the litigant by the judge, of customary law by statutory law, of the consumer by the supplier, of the customer by the bank, of religion by the state, of the minority by the majority, of women by culture, of gays by straights, of religious intolerance by fundamentalist, of religious pluralism by constitutions.

Law and religion in concord have a vital role to play in Africa faced with challenges of injustices, prejudices, and corruption. As both are focused on *justice as the expression of love seeking to do the right thing or what is right in any given situation*. As both can interact in robust laws conceived by moral values rooted in religious foundations that reverence all peoples made in the image of God. I believe this conference will have much to offer in this regard.

The third thought, concerns *context*. Law and religion do not exist in a vacuum they absorb their environment, such as,

political, social, cultural, economical, time, and historic context.

The great Jurist Oliver Wendell Holmes said of law:

“The life of the law has not been logic; it has been experience. The felt necessities of the time, the prevalent moral and political theories, ...even the prejudices which judges share with their fellowmen...The law embodies the story of a nation’s development through many centuries, and it cannot be dealt with as if it contained only axioms and corollaries of a book of mathematics.”⁷

The life of the law reflects human life which we can imagine evolving to the rhyme of the captivating phrases of Charles Dickens’ book, *A Tale of Two Cities*:

“It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of light, it was the season of darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us, we were all

⁷ Mr. Justice Holmes, p.2/3

going direct to Heaven, we were all going direct the other way....”

So law absorbs at different times, the best, the worst, wisdom, foolishness, belief, incredulity, light, darkness, hope, despair, everything, nothing, heaven and hell. It's human life in its historic developments, its ups and downs.

With this insight legal positivism is inadequate as a philosophical position to understand the life of law. Legal positivism would argue that all you can see is all there is. And that to make judgements of value, to seek meanings or causes, to seek good and bad in political and policy questions are unscientific and run the old risk of superstition and obscurantism. When the law sees itself in this way, that all there is is the rules mechanically applied without taking into consideration the dynamic contexts which give it life then the label 'The law is a ass' becomes apt.

Let me give you the context in which the label arises from Charles Dickens' *Oliver Twist*.

'That is no excuse', replied Mr Brownlow. 'You were present on the occasion of the destruction of these trinkets, and indeed are the more guilty of the two, in the eye of the law;

for the law supposes that your wife acts under your direction.'

Then Mr Bumble, said, 'If the law supposes that, the law is a ass – a idiot. If that's the eye of the law, the law is a bachelor, and the worst I wish the law is, that his eye may be opened by experience – by experience ...'⁸

The experience law needs is not so much a married life! But a constant flow of moral values to bring forth justice.

I think it is clear that law is not principally a code of rules or legal opinions but rather a *living manifestation* of 'a collection of human stories, each with a moral; not as a fetter, but as a source of freedom; not as an unwelcome but inescapable response to the ills of society, but as a means of providing that justice upon which good government and social harmony fundamentally depend.'⁹ The law ideally is a reservoir of justice to remedy the ills of human injustices.

The reservoir of justice, we speak of, has to be replenished by streams of moral values that flow from religion. It's a constant cleansing and healing flow of people and society.

⁸ Charles Dickens, *Oliver Twist*, chapter 51

⁹ Tom Bingham, *The Business of Judging*, p. 412

Now, just as the life of the law has not been logic but experience; more so religion is not about logic but mystery and inspiration, wrapped in God.

Albert Einstein once said, “Everyone of us appears here on earth involuntarily and uninvited for a short stay, without knowing the whys and wherefores...The most beautiful and deepest experience a [person] man can have is the sense of the *mysterious*. It is the underlying principle of religion as well as all serious endeavours in art and science. He who has never had this experience seems to me, if not dead at least blind. To *sense that behind anything* that can be experienced there is something that our mind cannot grasp and whose beauty and sublimity reaches us only indirectly and as a feeble reflection, that is religiousness.”¹⁰

Not from logic but ‘the sense of the mysterious’ flow the transcendent values into life ennobling us if we are sensitive to them. So morality is not temporal but eternal. The spirit in people responds to the good in them. It is the good and potential good in people that is the focus of religion. It is the good in people which intuitively recognises what is justice

¹⁰ Denis Brian, *The Unexpected Einstein*, p.182/183

and law becomes the application, however imperfectly, of justice, of that good, in our everyday affairs.

Religion conveys to us the importance of *moral purpose* and *spiritual sense*. Religion conveys above all the *reality* and importance of a *Power* that transcends our lives and world; *a Power beyond ourselves. A Power that loves us. A Power* that seeks to act through us to do justice every situation.

The fourth and final thought, concerns the importance of individuals as moral agents in striving for justice in our world. Let me illustrate this in the life of Lord Denning – who embodied law and religion.

In his brilliant book *Decision – Making in the White House*, Theodore C. Sorensen, concludes, “ I can only offer a conclusion which all of us already know: that the only way to assure good presidential decisions is to elect and support good Presidents. For in mixing all these ingredients, his style and standard, his values and vitality, his insights and outlook will make the crucial difference. A great presidential decision defies the laws of mathematics and exceeds the sum of all

its parts. A great President is not the product of his staff but the master of his house.”¹¹

This observation is applicable to decision makers in every profession. Good decisions, good leadership, does not pop up from a vacuum, it is a manifestation of *wisdom*. Wisdom is not that something we can download from the internet or buy in a bookshop or earn. It is a gift from God. Remember Solomon’s prayer for wisdom before he took up his leadership role. “Give your servant *therefore* an understanding mind to govern your people, and able to discern between good and evil; for who can govern this your great people?”¹²

This is the secret of great leadership in any field. This is what made Lord Denning a legend.

Lord Devlin once remarked that the secret of Lord Denning’s attraction to the legal profession as well as for the general public was the belief that he opened the door to the law above the law.¹³

That ‘law above the law’ is the wisdom of God of which Lord Denning was so aware of. I recall thirty years ago as a

¹¹ Theodore C. Sorensen, *Decision – Making in the White House*, p.87

¹² 1Kings 3:9

¹³ Lord Denning: *The Judge and the Law*, p. vii

theological student at Oxford having an inspiring conversation with him in his office in London.

He talked in-depth about his faith how, “In coming upon legal obstacles, it is not enough to keep your law books dry. It is as well to have a Bible ready to hand too.” He said the Bible was the most tattered book in his library.

He believed that “Without religion there can be no morality: and without morality there can be no law.”¹⁴ And that “If religion perishes in the land, truth and justice will also. We have already strayed too far from the faith of our fathers. Let us return to it, for it is the only thing that can save us.”¹⁵

In his book *The Closing Chapter* Lord Denning spoke candidly about his faith and its impact on his life at a Legal Service at the Cathedral at Norwich. This is what he said: “...I would not be here unless I believed in God. My belief in God is in part due to my upbringing – to what I have been taught – and in part to what I have found out in going through life. That is the case with all knowledge. No man knows anything except what he has been taught and what he has found out for himself.

¹⁴ The Family Story, p182

¹⁵ The Family Story, p.183

The fundamental point in my experience is that there is a spirit in man – quite separate from his body and from his intellect – which, when it reaches its highest and best, is but the reflection of the spirit of God. Now I know nothing of theology. Nor can I say that I have seen the sudden light of conversion as some have, but I do know that in the great experiences of life – and in the small ones too – such strength as I have is of God, and the weakness is mine.

Need I relate the experiences? Take the hard things. When faced with a task on which great issues depend; when high hopes lie shattered; when anxieties gnaw deep; or when overwhelmed by grief; where can I turn for help but to God?

Or take the joyful things. A hard task attempted and done; the happiness of family life; or the beauty of nature; where can I turn in thankfulness but to God?

All experiences convince me, not only that God is ever present: but also that it is by contact with the spirit of God that the spirit of man reaches its highest and its best.”¹⁶

We must now reach our verdict. I have used the ‘tools of trade’ the great authors, the classics, great people, life

¹⁶ The Closing Chapter, p.42/43

happening all around us, as inspiration to address our theme of law and religion in Africa: Comparative Practices, Experiences and Prospects.

Now what is it that can learn from it all and do. Africa is not monochrome, it is has someone described it a 'coat of many colours'. So the laws are a jumble of pieces, much like a jig – saw or a mosaic: customary law, Islamic law, Dutch law, English law, etc. All have to be fitted together to form a single whole, and developed to meet the context and conditions of the times. How is this best to be done? Is a question this conference must address.

As a base may I suggest as Africans to cherish and nurture our spirituality.

46 years ago, Kofi Abrefa Busia, Prime Minister of Ghana from 1969–72, wrote a book entitled, *Africa in Search of Democracy*. He placed first in his treatment of factors to be considered in Africa's search for democracy what he termed the 'religious heritage'. He argued that for many people the questions of religion seem irrelevant and out of place in discussing issues as modernisation and progress. This attitude he contented was prejudicial to a proper appraisal of the problems of Africa as Africans saw them.

I agree. This 'religious heritage' defines all Africans. John Mbiti a renowned African theologian said Africans are spiritual people. I think of the 'religious heritage' as not only derived from so called 'traditional religions' but dating back to the first century. Thomas C. Oden in his book, *How Africa Shaped the Christian Mind*, enlightens us of the vital role Africa played in the formation of Christian culture throughout the world. Africa, gave theological leadership to the Western church. The great African church fathers Tertullian, Origen, Cyprian, and Augustine were pillars of the African church and the West.

There is a myth that Christianity is foreign to Africa and was brought there by white missionaries 300 or 400 years ago when in fact it has been part of Africa's heritage for centuries. We also forget that much of Christian history occurred in Africa and if you remove Africa out of the Bible and Christian memory then you remove many important stories of salvation history. This a 'religious heritage' we need to nurture to help Africa address its challenges.

This 'religious heritage' is what Ubuntu. Ubuntu puts emphasis on our common humanity – I am because you are

– and therefore we all exist in community and must treat each other with respect and dignity.

The nurturing of spirituality will instil a reverence for God and this brings about integrity and decency in people to not only curb corruption but also instil a reverence for law.

Reverence for the law is critical for Africa to develop. So a culture of respect for the core values that define Ubuntu may be bolstered especially amongst our political leaders who play fancy –free with laws.

For example, the SADC Tribunal was set up 11 years ago with exclusive jurisdiction over all disputes between Member States and the Community, as well as natural or legal persons.

A case was brought to the Tribunal by a white Zimbabwean farmer aggrieved at the manner his farmer had been possessed by the Government. The Tribunal ruled in favour of the farmer needless to say the Zimbabwean government was not pleased. The complaint ultimately to the SADC Summit held in Maputo to suspend the function of the Tribunal. The SADC Ministers of Justice will review the

Protocol of the SADC Tribunal and make recommendations to be reported by to the next Summit in August 2013.

The rationale behind setting up the Tribunal was to demonstrate that SADC is rule based region and institution. Obviously it has serious challenges. The simple reason as wise observer of SADC commented is that some governments seek to use the Tribunal to deal with their own political problems with no respect for the rule of law.

Law and Religion need each other in Africa to bring about respect for the rule of law and development for the benefit of all God's people on this lovely continent. This is the dream of God.