

## Watching the Muffins— The Temple Church Sermon

Deborah L Rhode\*

I am deeply honoured and humbled by this invitation to address you. Speakers always say that with varying degrees of sincerity, but as someone whose day job involves ethics, I try not to dissemble—particularly in public. And it truly is humbling, and a bit daunting, to speak in such surroundings, and I found myself a little at a loss of what to say that would be adequate to the occasion. So I will follow the counsel of the American humourist Mark Twain, who advised speakers to be brief, to be sincere, and to be seated.

To speak sincerely about ethics is no small task, because it is hard to avoid seeming platitudinous, sanctimonious, or both. Those of us who do this for a living are schooled to avoid the description that George Orwell once offered, of someone who could not blow his nose without moralising on the state of the handkerchief industry. But moralising is what I came to London to do as part of the Conference on International Legal Ethics, and it is what I was asked to do here this morning. So here is my best effort.

Preparing for this talk reminded me of an interchange I had very nearly repressed. It happened a number of years ago when I was giving a guest lecture on legal ethics. During the question and answer period a student put up his hand and asked, Professor, what is your own moral philosophy? He was obviously sincere, so self-deprecating humour seemed somewhat inadequate. So I responded by quoting the American philosopher, William James: ‘the great use of life is to spend it for something that outlasts it’. The famous civil rights lawyer and US Supreme Court Justice Thurgood Marshall, for whom I clerked, said he wanted his epitaph to read, ‘He did what he could with what he had’. I would not mind if that were said at my own memorial service and, as I tell my students, it is never too soon to focus on what you want to be remembered for. It is so easy, in our increasingly secular world, to get so caught up in the daily demands of professional life that we lose focus on what is truly important and what we want our ultimate legacy to be. Surely part of a truly satisfying legacy would include public service—some effort to leave our own tiny corner of the world slightly better than we found it. Woodrow Wilson, one of America’s greatest

\* EW McFarland Professor of Law; Director, Center on the Legal Profession; and Director of the Program on Social Entrepreneurship, Stanford University, USA; Founding President, International Association of Legal Ethics, 2010–14. This is an edited transcript of the sermon given at Choral Mattins, 13 July 2014, at the Church of St Mary the Virgin, The Temple, London. The Benchers of the Inner Temple and the Master of the Temple extended a special invitation to delegates at the Sixth International Legal Ethics Conference to attend the service, and invited Professor Rhode to give the sermon.

Presidents, reminded us that ‘you are not here merely to make a living. You are here to enrich the world and you impoverish yourself if you forget the errand.’

What that entails varies by individual and occupation, but for the legal profession it should include pro bono service or the financial equivalent. Yet the majority of lawyers fail to meet that goal, and the record is particularly dispiriting among the largest and wealthiest firms, which could most easily meet the standard. It is a shameful irony that the United States, a nation with one of the world’s highest concentrations of lawyers, does so little to make legal services accessible. ‘Equal justice under law’ is one of the world’s most proudly proclaimed and routinely violated legal principles. It embellishes courthouse doors, but in no way describes what goes on behind them. Millions of individuals lack any access to justice, let alone equal access. In the United States, four-fifths of the legal needs of the poor and a majority of the needs of middle-income people remain unmet. The United Kingdom faces similar challenges, and recent budgetary cutbacks in legal aid have made a bad situation worse. An apt *New Yorker* cartoon features a well-heeled lawyer in his office staring down at a somewhat shabby client and stating, ‘You have a very good case, Mr Pipkin. How much justice can you afford?’

Yet too many legal professionals see the problem as someone else’s problem, and place responsibility anywhere and everywhere else. That needs to change, and one function of occasions like this is to remind ourselves of our personal responsibility to do better. GK Chesterton once observed that the problem with legal officials was not that they were ‘evil or stupid, but just that they had gotten used to it.’ That sense of indifference is one of our greatest challenges. In a world filled with horrific human rights abuses, daunting rates of poverty, increasing risks of global violence and growing indices of environmental degradation, it is all too tempting to retreat into passivity. Those of us who are academics by training and temperament are particularly susceptible to intellectual insularity. We think we have done our bit by naming the problems and calling on others to solve them. To borrow from Mark Twain again, ‘To do right is noble,’ he said. ‘But to advise others to do right is also noble and much less trouble to yourself.’ But in today’s world of increasing global interconnection, it is all of our responsibility to become at least armchair activists—to write the cheque, circulate the petition, join the boycott, give something of our time and talents to causes that we care about. ‘Ideas won’t keep,’ said Alfred North Whitehead, ‘Something must be done about them.’

Having just come from two days of conferencing on international ethics, I am reminded also of the importance of learning from other cultures. There is a tremendous temptation in the United States to be solipsistic. To take just one example, public opinion surveys indicate that Americans overwhelmingly believe that they have the best justice system in the world. Yet in terms of access to justice, we rate only 67 out of 97 in terms of access and affordability. We are tied with Uganda. Given the centrality of the United Kingdom in world history, I imagine that a sense of self-centredness is not an uncommon tendency here as well. But it is one we need to shed if we are to be truly reflective about our own institutions, and culturally sensitive to the global context in which they are situated. In today’s world, we all live downstream and we all need to understand the limits of our own knowledge and cultural practices.

When I was growing up in the American Midwest, my church taught the Bible as if it were the only source of religious truth the world over; we never learned even that there were other organised religions, let alone that they might have more adherents than Christianity. My high school civics class was all about the virtues of American democracy, with no mention of other systems or their possible contributions to world order. And my law school was all about the American legal system, with barely a nod to the virtues of other approaches to contested issues. We can no longer afford that cultural elitism, and opportunities like the last two days are a reminder of the richness of other resources for understanding. We need to cultivate more such opportunities for cultural exchange, and I applaud this church for reaching out to make it happen.

One of the few stories I remember from my early years of church attendance was a doubtless apocryphal tale of a boarding school that operated on an honour system for snacks. A bowl of apples was placed on a common table with the sign: 'Take only one; God is watching.' At the other end of the table was a sadly depleted tray of muffins with a handwritten note posted on its side: 'Take what you want. God is watching the apples.' I no longer recall what the moral of the story was then. But if I were to translate it today, in a world in which a declining proportion of the population believes in a God watching the apples, it is increasingly up to each of us to take responsibility for monitoring the muffins.