



Lawyers' Christian Fellowship NEWSLETTER

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November 2001



CHRISTMAS FUNCTION

**Saturday
1 December 2001**

From 7pm

**Speaker
Rev Dr Roger Chilton**

Location T.B.A.



**Have you paid your
Membership Fees
for 2001?**

Please see last issue for renewal form alternatively a copy can be downloaded from the website.

Forgiving Sin and Punishing Crime

In June 1989 Trevor Dodd, then aged 27, walked into the Newcastle Police Station accompanied by his solicitor and confessed to having killed a young woman in Sydney 10 years earlier. He said that he was coming forward because he wished to pay whatever debt he must in the hope that the feelings of guilt he had harboured for the preceding 10 years would diminish to such an extent that he could get on with living the rest of his life.

In a signed confession he disclosed his responsibility for a particularly serious homicide. He was at the time unemployed and in his own words "*heavily involved with alcohol and LSD*". One evening he met the victim Elizabeth Nagyat at a discotheque at Kings Cross. He never found out her name, but thought she was about 17 or 18 years of age. He took her to his flat. They got into bed together. When the girl refused to have sexual intercourse Dodd lost control and in his outrage strangled her. He later attempted to burn the body. Although the partially decomposed and burnt body was discovered soon after, the cause of death and the reasons for her disappearance remained a mystery for ten years. Yet Dodd was tormented by feelings of guilt. His history of drug abuse continued. Dodd was later converted to Christianity and his conversion brought with it a marked improvement in behaviour. The sentencing judge held that "*a most striking proof*" of the genuineness of his Christian conversion was that he came forward and confessed to a crime with which he would never have been connected. Dodd was prepared to suffer whatever were the appropriate consequences so that having paid his debt he could then get on with living a decent life. His contrition was beyond question. He was said to be "*a different man to the man who committed the crime*".

Dodd pleaded guilty to manslaughter. Sentencing law requires that a person is entitled to a discount on sentence where a guilty plea shows genuine contrition and saves the community the expense of a contested trial. And Dodd was entitled to added leniency because of his voluntary disclosure of a crime which would otherwise have remained completely undetected. It was also clear that there was a minimal risk that Dodd would offend again. Indeed the sentencing judge thought that a fixed custodial sentence could impair his rehabilitation by depriving him of the regular support of his fellow church members. These factors, coupled with the circumstances of Dodd's disturbed background in his teenage years, led an experienced Supreme Court judge to impose a sentence of 3 years imprisonment to be served by way of periodic detention, ie weekend gaol.

There was something of a public outcry, fuelled by the media. The Crown appealed against the leniency of the sentence and the Court of Criminal Appeal

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held that it was manifestly inadequate. A sentence to full penal servitude for a fixed term of 3 years was substituted. It was recognised that there could be circumstances where the proper sentence for manslaughter was periodic detention, a sentence which would enable an offender to remain in employment and minimise disruption to family life. Nevertheless the appeal court was satisfied that a fixed gaol sentence was called for. The central part of its reasoning was as follows:

... making due allowance for all relevant considerations, there ought to be a reasonable proportionality between a sentence and the circumstances of the crime ... Each crime ... has its own objective gravity There is sometimes a risk that attention to persuasive subjective considerations may cause inadequate weight to be given to the objective circumstances of the case We consider that to have happened here. In our view the requirement of a reasonable proportionality with the circumstances of the crime called for a significant full-time custodial sentence.

See **Trevor Vernon Dodd** (1991) 57 A Crim R 349.)

GOD'S FORGIVENESS AND GOD'S JUSTICE

Forgiveness is rooted in the gracious nature of God. *"The Lord our God is merciful and forgiving, even though we have rebelled against him"* (Dan 9:9) (NIV). God is described in Nehemiah as a *"forgiving God"* (Neh 9:17). The writer of Exodus speaks of *"The Lord, the Lord, the compassionate and gracious God, slow to anger, abounding in love and faithfulness, maintaining love to thousands, and forgiving wickedness, rebellion and sin"* (Ex 34: 6-7).

The New Testament shows that this nature is exemplified, indeed perfected, in and through Christ. During his earthly life our Lord forgave the sins of individuals with his father's authority (Mk 2:10) and through his atoning death both proclaimed God's forgiveness and delivered it once and for all to those who would receive it (Matt 26: 28, Eph 4:32, Acts 5:31). The forgiveness offered by God is complete and totally effective. Thus the Psalmist tells us that *"as far as the east is from the west, so far has he removed our transgressions from us"* (Psalm 103:12). Not only are they thus put out of reach (in Micah's words hurled *"into the depths of the sea"* (Micah 7:19); they are put out of God's mind (Is 38:17, Jer 31:34), indeed out of existence (Is 43:25, 44:22. Ps 51:1, 9; Acts 3.19).

The writer of the Exodus passage I have already quoted about God's forgiving nature nevertheless adds explicitly in Exodus 34:7 that *"he does not leave the wicked unpunished"*. The fundamental basis of just retribution at God's hand is also expressed unequivocally in Galatians 6:7-8 and Hebrews 2:2. The latter passage speaks of *"every violation or disobedience"* receiving *its just punishment"*.

Exactly how men and women appropriate divine forgiveness and the consequences of not doing so are vital issues, none the less so for being the subject of much vexed theologising. *"Vital"* in both its figurative and more literal senses. In not dwelling on this I must not be taken to be minimising its importance. I trust that all of us here will treat it as a *"given"*.

My topic **Forgiving Sin and Punishing Crime** seeks initially to go past this essential and critical issue of the individual's right relationship with God, to examine his or her relationship with those who are wronged and with society as a whole. A right relationship with God may be the catalyst for steps taken with a view to re-establishing a right relationship with society (as Trevor Dodd's story shows). It may also lead to reparation (a general word for making amends) and restitution (a more particular restoration of what has been wrongly taken). Of course restitution may not be possible if the victim is dead or unknown or unwilling to receive it, or if the wrongdoer is unwilling or unable to offer it. Many offenders who go to gaol appear to feel no remorse and offer no restitution or other visible signs of a true repentance. Our criminal justice system must do the best it can with the remorseful and the impenitent, the fearful and the arrogant, the offender capable of reformation and the seemingly intractable.

Trevor Dodd was hardly the typical criminal who comes up for sentencing in our courts. But his case raises some fundamental questions about wrongdoing, guilt, punishment and remission. Can it be said that in punishing Trevor Dodd society failed to offer him forgiveness? Why did the Court feel it had to impose the particular fixed sentence so long after the event when the genuineness of Dodd's contrition was beyond dispute? What role (if any) did the Courts play in God's plan for Trevor Dodd and Australia generally?

Extract from a paper prepared by Keith Mason, President of the Court of Appeal and delivered to the Christian Lawyers Society in Queensland in June 2001. This paper is based on a paper previously delivered to the Lawyers' Christian Fellowship in October 1993. If you wish to read more please visit the Fellowship's website where there is a link to the Queensland Christian Lawyers Society site and a copy of the full paper in PDF format.

Where is Dodd Now?

If you know how to contact the subject of the opening illustration of President Mason's paper Trevor Vernon Dodd please contact the editor who is interested in interviewing him for a future newsletter.

RECENT DEVELOPMENTS

Cloning Report Released

In response to the cloning of Dolly the sheep in 1996 the Federal Health Minister requested that the Australian Health Ethics Committee advise him in relation to the cloning of humans. That report was delivered in 1998.

In 1999 the Health Minister asked the House of Representatives Standing Committee on Legal and Constitutional Affairs to review that report of the Australian Health Ethics Committee. Last month the Committee's report was handed down by its chair Kevin Andrews.

The report also came in the wake of the decision of President Bush to only permit government funding of stem cell research on existing stem cell lines. This has the effect of limiting Federally funded research where new stem cell lines are created—a process which can involve the destruction of embryos.

The Standing Committee Report did not recommend as restrictive an approach as that of President Bush in that it recommended permitting the use of embryos that had been created for IVF or ART purposes and would otherwise be destroyed where the appropriate consents have been obtained.

The report can be found at:
<http://www.aph.gov.au/house/committee/laca/humancloning/contents.htm>

Charity Report Released

The Sheppard Inquiry into the definition of a charity has released its report. It is a comprehensive review of the entire area of law relating to charities, public benevolent institutions and non-profit organisations.

It suggests the existing proliferation of organisations reflected in the following diagram:

Figure 1: Non-profit sector¹



be replaced with three categories reflected in figure 2 below.

The report recommends that the fourfold definition of charity found in the preamble of the Charitable Uses Act of 1602 be replaced with the following definition:

Charitable purposes shall be:

- the advancement* of health, which without limitation includes:
 - the prevention and relief of sickness, disease or of human suffering;
- the advancement* of education;
- the advancement* of social and community welfare, which without limitation includes:
 - the prevention and relief of poverty, distress or disadvantage of individuals or families;
 - the care, support and protection of the aged and people with a disability;
 - the care, support and protection of children and young people;
 - the promotion of community development to enhance social and economic participation;
 - the care and support of members or former members of the armed forces and the civil defence forces and their families;
- the advancement* of religion;
- the advancement* of culture, which without limitation includes:
 - the promotion and fostering of culture; and
 - the care, preservation and protection of the Australian heritage;
- the advancement* of the natural environment; and
- other purposes beneficial to the community, which without limitation include:
 - the promotion and protection of civil and human rights; and
 - the prevention and relief of suffering of animals.

(* Advancement is taken to include protection, maintenance, support, research, improvement or enhancement.)

Figure 2: Altruistic Community Organisations, Charities and Benevolent Charities



The report recommends that the term "non-profit" be replaced with the term "not-for-profit".

In relation to the definition of religion it is recommended that the definition of religion be that based on the Scientology Case:

- belief in a supernatural Being, Thing or Principle; and
- acceptance and observance of canons of conduct in order to give effect to that belief.

It is proposed that the present terminology of public benevolent institution be replaced with a subset of charity that is a benevolent charity and that this be defined as a charity whose dominant purpose is to benefit, directly or indirectly, those whose disadvantage prevents them from meeting their needs.

The report is not small at 448 pages and it will be interesting to see how the Government responds to the report. The only certainty is that it will not be before the next election. For those want to read the report it is available on the internet at :
<http://www.cdi.gov.au/html/report.htm>

WITHDRAWAL OF TREATMENT

For those who follow developments in the areas of physician assisted suicide and withdrawal of treatment you may be interested to know that the Supreme Court of California recently handed down its decision in the case that has come to be known as the Wendland Case.

Robert Wendland was in a coma for sixteen months when he began to stir in January 1996 and by the time of the first hearing he could communicate in a limited manner by pressing a button and recognised hospital staff. Notwithstanding this his mother and one of his sisters requested that he have his fluids and food withdrawn.

The decision of the Supreme Court came some ten days after the death of Robert Wendland but it did not support the request to withdraw food and fluids.

For a discussion of this and other similar cases see chapter 2 of Wesley J. Smith's "Forced Exit", 1997, Time Books

Contacting the Fellowship

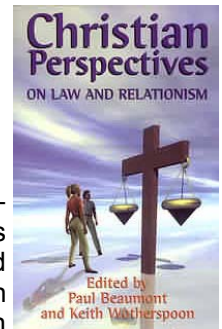
The newsletter's editor is Steven Nicholson who can be contacted at mcphes@pnc.com.au or on 47511055 or POBox 4 Springwood, NSW, 2777 or DX 26729 Springwood.

Book Alerts

While I have not had the opportunity (yet) to read the following volumes they may be of interest to members:

Christian Perspectives on Law and Relationism

Edited by Paul Beaumont & Keith Witherspoon, Paternoster, 2001
RRP £17.99

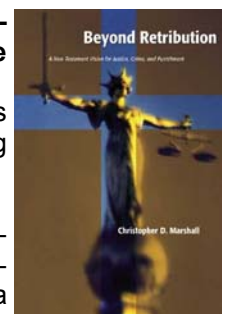


This is the third volume in the Christian Perspectives series. Previous volumes in the series have included Christian Perspectives on Human Rights and Legal Philosophy and on Law Reform. Each volume publishes the papers from a previous Christian Legal Academics conference that is held prior to the annual Lawyers Christian Fellowship conference in the UK.

If there is sufficient interest the Fellowship will order the volumes from the UK LCF who have agreed to supply them to us at £9.00 (est \$27.00) each. If you are not on the DX additional postage of \$4.00 for each book will be required. Please contact the editor if you are interested in ordering any of the volumes in this series.

Beyond Retribution—a New Testament Vision for Justice, Crime and Punishment

Christopher D. Marshall, Eerdmans and Lime Grove House Publishing Ltd, 2001, RRP \$45.00.



From his interest in restorative justice issues Marshall, a New Testament scholar, saw the need for a comprehensive study of justice, crime and punishment from the perspective of the scriptures of the New Testament. Glen H. Stassen describes it as "not simply a protest against the present dysfunctional criminal justice system; instead, it offers a developed theory underlying a changed and much improved system that could finally be called "just".

The areas dealt with in the book are "the justice of God in Paul and Jesus", "the purpose and ethics of punishment", "divine and human punishment in the New Testament", capital punishment and "forgiveness as the consummation of justice"

Form more information and a copy of the table of contents go to:

http://www.eerdmans.com/shop/product.asp?p_key=0802847978

Stay tuned early next year for a more comprehensive review.