

The 2019 Warburton Lecture/Sermon

“You have heard that it was said . . . But I say to you”

**Life, death and the (re-)interpretation of
scriptural and legal texts in a time of turmoil.**

May I speak, and may we all listen, in the name of God, Father, Son and Holy Spirit.
Amen

Introduction

It is indeed a joy and a privilege to be here with you today, and I am very grateful to your Preacher for inviting me; as she says, we have known each other for quite some time, and I was so pleased when I heard that Lincoln's Inn had chosen to follow Derek with Sheila Watson. As you know, King's College London has many links with the Inns of Court, and Lincoln's Inn is no exception. In fact, more recently the Diocese moved my wife and I just across the road from Lincoln's Inn Fields, so we are often walking by as neighbours. When I preached the Mulligan Sermon at Gray's Inn, it had to be on the lawyer's question, “who is my neighbour?” (Luke 10.29). All the judges and lawyers come once a year, and every year they get a sermon on the same text – and I feel very much a neighbour to Gray's Inn and Lincoln's Inn.

I began my Mulligan sermon at Gray's Inn by quoting the Archbishop of York (who you may know was a lawyer and barrister in Uganda, before fleeing Amin and coming here; therefore he can get away with this joke, even if I can't), who asked “what is the similarity between a lawyer and a rhinoceros?”. To which the answer is, “they are short-sighted, thick-skinned, and always ready to charge”. Now of course, when you say that of lawyers, one is traditionally talking about clerks, or scribes, as we heard in our readings. I am a Clerk in holy orders, but the other clerks whose responsibility it was to administer the law were always trained alongside those administering religion; you can see that close link in ancient Egypt, in Israel, in many societies, of those whose job it is interpret the texts from the past for the present – especially religious and/or legal (and very often there wasn't an awful lot of difference between those) – in the light of new situations.

William Warburton (1698 – 1779)

This is exemplified in the career of William Warburton himself, who as I'm sure you know followed his father into a legal career, practising as an attorney between 1719 and 1723, but then moved across to the Church, being ordained deacon in 1723 and priest in 1727.

He wrote extensively on both theological and ecclesiastical issues, but also wrote on a number of legal topics. I was delighted to read that his interests also encompassed literary criticism, and we'll be having some of that today – this was a field where his “sharply expressed views divided opinion” (but I'll leave you to decide if that's true of the current preacher – I mean me as preacher of the sermon, that is, not your illustrious Venerable Watson!).

Warburton was appointed Preacher of Lincoln's Inn in 1746, and became Bishop of Gloucester in 1760, although he continued here at Lincoln's Inn for another year.

When the lecture was founded in 1768, it was “for proving the Truth of the Christian Religion from the completion of those Prophecies in the Old and New Testament which relate to the Christian Church”, and when Lincoln's Inn very generously decided to rejuvenate the Warburton Lectures in 1985, they revised it as “To interpret and apply the truth of revealed religion in general and of the Christian in particular including, if thought fit, the relationship between the concepts and practice of law and the principles and practice of religion.”

So, today, I very much want to look at that central topic of “the relationship between *the concepts and practice of law and the principles and practice of religion*” in the light of how “*those Prophecies in the Old Testament*” (as in Deut 24) relate to Jesus' teaching (as exemplified in Matt 5)

Many links with King's College London

But of course, this isn't the first link with King's College London. The Warburton Lecturer from 1845 to 1853 was FD Maurice (and I was delighted to see the portrait of him on the wall there), who once again was a lawyer turned priest: he read civil law at Cambridge in 1823, came here to read for the bar, and returned to Cambridge where he obtained a first-class degree in civil law in 1827. Along the way, he got himself ordained, and became chaplain of Guy's Hospital in 1836, where he took up residence and “lectured the students on moral philosophy”, continuing to hold that post until 1860. (And of course today, the Chaplaincy at Guy's is very much part of King's.)

Maurice was elected professor of English literature and history at King's College London, in 1840 (because at that point there wasn't a Theology Department), and

when the Theological Department was founded in 1846, primarily to provide a cheaper training for clergy, for the great Victorian expansion into Hackney Fields and Islington and so on, he became a Professor of Divinity there as well. Around then is when he became Preacher and chaplain of Lincoln's Inn. Following his *Theological Essays* of 1853, he was dismissed when the then Prime Minister put a lot of pressure on King's to get rid of him – officially, because he quibbled with the King James translation of the Greek word 'aionios', which was "everlasting", while Maurice preferred "eternal", because he said "what kind of God subjects his creatures to everlasting punishment?", quite rightly pointing out that the Greek means 'eternal'. However, I suspect the fact that he was a founder of the Christian Socialist movement and at the time campaigning with his friend Charles Kingsley for the rights of young chimney boys and so on, had a lot more to do with Number 10's disagreement with him than the translation of a particular Greek word. But of course, even King's now honours him with the FD Maurice Professorship of Moral and Social Theology.

Interestingly, a predecessor of his, the Warburton lecturer in 1837 to 1840, was Alexander McCaul who was professor of Hebrew and rabbinical literature at King's in 1841, long before we had a Theology Department, and he also held the Chair of Divinity.

Alongside a list of very distinguished preachers, I see you have my great predecessor, Sidney Evans, who was Dean of King's for some 23 years, and who I have just passed as the longest-serving Dean; he was Preacher of Gray's Inn, but did the Warburton in 1969 and 1970. Also Rabbi Lord Sacks in 1993, Alister McGrath in 2006, and Ben Quash on the King James Bible in 2011 – all of whom have taught at King's. Subsequently, in 2012 Paula Gooder, in 2013 Nicholas Sagovsky, and in 2016 Sam Wells, all of whom I have supported to honorary or visiting positions at King's – so we're doing quite well at supplying you with Warburton lecturers! And therefore it is a great honour to be asked to join this distinguished list in this my final year as Dean of King's College London.

The role of lawyers and judges in reinterpreting text today

In our country we have a threefold system of law, as far as I understand it (and forgive me for trying to teach you to suck eggs): Parliament makes the law, the police enforce it and bring people to the courts for justice, and lawyers and judges interpret it. As far as I understand it (as a mere clerk in holy orders, and therefore this is the one occasion I can say that I understand it as a layman!), judges are not allowed or supposed to make new law – that is the job of Parliament. On the other hand, lawyers and especially barristers from these Inns of Court present interpretations of the law and argue about what the text really means, so the judge can pass judgement, thus deciding the interpretation – or possibly the (re)interpretation - which becomes legal precedent. So, the question is, do we have here a kind of 'legal fiction' where judges

are not meant to be making new law – and yet we all know that new interpretations of the law are needed for new situations today, otherwise the whole thing breaks down and the law becomes an ass.

Donoghue v Stevenson

I gather that a famous example of this is *Donoghue v Stevenson* (1928-32), which I'm sure is familiar to everyone here, where May Donoghue was taken ill because of a snail in her ginger beer. Previously, common law only acknowledged a duty of care to people harmed by negligent acts in specific and limited circumstances; for instance where a contract existed between the parties, or where a manufacturer was making something dangerous, or acting fraudulently. None of which applied to May Donoghue's snail in her ginger beer, and therefore, as the law stood, she could not take legal action over the snail.

However, a solicitor, Walter Leechman, had already brought two cases against another drinks manufacturer, AG Barr, alleging a dead mouse had been found in a bottle of their ginger beer (what it was about ginger beer in those days, I've no idea!) and lost both cases. But he issued May Donoghue's writ against David Stevenson, the manufacturer of the ginger beer – and since all this was happening in Glasgow, it went to the Outer House in 1930, where Lord Moncrieff gave judgement for Donoghue on the general principle, that there should be liability for negligent preparation of food. Stevenson appealed the case to the Inner House, where it was heard by the same four judges who had found against the dead mice case, who allowed his appeal.

Donoghue filed a petition to appeal to the House of Lords where it was heard in December 1931 by Lord Atkin, Lord Thankerton and Lord Macmillan, who found in favour of Donoghue, and Lord Buckmaster and Lord Tomlin, who gave the minority view for Stevenson, the manufacturer.

Lord Atkin of Aberdovey gave the leading judgment that “The rule that you are to love your neighbour becomes in law ‘You must not injure your neighbour’”, (which is an interesting interpretation of love to ‘not injure’), “and the lawyer's question: ‘Who is my neighbour?’ receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour.” This is interesting to compare with Mulligan sermon, where I had to preach on the lawyer's question, “Who is my neighbour?”.

Wikipedia, that fount of all knowledge, so beloved of undergraduates, states grandly, “And with those words the modern law of negligence was born.” But of course, a law cannot be “born” from or by a judge's decision – only “made” by Parliament. Yet the effect of this interpretation of the law of negligence – or rather re-

interpretation - has been crucial for subsequent cases of negligence, as a precedent for cases like *Hedley Byrne v Heller* in 1963, *Home Office v Dorset Yacht Co* in 1970, and *Caparo Industries plc v Dickman* (1990). I have even discovered, and got very fascinated about, the great debate about whether there ever actually existed the “historical snail” in that ginger beer!

Jesus in Matthew 5

So let us turn from the “historical snail” to the “historical Jesus”. In the start of the Sermon on the Mount in St Matthew’s gospel, immediately after the famous Beatitudes, Jesus states some principles very clearly on the side of the conservative view that Law cannot be changed:

“Think not that I am come to destroy the law, or the prophets: I am not come to destroy, but to fulfil.

For verily I say unto you, Till heaven and earth pass, one jot or one tittle shall in no wise pass from the law, till all be fulfilled.” (Matthew 5.17-18)

In the wonderful King James translation, ‘jot’ is a Jacobean transcription of the Greek *iota*, or *jot* in Hebrew, both referring to the letter ‘i’, to the littlest letter; and ‘tittle’, or *keraiá* in Greek, is the mark of a pen, the way in which a scribe would provide punctuation or vowel points.

That’s a pretty strong statement. And then Jesus goes on to say, on no less than six times in the rest of the chapter, “You have heard it was said, but I say to you ...” (Matthew 5.21, 27, 31, 33, 38, 43). In which case, what Jesus seems to be doing is exactly what he’s just said you shouldn’t do, changing the law: he changes ‘thou shalt not murder/kill’ into you mustn’t hate (5.21-26); he changes ‘you mustn’t commit adultery’ into you mustn’t lust (5.27-30); he turns the legal provision for divorce into adultery (5.31-32); he turns false witness/swearing falsely into any kind of swearing oaths (5.33-37) – which makes it very interesting when you get into court and you’re supposed to swear an oath on the Bible where it tells you not to swear oaths! And as for the law of retribution, *lex talionis*, which limited revenge to ‘eye for eye, tooth for tooth’ rather than the previous Mafia-style approach, of ‘you touch my sister, I kill you and burn your house’, which was a way of limiting such escalation of violence, but Jesus changes it to complete non-resistance, turning the other cheek and giving away one’s clothes (5.38-42). The statement about ‘hating enemies’ turns into love of enemies (5.43-47); and then the extraordinary command comes that you must exceed the righteousness of the scribes, the clerks, the lawyers, by being perfect “as your heavenly Father is perfect” (5.48).

What is more, although Jesus says “You have heard that it was said to those of ancient times”, what actually he’s quoting as those of “old times” are in fact three of

the Ten Commandments – “thou shalt not murder/kill”, “thou shalt not commit adultery” and “thou shalt not bear false witness”. The others (on divorce, on the law of limitation of retribution, *lex talionis*, and on the total destruction of enemies) are found in other parts of the Torah, and across the rest of the Old Testament.

So not only is Jesus flatly contradicting the principles he just enunciated that one jot or tittle cannot pass from the law, he is apparently disagreeing with not just the Torah, but the very centre of it, the Ten Commandments. What on earth is he doing?

Old Testament background

In fact, what he’s doing is behaving like any other rabbi of his own day – and indeed how the rabbis and writers of the Old Testament behave.

In these politically correct times, I can only tell jokes against lawyers and barristers by quoting the barrister John Sentamu. Equally, I can only tell jokes about rabbis by quoting the former Chief Rabbi Jonathan Sacks, as mentioned a former Warburton lecturer here, who is a good friend and colleague; in fact, recently Meg and I have edited a big book with him. He’s very fond of saying that ‘where there are two rabbis, there are three opinions’; or ‘did you hear the one about when they rescued the rabbi from the desert island where he’d been alone for a couple of decades, they asked him why he’d built two synagogues, and he said “that’s the one I go to, and that’s the one I wouldn’t be seen dead in”!’. The whole of the rabbinic method is that you quote precedent: Rabbi Aciva says, and Rabbi Yakov says, and part of the rabbinic learning is to learn all of these different interpretations – just like the training of lawyers with all the various legal precedents.

So what Jesus is doing is drawing upon several well established principles for the interpretation – or dare one say (re-)interpretation - of law found within the Old Testament.

Firstly he begins by asserting the **fixed and unchangeable nature of the law** (“not one jot or tittle shall pass away”), and then proceeds, in fact, to change it. And if you look back at our Old Testament lesson, you’ll see that in the Book of Deuteronomy it says at the start of the passage, “These are the statutes and judgements you must observe in the land” (Deut 12.1), and it concludes with verses 28 and 32, “Observe and hear all these words which I command thee, that it may go well with thee ... What thing soever I command you, observe to do it: thou shalt not add thereto, nor diminish from it.” This is a very clear statement: you must not change it, just like Jesus says.

However, the rest of the chapter (Deut 12) is a centralising project in which it makes clear that God can only be worshipped in one place (throughout there it says “the place the Lord thy God shall choose”, and that’s Jerusalem), while previously the

Israelites set up altars everywhere (think of Jacob having the dream of the angels' ladder and taking the stone which had been his pillow and turning it into an altar; Gen 28). What is more, immediately after v.1 about "diligently observing" commandments, there is some very violent language:

"Ye shall utterly destroy all the places, wherein the nations which ye shall possess served their gods, upon the high mountains, and upon the hills, and under every green tree:

And ye shall overthrow their altars, and break their pillars, and burn their groves with fire; and ye shall hew down the graven images of their gods, and destroy the names of them out of that place." (Deut 12.2-3)

Although it sounds like it's about the places of the heathen, in fact it was the different places of the different shrines which the Israelites had built over many years. But in the great reforms of King Josiah of the 600s, everything was centralised into Jerusalem. And so here we have a reading that says don't change anything – and then proceeds to tell you actually that you can now only worship God in Jerusalem.

Secondly, Jesus calls the Ten Commandments, "You have heard that it was said to those of ancient times", and then reinterprets it in a completely new way. Similarly, the prophet Ezekiel talks of an ancient "proverb" that the "parents eat sour grapes and children's teeth are set on edge"; the principle that judgement passes from father to child down the generations. Ezekiel describes this as an ancient proverb, which he then replaces with "only the person who sins shall die" (18.1-9). Jesus' use of 'those of ancient times' avoids specific mention of the Ten Commandments in the same way that Ezekiel dismisses the former principle as an ancient 'proverb'.

Thirdly, Jesus uses well-known Old Testament phrases, like "thou shalt not murder", "thou shalt not commit adultery", and takes the basic rule "be holy as the Lord your God is holy" and interprets as "be perfect as God is perfect" to reassure his listeners that he is using old biblical language. In the same way, Deuteronomy takes the phrase "Take care that you do not offer your burnt offerings *at any place* you happen to see" (v.13), and where the same phrase translates the Hebrew in Exodus 20.24 that you can make an altar in any place that you see, coming straight after the Ten Commandments. ["You need make for me only an altar of earth and sacrifice on it your burnt offerings and your offerings of well-being, your sheep and your oxen; *in every place* where I cause my name to be remembered I will come to you and bless you."]

So is Jesus being deceptive? Actually, he's following typical legal, rabbinic, methods of (re-)interpretation of scriptural text. Of course, there is the question of the 'historical snail'; you can look at the comparable passage in the Sermon on the Plain in Luke's gospel, and "be holy as God is holy" there becomes "be merciful, as God is merciful" (Luke 6.36). Whichever version was said by the historical Jesus, at the very least, here we have an interpretation of Jesus put forward by a well trained

Jewish scribe, namely Matthew, who says at the end of the chapter on the parables, “every scribe who has been trained for the kingdom of heaven is like the master of a household who brings out of his treasure what is new and what is old. When Jesus had finished these parables, he left that place.” (Matt 13.52-53).

The purpose of course in both Jesus’ and Matthew’s and the rabbis’ usage, and one I would commend to you, is to enable the law to speak to current issues through such reinterpretation – rather than abrogation.

Modern examples

A couple of quick modern examples. I’ve spent a lot of time in South Africa, working on the understanding of the Bible both to support apartheid and to defeat it. And it’s odd when I say the word to ‘support’, but the Afrikaners were in fact French Huguenots who escaped persecution in Catholic France, into Holland, onto leaky boats, who finally made it down to the Cape, where they discovered a land flowing with milk and honey, and Cape apples, and wonderful vineyards, and said ‘God has brought us to the promised land, we are like the chosen people in Exodus’. Not surprisingly, they then followed through what the Israelites did in the promised land by enslaving the natives and forbidding marriage with them. However, Archbishop Tutu and the black liberation theology movement also used that same story from Exodus. The difference was, in the Afrikaners’ reading, the Egyptian oppressors represented the French and the British, and they were the chosen people themselves; whereas in Archbishop Tutu and black theology’s version, the Afrikaners were the Egyptian oppressors, and they were the chosen people. So you see how a different interpretation of the same story makes a radical difference.

And that’s been true as biblical scholars have grappled with issues like slavery, which used to be thought was perfectly biblical; over the position of women and leading to the ordination and consecration of women bishops; over the debates about homosexuality and gay marriage - and one has to ask the question, how long the national church can go on asking for exemption from basic legal human rights granted within the legal system of our country. Is further (re-)interpretation of the scriptural text needed here too?

Conclusion

So today we face enormous turmoil in Europe, in the British Isles, in the United Kingdom, even to the threat of the breakup of the UK, and hard borders in Ireland, or the independence of Scotland; the rise of the right and nationalism and demagoguery across Europe, and the threat or even the possibility of the break up of the EU itself – not to mention of course, events on the other side of the pond with President Trump.

We are democracies. We are governed by Parliament who make the law, and judges and lawyers have the huge responsibility to interpret that law in order to give it life in these new situations. In St Paul's Second letter to the Corinthians, he talks about God "who has made us competent to be ministers of a new covenant, not of letter but of spirit; for the letter killeth, but the Spirit giveth life." (2 Cor. 3.6). May that same Spirit bless all your work in (re-)interpreting our legal texts, as lawyers and judges, and bring forth the life of the Spirit. Amen.

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