

## **Sermon: Jesus College Oxford (13/5/18): Faith and Law – N. Doe**

In the name of the Father, Son and Holy Spirit: Amen.

1. It is a great privilege and pleasure to be asked to preach today. I have had such a warm welcome as visiting fellow at Jesus College – from fellows, students and college staff, for which I am very grateful.

2. Four years ago, what the Press described as, ‘A Christian magistrate’, refused to allow a gay couple to adopt a child - on the basis that a child is best brought up in a traditional family with a mother and a father. The Press said the Magistrate considered that he was doing, I quote, ‘the best for the child *with the help of God*’.

3. The Magistrate was disciplined. A Statement of the Judicial Conduct Investigations Office (30/12/14) read: ‘The Lord Chancellor and Lord Chief Justice have issued the [Magistrate] with a reprimand’ as the Magistrate ‘was found to have been influenced by his religious belief and not by the evidence’. This ‘amounts to serious misconduct’; the Magistrate ‘should have recused himself’, withdraw from the case.

4. Whatever the rights and wrongs of the magistrate’s decision, and that of the Lord Chancellor, the case raises questions about the relationship between faith and law. Should faith have a place in the making of law and its administration? Why *would* God be interested in human law? Well, of course, it’s because *God has a passion for justice* - in relations between God and humankind - and in human relations, one with another; this message dominates the Bible.

5. But - we are often *surprised* by Scripture. Today’s readings are no exception. The governors in Babylon and the mob in Jerusalem both feared faith - and the otherness this implied - of Daniel and Jesus.

6. The law of Darius restricted loyalty to faith; the law Pilate was meant to enforce restricted what the religious authorities saw as a challenge to their power. Both Daniel and Jesus acted on their faith - their spiritual convictions - regardless of the legal consequence. At trial, neither offered a defence. The judge Darius applied the law strictly. The judge Pilate saw no breach of the law but yielded to the will of the mob. Both Daniel and Jesus were sent for execution -

despite both judges' reservations. But God did *not* intervene in the Court process – God acted later.

7. If Darius and Pilate sat in court here today, they'd recognise the principle of British law - *religion has no public place in the decision-making of the courts*. The courts separate law and religion. They administer human justice, the changeable political will found in Acts of Parliament, and so on. Courts don't exist to administer God's law – to honour the demands of faith - but to resolve differences: establish facts, apply law, giving remedies/sanctions. This *is* the Rule of Law.

8. The position was set out by Lord Justice Laws in the case of *McFarlane* (in 2010). Giving legal protection to a position because it was based on Christianity or any other religion would be 'deeply unprincipled'; why? (1) 'religious faith' is 'subjective', not subject to 'any kind of proof'; it 'may be *true*', but establishing this is 'beyond' the law 'in the heart of the believer'; (2) it would be 'divisive, capricious and arbitrary', especially 'in a society where all the people [do not] share uniform religious beliefs'; (3) it would mean that 'our constitution would be...a theocracy', 'autocratic', 'dictated to the people, not made by their judges and governments. The individual conscience is free to accept such dictated law; but the State, if its people are to be free, has the burdensome duty of thinking for itself'.

9. Many Christians would agree. The State exists for the temporal good of civil society. The Church has a different function. So: there should be an institutional separation between any church and the State - but both should cooperate in areas of common concern. Christians should obey State law - but perhaps reserve *total* obedience to God.

10. On the other hand, elements of British law suggest that Christian faith has a place in the State's legal system. In both Houses of Parliament, prayers are read daily at the start of business. In the case of *Donoghue v Stevenson* (1932) – about a snail in a bottle of ginger beer - Christ's command to love our neighbour was famously used by Lord Atkin to develop the duty of care in the law of negligence. And in 2002, 'court chaplains' were introduced to courts in England and Wales - for litigants, witnesses, jurors, lawyers, staff, and judges.

11. A courtroom even has semiotic resemblance to a church or chapel. A church has a cross; a courtroom has the royal coat of arms with a cross and the words ‘God and my right’. At the communion rail, we petition God in the Eucharist; at the bar, lawyers plead their clients’ causes. In the pulpit, we testify to the Gospel truth; in the witness box, we testify to the truth of a cause. Ritual too: clerics are ‘Reverend’, some judges, ‘Your Worship’; we stand when clergy and judges enter; in Church we bow to the cross and in Court to the royal coat of arms.

12. In fact, in 2011 the German scholar Heike Jung described lawyers as: ‘priests of the judicial ritual’. The idea is an old one. Medieval lawyers saw law as ‘the art of the good and equitable, of which lawyers can well be called priests’: *sacerdotes*. Today, judges still take a judicial oath, saying: ‘I do swear by Almighty God that I will do right to all manner of people after the laws of this realm, without fear or favour’. But diversity is respected. Hindu judges may say ‘I swear by Gita’; Muslims, ‘by Allah’; and Sikhs, ‘by Guru Nanak’.

13. Above all, God is active in the *consciences* of litigants, accused, lawyers and judges. Christians see conscience as the voice of God, Holy Spirit, shaping our faith and action. Deep within our conscience we discover a law which we have not laid upon ourselves but which we must obey – its voice, ever calling us to do good and avoid evil, sounds in our ear. There we are alone with God. Indeed many UK statutes have ‘conscience clauses’; courts often forbid conduct which is an ‘affront to *public conscience*’; and Lord Justice Laws himself has argued that religious litigants ‘ought to be subject to the voice of reason, and [their] duty to the State to the voice of conscience’.

14. Igor Judge, former Lord Chief Justice, said in 2008: ‘The judicial oath binds my conscience, as it binds the conscience of every judge who takes it’. He means: the *judicial conscience* requires a judge to apply the law. But Lord Kerr, speaking in 2012, took a wider view: ‘that a judge is constrained by no more than [their personal] conscience in deciding [cases] is as fundamental to the health of our system of justice as it is possible to imagine’; especially as judges make ‘policy choices’ and ‘moral choices’ - not just ‘legal’ choices.

15. Respect for the *personal conscience* of a judge may itself be respect for faith. Consciences differ. But if a judge's personal conscience is *the* criterion to decide cases, isn't this taking faith too far? This is debated currently in *Australia*. Various laws there require tribunals to 'act according to good conscience *without regard to technicalities or legal forms*' – the tribunal is free not to apply the law. Some argue this makes decision-making *far* too subjective. Yet, a recent study in the USA applauded judges who decide cases on the basis of their 'personal conscience' rather than the letter of the law.

16. Mark Hedley, a British Family Court judge, explained in 2016 how he had to decide whether to authorise an abortion for 'a seriously vulnerable young woman'. He said: 'For me [deciding] was an agony. In the end I authorised [the] abortion on a classic lesser-of-two evils test'. But he also recognised that when the law gives him discretion – a choice – he is guided by faith. But where it does not, he said: 'A clean conscience and dirty hands need not be mutually exclusive'.

17. Back to our Scripture readings. It was following their faith – the voice of God - which got Daniel and Jesus into court. In Daniel's case, Darius honoured his *judicial* conscience – he applied the law. But his *personal* conscience bit; he neither ate nor slept, and ran to Daniel in the morning. With Jesus, Pilate did *not* honour his *judicial* conscience: he ignored the law; yet he too was troubled by his *personal* conscience, but washed his hands of responsibility. And perhaps his wife shaped his conscience in telling him about her dream.

18. Thinking about law, and encountering it in life - inside or outside court - gives us the opportunity for active engagement with our own, individual, God-given faith and conscience. And delivering justice through law and in court requires obedience to the *united* personal and public conscience. There may well be a wall of separation between faith and law – but, in reality, God is on both sides of that wall.

Amen.