

Lincoln's Inn "Wigs and Mitres" sermon 24 November 2024.

It is an honour to undertake what is for me a new task at the invitation of your Treasurer, my friend and colleague, Michael Briggs. If you cannot hear me clearly at the back of the chapel, please raise your hand and I will try to make my voice reach you.

I recall being taught at school about the emphasis of the Old Testament on observance of the law being in contrast with the radical demands of the Gospel for unqualified love. This dichotomy, of course, was a simplification and did not do justice to the radical teachings of some of the prophets.

As we well know, Christ summarised the law and the prophets in the two commandments:

“Love the Lord your God with all your heart, with all your soul, with all your mind”

And “Love your neighbour as yourself”¹

This formula is both a distillation of the teaching of the Old Testament and a radical demand.

In the Gospel according to St Luke² an enquiring lawyer summarised the essence of the law in this way and asked the critical question, “And who is my neighbour?”.

The response was the beautiful parable of the Good Samaritan, which we have heard this morning, and to which I will return.

In this short address, I wish to share with you some thoughts on another set of differences. I consider some differences between, on the one hand, the developed law of the Roman Empire and the Stoic philosophy which were current at the birth of Christ as a guide to living in society, and, on the other, what I will call the value added by the Gospel.

Christ's message was delivered at a particular point in time in the history of the world, and much – both good and bad - had happened before the start of the Christian era. This has exercised many thinkers in the past. This morning, I look to the difference which the Gospel has made to living in society with others.

Starting with the Roman empire into which Christ was born:

Roman law achieved a great deal in setting out rules by which men and women should live in society. As well as a developed family law and law of succession, and a criminal law, the Roman law of contract enabled people to deal with each other in an orderly way – there was no general theory of contract but a number of individual contracts. Importantly, the law held people to their bargains: *pacta sunt servanda*.

The Roman law of delict, or tort, imposed involuntary obligations on its citizens to compensate others for their wrong-doing.

And the Romans had the *condictiones* and *negotiorum gestio*, which were laws of unjust enrichment; a taxonomy which English law has only recently developed in the work of Goff and Jones and the cases which have drawn on that work.

The great Roman jurist, Ulpian, encapsulated the essence of the law in three precepts: the first was to live honourably; the second was not to harm any other person; and the third was to render each his own.³

¹ Matt 22, vv34-40.

² Ch 10, vv25-28.

³ Justinian, Digest 1.1.10.

The precepts are an admirable basis for the organisation of a society ruled by law.

Roman law underpins much of the law in mainland Europe and has had a profound influence of English law.

There is also, I think, much to admire in Stoic philosophy such as
Its focus on the community or brotherhood of man ruled by a supreme providence.
Its teaching that living according to nature required that one lead a virtuous life, seeking contentment through virtue and avoiding ambition, luxury and avarice.
Its teaching that one should concentrate on what one can change for the better and not worry about things that one cannot change. This included an acceptance without complaint of the inevitability of death. As Epictetus, the Greek teacher of Stoicism in the second half of the first century AD, said: "I must die. But must I die bawling?"⁴

It also promoted human sympathy in a harsh age. Seneca in one of his letters stressed the importance of treating slaves as fellow human beings who lived under his roof, stating that they were "friends, albeit humble friends", and were equally the slaves of fortune as their masters.⁵

Stoicism promoted courage and endurance; it inculcated self-control and self-reliance; it advocated deference and civility in social interactions; it called for upright conduct and just dealing, and simple habits, avoiding luxury.

And it imposed a duty of rationality and obedience to the state, perhaps a two edged sword?

But by the start of the Christian era, Rome had failed to curb ambition; it had failed to preserve its republican government and had fallen into an often brutal autocracy.

This may have provoked the suspicion which one at least of the founding fathers of the American Republic had that Roman law had underpinned autocracy.

Thomas Jefferson unsuccessfully advocated in 1778 that the new republic should adopt as its laws not the then current rules of English law but those of English law in 1756.⁶ That was the year that Lord Mansfield became Chief Justice in England. Mansfield's introduction of rules of the civil law of continental Europe into English law and his consistent respect for the authority of the state aroused Jefferson's distrust.

Another limitation or weakness of Roman law was the maxim that laws fall silent in times of war. Roman customs relating to war (*ius belli*) provided no significant basis for the development of international humanitarian law which, in recent years, has grown out of the Judeo-Christian tradition.

Further, Stoics did not always practise what they preached. Seneca was a tutor and guide of the Emperor Nero, who turned out to be a bad egg. Seneca also endured exile for seducing an imperial princess; he abased himself when seeking a return to royal favour, and he amassed a fortune as a result of that favour.

⁴ Epictetus, "Discourses and Selected Writings" (Penguin Classics (2008)), I, 27. See also Massimo Pigliucci, "How to be a Stoic" (Penguin (2017)).

⁵ Seneca, "Letters from a Stoic" (Penguin Classics (2004)), Letter XLVII.

⁶ Norman Poser, "Lord Mansfield, Justice in the Age of Reason" (McGill-Queens University Press (2013)), pp 396-397.

Turning to the value added of the Christian Gospel, one must recognise that the history of the church, especially when Europe saw itself as Christendom and the church had too much power, shows that it was not only Seneca who did not practise what he preached.⁷ Good and bad continues in human society

Dr Samuel Johnson was aware of the gulf which often exists between preaching and practice: “Sir”, he said, “are you so grossly ignorant of human nature as not to know that a man may be very sincere in good principles without having good practice?”⁸

Indeed so; but, one might answer, without preaching, our practice will not improve.

The Christian Gospel and the Christian church have influenced, directly or indirectly, the law by which we are governed today. The influence has been strong particularly in the formative years of our law, but the Gospel’s radicalism has always been circumscribed by the boundaries of the *role* of law.

Perhaps the most famous example of such direct influence is the dictum of Lord Atkin in the historic case of *Donoghue v Stevenson*,⁹ the snail in the ginger beer bottle case, in which he referred to the Gospel command to love your neighbour and sought to give an answer in the modern law of negligence to the Jewish lawyer’s question of 1900 years before: “And who is my neighbour?”

The legal answer – “you must not injure your neighbour” - falls far short of ordaining the pity of the Samaritan for the person whom he rescued. It was closer to Ulpian’s second precept that we should not harm others. The legal answer he gave is that we are required to take reasonable care not to injure those whom we can reasonably foresee could be injured by our actions.

The law to this day does not impose a general duty in negligence to protect people from harm, whether at the hands of others or by acts of nature. Nor does it require one person to rescue others when they are at risk of harm or have been harmed. The law demands that we take care not to harm or to make matters worse. Taking on the role of the Good Samaritan, the rescuer, the person who makes things better, is a moral duty, not a legal duty.

Nonetheless, the Gospel’s teaching inspires us to seek a better world. We can see this in the historic and inspiring speech of the great American judge, Billings Learned Hand, entitled “The Spirit of Liberty” which he delivered in 1944.

After stating that the spirit of liberty weighs the interest of others alongside its own without bias, and remembers that not even a sparrow falls to earth unheeded, he invoked an ideal of justice. He said:

“the spirit of liberty is the spirit of Him who, near two thousand years ago, taught mankind that lesson it has never learned, but has never quite forgotten – that there may be a kingdom where the least will be heard and considered side-by-side with the greatest.”¹⁰

The idea that we should work for a better society, a kingdom where justice is available to all, is an inspiration, particularly at a time when so many cannot afford access to justice . The ideal lives

⁷ See, for example, the description of the papacy of the Borgia Pope, Alexander VI and the warrior Pope Julius II in Roger Collins, “Keepers of the Keys of Heaven: A History of the Papacy” (Phoenix (2010)), ch 15.

⁸ James Boswell, “A Journal of a Tour to the Hebrides with Samuel Johnson” (Penguin Classics (1984)) p 382.

⁹ [1932] AC 562, p 580.

¹⁰ Much quoted in many sources including his biography by Gerald Gunther, “Learned Hand – the Man and the Judge”.

in the enthusiasm of young lawyers to give pro bono assistance, a practice which we celebrated in Pro Bono Week earlier this month.

More than that, the radicalism of the Gospel in its demand that we help others sets us a very high standard which only a very exceptional people can meet. I certainly do not. It is far more than the law can demand. We are called to feed the hungry, give drink to the thirsty, give hospitality to the stranger in our home, clothe the naked, and visit people in prisons.¹¹ It is here, in omission rather than commission, that so many, and certainly I, fail to meet the demands of the Gospel. As the Preacher said in her sermon recently, we must continue to learn to love. It is our failure to do so that makes the promise of forgiveness invaluable.

A respect for the truth and a willingness to speak truth to power are attributes which predated the Christian era. Several Stoics paid a high price for so doing. But the belief in there being an objective truth is an important teaching in modern western society. The peddling of lies or “fake news” has become all too common in the western political world and there is a post-modern disrespect for objective truth among some elements of the commentariat and more widely in social media. We should not condone a society which treats its public discourse as a matter of competing narratives in which the prize goes to him or her who shouts loudest or who repeats a false narrative most often. We should not forget St Paul’s assertion that “we have no power to act against the truth, but only for the truth”¹²

It is, of course, true that we see through a glass darkly. In a recent radio series on ignorance,¹³ the former politician and writer, Rory Stewart, described human knowledge metaphorically as being only small islands in a sea of ignorance. As I grow older, I increasingly recognise the accuracy of that statement. But that does not exempt us from the pursuit of truth.

In summary, the Christian Gospel helps us play a role in our society through the belief that there are absolute truths, in its call to lead a better life - not just to avoid harming others but actively to do good - and in the hope of a better and more just world. The Gospel’s demands far exceed the precepts of the law, ancient or modern.

Most significantly, our ignorance notwithstanding, we are blessed by the faith that our lives - and deaths - are underpinned by God’s indefeasible love and care. This gives, in the words of a contemporary poet - “a peace that cradles unknowing
As one would cup a rose
In one’s hand.”¹⁴

And we may be inspired by the mystery of the promise that one day we may again enjoy the presence of those whom we have loved, who have loved us, and who have gone ahead of us.

To my mind those things are value added to our lives by the Gospel.

Amen

¹¹ Matt 25, vv31-44.

¹² 2 Corinthians 13, v8.

¹³ Rory Stewart, “The Long History of Ignorance” BBC Sounds. July 2024.

¹⁴ Psalm 28 Redux in Carla Grosch-Miller, “Psalms Redux” (Canterbury Press (2017)).