

TEMPTATION, THE TEN COMMANDMENTS AND TODAY'S LAWYERS

ANTHONY BASH

Solicitor, Bishop of Hull's Chaplain to the Legal Profession

1. INTRODUCTION

Is there an ethical dimension to the practice of ecclesiastical law? The Law Society and the Bar Council prescribe professional standards of conduct, as do certain statutes. Adhering to statutory and professional standards is important for maintaining good order in the administration of the law and the legal system. But are there wider duties and responsibilities that involve more than accountability to the state or one's professional body? Is there also accountability to God, who expresses his presence and identity in the ecclesial communities that ecclesiastical lawyers serve?

This paper is based on a sermon preached at the Legal Service for the County of the East Riding of Yorkshire.¹ It offers some reflections on the questions posed above, set in the wider context of the moral duties of *all* lawyers.

2. TEMPTATION

Immediately before the start of the public ministry of Jesus, Jesus was baptised in the Jordan by John. The baptism has been variously interpreted as being in the nature of a call, or a confirmation of a vocation already accepted or a commissioning from God,² ending with a voice from heaven affirming the divine identity of Jesus—and so affirming implicitly the divinely given task of proclaiming the kingdom of God. Jesus then spent forty days in the wilderness, facing—and, very significantly, resisting—temptation. The account of the temptation of Jesus occurs immediately after the baptism and is recorded in the three Synoptic Gospels.³ The Gospel writers include the temptations in their accounts to affirm that, although Jesus was divine (as his baptism showed), he was also fully a human being⁴ and so subject to the same pressures, temptations and longings of all other people. The Gospel writers also include the story to point

¹ The sermon was preached on 9 March 2003 at Beverley Minister, before the High Sheriff, Mr R Antony Byass, who chose the readings on which the reflections in this paper are based.

² See e.g. M D Hooker, *The Gospel According to St Mark* (London: A & C Black, 1991), p. 44.

³ Matt 4 : 1–11, Mark 1 : 12, 13 and Luke 4 : 11–13. Other examples in the Gospels of temptations that Jesus faced are in the Garden of Gethsemane (Matt 26 : 36–46, Mark 14 : 32–42 and Luke 22 : 40–46; see also Heb 5 : 7ff which probably alludes to these passages). The Gospel of John does not have an account of the temptations of Jesus.

⁴ The union of the divine and human natures in the one person, Jesus Christ, is called 'the hypostatic union'. This notion was definitively expressed by Cyril of Alexandria and incorporated into the statement of the catholic faith (called 'the Definition of Chalcedon') made after Cyril's death by the Council of Chalcedon in AD 451.

out that here, as elsewhere, Jesus *could* have reneged on the standards, duties and *modus operandi* of his God-given ministry, and discharged it incompletely, inadequately or inappropriately—but did not.⁵

These observations have implications for today's lawyers. Lawyers have, by virtue of their profession, an office or task and will, like Jesus, faced day-by-day many temptations. Since Jesus was tempted, *a fortiori* so will today's lawyers. Lawyers may be tempted to violate their professional standards—for example, by covering up mistakes, by cutting corners or by doing a less than thorough job. And for some, there may be the temptation sometimes to 'bend the rules', or even to lie and cheat.

Besides the corrosive effect of moral compromise on those who succumb to temptation, such compromise may also affect a wider group of people. So, for example, lawyers may choose short-term expediency to save face—but they may thereby also reap long-term destruction not only for themselves but also for those whom they have been appointed to protect and defend. It is the case that the continued stability of modern society depends in part on a legal system that is administered by people who are beyond reproach and who do not compromise the very system they are appointed to uphold. And this is as true of those engaged in ecclesiastical law as any other branch of the law.

Lawyers are daily faced with moral choices—and the moral choices that lawyers make in their professional capacity are likely to be replicated in moral choices made in their personal or private lives, and *vice versa*. People tend to show continuity, and (mis)behaviour in one area of life is likely to be found in other areas. In addition, the effect of moral dereliction, whether in the privacy of a person's non-professional life or at work as a lawyer, tends to affect the esteem the public holds for lawyers—and consequently the efficacy, credibility and vigour of the judicial system that lawyers are committed to administer and uphold. The searing criticisms of Jesus about hypocrites—those who said or taught something different from what they themselves in fact practised⁶—are not what today's lawyers would want to hear made of them.

3. THE TEN COMMANDMENTS

There are two statements of the Ten Commandments in the Hebrew Scriptures.⁷ These commandments contain what might be termed univer-

⁵ There are examples in the New Testament of those who discharged their ministries inappropriately: see e.g. Acts 8 : 9–24, and 2 Cor 11 : 12–15.

⁶ Etymologically, the word means 'play actor' and came to refer to someone who dissembled.

⁷ Exod 20 : 1–17 and Deut 5 : 1–21. For a useful introduction to the Ten Commandments, see E Nielson, *The Ten Commandments in New Perspective: A Traditio-Historical Approach* (London: SCM, 1968) and 'Ten Commandments' by R F Collins in *The Anchor Bible Dictionary* VI 383–387 (New York: Doubleday, 1992). Important academic study of the Ten Commandments has been carried

sally acclaimed axioms of living.⁸ There is no legal or ethical system that to this writer's knowledge in its entirety contradicts the Ten Commandments. The commandments offer a paradigm for living that models truth, honesty and integrity.

The commandments⁹ fall into two broad categories. First come those relating to God: God alone is to be worshipped. Because God is transcendent, no image or representation of God is to be made. If God is referred to, the allusion is to be reverential and appropriate. These are the first three commandments.

The second category of commandments, the remaining seven, refers to society and individuals within it. All people are entitled to a day of rest and recreation, a day for worship each week. Some lawyers have forgotten this to their cost, and many will know of burnt-out colleagues and their neglected families. People are required to care for elderly parents—and modern society has largely forgotten this duty. Murder, adultery, theft and perjury are proscribed without qualification. And, lastly, covetousness is forbidden—that covetousness on which modern society is predicated and which is at the root of so much of what the other nine commandments forbid or enjoin.

Even within the period of the Hebrew Scriptures, there is clear evidence that the rabbis developed and refined Jewish law (such as the Ten Commandments) so that it could apply to new situations. They engaged in juridical processes that both preserved continuity and permitted change, ensuring as a result that the Jewish law remained relevant and a living tradition. Today's system of justice and laws can, therefore, by the same processes also seek to embody those commandments in ways culturally appropriate for the twenty-first century.

But is this the point at which to stop? Is that *all* that the Ten Commandments are offering—a way of living that over nearly three millennia has proved to work, and to work well? Is the only reason for obeying the Ten Commandments a pragmatic and utilitarian one? Is it that

out by Bernard S Jackson (for a list of his publications, see www.legaltheory.demon.co.uk/lib_biblioBSJ1.html) and by Anthony Phillips (see *Essays on Biblical Law*, Sheffield: Sheffield Academic Press, 2002).

⁸ Strictly speaking, the Ten Commandments are not laws for, though they are rules or norms that prescribe a course of conduct, they do not stipulate a sanction for default. On the debate about the place of sanctions in the definition of law, see Lord Lloyd of Hampstead and M D A Freeman *Lloyd's Introduction to Jurisprudence*, 5th edn (London: Stevens & Sons, 1985), pp 264ff. Both law (strictly defined) and other rules that prescribe a course of conduct (such as may be found in commands, ethical systems, codes of conduct, exhortations, and so on) are normative and so related.

⁹ Following A Alt's essay translated as 'The Origins of Israelite Law' in *Essays in Old Testament History and Religion* pp 81–132 (Oxford: Blackwell, 1966), theologians refer to commands expressed as imperatives ('Thou shalt ...') as 'apodictic' and commands based on case law or examples ('If ... then ...') as 'casuistic'. The Ten Commandments are apodictic law.

people should heed and practise them because they offer the best way to live—and that history proves this to be so?

The way the Ten Commandments are presented militates against this approach. There is one very significant sentence in the Ten Commandments that many fail to notice, because of our familiarity—even over-familiarity—with the Ten Commandments. The sentence, the first, reads: ‘I am the Lord your God who brought you out of the land of Egypt and out of the house of slavery’.¹⁰

This sentence, ‘I am the Lord your God who brought you out of the land of Egypt and out of the house of slavery’, strictly speaking, is not part of the commandments: it is the preamble that sets the context for what is to follow. But it is more than a preamble: it offers the rationale as to *why* people should obey the Ten Commandments. That rationale is that God loved his people, rescued them from the squalor of captivity and in the words of Exodus 19 : 5 and Deuteronomy 5 : 3, made a ‘covenant’ with his people, a covenant predicated on God’s loyalty, goodness and commitment.

It is this that gives the answer to the question why the people were to practise the Ten Commandments.¹¹ The people were to obey because God loved them and because God was the one who had saved them from exploitation in Egypt. That the ethical principles were good in themselves was *not* the rationale for keeping the commandments. Rather, obedience to the Ten Commandments was to arise from the grateful response of the people to God. It was to be the willing surrender of people embraced in a covenant made by God with the people.¹²

Men and women today are not the descendants in a genealogical sense of those people with whom God made his covenant. Modern people have not been given the Ten Commandments because their forebears were

¹⁰ It is interesting to note that in the *Book of Common Prayer* (1662) only the words ‘I am the Lord your God’ from this sentence appear in the statement of the Ten Commandments in the service of Holy Communion.

¹¹ This, incidentally, also takes us to the heart of one of jurisprudence’s central problems, namely, that in logic one cannot infer or derive a normative statement from a factual one. Appeal to the moral imperatives of a divine being does not solve the problem: it simply bypasses it.

¹² It is now widely accepted that Judaism was not a religion of works (*pace* Martin Luther, for example) by which one sought to earn acceptance by God. Rather than keeping the law to gain acceptance into God’s covenant, the Jews kept the law in grateful response to the covenant God had already made with them. The question is popularly expressed this way: did the Jews keep the law to ‘get in’ to the covenant or to ‘stay in’ the covenant? The latter is now the widely accepted view. This view of the law and obedience is called ‘covenantal nomism’. See e.g. E P Sanders, *Paul and Palestinian Judaism* (Philadelphia: Fortress Press, 1977), and *Paul, the Law and the Jewish People* (Philadelphia: Fortress Press, 1983). For a brief exploration of the place of Old Testament law in the post-Old Testament period, see A Bash ‘Ecclesiastical Law and the Law of God in Scripture’, 5 *Ecc LJ* 7–13 (1998).

freed from slavery. They live in a different era and with a different history. Nevertheless, people today have the same opportunity to respond to the love and welcome of God. In the words of the New Testament, God so loved the world—each individual and each individual's neighbours too—that he gave his only Son. The result is that whoever believes in God's Son will not perish—perish in the slavery of godlessness and moral turpitude—but have the freedom of eternal life.¹³

Today, the response of a man or woman who discovers what God offers in and through the person in Jesus Christ should be the same as the grateful response of the slaves freed from captivity in Egypt some 3,000 years ago. It is a response that willingly and gladly surrenders to God's way of living. It is a response that results in ethical transformation, moral regeneration and inner sanctification. It is a response that, by its nature, inclines people to yearn to live out the Ten Commandments.

Nevertheless, it is true that not all who were freed from slavery in Egypt were grateful. The response of some was not willingly and gladly to surrender. The Hebrew Scriptures do not hide that there were some in the crowds who obeyed only outwardly and reluctantly. They were the ones who kept the Ten Commandments when they had to—when they were seen—but who, when they had the chance, did what they wanted. So, for example, when Moses was out of the way, they worshipped the Golden Calf.¹⁴

People have a threefold choice. They can either obey the Ten Commandments on pragmatic and utilitarian grounds, on the basis that time has proved the Ten Commandments to offer the best way to live. Such a reason may be good, but it is certainly not the best. Or people can obey out of a legalistic, rulebook mentality. That, too, may be good, but it is also not the best. Or they can obey the Ten Commandments—and the words and teachings of Jesus Christ—in gratitude for the great kindness and mercy that God has shown them, kindness and mercy that welcome them as unworthy failures into God's family and kingdom. Not only is this good, but also it is the best.

4. CONCLUDING OBSERVATIONS FOR TODAY'S LAWYERS

The moral duties of lawyers arise not only from the standards required by professional bodies and statute but also from the rigorous and discerning ethical demands of Judaeo-Christian biblical traditions. These traditions do not set out how modern lawyers should practise, but they offer the coordinates for doing so. Ecclesial communities continue to explore how those commandments may be put into practice in the circumstances of modern life. It is the case that *how* and *why* lawyers do what they do may be as important as *what* they do. Adhering to the ethical demands of Judaeo-Christian biblical traditions is *per se* worthwhile; doing so in the

¹³ John 3 : 16, here given in amplified and elaborated form.

¹⁴ Exod 32 : 1ff.

context of participation in the faith of the communities to which the ethical demands were formerly delivered (and in which they have been latterly retained and developed) is better. Either way, lawyers would not want said of them, as Jesus said of the scribes and Pharisees, 'Practise and observe whatever they tell you, but not what they do'.¹⁵ For those who do not practise what they purport to promote are termed by Jesus 'blind guides', 'hypocrites' and 'fools' and on them woes are pronounced.¹⁶ Better by far is congruence of all aspects of one's life—work, faith and recreation—so that, as in the case of Jesus, what a person does is a paradigm of what a person believes, and *vice versa*. For, then, it will truly be the case that such people will be known (that is, they will be known for who they truly are and in what they truly believe) by the actions that they take.¹⁷

¹⁵ Matt 23 : 2.

¹⁶ Matt 23 : 13–36.

¹⁷ A paraphrase of Matt 7 : 20.