



Lawyers' Christian Fellowship Newsletter

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July 2005

**Connecting Faith
and
Legal Practice
a short course**

Presented by



Macquarie Christian Studies
Institute

Join facilitators
Gordon Preece
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Naomi Stafford
Christopher Clark
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for details of the course,
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**Applications Close
8 July 2005**



10th AUGUST 2005

**BREAKFAST WITH
JONATHAN AITKEN**

Journalist, banker, parliamentarian and prisoner

See opposite for more information.



THE TEN COMMANDMENTS

In 2003, Judge Roy S. Moore, Chief Justice of the Supreme Court of Alabama lost office as a result of legal action. His offence was the insertion of a granite block weighing more than two tons in the rotunda of the judicial building: on the block was inscribed, among other things, parts of the ten commandments. He campaigned for office in 2000 with the slogan, 'the ten commandments judge'.

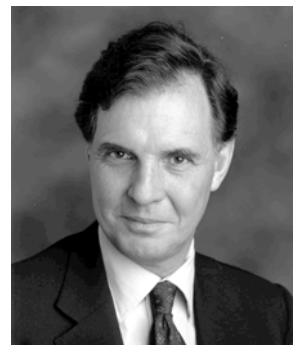
A fascinating tale, not least concerning the methods of appointment and dismissal of members of the judiciary. What interests me, of course is the Judge's project of inserting the ten commandments literally and symbolically into the public square. He is receiving considerable support from a group calling itself 'The Foundation for Moral Law'.

There is no doubt that the commandments are given a special status in the Bible. They are

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HEAR JONATHAN AITKEN'S STORY— BREAKFAST 10 AUGUST 2005 FROM PARLIAMENT TO PORRIDGE

Educated at Eaton and Oxford, the son of a parliamentarian, after an initial stint as a journalist Jonathan followed his father into parliament in 1974. In 1992 he moved to the front bench and eventually to the position of cabinet secretary even being heralded as a future leader of the conservatives. By 1999 he found himself serving again — this time at Her Majesty's pleasure having been sentenced to 18 months for perjury.



By 1999 he had also moved from being a Sunday believer to having a passionate commitment to Christ. Now Jonathan is a director of Prison Fellowship International, actively involved in the Alpha organisation and pursuing theological studies.

Jonathan has just finished Charles Colson's biography and has spoken around the world. His is a powerful and entertaining testimony of God's grace at work in the face of adversity. Jonathan will join us for breakfast on the 10th August. This is an ideal opportunity to invite a friend. Invitations will be forwarded to members shortly.

Jonathan's visit to Australia is being sponsored by Prison Fellowship and Alpha.

associated with one of Scripture's greatest heroes, Moses; they were actually inscribed by God himself on the tables of stone; they are referred to with some frequency; they have an absolute character, which attracts in a relativistic world. They are comprehensive: the first asks us for utter loyalty to one God, the second deals with our use of creation, the third with our relationship with this one God, the fourth and following deal with the great realities of time, family, life, sex, property and language; the tenth, like the first, challenges our inner lives. Here, if nowhere else we reach the bedrock; an absolute, unassailable guide to life; an unchallengeable, unchangeable set of instructions from the Maker. Good old 'laws' rather than weaselly 'values'.

Oddly, then, they are not as familiar as they once may have been. No doubt we could establish the text from the memory of this congregation, but we may need to pool our resources to do it. I say this on the grounds that when I once tested a class of theological students by asking them to write down some element of each of the commandments, not necessarily in order, the results were lamentable. Many failed, and one person claimed to know none at all, though whether that was defiance or ignorance I could not establish. Others seemed to treat the exercise like an exam of ten questions with the familiar rubric: attempt four only.

Now I am not sure whether you lawyers want the ten commandments, or even part thereof. I seem to remember one 18th century judge saying that the commandments were the law of England. But that was a long time ago, and to tell you the truth, I am not sure that I want them either. At least I am not sure that I want them, unless they are put back into context in the Bible. The absolute needs to be relativised. Let me make these five cumulative points.

First, the commandments changed form even in the lifetime of Moses. If you examine the earliest form we have in Exodus chapter twenty, it is not the same as that in Deuteronomy 5. I am not saying that the essence is different, but there are small alterations. Some appear to reflect the fact that the people were now about to move from being nomads to being settlers. But one is theologically significant. In Exodus, the people are told to take their Sabbath rest as a memorial of the rest God took on the seventh day of creation. In Deuteronomy the motive is as a memorial of their redemption from Egypt when God released them from slavery. In short, the meaning may have been settled, but it was open to translation for a new day.

Second, the commandments include the address, and the address does not seem to include many of us: 'I am the Lord your God, who brought you out of the land of Egypt, out of the land of slavery. You shall have no other gods before me.' When the commandments are abstracted from the Bible, installed on granite blocks or taught to children, this first commandment seems to be all about monotheism, the one-God-only philosophy. We miss the fact that it is the LORD, Yahweh, who is speaking, a God who has revealed his name, kept his promises and performed certain actions. Especially we miss the fact that the commandments are part of a solemn contract, a covenant between God and this people Israel, not any people nor all people. We turn frightening religion into safe ethics.

Let me hasten to say that the Bible itself claims that the law of Israel will be admired among the nations as it has been

in fact. Likewise the Bible itself sees all the peoples as bound to keep this law in some sense. But it was not given to all, and it certainly was not given to Israel so that by keeping it she may somehow be holy enough to approach God. The genius of biblical religion is that God has approached us, despite our failures. God saved this people, bound them to himself and set out for them a path of wisdom. It would all be meaningless in the abstract.

Third, the commandments do not and cannot stand on their own, even as a system of law. At one stage in the life of Israel, they were indeed part of the national law, what we would call the civil and criminal code. But they never stood in lofty isolation. From the very beginning they were accompanied by what I call (if you forgive my legal innocence) 'case-law' – all sorts of legal material in which the aphoristic sayings of the commandments are put to the test in real life situations and so defined and extended, applied, shaped and moulded.

The minute you allow for that, however, the evil human heart begins to practise nit-picking legalism. This is the wowsler principle at work. On its own, such law enables us to define away our obligations; we do ethical damage control; we lower the bar to our capacity; we do law and lose justice. So, if like Judge Moore you think that it would be good to lay down the law of God, you are bound to remember that the law of God itself contains two other laws, which summarise it with a sort of terrifying simplicity: you are commanded to love God with all your heart and soul and mind and strength, and to love your neighbour as yourself. However we are to apply the law of God to ourselves, it is to be in favour of God and in favour of the neighbour.

No doubt you remember Chariots of Fire, the film about the remarkable Eric Liddell, who refused to run on a Sunday even for gold. You may not realise that years later he did participate in Sunday sport – when he was in charge of children in a concentration camp and the children needed to be cared for. Here was a man who fulfilled the law in love: he applied God's law in favour of his neighbour.

Fourth, something immense has happened in world history to make the commandments as originally stated need significant translation. The Bible itself says: 'For the law was given through Moses; grace and truth came through Jesus Christ' (John 1:17). The commandments have to be drawn through the translation grid of Jesus Christ. Notice that I said, 'translation,' not 'repeal' or 'wholesale alteration'. Moses still matters. The path to human freedom is not found by following the dictates of the human heart as against the law of God. The law of God is good; indeed, following the law in the service of Jesus Christ is liberation. That is the testimony of Eric Liddell.

Think of the commandment to rest on the seventh day, the Sabbath. Already the Old Testament had made this a memorial both of creation and of redemption. The whole idea of a regular rest day is so good for us that we all know that we should practise it. We are created like that. Under the impact of Jesus and his resurrection the early Christians turned this into the first day of the week and filled their gatherings with faith, hope, love and joy.

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Of course the loveless nit-picking wowserish legalists have turned law into heaviness. They have forgotten that Jesus said, 'the Sabbath was made for man, not man for the Sabbath.' They have turned rest into repression; they have turned the joy of resurrection into the deadly hush of their solemn assemblies.

Neil Marks, the talented cricketer of an earlier generation, speaking of Sydney in the 1940s, recounts 'Sunday was the day of rest and worship, so said the Bible, and the church establishment of Sydney town did their utmost to make sure that after the morning service their God-fearing clientele journeyed home to prepare for grace before Sunday lunch. In the afternoon, in a subliminal way, the churches forbade any participation in organised sport although a visit to your maiden aunt's home for a cup of tea and an examination of her newly completed quilt was tolerated. Thus I would go to...Sunday School in the early morn and for the rest of the day kick a ball by myself in the backyard, an act which, in itself would probably be regarded as a sin by the town's evangelical arbiters of public taste.' (My Sporting Heroes, by Greg Growden, Random House, 2004, p 191). He is exaggerating; essentially he is right; as a descendant and admirer of those evangelical arbiters of good taste, I'm sorry; we were wrong. We did not apply our Bibles well enough.

Fifth, from our perspective, the commandments deal with sin more than crime. Of course, it is a crime to murder and steal and bear false witness. There have also been crimes of adultery and blasphemy and Sabbath breaking. But the commandments themselves show that they were not intended to function as a criminal code as such. The first commandment can only be fulfilled by a heart in love with God, and the last commandment can only be fulfilled by a heart of love for the neighbour. Murder may be a crime; but there is no human jurisdiction which can make covetousness a crime with any hope of a successful prosecution. Indeed, it would place all of us in the dock.

The sin of covetousness is invisible, although its miserable results are visible everywhere. It is an evil desire – perhaps of avarice, lust, envy, malice or selfish ambition that rises unbidden in the soul and is welcomed. Sometimes it is acted out; usually, for whatever reason, often fear of discovery, we suppress it. But its mere presence is an eloquent testimony that something is wrong; in the words of the perceptive prophet, 'the heart is desperately corrupt'. It is because Shakespeare understood human nature through God's law that he could describe the human personality so powerfully; it is because we have forgotten God's law that we no longer even have the verbal categories to describe what is going on in our own souls.

We do not need to turn to Shakespeare or the other old masters of human nature to understand what men and women are made of. Part of the grace and truth that Jesus Christ brought into the world was a profound respect for the Law of Moses. In the face of the wowser principle which imagined that it may somehow keep the law of Moses

through limiting its interpretation, he strengthened it; he extended its reach; he empowered it. He took an amateur boxer and turned it into a professional: Murder, he said was committed when we were angry with another; adultery when we had lust in our hearts; the actual deed was only a manifestation on an existing hidden fault.

The Bible tells us that God's law is good and it also expects us to love God's law. Frankly, I find this rather hard. Presumably Judge Moore wanted the commandments to be in the round to assure litigants that their causes would be tried in accordance with absolute principles. I think that if I saw the ten commandments in the foyer, I would quietly steal away, for any appeal to one of them must involve an appeal to all – and then where would I be? Perhaps their forbidding, condemning face is one of the reasons why people steal away from God. And yet – grace came through Jesus Christ.

We are told that he kept the law. Certainly, his life was love – he modeled it, inspired it, portrayed it, lived it. If love is the fulfillment of the law, the law does not condemn him. He was brought down condemned, it is true; but it was human

injustice which brought him down. Wowzers were there; corrupt people were there; the weak and the foolish were there; the vindictive and the heartless joined in – we were all there. His death condemns us all. But in his death, and through his death, and new and powerful divine forgiveness is let loose in the world.

There is a story that W.C.Fields, who had not lived a blameless life, was once found studying a Bible. Charged with this offence by an astonished onlooker, he drawled, 'I'm looking for a loop-hole'. In fact, his loophole was there: the transformation involved in making Jesus Christ the Master of his life and the arbiter of his destiny. The Bible puts

it this way: through Jesus Christ we are no longer 'under the law'; we are instead, under grace, mercy and forgiveness. And that is a possibility, no matter how far we have strayed or how fully we have transgressed. Even wowzers are not beyond repentance.

The ten commandments still have their uses: I should hate to be in a world without them; I still need their wisdom about how to live the human life. In fact we would all be far happier and better men and women if we endeavoured to keep them. They have had, and continue to have, a powerful positive impact for good in society. But they are not absolute; they do not have the last word over Jesus Christ and those in him. Without God's law exposing our follies, we would not appreciate God's grace. But when we do stand revealed with all our follies, what a great thing it is to know that God's great last word for the human race is not 'absolute law'; it is 'amazing grace'.

This Opening of Law Term Address was presented by the Anglican Archbishop of the Diocese of Sydney, Rev Dr Peter Jensen on 31 January 2005. Dr Jensen has also been invited to give this year's Boyer Lectures.



Vilification Update

Despite an attempt by Pastors Scot and Nalliah to injunct Judge Higgins and prevent him from handing down his penalty the penalty in the Catch the Fire ministries case (see our January newsletter for a detailed discussion) has now been handed down. The penalty requires the publication of a formal apology in a specified position in the Age and Herald Sun newspapers and on the website of the Catch the Fire Ministries. It also requires that undertakings be given to the Tribunal within thirty days by the defendants in the following terms:

Not to make, publish or distribute in Victoria or other State or Territory of Australia (including on the internet), whether in writing or orally and whether directly or indirectly, any statements and, or alternatively, information, suggestions and implications, to the same or similar effect as those found by the Tribunal to have breached the Racial and Religious Tolerance Act 2001 (Vic) (see paragraphs 80, 379, 387, 388 390);

Paragraph 80 is relevant as it sets out the statements that Judge Higgins found Pastor Scot made . However that same paragraph goes on to say:

I also make the point that I believe it is important to have regard to the cumulative effect of the statements made by Pastor Scot. One utterance standing alone may not be significant, but when regard is had to the totality of what was said, it makes the complainant's case cogent.

The difficulty is that, if it is a cumulative effect that is problematic is it reasonable to restrain each and every statement? Another problem with the penalty is that it treats Pastor Scot and Pastor Nalliah in the same way even though they made different statements and offended the act in different ways.

Paragraphs 379, 387, 388 and 390 however are not relevant. The latter two set out the judges position on the law and paragraph 387 states:

Interpretation of the Qur'an by Pastor Scot represented the views of a small group of fundamentalists, namely, Wahabbists, who are located in the Gulf states and who are a minority group, and their views bear no relationship to mainstream Muslim beliefs and, in particular, Australian Muslims.

Meanwhile Pastor Nalliah has indicated that he will not be making an apology and is prepared to go to prison.

Pastors Nalliah and Scot and Catch the Fire Ministries appear not to have appealed the decision of the Tribunal, but rather to have made an application to the Supreme Court of Victoria seeking relief in the nature

of mandamus, prohibition, certiorari and various declarations. If this is correct then it is unfortunate because it will mean that the legal issues arising from the Tribunal's decision will not be dealt with by the Court of Appeal in the near future.

New publication

The Legal System and Theology

The May issue edition of Interface: A Forum for Theology in the World explores the relationship between the Legal System and Theology and feature the following contributions:

Churches, Law and Clergy Abuse
Garth Blake

A Bill of Rights and Freedom of Religion
Frank Brennan SJ

Religious Vilification
Mark Durie

Lawyers' Values
Adrian Evans

Muslims, Headscarfs and Freedom of Religion
Nicky Jones

Theological Basis for Restorative Justice
or Biblical Justice
Chris Marshall

Freedom of Religion and Australian Constitutional Law
Reid Mortensen

Connecting Gospel and Legal Practice: Lawyers' Stories
Christine Parker

If you want to obtain a copy of this journal please forward a cheque payable to Australian Theological Forum for \$24.00. including postage to PO Box 504 Hindmarsh SA 5007.

For more information or details of other issues of Interface please visit www.atf.org.au

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