

‘The Christian Heritage in English Law’

1. Christian social reform in the C19th

Good evening, my name is David McIlroy and I am a barrister. What are you lot doing here? I understand that you are students. How old are you? Why aren't you working down a mine or up a chimney?

Do you know why you aren't working down a mine or up a chimney? Do you know who you have to thank? Here's a clue.

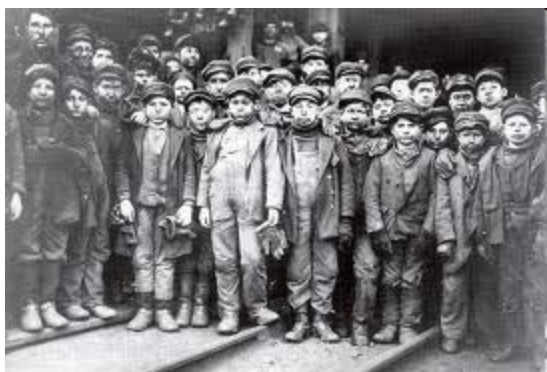


Do you know what this is? Everyone thinks it's called Eros. But it's not Eros, the god of love. This is the angel of Christian charity. Do you know where it is? It's to be found at Piccadilly Circus. And do you know where the statue's arrow is pointing? It's pointing down Shaftesbury Avenue. The statue is a monument erected to honour the Earl of Shaftesbury.

Theatre Land
SHAFTESBURY
AVENUE W1
WEST END LONDON

The Earl of Shaftesbury sounds like a pretty posh nob, and he was. But he was also the greatest social reformer England has ever seen. The first piece of legislation Shaftesbury was involved in was the reform of the lunatic asylums, institutions which were not fit to be called mental hospitals. These were places where most of the patients had to sleep naked on straw, and where they were chained hand and foot over the weekend, and left with little food, whilst the keepers went home for the weekend. When the keepers returned on Monday mornings they would take the patients outside, whether it was warm or freezing, and wash them down in a tub just as if you were cleaning a dog. The law he passed introduced Commissioners in Lunacy, like the Inspector of Prisons, who would go into the lunatic asylums to inspect the conditions there. Shaftesbury became chairman of the Commissioners in Lunacy and spent the next 57 years visiting lunatic asylums to check on the conditions there.

In 1842, the Earl of Shaftesbury went to visit a mine. He stood in a bucket and was lowered 450 feet (130 metres) into the ground. He went to see for himself the conditions in which children as young as 6 had to work. He saw small boys who had to lie on their backs in order to chip out coal, and their older brothers who had grown up deformed as a result of having to do that work in such cramped conditions. When he came to the surface again he was covered in coal dust. Having seen the horrors of life in the mines, Shaftesbury went to the Houses of Parliament and introduced an Act which banned children from working in the mines.



Later in the same week when he had been to see the mines, Shaftesbury went to the cotton mills in Manchester and tried to persuade them that their businesses would not collapse if the law were to prevent children from working more than 10 hours a day, 10 hours a day, in the mills.

By 1850, Shaftesbury had not only introduced laws which banned children from working in the mines and restricted their working hours in the mills, he had reformed the law applying to children working in factories so that children were not allowed to work more than 10½ hours a day and had to have Saturday afternoon and Sunday off.



Already in 1840, Shaftesbury had sponsored the Climbing Boys Act. Climbing boys were the child assistants of chimney sweeps, whose job it was to climb up the chimney to clear it of soot. To prepare for their work they were rubbed all over with salt in front of a hot fire in order to harden their skin and if they got stuck up the chimney, their master would simply light a fire in the grate to ‘encourage’ them to struggle enough to free themselves. It was hard and dangerous work, some boys suffocated on the job and others died later of cancer caused by breathing in the soot. The Climbing Boys Act 1840 was not effective but Shaftesbury did not give up and in the Shaftesbury Act of 1875 finally abolished the practice of sending boys up chimneys.

After an outbreak of cholera in 1849 in which thousands of Londoners died after drinking contaminated water, Shaftesbury campaigned for legislation which provided clean, safe water.

Outside of Parliament Shaftesbury was chairman of the Ragged Schools Union, founded in 1844, to provide free education to some of the poorest children. In his lifetime they educated more than 300,000 children. The ragged schools set the blueprint for what would become, 100 years later, the universal education which we all enjoy today.

Why did Shaftesbury do all this? Why did this noble, this peer of the realm, devote his life to the worst off and most vulnerable? He did it because he believed in the most incredible story of them all, the story of Christmas.

The Christian story, the story of Christmas is that God came down to earth in person. Now, if you were God and you were coming to earth in person, where would you want to live? Buckingham Palace?, Beverley Hills? And if you were God and you were going to be born as a baby, where would you want to be born? One of the posh private hospitals? You wouldn't want to be born in a stable, live above a shop and work as a carpenter, would you? Yet that is the Christian story. And from that story Christianity draws the conclusions that God loves the poor just as much as God loves the rich, if not more. The Christian story is of a God who was born as a baby, grew up to become a carpenter and then, when he changed career to become a religious leader, chose to hang out with the prostitutes, the grasses, the gang members and all the other outcasts and misfits of society. Not only that, but this son of God, this Jesus, taught us that everyone is equal in the eyes of God, that we should feed the hungry, care for the suffering and include those who are excluded from society. That Christian story and those Christian values were the driving force behind Shaftesbury's life.

Younger than you were, aged 15, Shaftesbury was walking down Harrow Hill one night. He heard shouting and yelling and drunken singing. He watched four men carrying a rough coffin. One of them slipped and the coffin fell to the ground. The men laughed and swore. Shaftesbury felt sick: 'Can this be permitted simply because the man was poor and friendless?', he thought to himself. From this moment on, he wrote, a conviction grew 'that God had called me to devote whatever advantages He might have bestowed upon me in the cause of the weak, the helpless, both man and beast, and those who had none to help them.'

At a celebration to mark Shaftesbury's eightieth birthday, J.M. Clabon said this: "I think there is no man of this, if of any other century, who has deserved such thanks as the noble earl. The myriads of children who from the tenderest age were kept standing for sixteen hours a day in hot factories – the poor half-clad women who, harnessed to cars in coal mines, used to draw them along low, dark passages – the gutter children of London and all great towns – the uncared-for lunatic – the prisoner in the foreign dungeon – the oppressed of every clime – owe him thanks for exemption from misery. And inasmuch as he did it to all these, he did it to the Saviour whom he always loved so well." *The Times* newspaper said of Shaftesbury that he had "changed the whole social condition of England".

Just one last thing to tell you about Shaftesbury, he combined a zeal for legislative reform with a concern for individuals. He paid for the small boy chimney sweep whose plight had spurred him to introduce the Climbing Boys Act to receive free education.

If you want to know who to thank for the fact that you are getting an education and not having to work, thank the Earl of Shaftesbury, or better still thank the God who inspired him.

2. Rights and Protection

I want to tell you a second story, a much older story. Once upon a time, so the story goes, there was a man and a woman living in a beautiful garden. In the garden there were all sorts of trees and flowers, and all kinds of fruit and vegetables. There was everything in the garden which they could possibly need. The owner of the garden was very good and very kind and he made only one rule. The one rule was that there was a special tree in the middle of the garden whose fruit the man and the woman were not allowed to eat.



One day the woman was wandering around the garden on her own and a talking snake came up to her. The snake said: “Why don’t you eat the fruit from the forbidden tree?” “I couldn’t do that”, say the woman, “the owner of the Garden has forbidden it.” “Why do you think he said that”, asked the snake. “Didn’t he just say that because he knows that it is the most tasty fruit in the whole garden.” And so the snake persuaded the woman to take a bite of the forbidden fruit. It tasted good to her so she took some and gave it to the man. Later that day, the owner of the garden came to visit the man and the woman. When he arrived in the garden, they hid because they were ashamed at what they had done. The owner called out “Where are you?” and when the man and the woman had come out from where they were hiding, he asked them: “Have you eaten the forbidden fruit?” “Yes”, said the man, (though, typical man), he also said, “I only did so because the woman gave it to me.” The owner of the garden was very angry and told the man and the woman that, because of what they had done, they would no longer be allowed in the garden.

Did you recognise the story? Of course, it’s the story told in chapter 3 of the book of Genesis. The man is Adam, the woman is Eve, and the owner of the garden is God. It’s the story of how human beings, who were created good, fell into temptation and brought evil into the world. But did you know how important it is to our laws today?

Church lawyers listening to that story and saw in it a whole series of rights which are fundamental to criminal procedure today. First, did the man and the woman know what the owner’s rules were? They did. They knew that there was one tree in the garden whose fruit they were not allowed to eat. From that, the Church lawyers drew the principle that no one may be punished for doing something which had not been proclaimed to be a crime. In Nazi Germany, they had secret crimes, so you could be arrested and put in prison for something which you did not know was illegal. Not so in Britain, you can go to the law-books and find out everything which is a crime. An important part of freedom is knowing what you can and can’t do.

Second, if there is a god, God must know everything. Yet, as they listened to the story, the Church lawyers realised that God does two things which seem quite unnecessary. When God comes to the garden, he calls out to Adam and Eve: “Where are you?” What’s the point of that? God knows exactly where Adam and Eve are. Then God asks Adam and Eve a question: Have you eaten the forbidden fruit?

The Church lawyers saw three important principles here. If you are going to be charged with a crime, you have to be asked to appear, you have to be summonsed to court. It is a favourite trick of dictatorships to try people in their absence, to convict them without giving them any opportunity to defend themselves. Not so in Britain. In Britain, if you are charged with a crime, you must be sent a summons to appear in court at a particular time on a particular date. The next principle is that God told Adam and Eve exactly what crime they were charged with – they knew that God was accusing them of the crime of eating the forbidden fruit. The other important principle is that God gave Adam and Eve the opportunity to defend themselves. Although God already knew that Adam and Eve had eaten the forbidden fruit, God still asked the question and gave them the opportunity to answer, not only to say whether or not they were guilty of the crime but also whether they had any explanation, any mitigation, which might affect the sentence.

Finally, when God banished Adam and Eve from the garden of Eden, God not only told them what their sentence was but why it had been imposed. From this the Church lawyers drew the principle that when a sentence is passed, the judge must pronounce it in court and give reasons why this particular sentence has been imposed.

At the heart of what it means to live in a free society is to know that you will only be arrested and charged if you have done something against the law, that you will be tried in public, that you will be given the opportunity to defend yourself, and that you will only be convicted if guilty, and that you will be given a sentence which is reasoned and reasonable.

For all of those things, we have what Christian lawyers did with a story in the Jewish Bible to thank.

3. Rulers are not above the Law

There is one more important contribution to English law and to living in a free society which I want to draw your attention to this evening. Do you recognise this man?



What's the big news in his life this week? He's just become President of Russia, again. Do you think the elections which saw him become President again were free and fair? Do you think that there are any restrictions on his power? Do you think he has to play by the rules?

Do you ever watch the weather forecast? Aren't they always saying things like this: this has been the hottest summer since records began, or this has been the driest winter since records began. Do you ever find yourself wondering, when did records begin?

Lawyers know exactly when records began. We can trace the beginning of records to 6th July 1189. The reason that is when records begin is this. Can anyone remember when the Normans conquered England and won the battle of Hastings? 1066. When William the Conqueror became king of England he applied a system of feudal law which worked like this. You lived on a piece of land which was owned by a lord of the manor. The lord of the manor made the rules which applied to everyone who lived on that piece of land. If you didn't like the rules, you were stuck. You couldn't challenge the lord of the manor's decision and, worst of all, you were tied to the land and couldn't move to another manor to escape from your lord. It is a system which looks and sounds a lot like slavery.



In 1154 William the Conqueror's great-grandson Henry II became king of England. Henry II is the person, above all else, that we have to thank for English law as we know it. If it wasn't for Henry II we would have a system of law like the French or the Germans. Henry II decided that everyone should have the opportunity to appeal to the king. He decided that everyone should be ruled by the king's laws. Now Henry II also knew that most people were too poor and too busy to be able to travel to London, to Westminster, to ask for the king's help. So Henry II appointed judges, whose job it was to ride around the country, to where the people were and to hold court in local places, in towns. The judges not only applied rules made by the king they also applied the local customs, which became consolidated as the English common law. By the end of Henry II's reign, the English common law had become established as the law which applied to everyone in England, from the most powerful lords of the manor to the least powerful peasants. Henry II died in 1189 and it is from the end of his reign that legal memory is measured. If a lawyer talks about time immemorial, he means something which happened before 6th July 1189.

But, if Henry II established the principle that the law applies to everyone in England, from the most powerful lord of the manor to the least powerful peasant, there is still one person where there is a question mark: does the law apply to the king, to the ruler, to the president, to the prime minister?



That important question was also answered in Henry II's time though not in the way he expected. In 1161 Henry II appointed his great mate and drinking buddy, Thomas Becket, as Archbishop of Canterbury. He hoped that by doing so he would force the Church to do what he the king wanted. But once Becket had been appointed as Archbishop he cleaned up his act and reformed his lifestyle. Even more alarmingly for Henry, he insisted that the church had its own legitimate rights and that the powers of the king were limited. Henry II was furious. In 1170, Henry II is alleged to have said one night, 'Will no-one rid me of this turbulent priest?' Four knights took this as a cue to go to Canterbury to try to arrest Becket. When he refused to come quietly, they hacked him to death inside the cathedral.

Thomas Becket paid with his life for standing up for the principle that the authority of government is limited. There is an area where you as an individual, can say to the government, get lost! There is an area where a family can say to the government, go away this is our business! There are aspects of religion which are none of the government's business. But even more than that, the lesson which England learned after Becket's death was that government is accountable for its actions: the law applies to the king just as it does to everyone else.

After Becket's death, Henry II was forced by the Pope to do penance, to make a very public apology for his involvement in Becket's death. And, the king was forced to pay for a shrine to Becket's memory to be put up inside Canterbury cathedral.

Do you like going on holidays? Where have you been on your holidays recently? In the Middle Ages there weren't any package holidays and there certainly weren't any flights. It took ages to get anywhere. Instead of holidays people used to go on pilgrimages, a bit like

Muslims do today when they go to Mecca. Where do you think the most popular place was to go on pilgrimage in the Middle Ages?

Becket's shrine was the most important in mediaeval England. For hundreds of years, people travelled to Canterbury, to the place which reminded them that the power of the king was limited.

Four hundred years later that collective memory that the king is answerable to the law had deadly consequences for another king.



King Charles I believed that his authority as king was unlimited. Parliament disagreed, and when the king refused to back down, Parliament declared him to be an enemy of the state and went to war against him. Under the generalship of Oliver Cromwell, Parliament won the war and King Charles I was executed. When his son, Charles II returned as king in 1660, it was on terms that the King would answer to Parliament for his actions.

To this day, a statue of Oliver Cromwell stands outside the Houses of Parliament as a reminder to the kings and queens of Britain that the real power lies with Parliament and not with the monarchy.

Conclusion

I haven't had time to talk to you about all the ways in which Christian ideas have influenced English law. I don't want to pretend that every part of English law is Christian nor that it

should be. Nonetheless, last year was the 400th anniversary of the first publication of the most important book in the English language, the Bible. David Cameron gave a speech to celebrate in which he described Britain as a 'Christian country'. I don't think he was quite right about that. Britain is a country where people who are Christians, Muslims, Jews, Sikhs, atheists, agnostics and others rightly feel at home. But David Cameron was right to acknowledge the profound way in which Christian values have become British values. Some of the most important values which shape the British legal system are Christian values. As we have seen, a lot of the legislation which protects children from exploitation and provides for their education has its origin in the work of a man commemorated by a statue of a cherub with an arrow, the Earl of Shaftesbury; many of the basic rights we enjoy when accused of a crime come from a story about a man, a woman and a snake; and our very belief that government is accountable to the people and that power is limited comes from an archbishop who stood up to a king and paid for it with his life.

8th March 2012