

ECCLESIASTICAL LAW AND THE LAW OF GOD IN SCRIPTURE

ANTHONY BASH¹

Solicitor

Curate, Holy Trinity Church, Hull

The Bishop of Hull's Chaplain to the Legal Profession in Hull

1. INTRODUCTION

The Ecclesiastical Law Society is rightly promoting afresh the study of ecclesiastical law.² In the case of the Church of England, the sources of ecclesiastical law are three-fold: case-law, statutes (and Measures made thereunder) and the Canons of the Church of England. These are the formal sources for identifying and expounding (Anglican) ecclesiastical law. The sources *qua* sources may not be the subject of debate; the debate may only be as to the interpretation of the contents of the sources and whether the sources should be amended. This approach to determining the substantive content of ecclesiastical law reflects the positivist approach to law, such as Bentham, Austin and Hart have set out.³

There is an underlying theological question which also has to be addressed. The question in part arises from the influence of naturalist theories of law, that is, from theories of law which in broad terms state that law is to be identified not only formally (such as from statutes and case-law) but also according to moral and ethical norms. To put the issue in a nutshell, some naturalist theories of law argue that, in some circumstances, a law properly enacted (and so formally identifiable as a law) may, nevertheless, be so repugnant to human conscience as to obviate the necessity to obey the law. In the Thomist scheme of natural law, for example, human conscience is shaped by and subject to *lex divina* and *lex naturalis* (which itself rests on *lex aeterna*). Human laws which contravene *lex divina* and *lex naturalis* are regarded as perversions of laws⁴ and do not bind the human conscience: in some cases there is no moral obligation to obey such laws, unless greater harm than that caused by obeying the laws themselves were to result.⁵

What is *lex divina*? Thomas Aquinas presents it essentially as the revelation of God in Scripture, including the revelation of God in the Old Testament. In the case of the Old Testament, and of Old Testament law in particular, two questions arise: first, what precisely is the juristic and moral status of Old Testament law today; second, on the basis of natural law theory, is ecclesiastical law subject (or should it be subject) to the *lex aeterna* contained in Old Testament law?

The remainder of this article considers some of the findings of scholars in the field of New Testament Biblical studies in relation to these questions. It also, incidentally, offers a brief overview of some of the issues and problems relating to the study of the place of the Old Testament law in the period of the Church of the New Testament as the background to the questions addressed in this article.

¹ This article is dedicated with gratitude and respect to the Bishop of Hull, The Right Reverend James Jones, who has done much to promote my links as a priest with the legal profession in Hull. I thank my wife, Dr Melanie Bash, for her critical reading of an earlier draft of this article and for her characteristically incisive observations on the text.

² See the Preface in R. D. H. Bursell, *Liturgy: Order and the Law* (Clarendon Press, Oxford, 1996).

³ For a description of classical and modified positivism, see H. McCoubrey and N. D. White, *Textbook on Jurisprudence* (2nd ed.), (Blackstone Press, London, 1993).

⁴ *Summa Theologica*, 1a2ae, 92, 114.

⁵ *Ibid.*, 1a2ae, 96, 4. For this discussion of Thomist naturalism, I am indebted to H. McCoubrey, *The Obligation to Obey in Legal Theory* (Dartmouth Publishing, Aldershot, 1997).

2. THE JURISTIC AND MORAL STATUS OF OLD TESTAMENT LAW

A preliminary observation is worth making before I offer a detailed study of some of the specific issues which have been raised. A widespread misunderstanding, based on Luther's theology and personal experience, is that the Jews of the first century sought to 'earn' salvation by keeping the law. Modern research into first-century Judaism has shown this view to be misguided. Obedience to the law in first-century Judaism was seen in the context of God's covenant, mercy and grace. Obedience to the law 'maintain[ed] one's position in the covenant, but it [did] not earn God's grace as such.'⁶ To make an obvious point, covenant preceded law for the Jewish people. Obedience to the law was a necessary condition for remaining in God's covenant mercy; it was not a precondition of receiving it. So long as a person maintained a desire to stay in the covenant, that person had a share in God's covenant promises. Thus 'the intention and effort to be obedient constitute the *condition for remaining in the covenant*, but they [that is, intention and effort] do not *earn* it.'⁷ This relation to the law has been termed 'covenantal nomism.'⁸ Since it was by faith in Christ—and not by the law—that one entered the redeemed community, the law was, in this sense, 'abolished' even though, as I show below, the law had continuing applicability to Christian believers.

This much is clear by way of general background. When one comes to the New Testament itself, the position is very complicated. What immediately becomes apparent from even a cursory reading of the New Testament and of the literature on the subject of the law is, first, that a vigorous—and unresolved—debate is contained within the New Testament on the place, continuing validity and value of the Old Testament law for Christian believers and, second, that a medley of (sometimes even contradictory) solutions to the questions of the debate is offered.

Different terms are used to refer to the same idea of 'the law'. In the New Testament, the word most commonly used for 'law' (in the sense of Old Testament law) is the word *nomos*. Also used are the words *ethos* (custom)⁹ and *entole* (commandment). The association of Moses with the law is common in the Old Testament and not surprisingly the name 'Moses' and words or phrases such as 'the law of Moses' are used in the New Testament as synonyms for the Old Testament law.¹⁰

(a) *The Gospels*

What do the gospels reveal about Jesus' own attitude to the law? In his epoch-making study, *Jesus and Judaism*,¹¹ E. P. Sanders has convincingly demonstrated that Jesus did not consider the Old Testament law 'to be final or absolutely binding'. This is *not* to say that 'the Mosaic dispensation was valueless and had already passed away' or that Jesus taught that the law was to be disregarded or disobeyed. According to Sanders, there is also no basis for saying that Jesus was a reformer of the law or that he opposed or rejected it.¹² Rather, he was a teacher of it, albeit sometimes in a novel way, and sought to live under its authority.

In a nut-shell, Sanders has highlighted the difference between law as someone in twentieth-century Britain might understand it and Old Testament law as it was

⁶ E. P. Sanders, *Paul and Palestinian Judaism* (SCM, London, 1977), p. 420.

⁷ *Ibid.*, p. 180 (Sanders' emphasis).

⁸ The term was coined by Sanders: see, for example, *Paul and Palestinian Judaism*, p. 422.

⁹ For discussion about the word *ethos* and its relationship to *nomos* in the writings of St Luke and his contemporaries, see S. G. Wilson, *Luke and the Law* (CUP, Cambridge, 1983), pp. 3–11.

¹⁰ Other words or phrases are used, such as 'living oracles' (Acts 7:38), 'the word of God' (Heb 4:12) and 'Scripture' (2 Tim 3:16).

¹¹ SCM, London, 1985.

¹² Pp. 267–269.

understood in the first century AD. For in the case of British law, it is final and binding until changed or re-interpreted; but in the case of Jesus, though he taught that not the smallest part of the law would pass away (Matt 5:18), his approach could produce mutually inconsistent results. Sometimes, his teaching had the effect of *extending* the law. Thus he said in Matt 5:33 *et passim* 'You have heard that it was said to the men of old [referring to provisions of the Old Testament law] . . . But I say to you . . .'—and then follow words which considerably enlarge and intensify those Old Testament provisions. In other places, he apparently *contradicted* the Old Testament law: for example, in Mark 7:14ff., Jesus abrogates the Jewish dietary laws and the writer, St Mark, to make the point clear, adds in a parenthesis in verse 19, 'Thus Jesus declared all foods clean.' Thus M. D. Hooker in her commentary on St Mark rightly notes that the debates in St Mark's gospel are about the *interpretation* of the Mosaic tradition yet the 'picture is not entirely consistent, for [St Mark] attributes to Jesus teaching which in effect challenges the Law and frees the community from the obligation to obey the Jewish food laws.'¹³

So what was the status of the Old Testament law for Christians in the period of the New Testament? St Matthew's gospel was almost certainly addressed to a Jewish-Christian community, and R. Mohrlang concludes, in respect of that Jewish-Christian community: 'for Matthew [in his gospel], the law in its entirety remains a valid and authoritative expression of the will of God . . . and all of life is viewed from this perspective.'¹⁴ St Luke in his gospel and Acts had a consistently conservative attitude towards the Old Testament law, seeing it as 'good and continuing into the Christian epoch.'¹⁵ In the view of S. G. Wilson, the Old Testament laws 'are viewed [by St Luke] as the proper and peculiar expression of Jewish and Jewish-Christian piety but out of place if imposed upon Gentiles' though there are in some places (e.g. Luke 10:25f., Acts 10:35, 15:20) implications that 'even among the Gentiles there should be some commitment to Mosaic principles even though there is no commitment to the law in the stricter and fuller sense.'¹⁶

(b) *The Pauline Letters*

The position in the writings of St Paul is considerably more complex.¹⁷ There is a bewildering number of different meanings of the word 'law' in his writings. Usually the word refers to the whole written and oral law. Sometimes it refers only to the ethical prescriptions of the law (Rom 13:8–10; Gal 5:14) or to one particular command of the law (Rom 7:2f.). In other places, it seems to mean 'general principle' (Rom 7:21ff.) or what we today call 'the Old Testament Scriptures' (Gal 4:21). Also baffling is what St Paul means by 'the law of Christ' in Gal 6:2 and 1 Cor 9:21.

Also bewildering and perhaps, in the end, impossible to synthesise are the statements about the purpose and continuing validity of the law for Christians.¹⁸ The law *does* have continuing validity for the instruction of Christians (Rom 15:4)¹⁹—but the law is only temporary and provisional, for Christ is 'the end of the law'

¹³ M. D. Hooker, *The Gospel According to St Mark* (A. & C. Black, London, 1991), pp. 24f.

¹⁴ R. Mohrlang, *Matthew and Paul* (CUP, Cambridge, 1984), p. 19.

¹⁵ P. F. Esler, *Community and Gospel in Luke-Acts* (CUP, Cambridge, 1987), pp. 128f.

¹⁶ S. G. Wilson, *Luke and the Law*, pp. 104, 106.

¹⁷ For an excellent review of the history of scholarly research on Paul and the law, see C. J. Roetzel, 'Paul and the Law: Whence and Whither?' *CR:BS* 3 (1995) 249–275. For a review of work published 1977–1987, see D. Moo, 'Paul and the Law in the Last Ten Years', *Scot. Journ. of Theol.* 40 (1987) 287–307.

¹⁸ The observation which is generally made is that though St Paul was a *coherent* thinker, he was not a *systematic* thinker. It is also widely observed that his thinking, like his letters, is 'occasional', that is, written to address the specific situation which occasioned the letter.

¹⁹ Summed up in the command to love (Rom 13:9f., Gal 5:14).

(Rom 10:4) from which we are now ‘discharged’ (Rom 7:6)²⁰ and to which we are not subject if led by the Spirit (Gal 5:18).²¹ The law is a gracious gift of God, though inadequate either to give righteousness and so save (Gal 3:10, 21) or as a rule of life, for no one can comply with its commands (Rom 2:17ff.). The purpose of the law, St Paul says, is to disclose God’s moral demands and so to bring about an awareness of sin and a juridical basis for its punishment. By its very nature the law even provokes sin and thereby causes (and reinforces) the very thing it forbids (Rom 5:20, 7:5ff.). It is a power from which people have to be delivered (Gal 4:3–7). The law is contained in a written code, which, though glorious, also ‘kills’ and is a *ministry of death* (2 Cor 3:6ff.). Law also—perhaps inevitably—promotes legalism; and legalism, in Paul’s eyes, is dangerous because it focuses the mind on human achievement rather than on the inevitable inadequacy of that achievement in God’s sight. The function of the law is to prepare people for the gospel of Christ: in this respect, it is like a person deputed by a child’s father to restrain and keep in order a young child until maturity (Gal 3:23ff.).

Given these statements, it seems remarkable that St Paul should also call the law ‘holy, righteous and good’ (Rom 7:12), for, although the law discloses the ethical demands of a holy God, it is inadequate to save, promotes and provokes the very things it seeks to eradicate from the human heart and confronts human beings with their helplessness to turn from moral turpitude. The argument of Romans and Galatians is that this is precisely why the law is ‘holy, righteous and good’—because it confronts human beings with their inadequacy and prepares them to receive God’s gift of grace in Christ.

Debate continues as to whether St Paul’s thought about the law can be regarded as coherent.²² Certainly, there are discrete statements about the law which seem to be irreconcilable.²³ The law is both a ‘curse’ (Gal 3:13) and ‘holy, just and good’ (Rom 7:12). In Rom 10:4, St Paul refers to Christ being ‘the end’ of the law—and this has been variously interpreted as meaning that Christ is either the goal or fulfilment of the law, or its end or termination—but earlier in the letter, in Rom 3:31, he asserts that he does not overthrow but upholds the law. In addition, despite his pessimistic description of the law in Romans and Galatians, St Paul remarkably describes himself as having every ground for ‘confidence’ in his pre-Christian days because he was, ‘as to righteousness under the law, blameless’ (Phil 3:6). In 1 Cor 7:19 he says ‘neither circumcision counts for anything nor uncircumcision’—circumcision was, of course, specifically commanded in the Old Testament—‘but keeping the commandments of God’²⁴

A complication also arises as to the continuing validity of the law for Christians. On the one hand, St Paul commends the law as given by God and as helping human beings to see their need for Christ. In some places, St Paul affirms the decalogue as having continuing validity for the Christian. On the other hand, however, St Paul clearly regards aspects of the law as abrogated: for example, Gentile men were not

²⁰ Despite St Luke’s presentation of St Paul as someone living faithfully according to the law (e.g. Acts 21:24), St Paul clearly regarded himself as ‘outside’ the law and not ‘under the law’—though with the baffling qualification ‘I am not free from God’s law but am under Christ’s law’ (1 Cor 9:20f.).

²¹ See also 2 Cor 3:7, 11, 13; Gal 2:19, 3:19–25.

²² H. Räisänen in *Paul and the Law* (J. C. B. Mohr, [Paul Siebeck], Tübingen, 1983) argues that St Paul’s view of the law is a mass of contradictions and contains even deliberate distortions at times (p. 188). Other scholars recognise that there are *some* contradictions in St Paul’s thought about the law but do not go so far as Räisänen. H. Hübner in *Law in Paul’s Thought* (T. & T. Clark, Edinburgh, 1984) identifies a development in St Paul’s thought which accounts for many of the supposed contradictions.

²³ Two proposed solutions are that (i) implicit in the thought of St Paul is the idea of pluriformity in the Church as to law observance, that is, that only Jewish Christians were to keep all the commandments of the law; (ii) St Paul’s concern in writing about the law was to regulate—and preserve—relations between Jew and Gentile in the churches.

²⁴ E. P. Sanders has described this verse as ‘one of the most amazing sentences [St Paul] ever wrote’: *Paul, the Law and the Jewish People* (Westminster Press, Philadelphia, 1983), p. 161.

obliged to be circumcised and Christian people (Jew or Gentile) were not obliged to keep the dietary laws. Elsewhere he posits a general principle that 'all things are lawful' (1 Cor 6:12, 10:23), that is, that Christians are free from the law and not bound by its formalities and technicalities. In addition, in cases where he is referring to moral and ethical issues on which the law speaks unequivocally, he only very rarely explicitly cites the law.

This leaves us with these questions: which laws applied—and why? Which did not—and why?²⁵ It is not enough to distinguish some of the laws as cultic or ritual and others simply as ethical,²⁶ because in the Jewish mind, such distinctions usually do not appear to have existed.²⁷ For example, to honour the Sabbath (the last day of the week) was not only a command in the decalogue (and so commonly regarded as ethical) but also had its origin in the creation story (see Gen 2:2f.). Yet St Paul does not enjoin Sabbath observance on Gentile Christians, seems extraordinarily flexible on the question of Sabbath observance (Rom 14:5ff) and to have supported Christian worship on the *first* day of the week—a working day—instead of the traditional Jewish practice of observing the last day (1 Cor 16:2).

It is also important to note that St Paul does not allude to the decision of the first Ecumenical Council at Jerusalem about the applicability of the law to Gentile Christians (Acts 15:6ff.). The decision of the Council, as reported by St Luke, is that Gentile Christians should not be 'troubled' with the requirements of the law except 'to abstain only from idol food and from fornication, and from strangled meat²⁸ and from blood' (verse 20).²⁹ It seems quite remarkable that St Paul should not quote this decision: in Acts, he is presented as having been at that Council and the decision of the Council should have silenced many of St Paul's critics and detractors against whom he wrote in his letters. In fact, he even disregards it: for example, in 1 Cor 8 and 10, he permitted Gentile Christians to eat whatever was sold in the meat market, whether or not it was idol meat (that is, offered to idols in pagan sacrifice before its sale). And why did he not quote the decision to the Galatian believers who, as Gentiles, sought to live as Jews by keeping the law, even to the extent of seeking circumcision?

(c) *Towards a Synthesis and Solution*

Whether or not St Paul's thought about the law may be said to be coherent and consistent with other parts of the New Testament, five statements—which have continuing applicability and validity to the life of the Church today—may probably be made with a moderate degree of certainty about St Paul's views on the law. These five statements are also consistent with what the four Gospels disclose about the teaching of Jesus on the law:

(1) For Jews, the law functioned as a binding legal code, but with some modifications (such as with respect to the dietary laws and commensality).

²⁵ The question is put sharply by Trypho in Justin's *Dialogue* (9:–31) who accused Christians of being inconsistent in their use of the Old Testament.

²⁶ The author of the letter to the Hebrews does seem to do so. The writer clearly accepts and argues from the continuing authority of the Old Testament and the Old Testament law, yet also asserts that the first (Mosaic) covenant of sacrifices has been abolished and superseded by the covenant made in Christ through the cross.

²⁷ For a description of the scope of the word 'law' as used in the Old Testament, see *Theological Wordbook of the Old Testament*, ed. R. L. Harris (Moody Press, Chicago, 1980), Vol. 1, pp. 403ff., s.v. *tôrâ* (law, teaching).

²⁸ That is, meat from animals not slaughtered by pouring out their blood in conformity with Jewish practice.

²⁹ The words are repeated in Acts 21:25. In both cases, the Western text omits the words 'and from whatever has been strangled'. Some regard the omission as implying that 'blood' refers to homicide, rather than to Jewish dietary laws. If this reading of the text is correct, the Apostles' prohibition is almost identical to the requirement of Jewish law for Gentiles in the pre-New Testament period. In other words, the First Ecumenical Council simply restated the traditional Jewish position on Gentiles and the law. For further discussion of this requirement, see P. J. Tomson, *Paul and the Jewish Law* (Fortress Press, Minneapolis, 1990), p. 50.

(2) For Jew and Gentile, the law did not confer righteousness; only faith in Christ does that.

(3) For Gentiles, the law does not function as a binding legal code.

(4) Nevertheless, there is an important qualification to be made to (3): the law does have a continuing contribution to make to Christian *ethics* for all people.

(5) However, what is not always clear is the extent of that contribution and what are the principles or ways of determining that contribution. There are pointers—such as the commandment to love (Rom 13:8–10; Gal 5:14)—but these only beg the question.

In answer to the first question posed at the start of this article as to the juristic and moral status of the Old Testament law today, we can say that the New Testament gives a qualified confirmation of its continuing validity, although the extent, expression and form of its validity are very difficult to determine. This affirmative answer leads to the second question, namely, whether ecclesiastical law is (or should be) subject to the *lex aeterna* contained in Old Testament law.

3. ECCLESIASTICAL LAW AND *LEX AETERNA*

A number of observations may be made.

First, ecclesiastical law is not inherently or intrinsically different from any other kind of law: ecclesiastical law is simply law which applies specifically to matters ecclesiastical. There is no reason in logic why *lex aeterna* should not apply to ecclesiastical law, given that *lex aeterna* applies to other expressions of law. One might also wish to argue on utilitarian grounds that if *lex aeterna* applies to what one might term 'secular' law, it should apply *a fortiori* to ecclesiastical law.

Second, the difficulty of determining what precisely is *lex aeterna* from the Old Testament means that it is almost impossible to state categorically what its applicability means in practice.

Third, it is very difficult to go from the New Testament understanding of the Old Testament law to the question of its applicability to the life of the Church today because the context of the discussion is so different. In the New Testament, the issue had to do with ethics and the regulation of relations between Jews and Gentiles in the community of the Church. The answer—that the Old Testament law applies, but with qualifications for both Jew and Gentile—is clearly not immediately referable to the question of the relation of Old Testament law to modern ecclesiastical law.

Nevertheless, what is clear is that *all* people stand in some relation of obligation to Old Testament law and, by extension, so do the communities and institutions which they form and have the responsibility to regulate. This, of course, includes the Church and its apparatus for government and law. This is to restate the idea of covenantal nomism in its new covenant (that is, New Testament) form.

Finally, in relation to the Old Testament law, the New Testament usually presents its claims upon human conduct in general terms (such as to love God, to show mercy and so on) rather than in the form of detailed description or legislation. Such detail as there is may be said to be what was regarded as appropriate applications of the general principles—but those applications are sometimes situation-specific or time-bound and so not necessarily applicable today. Herein lies the problem with many legislative enactments: the very act of expressing in legislative form what is regarded as a morally good end or aim sometimes obscures the desired end or aim by shifting the focus of attention to the enactment itself. Legalism and the potential to avoid or evade the desired end can result. And even the morally good end or aim can itself become out-of-date or irrelevant.

Probably the best that one can say is that ecclesiastical law must, directly or indirectly, promote love for God and love for other human beings in the context of mercy and justice. Certainly these moral fixed-points are *sine qua non* for ecclesiastical leg-

islators. Laws which fail to promote these basic Christian and Old Testament qualities may risk being regarded as repugnant to human conscience and some may feel constrained to disregard them. While this is very unlikely to be the case in regard to ecclesiastical law, it is something which those responsible for the framing of ecclesiastical law should bear in mind.³⁰ I suggest that, like the secular governing authorities to which St Paul refers in Rom 13:1ff. and 1 Tim 2:2f., legislators are the servants of God to promote the good of other human beings. If they discharge their task well, God will give us grace through their work 'to live a quiet and peaceable life in all godliness and dignity'.

³⁰ A possible example might arise if there were imposed on clergy an obligation to re-marry in church persons who had been previously married and either or both of whom had committed adultery.