

THE JUSTICE SERVICE, SALISBURY CATHEDRAL, 2013

It is a great pleasure to be here this afternoon. My many thanks to the Dean and to the High Sheriff for inviting me. And many thanks, on behalf of us all, to the choir for the music with which they have beautifully enhanced this service.

Bishop Nicholas, we share an odd ecclesiastical ancestry. In 1704 the young Thomas Sherlock became Master of the Temple; and thirty years later, Bishop of Salisbury. He was quite happy to hold both posts at once, and did so. Later still he was, it is said, offered either London or Canterbury. A rhyme summed up his dilemma. A boatman on the Thames at Temple Pier, half-way between Westminster and the City, asks Doctor Sherlock which way to take him, up stream or down?

“Which way?” said the Doctor, “why, fool, with the stream!”
St Paul’s or Lambeth, ’twas all one to him.

He chose London; and remained Master of the Temple too.

Those were the days! Long gone. You could not stay in London, Bishop, when appointed here. London’s loss is Salisbury’s gain.

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6 January 1215: Epiphany. After a hurried Christmas at Worcester, King John resorted to London’s Temple, his HQ at the western end of London, close to the City but under the Templars’ and not the City’s power. There surely he was safe. Well, yes and no. A delegation of barons, armed and ready for war, confronted the King. These rebel barons were by now specifying particular, practical demands, and wanted the King to confirm them *in an enforceable charter*.

Rebellion against a king was not unusual, but there was in 1212-15 no obvious rival to claim, or to place on, the English throne. (John had murdered the only plausible candidate, his own nephew Prince Arthur.) At the Temple these barons were rallying for the first time round a *charter*, specifics raised to the level of principle. The King

realised the threat to his own power; such a charter would be a rival centre of allegiance and of sovereignty. He demanded in response that the barons swear fealty to him and undertake in writing never to demand such liberties again. Neither side gave way.

The country teetered on the edge of civil war. William Longspee, Earl of Salisbury and the King's half-brother, was one of the great magnates of the West who remained loyal to the King, marshalling royal troops here in Salisbury.¹

At the Temple the barons defined their demand: for a charter to which the King himself would be subordinate. Six months later, at Runnymede, their demand was met: a reluctant King sealed Magna Carta. Longspee was named among the King's advisors.²

It has been a special pleasure to see your engrossment of the Great Charter. Salisbury, Lincoln and the British Library think of themselves, I gather, as the mothers of Magna Carta; we ourselves, in the Temple, are then a doting aunt.

If the Temple set in train one series of events that led to Salisbury, you have repaid us with a wonderful dividend. On 2 October 1225 Henry III came to Salisbury to see your new Cathedral. Richard Poore was by now the Bishop, and had with Longspee been a witness to the 1225 re-issue of the Charter.³

Jewel in the Cathedral's crown was the Trinity Chapel, the retro-choir, the new 'basilica' or Hall Church. The King must have loved it. In 1231 he declared that he would be buried in the Temple Church, near his brother-in-law and close friend William Marshal II. The Templars knocked down their small Chancel and built in its place a larger version of your own Trinity Chapel, as beautiful and airy and light a space as any in England. The King was present at its consecration in 1240; and every

¹ The other was William Marshal, Earl of Pembroke.

² So was William Marshal. Together they would in 1217 lift the siege of Lincoln, and so secure the Kingdom for Henry III, and the Charter for the Kingdom.

³ William Marshal had been buried in the Temple Church; Longspee would of course be buried here in Salisbury. Their effigies both survive.

week of every year we are grateful for the inspiration that he was given by the building in which, awed and uplifted, we are gathered today.

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The Story of the Good Samaritan.

A lawyer asked Jesus, how he can inherit eternal life. Jesus quotes two commandments from the Hebrew Scriptures: “Love God,” says Jesus; “and love your neighbour.” The lawyer, perhaps nettled by this neat answer, said to Jesus, “And who is my neighbour?” (Luke 10.29) So Jesus tells the story of the Good Samaritan, who found a traveler – wounded by robbers almost to death – and who, unlike the professionally pious priest and levite, takes care of him. “Who,” asks Jesus, “was a neighbour to the wounded man?” “The Samaritan.” “Go,” says Jesus, “and do likewise.”

Who is my neighbour? In Glasgow in 1928 (as some of you will well know) two women went into a café where one bought for her companion Mrs Donoghue a bottle of ginger beer and a blob of ice-cream. The ginger beer had been manufactured and bottled but not retailed by Mr Stevenson. Mrs Donoghue poured some first mouthfuls over her ice-cream. Delicious. She poured the rest; and with the ginger beer out plopped the decomposing remnants of a snail. Mrs Donoghue was deeply upset; her indigestion lasted for days, even months; she had to visit a doctor, and then in September the Glasgow Royal Infirmary. She took Mr Stevenson to court. Surely he was liable at law for her distress and illness.

What a rum business, the bottling of ginger beer must have been: at least twice, in the preceding years, a dead mouse had been found in a similarly opaque bottle. There is a surprising array of animals in this story; the snail is only, and by far, the most famous.⁴

⁴ For the background and many details, M. Chapman, *The Snail and the Ginger Beer* (London: Wildy, 2010).

There was little to suggest that Mrs Donoghue would win. There was no contract between Mrs Donoghue and Mr Stevenson; could he really be liable? Court after court in Scotland decided against Mrs Donoghue. But at last, in 1932, the case reached the House of Lords.

Their lordships gave their judgment in order of seniority. First Lord Buckmaster: with frankly savage sarcasm he dismissed Mrs Donoghue's case; to find in her favour would open the gates to a flood of such claims. Then Lord Atkin. And in consideration of a dead snail Lord Atkin delivered one of the most famous judgments in English Law. He said:

The rule that you are to love your neighbour becomes in law, You are not to injure your neighbour. And the lawyer's question" – put to Jesus himself, – "Who is my neighbour, receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour?⁵

What a remarkable approach, even then, to a judgment. Lord Atkin starts with a command from the Hebrew Bible: "thou shalt love thy neighbour as thyself" (Leviticus 19.18); and with Jesus; and with the duty to love. No wonder Lord Atkin had to refine his terms, and ask how a lawyer will in practice read the commandment. For no law – however fervent its exhortations may be – can legislate for love.⁶

In a famous dictum, centuries before, Sir Matthew Hale had declared, "Christianity is part [*or parcel*] of the laws of England."⁷ The motto was already in retreat in the early 20th century. Lord Sumner had sought, *before* *Donoghue v. Stevenson*, to hit Hale's maxim over the pavilion and out of the ground: "My Lords, the phrase 'Christianity is

⁵ AC 562 at 580 HL

⁶ Lord Atkin was not casual, in his reference to the words of Jesus. In 1931 he had delivered a lecture at King's College, London on just such a theme, with reference to Jesus' words in Matthew 7.12: 'I doubt whether the whole law of tort could not be comprised in the golden maxim to do unto your neighbour as you would that he should do unto you.' See Castle, R., 'Lord Atkin and the Neighbour Test', (2003) 5 *Ecclesiastical Law Journal* 33.

⁷ 1 Ventris 293, 3 Keb 607. Hale, on blasphemy: "Such wicked blasphemous words were not only an offence to God and religion, but a crime against the laws, state and government. For to say, religion is a cheat, is to dissolve all those obligations whereby the civil societies are preserved, and Christianity is parcel of the laws of England; and therefore to reproach the Christian religion is to speak in subversion of the law."

part of the law of England' is really not law; it is rhetoric. 'Thou shalt not steal' is part of our law... But 'Thou shalt love thy neighbour as thyself' is not part of our law at all."⁸

Lord Sumner, of course, was right. But was he missing a larger point?

- It would be mere folly to rely on love to keep public order.
- But no law will keep that order from dissolution without some such coagulant as love, decency, sympathy, neighbourly care.

- To elevate all systems of social order to an airy reliance on neighbourliness would be recipe for chaos: the strongest would take all they could get and the vulnerable would go to the wall.
- To reduce all systems of social wellbeing to the law's letter and its sanctions would be recipe for cold, grasping calculation: the strongest would take all they could get away with, and the vulnerable would go to the wall.

If we are to be a city, a county, a country – a *community* – at all, we need the structure and shape, the constraints and balances of a living body of law. And we need for its flowing, energising, motivating blood – in all who are called to obey it and *above all* in all those who serve it – the love of our neighbour. The lawyer asked Jesus, "Who" – out there – "is my neighbour?" Jesus answered a more pointed question: "To whom was the lawyer called to be – himself, in his own life and work – a neighbour?" The answer can still be unsettling. Some people are readily loved, they call out for our care and service; others – not least among those in prisons and cells whom you serve in your daily work – test our tolerance and sympathy to the limit.

"Love your neighbour." Historically, in England, the law of man and this great law of God, the ideal of Christian life, have been the body and the blood of our polity. It is hardly a fluke and certainly a blessing that in "tone" English law and English Christianity have been so well matched: incremental, gradualist, self-reflective, reliant

⁸ *Bowman v Secular Society* [1917] AC 406.

on precedent and on the experience and wisdom of generations past and present, little given to grand abstract formulae.

The strength of both has been *local* strength. About Christendom, of course, we know this. We are today in one of Europe's great buildings, a masterpiece of international standing. Whether or not we ourselves own any allegiance to Christian faith or Christian observance, we need only head out to any town and village, find at its centre the church, and sense how we are – we just *are* – the heirs of the local energy, commitment and loyalty that through the centuries have created and sustained the community built quite literally around it.

And for legal localism? This too is inscribed on every mile of our landscape. The great architectural historian Nicolas Pevsner had to flee Austria in the 1930s. He came to England, where he was baffled by the tortuously meandering roads. In Austria, the roads were *straight*. Why the difference. He concluded that local property rights in England had for centuries been strong enough to resist the acquisitive demands of regional and central government. (“Yes, build your road, but not through *my* field.”) So roads had to be built around and between local farms. When you are next caught for miles behind a trailer on some ever-winding Wiltshire lane, take heart. You are retracing, very *slowly* retracing, the history of English yeoman independence.⁹

But must it really be *religion* that fuels our care for others and makes us a genuine, living nation? No. Of course not; the High Sheriff sees charity after charity at work in this county, doing work of immeasurable value, without any reference to religion. But it is nonetheless striking how hard it still is to provide, without a God whose children we *all* are, a compelling *ground* for universal human dignity and human rights. We can *stipulate* such rights; and philosophers have for 200 years established the rights of potentially, possibly or actually rational and mature moral agents. But this does leave, exposed to terrible chill winds, those who will never or never again be such agents; and it is just those for whom the law and the neighbour alike take special care.

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⁹ A French republican diplomat said of St Petersburg, its enormous palaces, roads and vistas, “The rectangle is the angle of tyrants.”

Almost all of us here today serve the law in Wiltshire. Some of you may see yourselves as serving the supreme Judge, God of all justice; others, as serving justice itself; others, as simply doing, case by case, what is just. Some of us invoke God as the source and inspiration of all love; others acknowledge the love of neighbour as simply proper to humankind. All of us in our work acknowledge a cause higher than ourselves, our own interests or any human partiality.

Gathered here, we can together acknowledge our shared service of a justice greater and more enduring than we are, the depth of a principle at once ancient and for ever new. And here and now, if ever or anywhere, we can intuit, sense, glimpse the presence of the judge of all, the loving father of ourselves and of our neighbours, before whose sure, all-seeing and merciful tribunal we ourselves will one day as defendants stand.

And the snail? On the floor of the House of Lords in 1932 Lord Atkin – despite all the difficulties to which he might give rise – gave judgment in favour of Mrs Donoghue. The manufacturer had a duty to this woman with whom he had no contract. She was his *neighbour*. How oddly enriching, that Lord Atkin became by his judgment a neighbour, in his own terms, to all those victims who in the years since have benefited from the precedent he set. And how simply odd, that when the case returned to Scotland – after the purely procedural points settled in the House of Lords – the very existence of the snail was declared unproven. There may never have been a snail in that bottle at all.

“Who is my neighbour?” The answering story of Jesus still inspires and animates us, in the warmth and generosity and care of its Samaritan hero. In this place and this service above all others, Jesus’ consequent command can still inspire and animate us too. The command issued to the lawyer, heard by Lord Atkin and still addressed to all you who, in your high calling, serve the law: “Go, and do thou likewise.”