

REDISCOVERING ANGLICAN PRIEST-JURISTS

## VIII: Thomas Sherlock (1678–1761)

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### Introduction

Sermons preached by clerics have been largely neglected by scholars as a resource for the study of the history of English ecclesiastical law since the Reformation. Needless to say, scholarship has focused on the substantive and procedural ecclesiastical law found in the ecclesiastical legislation of Parliament, the canons passed by the convocations, the case law of the spiritual and temporal courts and the treatises of the civilian commentators. However, some historians of early modern England have studied the sermons delivered at the Inns of Court; but these studies have little to say about their preachers' portrayal of the ecclesiastical law and its jurisprudence.<sup>1</sup> Nevertheless, as we shall demonstrate, in each century since the Reformation, clergy in their preaching commonly treated legal matters or else used legal materials, including ecclesiastical law. The eighteenth century is no exception – and Thomas Sherlock (1678–1761) is an excellent example, whose function included as Master of the Temple (1704–1753) preaching to the common lawyers of Inner and Middle Temple. What follows deals with his life and career, law in his sermons (including jurisprudential concepts common to both the temporal and the spiritual law), and his legal thought in wider context – all at a time when the law was an inescapable part of the religious landscape, the limits on toleration, the constraints on Roman Catholics, and the provision for occasional conformity.<sup>2</sup>

<sup>1</sup> See for example H Adlington, 'Gospel, law, and *ars praedicandi* at the Inns of Court, c. 1570–c. 1640', in J E Archer, E Goldring and S Knight (eds), *The Intellectual and Cultural World of the Early Modern Inns of Court* (Manchester, 2011), 51–74.

<sup>2</sup> N Doe and S Coleman (eds), *The Legal History of the Church of England: From the Reformation to the Present* (Oxford, 2024) 95–113 (ch 5) and 115–134 (ch 6).

## The life and career of Sherlock

When Thomas Sherlock was translated to the see of London in 1748, the Archbishop – Thomas Herring – issued the new bishop with an ‘Option Deed’ securing, as his fee for the translation, the right of appointment to London’s most valuable living. Although such deeds were customary, Sherlock disputed it and from his research in the registers became convinced that it was an imposition. The dispute, which absorbed Government time and public interest, became so protracted and heated that at one stage Herring demurred further argument with one he described as, ‘a Veteran in Controversy’.<sup>3</sup>

Sherlock was a profoundly gifted controversialist, with a mind honed in legal principle and practice, which he put at the service of the Church and State in a disputatious age. Born in 1678 and educated at Eton and St Catharine’s Hall, Cambridge, he succeeded his father, William, as Master of the Temple in 1704, an appointment he did not relinquish until 1753.<sup>4</sup> There, he was ‘much esteemed by the leaders of the profession’.<sup>5</sup> By virtue of his Mastership of St Catharine’s Hall, to which he was elected in 1714, he claimed a Prebend at Norwich, which he secured by lengthy litigation and despite also enjoying a Prebendal Stall at St Paul’s. In a long clerical career, he both defended the pluralities he enjoyed and sought to enforce residence (about which his own record might be thought mixed) without any sense of a seeming contradiction.

As an academic, Sherlock was a skilled practitioner of the *Jus Academicum*, notably seeking when he was Vice-Chancellor of Cambridge University to uphold the rights of the Court of the Vice-Chancellor when Dr Bentley of Trinity College challenged its proceedings in the King’s Bench. In this Sherlock ultimately failed, but not without underlining that he enjoyed the confidence of the Senate for his legal skill and tenacity. As Vice-Chancellor, Sherlock ‘appears to have shown strength of will, and an autocratic spirit which accompanied him through life’.<sup>6</sup> The history of the unhappy relationship of Sherlock and Bentley continued when the Bishop of Ely sought to reverse a restriction of his jurisdiction as Visitor of the University which was determined in the King’s Bench. The University was once more in dispute with Bentley. In 1732, the bishop decided to appeal to the House of Lords, and it was Sherlock’s intervention (he was in the Lords as Bishop of Bangor from 1728) which caused the Lords to reverse the earlier judgement.<sup>7</sup> His biographer lays this at the door of his ‘dogged legal mind’ and his ‘disinterested championship of the interests of the University’.<sup>8</sup>

There was nothing curious in a bishop being politically convinced and active in the House of Lords. Sherlock’s public reputation was as a convinced Tory and as

<sup>3</sup> Herring to Lord Hardwicke, December 30 1749 BM Add MS 35598 f.441 quoted in E Carpenter, *Thomas Sherlock 1678–1761* (London, 1936), 181.

<sup>4</sup> Carpenter (note 3), 147. When translated to London in 1748 it seems that Sherlock was disappointed that the income of the See was less than that of Salisbury; and hanging on at the Temple secured him a house and £200 a year.

<sup>5</sup> J H Monk, *The Life of Richard Bentley, D.D.* (1830), quoted in Carpenter (note 3), 18.

<sup>6</sup> Carpenter (note 3), 10.

<sup>7</sup> G M Trevelyan, *Trinity College: An Historical Sketch* (Cambridge, 1943), 162.

<sup>8</sup> Carpenter (note 3), 21.

leader of the Tory clergy.<sup>9</sup> He navigated this without any tainting hint of wanted Tory Jacobitism. Indeed, Sherlock was a favourite of George II's queen, Caroline, who enjoyed power not least because of the king's frequent absences at Hanover.<sup>10</sup> Sherlock was perceived as the natural enemy of the leading Whig bishop of London, Edmund Gibson, the most notable canonist of the age and exercising power (not least over all senior appointments) as the 'Church Minister' under first minister Robert Walpole.<sup>11</sup>

It is often suggested that the Parliament of 1733–1737 was the most anti-clerical since that of the 1530s. Although enemies – and Gibson sought repeatedly to prevent Sherlock succeeding him in London – in fact their high church principles and causes were consonant; they were able defenders of orthodoxy in the face of Deism, staunch supporters of the Hanoverian Succession, resisters of the encroachment on the ecclesiastical jurisdiction, fierce opponents of the moral laxity of the age (in Sherlock's case especially the trade in gin), and parliamentary allies on such matters as the Quakers' Tithe Bill. Ironically, Sherlock's position at Court (so irksome to Gibson) was ended because of the Quaker bill: Queen Caroline scolding him for 'being so blind and silly as to be running a race of popularity with the Bishop of London' and advising him to retire to his diocese!<sup>12</sup> After the Queen's death the following year (1737), Sherlock never appeared at Court again. However, at the time of the 1745 Rebellion, and while still Bishop of Salisbury (since 1734), Sherlock proved his Hanoverian loyalty to the Government in a preached and published sermon.<sup>13</sup>

Sherlock was much absorbed in the religious settlement of the day, which allowed toleration to dissenters (but not Roman Catholics) and arguably some protection to those within and beyond the Established Church who strayed into heterodoxy. As early as 1717, the Bangorian Controversy aroused much feeling when the then Bishop of Bangor, Hoadley, preaching before the King, seemed to suggest that any authority set up to which consciences must submit was to trespass on the authority of Christ.<sup>14</sup> This was seen to deny authority to the Established Church. Sherlock (then Dean of Chichester) chaired a committee of the lower house of Convocation to discuss the sermon. However, the arguments aired in a warfare of pamphlets, narrowed to the authority and privilege contained in the Corporation and Test Acts, by which support of secular officials for the Established Church was publicly expressed as a condition of appointment (and was therefore odious to dissenters). Sherlock maintained that it was correct to provide that all power is exercised by those judged to be 'well effected',<sup>15</sup> and that the experience of the Commonwealth proved the hazards of this when set aside. Hence, the receiving of the Sacrament

<sup>9</sup> John, Lord Hervey, *Some Materials Towards Memoirs of the Reign of George II* (London, 1931), vol I, 89, quoted in J C D Clark, *English Society, 1688–1832* (Cambridge, 1985), 139: '... Bishop Sherlock "was hated by the Tories for ceasing to be a Jacobite and not loved by the Whigs because Jacobitism was the only Tory principle he had renounced"'.  
<sup>10</sup> N Sykes, *Edmund Gibson* (Oxford, 1926), 127.

<sup>11</sup> See G R Bush, 'Dr Codex Silenced: *Middleton v Crofts* Revisited', (2003) 24 *Journal of Legal History* 23–58.

<sup>12</sup> Hervey (note 9), quoted in Sykes (note 10), 140.

<sup>13</sup> At Salisbury, Sherlock also issued instructions for clergy to suppress anthem singing in church: D A Spaeth, *The Church in an Age of Danger: Parsons and Parishioners, 1660–1740* (Cambridge, 2000), 237–238.

<sup>14</sup> Carpenter (note 3), 99.

<sup>15</sup> Carpenter (note 3), 101.

was an ‘innocent’ proof that a man was in communion with the Church of England. Sherlock’s ‘Vindication’ was the ‘standard apologia of these disenabling statutes’.<sup>16</sup> Dissenters should be tolerated but not encouraged.

In 1752, London was shaken by two considerable earthquakes. Public dismay led quickly to moral and theological discourse, the religious interpretation of which was led by Sherlock. His letter, condemning the ‘wickedness and corruption that abound’,<sup>17</sup> sold more than 70,000 copies (much to the amused horror of Horace Walpole). Sherlock’s opponents attacked the refusal of the clergy to ascribe physical effects to nature and thereby illuminated one of the religious fault lines of the age.

If dissent and toleration appeared settled constitutional provisions, they were really part of undermining the dominance of the Established Church, together with a movement of speculation in theology which Sherlock and others sought to engage and contest. Specific positive revelation was under an assault from the religion of nature in the name of reason; the miraculous and supernatural fared especially badly and active morality was the touchstone of veracity and usefulness. Although not aimed at these ‘Deists’ by intention, Sherlock’s published ‘Discourses’, amounting to the Sermons that he preached as Master of the Temple, are influenced by the deist drift. ‘He wrote, above all as a lawyer to whom the New Testament was the *Scripta Lex*’.<sup>18</sup> He asserted that in history ‘natural’ religion cannot be shown to have shaped society or morality, but rather that it is where ‘the benefits of Christian dispensation [exist] that the light of reason shines in its fullest’.<sup>19</sup> By the time the *Discourses* appeared in print, Sherlock, although still bishop of London was advancing in infirmity and paralysis, but he retained a sense that the times and the issues were urgent for episcopal direction and care.

### The sermons of Sherlock and their treatment of law

As Master of the Temple, Sherlock preached many sermons which were printed in his life-time in four volumes entitled *Several Discourses Preached at the Temple Church* – they are inscribed ‘To the Worshipful Masters of the Bench of the two Honourable Societies of the Temple’, Inner and Middle; the sermons went into several editions, and those used for this study are from the 1750s,<sup>20</sup> although there were also later editions.<sup>21</sup> The sermons expound a particular scriptural text, engage in argument

<sup>16</sup> Carpenter (note 3), 103. So highly was Sherlock’s argument regarded that this paper, *The Vindication of the Corporation and Test Acts in Answer to the Bishop of Bangor’s Reasons for the Repeal of Them* (1718), was reprinted at the time of their repeal in 1826.

<sup>17</sup> Christopher Smyth (2011), ‘“Chastisements of a Heavenly Father”: The Meaning of the London Earthquakes of 1750’ (2011) 2 *Religion in the Age of Enlightenment*, article 12.

<sup>18</sup> Carpenter (note 3), 235ff.

<sup>19</sup> Carpenter (note 3), 239.

<sup>20</sup> Sherlock, *Several Discourses Preached at the Temple Church*, four volumes. The editions used in this study are: vol I, 5th edition 1759; vol II, 3rd edition, 1759; vol III, 1758; and vol IV, 1758. Citations hereafter to the *Discourses* refer to the number of the relevant volume, the number of the sermon or discourse (abbreviated to ‘D’), and the number of the page in that volume where the passage cited is located (e.g. vol II, D I, 10). I have modernised some of the text very lightly for ease of reading and comprehension.

<sup>21</sup> See for example T S Hughes, *The Works of Bishop Sherlock, with some account of his life, summary of each discourse, notes, etc.*, two volumes (London, 1830).

and counter-argument, and, unsurprisingly given his congregation, deploy juridical imagery extensively: for example, they speak of religion as a form of rule,<sup>22</sup> pleading at the bar of divine justice,<sup>23</sup> the reasonable or equitable construction of a rule,<sup>24</sup> the reasoning of Christ,<sup>25</sup> and evidence.<sup>26</sup> Above all, they contain a wealth of material on laws: the law of God and the law of the Gospel; the law of reason and the law of nature; conscience and access to the divine law; the laws of justice and equity; and the law of humans – its nature, scope, promulgation, application, and obedience due to it.

## The law of God and the law of the Gospel

The 'Law of God' plays a central role in the legal thought of Sherlock: 'The Will of God ... has, and ought to have, the Authority of a Law with us';<sup>27</sup> and: 'The very End of the Law is, to be the Rule of our Actions'.<sup>28</sup> This law of God is 'the first supreme Law, from which all others proceed, as distinct Branches, and by which they must all be governed'.<sup>29</sup> Its 'first and great commandment' is 'the love of God'; and its second is 'the love of our neighbour'.<sup>30</sup> Moreover, the divine law requires what is reasonable: '[A person] is not obliged to love another better than himself; and therefore it is unreasonable to expect that he should straighten and pinch himself to enlarge' upon it.<sup>31</sup> The law of God is a revealed law.<sup>32</sup>

Not only is the law of God found in the Ten Commandments of the Old Testament. It is also found in the 'Law of the Gospel' in the New Testament: 'the Gospel is a Law proceeding from the best and highest Authority, given by God to his Creatures; and we are bound at our Peril to take notice of it: If we will not walk in the Light of God's Law, when it shines so brightly before our Eyes, we shall be condemned for choosing

<sup>22</sup> Vol I, D I (John 6.67-69), 22: 'Religion, now considered as a Rule'; 17: 'Religion is founded in the Principles of Reason and Nature'; see also 51: 'Religion is only the Rule directing' humans to eternal life.

<sup>23</sup> Vol II, D V (Luke 13.23-24), 95: when Sodom was destroyed, 'the Number of the Wicked was never pleaded in Bar of Justice'.

<sup>24</sup> Vol II, D XIII (Psalm 88.15), 325: 'it is a reasonable Construction upon the Law of Nature to expect Pardon for our Failings and Omissions, and that the very Terms of our Obedience [to it] carry this equitable Construction with them'; and so: 'we shall be entitled to equitable allowance in the course of an imperfect obedience'.

<sup>25</sup> Vol I, D III (Matt 11.6), 134: 'When [Christ] had described the future State of the Church in Parables to the Jews, and came afterwards to explain them to the Disciples, he tells them the Reason of his Proceeding'.

<sup>26</sup> Vol I, D VII (Rom 4.25), 218: on the evidence for the Resurrection; e.g. 'the great Difficulty at which Men stick, does not arise so much from the Nature of the Evidence we propose, as from the Nature of the Thing itself'.

<sup>27</sup> Vol IV, D V (Proverbs 9.10), 144. See also D III (1 Tim 1.15), 92: 'The Voice of Reason and of the Law are in this respect the same'.

<sup>28</sup> Vol II, D I (Acts 15.1-2), 11.

<sup>29</sup> Vol I, D XIII (Matt 22.40), 348.

<sup>30</sup> Vol I, D XIII (Matt 22.40), 355; see also 358-359.

<sup>31</sup> Vol IV, D VI (Luke 10.29), 151.

<sup>32</sup> Vol I, D I (Acts 15.1-2), 29: he rejects the view of Natural Religion (compared with Revealed Religion) that a person 'is bound to nothing but what is agreeable to the Dictates of Reason and his own Mind: And upon these general Views they reject all Revelations whatever, and adhere to Natural Religion as the safer Guide'.

Darkness rather than Light'.<sup>33</sup> As such: 'the Gospel having all the Perfection requisite in a Law [is] designed for the Government and Instruction of rational Creatures';<sup>34</sup> it offers a 'Rule of Life' and 'the Sense and the Reason of the Law, are open and plain, and such as we cannot but see, and, when we see, consent to'.<sup>35</sup> One example is the 'general Law of loving thy Neighbour', which, specified 'in the Language of all particular Laws and Precepts is easily understood'.<sup>36</sup> Also: 'if the Gospel of Christ be indeed, as indeed it is, the Will of God, it will not be so easily parted with. It is the Law of our great Master, and obey it we must. The Advice of a Friend we may use or refuse, as we think fit; but the Laws of our Superiors must be obeyed'.<sup>37</sup>

### The law of reason and the law of nature

For Sherlock, 'the Laws of Reason and Nature ... are the Laws of God',<sup>38</sup> and a type of 'moral law', by which humans are 'rational agents' and 'moral beings' and as such enabled by God to distinguish between good and evil in 'the moral world'.<sup>39</sup> First, the 'Law of Reason' is 'a superior law'.<sup>40</sup> However, it is obscured by sin: 'Reason approves what is just and holy, consents to, and delights in the Law of God; but Sin captivates and enthrals it, and makes the Man the Slave of Sin'.<sup>41</sup> Nevertheless: 'Grace ... is given to restore us to the Obedience of Reason' and 'the very best Evidence we can have that the Grace of God is in us, is this, that we live up to the pure and sincere Dictates of Reason'.<sup>42</sup> Moreover: 'The Laws of [the] Gospel are declaratory of the original Law of Reason and Nature'; but these are not 'a more equitable Rule of Justice' than the law of the Gospel which itself represents 'Christian law'.<sup>43</sup>

Second, that said, Sherlock argues that reason has its limits: 'the Authority and Word of God is the only sure foundation of religion, and the only reasonable ground for us to build our hopes on'. As a result, for instance, 'mere Reason cannot be the perfect Rule of our Obedience',<sup>44</sup> for if this were the case reason would displace the

<sup>33</sup> Vol III, D XIV (John 3.19), 328–329: Sherlock classifies the law of the Gospel as the 'Royal Law' of Christ.

<sup>34</sup> Vol IV, D VI (Luke 10.29), 156.

<sup>35</sup> Vol I, D I (Acts 15.1–2), 59.

<sup>36</sup> Vol I, D XIII, 350; see also 351: this law is 'distinctly explained by St. James', and so 'there is no Occasion for any Niceties or Distinctions to support the Reason and Equity of his Doctrine'; and: 'What he teaches is plainly this: The great and fundamental Law of the Gospel is this, Thou Shalt love thy Neighbour as thyself'.

<sup>37</sup> Vol II, D VI (Luke 12.48), 124.

<sup>38</sup> Vol I, D I, 57.

<sup>39</sup> Vol I, D XII (Acts 10.34–35), 321, 324; and vol III, D XIV, 333, 335–337: 'the moral Law of Reason and Nature'.

<sup>40</sup> Vol III, D V (Ephesians 4.28), 121: 'the Law of Reason and Nature, which is a superior Law, obliges you to work only Things which are lawful and honest, that you may preserve a Conscience void of Offence' to God and man.

<sup>41</sup> Vol I, D VIII (Rom 8.16), 240.

<sup>42</sup> Vol III, D XII (James 3.17), 300: 'We become Slaves by departing from the Law of Reason'; 'the Works of Grace are Works of Reason'; and 320: 'From this Light of Nature we learn both the Law' and the 'Obligation to Holiness'.

<sup>43</sup> Vol III, D XIV (John 3.19), 333, 335–337: 'Reason teaches [obedience] to the great Lawgiver of the World'.

<sup>44</sup> Vol I, D I (John 6.67–69), 3, 27.

revealed law of God, which it does not: 'to argue that God gave Men Reason to be the Rule of their Obedience, is supposing that his original Intention is, that Men should obey Reason; to argue at the same time that those who live in Disobedience to this Law, are in the State which God intended them to be in, is to suppose that God intended [His] Law should be obeyed, and not obeyed, at the same time'.<sup>45</sup> That is, if reason is in conflict with the law of God, the latter prevails.

Third, because human reason has its limits, the Holy Spirit is given to assist it: 'the Power of the Spirit is on Reason's Side, and works together with it; so that to be under this Power is a State of Freedom and Liberty: And therefore it is justly said, that the Law of the Spirit of Life has made us free' and has 'stilled the horrid Contest that was in us between Reason and Sin'.<sup>46</sup> Sherlock has a great deal to say about 'the Mazes and Intricacies of human Reason';<sup>47</sup> after all, he asks the people: 'how many, or how few, will act by the Laws of Reason, and qualify themselves for the Mercy of God, Natural Reason and Religion can never shew'.<sup>48</sup>

The twin of the law of reason is the law of nature. First, the law of nature (like reason) is 'a superior Law'.<sup>49</sup> Second: 'common Consent is the Voice and Law of Nature; for what all agree in must needs derive itself from something that is common to all; and what is so, but the Sense and Instinct of Nature'.<sup>50</sup> Third, however, the law of nature has its limits: 'if Men have everywhere sinned, and come short of the Glory of God, the Law of Nature cannot help them to those Blessings, which by the Law of Nature are forfeited; and there is manifestly a Necessity to have recourse to other Means to obtain Salvation', namely faith.<sup>51</sup> Yet: 'As we are Men, we are the Servants of God; and therefore to serve him is the Law of our Nature, which is of the highest Obligation: As we are poor, we must serve Men, which is the Law of our Condition, which can never take place of the Law of Nature; and therefore no Necessity can dispense with the Service of God, or justify us in the Breach or Contempt of his Laws'.<sup>52</sup>

## Conscience and access to the law of God

Divine revelation, and human reason and nature, also meet in the human conscience. First: 'The Power of Conscience is seen in all Men; it is common to all Countries, to all Religions; Learned and Unlearned, Rich and Poor. It is an essential Character of a rational Mind, and therefore to Man, who is a rational Creature, it is natural'.<sup>53</sup>

<sup>45</sup> Vol I, D I (John 6.67-69), 28. See also D VIII, 241 on the 'Dictates of Reason'.

<sup>46</sup> Vol I, D VIII (Rom 8.16), 243, 244; see also 246: 'We must have the Evidence of our own Spirit that we do indeed love and approve the Law of God; and we must have the Evidence of the Spirit of God working in us by Obedience'.

<sup>47</sup> Vol I, D V (John 3.16), 184.

<sup>48</sup> Vol II, D V (Luke 13.23-24)], 96.

<sup>49</sup> Vol III, D V (Ephesians 4.28), 121.

<sup>50</sup> Vol I, D VI (2 Tim. 1.10), 194.

<sup>51</sup> Vol I, D I (John 6.67-69), 68: this qualifies the idea that the moral law is 'the Condition of Salvation': see above n 22.

<sup>52</sup> Vol III, D V (Ephesians 4.28), 118: this also refers to 'the Principle or Maxim upon which this Law is built'.

<sup>53</sup> Vol II, D XIII (Psalm 88.15), 313-314.

Second, 'the Sense of being accountable for their Actions',<sup>54</sup> and of 'their Obligation to obey the Laws of Reason and Nature ... is evident from the Force of natural Conscience'.<sup>55</sup> Third, conscience is proof that the law of God is written in human hearts: 'If Conscience testifies the same Thing to be good and just which the Law does, then Conscience proves the Matter of the Law to be written in the Heart', human 'Conscience and the Law both allowing and forbidding the same Thing'.<sup>56</sup>

However, like reason and nature, conscience has its limits: 'Reason will not always strive with a Man; but if often subdued by corrupt Affections, it will at last give over the Contest' and 'sensual Lusts do war against the Soul, by extinguishing the Force of natural Conscience, and not leaving a Man Reason and Religion enough to repent of his Iniquities'.<sup>57</sup> Then: 'when Reason and Conscience are destroyed ... Religion must soon follow'.<sup>58</sup> But all is not lost: 'If the Power of Conscience be natural to a rational Mind', it is God who 'admonishes you when Conscience flies in your Face' – that is, 'He who placed the Power of Conscience in every rational Mind, to act there as his Deputy, in restraining, rebuking, and correcting every Iniquity'; and the human conscience will reach 'to every particular Man's Case, who has not extinguished the Powers of Conscience, and the natural Sense of Honour and Shame'.<sup>59</sup>

### The laws of justice and equity

Sherlock accepts as axiomatic the proposition that: 'It is the Essence of Morality to bound the Desires within the Limits of Reason, Justice, and Equity'.<sup>60</sup> And to the last two we now turn.

First, whilst 'Justice [is] conversant in Rewards and Punishments' and 'the Essence of Justice [is] to distribute both where they are due', humans have by nature a sense of justice but they cannot fully understand divine justice: 'the first and natural State of Mankind was a State of Innocence' characterised by 'natural Notions of Justice and Equity, and the necessary Difference between Good and Evil'. However, although 'God can do nothing but what is just', 'our finite Minds cannot comprehend the Reasons and Limits of the divine Justice';<sup>61</sup> and, for instance, 'the Justice and Equity of God' in redeeming sinners is 'not discoverable by us'.<sup>62</sup>

Second, Sherlock on 'the Laws of Justice and Equity' and 'the Rules of Justice and Equity'.<sup>63</sup> He equates 'reason' with 'justice' and 'equity' with 'mercy'; he says:

<sup>54</sup> Vol I, D IV (1 Cor 1.21), 157.

<sup>55</sup> Vol I, D V (John 3.16), 181.

<sup>56</sup> Vol I, D VIII (Rom 8.16), 231 (on Rom 2.15): 'the Gentiles ... knew the Work of the Law to be written in their Heart by the Testimony of their Conscience, which agrees with the Testimony of the Law'; he also cites Grotius.

<sup>57</sup> Vol II, D IX (1 Peter 2.11), 203.

<sup>58</sup> Vol II, D X (Matt 27.38), 221.

<sup>59</sup> Vol II, D XI (Psalm 77.9-10), 257.

<sup>60</sup> Vol II, D IX (1 Peter 2.11), 202.

<sup>61</sup> Vol I, D I (John 6.67-69), 47, 54, 63, 65; see also 72: but this does not mean that 'there is no Reason in them'.

<sup>62</sup> Vol I, D II (Hebrews 7.25), 81, 85: i.e. in redeeming sinners.

<sup>63</sup> Vol II, D IX (2 Peter 2.11), 192.

'I will suppose ... (and it is the very Truth) that Justice and Mercy both meet in the Rules of Reason and Equity'. He then offers a practical example – namely, of a person 'seriously convinced of the Iniquity of Sin, and purposing to forsake it'. He argues: 'The Case supposes him to have sinned so as to deserve Punishment by all the Rules of Reason and Equity: The Question is, Whether a sincere Alteration of Mind can give him Security of a Pardon. I suppose it agreed by all who admit a future Judgment ... that it will be deemed reasonable for God to act upon such Terms as Reason itself, the Interpreter of God's Will in this Case, proposes to us', and so forgive.<sup>64</sup>

Third, then, it is the particularity of circumstances which determine what is just or equitable: 'In every Government particular Cases have their particular Reasons: Those who know the Reasons and Circumstances of each Case, may know whether the general Rules of Justice and Equity are properly applied in the Judgment and Determination of the Case. Others cannot possibly judge, though perhaps in the general Rules of Justice they may be well skilled'.<sup>65</sup> Mercy perfects justice: 'since Charity is the Perfection of the Law, to forsake Sin, and to live by the Rules of Charity, is the surest, the most effectual Way to obtain Pardon'.<sup>66</sup>

## The laws of humans

Sherlock deals with five aspects of human law: its nature, scope, promulgation, and application, and obedience to it. Throughout he deploys the laws of God, reason, nature, justice and equity and sometimes refers to English law, although he also admires 'the civil laws of Rome' which he claims have a place 'in almost all kingdoms'; but he does not elaborate.<sup>67</sup>

First, the nature of human law: 'all Laws ... are intended for Directions and Rules';<sup>68</sup> and: 'All Laws are founded upon one and the same Authority of God',<sup>69</sup> for example, the law of theft: as property is established 'by the positive Law of God', and it is acquired by 'Purchase or Exchange' or 'Work and Labour', so 'no Man can acquire the Possession of any thing which is at present another's, without the Consent of the present Proprietor fairly obtained'.<sup>70</sup> And for Sherlock, written law is best; after he explains how writing was used to deliver 'the Doctrines of Christ', Sherlock states: 'this Way has had the Consent and Approbation of all civilized Nations; from whence it is that *scripta Lex* is used in the best Writers to signify an instituted Law, as distinguished from the Law of Nature arising ... from Instinct or Reason'.<sup>71</sup>

Moreover, as 'our earthly Princes', 'the Rulers of the World may be said to be the Ordinance of God and to derive their Power and Authority' to make law

<sup>64</sup> Vol II, D XIII (Psalm 88.15), 320, 324.

<sup>65</sup> Vol II, D XI (Psalm 77.9–10), 269.

<sup>66</sup> Vol III, D VI (1 Peter 4.8), 170.

<sup>67</sup> Vol I, D I (John 6.67–69), 8.

<sup>68</sup> Vol IV, D VI (Luke 10.129), 155. See also vol III, D VIII, 221: 'the Rules which the Law prescribes'.

<sup>69</sup> Vol I, D XIII (Matt 22.40), 346.

<sup>70</sup> Vol III, D V (Ephesians 4.28), 102, 103, 105–108: 'The unjust Acquisition of any thing is Theft; for what you unjustly acquire, another loses, and suffers in his Property, for the Security of which the Law against Theft was enacted'.

<sup>71</sup> Vol 1, D IX (John 20.30–31), 255–256.

from God,<sup>72</sup> so too 'the Church of England has ... Authority to appoint Rules of Order and Discipline for [its] Members', rules which are 'settled upon prudential Considerations of the Circumstances of England'.<sup>73</sup> And the Church of England itself is essential to civil government, for it 'brings Maintenance to the Poor, Instruction to the Ignorant, and opens to the Miserable a Way to Happiness; which provides for the Order of Civil Government, and the Peace of Christ's Church, on Earth'.<sup>74</sup>

Second, the scope of law. This depends on the intent of the lawgiver: 'it is evident, that no Law, either human or divine, extends farther than the Lawgiver intends'.<sup>75</sup> However, as a matter of principle (although his specific focus is divine law), laws cannot and should not cover all cases: 'it is impracticable to give Rules and Directions for all possible Cases, and to adjust the general Laws of Virtue and Obedience to the great Variety of Circumstances incident to human Life'. Further, if laws were 'to take in all particular Cases', they would 'soon grow too voluminous to be serviceable; there being no Life long enough, no Industry sufficient for such a Study, and no Memory strong enough to retain such a Body of Institutes'. In addition, too many laws would obviate the need to exercise human reason: 'Reason and Judgment would be of no further Use ... were Men in all Cases limited by particular Clauses and Provisions'. Finally, too many laws afford too many opportunities to evade the law: 'likewise the End proposed to be served by such numerous and particular Laws would not be obtained; but Men would still find Room to cavil at their Duty, and be able to furnish Pretences to evade it'.<sup>76</sup>

Sherlock also relates the scope of law to its clarity: a 'Rule of Action must be plain and intelligible, or else it is no Rule; for we can neither obey nor disobey a Law that we cannot understand', for 'we cannot practise a Law, without understanding it'.<sup>77</sup> However, a law which is difficult to understand is nevertheless valid: 'no Body of Laws, human or divine, becomes void and of none Effect, because some Parts are hard to be understood, or not to be understood'; as a result: 'if Men dispute upon such Places, and divide into a thousand Opinions about them, such Divisions do still less affect the Law, which owes not its Authority to the Agreement or Disagreement of Interpreters' – yet laws should not be 'too obscure' for otherwise 'we [would] continue ignorant of the Meaning of the Lawgiver'; and moreover, 'Men may blunder, and make dark Laws, and so miss the Scope they aimed at'.<sup>78</sup>

<sup>72</sup> Vol IV, D XIII (Rom 13.1), 351: 'the State of the World requires that there should be some to rule, invested with Power to protect the Innocent, and to defend the Weak from the Violence of the Oppressor'.

<sup>73</sup> Vol IV, D XII (Jude 3), 336: the English Church has a much right to do so as 'the Church of Rome has for theirs'; also 324: 'the Church has a judicial Authority' and 'a Right' to inflict punishment; and the apostles had 'the Authority of settling Churches and prescribing Rules of Order and Decency to them'. After Sherlock wrote, of course, in *Middleton v Crofts* (1736) 2 Atkyns 650, King's Bench held that the 1603 Canons do not of their own force bind the laity, because they were not approved by Parliament but only by Convocation: see also n. 11.

<sup>74</sup> Vol IV, D XIV (Genesis 18.19), 394.

<sup>75</sup> Vol I, D IX (John 20.30–31), 260.

<sup>76</sup> Vol IV, D VI (Luke 10.29), 15–156: and: '... Virtue, which is shown in the free Choice that Reason makes of what is good and amiable, guided by the general Directions of God's Law, would be oftentimes lost and impracticable'.

<sup>77</sup> Vol I, D I (John 6.67–69), 58–59.

<sup>78</sup> Vol II, D I (Acts 15.1–2), 10–11: 'it is one Thing to know the Authority of the Person, another Thing to know what he says. His Authority makes what he says to be Law, and your Want of Knowledge in

Sherlock then distinguishes between mistaken and deliberate misunderstandings of law: 'In human Laws, the Main of the Subject's Duty is plain; and if he mistakes any dark Passages, yet so as to keep strictly to his known Duty, the Consequence perhaps may be tolerable, and he excusable: But if a Man from any dark Statute should infer a Right to rob and murder his Neighbour, and act accordingly (which Acts of Violence are plainly forbidden in the Law) he ought to suffer, not for misunderstanding the obscure Law, but for transgressing the plain'.<sup>79</sup>

In turn, the authority of 'human laws' depends 'not upon their being distinctly understood by all Men; for the Man, who has no Ability to expound a Statute, may yet be certain of its Authority, if he will have recourse to the proper Records'. Indeed: 'there are many Statutes of this Realm, the Authority of which no Man doubts of, though, at the same Time, those who are best able to judge are not agreed in the Meaning and Exposition of them'. Sherlock then asks his listeners: 'what would you think of a Man, who should affirm that we have no Statute-Book in this Kingdom, or none of any Authority and give you this Reason for it, because that which we call our Statute-Book has many Difficulties and Obscurities in it?'.<sup>80</sup>

Third, promulgation. Sherlock begins with divine law: 'If God intends a Law for the Use of the World, he is obliged, if I may use the Expression, to publish the Law to the World'. He then applies this to human law: 'it must be allowed, that the Promulgation of the Law is the proper Care and Concern of the Lawgiver: For the Law must come from the Governor to the Governed; and the Subject, till he knows the Law, that is, till it is promulged and sufficiently declared to him, can have no Concern in it'.<sup>81</sup> This requirement of promulgation is 'universally true of all Laws whatever, both human and divine: And the Reason of it is plain, because otherwise Men would be bound to an Impossibility, to obey a Law, before they knew' that law.<sup>82</sup> Therefore, promulgation of the law and the authority of the lawgiver represent 'the Essentials necessary to constitute a Law, either human or divine'. As a result, because 'Promulgation is so far of the Essence of the Law', then it necessarily follows that 'no Man in Reason or Equity owes any Obligation to a Law till it is made known to him; that the Obligations therefore of a Law are limited by the Terms of the Promulgation'.<sup>83</sup>

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the Meaning of what he says will not unmake the Law: For if it could, Ignorance would be the supreme Authority, since no Authority could make a Law, which Ignorance could not repeal'. He applies these ideas to the law of God.

<sup>79</sup> Vol II, D I (Acts 15.1-2), 18.

<sup>80</sup> Vol II, D I (Acts 15.1-2), 7-8: he applies to same reasoning to the authority and clarity of parables.

<sup>81</sup> Vol I, D IX (John 20.30-31), 256, 269: 'Apply this to Revelation, and you will perceive, that it is absurd to suppose that God has given any Law; to the World which he has not sufficiently promulged and declared; for that would be to suppose that God intended to give, and not to give, a Law to Mankind at the same time'.

<sup>82</sup> Vol I, D IX (John 20.30-31), 255-256: The Gospels then were published that they might be a standing Evidence to all Ages of God's Purpose to redeem the World by sending his Son to take our Nature on him'.

<sup>83</sup> Vol I, D IX (John 20.30-31), 262: 'Which of them all so much as pretends to the Essentials necessary to constitute a Law, either human or divine? Where was it published and declared? by whom, and how qualified?'; 267-268: Sherlock also applies these ideas to the law of Moses. See also II, D VI, 121.

As to mode of promulgation: 'a Law is sufficiently promulgated, when [this] is done according to Custom in some public and solemn Manner' or 'public Declaration'.<sup>84</sup> However, this mode of promulgating human law is weaker than that by which divine law is promulgated, namely by God writing it in human hearts; indeed, 'human Laws', how 'publicly and solemnly soever they are declared at first, are often worn out by Length of Time, or grow dark and obscure, and stand in Need of an authoritative Exposition to silence the Contentions arising' in them.<sup>85</sup>

Fourth, obedience. Obeying law is not a matter of choice: 'No Man is at Liberty to choose whether he will be governed by the Laws of the Realm; and it would be to little Purpose to plead to an Indictment, that you never intended to be governed by the Law, but choose to act by other Rules; and therefore desire that the Law may have no Place in the Judgment, but that you may be tried by those Rules by which you choose to live'.<sup>86</sup> Obedience itself is achieved through punishments and rewards: 'Christian Law, indeed, like all other wise Laws, is fortified with Rewards and Punishments ... as Motives of Obedience';<sup>87</sup> and any punishment 'must exceed the Advantage the Offender will reap by transgressing the Law; or else, as much as the Gain to be reaped by breaking the Law exceeds the Punishment annexed to' it.<sup>88</sup>

Fifth, the application of law. Sherlock advances several principles here. One is equality before the law: 'Among Men all are judged by the same Rule, one Law comprehends all, and is of the same Interpretation and Extent in all Cases' – that is, 'all who are esteemed to have Reason enough to govern themselves, are concluded under one Law', although 'in Truth and Equity ... no two Cases are perhaps exactly alike, or equally subject to the same Rule'.<sup>89</sup> A related 'Maxim' is that 'the Rule of Life and the Rule of Judgment ought to be the same' – as such, it is not 'equitable, that Men should live by one Rule, and be judged by another'.<sup>90</sup>

The next principle is that ignorance of the law will not excuse its application in a particular case; he writes: 'In human Judicatures ... it is in everybody's Power to pretend Ignorance of the Law, or some other Inability'; if pretended ignorance were accepted, this would 'open a Door to all kind of Licentiousness, and take off the Fear of Punishment'; moreover: 'the wisest and ablest Judges cannot discern, some few Cases perhaps excepted, between real and affected Ignorance'; therefore, 'the Law puts all, except those who are manifestly deficient in Reason, upon the same Level, and supposes every Man to know the Law of his Country'.<sup>91</sup>

Sherlock also tackles 'the Distinction between good and bad Laws', both of which may be 'derived from the same Authority [or lawgiver]; which shews, that Authority, though it may make a valid Law, yet it cannot make a good one, unless acting upon the Reason of Justice'. His approach to this issue is found in a discussion of the maxim *Summum ius, summa injuria* (from Roman law) – i.e. granting a party the maximum

<sup>84</sup> Vol II, D XVII (Matt 14.1-2), 394; see also 395: 'In the same Manner the Moral Law is promulgated to every rational Creature'.

<sup>85</sup> Vol II, D XVII (Matt 14.1-2), 396.

<sup>86</sup> Vol III, D XIV (John 3.19), 332.

<sup>87</sup> Vol II, D IV (Philippians 2.12-13), 69.

<sup>88</sup> Vol III, D I (Proverbs 19.27), 16.

<sup>89</sup> Vol II, D I (Acts 15.1-2)), 19–20: however, 'Children, Idiots, and Madmen are excepted Cases'.

<sup>90</sup> Vol II, D XIII (Psalm 88.15), 325.

<sup>91</sup> Vol II, D VI (Luke 12.48), 108–109.

extent of their rights may do an injustice to the other party. He states: '*Summum jus* regards the written Law, *summa injuria* regards the original Reason of all Law'. He continues: 'in many Cases ... the Letter of the Law contradicts the Reason of the Law' – this is because 'Laws and Maxims of Law have no Regard to the Circumstances of particular Cases' and 'how liable we are to mistake' if 'we form our Judgments by applying *general Rules of Law or Equity to particular Cases*'.<sup>92</sup>

The choice for Sherlock is either to allow 'the general Maxim [to] prevail contrary to the very Reason upon which the Maxim itself is founded' or to allow 'the Reasons of Justice and Equity [to] prevail to supersede a general Law, which is not applicable to the present Case' – that is, it is a choice between, on the one hand, the 'Rule of Law' or 'Rule of Justice' and, on the other hand, the 'Reason of Law' or 'Reason of Justice'. He contrasts at this point human justice and divine justice: 'our Rules do not always extend to the Reason of particular Cases; but the Judgments of God do always regard the Reasons and Circumstances of every Case'.<sup>93</sup>

For Sherlock, the 'Reason of Law or Justice' (mercy) should prevail over the 'Rule of Law or Justice' 'general and particular Laws ... often fall very heavy upon particular Persons; whence it is that we complain of the Rigor and Hardness of the Law'. Were 'Men perfect both in their Reason and in their Wills, so that they could neither judge amiss nor act amiss, they would then do that which is exactly right and reasonable in every Case, and there would be no room to correct the Rigor of Justice by the Interposition of Mercy; for there is no Rigor in that which is perfectly right and reasonable'. But the very necessity for 'Pleas for Mercy' arises 'from the Circumstances of the Person, or the Action' and these 'show that the Law is too hard in his Case, and that he ought in Reason to be eased against the Extremity of the Law' – as such, 'the Reason of Law and Justice' should be 'adapted to the very Merits of the Case'.<sup>94</sup>

Sherlock recognises that this choice arises because of the limits of law: 'all Cases are judged by Laws made long before the Cases happened, and which cannot consider the Alleviations or Aggravations of particular Facts, it comes to pass sometimes, that the Law is a very inadequate Rule of Justice in Cases that fall under it'. However, no-one should suffer 'the Rule of Justice against all Reason of Justice' but 'ought to have the Benefit of Mercy, and to be relieved against the Rigor of the Law'.<sup>95</sup> For Sherlock the issue is of particular importance when 'many Innocents suffer in the Punishment of one injurious Person'; for example: 'The Law does not consider who

<sup>92</sup> Vol III, D VIII (Matt 13.29), 219–220: emphasis added; as to *Summum jus, summa injuria*: 'the Words in themselves, unless you have respect to the different Rules to which they refer, are a plain Contradiction. For it is not to be affirmed, that what is *summum jus* according to this Law, is, according to the same Law, *summa injuria*'.

<sup>93</sup> Vol III, D VIII (Matt 13.29), 221–222: 'Men are tied down to judge by the Rules which the Law prescribes, but the Judgment of God does not arise from any Rule or Maxim of Law, but in every instance follows the Reason of the Thing to be judged of; otherwise his Judgments would not in every Case be reasonable'; 222: as 'the Fountain of Justice, and of all Laws and Principles of Law, so the Divine Reason ... is in every Case the true Measure of Justice'.

<sup>94</sup> Vol III, D VIII (Matt 13.29), 223.

<sup>95</sup> Vol III, D VIII (Matt 13.29), 224; see also 227: Sherlock then addresses two difficult questions: 'because the Punishment of the Law is too heavy for his Crime, ought he therefore to go unpunished? because this Punishment is unreasonable, shall he therefore escape that which is reasonable?'.

shall maintain the Children, when it seizes the Father's Estate ...; nor does Justice relent for fear she should make a miserable Widow, and many wretched Orphans, by the severe Blow which cuts off the guilty Husband and Father'.<sup>96</sup>

## The legal thought of Sherlock in context

Sherlock is very aware of the religious, political, and legal contexts of the time in which he preaches. For example, in one sermon at the Temple in 1715 (the year of a Jacobite uprising in Scotland but which he does not mention), he shows himself no admirer of the Stuart James II (1685–1689), a 'papist', in whose time: 'this church and nation were brought to the brink of ruin: and though he had been saved from a bill of exclusion by the interests and loyalty of the church, yet no sooner was he on the throne, but he imprisoned her bishops, dispensed with her laws, and broke down all the fences that were raised for her security; in which confusion she had utterly perished, had not the providence of God rescued her by the means of a protestant prince [King William III], happily allied to the crown by marriage and by birth'.<sup>97</sup>

In any event, with respect to the intellectual context of the legal thought of Sherlock, there are clearly similarities and differences between Sherlock and other thinkers both before and during his life. What follows looks briefly at: other law-themed sermons; understandings of the cosmic legal order; and human law – nature, scope, promulgation, application and effect.

Sherlock is not alone in preaching on law or in using legal materials in sermons. Many clerics did so in their sermons in each century after the Reformation. There are three examples. First, in the sixteenth century, in a sermon of 1588, Richard Bancroft (later Archbishop of Canterbury (1604–1610)) sought to persuade puritans to accept the Book of Common Prayer using maxims of the civil and the canon law: 'I have read, that if any thing, fact, writing, law or whatsoever may in reasonable construction admit two interpretations, the best and the mildest is ever to be received. And the civil lawyers have these rules: *Semper in dubiis benigniora sunt praeferenda*: Always in doubtful matters the more benign are to be preferred. *Non oportet jus calumniari, aut verba ejus captare*: It is not meet to cavil at laws, or to snatch at their words'; and: '*Non sunt rejiciendae leges quae interpretatione aliqua possunt convenire*: Laws must not be rejected, which by any reasonable interpretation may be reconciled'.<sup>98</sup> As we have seen, Sherlock himself commonly invoked 'Maxims' or 'Principles' (of law and of religion) but his discussion of the maxim *Summum ius, summa injuria* from Roman law is a rarity.<sup>99</sup>

Second, the cosmic legal order. Needless to say, Sherlock was not the first to see human law within the context of a wider constellation of higher laws. In this he is

<sup>96</sup> Vol III, D VIII (Matt. 13.29), 229.

<sup>97</sup> D V, preached 20 November 1715 (on Acts 7.25): 'the eyes of the popish faction were on the Pretender to the crown, and all their hopes centred on him': T S Hughes, *The Works of Bishop Sherlock* (1830), III.326 at 334.

<sup>98</sup> I have modernised the language of the text. I am very grateful to the Ven Russell Dewhurst for this quotation; see: <https://www.anglican.net/works/richard-bancroft-sermon-preached-at-pauls-cross-1588/> (accessed 23 October 2025).

<sup>99</sup> For Sherlock see above for *Discourses*, vol III, D VIII (Matt 13.29), 219–220.

very reminiscent of a former Master of the Temple, Richard Hooker (d. 1600); Hooker is of course celebrated in part for his exposition of the categories of higher law.<sup>100</sup> The same may be said of many after Hooker and during Sherlock's own lifetime – civilians, common lawyers, and clerical jurists – who deployed extensively ideas of divine law, natural law, the law of reason, justice and equity, and conscience, in their commentaries on ecclesiastical law.<sup>101</sup> Needless to say, the secular judiciary of the eighteenth century too were fully aware of the debate between revealed and natural religion; and in one case from 1748, concerning religious toleration in London, Lord Mansfield (1705–1793) invoked both: 'It cannot be shown from the principles of Natural or Revealed Religion that independent of positive law, temporal punishments ought to be inflicted for mere opinions with respect to particular modes of worship'.<sup>102</sup>

These categories of higher law, and their relation to inferior human law, were also the object of preaching. From the seventeenth century, we have examples of sermons preached on the occasion of Readings at the Inns of Court (i.e. lectures on the text of statutes), such as those preached by Adam Littleton (1627–1694),<sup>103</sup> who also published works by John Selden (d. 1654), including on ecclesiastical law; and he translated one on legal history into English.<sup>104</sup>

For instance, in a sermon delivered in 1675 (three years before the birth of Sherlock) on the occasion of the Reading at Middle Temple given by Sir Francis Winnington (1634–1700), Littleton foreshadows in a single discourse many of the themes scattered across so many of Sherlock's discourses. Littleton's sermon is entitled 'Law established by Gospel', and is an exposition on a scriptural text from Matthew.<sup>105</sup> Its principal theme is that, in the Sermon on the Mount, Jesus provides 'a System of Christian Ethics, the Summary and Abstract of all Practical Divinity',<sup>106</sup> which Littleton then explores in the context of various legal categories.

<sup>100</sup> N Doe, 'Richard Hooker: Priest and Jurist', in R H Helmholz and M Hill (eds), *Great Christian Jurists in English History* (Cambridge, 2017), 115–137.

<sup>101</sup> See Doe and Coleman (note 2), esp. 121 and 130–133.

<sup>102</sup> D Lieberman, *The Province of Legislation Determined: Legal Theory in Eighteenth-Century Britain* (Cambridge, 1989), 124–125: 'Persecution for a sincere, though erroneous conscience, is not to be deduced from reason or the fitness of things', and, indeed, 'is against Natural Religion, Revealed Religion and sound Policy'.

<sup>103</sup> Adam Littleton DD, *Eight Sermons Preached Upon Solemn Occasions* (London, 1679).

<sup>104</sup> Littleton claimed descent from the ancient Littleton/Wescote family of Worcestershire (which included the jurist Thomas Littleton (d. 1481)), was chaplain to Charles II, awarded DD in 1670 and at the time of his inns of court sermons was rector of St Luke's Chelsea (appointed 1669); in 1670, he received his DD. Under the name 'Redman Wescote', Littleton published *Tracts written by John Selden of the Inner Temple* (1683); Selden's work on English legal history, which Littleton translated from the Latin, was *Jani Anglicorum facies altera*.

<sup>105</sup> *Sermons*, 299: 'A Sermon Preached at the Reading of Sir Francis Winnington of the Middle Temple, Aug. 1. 1675'; Winnington entered Middle Temple in 1656 and was Called to the Bar in 1660, and became an MP and Solicitor-General to Charles II; Littleton's text is Matt 5.17: 'Think not, that I am come to destroy the Law or the Prophets: I am not come to destroy, but to fulfill'; see also 307: for Littleton, the message is simple – Christ is 'the end of the Law'. See also 313, 'A Sermon Preached at the Reading of Thomas Walcot Esq; in the Inner Temple, on Quadragesima Sunday, Febr. 17. 1677/8' on the text Luke 8.33–35.

<sup>106</sup> *Sermons*, 299: and Jesus confirms with 'new sanctions' the 'old law', namely, 'the old Fabric and Body of Constitutions which God had given ... for the rules of Practice and Worship'.

At the outset, he comments on the nature of law; in keeping with countless earlier thinkers, he says: 'The Law in general is a binding Rule; *Lex a ligando* is the common saying; but I think rather, *Lex a legendo*, the publishing or promulgation of Laws being that, which makes them obligatory'.<sup>107</sup> As we have seen, Sherlock too sees promulgation as a constitutive essential for the validity of law. Littleton then makes a fundamental distinction: 'Law is either Natural or Positive. The Law of Nature is the rule and precept of right reason. Positive Laws are consequences drawn from that, and suited to the necessities and conveniences of human society'.<sup>108</sup> This may be contrasted with Sherlock who offers a wider complex of higher laws.

Like Sherlock, for Littleton natural law is moral law: 'Natural Law is the same as what we call Moral Law, and implanted into the very Nature and Constitution of Man; that which the Apostle styles the Law written in the heart, which even by secret instincts teaches us Piety to God and Justice to our Fellow-men; of which the Decalogue was a compendium draught; the pravity of sinful nature and the vicious customs of the World having made it necessary for the supreme Lawgiver to deliver this Law audibly by word of mouth for the greater cause of the present Hearers, and to set it down visibly in Writing, that no one of their Generation to come might pretend Ignorance: and this is what we are told, that the Law was given because of Transgressions'.<sup>109</sup> Unlike Sherlock, however, Littleton does not address the law of reason.

Littleton then deals with the human positive law; in addition to that of God – who is the 'Lord and Judge of Conscience' – he says: 'the other sort of Positive Laws, as regarding mainly the outward man, subjects us also to the Magistrate, who makes Judgment of mens intentions by their Actions. The Mind and Conscience of man being otherwise undiscoverable to man, and by Consequence exempt from the Power as well as the Cognizance of all human Authority, though the obligation of obedience be founded in Conscience too even to human laws'.<sup>110</sup>

This sets the scene for Littleton to tackle the relationship between positive human law and the higher laws. Like so many before and after him,<sup>111</sup> including Sherlock, Littleton says: 'as Christ has highly improved and ratified the Laws of Nature, so his Religion in its Principles do fairly comport with the positive Constitutions and Municipal Laws of particular Countries and Nations'; moreover, Christ 'gives no Authority or Encouragement to anyone, upon pretence of Evangelical freedom, to shake off the yoke of obedience [to human laws], which is laid upon them by just Powers set over them'.<sup>112</sup> This of course opens the door to a fundamental qualification to the duty to obey human laws: 'how ill will it become any [of Christ's] Disciples [including today], out of wilfulness or pretended weakness, to disturb the Peace of a Church and State, whereof they are members, by refusing Obedience to the lawful Commands of lawful Superiors? And such are all commands, where

<sup>107</sup> *Sermons*, 300.

<sup>108</sup> *Sermons*, 300.

<sup>109</sup> *Sermons*, 300; see also 303: he writes here of the 'indispensable obligation of the Moral Laws'.

<sup>110</sup> *Sermons*, 300; see also 305 for 'Judicial Laws', 'Divine Law', and 'Human Laws'.

<sup>111</sup> See for example in the field of English church law, N Doe, "Legalists and Moralists" in the Historic Portrayal of the Constitution of the Church of England' (2023) 25 *Ecc LJ* 1–25.

<sup>112</sup> *Sermons*, 307.

God himself has not in his Word expressly forbidden or directly bid the contrary'; his punchline: 'for it is in that case only, where we are to obey God rather than men, namely when God has commanded some thing, and the Magistrate commands another'.<sup>113</sup> Littleton here is a moralist not a positivist.

Littleton ends his sermon by praying with his congregation of lawyers, that, in England, 'we may, as He came not to destroy but to fulfil the Law, so perform all Offices of Justice and Love to one another, and so agree in the Service and Worship of God, that Religion and Laws may still flourish in our Land, to the Honour of the Government, the Welfare of the People, and the Glory of the Great God, to whom be glory now and for ever. Amen'.<sup>114</sup> Once again, this tripartite view of the purposes of law (including church law) are standard for his day.<sup>115</sup>

Finally, there are the sermons of William Beveridge (d. 1708) delivered in the decades just before Sherlock became Master of the Temple. I give three short examples. Like Sherlock, Beveridge recognises the authority of the Church to govern itself – Christ left 'the power of governing the Church' to his apostles and their successors who are 'empowered both to declare what are those commands of Christ which men ought to observe, and also to use all means to prevail upon men to observe them' by 'correcting and punishing those who violate, rewarding and encouraging those who keep them'; Beveridge then cites specific early Canons on the matter of visitation in governance. Beveridge also cites the Canons Ecclesiastical 1603, such as: the rule that 'none be ordained, either deacon or priest, who has not first some certain place where he may exercise his function [citing Canon 33], nor except he subscribe to the three articles mentioned in Can[on] 36'. Beveridge also has a lengthy sermon of the administration of Church courts by lay people including those who are 'learned in the law'.<sup>116</sup> By way of contrast, there is no obvious use by Sherlock in his sermons of specific rules of the substantive or procedural ecclesiastical law of England, compared with its jurisprudence.

## Conclusion

Thomas Sherlock thought ordinarily in legal categories. He sat comfortably on the bishops' bench as both a minister of the Gospel and the erstwhile Master of the Temple. A Tory, he was guided more by conservation than reform and although his interpretation of the London earthquakes might now strike us as ridiculous (as also his hatred of gin and its social effects) yet this was popular with his clergy and his people. Yet his thought as outlined in the *Discourses* seems to have avoided the worst pitfalls of orthodox predestination theology because he spoke of mercy and justice with ease. He does not seem to have governed as a legalist nor was he accused of such (unlike Gibson), despite believing that the law of God was both natural and revealed and that human law shared something of this sacred character.

<sup>113</sup> *Sermons*, 308.

<sup>114</sup> *Sermons*, 312.

<sup>115</sup> Doe (note 111), at 331–336.

<sup>116</sup> N Doe and D Nikiforos, 'Rediscovering Anglican Priest-Jurists III: William Beveridge (1637–1708) (2021) 23 *Ecc LJ* 82, at 94–96.

Second, using Sherlock as a case study, it is clear that sermons represent a potentially fruitful resource for the study of the history of English law since the Reformation. This would certainly fill an obvious gap in current scholarship. Sherlock is a particularly good example because those to whom he preached were primarily lawyers at the Temple Church. His focus is almost always on scripture and its message. However, to enable his listeners to engage with the scriptural and theological matters on which he expounds, to enable them to understand these more fully, and to relate them to their own professional lives as lawyers, Sherlock uses ideas from a breath-taking range of analogous legal categories – from the higher laws of God and the Gospel, reason and nature, justice and equity, and conscience, to the lesser laws of humans – their nature, scope, promulgation, application, and enforcement. But he says very little, so it would seem, about the substantive ecclesiastical law: his focus is jurisprudence.

Third, Sherlock is not the only cleric after the Reformation to preach on law. Three brief examples have been offered here: Bancroft, Littleton, and Beveridge. However, these three hardly exhaust the field for study. It is submitted, therefore, that a far wider, more ambitious, project would yield fruitful results for the history of ecclesiastical law and jurisprudence – including a comparative approach to law-themed sermons across the centuries after the Reformation with a view to explore, for instance, continuity and change in terms of topics treated, juridical sources used by the preachers, and the complexion of their congregations.

When Inner and Middle Temple hold their amity dinner, the ‘Sherlock Cup’ is proudly displayed: this lavish silver-gilt cup was commissioned by the two Inns in 1725 as a gift to Sherlock after he arranged to have his sermons printed at the request of their Benchers who presented it to him in appreciation.<sup>117</sup> If there were a cup to be awarded to an Anglican cleric-jurist for the treatment of law in sermons, Sherlock would be a good candidate to receive it.

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<sup>117</sup> Each Inn gave £25 towards the commission and the arms of both are engraved on the body of the Cup, with Sherlock’s arms on the lid. When Sherlock died in 1761, the Cup passed to his nephew, Sir Thomas Gooch, and then down through his family, many of whose effects were auctioned in 2000. It was then jointly purchased by the Inns (275 years after commissioning it): *Middle Temple: Amity Dinner with Inner Temple* (15 March 2023).