

Helmuth James, Count von Moltke

A memorial address on the 60th anniversary of his Call to the Bar of
15 November 1998 at The Temple Church
By The Rt Hon Sir Konrad Schiemann

“And the Lord spake unto Moses, saying, speak unto all the congregation of the children of Israel, and say unto them ‘Ye shall be holy: for I the Lord your God am holy.’ “¹Jesus said to the multitudes “Be ye perfect as your heavenly Father is perfect”².

The challenge seems impossible - in part because of the high standard set by the concept of holiness or perfection, and in part because we are required to strive for holiness and perfection in all areas of our life. So, we look around for examples to follow.

The Church, recognising this, encourages us to look at, and meditate on, the lives of holy men and women in the past. Many of these lived long ago in environments far removed from our own. We learn from them of course, but somehow, the practice of the law does not seem a natural setting in which to be holy. So, we ask: where is the twentieth century lawyer in a grey suit who may serve as an example to us here in the Temple as to how we can use our gifts as lawyers in the Lord’s service?

One whose life can help us and whom we honour today, was Helmuth James, Count von Moltke. His father was German; his mother the daughter of Sir James Rose Innes, Chief Justice of South Africa and a member of the Inner Temple.

Helmuth James grew up in Germany. He was 26 when Hitler came to power. He qualified and practised as a German lawyer. Nonetheless, he was also called to the Bar by the Inner Temple, in the Michaelmas Term of 1938, 60 years ago this month. He was a pupil in John Foster’s Chambers at 2 Hare Court and thought of practising here. However, he came to the conclusion that it was his duty to return to Nazi Germany. Five years later he was imprisoned. On the orders of the Nazis his name was removed from those who were entitled to practise as lawyers in Germany. Thereafter he was tried for treason by a court, created by the Nazis, named the People’s Court. Its president, Roland Freisler, proclaimed the following legal principles:

¹ Leviticus 19,2

² Matthew 5.48

“It is already a preparation for high treason to arrogate to oneself any judgement on a matter which it is for the Führer to decide.”

“Anyone who objects to acts of violence, but prepares for the eventuality that another, that is, the enemy, removes the government by force, thereby engages in preparation for high treason.”³

Freisler asked rhetorically

“From whom do you take your orders? From the Beyond or from Adolf Hitler?”⁴

Helmuth James was not one of those who plotted the death of Hitler. His crime in essence was that he used his intellectual gifts and powers of leadership, not in the service of Hitler, but to expose evil and make plans for the governance of Germany once the Hitler regime had been defeated. In January 1945, he was condemned to death and executed whilst still a member of the English Bar. For the moment, I think the last Inner Templar to suffer that fate.

Here was a man who thought it morally wrong simply to ignore what the politicians were doing. He was a doer as well as a thinker. He was conscious of the dangers of failing to confront reality by submerging oneself in detail. Losing sight of the wood by reason of concentrating excessively on each tree is a well-known failing amongst lawyers. So is taking no notice of anything in the world other than their daily case load. Helmuth James refers to the matter thus in a letter to his wife⁵:

“It is our duty to recognise what is obnoxious, to analyse it, and to rise above it in a synthesis which enables us to make use of it. Whoever looks the other way for lack of the ability to recognise it or of the strength to surmount what he has recognised, is indeed putting his head in the sand.....the rage for detailed information leads to attaching excessive importance to detail and neglecting the equally important task of sublimating the facts and bringing them into proper perspective. If one chases after details one won't have the strength to prevail over them. It is certain that this strength is greater in a calm atmosphere than in a hectic one, and anyone able to spread this atmosphere of peace around himself is a live support and driving force in the right direction. Peace is not

³ Letters to Freya p.400

⁴ *ibid.*p.409

⁵ Letters to Freya p.73

complacency. Whoever lets black be white, and evil good, for the sake of outward calm does not deserve peace and is putting his head in the sand. But whoever knows at all times the difference between good and evil, and does not doubt it, however great the triumph of evil seems to be, has laid the first stone for the overcoming of evil.”

Helmuth James teaches us to beware of the attractions and dangers of protecting ourselves from pain in a letter which he wrote in the context of seeing the remains of relatives who had been killed in the bombings of Berlin.

“You ask how one can stand it all. That isn’t so hard. To avoid getting callous is much harder. I am always catching myself at it. ... I overcame my emotion and horror, and then it was quite easy. But that is a false reaction. One should overcome this defensive indifference, one should not put on an armour, one must bear it. In order to endure death and horror one tends to kill off one’s own humanity, which is a much greater danger than not being able to bear it.”

The danger of becoming callous is one to which we at the Bar and on the Bench are much exposed professionally. Because we do not wish to get hurt ourselves, we find ourselves taking care not to feel the other person’s pain, using euphemisms for sending others into jail or bankruptcy. This is dangerous, not only for others, but also for ourselves. The professional and personal challenge is to remain objective without losing the capacity to feel the other person’s pain. We must learn to **use** pain. The part of us which feels suffering is, I suspect, the same part as that which feels joy. If we let that part shrivel up, we will not be perfect, as we are commanded to be perfect. Moreover, if we are untouched by the pains and joys of others, we may find that the pain which inevitably at some stage life will inflict upon us, is a pain which we cannot absorb and use. Perhaps this is what the Psalmist had in mind when he sang *“Blessed is the man who walking through the valley of dryness uses it for a well”*⁶.

So in Helmuth James we see a man who remained sensitive to horror even in times filled with horror. Of the shooting of hostages, he wrote in 1941:

⁶ Psalm 84,6

“In one area in Serbia two villages have been reduced to ashes. 1,700 men and 240 women from among the inhabitants have been executed. That is the so called “punishment” for an attack on three German soldiers. In Greece 220 men in one village have been shot..... Certainly more than a thousand people are murdered in this way and another thousand German men are habituated to murder in this way..... May I know this and yet sit at my table in my heated flat and have tea? Don’t I thereby become guilty too? What shall I say when I am asked: and what did you do during that time?”

But here was a man who did not just sit back and agonise. His example to us is that he employed his courage and legal skills to do what he could in the situation which faced him. Having, through calm reflection, recognised evil he then accepted his duty to expose it and fight it. This he did fearlessly. He was a public international lawyer in a unit whose function it was to advise the supreme command of the German military forces on legal matters. The task of the unit was to issue written opinions on paper. He wrote boldly and clearly. Moreover, time and time again he managed to attend the meetings of senior officers for whom those opinions had been prepared. The effect of his personality and courage on them was sometimes, at any rate, to shame them into following his lead.

Here was a man who simply put aside all thoughts of personal safety, let alone advancement, in order to articulate publicly what he thought was right. He put the following draft⁷ before his superior:

“I understand that the chief of the department for Commercial and Economic warfare measures has suggested the murder of the British Ambassador to Switzerland. The department for counterespionage has apparently refused to do this and so it is now being suggested that the Gestapo should be asked to do it. I ask for permission to enter an absolute veto against any further attempt to murder the British Ambassador to Switzerland. In particular it seems to me untenable that requests of this sort should be made by the Army to the Gestapo.”

For a junior officer to write like this in Nazi Germany took a formidable amount of courage.

One of the matters on which he expressed himself, was the position of those persons who had been in the armies of countries defeated by

⁷ Ger van Roon : Helmuth James, Graf von Moltke p.238

Germany, such as Poland and France. Many such persons then took up arms as part of the army of a country still fighting Germany, such as the Soviet Union or Great Britain. When such persons were subsequently captured by the Germans, a difficult legal question arose: were they to be treated as civilians bearing arms - for which the penalty was death - or as soldiers who had become prisoners of war? He persuaded the authorities that the proper legal analysis of the situation was that these persons were to be regarded as prisoners of war.

Here is how he did it. Again, I quote from a letter⁸ to his wife:

“There was a big row and I wonder whether they will try and throw me out at last. Once more I was defeated in the large group ... When the meeting was over, I went to Weichold [his superior] and said I had been left in a minority of one. But I remained unconvinced and asked permission to exercise the right of every official to have his dissenting opinion put on record. Big row: I was an officer and had no such right but simply the duty to obey. I said I was sorry, but this was a question of responsibility before history, which to me had priority over the duty to obey. The matter came before the Admiral⁹ and after 5 minutes he endorsed my opinion. He obviously had shared it all along, at any rate had wavered, and my resistance had strengthened his courage.... Result: the Admiral will represent the opinion of the Sections officially but will have his personal dissent recorded on the minutes and will also speak to these minutes before the Führer.

[the Admiral] succeeded finally in getting Keitel [the Fieldmarshal] onto my line and at 6.30 came a Führer Order with my conclusion and with my arguments. ... a great disaster has been averted and despite everything it gives me great satisfaction to think that many non-German women have your husband to thank for the continued existence of theirs.”

Note the firmness. Note the openness. Note the result of his leadership, although he was a junior officer and those whom he was leading were his seniors. One can lead, even though formally one is not the person in charge. At times we are under a **duty** to lead our superiors not just to follow them.

⁸ Letters to Freya p.60

⁹ Schuster

Perhaps I may allow myself here to recall that he mentions a few days after this letter that he dreamt he went to his chambers in the Inner Temple. It was a pleasant dream - save that at the end everything went wrong, and he had to choose between the alternatives of being shot as a spy in England or as a traitor in Germany.¹⁰

The treatment of prisoners of war frequently occupied his energies. Let me quote the following from a draft¹¹ which he prepared for his superior Admiral Canaris in relation to the treatment of Soviet prisoners of war:

*“The legal position is as follows. The **Geneva Convention on Prisoners of War** is **not** in force between Germany and the Soviet Union. Therefore it is the rules of international law concerning the treatment of prisoners of war which **are** in force. These have established since the 18th century, that **captivity** is neither revenge nor punishment, but essentially a **security** measure whose sole purpose is to prevent the prisoners from taking any further part in the war. This approach has arisen from the view, held by **all** armies, that it was contrary to military conceptions to kill or harm the unarmed. It further is consonant with the interests of each combatant nation to save its own soldiers from harm when in captivity.”*

Here we see the Christian lawyer making use of his legal and persuasive skills to persuade his superiors that maltreatment of enemy prisoners is both against the law and against self-interest.

He became privy to what was happening to the Jews. Listen to his thoughts and actions¹²:

“Yesterday I was at a meeting in the Foreign Ministry about the persecution of the Jews. It was my first official contact with this question. Against 24 men and quite inflexibly I attacked a decree [one of the Nuremberg Laws against the Jews] which already had the approval of all ministers and the chief of the OKW (the top military command) and for the moment have halted its course. And when I returned, the official in whose competence it really fell asked me: ‘Why did you do it? You can’t change a thing although of course these measures are catastrophic.’”

¹⁰ Letters to Freya p.66

¹¹ van Roon p.258

¹² Letters to Freya p.181

In fighting the latest decree against the Jews I have succeeded in getting the three most important Generals of the OKW to write to the fourth that he must immediately withdraw the approval he gave on behalf of the chief of the OKW. The next stage is to see whether he does so. Only after that will the real battle be joined.

My self-appointed representation of the interests of the Wehrmacht has been endorsed by [Admiral] Canaris and by [General] Thomas. I dictated letters and both were visibly pleased when they signed them. Which proves the general rule, that as soon as one man takes a stand a surprising number of others will stand too. But there always has to be one to go first: otherwise it does not work.”¹³

Surely there is here a lesson for all of us. We are called to set the tone and then at least **some** others will follow our lead. We must use our legally trained brains to help us to identify the important issues. Helmuth James draws our attention to the fact that there are times in our lives when our willingness to be counted and to assert the just may be of much greater significance than we ourselves at the relevant time perceive. He once reflected in these terms¹⁴.

“Strange how infinitely many things suddenly depend upon a single decision. Those are the few moments when one man can suddenly count in the history of the world. Everything before, everything that follows is based on mass, anonymous forces and men. And then suddenly one feels that all these forces are holding their breath, that the gigantic orchestra that has played so far has fallen silent for one or two bars, to let the soloist set the tone for the next movement. It is only one heartbeat of time, but the one note, which will sound out alone and solitary, will establish the next movement for the whole orchestra. And all await that tone.”

His activities during the war will have saved some lives. However, to his contemporaries he will have seemed, as Jesus must have seemed, unsuccessful. By and large the Nazis went their way and he did not stop them. But he is an example for us. Like our Lord he emerges the ultimate victor. True, like our Lord, he was imprisoned and executed because he would not renounce his vision of holiness, his vision of perfection. His earthly life came to an end. But who is the exemplar now? It is not Judge Freisler who presided over the People’s Court and was swept along by the

¹³ Letters to Freya p.183

¹⁴ Letters to Freya p.259

political currents of the day. It is Helmuth James Count von Moltke, Barrister of the Inner Temple, who took his orders from the Beyond and whom we commemorate today.

Konrad Schiemann