

## A British Christian in Public Office: Lord Mackay of Clashfern

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### Introduction

The Anabaptists of the 16<sup>th</sup> century eschewed political involvement, as do many (although not all) of their spiritual heirs today. They understood Jesus to teach that civil government belongs to this world and that Christians as citizens of the kingdom of God should not hold office or actively serve earthly governments, to whom they are obliged only to offer passive non-resistance (Matt. 22:21, John 18:36; cf. Rom. 13:1-7). Martin Luther (1483-1546), on the other hand, taught that since God rules over the whole world, He does so in two ways. Earthly kingdoms are ruled through secular and religious powers by the enforcement of law, whereas members of the heavenly or spiritual kingdom of God are governed by the gospel of grace. Christians live in and may serve both kingdoms, although a competent unbeliever (“Turk”) as an earthly governor is preferable to an incompetent believer. John Calvin (1509-1564) made a similar distinction between the two kingdoms and went on to say, “Yet this distinction does not lead us to consider the whole nature of government a thing polluted, which has nothing to do with Christian men.”<sup>1</sup> He called “fanatical” the view that as members of the spiritual kingdom of God, believers have no responsibility to earthly powers.

Calvin’s view found expression in post-Reformation confessions such as the Westminster Confession of Faith, which devotes a chapter to the subject of the “Civil Magistrate”. Chapter XXII Paragraph II of the Confession states: “It is lawful for Christians to accept and execute the office of a magis-

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<sup>1</sup> John Calvin, *Institutes of the Christian Religion* (A New Translation, by Henry Beveridge, Esq., Edinburgh: Printed for The Calvin Translation Society, 1845), IV.XX. 11.

trate, when called thereunto; in the managing whereof, as they ought to maintain piety, justice, and peace, according to the wholesome laws of each commonwealth. . . .”<sup>2</sup> This Confession was produced in England with Scottish input at a time (1643-46) of Puritan ascendancy and clearly presupposes a Christian society and government. The civil magistrate is to maintain not only justice and peace but also piety. The situation today is much different in what is now Great Britain, as in the Western world generally, where pluralism and secular values often hostile to Christian principles hold sway. How is a Christian of Reformed persuasion in the tradition of the Westminster Confession to conduct himself in such a context? This article offers one example in the person of Lord James Mackay of Clashfern, at one time Britain’s Lord Chancellor.

### Life and Work

On January 29, 2012, a young single mother by the name of Emily blogged as follows:

On Wednesday night, the Coalition Government suffered its biggest defeat in the House of Lords since it was elected. It was a landslide: 270 over 128. The vote was for an amendment to the planned CSA [Child Support Agency] charges, tabled by Lord Mackay of Clashfern.

Last year, I wrote and wrote and wrote about the Government’s plans to charge single parents with care of their children to apply for child maintenance – and to take part of the money that was collected. I didn’t just write about it on my blog: I wrote to my MP and I wrote to the Consultation, as well as speaking to them on the phone . . . No one paid any attention . . .

Then along came Lord Mackay of Clashfern, leading a wonderful revolt and talking absolute sense . . .

When I watched him speaking in the House of Lords . . . I cried. Finally, a Conservative MP who wants fairness, a man who understands the reality of thousands of single parents. I never thought I would want to hug a Tory peer.

I can’t give Lord Mackay of Clashfern a hug, but I am going to write him a thank you letter – and I hope others who helped campaign against these charges will have the time to do the same.<sup>3</sup>

<sup>2</sup> *Westminster Confession of Faith* (Glasgow, Free Presbyterian Publications, 2004), Chapter XXIII, Paragraph II.

<sup>3</sup> “Thanks, Lord Mackay of Clashfern.” Posted by Emily on Jan. 29, 2012 in *Single Parent Stuff*. <http://myshittytwenties.co.uk/2012/01/29/thanks-lord-mackay-of-clashfern/>. A subsequent comment (Feb. 13, 2012) revealed, “I emailed him and he wrote back to me the next morning – and signed it ‘James’. He’s got to be the best Tory peer going. Alas, the MPs didn’t take any notice and ignored him anyway.”

Heart-warming comments of this nature are typical of those who have seen and heard Lord Mackay in action. His vote against his own government is also typical of his commitment to doing what he believes to be right, regardless of political considerations. Still active in his eighty-seventh year, Mackay frequently flies to London from his Scottish Highland home of Inverness to speak and vote in the House of Lords on matters of socio-ethical significance. The values he espouses are ones he learned in his religiously devout upbringing.

### Early Life and Career

James Peter Hymers Mackay was born in July 1927, in Edinburgh. His father came from the Highland hamlet of Clashfern in west Sutherland and had worked as a porter/signalman for the Caledonian Railway Company. James' mother was originally from Halkirk, Caithness, in the very far north of Scotland. His parents married late in life, his mother having been previously widowed, and James was an only son. A popularly circulated story has a pious old woman meet the couple after they had been married and childless for some years. She assured them that they would yet have a son who would "rise high in goodness and ability".<sup>4</sup>

James' father was an active elder in the local congregation of the Free Presbyterian Church of Scotland, and it was in this theologically conservative denomination that his faith was nurtured, leading to his own profession of faith as a young man. James would later become an elder himself and served the denomination as legal adviser and assistant clerk of Synod for a number of years. Even when in later life his public duties led him into conflict with denominational leadership, he referred to his church's principles as "the most tender love that has ever been described".<sup>5</sup>

James won a scholarship to George Heriot's, an elite school in Edinburgh, and from there went on to study mathematics and natural philosophy (physics) at the University of Edinburgh, receiving a joint M.A. in 1948. He taught

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<sup>4</sup> See John Macleod, *No Great Mischief If You Fall: The Highland Experience* (Edinburgh: Mainstream Publishing Company, 1993), p. 91. Macleod adds "But stories of this sort are so common in the Highlands, and so frequently retrospective that perhaps we should not believe this."

<sup>5</sup> BBC program, "Make Way for the Lord Chancellor 1". [www.youtube.com/watch?v=lj9c5aB8MQU](http://www.youtube.com/watch?v=lj9c5aB8MQU). The source of the conflict, leading ultimately to his excommunication in 1989 and the formation of a break-away denomination by his supporters (whom he did not encourage or join) was his twice attending a requiem mass for former colleagues and refusing to admit that he had done anything wrong. The Free Presbyterian Synod had previously denounced national leaders for similar reasons, but had not as yet disciplined one of its own members. It was undoubtedly one of the most painful periods in Lord Mackay's life; yet in agreeing to be the subject of this article, he cautioned that nothing critical should be said about his former church colleagues.

mathematics for two years at the University of Saint Andrews before pursuing further studies in mathematics at Trinity College, Cambridge, from which he graduated in 1952. One unintended consequence of his time at Cambridge was the decision that his future lay not in academic mathematics but in law. He returned to study in Edinburgh, receiving an LL.B. (with distinction) in 1955.

In that same year, he was elected to the Faculty of Advocates (the Scottish Bar) and a decade later “took silk”, becoming a Queen’s Counsel. He was Sheriff Principal for Renfrew and Argyle from 1972 to 1974. In 1973, he became Vice-Dean of the Faculty of Advocates and from 1976 to 1979 served as its Dean, making him the leader of the Scottish Bar.

### Family Life in Edinburgh

In 1958 James married a cousin, Elizabeth (Bett) Hymers, and together they had a son and two daughters. Their son, James, is now the only accredited Consultant Clinical Genetic Oncologist in the United Kingdom, with a special interest in cancer genetics, and is an honorary senior lecturer in the Department of Biology, University College, London. The younger daughter, Ruth, is Managing Director of a veterinary practice in Lancashire. The middle child, Elizabeth (Liz), married James Campbell, a frequent visitor to the Mackay home when he was a boarder at George Watson’s School. Campbell is now Chief Executive of Blythswood Care, a Christian charity based in the Scottish Highlands, to whose ministry his father-in-law has contributed his influence from time to time. James and Bett have been blessed with seven grandchildren.

In later years, James would describe Bett as “absolutely extraordinary”, recalling that she “was a nurse and when we got married she was willing to come and look after my father even although it meant she could not finish her course at the Royal Infirmary. She did that for six months or so before he passed away. I am very blessed and I try to be thankful for that. Our relationship has always been very happy and our family is very important to us. They have been supportive of us in every situation. For this I am very thankful.”<sup>6</sup>

The Mackay home in Edinburgh was a place of generous hospitality to, among others, university students including myself and other family members. I remember asking James how he took notes at university. His answer: “I didn’t. I remembered the spoken word.” On one occasion, I mentioned a visitor to the Free Presbyterian Church who appreciated the preaching of our pastor, Rev. Donald Campbell, but who was otherwise quite critical of the church. I said that he often spoke to me about the faults of the Free Presbyterian Church. James looked at me and responded sharply, “What are they? I’m not aware of them!” Another memory is of a question he asked those of

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<sup>6</sup> “Lord Mackay of Clashfern Part 2: From Court Room to Cabinet Room.” Interview with Robert Pirrie in *Signet Magazine: The Magazine of the Writers to Her Majesty’s Signet*, February, 2013, Issue 4, p.19.

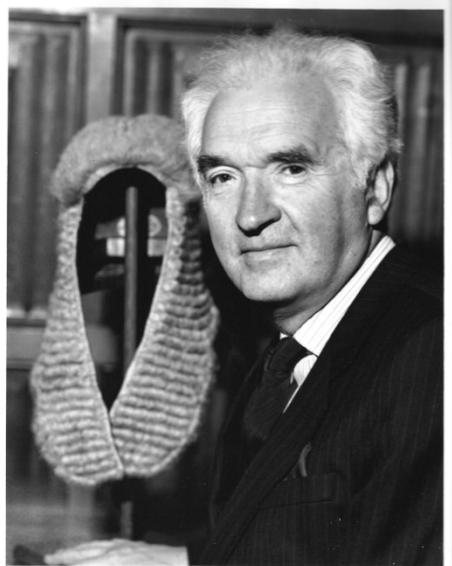
us present and then answered himself: “Why is it that the majority of the Ten Commandments are phrased negatively?” The answer, as I recall, had something to do with the negative including or implying the positive. He also planted firmly in my mind the distinction between jealousy and envy, such that God is jealous (requiring exclusive possession and loyalty) of his people without being envious of other gods.

#### Lord Advocate of Scotland

One Friday in 1979, James and Bett Mackay were shopping at Marks and Spencer’s (a British chain store), when they ran into a professional colleague who said, “James, I hear you’re going to be Lord Advocate.” James responded with an astonished, “What?”, and said he rather wished he had been informed. Sure enough, the following Monday, he received a phone call from Prime Minister Margaret Thatcher inviting him to take on the position of Lord Advocate, the chief legal officer of the government and crown in Scotland. He accepted and took the title of Lord Mackay of Clashfern in honour of his father’s first home.

Normally, the governing party in parliament would choose one of its own party members for the position, but James Mackay was not known for his political affiliation. The obvious choice, based on precedent, would have been Nicholas Fairbairn, Q.C., who was a Conservative Member of Parliament. Mackay suggested this to the Prime Minister and she replied that if he (Mackay) would take on the top job, Fairbairn could be appointed to the deputy position of Solicitor General.

Fairbairn was a flamboyant and controversial political figure, thought to be a hard-drinking womanizer. This was not the desired image for the Lord Advocate and led to his being passed over in favour of Mackay. It is significant that both Conservative Prime Minister Thatcher and her Labour predecessor James Callaghan (1976-79) were inclined to appoint Mackay. Fairbairn was no doubt disappointed at having been passed over, but he would later describe Mackay as possessing “extraordinary good manners” as well as being “incredibly intelligent”.<sup>7</sup>



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<sup>7</sup> Sir Nicholas Fairbairn in “Make Way for the Lord Chancellor 1”.

As Lord Advocate, Mackay was head of the Scottish prosecution service and also represented the United Kingdom in the European Court of Justice. He gained a considerable reputation in the English legal establishment and is credited with creating English interest in many aspects of Scots law.

Reflecting in an interview with *Signet Magazine* on his time as Lord Advocate, Mackay had this to say:

I think it was very good for me. I was introduced to the world of politics and to the matters of the press and so on and introduced to it fairly gently because I was fairly junior in the political hierarchy . . . I worked a lot with Sir Michael Havers [then Attorney General and later Lord Mackay's predecessor as Lord Chancellor] and he used to nominate me for doing English cases in the House of Lords and the Court of Justice of the European Community. That was an extraordinary experience and maintained my position as an Advocate quite a bit even after being the Lord Advocate . . . So I continued to be an Advocate really until I became a judge in 1984.<sup>8</sup>

The appointment as judge was jointly to the Court of Session, the supreme civil court of Scotland, and to the High Court of Judiciary, the supreme criminal court. This was followed in 1985 by an appointment as a Lord of Appeal in Ordinary ("Law Lord") of the House of Lords, which was the highest appellate court in the United Kingdom prior to its replacement with the Supreme Court of the United Kingdom. There is a touching story associated with this latter appointment:

I treasure it, because it's about real people. I was sitting in Glasgow, in the High Court, a criminal trial, and I was coming home from court in the afternoon walking up Argyll (sic) Street. That morning's papers had my appointment and, as I recall, there was a big photograph in the Daily Record . . . (T)hese two chaps were sitting on a seat and as I passed one of them said, "Lord Mackay". So I came over to him and he said, "We see you got a wee bit of promotion – we were all very pleased". I didn't know for whom he was speaking! Anyway, I thanked him kindly then went on. There was something about that that really stirred my heart a bit.<sup>9</sup>

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<sup>8</sup> "Lord Mackay of Clashfern, Part 1: From the Highlands to High Office." Interview with Robert Pirrie in *Signet Magazine: The Magazine of the Writers to Her Majesty's Signet*, July 2012, Issue 3, p. 19.

<sup>9</sup> *Ibid.*

## Lord High Chancellor

Next came the highest law office in the land, Lord High Chancellor of Great Britain.<sup>10</sup> Again, we tell it in Lord Mackay's words:

I was sitting listening to [a debate in the House of Lords] and I received a message . . . that the Prime Minister wished to see me as urgently as possible and could I come over to the telephone to speak to her Private Secretary. I phoned over and he said to me, yes, please come over at 4.30 pm. This was at about 4.15 pm. I had no idea what this was about . . . Anyway, just after 4.30 pm I was met at the door of number 10 . . . Mrs Thatcher was upstairs. She . . . said that Sir Michael Havers had resigned as Lord Chancellor that afternoon on the grounds of ill health [having only been appointed four months previously in March 1987] and that "we" want you to become Lord Chancellor. I cannot remember my exact words – I was too thunderstruck – but I did say it was a great honour. Mrs Thatcher said that "we" would like you to do it. I noticed the plural and I took it that she was acting with others . . . I said, ". . . I would like to ask my wife before I give you my final answer" . . . With Mrs Thatcher across from me, I lifted the telephone and gave the number to the operator at number 10 and was put through to our Edinburgh flat.<sup>11</sup> There was no answer. . . .

Mrs Thatcher asked to be informed as soon as I had spoken to Bett because, she said, "we would like to have the announcement on the 7 o'clock evening news". So, as you can imagine, on returning to the Lords, I kept phoning and phoning. Eventually Bett answered. I explained what was happening and we agreed that, as Bett put it, "I don't think you can refuse" . . . I phoned the Private Secretary who insisted on putting the call through to the Prime Minister. I told her that I had spoken with Bett and that I would be delighted to take the appointment. Mrs Thatcher thanked me and said the announcement would be on the 7 o'clock news. . . . It was quite a day, I can tell you!

Two or three weeks after . . . the announcement of my appointment as Lord Chancellor . . . we had been invited to lunch . . . with the Speaker of the House of Commons. . . . On our way we discov-

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<sup>10</sup> Great Britain consists of England, Wales, and Scotland. Northern Ireland is part of the United Kingdom, but not of Great Britain. Although Lord Mackay was never the Lord Chancellor of Northern Ireland, his office had responsibility for the judiciary in Northern Ireland.

<sup>11</sup> James and Bett had by this time moved out of their family home into an exclusive flat near the Palace of Holyroodhouse (the Queen's official residence in Edinburgh) and the Scottish parliament buildings.

ered that Mrs Thatcher and her husband were to be at the lunch as well. . . . We arrived first at the Speaker's house and when Mrs Thatcher and her husband came in I introduced Bett as "the lady who kept us waiting". Mrs Thatcher bowed very low and said to Bett, "We are very grateful for your answer".<sup>12</sup>

Among the many congratulations received was a telegram from a pool hall in Glasgow, reading "Good luck, sir, in your new job! You'll need it! From the Glasgow boys." As noted above, Lord Mackay treasured such sentiments from "real people". The esteem of his colleagues can be gauged from an inscription in his copy of the first Denning Law Journal published the previous year by Lord Denning, formerly Master of Rolls (i.e. President of the Court of Appeals). Denning wrote, "For James Mackay with high esteem in the sure confidence that he will long adorn the Lords and give the best of advice to all generations. And in much appreciation of his kindness and all best wishes. Tom Denning."

At his first press conference as Lord Chancellor, James Mackay made it clear that he saw his role as one of serving the judges. He spoke of the need for improved working conditions and lifted restrictions prohibiting judges from speaking to the press. He also addressed child-care law reform and the more controversial issue of prison reform. "If you are humane and compassionate at heart, and judges should be," he said, "it is an awesome responsibility to send [individuals] to prison knowing the conditions they will face when they arrive at the prison gate." He suggested the possibility of alternative forms of punishment for nonviolent offenders. In a separate action, the new Lord Chancellor announced measures to help ensure that lawyers involved in legal aid cases receive payment.<sup>13</sup>

As Lord Chancellor, James Mackay was latterly the second most senior minister in the British Cabinet, the speaker of the House of Lords, and, most significantly, the person responsible for judicial appointments in England and Wales. He was not the first Scot to be appointed Lord Chancellor, but he was the first Scot who had previously practiced only at the Scottish Bar. Nicholas Fairbairn opined that if an Englishman had been appointed to a comparable position in Scotland, it would have led to a revolution!<sup>14</sup> But there was general recognition that Mackay was simply the best man for the job. Besides, as an outsider to the political hierarchy, he owed no one any favours. Margaret Thatcher considered him "the best lawyer in my government". The President

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<sup>12</sup> "Lord Mackay of Clashfern Part 2: From Court Room to Cabinet Room," pp. 15-17.

<sup>13</sup> This paragraph is from an article I wrote, based on unnamed newspaper reports, in *WORLD Magazine*, January 18, 1988, reprinted as "MacKay (*sic*) Named Lord Chancellor" in the *CLS [Christian Legal Society] Quarterly*, Spring 1988, p. 26.

<sup>14</sup> Sir Nicholas Fairbairn in BBC program, "Make Way for the Lord Chancellor 2", <http://www.youtube.com/watch?v=jY8NmQzv1o>.

of the Law Society of Scotland stated, “He is not only an outstanding man in his profession, but one of the most brilliant Scottish scholars of all time.”<sup>15</sup>

Several years later following the death of Baroness Thatcher, who after her resignation as Prime Minister would join Lord Mackay in the House of Lords, he and others paid tribute to her. As part of his tribute, he recalled an amusing incident:

In those days, the position of Lord Chancellor to which I was appointed had a certain priority and protocol. Shortly after my appointment, my wife and I were invited to a state function at Buckingham Palace. At that time, the protocol was – it may still be, for all I know – that the first couple to greet the Queen and the royal guests from the other country was the Archbishop of Canterbury and his wife. The second couple to go in was the Lord Chancellor and his wife, and the Prime Minister followed. My wife could hardly contain herself at the idea of going in front of Margaret Thatcher into the royal presence. Mrs Thatcher just said to her, “This is what you have to do. On you go”. My wife had to do what she was told. Her [Thatcher’s] character did not allow for much debate on that kind of thing.<sup>16</sup>

Lord Mackay was to become the longest continuously serving Lord Chancellor of the 20<sup>th</sup> century (1987-97), having been reappointed in 1990 by Thatcher’s successor, John Major. An interesting detail in John Major’s autobiography is his mention of Lord Mackay’s role in the decision to return the Stone of Scone, also known as the Stone of Destiny, to Scotland on St. Andrews Day 1996. Ancient kings of Scotland had been crowned on this stone. It was taken as booty by Edward I in 1296 and placed under the chair in Westminster Abbey where British sovereigns are crowned. On Christmas Day 1950, four Scottish students broke into the Abbey and stole the stone, returning it to Scotland and placing it eventually on the altar of Arbroath Abbey in the safekeeping of the Church of Scotland. When the police were informed of its whereabouts, the stone was returned to Westminster Abbey. In 1996, as a symbolic response to growing nationalism in Scotland, it was decided by Major’s Conservative Government that it would be returned to Scotland and kept there when not used at coronations. In considering the pros and cons of returning the stone, John Major consulted Lord Mackay, who advised that the advantages outweighed the disadvantages.<sup>17</sup>

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<sup>15</sup> These quotations are from my article, “MacKay (*sic*) Named Lord Chancellor”. See footnote 11.

<sup>16</sup> House of Lords, 10 April 2013. “Death of a Member: Baroness Thatcher”, Column 1161. Lords Hansard Text for 10 April 2013. [www.parliament.uk](http://www.parliament.uk).

<sup>17</sup> See John Major, *The Autobiography* (New York: Harper Collins, 1999), pp. 426-427.

Subsequently, following a referendum in 1997, the Labour Government then in power passed the Scotland Act 1998, resulting in the devolution of some powers to a Scottish Parliament for the first time since the Act of Union in 1707, when the Kingdom of Scotland had merged with the Kingdom of England to form the Kingdom of Great Britain. Labour Prime Minister Tony Blair, who was himself born in Scotland, hoped that this would mute the calls for Scottish independence. In fact it has done the opposite, as the Scottish Parliament is now in the control of the Scottish National Party, which has arranged for a referendum on Scottish independence on November 18, 2014.

When Lord Mackay first took his place in the House of Lords as Lord Chancellor of Great Britain, he stated that it was a great honour, not just for him, but also for Scotland. However, for him, loyalty to Scotland means maintaining its union with England and Wales as part of Great Britain. He recently stated:

The Union has led to remarkable intertwining of our nations and the act of separation of itself is likely to cause damage. Two of our children live in England and will have no vote in the referendum. This illustrates how the ties of kinship will be broken by the process but this will be instantly repaired if the vote negates independence. If not this will be a permanent rupture of close relationships that will be damaging and repeated in countless families across the United Kingdom. Second, there are very strong ties of trade which will be damaged. A high proportion of Scottish trade is with England. Our currency, our defence, our position internationally are all shared. For example our seat on the Security Council of the United Nations is held by the United Kingdom as is our membership of the EU and NATO. Third, the resources of the United Kingdom are much greater than those of Scotland and therefore what would be the consequence for a separate Scotland of a disaster such as the threat of collapse of two major banks. Although England is much bigger than Scotland the part played by Scots in the United Kingdom has been considerable. I believe firmly that united we are much stronger than we would be separately. There is synergy in the Union.<sup>18</sup>

During his tenure as Lord Chancellor, Mackay introduced changes to the legal system of England and Wales which won him praise as a reformer responsible for the most radical reforms in 700 years, but also criticism for “dressing up minor tinkering as major reform” and of thereby “hindering much-needed change in the legal system”.<sup>19</sup> He was perceived by some as

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<sup>18</sup> Personal email correspondence, July 30, 2013.

<sup>19</sup> The quotations are from an article by Fiona Bawdon in the *Independent* newspaper, “Law: Do We Really Need a Lord Chancellor?” Friday, 17 July 1994. See Ruth

“obsessed” with cost-cutting above all else. Barristers (whose previous monopoly on the right to conduct litigation in the higher courts was broken, permitting qualified solicitors to do so) appear to have felt especially threatened.<sup>20</sup>

The office of Lord Chancellor was unique in British politics. It straddled the executive, legislature, and judiciary; the incumbent was a judge, cabinet minister, and parliamentarian. Lord Mackay saw this as being crucial to the preservation of judicial independence. It meant that he was “able to act both as a bridge and as a fortification between the executive and the judicial powers”.<sup>21</sup> However, there was increasing criticism by those who saw the office as either too powerful or anachronistic. This led ultimately to its being reduced to only a cabinet ministry by the New Labour government of Tony Blair, as part of its broader reforms of the House of Lords. A Secretary of State for Constitutional Affairs was appointed alongside. According to one of Blair’s biographers, not only was the judiciary offended by this development with the “loss of its ‘champion’ in Cabinet”, the Queen was also reported to be “hopping” about it!<sup>22</sup>

#### Retirement and Continuing Influence

By the time these changes were made, Lord Mackay had already resigned, following the calling of the general election in 1997. He and his wife “retired” to the picturesque Highland community of Cromarty and then to the Highland capital of Inverness, where they presently live. Six years previously, he had been appointed as Chancellor of Heriot-Watt University in Edinburgh and held that position for fourteen years. His last official act as Chancellor, on the instruction of the Senate of the University, was to confer an

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Fleet Thurman, “English Legal System Shake-Up: Genuine Reform or Teapot Tempest?” (*Boston College International and Comparative Law Review*, Vol. XVI No. 1) for a helpful discussion of the major changes made in 1990 and their “ripple effect as far away as the United States”.

<sup>20</sup> Traditionally, barristers in England and Wales, and advocates in Scotland, have had a distinctly separate role from solicitors.

<sup>21</sup> Quoted by Fiona Bawdon, *Ibid.* See also Lord Mackay’s remarks in his lecture on “The Judges” in *The Administration of Justice*. Published under the auspices of The Hamlyn Trust. London: Stevens & Sons/Sweet & Maxwell, 1994, p. 18: “The fact that the executive and judiciary meet in the person of the Lord Chancellor should symbolise what I believe is necessary for the administration of justice in a country like ours, namely a realisation that both the judiciary and the executive are parts of the total government of the country with functions which are distinct but which must work together in a proper relationship if the country is to be properly governed.”

<sup>22</sup> Anthony Seldon, *Blair Unbound* (London: Simon & Schuster, 2007), p. 218.

honorary degree on his wife in recognition of her contribution to the university during his tenure.<sup>23</sup>

As noted previously, Lord Mackay has continued to be active in the House of Lords, frequently flying south to participate in debates. He also serves as editor of Halsbury's Laws of England, a regularly updated authoritative encyclopaedia of the laws of England and Wales. He was installed a Knight of the Thistle in 1999 at a ceremony presided over by the Queen at St. Giles Cathedral in Edinburgh. Previously in 1984, he had been elected a Fellow of the Royal Society in Edinburgh, and in 2003 received its Royal Medal. Then in 2007, Lord Mackay was appointed as Lord Clerk Register and Keeper of the Signet, now a largely honorific office in Scotland with origins in the 13<sup>th</sup> century.

In 2005 and 2006, he served as Lord High Commissioner (the Queen's representative) to the General Assembly of the Church of Scotland. He is a past president and the Patron of the Lawyers' Christian Fellowship, based in London, and is currently Honorary President of the Scottish Bible Society. As part of its 2011 celebration of the four hundredth anniversary of the King James Bible, the society distributed copies of the (NIV) Bible to various courts and legal offices in Scotland. The Bibles were accompanied with a pamphlet, *The Bible in Scots Law: A Guide for Legal Practitioners*, with a foreword by Lord Mackay stating that: "I believe the teaching of the Bible is vitally important for guidance in daily living for all of us. . . . I have found it immensely important in my life and I trust it will be the same with many who have access to it through this initiative now."<sup>24</sup>

Not surprisingly, the initiative – and Lord Mackay in particular – were subjected to considerable criticism and scorn, with critics labeling the campaign "an attempt to drag the legal system back to the 'dark ages'" and likening it to "a plea for a fundamentalist Christian version of Middle Eastern Sharia law."<sup>25</sup> But it is Lord Mackay's belief that if we use the Bible in dealing with our day-to-day challenges, "we will soon learn that what it says about human beings is as true today as it was when it was originally written all these years ago." This remains his abiding conviction and the controlling principle of his life.

## Reflections and Conclusion

When James Mackay was appointed Lord Advocate of Scotland in 1979, Margaret and I paid a visit to his and Bett's Edinburgh home, where I conducted an interview for a forthcoming magazine article. He then drove us to

<sup>23</sup> Lord Mackay himself has received numerous honorary degrees and other awards. He was also elected an honorary Fellow of Trinity College, Cambridge in 1989 and of Girton College, Cambridge in 1990.

<sup>24</sup> Foreword to *The Bible in Scots Law: A Guide for Legal Practitioners*. Scottish Bible Society, Edinburgh, [www.scottishbiblesociety.org](http://www.scottishbiblesociety.org).

<sup>25</sup> Mark Horne, "Law chief urges Scots courts: consult the Bible in judgments", *Sunday Herald*, 15 August 2010.

Waverley train station to board a train for Glasgow as the next step on our return to Canada. We were running late and James was helping us get our suitcases on the train as it was about to leave, urging us to “hurry, please!” Margaret turned and asked if he had any parting advice for us. In answer he quoted the King James Version of Proverbs 3:6, “In all thy ways acknowledge him, and he shall direct thy paths.”<sup>26</sup>

### Christian Character

The verse immediately prior to the one quoted above makes it clear that we are not to lean on our own understanding, but trust in the Lord with all our hearts. This is what James Mackay has sought to do all of his professional life. Consistent with that, he has become known in the legal profession, in political circles, and in the media as well as in the church, for his unassuming humility, personal loyalty, and gracious character.

An incident recorded by my brother-in-law John Tallach illustrates this point. Soon after he and my sister Isobel moved to a pastorate in Aberdeen in 1979, they had a visit from a man named Eric McCracken who represented a missionary organization. Before joining this organization, he had worked as a court reporter in Edinburgh. This is how John recalls one of their conversations:

He told us about some of his experiences in his former life. He belonged to a team of shorthand writers who served in the courts. They would take down what was being said by lawyers and witnesses. They worked under considerable pressure, for short periods at a time, then were relieved so that they could go off and write up from their notes a record of the court’s proceedings. Eric told us that it was not uncommon for lawyers to discuss with court reporters the terms in which the court’s proceedings were to be reported. He said that some lawyers would treat the court reporters like dirt, ordering them to change what they had written to reflect what these lawyers wanted entered in the record. There was, however, one advocate who always treated the reporters with respect. His name was James MacKay. He was probably the most able of all the lawyers, but if there was ever a question about what was to be entered in the court record he would come in and discuss the problem with the reporter as an equal and they would work towards a record with which they were both happy. “It was a recognised fact in the reporters’ room,” Eric said, “that he had a humble attitude, and that he treated us with dignity.”<sup>27</sup>

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<sup>26</sup> More recent versions, (e.g. NIV, ESV) translate “He will make your paths straight.”

<sup>27</sup> Personal email correspondence, July 13, 2013.

As Sir Nicholas Fairbairn was quoted as saying earlier in this article, James Mackay was known among his colleagues to have “extraordinarily good manners”. That this was recognized well beyond his professional colleagues is evidenced by the warm appreciation expressed to him by “real people”, also referenced earlier. Another example is of a Glasgow scrap dealer who had attended a trial over which Lord Mackay presided, wrote to express appreciation for the manner in which he had sentenced one particular young man “as if you were his father”.

This aspect of James Mackay’s public reputation cannot be overemphasised. It is significant that before Jesus spoke to His disciples of their calling to be salt and light in society, He taught them in the Beatitudes what Christian character (and therefore its influence) looks like (Matt. 5: 1-16). This is a recurring theme throughout the New Testament in particular. In several of the epistles, lists of Christian character can be found contrasted with sinful attitudes and behaviour (e.g. Rom. 12:9-21; Gal. 5:16-26; Eph. 4:17-32; Phil. 2:1-18; Col. 3:1-4:6; 1 Pet. 3:8-17; plus the entire book of James, etc.).

All too often, those who have made public stands for Christian values in society have either done so in a manner inconsistent with their profession or have been found to be inconsistent in their personal lives. Such a charge has not and cannot be made against James Mackay.

One aspect of Lord Mackay’s Christian profession that sets him apart from many other public Christians has been his strict observance of the Lord’s Day and the priority placed on public as well as private worship. Perhaps in our modern society where business and politics as usual goes on seven days a week, this is one of the most difficult areas of Christian witness for those in the public arena. However, newspaper reporters as well as colleagues soon learned that, in the words of his press agent when Lord Chancellor, “He’s an extremely tolerant man, but he won’t budge on that one.”<sup>28</sup>

#### Public Record

Lord Mackay has been criticised by church leaders and others for some of his public stances when in government. At the same time, some have thought that he could have been more vocal about important public issues. His public record (in and out of government) on such issues as divorce, embryo research, assisted suicide and voluntary euthanasia, Sunday trading, welfare reform, and same-sex marriage can be readily found on the Internet. He knows that he is not above criticism. But a consistent theme throughout has been his attempts to find middle ground on contentious legislation in order to mitigate the potential or actual harm to which such legislation might lead.

For instance, during a recent controversy over a Same Sex (Marriage) Bill, which ultimately became law in July 2013, Lord Mackay was an outspoken critic of the bill as it moved through the House of Lords. Yet, recog-

<sup>28</sup> Quoted in Cal McCrystal, “Profile: the Lord Chancellor is a tireless legal reformer, but only six days a week.” *The Independent*, Sunday, 12 December 1993.

nizing that it would most likely pass, he proposed a number of amendments, including one that would recognize a distinction between marriages by referring in the bill to “marriage (same sex couples)” and “marriage (opposite sex couples)”. He insisted that this amendment was the very minimum necessary to recognize the “distinction that exists in fact between marriage for same sex couples and marriage for opposite sex couples”. To think otherwise, he said, was to engage in fantasy.

Speaking at length of the effects on children, Lord Mackay offered as his opinion that opposite sex marriage was a “uniquely well designed system” for the birth, nurture, and protection of children, and that “so far the state has not been able to devise a system which is equally effective”.<sup>29</sup> He also stressed the importance of continuing to protect the religious rights and freedoms of churches opposed to this radical change in law.

### Faith and Politics

Christians in public life in Britain tend to be less outspoken about their faith commitments than their American counterparts. I once asked Lord Mackay about this, and he said it might be construed as inappropriate to use one’s position to publicize one’s faith. By extension, he would have thought it inappropriate as Lord Chancellor to use his considerable power and influence to appoint judges based on religious or political considerations, as is often done in the highly politicized Supreme Court nomination process in the United States. However, anyone who knows – or knows of – Lord Mackay is left with little doubt that he operates on the basis of deep religious principles rather than political expediency, even if that means making political compromises in the interests mitigating the effects of legislation he sees as potentially harmful to society.

British Christians in political life generally approach their calling with less of a thought-out Christian philosophy of politics than, for instance, those who have been influenced by the Dutch theologian-politician Abraham Kuyper, who served as Prime Minister of the Netherlands between 1901 and 1905. Kuyper is often quoted as saying that there is not a square inch of human life of which Christ, who is Sovereign, does not say “Mine!” He developed an elaborate system of “sphere sovereignty” in which the various spheres of life including church and state have separate roles, but each operates under the sovereignty of God.<sup>30</sup> To approach political life without a

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<sup>29</sup> BBC TV live coverage of the House of Lords Debate, 8 July 2013. The amendment was termed a “wrecking amendment” (Lord Deben) that would deal a “fatal blow” to the bill’s intentions, and would create “two classes of marriage” (Lord Alli). It was defeated by a vote of 314 to 119, and Lord Mackay accordingly withdrew further amendments that were conditional on the passage of the first one.

<sup>30</sup> His influence has extended far beyond Dutch Reformed circles. One of his best known and most influential disciples was the late Charles Colson, one time “hatchet man” of US President Richard Nixon, turned Christian political crusader and prison

comparably developed Christian philosophy can lead to compartmentalising, where faith and politics have little to do with one another.

James Mackay cannot be accused of this. As noted in our introduction, he stands in the theological tradition of the Westminster Confession of Faith, and its chapter on “The Civil Magistrate”. We saw that the Westminster Confession was produced at a time of Puritan ascendancy and clearly presupposed a Christian society and government. The situation in Britain today is much different, as can be seen from the hostile reaction noted above to the simple act of distributing Bibles to Scottish courts and law offices. How, then, is a Christian in public office to conduct himself in such a context?

Besides demonstrating personal piety, James Mackay’s approach, as we have seen, has been to work for the best possible compromises in the interests of maintaining justice and peace, while seeking to safeguard religious rights and limit the harmful effects of non-Christian legislation. In his own words, a Christian in public office “must act according to Christian principles but he is not alone and must be an influence for good so far as he can in dependence on divine grace.”<sup>31</sup> His approach to specific issues has left him open to criticism from church leaders and secularists alike. But his personal integrity and motives have been above question. This is no small achievement for a Christian in public office.

James Mackay will not be remembered as a crusader in the tradition of William Wilberforce or Lord Shaftesbury.<sup>32</sup> But neither can he be justly accused of having sacrificed his Christian principles in the interests of political expediency. Rather, by his consistently godly character and reasoned approach to justice for all with the protection of religious rights, he continues to be a light in the world, reflecting the spirit of his Master, seeking always to acknowledge God in all his ways – trusting that as he does so, his steps will be made straight and his paths directed throughout life, as they have thus far been.

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reformer. His best-selling *How Now Should We Live* (Wheaton, IL: Tyndale House Publishers, 2004) was heavily influenced by Kuyper.

<sup>31</sup> Personal email correspondence, July 30, 2013.

<sup>32</sup> William Wilberforce (1759-1883) is well known for his long and ultimately successful crusade in the House of Commons against the slave trade. The 7<sup>th</sup> Earl of Shaftesbury (1801-1885) became known as “The Poor Man’s Earl” because of his constant advocacy of improved working conditions for the poor, especially women and children. He also promoted a number of other social reforms and, like Wilberforce, opposed the slave trade.