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THE CHRISTIAN LAWYER®

A PUBLICATION OF CHRISTIAN LEGAL SOCIETY

ALSO IN THIS ISSUE

David Nammo, Executive Director and CEO

The Christian lawyer – it's a phrase that surprisingly provokes strong reactions from many people.

Pastors almost always react to the phrase by asking whether "Christian lawyer" is an oxymoron.

Some in today's culture think that the term "Christian lawyer" is a non sequitor. But for us Christian lawyers it should mean so much more. It should embody the calling we have from whence and whom that calling came. It should remind us that we are called not only to be excellent lawyers – but excellent lawyers who "Go and Do Likewise" every day by loving our neighbors.

Over the years, *The Christian Lawyer* magazine evolved, stopped, and even had a new name for some time.

The original magazine – dated Summer 1968 – featured a picture of Gerrit P. Groen on the cover, the first Vice President of CLS. He had passed away four years prior at the young age of 53 and was remembered fondly by his colleagues. The logo at the time was a cross with the letters "CLS" in the upper left quadrant of the cross.

One of the most fascinating things about this first issue is the insight it gives into the legal profession at the time. The issues that CLS is dealing with today are not that much different from 50 years ago. The scope and the reach, maybe, but the issues – it is almost as if we have been dealing with the same things for five decades. For example, the titles of two of the three articles in the inaugural issue of *The Christian Lawyer* were:

- Legal Controls and Human Reproduction
- Homosexuality and the Law

That was 11 years before *Roe v. Wade* and 47 years before *Obergefell* – yet lawyers were discussing the issues of abortion and homosexuality.

The second issue, published later that same year, included two articles that look like they could be printed today:

- Legal Rights of the Fetus
- Christian Schools in Court

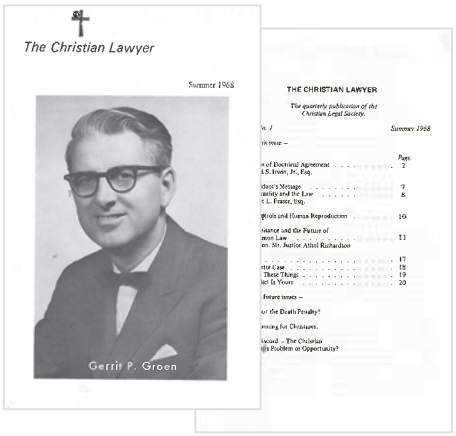
The magazine itself changed its look and its name over the decades. For the first 16 years, *The Christian Lawyer* was published once or twice a year. But in 1980, the decision was made to start printing the magazine four times a year, and the name of the magazine was officially changed to Christian Legal Society *Quarterly.* CLS published four magazines a year for 17 years, until finally ceasing to publish a magazine in 1997 after the second issue that year.

Several years later, in late 2005, CLS resumed publishing and printing the magazine, once again calling it *The Christian Lawyer.* Since that time, CLS has published the magazine an average of twice a year, with occasional exceptions.

As CLS President J.C. Berghoff (1966–1968) stated in the opening President's Message: "To Christians, the law can have no meaning or lasting significance apart from the will of a sovereign God . . . from the beginning of recorded history, man has been attacking God's right to be regarded as the only source of law and jurisprudence. It is not well that the Christian viewpoint on such matters remain concealed or unheard."

I echo the the final words of that same message, as they are as true today as they were 50 years ago:

> We are encouraged. The outlook for the Christian Legal Society appears to be a bright one. We solicit your support and particularly your prayers, as we realize that with God, "all things are possible" and without his approval, our efforts are bound to fail.



The cover and table of contents of the very first issue of *The Christian Lawyer,* published in the summer of 1968.

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50 Years: An Introduction

BY DAVID NAMMO

CLS is pleased to republish the articles in this issue. They have been chosen from across the decades of issues of *The Christian Lawyer* or the *Quarterly* magazine. They are timeless and their truths should resonate with all of our readers in the 21st Century.

Over the past 50 years, CLS has been blessed to include as authors U.S. Supreme Court justices, judges, solicitor generals, law school deans, professors, politicians, lawyers, law students, theologians, pastors, and more.

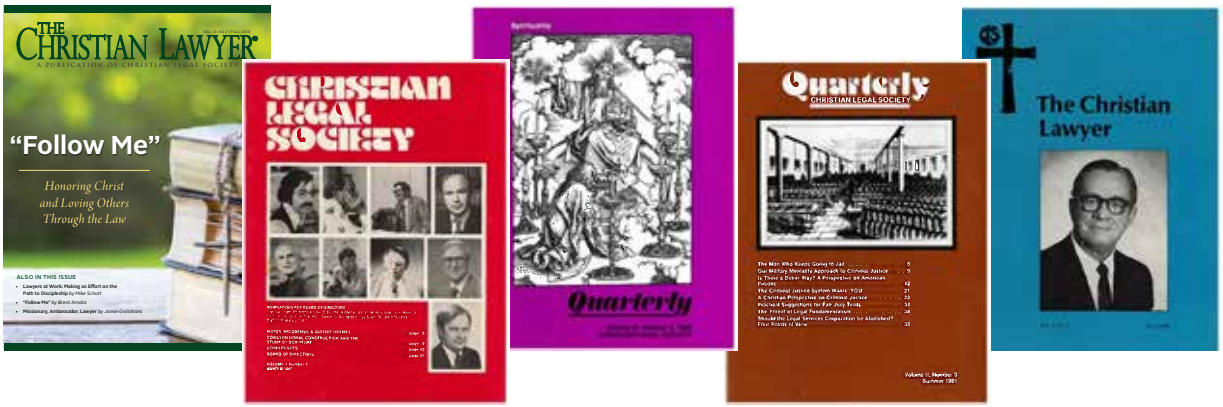
The process of reviewing and choosing selections for this issue was difficult. We waded through 50 years of incredible content. The one thing we noticed, after pouring through magazine after magazine, is that the issues that Christian lawyers care about have not changed all that much in five decades. Christians are still trying to find ways to see the Lord's hand in everyday practice. Lawyers in general continue to struggle with time commitments and balance of life issues. And of course, the religious liberty and life issues continue to be important to CLS members and readers.

The author of our *What is Religion?* article from the 1970s is William Bentley Ball. He was a renowned attorney in religious liberty circles and a longtime CLS member. Many of us may not know his name, but rather may be more familiar with the landmark case, *Wisconsin v. Yoder,* where he represented three Amish farmers that were convicted of a crime for refusing to enroll their children in the public schools. It was his argument, insisting that the government provide a compelling public need to violate the religious liberties of religious groups and individuals, that would be enshrined in future Supreme Court cases and tests. Sadly, that standard was reversed in the landmark *Smith* case, which weakened the principle. Congress eventually enshrined the compelling interest doctrine in the Religious Freedom Restoration Act of 1993, the drafting and passage of which CLS was instrumental.

The article from the 1982 is a from the first dean of Regent School of Law, Herbert "Herb" Titus, and is titled *Jesus: Advocate, Counselor, Mediator*. Dean Titus taught constitutional law, common law, and other subjects at five different law schools for almost 30 years. He was a candidate for Vice President of the United States in 1996 on the Constitution Party ticket. He also authored the foundational Christian jurisprudence book *God, Man and Law: The Biblical Principles.*

Our article from the 1990s is *Christian Character and Good Lawyering*, written by Julius "Jay" Poppinga. Jay is one of CLS' earliest members and served on the CLS national board for 14 years and as its president from 1974-1977. He even served as interim executive director in the 1980s. Most CLS members under 50 will have no memory of Jay, but those who do remember him remember him fondly as a Godly man, great lawyer, and friend. He modeled what it meant to be a CLS member for many years, mentoring numerous lawyers and law students, and making sure the job was done well.

It is our prayer that you will be blessed by this wisdom from CLS members and friends over the years. As Psalm 117 says, the truth of the Lord is forever. We hope you will find some of His truths for your life in these articles. May they bless you today as they did others 20, 30, and 40 years ago.



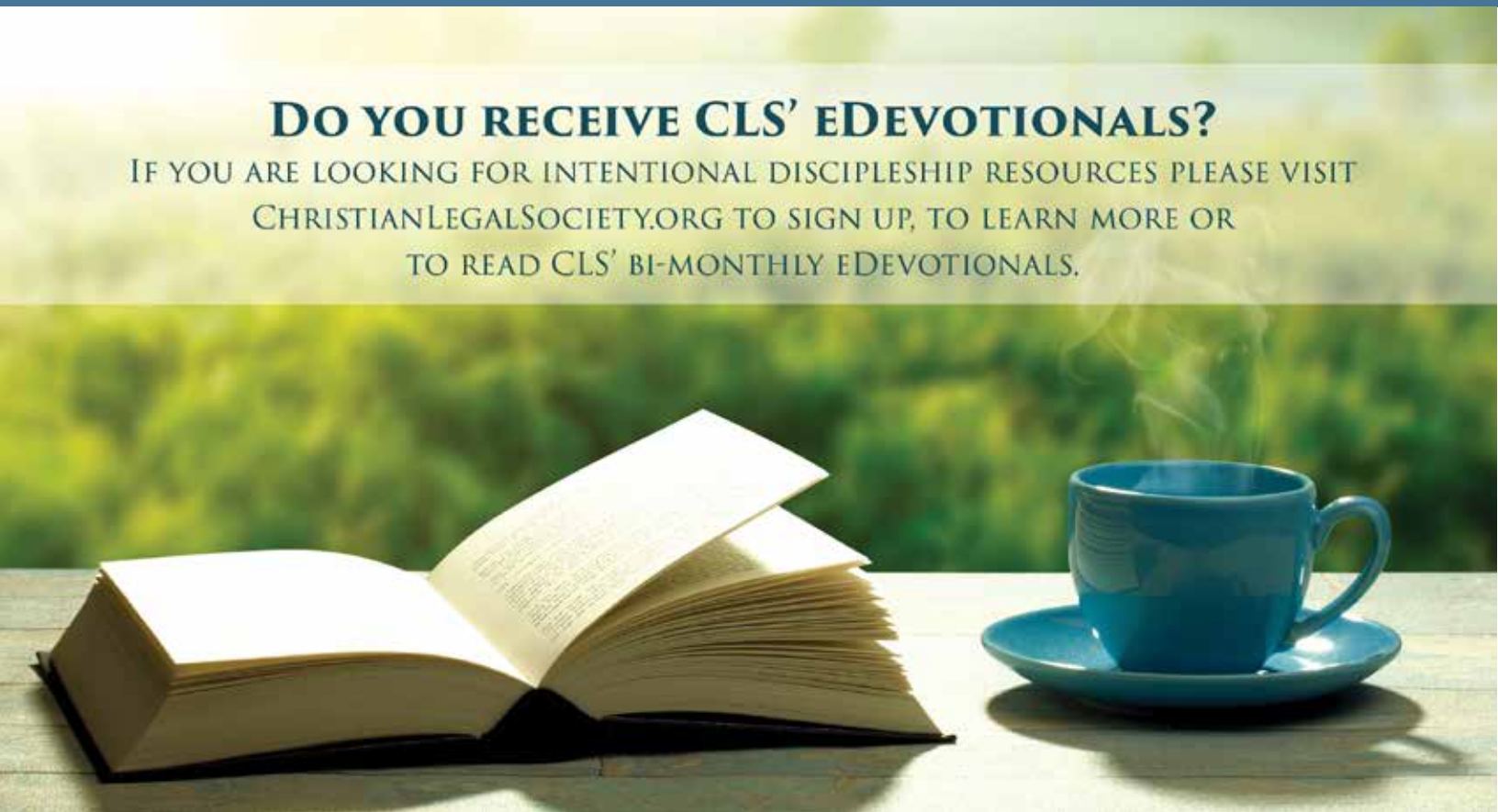
Happy 100th Birthday, George!

George B. Newitt began his career as a chemical engineer, doing research and development of self-sealing gasoline tanks for military aircraft from 1940 to 1945. After the end of WWII, George went to law school at Notre Dame. Entering practice with a large intellectual property firm headquartered in Chicago, he tried patent, trademark, and copyright cases all over the country, representing many Christian clients such as Servicemaster, Tyndale House Publishers, and Moody Bible Institute. A founding member of Christian Legal Society since its 1961 inception, George served as president of the organization from 1990 to 1992. He also served as the first editor in chief of *The Christian Lawyer*, and is known as the conductor of *Great is Thy Faithfulness* – the CLS theme song – for 50 years.

He turned 100 on April 13.

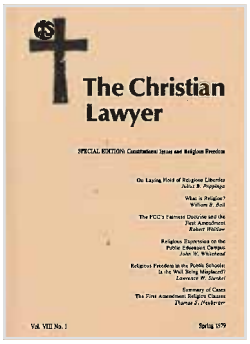
**Five days later, George went home to be with the Lord. Thank you for your legacy and faithfulness, George.*

George B. Newitt conducting *Great is Thy Faithfulness* at the 50th Anniversary CLS National Conference and other conferences through the decades.



What is Religion?

BY WILLIAM B. BALL



Reprinted from The Christian Lawyer, *Vol. 8, No. 1 (Spring 1979).*

"What Is Truth? said jesting Pilate and would not stay for an answer." This famous opening of Francis Bacon's *Essay on Truth* occurred to me as I was preparing these remarks on "What Is Religion." Today, many a good-willed Pilate is asking "What Is Religion?" and all too readily giving an answer. This is in situations—and you members of the Christian Legal Society are aware of many of them—in which some person is pressing a religious liberty claim. He is often met with a two-fold response: (1) "Indeed we all believe in liberty of religion—it is a constitutional right, a fundamental right." [or] (2) "But, your case does not really involve religion" or "I don't see what religion has to do with it," *or* "How is your religion being hurt?"

I have come to believe that while, superficially, we tend to say that "liberty" is the active and meaningful term in the phrase "religious liberty"—liberty being the scope of what you can do, the spectrum of things which are protected—in many actual situations it is more often the content given to "religion" that determines whether, in fact, one shall enjoy religious liberty in that situation.

I would like to approach the question of "What is religion?" first, by taking a very brief look at the legal history of the definition, then by pausing to look at a number of current instances in which religious liberty is being defined by defining *religion*. Finally, I would like to spend a concluding moment with some observations on concerns which Christian lawyers ought to have with respect to the defining of religion.

As to the first point: in our earliest colonial life in the North we often see "religion" defined in terms of "true" religion. I suppose that a Cotton Mather might readily have said that there was religious freedom in the Massachusetts Colony, because one was free to practice the religion there established. All other religions being false they were not religions at all. So your freedom to practice the established religion was your freedom to practice all religion, there really existing none other but the one established.

With the founding of the Republic, and the adoption of the First Amendment, all religions were, at least in theory, placed on equal legal footing (although until 1833, the Congregational Church remained the legally established church of Massachusetts). Due to many possible factors, one of which was absence of the Fourteenth Amendment with its subsequent absorption accompaniment, less than a handful of decisions of the Supreme Court in the 19th century dealt with religion. The Latter Day Saints cases, late in the century, start the Court into its first probings of What Is Religion? In one of those cases, *Davis v. Beason*,[1] we find the Court defining religion as "man's relationship to his Creator." This definition of religion as theistic religion doubtless persists to this day in popular concept.

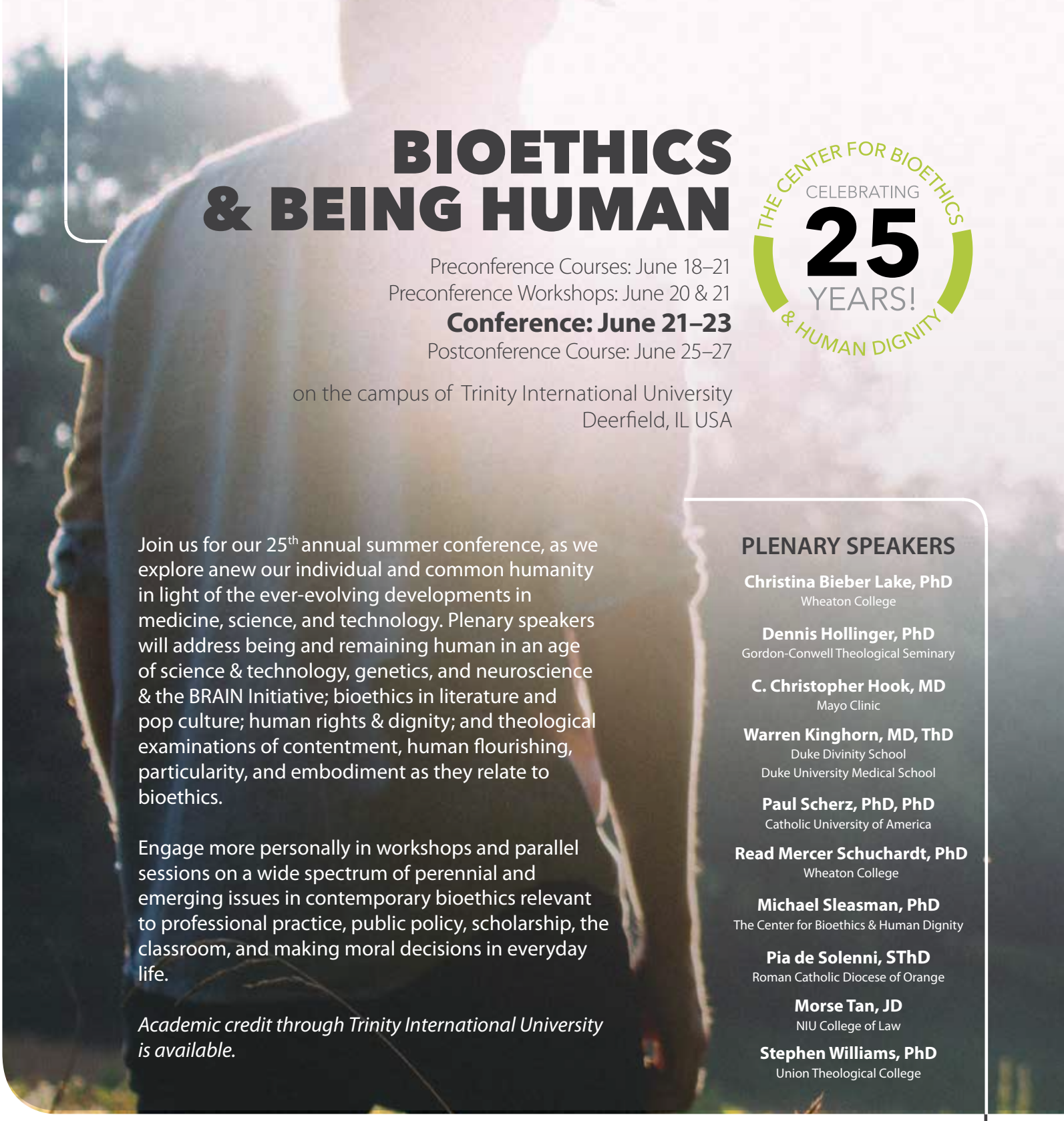
In *United States v. Ballard*,[2] the Court warned against government attempts to define religion, Justice Douglas stating:

> "Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs." *Id.* at 86.

In 1961, the Court clearly indicated that non-theistic religions are also "religions" within the meaning of the First Amendment. The case is *Torcaso v. Watkins*.[3] Roy R. Torcaso had said that the Maryland Constitution's requirement of an oath to become a public officer could not constitutionally bar him from office and that he would not declare belief in God. The Supreme Court held that the Maryland religious test unconstitutionally invaded Torcaso's "freedom of belief and religion." *Id.* at 496. The opinion, however, did not disclose that Torcaso had any beliefs or any religion. Thus it would seem that non-belief and non-religion may conceivably come under the protection of the Free Exercise Clause. By this decision the Court has left a large comma in an unfinished sentence respecting the question of What Is Religion? But it complicated the matter even more by its now famous Footnote 11, wherein it said in part:

> "Among *religions* in this country which do not teach what would generally be considered" a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism and others." (Emphasis supplied).

Perhaps the most interesting postscript to *Torcaso* has been the insistence of many persons—concerned over certain programs in the public schools—that the programs are Secular Humanist in content and, under the teaching of *Abington Township v. Schempp,* 374 U.S. 203(1963), may not be imposed in those



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schools since that would amount to an establishment of religion. Their opponents have defended the public schools in these controversies on two grounds: (1) the programs are not really "Secular Humanist," and (2) the Court never really held that Secular Humanism was barred by the Establishment Clause, but merely that it was protected by the Free Exercise Clause. On both counts, I think that the complainants have the better of the argument. They may have some problems of proof in nailing down the charge that a particular program is "Secular Humanist" but those are merely problems of proof. The reality is plainly there in many identifiable programs. On their Establishment Clause argument, the complainants are home free. Nobody put the matter better than Mr. Justice Rutledge in his dissent in *Everson*:

> "'Religion' appears only once in the Amendment. But the word governs two prohibitions and governs them alike. It does not have two meanings, one narrow to forbid 'an establishment' and another, much broader, for securing 'the free exercise thereof.' 'Thereof' brings down 'religion' with its entire and exact content, no more and no less, from the first into the second guaranty, so that Congress and now the states are as broadly restricted concerning the one as they are regarding the other." *Everson v. Board of Education*, 330 U.S. 1, 32 (1947).

So much for this *Torcaso* postscript, and on to *Seeger,*[4] where "religion" and "conscience" merge in focus. Much has been written of *Seeger*, and I will not elaborate on that detailed opinion here. Suffice it to say, that with *Seeger* we come to another spacious area for speculation on the question, What ls Religion? Here you will recall that a unanimous Court decided that the Draft Act's language about belief in a Supreme Being "excluded" essentially political, sociological, or philosophical views, and that the belief must be sincere and occupy a real place in the life of the possessor of the belief.

Let me now come to my second main point—that is, instances in which religious liberty is being defined by defining religion. We see, in some administrative regulations and rulings, in some statutes, and even in some judges' opinions, expressions which state a rigidly narrow, or almost eccentric, definition of religion. In the case of *Caulfied v. Hirsch*, 410 F. Supp. 618, 95 LRRM 3164 (E.D. Pa. 1977) now before the Third Circuit and possibly moving to the Supreme Court, wherein an injunction has been obtained against the National Labor Relations Board's effort to assert jurisdiction over Catholic schools in Philadelphia, the Labor Board has taken the position that no Free Exercise claim can possibly be asserted by the pastors of the schools in question, since the Act does not contradict any "tenet" of the Catholic religion, or prevent the expression of any "tenet." Now, while NLRB professes adherence to the broadest view of liberty of religion, the "religion" whose liberty it says is boundless proves to be the rather narrow thing of "tenet." On this view—so long as it does not contradict a doctrine or bar the expression of it—government may control a church school in all that is comprised by the phrase of Section 8 of the NLRA, "terms and conditions of employment," a phrase which actually embraces almost everything in the life of a school. This means, if taken literally—and you had best always take government literally—that the state may, for example, regulate or control the faith community of a religious school, an Amish community or clergy appointments, or synod meetings of a church, or any other incident of religion, just so long as it did not single out a "tenet" (or doctrine, or belief) and say: "That is false," or "You can't teach that."

A second example: a decade after the *Schempp* decision, a number of good people in one of the states still felt deprivation and

annoyance over the fact that, while most children spend most of their waking hours, during most months of the year, in public school, they may not, as part of that schooling, hear the Word of God spoken as the Word of God through the Bible. These religiously motivated people therefore formed an organization which would supply teachers to the public schools, trained in the Bible, who would provide Bible readings and discussion, by means of separate classes, to children whose parents would elect such a program for them. This program was paid for by the private organization and occasioned no cost to the public school. Recently it was challenged in court as an establishment of religion. The proposed defense provides a remarkable example of a misunderstanding of the term, "religion," as used in the Constitution. Extremely mindful of *Schempp*, the defense has taken the position that the program is not "religious;" it is "literary"—that is, it is secular. Since the Supreme Court in *Schempp* said that the Bible could be taught as "literature" (as compared with teaching it as the Word of God), the program, it was felt, passed constitutional muster. But an alternative defense was also raised: namely, that if the court terminated the program, the result would be to deny the children enrolled in it the free exercise of their religion. The challengers should have a field day with this one, because obviously if the program is "secular," there can be no Free Exercise claim, and if the program is religious, the challengers would seem to be promised success on their Establishment Clause claim. But would the latter necessarily be so? I would answer: No. And the reason I say that—and the sole key to a defense of this case—lies in that word, "religion." Ponder that word and ask yourself what is *really* involved in this situation. The challengers will have no trouble in proving that this program was organized, and funds were raised for it, and teachers were trained for it, not for any "literary" purpose, but because of love of God, deep commitment to the Bible, and a sure instinct that education which excludes the Bible as the *Word of God* silently, subtly but surely teaches that the Word of God is unimportant because obviously only that which is taught is important.[5] The program was *never* organized in order to promote literature. If that were the aim, why were not Shakespeare and Milton and Tennyson and Masefield chosen as well as the Bible? The reason for the "literary" false face was plainly *tactical:* the sure apprehension that the Supreme Court would strike the program down under *Schempp.*

> "A Christian lawyer should be an apostle by first of all being a lawyer, not try to be a lawyer by first of all being an apostle."

But lawyers in religion cases must pause to listen to believers. And believers must pause to listen to God. A case like that should be defended on the single ground of liberty of religion. But are not *McCollum,*[6] *Engel,*[7] and *Schempp* insuperable barriers? Not until a Free Exercise defense has been tried and found to fail. And it has not yet been tried or found so. In these three cases, that defense was not raised. In *Schempp* you will recall that the plaintiffs raised a Free Exercise claim in addition to their Establishment claim, but that the Supreme Court decided the case solely on the basis of the latter claim. What is needed in the situation I have just discussed is a single forthright counterattack based upon a fully developed picture of the religious need of the child, and not merely an admission of the religious character of the Bible program, but an insistence upon it. The aim would be to focus the Court on the tension between Establishment and Free Exercise considerations to which Mr. Justice Black referred in *Everson,* and to show that the latter considerations, in this case, far outweigh the former.

Here, then, was an example of a misunderstanding of what is "religion." In my first example, religion was misdefined by seeing it in terms of but a single facet of its many meanings. In my second, it is misdefined by failing to see it in its strength, its vital reality, and failing to recognize the truth of C.S. Lewis' remark that there are no *nonreligious* activities, only *religious* and *irreligious.* Let me turn to a third example of misdefinition. It may be summed up in the sentence: "Religion is a private matter."

President Ulysses S. Grant, in 1875, at the Convention of the Army of the Tennessee, put it this way:

> "Leave the matter of religion to the family altar, the church, and the private school...."

And a former Supreme Court Justice, on another occasion, cautioned that religion was a private matter, citing the passage in Matthew 6:6:

> "... when thou prayest, enter into thy closet...."

Of course, in the Gospel from which this latter is quoted, our Lord is inveighing against religious hypocrisy, religious vanity. He was attacking show-offs, but not witnesses. He was not telling us that our religion is to be kept in a closet, and out of public life. The Lord who said "Go ye, therefore, and teach all nations,"

could never have said that religion is a private matter in the sense that it can never be a public matter. To the Christian person religion is "private" only in the sense that it is the fulfillment of one's personhood. But that is the reason why it is public.

Now of course this matter of being an apostle has consequences—indeed impact (let us hope) on the world. Americans have very often—sometimes mistakenly, invariably sincerely—refused to hide the light of faith under a bushel but have used it to illuminate great public issues. And religious leaders have often held aloft this lamp as they boldly entered the public forum. Look at the anti-slavery movement, the anti-child labor movement, national prohibition, the civil rights movement, the recent manifestations on aid to Israel, on abortion, on capital punishment, migrant labor, political asylum, amnesty, the Prayer Amendment, Vietnam, human rights: these all afford examples of sometimes very vigorous, and usually political, witnessing by religious persons in public affairs for religious reasons. In the phrase of Luther, these witnesses "can do no other."

Some religionists find all of this embarrassing, and secularists find it intolerable. They want the preachers to shut up and "mind their business," and they define that business very narrowly. In their activity to keep religion in the sacristy and out of the streets, contain it in churches but keep it out of schools, let it express itself in worship but not in the forum, they stand in a long and disreputable tradition. Theirs was the view of the French *laicisme* of the 1900's,[8] of *Bismarck's Kulturkamp,*[9] of Napoleon Bonaparte's law of May 10, 1806[10]—and of course that is actually the way in which religion is viewed east of the Iron Curtain.

The Supreme Court of the United States flirted with this concept briefly (and, it is to be hoped, temporarily) in *Lemon v. Kurtzman* in 1971 when, in striking down programs of public aid to religious schools, it detoured into hitherto unknown, if not forbidden, constitutional territory—namely, what it described as that relating to "political division along religious lines." This entirely novel doctrine appears to have a genealogy reaching no further back than the inventive mind of Professor Paul Freund, of Harvard, whose brief remarks on the matter before in a 1968 ABA panel discussion, though totally bare of citation to legal or historical authority and representing merely the subjective views of their author, were then surprisingly published as a Harvard Law Review article, and as such became citable by the Supreme Court in *Lemon*. The Freund doctrine came out like this:

> "Ordinarily political debate and division, however vigorous or even partisan, are normal and healthy manifestations of our democratic system of government, but political division along religious lines was one of the principal evils against which the First Amendment was intended to protect. [Here citing Freund.] The political divisiveness of such conflict is a threat to the normal political process."[11]

"But let justice roll down like waters, and righteousness like an ever-flowing stream." Amos 5:24

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Again,

> "The history of many countries attests to the hazards of religion intruding in to the political arena. …"[12]

The fact that supporters of aid to parochial schools are singled out as "divisive" is of far less consequence than the implications of this teaching for all religious groups in the nation. Once the state, through its courts, begins to choose *which* "political division" is permissible because "normal," once the state says that religion may *not* "intrude into the political arena," our political life will be left to secularists. I cannot help, in this connection, but imagine what Roger Williams would say of this who, "wherever he went became involved in disputes over religion, politics, and property rights."[13]

This is not the occasion to develop in detail some contemporary manifestations of this secularist view of religion, but I would be remiss if I did not mention developments now taking place in the vital (or mortal) area of federal taxation. Some of these, it seems to me, are a precise expression of the same extremely narrow view of "religion." There is, for example, the effort of the Internal Revenue Service, to define a "church." In 1969 the Congress provided tax exemption for churches and their "integrated auxiliaries." In January, 1977, IRS issued regulations whereby it went outside of what Congress had provided by saying that an "integrated auxiliary" of a church is one which has "exclusively religious activity." In practice thereafter, IRS has pronounced home-made law in saying that, if a religious organization has a secular counterpart, it is not an "integrated auxiliary." Therefore, a religious organization which has been founded by a church in order to bear witness to Christ through the care of and spiritual ministry to refugee orphan children—even though this organization would not exist except for that witness—is decreed by government fiat not to be an integrated part of its church.

Now to my third and last point: Having spoken some fears or warnings, on this matter of What Is Religion? let me speak thoughts of gratitude and of hope as I briefly pause to consider the significance of the question, not in terms of what it means in the law, but what it means in the lawyer.

I feel a great personal sense of gratitude that a Christian Legal Society exists—or rather that this Christian Legal Society exists. That a prayerful, Christ-centered group such as this exists in our society seems almost strange. You say: "But what could be more natural?" I understand—but we also know that what is natural is becoming what is strange in our society. For example, the traditional family. For example, peaceableness. For example, the Cross—or the Christian attitude toward suffering. If you pause but to glance at that last-mentioned item, and consider proposals now being made for the positive euthanasia of retarded children, you are conscious not merely that the Christian lawyer's work is cut out for him, but that there is more cut out for him than his present numbers can cope with.

"The Christian lawyer, then, though he appears to be the master of the litigation, is merely its servant-the servant of these servants of God."

In asking ourselves "What Is Religion?" in terms of what it is to us, there are perhaps three points of particular moment: (1) the need of the Christian lawyer to defend religious and other human liberty in America today, (2) the need of the Christian lawyer as faithful witness within our profession which is indeed in a troubled state and was never held in worse public repute, (3) the need of the Christian lawyer to rouse and help others to be Christian lawyers. Happily, the Society is deeply conscious of these points and doing good things with respect to them, emphasizing always that the first step in Christianizing society is the Christian spiritual formation of the person who tries to do it.

A closing personal observation. I have had the blessing, these past years, of representing believers of many different faiths—Catholics, Orthodox Jews, Seventh-day Adventists, Baha'is, Old Order Amish, Beachy Amish, Dunkards, Fundamentalists, Evangelical Methodists, Episcopalians, Old Order Mennonites, Reformed Mennonites, Quakers and others. I would never have been able to handle any of these cases merely as a legally mechanical matter. That has been because, first of all, of what the client, as a sincere believer, had given to me. I have been edified, lifted up, given hope, new lights, drive—indeed often passion—because of their willingness to stand as witness for God, whatever the consequences. The Christian lawyer, then, though he appears to be the master of the litigation, is merely its servant—the servant of these servants of God.

In that relationship however it is important for the Christian lawyer to know how he is to be that servant. Here let me paraphrase Thomas Merton, in his beautiful book, SEEDS OF CONTEMPLATION, who was speaking of poets who want to be apostles (and I will use the word "lawyer" where he uses the word "poet"):

> "A Christian lawyer should be an apostle by first of all being a lawyer, not try to be a lawyer by first of all being an apostle. For if he presents himself to people as a lawyer, he is going to be judged as a lawyer and if he is not a good one his apostolate will be ridiculed."[14]

In other words, our Christian religion tells us that as lawyers we must not ape preachers, parade mere religiosity, or attempt to stampede judges by appeals to religious emotion or authority. Religious liberty cases are sacred cases. That being so, our task in them is to deal studiously and effectively with the secular law which they involve.

What is religion to the Christian lawyer? It is to be a good lawyer—for the sake of Christ and His children.

William B. Ball was an expert on constitutional questions concerning the role of religion in education. After receiving his law degree from Notre Dame University, Mr. Ball worked in private practice, taught law at Villanova Law School, and served as general counsel for the Pennsylvania Catholic Conference. Mr. Ball argued nine cases before the U.S. Supreme Court and assisted in 25 others, many of which brought landmark decisions in the development of case law and policy on church-and-state relations. Throughout his career, Ball argued for the use of public funds for religious schools and against governmental regulation of religious schools. Mr. Ball passed away January 10, 1999.

END NOTES

1. 133 U.S. 333 (1890).
2. 322 U.S. 78 (1944).
3. 367 U.S. 488 (1961).
4. *United States v. Seeger*, 380 U.S. 163 (1965).
5. As Sir Walter Moberly has perceptively written concerning the religiously "neutral" British universities: "On the fundamental religious issue, the modem university intends to be, and supposes it is, neutral, but it is not. Certainly, it neither inculcates nor expressly repudiates belief in God. But it does what is far more deadly than open rejection; it ignores Him.… It is in this sense that the university today is atheistic.… It is a fallacy to suppose that by omitting a subject you teach nothing about it. On the contrary you teach that it is to be omitted, and that it is therefore a matter of secondary importance. And you teach this not openly and explicitly, which would invite criticism; you simply take it for granted and thereby insinuate it silently, insidiously, and all but irresistibly…." W. MOBERLY, THE CRISIS IN THE UNIVERSITY, 55 -56 (1949).
6. *McCollum v. Bd. of Education*, 333 U.S. 203 (1948).
7. *Engel v. Vitale*, 370 U.S. 421 (1962).
8. See the commentary of the Methodist scholar, Professor Robert M. Healy in THE FRENCH ACHIEVEMENT, 22 (1974).
9. See HAZEN, EUROPE SINCE 1815, 308 (1910).
10. HEALY, id., at 14.
11. *Lemon v Kurtzman*, 403 U.S. 602 (1971).
12. Ibid.
13. OLMSTEAD, HISTORY OF RELIGION IN THE UNITED STATES, 105.
14. T. MERTON, SEEDS OF CONTEMPLATION, 65.

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Jesus Christ: The Role Model for the Christian Lawyer

BY HERBERT W. TITUS

He that saith he abideth in him ought himself also so to walk, even as he walked.

–1 JOHN 2:6

Reprinted from the Christian Legal Society Quarterly, *Vol. 1, No. 2 (Spring 1980).*

It has long been accepted that lawyers play three primary roles: advocate, counselor and negotiator or mediator. As advocate, the lawyer asserts the legal rights of others. As counselor, the lawyer advises people how to live within the law. As negotiator or mediator, the lawyer helps people to settle disputes without a fight in court.

In the exercise of these three functions, lawyers have long searched for a "role model." In this century, the American Bar Association has twice articulated a set of standards governing the legal profession, first, in its early 20th Century Canons and, second, in its 1970 Model Code of Professional Responsibility. Both times the A.B.A. has charted an uneasy, and often an uneven, course between two rejected models of professional behavior: the lawyer as "hired gun" and the lawyer as "social engineer."

On February 1, 1980, the American Bar Association's Commission on Evaluation of Professional Standards issued a discussion draft of the proposed Model Rules of Professional Conduct which are designed to replace the 1970 Model Code. Once again the A.B.A. has faced the recurring questions of professional responsibility:

> If a lawyer may defend a guilty man, how should he do it?
>
> If a lawyer may advise a client of moral and other non-legal considerations before choosing a course of action, how should he do it?
>
> If a lawyer believes that a particular course of action is the right one for the client, how should he negotiate that?

And once again, these questions and others have been answered by the A.B.A. Commission which has proposed to chart the same uneasy and uneven course between the model of the lawyer as "hired gun" and the lawyer as "social engineer."

As a "hired gun" a lawyer would become a tool of the client's; as a "social engineer" a client would become a tool of the lawyer's. As a "hired gun" a lawyer would refuse to take any responsibility for the rightness or wrongness of the client's cause; as a "social engineer" a lawyer would substitute his values for that of his clients. To avoid these extremes, the new Model Rules contain such statements as the following:

> "An advocate does not vouch for the justness of a client's cause but only its legal merit."
>
> "In advising a client a lawyer shall exercise independent and candid professional judgment uncontrolled ... by the lawyer's own interests or wishes."
>
> "A lawyer as negotiator should not impose an agreement on the client, even if the lawyer believes the agreement is in the client's best interests. By the same token, a lawyer does not necessarily endorse the substance of an agreement arrived at through his or her efforts."

A friendly observer is likely to respond to these statements with the word, "balanced." An unfriendly observer is more likely to comment: "tricky." But for those of us who practice and teach law, we must press for a deeper understanding.

As I studied these Model Rules and their predecessors, I came to the conclusion that the lawyers have done, on the whole, a good job. But as I thought a little deeper, I came to the realization that something crucial was missing. While lawyers have identified the "hired gun" and the "social engineer" models of professional conduct as ones to be rejected, they have failed to identify a positive model of professional conduct, a model to be measured by. On the one hand, lawyers are told not to be a "hired gun;" and,

on the other hand, he is admonished not to be a "social engineer." But what should a lawyer be?

I believe that Christians have an answer to that question, in the Lord Jesus Christ. Jesus did tell the lawyers of his day how *not* to practice law:

> "Woe unto you also ye lawyers! for ye lade men with burdens grievous to be borne, and ye yourselves touch not the burdens with one of your fingers." –Luke 11:46

> "Woe unto you, lawyers! for ye have taken away the key of knowledge; ye entered not in yourselves, and them that were entering in ye hindered." –Luke 11:52

But he left us with a much richer legacy. He gave us through His own life a Biblical model for the practice of law because He performed, and continues to perform, the three essential roles of a lawyer. He is our Advocate; He is our Counselor; He is our Mediator.

Jesus Christ as Advocate

In 1 John 2:1, we find this remarkable passage:

> "... And if anyone sins, we have an Advocate with the Father, Jesus Christ the righteous."

As our advocate Jesus Christ has been called alongside to help us because we have sinned. For example, he helped the adulterous woman even though she was guilty. See John 8. Advocacy is, indeed, a high calling—for the need is great!

Today, many have attacked the lawyer's role of advocate and the adversary system to which it has given birth. While the A.B.A. Commission has endorsed as legitimate, the lawyer's role as advocate, I detect some uneasiness with that traditional role in several of the proposed Model Rules of Professional Conduct.

In its introduction to the section governing the lawyer as advocate the Commission has stated that a lawyer does not vouch "for the justness of a client's cause, but only its legal merit." If a client's cause has legal merit, is it not just for a lawyer to advocate that claim? While the ultimate issue of justice is for the judge, and not for the lawyer, the Commission ought to embrace, not apologize for, the role of the lawyer as advocate. It ought to make a positive statement about the need, if justice is to be done, for a lawyer to serve the client as advocate. There need be no apology for the lawyer's role as advocate.

The disclaimer that a lawyer as advocate does not vouch for the justness of his client's claim spills over in the definition of several of the proposed Model Rules. Let me address three of those.

Rule 3.1 (a) states that "A lawyer shall not file a complaint, motion, or pleading, other than one that puts the prosecution to its proof in a criminal case, unless according to the lawyer's belief there is good ground to support it." If a motion or complaint or pleading in a criminal case requires the prosecutor to prove beyond a reasonable doubt that a person is guilty of the crime charged, then surely a lawyer has good grounds to support that action. A plea of "not guilty" does not always mean that the defendant did not do it. A "not guilty" plea is often entered solely to contest the authority of the state to take jurisdiction over the defendant. After all, a criminal case is not just a search for truth for the state has authority over a defendant only to prove the crime or crimes which have been charged.

Rule 3.1 (a) takes an unnecessarily cynical view of the role of the advocate in a criminal case. This cynical view, also, accounts for an erosion of the defense attorney's responsibility to prohibit the introduction of false or misleading testimony in a criminal trial. While the principle that a lawyer must not introduce evidence that he knows to be false or misleading is reaffirmed in civil matters, the Commission has proposed a rule that a lawyer must introduce on behalf of a defendant in a criminal case:

> "evidence regardless of belief as to whether it is false if the client so demands and applicable law requires that the lawyer comply with such a demand."

What possible law could there be that would require a lawyer to offer into evidence testimony that he knew to be false? In the comments the drafters suggest that in some jurisdictions the Constitutional guarantees of due process and of assistance of counsel may require such conduct. I doubt if there is any case law supporting the proposition that a lawyer must actively assist a client to tell a lie in court. The United States Supreme Court has repeatedly stated that neither guarantee gives a defendant in a criminal case the right to commit perjury. Should the A.B.A. encourage courts to depart from this position?

Would Jesus Christ, our advocate, offer such evidence before the Father? Did He, by defending the adulteress, take a position that she, in fact, had not done the act charged? No! As our Advocate He intercedes on our behalf to assure that we have not been falsely accused by Satan, the master deceiver, who accuses the Christian "day and night." Rev. 12:10. As our Advocate Jesus exposes Satan's untrustworthy character and reputation (John 8:44) and impeaches his testimony. (John 16:11)

In addition, Jesus, as advocate, appeals for equity, for fairness. For example, He argued on behalf of the adulteress: "He that is without sin among you, let him first cast a stone at her." John 8:7. His appeal succeeded as one by one they dropped the charges against her. John 8:9.

Would not the lawyer's position as advocate—as intercessor against false accusations and as appealer to the community conscience—be inevitably compromised if the lawyer's duty to do everything he can to prevent a client from offering false testimony is modified? I cannot help but think that the A.B.A. should protect the advocate's position by a firm barrier against even the appearance that a lawyer may be cooperating with a lying client. God's Word is clear and uncompromising:

> "Thou shalt not raise a false report: put not thine hand with the wicked to be an unrighteous witness ... Keep thee far from a false matter." –Ex. 23:1 & 7a

Moreover, it is no accident that the verse in 1 John 2:1 has identified the sinner's advocate as "Jesus Christ, the *righteous*." The lawyer, as advocate, must not identify too closely with a client lest the lawyer lose his righteous insulation.

If the lawyer is not to be too closely identified with the client in order to preserve his position as advocate, he must also be independent from the state or from others who oppose or accuse his client. The lawyer is an advocate, *not* an accuser.

The A.B.A. has long recognized this principle. It is best illustrated by the rules safeguarding the lawyer-client privilege of confidentiality. But the proposed Model Rules contain one provision that I think seriously threatens this privilege. Section 1.7 (b) reads as follows:

> "A lawyer shall disclose information about a client to the extent it appears necessary to prevent the client from committing an act that would result in death or serious bodily harm to another person, and to the extent required by law or the rules of professional conduct."

The Commission has explained this section as follows:

> "When homicide or serious bodily injury is threatened by the client, the lawyer must make disclosure to the extent necessary to prevent the wrong.... "

In the 1970 Model Code of Professional Responsibility a lawyer was not bound to keep confidential a client's intent to commit a crime, but the Code did not command the lawyer to disclose such information. That rule is as it should be. Any time a lawyer reveals a statement made in confidence to him he jeopardizes his role as advocate by becoming the client's accuser.

Once again we may find guidance in the Word of God. In John 3:17 we read: "For God sent not his Son into the world to condemn the world; but that the world through him might be saved." And so it is with a lawyer. He is not appointed by the state or by another person to condemn the client, but to protect that client. If the lawyer is obligated to compromise that role in favor of protecting another by breaking the client's confidence, then he inevitably weakens his position as the client's advocate. Moreover, we ought not enact any rule requiring a course of action based upon a person's assessment of the future. God has warned us against such presumption:

> "Whereas ye know not what shall be on the morrow. For what is your life? It is even a vapour, that appeareth for a little time, and then vanisheth away." –James 4:14

Jesus Christ: Counselor

Thus far, I have tested three of the Model Rules by the Biblical standards for an Advocate. Let me now turn to the guidelines that Jesus Christ gives us as Counselor:

> "For unto us a child is born, unto us a son is given: and the *government shall be upon his shoulders* and his name shall be called Wonderful, Counselor ..." –Isaiah 9:6

Immediately after Jesus had won the case for the adulteress we find these words "Go, and sin no more." John 8:11. As her Advocate Jesus had "won the case;" but as her Counselor He had a greater responsibility. Had Jesus given such counsel under the Model Rules of Professional Conduct, would He have risked violation of Rule 2.1?

> "In advising a client a lawyer shall exercise independent and candid professional judgment uncontrolled by the interests or wishes of a third person, or by the lawyer's own interests or wishes."

One could readily agree that Jesus' advice to the adulteress was "independent" and "candid," but was it "uncontrolled" by the interests of the adulteress' family or Jesus' own interests or wishes? While the Commission has allowed a lawyer's advice to take into account ethical, equitable and other non-legal factors, it has failed to identify when those factors amount to an impermissible "control." Jesus' advice was dictated by an absolute moral code set by God. Would that be impermissible? Does Rule 2.1 allow only for a lawyer who subscribes to a "situational ethic"?

Suppose, on the other hand, that the adulteress had informed Jesus in the midst of her trial that she desired only His services as an advocate and did not desire any advice concerning her future

conduct. Should Jesus have been *relieved of a duty to counsel her* to go and sin no more as apparently he would have been under Model Rule 2.4:

> "A lawyer who knows that a client contemplates a course of action which has a substantial likelihood of serious legal consequences shall warn the client of the legal implications of the conduct, unless a client has expressly or by implication asked not to receive such advice."

The drafters have justified this modified responsibility with the remark that "a lawyer has no duty ... to give advice that the client has indicated will be unwelcome."

Consider the following "unwelcome advice" of the Lord Jesus Christ:

> "Love your enemies, bless them that curse you, do good to them that hate you, and pray for them which despitefully use you, and persecute you." –Matt. 5:44

> "For whosoever will save his life shall lose it; and whosoever will lose his life for my sake shall find it." –Matt. 16:25

> "And if your brother sins, go and reprove him in private, if he listens to you, you have won your brother." –Matt. 18:15

As counselor the government is placed upon Christ's shoulders and his disciples' desires could not remove that.

Can the lawyer as counselor be relieved of his responsibility simply because of the client's wishes? Under the proposed Model Rules, apparently so. Rule 2.2 provides that "a lawyer may refer to all relevant considerations unless in the circumstances it is evident that the client desires advice confined to strictly legal considerations." Only if the lawyer finds such a restriction "repugnant or imprudent" (Rule 1.5 (b)), would he be justified in referring such a client to moral and ethical considerations relevant to the client's cause. Otherwise, as Rule 1.3 (a) prescribes, it is the client, not the lawyer, who decides the objectives of the representation and the means by which they are to be pursued.

While a lawyer cannot force any client to accept his advice, one wonders why the Model Rules have been drafted in such a way as to force the lawyer to accept the client's! Once again I believe that the Bible guides us to the right balance in the joint undertaking of lawyer and client.

"Therefore take no thought, saying, what shall we eat? or, What shall we drink? or Wherewithal shall we be clothed? ... But seek ye first the kingdom of God, and his righteousness; and all these things shall be added unto you." –Matt. 6:31, 33

Jesus did not give the disciples the advice asked for because He knew better. Those who heard his advice were not bound by it, but neither was Jesus bound by their stated desires.

Jesus Christ: The Mediator

"For there is one God, and one mediator also between God and men, the man Christ Jesus." –1 Tim. 2:5

Jesus, we are told by the writer of Hebrews is the mediator of a "new covenant" (12:24), of a "better covenant, which was established upon better promises" (8:6). Under this new covenant God promised:

"If we confess our sins, he is faithful and just to forgive us our sins, and to cleanse us from all unrighteousness." –1 John 1:9

And man, under the new covenant, was called upon to forgive anyone who had wronged him:

"Then Peter came and said to Him, 'Lord, how often shall any brother sin against me and I forgive him? Up to seven times?' Jesus said unto him, 'I do not say to you, up to seven times, but up to seventy times seven." –Matt. 18:21-22

As mediator Christ ministers true healing between God and man and between man and man through repentance and forgiveness.

Is this pattern of repentance and forgiveness—of Christian mediation—available to a lawyer as the means of reconciling a dispute? Can he actively assume the role of mediator on behalf of the client to negotiate the settlement of a dispute? The Christian Legal Society has endorsed this principle and many Christian lawyers are encouraging and enabling their Christian clients to take seriously Chapter 6 of 1 Corinthians:

"Now therefore there is utterly a fault among you, because ye go to law one with another. Why do ye not rather take wrong? Why do ye not rather suffer yourselves to be defrauded?"

I have serious doubts whether the proposed Model Rules accommodate this practice. The drafters see the goal of the negotiation process as "agreement," *not* healing. Consequently, they exhort the lawyer to "seek the most advantageous result for the

client." While the lawyer is encouraged to settle, rather than to go to court, he "is to act as an agent," not as a "mediator," for the client.

While the proposed rules do not prohibit Christian mediation, I think they may place serious limits on that method of settling disputes. For example, Rule 4.1 (b) provides that a lawyer, in the conduct of negotiations for a client, shall

> "in connection with an offer, take reasonable steps to assure that the judgment of the client rather then [sic] that of the lawyer determines whether the offer will be accepted."

> "A lawyer shall accept a client's decisions concerning the objectives of the representation and the means by which they are to be pursued ... unless in violation of law or the rules of professional conduct (or) unless repugnant or imprudent ...."

These rules coupled together do not encourage the kind of open dialogue between client and lawyer that is the hallmark of Christian mediation. Rather, they reflect an assumption that the lawyer performs the same type of advocacy role in the settlement process as he does at trial. In fact, the Commission has explicitly endorsed that adversary model in its introduction to the Model Rules governing the lawyer as negotiator:

> "(I)t must be recognized that in negotiations a lawyer is the agent for the client and not an arbitrator or mediator. Negotiation is in part a competition for advantage between parties who have the legal competence to settle their own affairs."

Not only do these rules and this statement discourage Christian mediation as a means of settling disputes, the new rules governing advertising have not even addressed the problems of accommodating advertising with the lawyer's role as mediator. Rule 9.1 prohibits only false, fraudulent, or misleading statements. If a lawyer advertises uncontested divorces with no children at $80, will such a lawyer take the time to discuss and to pursue the possibility of mediating a reconciliation, and thereby, to bring true healing into the marriage? The Commission has simply failed to address the potential harm that advertising poses to the settlement process.

Jesus Christ: Pattern for the Christian Lawyer

In His role as Advocate, Counselor and Mediator, Jesus Christ has set the pattern for the Christian lawyer. As advocate, Christ knew the law thoroughly (*see, e.g.,* Matt. 5:27-28) and displayed a high degree of skill in defending the guilty, *see* John 8. Yet, He did not limit Himself to legal knowledge and "technical defenses." As counselor and mediator, He helped people to find "fulfillment" in their lives just as He came to "fulfill" the law. *See* Matt. 5:17. He was not satisfied to have just won the case for the adulterous woman in John Chapter 8. Rather, He counseled her to sin no more. Moreover, He did not limit His counsel to "the law." Instead, He gave Godly counsel to His followers that they might taste the abundant life. Finally, as mediator Christ ministered true healing to God and man and man and man. The pattern of repentance and forgiveness was established by the new covenant as the means for realizing this healing.

The Christian lawyer as advocate, counselor and mediator ought to practice law in the pattern set by Christ. With the power of the Holy Spirit he can truly become a minister of healing in the breakdown of all types of legal relationships. Through intercessory prayer and the exercise of the gifts of the Holy Spirit, the Christian can believe for miraculous, not just legal solutions to his client's problems:

> "Verily, verily, I say unto you, He that believeth on me, the works that I do shall he do also; and greater works than these shall he do; because I go unto my Father." –John 14:12

Herbert "Herb" Titus is the founding dean of the Regent University College of Law. He taught constitutional law, common law, and various subjects at five different law schools over 30 yeas. He holds a law degree from Harvard University. He also authored the book, *God, Man and Law: The Biblical Principles.*

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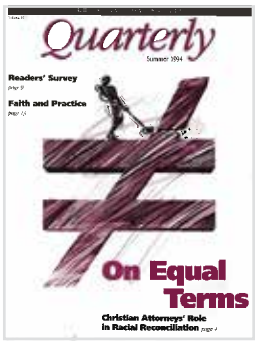
Christian Character and Good Lawyering: Integrating Faith and Practice

BY JULIUS B. POPPINGA



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What does it mean to integrate our faith and our practice? Where does the lawyer fit into God's scheme of things?

As I read the Bible, I see two major themes: the creative work of God and the redemptive work of God. His redemptive work, triumph over sin and death, is accomplished in the death and resurrection of Jesus Christ. It is accomplished in fact, but not yet in fulfillment. Until that fulfillment, the Holy Spirit is at work in two ways: to restrain evil and to restore good, both in the individual and in society. Thus I Timothy 2:1-4 speaks of the role of human government as securing a quiet and peaceful life for its subjects, and Romans 13 teaches that human government is ordained of God to restrain evil.

God's restorative purpose surfaces in Isaiah 42 which prophetically speaks of Christ as the one who will bring forth justice to the nations, who will make "crooked things straight" and who will "magnify the law and make it honorable."

We as lawyers are squarely in the middle of all this. From the secular point of view we are "officers of the court" and largely control access to the judicial arm of government. In theological terms, we are an integral part of the manifestation of God's presence in human history whereby evil is restrained and good is encouraged until the return of Jesus Christ.

If we appreciate the place we have in God's plan, we can better understand the connection between what we believe and aspire to as Christians and what we do as lawyers. From this somewhat lofty vantage point we can see more clearly what it means to integrate our faith and our profession.

Now we are ready to ask ourselves on the practical level these questions: What does my walk as a Christian bring to my work as a lawyer? What does my work as a lawyer bring to my walk as a Christian? What does my walk as a Christian and my work as a lawyer bring to the body of Christ, that is, to the community of believers known as the Church?

What does my faith bring to my work?

From time to time I detect an unspoken assumption that the Christian lawyer is at a disadvantage, that he or she labors under a handicap of trying to be good in a system in which nice guys finish last. I do not accept that. To the contrary, I believe that the Christian has the advantage, that he or she has by reason of the Christian faith (assuming of course a faith that has an impact on character) qualities that make for a superior lawyer.

Romans 12:17 teaches us to "Provide things honest in the sight of all men." Daniel Webster said: "An eminent lawyer cannot be a dishonest man.... He cannot be, because he is careless and reckless of justice. The law is not in his heart; it is not the standard and rule of his conduct." I think you will agree that lack of integrity is fatal to the effective lawyer. Just ask yourself, if you were the client, would you really want a lawyer who you know is dishonest?

Also in Romans 12 we read, "Be not slothful in business," but fervent in spirit. Here we have the Christian grace of diligence. Again the Christian lawyer has the advantage. The Christ-like person is a person of discipline. Persistence and excellence are products of the Christ-follower's manner of life.

If you were the client, wouldn't you want a lawyer who will go the second mile? When the client retains a Christian, that is what he or she should get. The second-mile Christian will never be a second-rate attorney. The results will reflect the discipline, diligence and fervor that the Christian lawyer applies to the task at hand.

What does my work bring to my walk as a Christian?

The discipline of time. Every practicing lawyer learns the value of time. We record it diligently to the nearest ten-minute segment of the hour. It measures our value to exchange. The apostle Paul would be quick to see this as a form of "Redeeming the time" (Eph. 5:16).

The discipline of the tongue. Words have consequences. Anyone who has negotiated a business transaction knows how important it is to say what you mean, to say only what you mean and to be sure your client has authorized you to say it. Every trial lawyer has seen one unbridled word by a witness undo a case. Scripture speaks

strongly against those who think they are religious but who do not control their tongues. Their religion is "worthless" (James 1:26).

The discipline of temperament. Whatever the context—the board room, the conference table, in deposition, in court—the lawyer who loses his or her temper loses period. Every lawyer would do well to heed the biblical admonition to "be quick to listen ... slow to anger" (James 1:19). And the wisest of them all remind us that "A soft answer turns away wrath" (Prov. 15:1).

The discipline of tension. Lawyers learn to live with tension. It inheres in virtually everything we do. We are on one side, looking after one set of interests; another lawyer is on the other side, looking after a competing set of interests. Living with tension equips us in a special way for the life of faith.

Jesus answered the question put to Him about paying taxes with a formula for tension that has left us ever since sorting out the competing claims of God and of Caesar. Jesus told His followers that testing would be part of their lives (John 16:33).

The discipline of trust. As lawyers, if we are to succeed at all, we must not only win our clients' trust, we must deserve it. This carries with it great responsibility. People act on our advice. They invest fortunes in a business venture relying on the skill and care of their attorney to protect them against needless risk. They put their most perplexing problems in our hands, and count on us to lead them to the best resolution. And in criminal cases they entrust their freedom and even their lives to us. As attorneys, we are called upon by the highest standards of our profession not to betray the trust that is reposed in us. We are expected to be faithful to it. Solomon put it this way: "Confidence in an unfaithful man in time of trouble is like a broken tooth and a foot out of joint" (Prov. 25:19). Once again, we are molded by our profession to a biblical virtue.

What does my being a lawyer and a Christian bring to the church and society?

Here we couple Christian graces with professional disciplines—the better to equip us for service to others. Indeed, what most quickly comes to mind is the lawyer's servant role. We are by occupation burden bearers. At times of reflection on having been spared great calamity in personal and family life, I have remarked to those close to me, "All my problems are those of others, and I get paid for worrying about them!" The facetiousness of that remark notwithstanding, I have throughout my career as a practicing lawyer been conscious of the admonition that we are to "bear

one another's burdens" (Gal. 6:2). A good antidote to lawyers' tendencies to arrogance is to remember that we are really just society's Sherpas.

There are other ready examples of how what we believe and what we are trained to do as lawyers combine in service. Think for instance of your skills of analysis, of getting at the facts, of adjusting competing interests and of keeping in view the big picture. Every day of a lawyer's life is given to this kind of activity. Sanctify this experience with circumspection (Eph. 5:15) and with the ability to see beyond the self to understand the interests of others (Phil. 2:4), and behold a problem solver, of whom every church, the Church, and indeed the world is in short supply.

Earlier this year this caught my attention in the obituary section of *The New York Times:*

> Michael Metzger, 57, Hard-Hitting Lawyer
>
> St. Helena, Calif., March 3 (AP) –Michael Metzger, one of Northern California's most aggressive and outspoken defense lawyers, shot himself to death Tuesday night after firing a round of birdshot at his wife, authorities said today.

The tragedy of this account barely overcomes the irony. Here was a man who in life and in death would be known as a "hard-hitting lawyer." Sadly, it struck the one nearest him—his wife—and the one against whom he was the most defenseless—himself. He achieved ultimate integration of his lawyer self and his personal self, and the consequences were disastrous. There is a better way.

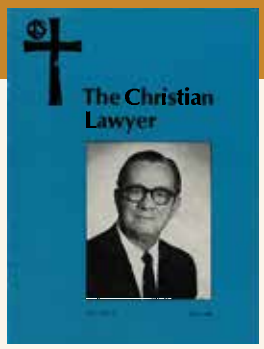
CLS calls each of its members to an integration of the personal self, remade in the image of Christ by His grace, and of the lawyer self, forged in the discipline of a demanding profession. CLS encourages each one of us to put a unique blend of spiritual principle and professional proficiency at the disposal of our Master—to serve clients, yes, but also to be ministers for good in the "world."

Integrating faith and practice means experiencing a continuous three-way flow—our faith affecting our work, our work affecting our faith, and both being brought to bear to serve the needs of the Church and of society.

Julius "Jay" Poppinga is the former president of Christian Legal Society and a long time CLS member and board member. He obtained his law degree from the Uinversity of Michigan and worked as a partner at McCarter & English for many years.

The Concept of the Christian Lawyer

Reprinted from The Christian Lawyer, *Vol. 1, No. 2 (Fall 1968).*



This issue of *The Christian Lawyer* marks the 50th anniversary of its publication. Such a milestone inspired me to reflect not only on the changes that have occurred in the legal profession but also on the things that have remained the same at Christian Legal Society. I believe such a comparison illuminates important issues affecting the legal profession and the enduring quality of the professional life experience by Christian attorneys.

Looking back to the 1960s, many would be amazed by the changes in the past generation. Today, the bench and bar are much more enriched with the participation of those who were previously limited in the practice of law. The advancement of computers, email, cell phones, and other sophisticated social media platforms have transformed law practice, and the widespread recognition of professional responsibility to pro bono efforts has added meaning to the profession.

A lot of changes have occurred over the past 50 years, but yet the fundamental concept of the lawyer as a Christian remains the same for Christian Legal Society. Glenn Winters' article below, *The Concept of the Christian Lawyer*, reminds us that "[w]hat we are reaching toward, I believe, is the concept of the lawyer as Christian in the simple and true sense of the term—a person who believes in Jesus Christ as the Son of God, the savior of the world, and his own savior, and for whom that faith is a real and meaningful part of his life." It was true 50 years ago and still holds true today at CLS. This "concept" is the one thing that counts—and thankfully it is more than a concept—it is a reality in the lives and practices of thousands of lawyers.

–Connie Bourne, Director, Attorney Ministries

BY GLENN R. WINTERS

There are a great many organizations in the legal profession. When I lived in Ann Arbor, I used to belong to the Washtenaw County Bar Association and the State Bar of Michigan, as well as the American Bar Association. Bar associations represent the members of the legal profession in a general way, and in their capacity simply as lawyers. There are also a variety of specialized organizations in the profession which offer the lawyer the opportunity to cultivate specialties or support causes in which he is particularly interested. The American Judicature Society, organized 50 years ago, and situated here in Ann Arbor for many years, is one of them. So are the American Patent Law Association, the National Legal Aid and Defender Association, the Catholic Lawyers Guild, and a great many more.

It has sometimes been suggested that there are too many legal organizations, but I do not agree with this view. It is not a coincidence that America is not only the richest, most powerful, most modern and most progressive nation, but also the most highly organized. When I visited Asia some years ago, one of the things that I noticed most conspicuously was the comparative lack of organization and of organized activities among the lawyers and judges. Among our own people, you can tell a lot about a person by the organizations he belongs to. Organizations are an important means for all of us to have a part in many worthy activities and causes we would like to share or support; and our profession, our communities and our country are the better for them.

Christian Legal Society is a national organization of Christian lawyers [started] in the city of Chicago about six years ago when a small group of Christian lawyers began meeting regularly at lunch for Christian fellowship and were inspired to undertake to find and organize such persons throughout the country. Paul Barnard, professor of law at Stetson University, St. Petersburg, Florida, and Gerrit P. Groen, an attorney practicing in Chicago, took the lead in this movement, and were the organization's first and second presidents, respectively. It was incorporated under the name "Christian Legal Society," and it held its first annual meeting at the A.B.A. convention in San Francisco in 1962. Only a handful attended that historic gathering in the Fairmont Hotel, but it was sufficient to elect a nation-wide board of directors and start the infant organization on its way.

A news release on that meeting, distributed to both the religious and the legal papers, brought both praise and criticism, and it also brought members. Under President Groen's leadership, membership grew to about 100, and local chapters were established in Chicago, Dallas and Seattle, and on university campuses here in Ann Arbor, at Stetson University, and a few other places.

All of you have undoubtedly read the formal statement of purposes of the Society; but it is worth reading, again, now. The Society was founded:

- To provide a means of society among Christian lawyers of the Protestant faith.[1]
- To clarify and promote the concept of the Christian lawyer.
- To encourage and aid deserving young students in preparing for the legal profession.
- To provide a forum for the discussion of problems relating to Christianity and the law.
- To cooperate with bar associations and other organizations in asserting and maintaining high standards of legal ethics.

Now, a word about the concept of the Christian lawyer. The concept that a Christian lawyer is a lawyer who is not a [insert any other group here], is not good enough. What do we want our concept to be?

This has been a most weighty problem for the founders and first directors of the Society. It would be very easy, on the one hand, to build up in a short time a membership in the thousands, of lawyers who call themselves Christian in one way or another. On the other hand, it would be possible to narrow the requirements so rigidly that few would be eligible, and it would amount to nothing.

How should we draw the line between a large membership, for many or most of whom the concept would be a dim or blurred one, and a small membership limited by unduly manner and strict requirements? No precise formula has been worked out, and probably never will be, but here are my personal impressions of how it is developing, or ought to develop.

1. Membership in the Society will not be made contingent on the negatives of Christian life and conduct—what a person does or does not wear, say, or do. There are wide variations among good Christians on these points, and we must leave them all to the individual's own light and conscience.
2. Something more than a bare, nominal identification in a minimal way with a Christian denomination should characterize the CLS member.... Let us hope that being a Christian means something more to Christian Legal Society than it does to the Arab immigration authorities!

3. What we are reaching toward, I believe, is the concept of the lawyer as a Christian in the simple and true sense of the term—a person who believes in Jesus Christ as the son of God, the savior of the world, and his own savior, and for whom that faith is a real and meaningful part of his life. Such people are to be found in many denominations, and they are all welcome in the Society. Thousands of people have joined churches in all sincerity simply because they thought it was the right thing to do, and without ever having been confronted with the concept of a living faith in Christ as savior and Lord. Persons who have the name of Christian without the actual faith are not, however, excluded, for it is not for us to sit in judgment on the innermost heart of another person. If the standard of Christianity in terms of a real and vital Christian faith is consistently held up, those who join and stay with us will be those who have such a faith; or if not, they may get it as a result of mingling with us.

The word faith is often used as a synonym for religion. An interfaith council is a group with representatives from various different religions. Faith is the great affirmative force in human life that has moved mountains throughout history. As Christian lawyers, we should have faith in both elements of our formula—faith in God, and faith in the law, and our system of justice.

This is a cynical age. In spite of Billy Graham, there is more aggressive unbelief in today's world than ever before in the Christian era. Modern cynicism extends alike to religion and to the law. The ancient phrase, "There, but for the grace of God, go I" has been just slightly altered to, "The only difference between that fellow and the rest of us is that he *got caught!"* I think it would shock us all if we knew in how many minds and hearts today both sin and crime are identified only with *getting caught.*

Somewhat similarly, legal standards are looked upon as a challenge to see how far one can go without actually violating the law. You all know how this principle is applied in the writing of tax returns, for example.

Christian lawyers should regularly remind themselves, their clients, and the portion of the public that they meet, that when Moses came down from Sinai with a shining face, the gift he brought from God was the gift of LAW. "Thou shalt Love the Lord thy God with all thy heart, and with all thy soul, and with all thy strength"—there is the definition of our duty to God—"and thy neighbor as thyself"—there is our duty to each other. All of the complex of the civil and the criminal law is for the purpose of helping us obey the second half of that divine command.

When I was a boy, more than one of my elders patted my head affectionately and said, "This boy is going to be a preacher some day." At the time, I believed them, but it didn't work out that way. I became a lawyer instead. Many lawyers are evil creatures, preying on their fellowman as long as they can escape disbarment. To me, however, the lawyer, like the minister, is God's representative on earth—helping his fellowman find justice as the minister helps him find grace and mercy. I am proud to be a lawyer, and I am grateful that it is my privilege to be a Christian lawyer.

Glenn R. Winters was Executive Director of the American Judicature Society. The article was taken from an address to members of CLS in Ann Arbor, Michigan.

END NOTES

1 We have since expanded our society to include brothers and sisters in the Catholic and Orthodox traditions.

The Ordinary Religion of the Law School Classroom

Reprinted from The Christian Lawyer, *Vol. 7, No. 2 (Fall 1978)*[1].

Cornell Law School Dean Roger Cramton created a stir with an article in the *Journal of Legal Education* called *The Ordinary Religion of the Law School Classroom*[2] that was first published in the Spring 1978 issue of *The Christian Lawyer*. The article was significant because it examined "the unarticulated (and usually unexamined) value system of legal education," which Cramton called the "ordinary religion" of the law school classroom. Its "essential ingredients" include a "skeptical attitude toward generalizations; an instrumental approach to law and lawyering;" and "a faith that man, by the application of his reason and the use of democratic processes, can make the world a better place."[3]

Importantly, Cramton's premise involved not only the content of the ordinary religion, but also its stealth delivery: the ordinary religion is "almost never openly articulated, but it lurks behind what is said and done." Cramton noted "certain fundamental value assumptions unconsciously presupposed" by most faculty and students, who do not really know what they are "assuming" because "no other way of putting things has ever occurred to them."[4] Because the value system is taken for granted, it is difficult for the students to detect its presence, and the vast majority of the teaching and discussion that takes place in the classroom does so without acknowledgment of the underlying framework.

Perhaps the amoral, pragmatic, skeptical approach is the best way to teach and study law. Maybe the law is simply a tool for social engineering, rather than something rooted in the moral order of the universe. But even so, it is not the historical view. It is not the moral view. It is not the view of orthodox Christians through the ages. The unsuspecting student should at least get a crack at appraising these perspectives before he is led by the nose into the weeds without warning. The Christian student, who is to measure all things against a biblical standard, is put in the position of having to ferret out the assumptions before she can evaluate them. A novice in this difficult learning environment has very little practical hope of engaging in sustained, thoughtful dialogue from a Christian perspective.

Because of the pressures faced by law students as they seek to learn a new subject, with a new language, by new methods, the law school worldview is easily caught. The thin gruel of amoral pragmatism, preserved by stealth, is served up in the context of a hyper-competitive, high-stress environment, which distracts, deadens, or exasperates the student to the point of capitulation. Those who cared in the first place, who sought the good and the true in the law when they initially came to law school, are often disabused of their idealism fairly quickly. Forty years ago, Roger Cramton did us the favor of demonstrating how law school squeezes the idealism out of law students, stifles their imaginations, and indoctrinates them in a false story of law. His admonition is still instructive—and needed—today.

- Mike Schutt, Director, Law Student Ministries[5]

END NOTES

1 The following article has been edited for length. In doing so, some footnotes from the original have been deleted, and the remaining footnotes have been renumbered.

2 Roger Cramton, *The Ordinary Religion of the Law School Classroom*, 29 J. LEG. ED. 247 (1978).

3 Id. at 248.

4 Id. at 247-48.

5 This introduction is adapted from my discussion of Cramton's article in my book *Redeeming Law, Christian Calling and the Legal Profession* (InterVarsity 2007).

BY ROGER C. CRAMTON

A professional discipline necessarily shares a constellation of beliefs, values and techniques. This common intellectual framework defines the boundaries of the discipline (e.g., what is "law" and what are "lawyers' problems"), identifies subsets of problems with which the discipline is concerned, delineates models for behavior and action, and supplies concepts and values through which members of the profession understand what they observe.[1]

This paper is a preliminary look at part of the intellectual framework of law and the legal profession in the United States: the unarticulated (and usually unexamined) value system of legal education. What is the "ordinary religion" of the law school classroom? What are the sources of this value system? Viewed from a moral and religious perspective, what are its implications? A clear understanding of the value system that permeates the educational enterprise is a prerequisite to its change and improvement.

What is the ordinary religion of the law school classroom?

A sophisticated observer of the typical classroom in most American law schools would hear a variety of views and see many differing methods. But he could also detect certain fundamental value assumptions unconsciously presupposed by most faculty and student participants. This intellectual framework is almost never openly articulated, but it lurks behind what is said and done. As Whitehead noted, fundamental assumptions "appear so obvious that people do not know what they are assuming because no other way of putting things has ever occurred to them." Occasionally, cardinal tenets of this normally unarticulated value system are stated in a fashion suggesting that they are the common framework of the entire discipline. The process of socialization by which a law student becomes a lawyer involves the identification and acceptance of these accepted truths about law and lawyering.

The "ordinary religion of the law school classroom," of course, serves as a shorthand expression for this value system.[2] It includes not only the more or less articulated value systems of law teachers but also the unarticulated value assumptions communicated to students by example or by teaching methods, by what is *not* taught, and by the student culture of law schools.

The essential ingredients of the ordinary religion of the American law school classroom are: a skeptical attitude toward generalizations; an instrumental approach to law and lawyering; a "tough-minded" and analytical attitude toward legal tasks and professional roles; and a faith that man, by the application of his reason and the use of democratic processes, can make the world a better place.[3]

In the paragraphs that follow I attempt to summarize the intellectual framework that would be perceived by a sophisticated observer of legal education today. For rhetorical convenience, this effort at a coherent and explicit statement of what is usually tacitly assumed is put in the form of a direct statement, as though from the mouth of my sophisticated classroom observer. The reader should not assume that I agree with the views stated, but only that I believe the statement is a fair summation of today's orthodoxy.

A Skeptical Attitude Towards Generalizations, Principles and Received Wisdom

There was a time when law was viewed as a body of "rules" to be taught *ex cathedra*, learned by rote, and administered in a semi-religious way. During the nineteenth century, influenced by the scientific method, law came to be viewed as a system of "principles" that could be ferreted out of cases by an inductive process. Modern thought has liberated us from the blinders imposed by these earlier approaches to law. There is no "brooding omnipresence" from which principles or rules can be derived. Law is not a logical system in which a rule to be applied to a new situation is deduced by logic from some fundamental, preexisting principle. The primitive conception that in some way men can arrive at true propositions and by reasoning logically from these premises arrive at new legal truths or specific decisions by deduction alone, is a false and mischievous way of looking at the legal universe.

Because law students and lawyers are constantly tempted to invest generalizations with reality and to assume that law is more preexisting, certain and stable than it really is, the foremost task of legal education is to inculcate a skeptical attitude towards generalizations, principles, concepts and rules. When the universe is looked at honestly, without the preconceptions that emanate from our childish yearning for security, it is apparent that "'concepts' and 'interpretations' and 'methodological premises' are simply our man-made, custom-built tools for organizing 'facts' or the data of 'nature.'"[4] "Legal rules are but the normative declarations of particular individuals, conditioned by their own peculiar cultural milieu, and not truths revealed from on high."[5]

* * *

Whether or not a "value-free" jurisprudence can be evolved, care must be taken to distinguish between facts and values, between realities and theories. Any true knowledge requires agreement on a mode of proof or verification. In the absence of such verification, an assertion cannot be taken as true. Since it is apparent that people differ in the values they hold and that there is no rational way to resolve these differences, a practical person will not waste time worrying about unanswerable questions. In short, the good lawyer cultivates a skeptical attitude towards generalizations, principles, and received wisdom.

An Instrumental Approach to Law and Lawyering

A second basic feature of the ordinary religion of the law school classroom is that law is an instrument for achieving social goals and nothing else: "law is *instrumental* only, a means to an end, and is to be appraised only in the light of the ends it achieves."[6] "[H]uman laws are devices, tools which society uses as one of its methods to regulate human conduct and to promote those types of it which are regarded as desirable.… [Hence] the worth or value of a given rule of law can be determined only by finding out how it works, that is, by ascertaining, so far as that can best be done, whether it promotes or retards the attainment of desired ends."[7]

Since the lawyer is engaged in the implementation of the values of others—a client or a government agency or the general society—he need not be concerned directly with value questions. His primary task is that of the craftsman or skilled technician who can work out the means by which the client or the society can achieve its goals. He should concern himself with the choice of means and the relationship of means to ends, not to the choice of ends, which can safely be left to personal choice or democratic decision.

* * *

A "Tough-Minded" and Analytical Attitude Towards Lawyer Tasks and Professional Roles

It follows from what has been said that a good lawyer will have a "tough-minded" and analytical attitude toward lawyer tasks and professional roles. The law teacher must stress cognitive rationality along with "hard" facts and "cold" logic and "concrete" realities. Emotion, imagination, sentiments of affection and trust, a sense of wonder or awe at the inexplicable—these soft and mushy domains of the "tender minded" are off limits for law students and lawyers.

Two models of professional behavior are presented to law students: the "hired gun" and the "social engineer." The former is the skilled craftsman of the discrete controversy, while the latter is the technician and applied scientist of the use of legal tools for broader social change. Both are technicians who are trained in the dispassionate use of legal skills for the instrumental purposes of those they serve. The hired gun gets his goals from the client

he serves; the social engineer either prefabricates his own goals or gets them from the interests he serves. Involvement in the messy reality of human feelings is to be avoided by both in favor of an analytical detachment that gives preeminence to a rational calculation of alternative strategies of aggressive action.

The task of the lawyer, in this view, is to use legal arguments to influence decision-makers to decide in favor of his client or interest.

* * *

A Faith that Man, by the Application of His Reason and the Use of Democratic Process, Can Make the World Better

The ordinary religion's approach to law and lawyering releases lawyers from the confines of outmoded conceptions and allows them to pursue social justice more openly. A concern for consequences—for justice in the individual case and for justice in social policy—can properly be result-oriented. Result-orientation in the pursuit of values on which there is general agreement (such as civil liberties, more goods for more people, and the alleviation of hardship and poverty) is not unworthy, especially as contrasted with the more formal and mechanistic "slot machine" jurisprudence of earlier days—a jurisprudence that often produced intolerable results.

* * *

If we use our heads and follow these established decision-making mechanisms, the ordinary religion concludes, society will get better and better. There has been steady progress towards the good life throughout history. Good will and good sense, combined with reliance on the institutions of representative democracy, offer the best hope for salvation on this earth.

What are the sources of the "ordinary religion of the law school classroom"?

The intellectual framework just summarized is a somewhat impressionistic collage of ideas, attitudes and values that seem to me to be dominant motifs of legal education today. I believe it is essentially accurate, if only in the way that a good political cartoon portrays essential features through exaggeration and the elimination of detail.

The sources of the world view represented by "the ordinary religion of the law school classroom" are threefold: intellectual trends in the general culture surrounding the law schools; the formal law school curriculum; and the informal or hidden curriculum that encompasses what students learn apart from the formal curriculum.

General ideas current in our culture shape values and structure patterns of thought and thus influence the ordinary religion of the law school classroom. The prevalent orthodoxy of legal education, of course, is a blend of legal positivism, sociological jurisprudence, legal realism, and "the functional approach." In the larger society, the intellectual currents emanating from the scientific method, logical positivism, and pragmatism have had enormous influence. They have become part of the intellectual woodwork of the law school classroom even though rarely discussed.

* * *

The development of ethical attitudes is probably more affected by the hidden curriculum than by the formal curriculum: the example of teachers and administrators in the handling of issues and people; the implication by students that matters *not* included in the formal curriculum are unimportant to lawyers; and the powerfulness of the student culture in affecting attitudes toward grading, examinations, competition, status and "success."

Moral implications of the law school experience

I have outlined the basic tenets of the "ordinary religion of the law school classroom" and have summarized its three sources. The balance of my remarks is concerned with some of the moral implications of this way of looking at law and lawyering.

The Inculcation of Skepticism

A skeptical attitude toward generalizations, principles and rules is doubtless a desirable attribute of the lawyer. But skepticism that deepens into a belief in the meaninglessness of principles, the relativism of values or the non-existence of an ultimate reality is dangerous and crippling. Tendencies toward moral relativism and value nihilism are pervasive in the general society.

* * *

[O]ne of the most insistent notions is that there is an unbridgeable chasm between "facts" (which are "real" or "hard" or "tangible") and "values" (which are "subjective" or "soft" or "intangible"). The distinction between the is and the *ought*, the legal realists said, was temporary and was designed merely to free legal scholars so they could take a fresh and critical look at how officials actually behaved, all as a preliminary to the main task of

reforming legal institutions in the light of the suspended goals. This ideal was rarely achieved; since the divide between is and *ought* could not be narrowed by compelling the *is* to conform to the *ought*, the *ought* was permitted to acquiesce in the is.[8]

Instead of transforming society, the functional approach tends to become dominated by society, to become an apologist and technician for established institutions and things as they are, to view change as a form of tinkering rather than a reexamination of basic premises. Surface goals such as "efficiency," "progress," and "the democratic way" are taken at face value and more ultimate questions of value submerged.

In addition to these general cultural factors, the law school milieu involves some special features which feed value skepticism or discourage explicit discussion of values:

First, the steady diet of borderline cases. Since there is a good argument both ways, and the case could reasonably have been decided either way, the student is led to believe that life is that way, that law is that way—there are no *right* answers, just *winning* arguments. This diet of borderline cases thus contributes to value skepticism.

Second, the perceived arbitrariness of categories and line-drawing. The ideas that modern lawyers have about the meaningfulness and relationship of legal categories influence our perception of values.... The very metaphor of "drawing a line," a phrase often on the law professor's lips, suggests a deep arbitrariness of law—an arbitrariness beyond the rule of genuine reason and therefore beyond values.

Third, an overemphasis on the uncertainty and instability of law. The beginning law student tends to exaggerate the certainty and stability of law....

Fourth, a tendency of advocates to take goals for granted. Most law school teaching places the law student in the position of an advocate who is asked to work with existing rules and arguments. The goals underlying the competing rules are adverted to in passing, but are evaluated only rarely.

Fifth, the relative neglect of law creation and planning. In individual courses and in the law curriculum as a whole the dominant emphasis is on lawyers as appliers of law rather than as creators of law. The student generally is cast in the role of an advocate involved in litigation....

Sixth, the avoidance of explicit discussion of values. The law teacher typically avoids explicit discussion of values in order to avoid "preaching" or "indoctrination." His value position or commitment is not thought to be relevant to class discussion; students are left to decipher his views from the verbal and non-verbal cues that he provides....

The Willfulness of Choice

The now conventional law school view of the process of adjudication has important moral implications. The conventional view is that the process of law discovers a legally "right answer" only in easy cases. In a hard case, *i.e.*, one in which a legal rule does not supply a clear answer, the judge exercises discretion and applies new law retrospectively to the parties.[9] The opinion may attempt to persuade its readers that it states a rule that was the law all along, but hardheaded students of the law teach that this is a fiction.

This view of the adjudicatory process suggests a degree of freedom and discretion on the part of the decision maker that invites willful and unprincipled decisions. If there is no right answer and if the search for one is fictitious, the decider may be tempted to apply his own preferences.

* * *

The "ordinary religion" also has a harmful tendency to view judicial opinions as rationalizations that conceal rather than express the real motive or underlying explanation....

The Instrumental Nature of Law

Today law tends to be viewed in solely instrumental terms and as lacking values of its own, other than a limited agreement on certain "process values" thought to be implicit in our democratic way of doing things. We agree on methods of resolving our disagreements in the public arena, but on little else. Substantive goals come from the political process or from private interests in the community. The lawyer's task, in an instrumental approach to law, is to facilitate and manipulate legal processes to advance the interest of his client.

Modernism, of course, has its good side. Law was previously viewed as mysterious and mystical; it was thought to have a degree of certitude and omniscience that did not comport with realities; and it was overly concerned with formal logic and insufficiently concerned with social justice. Modern law brings humanitarian and egalitarian aims to center stage; there is a heightened concern for just results.

The instrumental view of law, however, has its debit side. One deficiency is a failure to recognize that the legal enterprise has moral principles of its own, wholly apart from the substantive

goals of society. Professor Fuller has called our attention to the inner morality of anything worthy of being called "law."[10]

* * *

The instrumental approach also involves a technocratic perspective which elevates power and control at the expense of other values. The social engineer is an individual whose reason and skill are employed in order to predict and control social and natural behavior. Knowledge is not sought for its own sake, but primarily for the control it gives over man and nature.

* * *

The Two Models of Professional Conduct: The "Hired Gun" and the "Social Engineer"

One of the consequences of a skeptical age is that all the heroes are killed off one by one. Law is no exception. The great men of American law in recent times—men such as Holmes and Brandeis—come off poorly in the critical atmosphere of the law classroom. Their wisdom is seen as partial, their decisions frequently shortsighted or wrong, and their greatness blurred.

Yet the young professional hungers for mature professionals on which he can model his conduct. In certain aspects of thinking and feeling—such as careful use of language, cognitive rationality, and a skeptical attitude—law teachers may serve as models. But they have forsaken the profession that the law student plans to enter; and their attitude toward practitioners is often touched with an air of superiority and disdain. Inevitably there is a "do as I say, not as I do" problem for the law student in viewing a law teacher as a model.

* * *

The two abstract models of professional conduct—the "hired gun" and the "social engineer"—are specialists in manipulation and are consistent with the instrumental approach to law. But they present serious moral difficulties for many law students.

* * *

The role of the "hired gun" forces the potential lawyer to visualize himself as an intellectual prostitute. In law school he is asked to argue both sides of many issues. It is common for a student to respond to the question, "How do you come out on this case?" with the revealing reply, "It depends on what side I'm on." If the lawyer is going to live with himself, the system seems to say, he can't worry too much about right and wrong. Many sensitive students are deeply troubled by the moral implications of this role, and law school generally provides little help in resolving the problem.

The "social engineer" model is cast on a larger scale, dealing with issues and interests rather than with individuals, but this role has a somewhat lifeless, bureaucratic and technocratic flavor. There is also a moral tension between the instrumental character of the role and democratic values. If the social engineer provides the goals for his own effort, he contradicts the values of democratic self-determination. On the other hand, if he takes his values

from the interests or groups he represents, he suffers from the same subservience to values of others that is characteristic of the hired gun.

* * *

The Neglect of Non-Cognitive Aspects of Behavior and Thought

Near the end of his long term as dean of the Harvard Law School, Erwin Griswold concluded that legal education concentrates too much on producing the sound craftsman, "puts a premium on verbal manipulation," and breeds "excessive caution" among lawyers and law teachers. Legal education is too much absorbed with the internal mechanics and consistency of the legal system and too little concerned with its effects on people: "… there is more truth than we have been willing to admit [to the adage that legal education sharpens the mind by narrowing it]. The methods of legal education … have a tendency to exalt dialetical skill, to focus the mind on narrow issues, and to obscure the fact that no reasoning, however logical, can rise above the premises on which it is based."[11]

Law students, Griswold stated, bring a larger measure of idealism to law school than they leave with. Partly this is because of the "exaltation of rationality over other values which are of great importance to our society." Imagination in a broad sense is stifled rather than encouraged. And the emphasis of the curriculum on business and finance, the areas in which there is the greatest opportunities for remunerative private practice, conveys the impression, unintended or not, that law students' "future success and happiness will be found in the traditional areas of law."[12]

A vicious circle tends to perpetuate these characteristics. Students are admitted to law school on the basis of aptitude in the reasoning qualities emphasized by "the drily logical mill" through which the faculty have been recruited. "[T]he continual inbreeding that is involved [may] be producing even narrower law students than [the faculty] were themselves."[13]

* * *

Knowledgeable observers comment that law students become more isolated, suspicious, and verbally aggressive as they progress through law school; their aptitude for verbal articulation increases, but they rarely stop to listen to others. If so, will they be good counselors? Will they need to unlearn a number of things in order to operate successfully as a professional? The sharing, helping and serving aspects of human endeavor, especially important to future professionals, are not recognized adequately in the law school experience.

* * *

Conclusion

Modern dogmas entangle legal education—a moral relativism tending toward nihilism, a pragmatism tending toward an amoral instrumentalism, a realism tending toward cynicism, an individualism tending toward atomism, and a faith in reason and democratic processes tending toward mere credulity and idolatry. We will neither understand nor transform these modern dogmas unless we abandon our unconcern for value premises. The beliefs and attitudes that anchor our lives must be examined and revealed.

Our indifference to values confines legal education to the *"what is"* and neglects the promise of *"what might be."* It confirms a bias deeply engrained in many law students—that law school is a training ground for technicians who want to function efficiently within the status quo.

The aim of all education, even in a law school, is to encourage a process of continuous self-learning that involves the mind, spirit and body of the whole person. This cannot be done unless larger questions of truth and meaning are directly faced.

If all law and truth are relative, pressing one's own views on others would be arrogant and mischievous. But if there is really something that can be called truth, beauty or justice—even if in our finiteness we cannot always agree on what it is—then law school can be a place of searching and creativity that aspires to identify and accomplish justice. If ethical relativism reigns supreme, law will become ever more complex and detailed, and finally boring, and law school will merely be a dull and unpleasant place on the gateway to a supposedly learned profession. At least the scientist, even if he is an ethical relativist, has something new to discover about the world of nature. If truth and justice have no reality or coherence, what does the lawyer have to do? And why should a trade school—for that is what it would be—occupy space on the university campus?

Law schools and legal educators are inevitably involved in the service of values. For the most part they serve as priests of the established order and its modern dogmas. The educator has an obligation to address the values that he is serving; and there is room for at least a few prophets to call the legal profession and the larger society back to a covenant faith and moral commitment that it has forsaken. The New Testament, Paul Tillich reminds

us, speaks of "doing the truth." "Truth," he says, "is hidden and must be discovered.... Truth is something new, something which is *done* by God in history, and, because of this, something which is *done* in the individual life. ... [T]ruth is *found* if it is *done* and done if it is found.... Saving truth is in him that does the truth."[14]

Roger C. Cramton earned his law degree from the University of Chicago Law School in 1955. He began teaching law in 1957 as an assistant professor at the University of Chicago Law School and then at the University of Michigan Law School. He became dean of the Cornell Law School in 1973. In addition to his work as Cornell's law dean, President Gerald Ford appointed Cramton as the first chairman of the Legal Services Corporation, which he held from 1975 to 1978. Roger passed away in 2017 at the age of 87.

END NOTES

I have benefited from discussions with a number of colleagues in the preparation of this paper, especially Robert S. Summers, Ronald Dworkin, John Lee Smith, and Richard Baer. Needless to say, they are not responsible for my conclusions or my errors.

1 See Comment, Legal Theory and Legal Education, 79 *Yale L. J.* 1153, 1156 (1970) for a good discussion of the influence of theories about law on legal education.

2 The term "ordinary religion" should be viewed as a rhetorical device. The current intellectual framework of legal education is not a developed philosophy of life, much less a theology. And religion, which is concerned with the ultimate meaning and purpose of life, is artificially circumscribed if it us limited to ethics.

3 Other important aspects of the lawyer's intellectual framework could be added. Lawyers, for example, are concerned with forms and processes in a way that invests them with primacy and reality. A strong tendency toward formalism and legalism—taking forms and language more seriously than others do—continues in modern times to distinguish the lawyer and to cloak him in an aura of specialized and technical mystery. The analogy between religion and law suggests a broader effort to analyze the legal profession as a secular priesthood. The *priestly* function, analogous to the administration of the sacraments, is found in the authenticating rituals of the law (oaths, robes, trials, formal decisions); the *prophetic* function is found in the call for, and elaboration of, justice; and the pastoral function is found in the counseling and helping of individuals.

4 M. McDougal, Fuller v. The American Legal Realists, 50 *Yale L. J.* 827, 833 (1941).

5 *Id*. at 834.

6 McDougal, *op. cit. supra* n. 4, at 834.

7 [W.W.] Cook, [Scientific Method and the Law, 13 *A.B.A.J.* 303,] at 308.

8 L. Fuller, American Legal Realism, 82 *U. Pa. L. Rev*. 429, 461.

9 R. Dworkin, Hard Cases, 88 *Harv. L. Rev*. 1057 (1975).

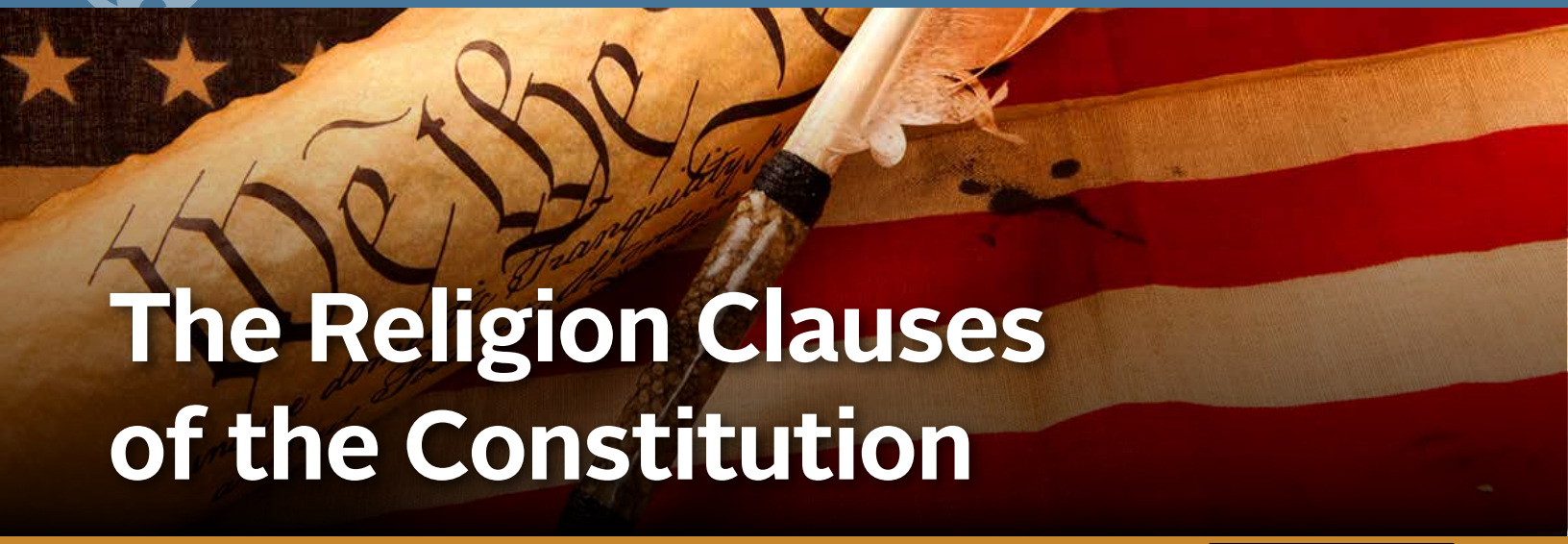
10 L. Fuller, *The Morality of Law* c. 2 (1964).

11 E. Griswold, Intellect and Spirit, 81 *Harv. L. Rev*. 292, 299 (1967).

12 *Id*. at 300-02.

13 *Id*. at 302.

14 P. Tillich, *The Shaking of the Foundations*, 116-17 (1948).



The Religion Clauses of the Constitution

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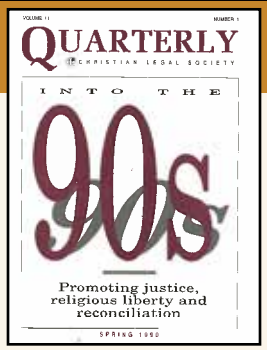

When the article below by then-Solicitor General Ken Starr appeared in the Spring 1990 edition of the *Quarterly*, little did we know that 1990 would be a watershed year for American religious freedom. That year, the United States Supreme Court enhanced protection for religious expression in Board of *Education v. Mergens*,[1] yet, paradoxically, weakened protection for religious exercise in *Employment Division v. Smith*.[2]

In *Mergens*, the Court interpreted the Establishment Clause to require the government to be neutral in its treatment of students' religious speech in public secondary schools. Representing the United States government in *Mergens*, General Starr defended the constitutionality of the Equal Access Act,[3] the federal law that requires public secondary schools to allow students to meet for religious speech. (CLS had been instrumental in the Act's passage six years earlier.) By an 8-1 vote, the Court ruled that the Act was constitutional because the Establishment Clause was not violated by allowing students to meet for religious speech. *Mergens* laid the foundation for numerous subsequent decisions protecting citizens' religious speech in a variety of contexts.

In *Smith*, the Court similarly required government neutrality toward religious exercise. But, whereas formal neutrality in the Establishment Clause context creates a level playing field for religious citizens, formal neutrality in the Free Exercise Clause context creates an unequal playing field tilted against religious citizens.

To restore fair opportunity for Americans of all faiths, Congress passed the Religious Freedom Restoration Act (RFRA).[4] RFRA requires the government to pursue *substantive* neutrality toward citizens' religious exercise, rather than the *formalistic* neutrality of *Smith*, which affords religious citizens only meager protection.[5]

Because *Smith* diminished protection for religious freedom at the federal, state, and local levels, Congress sought to restore protections for religious freedom at each level. But the Court ruled in *City of Boerne v. Flores*[6] that Congress had not acted within its authority when it applied RFRA to state and local laws. While twenty-two states have subsequently adopted individual "state RFRAs" to protect their citizens against state and local laws that burden religious exercise, citizens in too many states still lack adequate protection as a result of *Smith*.

But the nadir for religious exercise was reached in 2004 in *Locke v. Davey*.[7] Ignoring *Smith's* requirement that, at a minimum, a law must be facially neutral regarding religion, the Court allowed Washington State to discriminate against college students who declared a major of "devotional theology" by barring them from otherwise available state scholarships. Fortunately, last year, the Court largely rectified its Davey mistake by ruling that Missouri must allow a religious preschool to participate in a grant program to improve playground safety, in *Trinity Lutheran Church v. Comer*.[8]

Meanwhile RFRA continues to protect Americans' religious freedom from federal constriction. In *Burwell v. Hobby Lobby,*[9] the Court faithfully applied RFRA to override a federal mandate that targeted core religious beliefs shared by many citizens. Most recently, in October 2017, the Department of Justice issued important new guidance that requires all executive departments and agencies to comply with RFRA.[10]

But because RFRA's protections do not encompass state and local laws, overruling Smith remains a high priority. To that end, in its friend-of-the-court brief in *Masterpiece Cakeshop v. Colorado Civil Rights Commission,*[11] CLS urged the Court to consider overruling Smith. Soon we will learn whether the Court has granted that request.

In Spring 1990, we were blissfully unaware of the imminent rollercoaster ride awaiting religious freedom. Perhaps because of the "many dangers, toils, and snares" through which religious freedom has come since this article first appeared, we can appreciate even more its reminder that religious freedom remains an essential bulwark against government coercion.

–Kim Colby, Director, Center for Law and Religious Freedom

END NOTES

1 496 U.S. 226 (1990).

2 494 U.S. 872 (1990).

3 20 U.S.C. §§ 4071-4074.

4 42 U.S.C. §§ 2000bb *et seq.*

5 A seminal examination of formal and substantive neutrality Professor Douglas Laycock's article, Formal, Substantive, & Disaggregated Neutrality Toward Religion, 39 DePaul L. Rev. 993 (1990), was published in 1990.

6 521 U.S. 507 (1997).

7 540 U.S. 712 (2004).

8 137 S. Ct. 2012 (2017).

9 134 S. Ct. 2751 (2014).

10 82 Fed. Reg. 49668 (Oct. 26, 2017).

11 No. 16-111 (oral arg. Dec. 5, 2017).

BY HON. KENNETH W. STARR

Editors Note: As part of a two-year series marking the bicentennial of the Bill of Rights, the U.S. Solicitor General examines the original intent of the religious freedom clauses.

The religion clauses of the First Amendment are majestic in their simplicity: Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. Beginning with *Cantwell v. Connecticut* in 1940, the Supreme Court has applied the First Amendment religion clauses to the states through the vehicle of the Fourteenth Amendment's due process clause. After a series of decisions involving in large part the activities of minority religious sects, especially the Jehovah's Witnesses, the religion clauses burst onto the national consciousness with particular fury in the landmark school prayer cases of the 1960s.

Those opinions made clear that the Supreme Court was vexed by two related concerns: the first was the specter of young and impressionable schoolchildren being coerced, albeit by peer and group pressure, to engage in religious activities that were an affront to their consciences. The same concerns of freedom of mind and conscience that animated the Supreme Court in the second flag salute case, *West Virginia Board of Education v. Barnette,* lay at the core of those decisions. The Court's second concern in those cases was more separationist in nature—it was not the business of the schools or school authorities to formulate prayers or otherwise mandate religious activities on school premises.

It is this second concern that has proved far more intriguing and difficult in our law than the first—that it is not the business of the state to be involved in religious matters. The underlying idea is that keeping the state out of religion will protect and preserve the sanctity of religion—will keep religion pure and undefiled, in the words of St. Paul—and will protect religious liberty.

Our Duty to God

This sentiment finds its roots in natural rights history, which undergirded the Declaration of Independence and James Madison's immortal Memorial and Remonstrance, a pre-Constitutional attack on a proposed religious tax in Virginia. Religion, Madison opined, was our duty to God. In that relationship, the state had no warrant for entering. If we breached our duty to God, that was a matter between the individual and his or her Creator. The state should remain bound in focus to worldly matters.

This separationist sentiment has been the focal point of the most controversial and bitter legal battles of the last two decades. Part of the reason for their frequency is that government has grown dramatically from its limited compass of the 18th century. As has frequently been noted, the New Deal restructured the basic arrangements of government in the United States. Not only was the relationship of the federal government to the states recast, but the underlying philosophy as to the appropriate extent of government responsibility was

fundamentally altered. From the 18th century desire to free the movement of commerce to create free trade zones among the states, governmental responsibility moved in this century to its current sweeping status.

Outside Enumerated Powers

The ubiquity of modern government provides a vastly different environment for applying Madison's principles of natural rights. Madison, and Jefferson as well, adhered to notions of limited government. Although Madison was adamant in his distrust of the states as parochially and selfishly preventing the growth of a vigorous commercial republic, Madison did not envision the new central government as becoming today's welfare and regulatory state. After all, Madison believed that the First Bank of the United States, established by the First Congress, was unconstitutional, as being outside Congress's enumerated powers in Article I.

Thus it is that a strongly separationist approach to First Amendment interpretation has implications that our forebears did not have occasion to consider. If government is ever a greater part of life, then separationist values—encapsulated in Jefferson's letter to the Danbury, Connecticut, Baptists in which he coined the term "wall of separation"—mean that religion is forcibly removed from more and more of life in the modern world. The world, by constitutional mandate, is made increasingly secular.

So what are we to do in this era of uncertainty concerning how constitutional doctrine meets the far-flung reaches of modern-day government? Obviously, it is for the Supreme Court ultimately to say, but there is value in seeking out what animated the Framers in fashioning the religion clauses.

The Madisonian View

The debate in that First Congress in August of 1789 focused on the establishment issue, bypassing in the main what was then the "rights of conscience" clause and what came to be the free exercise clause. Debating a draft of the proposed Bill of Rights, prepared in large part by Madison, the discussion opened that day with Congressman Peter Silvester of New York's expression of concern about the establishment clause. The Congressman complained that, as drafted, the clause was susceptible to a dangerous interpretation far different from that intended, namely that it might be thought to have a tendency to abolish religion altogether. And this, asserted Congressman Silvester, with the support of Congressman Benjamin Huntington of Connecticut, would not do.

Madison promptly thereafter took the floor. He began by setting forth his interpretation of the religion clauses: "Congress should not establish a religion," Madison intoned, "and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience."

The notion of compulsion was thus at the heart of Madison's interpretation of the religion clauses. Compelled religious exercises, not religious exercise *per se,* are what Madison wanted to avoid. It shares a value with the Fifth Amendment—there is no protection against self-incrimination, as is loosely thought to be the case. The crucial distinction for constitutional purposes, however, is that the individual must be free from compelled self-incrimination.

Compulsion Forbidden

Madison yielded the floor; his view was clear. Although at least five states had an established church at that moment, none would exist at the national level. Nor would individuals be compelled in matters of religion and conscience, the value that reaches across two centuries to inform the flag salute case and, in part, the landmark school prayer cases. Compulsion—the antithesis of liberty—was to be forbidden.

Congressman Huntington took the floor. He expressed agreement with the Madisonian reading of the clause and felt that the clause was sound. Let us protect ourselves against an established religion, Congressman Huntington said, but let us not while securing the rights of conscience, patronize those who profess no religion at all.

Madison took the floor again. The various concerns with the clause, he felt, could be satisfied if the word "national" were inserted in front of the word "religion." This was not an anti-religion clause, Madison emphasized. Religion would flourish in a society where there was liberty. The sole concern, Madison stated, was that one religious sect might obtain preeminence or establish a religion at the seat of government.

"National," a Buzz Word

Madison was trying to revive the language that he had previously drafted and which he thought, quite rightly, would aid clarity. But Congress opposed it because of its connotation of diminishing state's [sic] roles, a condition that the antifederalists would never brook. The distinction, which was quite sharp in their minds, was one between a national government, on the one hand, and a federal government, on the other. After further debate on that issue, the Annals of Congress records that Madison withdrew his motion, protesting all the while that the term "national religion" by no means implied that the government was a national one rather than a federal one.

The vote taken on the religion clauses was 31 in favor and 20 against. Not an overwhelming vote of confidence in religious liberty, but nonetheless, it passed by a comfortable margin.

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Without suggesting that this brief foray into one aspect of constitutional history is by any means definitive, it would appear from this reading of the First Congress' debates that the aim of the religion clauses was to maximize liberty. They would accomplish this goal by forbidding the establishment of a national church, thus continuing the trend of disestablishment begun during the Revolution itself and destined to be completed, finally, in 1833. And the Clauses also ensured that individuals would be protected from compelled religious observances or other matters pertaining to conscience. It was not to abolish religious practices, but to prevent government compulsion of those practices.

If that principle is to be discerned fairly from the history of the First Amendment and the First Congress, which fashioned it, then it would indicate that the Supreme Court was entirely correct in deciding the "right of access" case the way it did in *Widmar v. Vincent.* There, a voluntary religious student organization was seeking nonpreferential access to campus facilities to carry on its meetings. It was seeking equal access, nothing more. And yet the rigidity of separationist doctrine had beguiled the [university] to succumb to a truly perverse notion—that all student groups except those with a religious purpose could make use of university facilities. The bedrock constitutional principle of protecting religious liberty had been turned on its head; groups were being singled out for unfavorable, disparate treatment if their purpose was religious in nature.

A Charter of Liberty

The experience in *Widmar,* notwithstanding the correction of constitutional error by an almost unanimous Supreme Court, suggests the reality of the danger of undue doctrinal rigidity in interpreting the religion clauses of the First Amendment. The Constitution is, above all, a charter of liberty, by way of structural design and of specific guarantees of particularly important liberties. When the Constitution becomes an instrument for attacking noncompulsory activities embodying acts of religious liberty in this post-New Deal world of ubiquitous government, we must question whether our modern-day infatuation with legal doctrine has strayed far away from the values that undergird the Constitution and the Bill of Rights—values that bind together the nation in all its diversity.

The Honorable Kenneth Starr is the former president and chancellor of Baylor University and former Dean and Professor of Law at Pepperdine University. He served on the U.S. Court of Appeals for the DC Circuit under Ronald Reagan and as U.S. solicitor general under George H.W. Bush. He obtained his law degree from Duke University. He currently serves on the CLS board and is a longtime CLS member.

Christian Legal Services:

A Call to Love and Action for Christian Lawyers

Reprinted from the Christian Legal Society Quarterly, *Vol. II, No. 4 (Fall 1981).*

All attorneys who are involved in Christian Legal Aid today stand on the shoulders of one giant—John D. Robb, Jr. Even at age 90, John continued to go to his Albuquerque law office daily.

Affectionately known as the "godfather" of the Christian Legal Aid movement, John left a big legacy on legal service to the poor. As he once stated, "Law has always satisfied me intellectually, but legal aid for the poor is an affair of the heart."

Originally a "nominal" church-attending Christian when he was younger, he had a religious epiphany at about age 40. After that, he rededicated himself to God and "seriously embraced the Bible's call to care for the poor and needy."

In the 1970's, John served as Chair of the American Bar Association Standing Committee on Legal Aid and Indigent Defendants. He testified before Congress and was instrumental in the creation of the Legal Services Corporation, the federally-funded organization that supports nearly all of the major secular legal aid organizations around the country.

Recognizing that secular legal aid was missing an important dimension of clients' problems, however, John devoted the latter part of his career to spreading the message of Christian legal aid. Many of the most successful CLA programs in the country today owe their existence to John's inspiration and guidance.

The following article, written by John in 1981, reveals his deep passion for promoting the "Call to Love and Action" among Christian attorneys. We pray that more Christian attorneys will follow his footsteps and "consider afresh our obligations to help bind up the legal wounds of unfortunate people as a visible expression of our Lord's love and concern for them."

–Ken Lui, Director, Christian Legal Aid

BY JOHN D. ROBB, JR.

It was 4:45 Friday afternoon on a beautiful Fall day. George Knox, Christian attorney, was putting the final touches on a brief in preparation for a weekend with his family in the mountains. The telephone rang. "George, this is Pastor Thorne calling. I have a Christian lady in my congregation whose husband has left her and she desperately needs to talk to a Christian lawyer. Her husband is threatening her with violence. She has no money to hire a lawyer and the police told her that this is a domestic matter—to see her lawyer." "Have you called the legal services program on Jefferson Street?" George asked. "She's already called them and also the volunteer lawyers panel for the bar association," the Pastor replied. "But, the legal services program interviewer told her that they are not taking any more cases at this time because of the reduction in their staff. The bar association told her they are swamped with applications because the funding for the legal services program is being sharply reduced and there is a 2½ months waiting period before they can refer her to a lawyer. Besides, when she consulted with one of these lawyers last year, all he could do was to recommend a divorce action. She really wants advice as to how she might try to save her marriage. George, she really needs a lawyer who can advise her from a Christian standpoint." There was a long pause on the phone. "Are you still there, George?" "Yes, Pastor, but I'm afraid I just can't help her. I am swamped and I've resolved that I just cannot accept any more cases at this time. How about referring her to another Christian lawyer? " George asked. "I've tried two others and they're not available either," the Pastor replied. "I'm sorry, Pastor, I'd really like to help, but there is just nothing I can do." "Well, thank you for your time, George," the Pastor replied dejectedly.

Have you received telephone calls like this? If not, this scenario is one which increasingly will be played out in the months ahead. The impending cutback in the funding for the National Legal Services Program and for many social service programs which assist the poor provides a fertile climate and urgent need to re-evaluate the role of Christian lawyers and law students in addressing the problems of the poor. A slash in its funds of approximately 25%, with a consequent reduction in services to the poor, is the likeliest outcome of the current battle in Congress. This probably translates into at least 300,000 of the 1.5 million cases a year which can no longer be handled—a national crisis for the cause of equal justice. Although it is unrealistic to expect that Christian lawyers and law students alone (and indeed the volunteer efforts of all lawyers and law students) could meet this entire need, we should consider afresh our obligations to help bind up the legal wounds of unfortunate people as a visible expression of our Lord's love and concern for them; also, our rich opportunities to help lead them to Christ.

A Christian's Responsibility for Justice

The Biblical Baals for Justice

Both the Old and the New Testaments mince no words in declaring that God is a God of justice, of righteousness and of mercy and that Christians as priests and ministers are commanded to carry out his divine standards.

For example, Jer. 22:15,16: "Did not your father eat and drink and do justice and righteousness: Then it was well with him. He judged the cause of the poor and needy: then It was well. Is not this to know me? says the Lord."

Micah 6:8 most succinctly states God's familiar imperative: "... what doth the Lord require of Thee, but to do justly, to love mercy and to walk humbly with their God."

The New Testament gives added impetus to these commands both by the example and the message of Jesus Christ. He spent much of his time with sinners, publicans, the poor, the lame, the afflicted, widows and the orphans. In Luke 4:18-19 Jesus said: "The spirit of the Lord is upon me, because he has anointed me to preach good news to the poor. He has sent me to proclaim release to the captives and recovering of sight to the blind, to set at liberty those who are oppressed, to proclaim the acceptable year of the Lord."

Jesus further surprises his listeners by telling them and us that we affirm or deny Jesus himself when we either give or withhold food and water to "even the least of these, my brethren" (Matthew 25:31-46).

A Lawyer's Specific Concern for Justice

Jesus speaks to all lawyers by addressing one of us in the familiar story of the Good Samaritan in Luke 10:27. There he says that we are to "love your neighbor as yourself." Of our duty and privilege to minister as the Samaritan did to the physical needs of others, Jesus commanded the lawyer: "Go and do thou likewise" (Luke 10:37).

Most attorneys have long had a tradition of helping less fortunate persons on an ad hoc basis at reduced fee or for no fee at all. This is a recognition that as officers of the Court we have a monopoly on the practice of law, and a professional obligation to see that the justice system works for everyone. In more recent times, the Code of Professional Responsibility (EC 2-1) has specifically articulated this obligation to "... assist in making legal services fully available." Equality of rights is the concept underlying the Declaration of Independence and the Bill of Rights of the United States Constitution. In our system, rights are vindicated by the use of lawyers as advocates. We hold the pass keys to the legal system. Denying access of some to attorneys means closing the system to them. And denial of such access by millions of poor Americans erodes the very foundation of the freedoms represented in our democratic system. It produces in them anger, frustration and ultimate susceptibility to allen[sic] forces. For lawyers generally, their own self-interest and their stake in our system provide strong additional incentives to help cure the imbalance in our justice system which results when one side goes unrepresented. But to the Christian lawyer and law student the divine imperatives of the Scriptures provide the clearest command to love and to action.

> "But to the Christian lawyer ... the divine imperatives of the Scriptures provide the clearest command to love and action."

History of Organized Legal Aid In the United States

With the growth and complexity of the law and of the burgeoning populations in the cities, the need for free legal assistance multiplied. In the late 1800's and early 1900's legal aid societies were formed by welfare bureaus and bar association groups to provide an organized and coordinated effort at grappling with these expanding problems. But by the late 1950's even the best efforts of these groups and of other volunteer attorneys could not keep pace with the growing needs. As a result, in 1965 the American Bar Association and the Federal Government (acting through the Office of Economic Opportunity) entered into an historic arrangement under which the ABA agreed to support a federally-funded subsidy for expanding the scope and extent of service of most of the existing legal aid societies and for starting new ones. Standards were adopted to ensure that the poor would receive quality legal representation by local lawyers in accordance with the ethics and traditions of the Bar. In 1975 the Congress, (with the active support of the ABA, of other Bar and concerned groups, and of the Nixon Administration), moved the home of the national program into an independent, federally chartered National Legal Services Corporation. As of early 1981 (before proposed budget reductions), the Program was staffed by approximately 6,000 lawyers representing one attorney for each 10,000 persons. Attorneys operated out of approximately 323 local offices throughout the nation. Its $321 million budget made it possible for legal services lawyers to address between 1/3 and 1/2 of the estimated legal problems of the poor. Law students through clinical education programs

and otherwise have also made important contributions. Along with the proposed reduction of federal funds came numerous amendments to the federal statute which, if adopted, will prevent service to the poor in a number of areas previously handled by the program's lawyers. Whatever our views concerning the effectiveness of the national program, it is submitted that there can be no dispute about our biblical duty and our privilege to serve the Lord by helping the poor with their legal and spiritual needs, particularly at this crucial time.

What Might Christian Lawyers and Law Students Do?

The first thing Christian lawyers and law students can do is to make a sacrificial commitment to increase their efforts to aid the poverty stricken. I would suggest that each Christian attorney and law student prayerfully consider a "lawyer's tithe" of his or her time in donating services[sic] to help the poor as led by his or her conscience and the Holy Spirit. Donating services in related areas such as Christian conciliation and representation of Christian churches and organizations should be considered as part of the "lawyer's tithe." Moreover, the tithe would not necessarily be an arbitrary 10%. To some already heavily engaged in Christian legal work, one hour a week might be an appropriate response. But for those not so engaged, or for attorneys who are retired, a much larger time commitment might result. Indeed, many may feel called into full-time Christian service as some have already.

"The first thing Christian lawyers and law students can do is to make a sacrificial commitment to increase their efforts to aid the poverty stricken."

The second step would be to determine the ways in which each of us would serve. This would involve considerations such as the interest, experience and gifts which each possesses. Service on the board of, or handling cases for, a local secular legal services program or a bar-sponsored program are two ways in which a lawyer or law student might serve. But as between secular and Christian programs, I would hope that many lawyers and law students would opt to devote their time to Christian legal aid programs so that their efforts would be a more visible, tangible expression to the community of the love and compassion of Jesus Christ. Those unable to commit much time might contribute a cash equivalent. I believe that the deep personal satisfaction each person would receive from this type of service "as unto the Lord" would far exceed the sacrifice involved.

How Would Organized Christian Legal Services Programs Function?

Christian legal services would be much more than an extension of secular legal services programs. Such services would be part of a Christian ministry to the whole person, that is, a Christian "holistic" approach dealing not solely with the legal problems but offering help with related spiritual and other personal problems as well. Evangelism would be a major objective and an introduction to Christ would be sensitively offered to interested clients during the rendering of services.

Churches with a sufficient number of lawyers might operate a separate legal services program; or groups of churches might band together for this purpose; or non-profit legal services corporations could be established by interested groups of Christian laypeople and attorneys with boards of directors representing the Christian community at large. Endorsement and possible financial contributions from churches, individual members and Christian foundations and organizations could supplement the efforts of Christian lawyers and law students. The type of organization of each program, whether services would be rendered by staff or volunteer lawyers or both, the types of funding, the cases to be handled, the eligibility requirements for persons served, whether services would be free or rendered on a sliding scale are all questions that would be resolved in each program depending upon the priorities established, the needs of the people to be served and the time or funds available. Each program could cooperate closely with and obtain much professional assistance from the nearest existing secular local legal services and bar sponsored programs. It could generate its own clientele or cases and/or could accept referrals from other churches, groups or agencies. Law firms might be organized comprised of Christian lawyers who could be financially self-sustaining by handling both fee generating and poverty cases along the lines of secular public interest law firms. Although only a few role models of Christian legal aid programs are available, sufficient experience has been acquired already to provide guidance for most of the different types of plans previously discussed. These plans could be disseminated by Christian Legal Society to churches or Christian attorneys, law students and laypeople interested in establishing such services. Christian

legal services programs could also work in close harmony with church and social agencies and other community resources. Plans are presently underway by the Christian Legal Society and local groups for Christian Mercy and Justice Centers[1] which would include not only legal aid, but also conciliation, regional or local centers for law and religious freedom (which would concern themselves with first amendment problems) and counseling services (to deal with the common emotional and other problems which so often are the underlying cause of legal problems or controversies). Christian lawyer referral services to serve the needs of churches and church members who are able to pay fees for representation by Christian lawyers could also be a component of such Christian Mercy and Justice Centers.

Model Community-Wide Legal Services Program

A model for a community-wide legal services programs, which I believe has much promise, would be one which draws upon the combined resources of the entire Christian community. Headed by a board of directors representing Christian churches, organizations, and individuals, the board would establish policies and priorities and retain the chief counsel. The foundation of the program would consist of a volunteer panel of Christian lawyers and law student "interns" working under a lawyer's supervision. Law students could either request assignment by the law school as part of the clinical education program or serve independently of the law school program. A central office would house the chief counsel and volunteer Christian laypeople who could make appointments and screen applicants to determine client eligibility. Qualified applicants would interview the chief counsel to ascertain whether or not he or she had a real legal problem; and if not, counsel would refer that person to an appropriate agency or facility for necessary non-legal assistance. Clients requiring only the brief attention of a lawyer or involving special skills of the chief counsel would be handled by that lawyer. Other matters would be referred to a member of the panel if it contained qualified attorneys in that field. The chief counsel would be a resource person to the volunteer panel providing back-up assistance, including briefs, forms, and a limited library dealing with poverty law and other related specialized materials. He or she could also tactfully monitor assigned cases to insure adequate attention by busy lawyers. The volunteers would be asked to undergo training in problems which they would frequently encounter in dealing with the poor, in leading their clients to accept Jesus Christ and in dealing with other spiritual problems. Persons having litigated matters would be first offered the opportunity to heal their relationships and to resolve their disputes by referring them to conciliation services. Those requiring counseling could be referred to Christian counseling services.

I believe that the advantages of such a plan are that:

1. It would help to unify the local Body of Christ by bringing the churches of all backgrounds and diverse Christian groups together in a common effort.
2. The plan would provide a coordinated approach. It would thus aim to avoid the problems sometimes encountered in volunteer programs where the lawyers have no backup assistance in handling involved cases and sometimes neglect poverty clients under the pressures of their other practice.
3. The plan would provide a highly visible symbol of the love and compassion of Jesus Christ to the whole community.
4. It has great flexibility. It would work both in communities where there are large numbers of volunteer lawyers and law students but minimal funding (where the chief counsel might be only part-time) or where the reverse is true (in which case most of the matters could be handled by increasing the number of staff lawyers).

But a community-wide legal services program is only one approach. Each church, Christian group or community should consider the plan which would best suit its needs.

We may not be able to handle all the legal problems which confront the unfortunates of the world, but Jesus does not expect us to. Most of us can, however, do more than we are presently doing. Where do we start? As Lorne Sanny, President of the Navigators has stated concerning Christian service: "We start where we are and with what we have and we do what we can."

John D. Robb, Jr. was a member of the firm of Rodey, Dickason, Sloan, Akin & Robb, P.A. in Albuquerque, New Mexico. He served on the CLS board of directors for many years and became the first director of CLS' Christian Legal Aid ministry in 1997.

END NOTES

1 Such centers have long been a dream of attorneys like Carl Esbeck, formerly of Albuquerque and now a law professor at the University of Missouri.

Connect with other CLS members in your area

ALABAMA

Birmingham
CLS Birmingham
Mark Hogewood
mhogewood@wallacejordan.com

Mobile
CLS Mobile
William Watts
www.helmsinglaw.com

ARIZONA

Phoenix
CLS Phoenix
James Williams
james@azbarristers.com

Tucson
CLS Tucson
Jim Richardson
richardsonjim@icloud.com

CALIFORNIA

Inland Empire
CLS Inland Empire
Maureen Muratore
mmlawyer@peoplepc.com

Los Angeles
CLS Los Angeles
Arnold Barba
arnold.barba@limnexus.com

Orange County
CLS Orange County
Steve Meline
melinelaw2@yahoo.com

Sacramento
CLS Sacramento
Steve Burlingham
steveb@gtblaw.com

San Diego
CLS San Diego
Miles Lawrence
Miles@LTSLaw.net

San Fernando Valley
CLS San Fernando Valley
Ben Jesudasson
ben@bjslawfirm.com

San Francisco
CLS San Francisco
Kirstin L. Wallace
kwallace@archernorris.com

West Los Angeles
CLS West L.A.
Sarah Olney
sarah.olney@yahoo.com

COLORADO

Colorado Springs
CLS Colorado Springs
Theresa Sidebotham
tls@telioslaw.com

Denver
CLS Metro Denver
Terry O'Malley
tomalley@omalleylawoffice.com

DISTRICT OF COLUMBIA

CLS DC Metro
Paul Daebeler
pfdaebeler@verizon.net

FLORIDA

Jacksonville
CLS Jacksonville
Tom Harper
tom@employmentlawflorida.com

Orlando
CLS Orlando
Joshua Grosshans
josh@lseblaw.com

Tallahassee
CLS Tallahassee
Andrew Wilcox
Andrew@Wilcox-legal.com

West Palm Beach
CLS West Palm Beach
Diego Asencio
diego634c@aol.com

GEORGIA

Atlanta
CLS Atlanta
Clare Draper
Clare.draper@alston.com

HAWAII

Honolulu
CLS Hawaii
Terry Yoshinaga
yoshinagalaw@gmail.com

ILLINOIS

Chicago
CLS Northern Illinois
Steve Denny
sdenny@dennylaw.com

Wheaton
CLS Wheaton
Mark Sargis
msargis@bellandesargis.com

KANSAS

Wichita
CLS of Wichita
Richard Stevens
rcstevens@martinpringle.com

LOUISIANA

New Orleans
CLS New Orleans
Frank Bruno
frankbruno4319@att.net

MARYLAND

Greater Baltimore
CLS Maryland
Kimberly Waite
kimlwaite@yahoo.com

MASSACHUSETTS

Boston
CLS Boston
Brian Tobin
CLSBoston@zoho.com

MINNESOTA

Minneapolis
CLS of Minnesota
Ted Landwehr
tland@landwehrlaw.com

MISSISSIPPI

Jackson
CLS of Central Mississippi
Bob Anderson
andersonlawpllc@comcast.net

MISSOURI

Kansas City
CLS Kansas City
Jesse Camacho
jcamacho@shb.com

St. Louis
CLS St. Louis
Gary Drag
garydrag@sbcglobal.net

NEBRASKA

Lincoln
CLS Lincoln
Jefferson Downing
jd@keatinglaw.com

NEVADA

Las Vegas
CLS Las Vegas
David Ortiz
davidortizlaw@yahoo.com

NEW JERSEY

Cape May
CLS Cape May
Anthony P. Monzo
amonzo@mchlegal.com

NEW YORK

New York City
CLS NYC
Jonathan Nelson
jnelson@nelsonmaddenblack.com

Syracuse
CLS Central New York
Ray Dague
rjdague@daguelaw.com

NORTH CAROLINA

Wake County
Wake County CLS
Max Rodden
mrodden@smithdebnamlaw.com

OHIO

Columbus
CLS of Central Ohio
Dino Tsibouris
dino@tsibouris.com

Willoughby Hills
CLS of Ohio Northeast
Robert L. Moore
rob@robmoorelaw.com

OKLAHOMA

Oklahoma City
CLS Oklahoma City
David Van Meter
david@vanmeterlawfirm.com

OREGON

Salem
CLS of Oregon
Herbert Grey
herb@greylaw.org

PENNSYLVANIA

Greater Philadelphia
CLS Philadelphia/Delaware Valley
Ted Hoppe
thoppe@thoppelaw.com

Pittsburgh
CLS Western Pennsylvania
Delia Bianchin
dbianchin@lynchlaw-group.com

TENNESSEE

Memphis
CLS Memphis
Jay Lifschultz
Jay.lifschultz@usa.net

Nashville
CLS Greater Nashville
Zale Dowlen
zale.dowlen@outlook.com

TEXAS

Austin
CLS Austin
Steve Campos
stevec@CCLLPlaw.com

Dallas
CLS Dallas
Jessica Lewis
president@clsdallas.org

Houston
CLS Houston
Stephen Moll
smoll@reedsmith.com

San Antonio
CLS San Antonio
Chad Olsen
chad@braychappell.com

Williamston County
CLS Williamston County
Terence Davis
attorney@myfamilylawspecialist.com

VIRGINIA

Leesburg
CLS Northern Virginia
Mark Crowley
markvincentcrowley@earthlink.net

Richmond
CLS Richmond
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Christian Leadership to Change the World

Jennifer Patrick, President and Chairman of the Board

This month, CLS celebrates 50 years of *The Christian Lawyer.* While an early four-page newsletter sprang up in 1964 under the stewardship of CLS member George Newitt,[1] it was not until 1968 that *The Christian Lawyer* formally became CLS's official "professional journal of interest,"[2] deemed by fifth CLS President, J.C. Berghoff (1966 – 1968), of particular relevance to "lawyers, to ministers, teachers and students … of matters in the fields of law, political science and philosophy."[3]

Fifty years ago, the same year that CLS began to publish the new *The Christian Lawyer* magazine, America's legal and social landscape was rapidly changing. Civil rights were at the forefront; Martin Luther King, Jr. was assassinated in Memphis, Tennessee; and 50-year-old Billy Graham was just beginning to plan 216 more evangelistic crusades throughout the world. The legal issues of the day have certainly changed, but then, as now, Christian lawyers were earnestly seeking and diligently serving the Lord through the practice of law.

Recognition of milestones can serve as an insightful instrument, providing not only an opportunity to reflect and convey our gratitude to God for all that He has accomplished, but helping to motivate us to press forward and grab hold of what God has purposed for us. Each of us will have our own milestones, even that rock of remembrance in our own journey with the Lord, without which the course of our lives - and our law practices - would never be the same. Without time for reflection, we might miss them entirely and pass by opportunities meant for us. For instance, when we receive this issue of *The Christian Lawyer,* will we quickly leaf through it and set it aside, or will we take it to a quiet place to reflect on its articles, perhaps seeking what the Lord might have us do after reading its contents?

After all, these stories are your stories. Over the decades, every issue of *The Christian Lawyer* has been prayerfully assembled, encouraging each of us as busy lawyers, judges, and law students to pause and consider a particular theme where the Lord is powerfully at work among fellow members of the legal profession and providing a personal invitation for us to join in it. To that end, after you have read your copy, won't you consider sharing it with a colleague to introduce them to Christian Legal Society?

Celebrating a shared milestone, and being inspired and spurred on by one another's contributions helps us grow together in Christ, both personally and in our law practices. We may not all find ourselves standing before the United States Supreme Court arguing that prominent landmark case, but we can certainly be kneeling in concerted prayer for its outcome.

What about that next milestone moment just around the corner? With so many varied and time-consuming challenges in our law practices, legal studies, and interactions with colleagues and clients alike, we may at times wonder how God can use us at all, but He has promised to do just that. Moses famously experienced his own share of self-doubt, but as he climbed down from Mount Sinai after speaking with the Lord, his face was visibly radiant. (Exodus 34:29).

Consumed with carrying out the Lord's special assignment for him, he was not even aware that his face was glowing and radiating God's glory toward all who encountered him. If we are willing, when we are set on seeking His face and reflecting His influence on our lives, we will be useful to God in any capacity in which He calls us to serve.

END NOTES

1 If you have ever found yourself standing shoulder to shoulder with hundreds of lawyers and law students at a CLS Conference, moved beyond measure while singing, *"Great Is Thy Faithfulness,"* you have been blessed by George Newitt's enduring influence on CLS.

2 Christian Legal Society (2011, Spring). Great is His Faithfulness: 50 Years of "His-Story" at CLS: Part I, *The Christian Lawyer,* 7(1), p.4, www.christianlegalsociety.org/sites/default/files/2017-07/CL_Spring11_web.pdf.

3 *Id.*

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