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Maybe A Lawyer Can Be A Servant; If Not . . .

by Thomas L. Shaffer*

Then a jealous dispute broke out: who among them should rank highest? But he said, 'In the world, kings lord it over their subjects; and those in authority are called their country's 'Benefactors.' Not so with you; on the contrary, the highest among you must bear himself like the youngest, the chief of you like a servant. For who is greater—the one who sits at table or the servant who waits on him? Surely the one who sits at table. Yet here am I among you like a servant.¹

The religious heritage of Jews and Christians (and Muslims, too, I think) is an awesome, demanding, put-it-absolutely-first set of habits, propositions, and pressures. It is not something to be reconciled with something else, not something that informs some other thing that is in need of being informed. It is, rather, dissonance with faith that must be reconciled with faith. Whatever is not consistent with faith must be conformed, not informed.

This is so, even among those in the American Christian mainline—if not as a way of life, at least as a theological proposition and an occasional discipline. I have seen it that way, even during periods of lapse. I was raised a low-church American Protestant, in a tradition (Baptist) that centers on adult *conversion* to this God-comes-first point of view: In the church of my boyhood, everybody is a convert; the church is a "free" church, freely chosen, not (in theory) a matter of culture.² Sometimes the convert to the faith is knocked to the ground on the Road to Damascus. Sometimes he has been observant in the denomination from birth and takes its customs and commonplaces for granted. But in the latter case, he is expected to seek the experience of conversion so that he can be a real Christian. Sometimes the moment of conversion is less a moment than a movement, in which a day comes gently when, in C.S. Lewis's phrase, she is "surprised by joy."³

I was "converted" in the routine way, in early teen-age, the age where, if I had been a Lutheran or an Episcopalian, I would have been invited to prepare for confirmation—or, if I had been a Jew, for admission

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1. *Luke 22:24-27* (New English Bible).

2. WILLIAM HENRY BRACKNEY, *THE BAPTISTS* 71-86 (1988); JAMES WM. MCCLENDON, JR., *SYSTEMATIC THEOLOGY: DOCTRINE* 361-72 (1994).

3. C.S. LEWIS, *SURPRISED BY JOY* (1955).

into the adult community of worshipers. My Sunday School teacher and my mother told me what was expected; my father nodded his head; the pastor paid a visit to our house and invited me to accept Jesus as my personal savior, which, of course, I did. My sins were washed away, by faith, an event that was symbolically observed in total-immersion baptism in the tank behind the pulpit, in the church, on a warm summer evening.

For all of that customary drama, my adherence to the church became what it had been all along. There had never been a time when I did not think of Jesus as my savior—not that I can recall. But, after the ceremony in the tank, others in our small town who made up their minds about me from what they saw me do, and may therefore have doubted my righteousness, were invited to put away their doubts. Whatever I had been, I had become a Christian. One of the things that meant was that I was vulnerable to anybody telling me I should behave like a Christian. Several people mentioned that to me.

However it comes, when it comes, in the faith of my youth, acceptance of the Lord is the first day in a life which the Lord is then seen to rule. Everything gives way before that lordship. My daughter Mary, when she was confirmed as a Roman Catholic, was told that she had become a “mature Christian.” My friend David Bauer, after his bar mitzvah last winter, was welcomed by his community as an adult Jew, one of the chosen and consecrated, priestly People of God. The traditional prayer for a parent on that occasion is, “Blessed be He Who has relieved me of the responsibility for this boy.”

The point I want to make about absolute priority would be true of Mary and David, as it would be true of an adult Christian who changes denominations: I am a Roman Catholic now and have been for the last forty-five years. I switched Christian denominations out of teen-age rebellion against the denomination of my family. When I did, I was told by those who accompanied me to a redundant and timid baptism in the Catholic tradition that the faith of the church comes first—ahead of “the world,” ahead of my Baptist family, ahead of the pernicious tendencies I had inherited from the Protestant Reformation, all of which I solemnly renounced at the Mary altar in Immaculate Conception Cathedral in Denver. I was told that I had been given my one chance to triumph over innocent error; if I should happen to slip back toward the Baptists after that, I would have to answer for it.

(The conflict in *denominational* priorities has, in local Christian custom, as well as in minds like mine, been pretty much resolved. I often think that Pope John XXIII and the Second Vatican Council gave me back my Baptist youth. When Protestant Christians become Roman Catholics now, they do not renounce their former Christianity; they are not re-

baptized; they are treated sort of like people who went to college at Texas Tech and then decided to study law at Yale.)⁴

Thus the memory of the church⁵ offers a clear priority to a Christian in the law, one that we Christians share with one another and, in a different but vital and important way, with Jews. A priority that law school and being a lawyer does not trump—at least not finally or theologically. If I got confused along the way about that—and I did—I want you to know that I have been brought back to an understanding that faith is not something added on, not something that “informs” what I am otherwise about, or something that needs to be reconciled with the more important business of being in the legal profession in America.

My instinct and experience parallels inherited theological sources. When Israel is camped on the borders of Canaan, the Lord takes the occasion to say to them, through Moses: “You are a people consecrated to the Lord your God.”⁶ He invites them to contemplate the people who are already in the Promised Land, and He says, “You shall not intermarry with them. . . . You shall tear down their altars, smash their pillars, cut down their sacred posts, and consign their images to the fire.”⁷ You shall not worship their gods.”⁸

The Apostle Paul, speaking to the primitive church (as I grew up, I understood him to be speaking to me), said, “I pray that your inward eyes may be illumined, so that you may know what is the hope to which he calls you, what the wealth and glory of the share he offers you among his people in their heritage, and how vast the resources of his power open to us who trust in him. They are measured by his strength and the might which he exerted in Christ when he raised him from the dead . . . far above all government and authority, all power and dominion, and any title of sovereignty that can be named”⁹ “Far above all power and dominion.” Far above—especially for lawyers—especially among believers who come to law school and go out into the practice with a commitment to

4. I describe what happened in 1951. The relevant legal guidance for pastors, then and now, is in *Canon 869 of the Code of Canon Law*: “Those baptised in a non-Catholic ecclesial community are not to be baptised [again] unless there is a serious reason for doubting the validity of their baptism” *THE CODE OF CANON LAW IN ENGLISH TRANSLATION* 160 (Canon Law Society of Great Britain and Ireland 1983). The assistant pastor at the cathedral must have had doubts about the Baptists (as most Roman Catholics in those days did), but, whatever its doctrinal defects, baptism in the church of my boyhood cannot be faulted for want of thoroughness. The comparison reminds me of a story I heard, years ago, from my friend Dean Willard Pedrick: A man was asked if he believed in baptism. He said, “Believe in it? Man, I’ve *seen* it.”

5. I borrow from Dietrich Bonhoeffer the phrase “memory of the church” as a substitute for “theological knowledge.” CLYDE E. FANT, *BONHOEFFER: WORLDLY PREACHING* 27 (1975).

6. *Deuteronomy* 7:6 (Jewish Publication Society).

7. *Deuteronomy* 7:3-5 (Jewish Publication Society).

8. *Deuteronomy* 7:16 (Jewish Publication Society).

9. *Ephesians* 1:17-21 (New English Bible).

"God and the law," as if the two were somehow to be coordinated and, when expedient, fashioned into a civil religion.¹⁰

Consider the way we American lawyers learn about the relationship between the church and the law: This grand constitutional and legal order we propose to serve is unfolded before us and built up in our minds and hearts; it comes to us out of multi-volume sets of course books, and, like the gods of Canaan, it comes to us *as religious*: Thomas Jefferson said America was God's New Israel; David Hoffman, the grandfather of legal ethics in America, spoke of the law as a temple and of us lawyers as priests who served in the temple; Law Day speakers commonly talk about our duties in this "calling" as the highest duties we have. Most of us aging males in the trade can look back with some regret at the many times when we believed that stuff and neglected family and psychic health as well as the moral implications of our being among a consecrated people.

We are formed by legal education for service in the temple of the law, and then along come people like Professors Floyd and Baker, who reasonably, plausibly raise the question: "How do you reconcile your faith with *that*?" It should be a painful question for a believer whose professional formation says that faith cannot be allowed to complicate, confuse, or confute the imposing legal order we were taught to admire and serve above all other orders. But the priority I identify here would say that faith among Christians is nothing until it can be allowed to mess up American democratic, constitutional, legal, professional commitment.¹¹

If the present question were put right, I think, it would go like this (I speak now in the language of some believers, not others): How does a Christian go about being a lawyer? In William Stringfellow's phrase, the issue is about being "a biblical person who works as a lawyer."¹² Stripped of the pretensions of professionalism, the question would be much the same for a biblical person who worked as a plumber or a clerk for the Bureau of

10. This raises a question of ecclesiology, of what the church ("ecclesia") is to be when it is faithful. My position on such a question is radical when compared to those of my sisters and brothers who find lingering vitality in "the church-state nexus," that is, in the Christendom that came to be when the Emperor Constantine was baptized (313 C.E.) and that was continued in the alliances Protestant reformers made with governments. See Robert E. Rodes, Jr., *The Last Days of Erastianism: Forms in the American Church-State Nexus*, 62 HARV. THEOLOGICAL REV. 301 (1969). This is not a denominational disagreement; just in terms of the few theologians I discuss here, I share it with Baxter, a Roman Catholic; with Yoder, a Mennonite; and, for the most part, with Brueggemann, a Presbyterian. I discuss it in law-school terms in *Erastian and Sectarian Arguments in Religiously Affiliated American Law Schools*, 45 STAN. L. REV. 1859 (1993), and *Stephen Carter and Religion in America*, 62 U. CIN. L. REV. 1601 (1994).

11. Michael J. Baxter thus criticizes the "political theology" of the mainline church, theologians for which "never acknowledge that mediating love of neighbor might require *disloyalty* to the country." Michael J. Baxter, *Review Essay: The Non-Catholic Character of the "Public Church,"* 11 MOD. THEOLOGY 243, 254 (1995).

12. *A Lawyer's Work*, CHRISTIAN LEGAL SOC. Q., Summer 1982, at 17.

Motor Vehicles. But, for a lawyer, it is a particularly difficult question, if you take it seriously, as a few of my students have done over the years, because “the law” is a grander thing than pipes or papers. Because the law is grander, and therefore more like the gods of Canaan, some of my students have taught me to remember this: “Maybe a Christian *cannot* be a lawyer.”

* * *

More important than how this question is put, is *where* it is put. In the texts I suggested as fundamental on the theology of the matter, the implicit questions were put *among the faithful*—on the borders of Canaan, and in those odd little household sects St. Paul wrote to. These discussions were what Walter Brueggemann calls “conversations behind the wall,” among the faithful—only among the faithful—in the language of the faithful—although often also in preparation for further conversation *on* the wall, in the world.¹³ The notion would be that a discussion such as the one in this symposium is prior, in time and in importance, to preparation for practicing law. What is really important will then have gone before. When questions of informing or reconciling seem to come up in the future, this something important must continue to come first, both as to the question that comes up and as to the place and time in which it is discussed and resolved.

Putting the question and the site of the question together, and talking behind the wall, then, what is asked, over and over, is this: Should one of *us* work as a lawyer? *What do you think?* I have imagined and described elsewhere some settings that might make this notion of time and geography more concrete. One can think, for example, of a primitive Christian or Jewish community within imperial Rome, as the place where a member of the community, among other members, and among them only, asks such a vocational question. (I suppose there were Christian and Jewish lawyers in imperial Rome, and I suppose they were among their sisters and brothers in the faith when they figured out how to work as lawyers,¹⁴ or how to avoid that sort of work.)

13. See *infra* note 26 and accompanying text.

14. My friend Mark H. Aultman observes: “The wall, of course, provides more protection to those who are behind it than to those who are on it.” Letter from Mark H. Aultman to Thomas L. Shaffer (July 28, 1995). The point fits II Kings chs. 18 and 19, where the attacking Assyrians spoke in the language of the besieged inhabitants of the city, in an effort to threaten the populace into submission. The representatives of the defending king, standing on the wall, had to resist that effort and they no doubt had also to resist the effort of the populace to understand what the Assyrians were saying. “The transition in language from going behind the wall to on the wall (and vice versa) also involves a diminution in meaning,” Aultman says, which is what the representatives of the king wanted. “One can be very accomplished in two languages (as many French Canadians are), but for the most part one’s audience will not be.” Aultman describes, in the metaphorical or symbolical use I am making of Brueggemann’s essay, the situation of a lawyer. See *infra* note 26 and accompanying text.

Or a local, rural, small Anabaptist community such as the one Garrison Keillor talks about, from his youth in Lake Wobegon, Minnesota, when he recalls being a child among the Sanctified Brethren: What I have imagined is one of those people asking the others whether she ought to go to law school.

Or in the church as Walker Percy described it, "at a time near the end of the world," in an AIDS hospice at the foot of a fire tower in the forests of South Louisiana. Dr. Thomas More, in those stories, became a distinct sort of physician and psychiatrist, and I suppose that, if someone in that group had become a lawyer, she would have been a distinct sort of lawyer.¹⁵

That, I hope, gives you an idea of how I approach the issues of reconciliation and informing that were put to me. I want, for the remainder of this essay, to ponder two of the problems my idea poses:

(1) What, for one who is no longer in the primitive church, nor in a "sectarian" worshiping community, nor at the foot of the fire tower in Louisiana, is the site and the time in which questions are asked about working as a lawyer?

(2) How, given that the processes of this distinct community are somehow and somewhere invoked, does a lawyer's community translate these distinct determinations into the practice of law?

* * *

The Community. The short-hand Christians use when they talk about the community of the faithful is "the church."¹⁶ Christian scripture appropriates Jewish tradition and claims for the church a priestly place among the nations and within the nation. It then raises the importance of its sense of itself as a priestly people when it says that the church is the body of Christ, from which metaphor (but it is more than a metaphor) it claims, in one way or another, that the substantive witness of the church, in the world, is infallible—or, at least, that, whatever mistakes and depredations the church commits in the world, God will stay with it and bring it safely home.

Now, I am talking about this "church" as the place where questions of priority and behavior are resolved in discussion, imagining the sort of thing St. James spoke of, in the Acts of the Apostles, when the early Jewish

15. Thomas L. Shaffer, *The Church and the Law*, in ANDREW W. MCTHENIA, JR., *RADICAL CHRISTIAN AND EXEMPLARY LAWYER* 103 (1995) (discussing *LOVE IN THE RUINS* (1971) and *THE THANATOS SYNDROME* (1987)).

16. I don't have a useful word for the parallel among Jews for the word "church." Still, the essentials for understanding an association of Jews as the people of God are, I think, parallel: communal quality of belief; local group as the place for moral discourse; respect for teachers. In fact, those qualities of faithful community are among the lessons Christians have learned from Jews.

followers of Jesus got together and threshed out answers for a series of questions on what to do about Gentile converts: Whether, for example, they were to follow the moral and legal system Jewish Christians followed. When they were through threshing, St. James announced their decisions with this prelude: "The Holy Spirit and we have agreed"¹⁷

What I need to locate, with regard to being a biblical person who works as a lawyer, is a forum that is able to conclude its business with that credential: The Holy Spirit and we have agreed. I have not often found evidence of that credential in my own institutional Roman Catholic Church, where the church as commonly spoken of identifies a hierarchical structure of officials, still following a governmental system it borrowed from the Roman bureaucracy in the fourth century. That church certainly has a way to resolve questions, but it rarely considers questions that resemble those Stringfellow wrote and talked about—and, in any case, it is not a community; it is not what I am talking about when I talk about the church as a place where these questions are resolved.¹⁸ On reflection, I notice that I have not resorted to my (bureaucratic) church, at any level, for guidance in how to work as a lawyer. But I have resorted to the church conceived of, not as a hierarchical structure of government, but as the people of God. (This is, by the way, a distinction preserved firmly in Roman Catholic tradition, which also recognizes, as I do, a certain amount of overlap between the bureaucracy and the people of God.)¹⁹

I suppose I could narrow the focus a bit and put a question about reconciling and informing to my local pastor, an unmarried professional male clergyman duly appointed to his full-time clerical duties by my diocesan bishop, who lives fifty miles from my house and whom I have never turned out to meet. My pastor would listen to my questions seriously, I am sure, and would probably say something like, "Well, do your best."

17. *Acts* 15:28 (Good News Bible).

18. Which is not to deny respect for teachers—for what Catholics call the "magisterium" of the church ("magister" means "teacher"). This respect for teachers has nothing to do with papal infallibility; in my view it is best understood as resembling the rabbinical tradition in Judaism. See 2 RICHARD P. MCBRIEN, *CATHOLICISM* 821, 834-35 (1980).

19. See *CATECHISM OF THE CATHOLIC CHURCH* 197-98 nos. 687-88 (1994); KARL RAHNER, *THE GREAT CHURCH YEAR 209-10* (Albert Raffelt ed., Harvey D. Egan, S.J., trans. 1994):

[T]he church is not the institution of salvation which can remain stable on this earth and which discharges, one by one, into God's incomprehensibility only those whom it has embraced with its saving care. Rather it is the pilgrim people of God who, as such, await the coming of Jesus and stand under the law of his Spirit which redeems and triumphs only through death. . . . Aren't we . . . [t]oo anxious . . . [i]n the face of the dangerous and the not yet secure? As if we had to defend a church that itself were already the definitive kingdom and not just the tent (that needs ever again to be dismantled and put up again provisionally) of the pilgrim people of God, which, with inexorable courage, is even now in the period of time heading toward that point where there will be no church.

What my pastor would not do, but what the biblical model seems to assume for the people of God, is to convene the local congregation to consider my question. The congregation would be important, even essential, since my biblical theology says "the people of God" is a people; it is not the executive director of a people; it is not a company commander or a parish council or a vestry. I would need here more than the judgment of an administrator or a committee.

If it were convened for the purpose, would the local congregation meet that need? It might; I don't doubt that it could. But if my pastor convened the local congregation to talk about reconciling Christian life with working as a lawyer, and about informing a lawyer's life from the faith, the project would be unfamiliar. The Roman Catholic congregation in which my wife and I are enrolled gathers for worship on weekends, and once in a while for a picnic or a fish fry. It does not gather for moral deliberation. My sisters and brothers would be surprised at being called together to talk about Christian law practice. As I say, though, it might work. Maybe we lawyers should try it.

Conventional, mainline congregational discussion is implausible. But, still, such vocational questions, if they are to be resolved biblically, are to be resolved with what John Howard Yoder calls "the communal quality of belief."²⁰ But I don't think my congregation is going to be the community Yoder proposes for the job. Nor would any Catholic parish be, nor would any congregation in a mainline Protestant or Orthodox denomination, and neither, I think, would a Jewish congregation work for a Jew. I suppose there are congregations of fundamentalists, Pentecostals, Orthodox Jews, and Anabaptists, and, occasionally, people in mainline denominations who are isolated by choice or circumstance, in which the worshipping community and the deliberating community are *routinely* the same—and in which these questions could be put, discussed, and resolved under the authority of the Holy Spirit. I have no experience of them.

But, still, I claim that I have a way, a way I have used, to submit these lawyer's questions to the communal quality of belief—which is a blessing, because it is essential to faithful obedience for me to resort to such a community. The prescriptions for it, and the requirement of it, are clear in Christian scripture, and, I think, in rabbinical²¹ tradition. Both Jews and Christians represent and think of themselves—on moral questions put by individuals, as well as in terms of religious witness in the wider society—as

20. All references here to Professor Yoder's work are to *The Priestly Kingdom* (1984), most of them to pages 151-71, a chapter entitled *The Christian Case for Democracy*. The "communal quality of belief" is explained at pages 15-45, a chapter entitled *The Hermeneutics of Peoplehood*. JOHN H. YODER, *THE PRIESTLY KINGDOM: SOCIAL ETHICS AS GOSPEL* (1984).

21. See, e.g., the preface to ROGER BROOKS, *THE SPIRIT OF THE TEN COMMANDMENTS—SHATTERING THE MYTH OF RABBINIC LEGALISM* (1990).

communities; in unavoidable ways they understand themselves as standing before God *together*, and therefore, in unavoidable ways, as accounting collectively not only for what they do together, but also for what each member of them undertakes to do. It is not biblically sufficient for a believer to go off by himself, alone with God, and figure out how his faith is to be reconciled with what he works at, or how his faith is to inform what he does when he works.

For this purpose, for me, the church has been a small group. Jesus said two or three were enough.²² Once or twice the small group that has been the church for me has been loosely organized, within the law school where I taught, sometimes as a Christian “fellowship.” More often it has been a circumstantial group of believers on a university faculty—in somebody’s office, in the hall, on a walk outdoors, or at lunch. Always it has come to include my faithful wife Nancy (faithful to the faith, and my faithful friend). Sometimes it has included one or more of my children. Often it has included students and sisters and brothers I dealt with by letter.²³ On all of these occasions I have been able to see, as Karl Barth says, that God will find us where He has put us.²⁴ And on most of these occasions I could perceive at least the faint presence of the offices and procedures for discourse that St. Paul prescribed for communal moral discussion in the primitive church—“agents of direction . . . agents of memory . . . agents of self-consciousness . . . agents of order and due process,” respectful attention to everyone who speaks, and a consensus that the discussion, conducted with this process, is able to claim the promises of God (Yoder’s list).²⁵

The church I belong to, when I seek guidance as one who works as a lawyer, is otherwise a fragmented church. The fragmentation is no doubt the product of the radical separation, in our culture, of faith from public life, a separation that also results in the separation of worship from the communal moral discourse faith requires. I tend to think that, in an ideal world, the community in which Nancy and I worship would also be a community for

22. *Matthew* 18:20.

23. *See infra* note 35.

24. KARL BARTH, *ETHICS* 193 (Dietrich Braun ed., Geoffrey W. Bromiley trans. 1981) (1928).

25. *See supra* note 20. It is important to notice that answers given in such deliberations (i) are not inevitable and (ii) when concrete and useful are nonetheless only provisional. Aultman raises these considerations when he writes (note 14 *supra*):

[D]iscussions do not necessarily “resolve” things; they can both clarify and confuse. That a hierarchy can no longer give an authoritative answer does not mean that current discussion will either. Sometimes only time will tell. The advantage of most churches is that they can engage in moral discourse over time.

See Aultman, supra note 14. I suppose there is no better demonstration of Aultman’s point than some of the specifics in the resolution reached by the primitive church in Jerusalem: “[E]at no blood; eat no animal that has been strangled.” *Acts* 15:29 (Good News Bible). I am not aware that Christians since then or in other places have worried much about those “resolutions.”

moral discourse. God did not put us in such an ideal world, but, still, He will find us where He has put us.

* * *

The Practice of Law. The eloquent Protestant theologian Walter Brueggemann poses a provocative architectural distinction from the story of the siege of Jerusalem, in II Kings chapters 18 and 19: The Assyrian army has laid the siege; agents of the righteous king of Judah, Hezekiah, stand on the city wall and discuss grave matters of public policy with the chief officer of the Assyrian army. The negotiators for Judah ask the Assyrian officer to speak in Aramaic, which is in the circumstances the language of official discourse—the language of the law, if you like. (The King James Version calls it the Syrian language.) Aramaic, not Hebrew, is the language to be used “on the wall.” But when Hezekiah, behind the wall, ponders with his agents what action to take—there also to pray and to consult the prophet Isaiah—he speaks in Hebrew (“the Jews’ language”).

The (if you like) lawyers of Judah are bilingual, not only in their words but also in their “perceptions of reality.” The language behind the wall expresses (Brueggemann’s term) a “sectarian hermeneutic”; that is, it is not only for talking, but is also the language of moral deliberation. It is not that God acts and lives with His people only behind the wall, of course, but that, for the people of Jerusalem, behind the wall is where they remember who they are. And, because they there remember who they are, they do not forget who they are when they get on the wall.²⁶

The dialogue on the wall is neither unimportant nor merely sequential. For one thing, as Brueggemann puts it, the fact that ambassadors of King Hezekiah there speak to the Assyrians in Aramaic keeps consideration of public policy (of jurisprudence, if you like) from becoming either a “totalitarian monologue” or the harangue of demagogues. But it is behind the wall where the King, the Prophet, and the priestly people—the lawyers, too, if you like—figure out what to do.²⁷

26. All references here to Professor Brueggemann’s work are to *Interpretation and Obedience*, a chapter entitled *The Legitimacy of a Sectarian Hermeneutic: 2 Kings 18-19*. WALTER BRUEGGEMANN, *INTERPRETATION AND OBEDIENCE* 41-69 (1991).

27. Baxter thus speaks of “an intrinsically Christian understanding of politics, presented through historical texts which have no permanent, transcendental place apart from the practices and forms of life which produce them.” Baxter, *supra* note 11, at 256. He argues there and elsewhere that these “practices and forms” include worship—sacraments, liturgy, preaching, and prayer. See Michael J. Baxter, *Overall, the First Amendment Has Been Very Good for Christianity—NOT!: A Response to Dyson’s Rebuke*, 43 DEPAUL L. REV. 425 (1994); see also Richard P. Baepler, *Religious Challenges to Legalism*, OCCASIONAL PAPER NUMBER ONE, SECTION ON LAW AND RELIGION, ASSOCIATION OF AMERICAN LAW SCHOOLS (1980).

* * *

What guidance might such a conversation behind the wall produce for a biblical person who works as a lawyer? The epigraph I borrow from Luke's Gospel suggests New Testament answers. John Howard Yoder argues that Jesus's command of servanthood can be taken in three parts:

—First, Jesus notices “the brute existence of dominion”: Kings lord it over their subjects.

—Second he notices that rulers justify their power by claims of beneficence (as the Assyrians did during the siege): They are called benefactors.²⁸

—Third, Jesus announces an alternative (if you like) professional ethic: Here I am among you, a servant; follow me.

Yoder's reflection suggests from this text alternative possibilities for a biblical person who functions as a formulator of public policy and as an advocate (as a lawyer does). Both of these alternatives rest in the second part of St. Luke's text; both of them appear to be available for practice by a biblical person who works as a lawyer:

—The first alternative is to claim power—a steady temptation, if not a realistic prospect, for a lawyer in a democratic society.²⁹ The question it asks and answers is this (Yoder): “If we had the power to set up the situation so as to be as fair and as foolproof as possible, how would we set it up?” In modern American circumstances, the language used in pursuing this first alternative is the language of liberal democracy; a familiar and even characteristic arena for it among academic lawyers is the law of church and state.³⁰

—The other alternative makes rhetorical, manipulative, tendentious use of the ruler's justification for power—always at least mildly cynical, particularly in modern representative democracies. “If the ruler claims to be my benefactor, and he always does, then that claim provides me as his subject with the language I can use to call him to be more humane in his ways of governing me and my neighbors.” And my clients. Unlike the first alternative, here the biblical person who works as a lawyer is using the ruler's language for purposes worked out (in Brueggemann's image) behind the wall. The language of the ruler—the language of the law, I think—is

28. The King of Assyria sent this message to the people of the city: “Make peace with me. Come out to me, and then you shall each eat the fruit of his own vine and his own fig tree, and drink the water of his own cistern . . . grain and new wine . . . corn and vineyards . . . olives, fine oil, and honey—life for you all, instead of death.” 2 *Kings* 18:31-32 (New English Bible).

29. Baxter suggests that formulation and advocacy from the church are ad hoc, pragmatic, circumstantial; the church does not take on responsibility for the civil order—does not adopt its narrative. See Baxter, *supra* note 11.

30. See *supra* note 11 and accompanying text.

here used "as a fulcrum for constructive criticism" *but not as the primary language of moral deliberation*. The deep answers are located, as Yoder puts it, in "the faith community speaking internally."

The heart of the theological argument I borrow from Yoder is the insistence that the priority in moral deliberation remain behind the wall, in the church. (Brueggemann is, for me, too sanguine about moral deliberation on the wall.³¹) The deep influence runs for the most part in only one direction.³² The reasons are evident in American church history, even if they are not evident in more detached theological reflection. The danger Christians should by now have learned to avoid is what has happened to the mainline church in America: In the quest for a "public theology," a primary language for moral deliberation that is worked out "on the wall," most Christians in America have surrendered their distinctive witness as a priestly people. They and their most influential theologians have lost sight of the fact that (as Father Michael Baxter puts it), "Christians are citizens of another *patria*, one that identifies them as strangers and aliens in this and all other nation-states through which they pass on their pilgrim journey."³³

Which does not necessarily mean (although it might mean) that a biblical person should not even try to work as a lawyer—or, if she does, that her work as a lawyer will be so stridently restricted as to be ineffective for the ordinary business clients bring to her. From the perspective of "the faith community speaking to the nations" (Yoder), and more specifically from the perspective of a biblical person going out from such a community to work as a lawyer, I discern from Yoder's reflection on the text from Luke's Gospel three practical guides for thinking about what a lawyer is to do:

First, *servanthood*: Whatever a Christian does in any job is primarily oriented to following Jesus, who said, "Here I am among you like a

31. Brueggemann thus seems to me to depend on the civil conversation on the wall as a source of discipline for the conversation behind the wall—this mainly because the conversation behind the wall has been corrupted. No doubt he is right that "the technicalities of policy questions" are for the language of Syria, provided, as he also says, "a transformed imagination" is for behind the wall. Brueggemann, *supra* note 26, at 64. I mean here to speak of the way influence works, not of the way language works. Aultman, *supra* note 14 writes, "While a separate theology cannot come from 'on the wall,' neither can a primary language for moral deliberation for action 'on the wall' come from 'behind the wall.' These *are* two different languages." The advocate has to be able to translate back and forth. Somewhat the same point is made in the documents of the Second Vatican Council:

With the help of the Holy Spirit, it is the task of the entire People of God . . . to hear, distinguish, and interpret the many voices of our age, and to judge them in the light of the divine Word. In this way, revealed truth can always be more deeply penetrated, better understood, and set forth to greater advantage. . . . Indeed, the Church admits that she has greatly profited and still profits from the antagonism of those who oppose or persecute her.

GAUDIUM ET SPES: PASTORAL CONSTITUTION OF THE CHURCH IN THE MODERN WORLD ¶ 44, *reprinted in CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE* 166, 194 (David J. O'Brien & Thomas A. Shannon eds., 1992); *see also* Baepler, *supra* note 27 (making the point from his Lutheran heritage).

32. *See* the sources *supra* note 31, especially that of Baepler.

33. *See* Baxter, *supra* note 11 and accompanying text.

servant.” In Yoder’s explication, in “the vocational decisions of persons committed to Kingdom ethics as they decide how to be active in the wider society . . . preference will not be for dominion roles but for servant roles.” Reflection on biblical servanthood thus argues, in Yoder’s theology (and in mine), against the claim of lordship that characterizes other and more prominent American Protestant and Roman Catholic political theology and that is, in my observation, a steady temptation for Christian lawyers in a modern liberal democracy such as that of the United States.

Second, *particular attention to the oppressed*. I understand that category of persons (“oppressed”) as it is understood in the story of II Kings, where Jerusalem is threatened with destruction by armed force; in liberation theology, where perceptions of deep injustice benefitting the ruling class in modern democracies leads Christian thinkers to seek God among the poor; and, for that matter, as almost any county-seat American lawyer would understand it. (We lawyers know who the oppressed are, if only because we know whom we oppress.) Roman Catholic leaders thus advise, in moral and political and economic deliberation, a “preferential option for the poor.” Yoder goes beyond an “option” derived from considerations of justice; he identifies the alternative with the New Testament biblical model: “[T]he paradigmatic person by whose situation my ethic must be tested would not be the oppressor but the oppressed, not the most powerful or even the most righteous person, not my representative or my ruler, but the one with whom Christ in his servanthood is first of all identified.”

Third, and critically kept last, *attention to effectiveness*, to the extent that effectiveness is consistent with clear-sighted attention to servanthood and to care for the oppressed.³⁴ Effectiveness not disciplined by being considered last might become a matter of “taking the Caesar model and modifying it by adding certain kinds of Christian modesty and morality.” By contrast, “the model of the empirical availability of ways to be socially effective with integrity” (Yoder) is disciplined by considerations of servanthood and care for the oppressed.³⁵

34. Aultman: “I really think this is the most important point. By effectiveness, however, I would understand not simply achieving what you hope or intend, particularly in a broad sense of social policy, but attention to the actual effects of what you do and say. Eventually, I think, this sets up (an awareness of) a dichotomy between much of what is intended or hoped for by what is done and said, and the effects of what is done and said as it is mediated through social systems, organizations, and bureaucracies.” Aultman, *supra* note 14. Aultman, a practicing lawyer, would no doubt agree that these “actual effects” occur, usually and primarily, in work (i) with and for clients (ii) that falls within Yoder’s other two criteria. An instructive parallel comes from rural, in-the-field, medical care, provided in Haiti by a physician who is also a thoughtful student of liberation theology: Paul Farmer, *Medicine and Social Justice*, AMERICA, July 15, 1995, at 13.

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