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# Christian Service in the Practice of Law

Kenneth W. Starr\*

In his much-beloved *Mere Christianity*, C.S. Lewis observes:

Morality . . . seems to be concerned with three things. Firstly, with fair play and harmony between individuals. Secondly, with what might be called tidying up or harmonizing the things inside each individual. Thirdly, with the general purpose of human life as a whole: what man was made for . . . . You may have noticed that modern people are nearly always thinking about the first thing and forgetting the other two.<sup>1</sup>

With Lewis' powerful insights in mind, the question presents itself: Why do moral individuals choose not to involve themselves in the law? Is their concern rooted in the inescapable fact that lawyers are continually asked to make difficult choices? A person of faith might prefer to avoid controversy or temptation. But the result of withdrawal from the field is an unhappy one. The much-maligned, but insightful Machiavelli argued in his *Discourses* that tyranny dominated his day because the religious people of

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1. C.S. LEWIS, *MERE CHRISTIANITY* 71 (1952).

his time embraced contemplation, not cultural interaction, as their moral duty.<sup>2</sup>

Thoughtful reflection leads inexorably to the conclusion that society cannot function well without moral individuals willing to serve in positions of authority and influence. Without the moral dimension, as Machiavelli reminded us, government is left in the hands of the criminal.<sup>3</sup> Moral individuals should not abandon the fields of law and government to the amoral, either out of complacency or a fear of facing difficulty.<sup>4</sup> In particular, people of faith have a solemn responsibility to be involved in the nurturing and maintenance of society. At times, this duty is one of proactivity, but at other times simple engagement in a challenging setting helps mitigate the risks of amorality.

## I.

The greater the role law plays in a culture, the greater that culture's need to have the moral in authority. American society's dependence upon the law dates back at least as far as the Declaration of Independence, where the United States claimed the "separate and equal station to which the Laws of Nature and of Nature's God entitle[d] them."<sup>5</sup> Sol Linowitz expounds upon the centrality of the law to American society in his poignant lamentation, *The Betrayed Profession*:

Whether or not the business of America was business, as Calvin Coolidge said, the spirit of America has been the rule of law. For generations, Americans prided themselves that ours was a nation of laws, not of men, and that no one, not even the president of the United States, was above the law.<sup>6</sup>

Applying this principle to economics, Linowitz notes that what makes a "free market" truly free are the rules that render all parties equal before the law.<sup>7</sup> This dependence of American society upon law, manifested at the nation's birth, is evident on a daily basis in contemporary American life. Individuals (or organizations) facing difficulty frequently need legal help and advice to solve their problems in a sensible manner. Likewise, goal-seekers need to know how to achieve their ends without running afoul of governing rules.

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2. NICCOLO MACHIAVELLI, DISCOURSES ON THE FIRST TEN BOOKS OF TITUS LIVIUS (1531), reprinted in NICCOLO MACHIAVELLI, THE PRINCE AND THE DISCOURSES 285-86 (Christian E. Detwold trans., 1940).

3. *Id.*

4. As illustrated in 1 *Samuel* 13:16-22, society needs moral individuals in every walk of life. At this point in Israel's history there was no blacksmith in Israel, a condition apparently forced upon them by the Philistines. The Israelites had to go to their enemy, the Philistines, to sharpen their iron, an arrangement that seems to have worked until the Philistines invaded and Saul needed an army. *Id.*

5. THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).

6. SOL M. LINOWITZ, THE BETRAYED PROFESSION 2 (1994).

7. *Id.*

Faced with society's need for the legal system, the Christian must consider his duty to serve that need. We are commanded in the Gospels to love our neighbors.<sup>8</sup> In giving this command, Christ emphasizes that our "neighbors" are not only those who live as we choose to live, or believe as we choose to believe.<sup>9</sup> The Christian duty to one's neighbor constitutes a duty to anyone in need. Martin Luther explains the Christian's duty to serve and strengthen society in *Secular Authority*:

For it is something which you do not need, but which is very beneficial and essential for the whole world and for your neighbor. Therefore, if you see that there is a lack of . . . constables, judges, lords, or princes, and you find that you are qualified, you should offer your services and seek the position, that the essential governmental authority may not be despised and become enfeebled or perish. The world cannot and dare not dispense with it . . . . You would be doing it not with the purpose of avenging yourself or returning evil for evil, but for the good of your neighbor and for the maintenance of the safety and peace of others.<sup>10</sup>

Indeed, believers are commanded not only to love their neighbors, but to advocate the cause of justice. In particular, believers are commanded to stand up for the rights of the orphan, the widow, and the alien.<sup>11</sup> Micah beautifully sums up the requirements in the beloved passage: do justly, love mercy, and walk humbly with your God.<sup>12</sup>

Ironically, the difficult moral questions resulting from engagement in the legal profession are all the more reason why people of faith should be willing to enter the life of the law. With a solid moral foundation, legal training empowers the Christian lawyer to be among the most sensitive of practitioners to ethical concerns.

John Calvin notes that "arbitrary lordship is an encroachment upon God's Kingdom."<sup>13</sup> The lordship of law and the exercise of the legal profession, then, ought not to be left to the devices of arbitrary ethics, but should be taken up by those committed to the moral and religious vision of

8. *Matthew* 22:39.

9. See *Luke* 10:29-37 (parable of the Good Samaritan).

10. MARTIN LUTHER, ON SECULAR AUTHORITY (1523), available at <http://www.cla.sc.edu/hist/faculty/edwardsk/hist310/reader/secular.html>.

11. *Isaiah* 1:17 (New King James) ("Learn to do good; Seek justice, Rebuke the oppressor; Defend the fatherless, Plead for the widow."); *Deuteronomy* 10:18-19 (New King James) ("[God] administers justice for the fatherless and the widow, and loves the stranger, giving him food and clothing. Therefore love the stranger . . .").

12. *Micah* 6:8.

13. CALVIN, INSTITUTES OF THE CHRISTIAN RELIGION 1185 (Ford Lewis Battles trans., John T. McNeill ed., Westminster Press 1960) (1559).

seeking the good in an ethical and upright manner. Rather than approaching questions through the lens of utilitarian ethics, the moral lawyer lives in the culture and context of principles-based ethics, discerning what is right in terms of abiding truth, not varying circumstances. The principles-based practice of law affects not only how an attorney approaches legal questions, but also how she treats her clients, the court, and others caught up in the legal process.

## II.

For those of us who are called to be lawyers, what role should our faith play? What role does it play? What does it mean to be a Christian lawyer?

Oliver Wendell Holmes, a non-believer and a skeptic, said, “[A] man may live greatly in the law as well as elsewhere . . . .”<sup>14</sup> My own perspective is that a person of faith can live even more greatly in the law. But to do that, we need constant guidance, found in the Word of God. One of my animating scriptures is *Matthew* 5:16.<sup>15</sup> We are to let our light shine, not for applause, but so that others may see our good works and glorify God. If the world is to see our light, we need to have a plan of action and be dynamically engaged.

“Being engaged” means that at times we will find ourselves as lawyers in a difficult situation, facing a tough problem, a tough argument, or a tough brief to write. At those times we are to remember that our good deeds have a definite purpose: the glory of God. In difficulty, we should ask for His assistance, not only for ourselves and the cause of justice, but so we can present our work as a gift to Him. The fact that our work is offered up to God, and for His glory, gives us greater motivation to strive for excellence.<sup>16</sup>

In legal representation, we must realize that the most excellent servant to the client is one who thinks through the moral and legal implications of a problem and truly “counsels” the client. More than simply ensuring legal victory, the Christian attorney glorifies God by incorporating the values of care and compassion with faithful, zealous representation of her client’s interests. We need to be worthwhile advisors to our clients, striving to produce results that glorify God, not simply solving problems in the least troublesome manner.

At bottom, we must have integrity. As a senior associate I worked with an experienced Florida trial lawyer who had obtained an acquittal for a Senator accused of perjury. This attorney was hugely successful, winning victory after victory. When I asked for his secret, he explained that he always communicated to the judge and jury that they could place complete confidence in whatever he said. He mastered the record of each case and the

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14. OLIVER WENDELL HOLMES, COLLECTED LEGAL PAPERS 30 (1920).

15. “Let your light so shine before men, that they may see your good works and glorify your Father in heaven.” *Matthew* 5:16 (New King James).

16. *Colossians* 3:23 (New King James) (“And whatever you do, do it heartily, as to the Lord, and not to men.”).

applicable law, so that he could present the facts and the law to the court with total integrity.

Integrity is the moral key in our profession. The lawyers who do well are the lawyers in whom the judge has complete confidence. These lawyers develop a reputation that they are worthy of confidence and trust because they respect the law and recognize the weaknesses of their cases.

An example of this integrity in action comes from one of the great early arguments I listened to as a judge. The case concerned the demise of the *Washington Star*, and the paper was represented by a former federal judge. There was a real weakness, however, in the *Star's* position. The case was on appeal, and my senior colleague in the center chair raised this weakness with the *Star's* attorney. The former judge (and now appellate advocate) responded by saying, "Your honor, you have identified the strongest point in our adversary's case, but our adversary should not prevail for the following three reasons." Was the issue a true Achilles' heel or was it a surmountable weakness? It turned out the former judge was right. The problem was a fair point that he recognized with integrity, and he gained credibility by doing so.

Even younger associates need to stand up and be counted when due diligence reveals that a given approach is unethical or dishonest. A junior associate should attempt to persuade those in authority, with excellence but with firmness, that the position she is being asked to take is not grounded in integrity. Young attorneys need not be shy, but can be gracious and explain the need to explore other options. The client might be willing to pursue an ADR track, or take the issue to mediation. In other situations the client may need to hear that it needs to write a check and change its conduct. By working collaboratively with a client, an attorney, even a young attorney, can obtain an excellent result that is grounded in integrity

### III.

In my experience over three decades of practice in large firms, most clients want certainty and resolution in a cost effective way. However, at times we may be faced with a "really bad client" who knows it is in the wrong and wants to postpone making things right as long as possible. Assisting that client in delay tactics may pose a problem quite apart from the faith-based perspective. Even to my secular brothers and sisters, I would explain this as a Rule 11 question. We certainly may have other options, but to do something purely for delay is dishonorable. This is inconsistent with our duty as officers of the court.

I remind my Christian colleagues of Mars Hill, where Paul spoke to the Athenian culture from that culture's perspective.<sup>17</sup> We can use Paul's approach when dealing with secular clients. Once an attorney has mastered the client's perspective, she can speak from that same perspective, even if what is animating her is an integrity based in faith. An attorney can communicate and persuade by raising the specter of a published federal opinion dismissing a lawsuit as being without merit. An attorney can perform a cost-benefit analysis for both the firm and the client. Often, reasonable forethought can show a morally questionable undertaking to be simply unprofitable for the people involved.

#### IV.

Christian lawyers should be servants. We should be servants in our communities, in our civic associations, in our schools, and in the inner city. Those of us in large firm settings have a special duty to reach out, as the Lord taught us, to the underprivileged and the dispossessed. It would be odd for the Christian lawyer not to have a cup filled to overflowing with non-remunerative matters. When we use our skills to serve others, not only is God glorified, we grow as a result.

One source of growth for me personally was the privilege of representing Sandra Banning, the mother of the child in the pledge of allegiance case, as a friend of the Court. Sandra is a very devout Christian, and the way she dealt with Mr. Newdow, the father of her daughter, was a source of great inspiration for me. She did not desire in any way to show disrespect for the father or interfere with him, and our amicus brief alone among the many reflected that - it was touched by her grace. So an attorney can be touched by a client, even as the attorney serves. We find in those clients who cannot pay the bills that which benefits us and causes us to grow. We should ask that the Lord make us instruments of His peace,<sup>18</sup> and that He bless other individuals through us.

The standard we should use is service, though it is difficult not to measure success by legal victory. We should broaden our focus and ask if we are serving the interests of the client, the community, and the light. Jesus himself stated that He had not come to be waited on; He came to serve.<sup>19</sup>

#### V.

We can expect failure in our efforts to glorify God in our work, to serve with integrity, to show mercy. Even the apostle Paul agonized over his

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17. *Acts* 17:22-34; see also CHARLES COLSON & NANCY PEARCEY, *HOW NOW SHALL WE LIVE* 30 (1999) (describing how "Paul appealed to his audience's own experience and literature" in bringing the Bible message to them).

18. Saint Francis of Assisi, *Prayer of Saint Francis*, available at <http://catholicforum.com/saints/pray0027.htm>.

19. *Matthew* 20:28 (New King James) ("[T]he Son of Man did not come to be served, but to serve, and to give His life a ransom for many.").

failure to do the good that he should have been doing.<sup>20</sup> For an attorney, these failures to treat every individual with dignity and compassion can be daily. Under the stresses of our profession, it is easy to become caught up in our own experiences, losing perspective and balance.

Thus, we should also remember to be humble. James and Peter, those who were at the Lord's elbow during His earthly ministry, looked back to the wisdom of the Proverbs. In the epistles, both James and Peter quote from *Proverbs* 3:34: "God opposes the proud, but gives grace to the humble."<sup>21</sup> We need humility, but we need to pursue it honestly. If you remember the parable of the talents,<sup>22</sup> the man with one talent may have said to himself, "I'm a humble man." But that was false humility, and his work did not glorify his Master.

Unlike the man with one talent, we should take pleasure in the abilities God has given us, and we should pursue our work with diligence. Near the end of Oliver Wendell Holmes' life, President Roosevelt came to pay a courtesy call. Holmes was blind, and when Roosevelt arrived a law clerk was reading to the retired Justice from Plato's *Republic*. When Roosevelt asked why Holmes was studying Plato at this point in life, Holmes replied, "Why, Mr. President, to improve my mind."

May we ever seek improvement and excellence.

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20. *Romans* 7:19.

21. *James* 4:6 (Revised Standard); *1 Peter* 5:5 (Revised Standard).

22. *Matthew* 25:14-30.



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