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Ecumenical Evangelical Legal Thought: The Contributions of Robert F. Cochran, Jr.

William S. Brewbaker III*

Abstract

This Essay organizes an assessment of Robert F. Cochran's scholarly contributions around the theme of "ecumenical evangelical legal thought." Professor Cochran's work bears the hallmarks of evangelicalism in its emphasis on the Bible, its practical focus, and its willingness to cross institutional and theological lines. The Essay recounts some formative influences on Professor Cochran, discusses his methodology as a Christian scholar and specifically his use of the Bible in thinking about law, his work in legal ethics, and his work as a movement-builder. It concludes with some observations about the reconciliation of ecumenism and evangelicalism in Cochran's work and its implications for the future.

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I. INTRODUCTION

In this Essay, I will argue that Bob Cochran’s scholarly legacy is an approach to law and legal theory that I will label “ecumenical evangelical legal thought.” No one who knows Bob or knows his work will be surprised at the “evangelical” portion of that label. (Sadly, I feel the need to emphasize that I am using *evangelical* in the longstanding sense of a theological movement that has historically been compatible with a wide range of political positions.¹) Bob is a born (again)-and-bred evangelical, whose life exemplifies the hallmarks of traditional evangelical Christianity: a focus on the Bible, the singular importance of Christ’s atoning death, the need for personal conversion, and an activist approach to spreading the Gospel and social action.²

In the era during which Bob (and I) came of age, however, the words *ecumenical* and *evangelical* did not go together.³ Evangelicals in the 1970s and 1980s associated the ecumenical movement with what they saw as the mainline Protestant establishment’s capitulation to theological liberalism.⁴ While theological liberalism is a contested concept,⁵ evangelicals generally think of theology as “liberal” to the degree that it limits Christian doctrine to things human reason (as understood by the Enlightenment) can accept, rather than affirming the teaching of Scripture as understood by the church through

1. The Trump era (more particularly the behavior of “evangelical” leaders like Franklin Graham and Jerry Falwell, Jr.) has led many Christians to wonder whether they can still call themselves *evangelical*. See, e.g., Peter Wehner, *Why I Can No Longer Call Myself an Evangelical Republican*, N.Y. TIMES (Dec. 9, 2017), <https://www.nytimes.com/2017/12/09/opinion/sunday/wehner-evangelical-republicans.html> [<https://nyti.ms/2jCGudG>].

2. See DAVID W. BEBBINGTON, *EVANGELICALISM IN MODERN BRITAIN: A HISTORY FROM THE 1730S TO THE 1980S*, at 217 (1989).

3. Neither did the words “catholic” and “evangelical,” although today, it is not difficult to find an evangelical who identifies as “catholic” or even a Catholic who identifies as evangelical.

4. Political liberalism was also important, as were issues of class and race. To evangelicals, the flagship organization of Protestant ecumenism—the National Council of Churches—was not an admirable attempt to move toward renewed Christian unity (something Christ himself emphasizes in the prayers recorded in *John 17*), but an establishment interest group with a social gospel political agenda. Charles Austin, *National Council of Churches Faces a New Type of Critic*, N.Y. TIMES (Nov. 3, 1982), <https://www.nytimes.com/1982/11/03/us/national-council-of-churches-faces-new-type-of-critic.html> [<https://nyti.ms/29yVIhY>]. The mainline denominations were populated by the economically and politically powerful. Sadly, racism undoubtedly played a role in evangelical resistance to liberalism, especially in the South. See JEMAR TISBY, *THE COLOR OF COMPROMISE: THE TRUTH ABOUT THE AMERICAN CHURCH’S COMPLICITY IN RACISM* (2019). Needless to say, a full treatment of these issues goes well beyond the scope of this Essay.

5. See 3 GARY DORRIEN, *THE MAKING OF AMERICAN LIBERAL THEOLOGY: CRISIS, IRONY, AND POSTMODERNITY, 1950–2005* (2006).

the centuries.⁶

A few decades later, things look a little—though not entirely—different. During the closing decades of the twentieth century, evangelicals developed their own version of ecumenism. On one hand, they continued to leave main-line Protestant churches, and those denominations have continued to fragment along traditional vs. liberal theological lines.⁷ On the other hand, evangelicals have been inclined to join together in spreading the Gospel and doing works of mercy and justice through cooperative ventures that cross denominational lines (“parachurch organizations”).⁸ In such settings and elsewhere, an evangelical Methodist or Presbyterian might feel more at home with a fellow evangelical of another theological heritage (or even a traditional Catholic) than with a more theologically liberal inheritor of her own tradition.⁹

One area of continuity, from then to now, is that evangelicals have always prided themselves on being practically oriented. One did not have to have a Ph.D. from Princeton or Yale to spread the Gospel, and many would have argued that this sort of education was likely to be a positive impediment to God’s work in the world. To know and follow the words of Scripture was the main thing, and one could gain this knowledge on one’s own, at a Bible college, or at one of the many denominational or independent seminaries that

6. See generally Gerald R. McDermott, *The Emerging Divide in Evangelical Theology*, 56 J. EVANGELICAL THEOLOGICAL SOC’Y 355 (2013) (comparing the evolution of evangelical thought, particularly in terms of liberalism and conservatism, to other Protestant and Catholic traditions).

7. See PEW RESEARCH CTR., AMERICA’S CHANGING RELIGIOUS LANDSCAPE 4 (2015), <https://www.pewforum.org/2015/05/12/americas-changing-religious-landscape/> (follow “Complete Report PDF”).

8. Michael S. Hamilton, *American Evangelicalism: Character, Function, and Trajectories of Change*, in THE FUTURE OF EVANGELICALISM IN AMERICA 18, 30 (Candy Gunther Brown & Mark Silk eds., 2016).

9. Significant numbers of evangelicals have since discovered that their own theology was more “liberal” than they thought. In the course of looking for ways to spread the Gospel in the nineteenth century, evangelical churches unwittingly borrowed (and retained) some then-current assumptions of the Enlightenment that were overly optimistic about the capacity of human reason to achieve a God’s-eye view of the world. See generally MARK A. NOLL, THE SCANDAL OF THE EVANGELICAL MIND (1994). This was in direct contradiction to the traditional Protestant understanding of the effects of sin on the intellect, as well as traditional Christian understandings of human finitude and the particularity of Christian belief. While commitment to the Bible’s authority remains a hallmark of evangelicalism, there is perhaps a greater recognition now of Scripture’s narrative context, and the tension between the fundamental presuppositions of Christian and secular worldviews. Evangelicals are also giving greater attention to the fact that Christianity is not solely a matter of intellectual assent to propositional truth but is primarily a matter of the affections of the heart. See generally JAMES K.A. SMITH, DESIRING THE KINGDOM (2009).

were formed in reaction to theological drift in the mainline seminaries. Although this tendency can easily devolve into anti-intellectualism (and has all too often done so), its positive side is its assumption that theological knowledge is given for the purpose of being acted upon; as St. Paul writes, “Knowledge puffs up, but love builds up.”¹⁰ Evangelicalism was (and mostly remains) populist, practical, and movement-oriented.

This too-brief sketch of the evangelical state of affairs will, I hope, provide some context for what I mean when I describe Professor Cochran’s work as *ecumenical evangelical legal thought*. Professor Cochran’s work bears the hallmarks of evangelicalism in its emphasis on the Bible, its practical focus, and its willingness to work across institutional and theological lines. I begin the Essay by recounting, in Part II, some influences and experiences that I take to be formative of Professor Cochran and therefore of his work.¹¹ Part III discusses Cochran’s methodology as a Christian scholar and specifically his use of the Bible in thinking about law.¹² Part IV discusses the practical aspects of Cochran’s scholarship with particular focus on his work in legal ethics.¹³ Part V briefly discusses Cochran’s work as a movement-builder.¹⁴ I conclude with some observations about the reconciliation of ecumenism and evangelicalism in Cochran’s work and its implications for the future.¹⁵

II. BOB COCHRAN’S VIEW FROM SOMEWHERE

Bob Cochran was born in Greenville, South Carolina, and raised in various cities in Virginia, where his father, Robert F. Cochran, pastored Baptist churches. The elder Cochran was not just a Southern Baptist, but also an evangelical in the sense described above.¹⁶ One of Bob’s prized possessions is a photograph of his father with a very young Billy Graham, who had come to Columbia, South Carolina, to speak for the parachurch organization Youth for Christ, which had been founded by Mr. Cochran.

In the fall of 1973, Bob arrived in Charlottesville to begin his studies at

10. 1 *Corinthians* 8:1 (New Revised Standard Version).

11. *See infra* Part II.

12. *See infra* Part III.

13. *See infra* Part IV.

14. *See infra* Part V.

15. *See infra* Part VI.

16. *See supra* note 2 and accompanying text.

the University of Virginia School of Law. Two developments of special significance are worth noting. First, Bob was one of the founding members of the Law Christian Fellowship, a group of law students that met regularly for prayer and Bible study (and still does).¹⁷ Second, in Bob's third year, his mentor and future co-author, Professor Thomas Shaffer of Notre Dame Law School, arrived at the law school as a visiting faculty member.¹⁸ Shaffer offered a class on law and religion, which Bob would later describe in memorable terms:

[Shaffer] volunteered to teach a course on law and religion, in addition to his regular courses. The Dean allowed it. We met in the home that Shaffer and his wife Nancy rented. On the first evening, we went around the room and told why we were taking the class. All of the students identified themselves as Christians (though we might not all have recognized one another as such). We came from a wide variety of theological backgrounds—Roman Catholics, Presbyterians, Methodists, Baptists, an Armenian Orthodox, and a Mennonite. When Shaffer realized that we were all confessing Christians, he asked one of us to pray. As we bowed, I envisioned Thomas Jefferson, the founder of the University of Virginia and proponent of a “wall of separation” between church and state, looking down on us. He was not pleased. To this Baptist boy, however, it seemed to balance things out when we closed the class with beer.¹⁹

I am not certain whether this class was the beginning of Bob's evangelical ecumenism, but it was likely an important contributor. Not only, as he notes above, were the members of the class from a wide variety of church backgrounds, but Shaffer himself was the product of a remarkable convergence of religious influences—a Baptist who converted to Catholicism but whose chief intellectual influences were Anabaptist.²⁰

17. See *Our People: Bob Cochran*, CTR. FOR CHRISTIAN STUDY, <https://www.studycenter.net/people/bob-cochran> (last visited Nov. 9, 2019).

18. Robert F. Cochran, Jr., *American Lawyers and Their Communities: Ethics in the Legal Profession*, 16 J.L. & RELIGION 751, 752 (2001) (reviewing THOMAS L. SHAFFER & MARY M. SHAFFER, *AMERICAN LAWYERS AND THEIR COMMUNITIES: ETHICS IN THE LEGAL PROFESSION* (1991)).

19. *Id.*

20. See THOMAS L. SHAFFER, ON BEING A CHRISTIAN AND A LAWYER 218–20 (1981) [hereinafter SHAFFER, ON BEING A CHRISTIAN] (describing his spiritual journey and characterizing both the Baptist



Several Members of the University of Virginia Law Christian Fellowship, assembled for the Wedding of Bob Cochran (center, standing), June 19, 1982.

Shaffer's groundbreaking book, *On Being a Christian and a Lawyer*, emerged out of this class.²¹ In the afterword to the book, Shaffer expresses attitudes toward students, teaching, and scholarship that would be reflected in Cochran's work going forward:

I began this enterprise, and continue it, as a law teacher—nothing more than that, but nothing less. Not a word is written *ex cathedra*. How could it be? But every word is written because my students

and Catholic church communities of which he was a part as “tragic”); see also Thomas L. Shaffer, *The Radical Reformation and the Jurisprudence of Forgiveness*, in *CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT* 321 (Michael W. McConnell, Robert F. Cochran, Jr. & Angela C. Carmella eds., 2001) [hereinafter *CHRISTIAN PERSPECTIVES*].

21. SHAFFER, *ON BEING A CHRISTIAN*, *supra* note 20, at 227.

raise personal, confusing questions about being lawyers and Christians and Jews. My confusion was blessed, early on, by a group of law students at the University of Virginia, in 1975 and 1976. They were members of the Christian Law-Student Fellowship there and were enrolled in a group-study venture, in which I taught and learned, that was called law and religion. All of them are now about their professional apostolates; I think of them often as a special audience for which I write. They are: [students in the class, including Cochran, listed by name].²²

The Law Fellowship connection continued when Bob stayed in Charlottesville following graduation; he remained involved as a mentor to law students. His relationship with Tom Shaffer continued as well when Shaffer moved to Washington & Lee University, and thereafter, back to Notre Dame.²³ Shaffer guided Cochran into law teaching and in his work as a scholar.²⁴

A final important influence on Bob's thought has been, of course, the Pepperdine community itself. Although he was not a Church of Christ member, Bob—now Professor Cochran—found Pepperdine Caruso Law School to be a congenial place to pursue his ambition to connect his faith and legal scholarship.²⁵ Indeed, Cochran's interests in doing legal scholarship eventually helped increase the law school's emphasis on scholarly writing as a regular part of faculty responsibilities.

III. TOWARD A BIBLICAL UNDERSTANDING OF LAW

Given Professor Cochran's background, it is not surprising that his ambition would be to bring his faith to bear on his work.²⁶ The critical question, however, is what it would mean to do so. One would assume that, as an evangelical, he would be inclined to give biblical revelation pride of place in such a project. But the details of even that approach are far from obvious. A number of critical questions present themselves: What relevance might the Bible

22. *Id.*

23. *See* Cochran, *supra* note 18.

24. *Id.*

25. Years ago, he told me that "Pepperdine is on the far-left end of the Churches of Christ, which makes it a pretty comfortable place for a garden-variety evangelical to be."

26. Even without the specifics of Bob's background, one would not be surprised at the ambition. Human beings seem inclined to connect the most important features of their lives with their understanding of life in general.

have to a secular society's legal system? What is the relationship between what the Bible says about morality to civil law? What status should be given to the portions of the Bible that served as the civil law for ancient Israel? Should they be followed? What about those parts of the Bible that cannot be reduced to moral principle or civil command? Do these portions have any relevance to the Christian legal scholar? Not only that, but how is the Bible to be interpreted? Should it be read through the lens of a particular faith tradition? Must it be?

A. Scripture and Law: Cochran the Evangelical

Professor Cochran's work answers most of these questions, implicitly in some cases, explicitly in others, and with varying degrees of detail. As noted, and not surprisingly, the Bible is front and center in Cochran's work. Indeed, the introduction to his co-edited (with seminary professor David VanDrunen) volume, entitled *Law and the Bible: Justice, Mercy, and Legal Institutions*, begins with a lengthy excerpt from Psalm 19, formatted so as to consume the entire first page:

The law of the LORD is perfect,
refreshing the soul.
The statutes of the LORD are trustworthy,
making wise the simple.
The precepts of the LORD are right,
giving joy to the heart.
The commands of the LORD are radiant,
giving light to the eyes.
The fear of the LORD is pure,
enduring forever.
The decrees of the LORD are firm,
and all of them are righteous.
They are more precious than gold,
than much pure gold;
they are sweeter than honey,
than honey from the honeycomb.²⁷

27. See Robert F. Cochran, Jr. & David VanDrunen, *Introduction to LAW AND THE BIBLE: JUSTICE,*

As the title of the book illustrates, Cochran's work²⁸ begins in faith that the Bible will, in fact, have something meaningful to say about justice, mercy, and legal institutions. Not only that, he also assumes that what it has to say can often be translated into insights about what the content of the law should be:

What the Bible has to say about law is important for all the reasons that what the Bible has to say about anything is important. The Bible shows us God's will and character as it reveals him to us. The Bible reveals that God is our creator and that law springs from his will and reflects his holy character. The great hope of the Scriptures is that all God's works—including law—will praise his name.²⁹

In Cochran's case, boldness about the importance of what Scripture has to say is paired with appropriate modesty about our ability to understand its implications. Cochran's modesty is founded both in an awareness of evangelical biblical interpretation's indebtedness to tradition as well as in his insistence on seeing the juridical task within the larger biblical narrative. In this respect, Cochran's approach to biblical authority is in line with the classical Reformation. Consider these notes from the introduction to *Law and the Bible*:

We fear that some Christians, on all points of the political spectrum, cherry-pick verses of Scripture to justify already-existing political opinions. . . . Reading Scripture in both its immediate context and the context of all of Scripture will help to avoid such abuse. Ultimately, of course, by being attentive to all of Scripture we are attentive to God himself, who speaks in and through the Scriptures, judges our faulty assumptions and unbelieving propensities, and gives us

MERCY AND LEGAL INSTITUTIONS 13 (Robert F. Cochran, Jr. & David VanDrunen eds., 2013) [hereinafter *LAW AND THE BIBLE*] (quoting *Psalms* 19:7–10).

28. As will be seen, Professor Cochran regularly works with co-authors and editors. While I have identified co-authors and editors in the text and notes, given the focus of this Essay, after the initial reference, I will present the relevant ideas as Professor Cochran's for the sake of simplicity. In this instance, for example, the work referred to was jointly authored by Professors Cochran and VanDrunen.

29. *Id.* at 14.

greater insight into what all of life, including law, should be.³⁰

Cochran is not prepared to accept a Christian account of law that simply reduces divine revelation (whether in Scripture or through natural law) to a set of abstract principles appropriate for application by civil authorities.³¹ While he does not deny the significance of divine commands, he sees the heart of the matter as attempting to situate the legal scholar's calling (or that of the judge or lawyer) in the context of the larger narrative of Scripture—i.e., the parts of the Bible that do not take the form of precepts and that answer the basic questions—humans must ask: “[W]hat [was I] put on earth to do, and what [could it] mean that I was put on earth to do it?”³² Central to that narrative in Cochran's account are (i) the kingdom of God, (ii) love, and (iii) sin.

For Cochran, the central feature of the biblical narrative is the kingdom of God, which is found wherever Christ is loved and obeyed.³³ Even though the kingdom is a matter of obedience, it is not merely a matter of following laws. Cochran and his co-author Dallas Willard note “the ambiguous nature of Jesus' relationship to law”³⁴ suggested in passages like *John* 1:17: “[T]he law indeed was given through Moses; grace and truth came through Jesus Christ.”³⁵ Law alone is not enough; grace and truth are needed if the law is to be understood rightly, much less obeyed. Furthermore, grace and truth are gifts found in Jesus and, by extension, in the renewed hearts and minds of those who follow him: “Law is valuable, but it needs to be understood in light of the teaching of the kingdom of God that the condition of the heart is primary.”³⁶

30. *Id.* at 15. It is worth noting that some contemporary evangelicals adopt an understanding of *sola scriptura* that is at odds with the understanding of the classical Reformation. See KEITH A. MATHISON, *THE SHAPE OF SOLA SCRIPTURA* 237–53 (2001) (contrasting the Reformation understanding with a modern evangelical misunderstanding Mathison designates as “*solo*” *scriptura*, which divorces the reading of Scripture from the historic creeds of the church and biblical structures of church authority).

31. See LAW AND THE BIBLE, *supra* note 27, at 15.

32. I OLIVER O'DONOVAN, *SELF, WORLD, AND TIME: ETHICS AS THEOLOGY*, at ix (2013).

33. Robert F. Cochran, Jr. & Dallas Willard, *The Kingdom of God, Law, and the Heart*, in LAW AND THE BIBLE, *supra* note 27, at 156–57.

34. Cochran & Willard, *supra* note 33, at 152. Again, much of the discussion in this section is taken from this jointly authored work. This is not to minimize Professor Willard's contributions to the paper in question or, more importantly, his influence on Professor Cochran, who revered him as a friend and mentor.

35. *John* 1:17 (New Revised Standard Version).

36. Cochran & Willard, *supra* note 33, at 160.

Cochran notes that when Jesus speaks of *law*, depending on the context, he might have in mind either the “Roman law, the Mosaic law as originally given by Moses, [or] the Mosaic law as expanded and interpreted by the Jewish tradition of Jesus’ day.”³⁷ Jesus’s reaction in encounters with the civil law and with then-current interpretations of Mosaic law included defiance, obedience, praise, criticism, reinterpretation, and affirmation.³⁸ His “most striking response to law in his culture was to challenge it as a distorted expression of God’s moral law and of life in God’s kingdom.”³⁹ As prophet, Jesus observed that the law of his day “had forgotten its purpose, [and] served itself and its experts, rather than the people.”⁴⁰

Jesus’s focus on the heart carries consequences for understanding, and living under, the various genres of law. The Sermon on the Mount is the chosen starting point. Here, Jesus

contrasted the Jewish legal code with his heart-based kingdom. The Jewish law prohibited murder, but Jesus called the citizens of this new kingdom not to even be angry. . . . The Jewish law required oaths in some contexts, but Jesus prohibited oaths and taught that his followers’ word should be binding in all contexts. The Jewish law imposed reciprocal penalties . . . but Jesus called the citizens of his new kingdom not to respond to violence in kind and to love their enemies. Compliance with these startling, seemingly impossible commands required (and requires) a change of heart.⁴¹

This change of heart cannot simply be summoned up from within oneself. For Cochran the evangelical, it is supplied by the new birth, the fulfillment of God’s promise through the prophet Jeremiah to “put my law in their minds and write it on their hearts.”⁴² The gift of divine regeneration of the heart could “generate a far more radical change than human law could bring. . . . [It] would cause someone to want to do the good, in most cases automatically to do the good.”⁴³ Evil deeds likewise come from the human

37. *Id.* at 155.

38. *Id.*

39. *Id.* at 160.

40. *Id.*

41. *Id.* at 156 (citations omitted).

42. *Jeremiah* 31:33 (quoted in Cochran & Willard, *supra* note 33, at 155).

43. Cochran & Willard, *supra* note 33, at 156–57.

heart; the disordered loves that come naturally to each of us in our fallen state lead us to choose wrongly and to disregard the love we ought to have for God and for our neighbor.⁴⁴ If the root problem is not addressed, the symptoms will inevitably persist.

What implications has this analysis for the contemporary lawyer or legal scholar? Cochran argues that those whose hearts have been transformed “will be far more likely to comply with most aspects of law” and “will go beyond the requirements of law,” that “a changed heart will lead one to be greatly concerned with justice.”⁴⁵

In the current moment, with the deficiencies of the contemporary evangelical church so clearly on display, this may seem like far too rosy an assessment. One might wonder whether the evidence belies the claim for Cochran’s much-vaunted transformation of the heart, especially when it comes to law and politics. Indeed, the belief in the new birth seems easily translatable into a belief in the believer’s moral superiority, and the glib supposition that everything would be okay “if only people like us were in charge.”⁴⁶

Investigating that charge in a systematic way would take us well beyond the scope of this project, but Cochran is sensitive to the objection. To begin with, he does not associate conversion with an automatically changed heart. In a genuine conversion, which consists of repentance and faith, the seeds of change are present. Nevertheless, the heart change that starts “may not get much farther.”⁴⁷ Moreover, he singles out Jesus’s teaching about the centrality of the heart as “a check on his modern followers who might want a political or military kingdom [T]he kingdom does not come through law.”⁴⁸ Finally, he challenges a too-easy identification of the Gospel with contemporary political agendas. Our problem is not, for example, either that we have too much government regulation or too little governmental intervention; by Cochran’s lights, we may have both problems at the same time: “Law should

44. For an exploration of these Augustinian themes in the context of justice and law, see Charles Mathewes, “*Be Instructed, All You Who Judge the Earth*”: Law, Justice, and Love During the World, in *AGAPE, JUSTICE, AND LAW: HOW MIGHT CHRISTIAN LOVE SHAPE LAW?* 166 (Robert F. Cochran, Jr. & Zachary R. Calo eds., 2017).

45. Cochran & Willard, *supra* note 33, at 157; see also *id.* (“Justice alone will never do justice to justice, but a heart of love will promote and require justice (and much more).”).

46. This particular manifestation of self-righteousness seems endemic to virtually all the participants in our current political moment, religious or secular.

47. Email from Robert F. Cochran, Professor of Law, Pepperdine Univ., to William S. Brewbaker III, Professor of Law, Univ. of Ala. (Aug. 17, 2019) (on file with author).

48. Cochran & Willard, *supra* note 33, at 157.

serve human good. It can miss that objective when it is either so consumed with details that it loses sight of people or so weak that it fails to protect them.”⁴⁹

On the other hand, in the administration of law, character counts: “A cruel or irrational judge, prosecutor[,] or policeman can have a devastating effect upon public and private well-being and righteousness. Who better than a person living with Christ in Christ’s kingdom to administer law in a just manner?”⁵⁰ The phrase *living with Christ in Christ’s kingdom* no doubt bears emphasis in Cochran’s formulation, and the connection with love proves crucial. Jesus’s followers were “to love broadly . . . to love neighbors, Samaritans[,] and enemies.”⁵¹ Although he does not discuss it, Jesus’ presentation of the final judgment in *Matthew 25* in terms of the “sheep” whose faith was evidenced by love and mercy and were welcomed into eternal life and the “goats” who, despite professing belief, were indifferent to the needs of those around them and were to be eternally punished. Genuine love of God and neighbor is “the framework on which all of the law hangs ([*Matthew*] 22:35–40).”⁵² Indeed, Cochran has said that whereas most of his career has been spent reaching out beyond the evangelical community, “in this last part of my career, I am trying to speak to the evangelical community, at a time when we seem to have forgotten Jesus’s message of agapic love, love of the Samaritan, and love of the enemy.”⁵³

Love, then, is central to Cochran’s framework (so central in fact, that he later organized a conference and edited a volume entitled *Agape, Justice, and Law*, dedicated entirely to examining love’s role in Christian thought about law).⁵⁴ Law, it turns out, is simply one more way of loving one’s neighbor: “Love can be reflected in laws as dramatic as those prohibiting murder and those ensuring that criminal defendants have fair trials to laws as seemingly

49. *Id.* at 161.

50. *Id.* at 164. He also quotes Augustine, stating, “[The rule of Christians] is beneficial, not so much for themselves as for their subjects.” *See id.* (alteration in original) (quoting AUGUSTINE, *THE CITY OF GOD* 88 (Gerard G. Walsh trans., Doubleday ed., 1958)).

51. *Id.* at 164.

52. *Id.*

53. Email from Robert F. Cochran, Professor of Law, Pepperdine Univ., to William S. Brewbaker III, Professor of Law, Univ. of Ala. (Aug. 18, 2019) (on file with author).

54. *See* AGAPE, JUSTICE, AND LAW, *supra* note 44; *see also* Robert F. Cochran, Jr., *Jesus and the Mosaic Law: Agapic Love as the Foundation and Objective of Law*, *TOURO L. REV.* (forthcoming 2020).

mundane as those prohibiting drivers from double parking.”⁵⁵ Critically, human law has only instrumental value; it is intended to serve the larger interest of human flourishing.⁵⁶ Another implication of love as the framework for law is a concern for the most vulnerable members of society. Cochran does not assume that this leads to a politics of Christian socialism, but he does “suspect that [Jesus] would affirm the Catholic teaching that laws . . . should be evaluated first based on their impact on the poor.”⁵⁷ Moreover, genuine concern for the poor requires attention not only to the provisions of the laws on the books, but also to its administration.⁵⁸

Not only that, loving one’s neighbors is not limited to protecting them from economic oppression, undeserved misfortune, or bureaucratic indifference. Law also has a role in shaping virtuous character in the name of love: “Law can and must reinforce the practices of the good.”⁵⁹ This was a good effect, he argues, of the Old Testament laws that protected the poor. Although there are limits to their character-building capacities, laws requiring farmers to permit poor people to glean from their fields, for example, ingrain generosity and love for the poor as habitual behavior.⁶⁰

A final significant feature of Cochran’s Christian narrative is the fact of sin. According to the Christian story, the default condition of every human heart is one of deceit and rebellion against God. We are all sinners in need of grace, and this has a number of implications for our legal practices. Those who make and administer law are no less in need of grace and forgiveness than are offenders. They are obligated to love their enemies as well as their friends, and are to administer justice recognizing their kinship with the offender, not as though the offender were “bad” and the judge “good.”⁶¹ Moreover, Christian punishment is never revenge born out of “hatred or vindictive passions.”⁶²

Although the fact of civil law is often attributed to the presence of sin in

55. Cochran & Willard, *supra* note 33, at 165.

56. *See id.* at 166 (quoting *Mark 2:27*) (“The Sabbath was made for man, not man for the Sabbath.”); *see also* Robert F. Cochran, Jr., *Jesus, Agape, and Law*, in *AGAPE, JUSTICE, AND LAW*, *supra* note 44, at 22–28.

57. Cochran & Willard, *supra* note 33, at 167.

58. *See* Cochran & Willard, *supra* note 33, at 167–68; *see also* Cochran, *supra* note 58, at 28–34.

59. *Id.* at 169.

60. *See id.* at 169.

61. *Id.* at 170; *see also id.* at 174 (endorsing the traditional formulation “justice tempered with mercy”); Cochran, *supra* note 58, at 14–15 (discussing the parable of the Good Samaritan).

62. Cochran & Willard, *supra* note 33, at 170 (quoting Jeffrie Murphy).

the world, the content of law is also affected. It is not just a question of law's identifying a locus of serious human rebellion, then specifying the correct moral standard and penalizing deviation from it. Here, Cochran emphasizes Jesus' teaching on the Mosaic law of divorce in *Matthew* 19.⁶³ Jesus teaches that Moses allowed divorce "because your hearts were hard." In other words, "Jesus approved of civil law that explicitly permitted and even identified the procedures for deviations from God's moral law" in view of the harsh consequences that would otherwise ensue.⁶⁴ Cochran sees this insight as a potential lens through which other Old Testament laws might be read,⁶⁵ as well as a model for contemporary judges and legislators, who should "prudently and creatively craft laws with eyes fixed both on God's moral law and on practical reality."⁶⁶

A final lesson Cochran draws from the biblical narrative with respect to law is the need for humility. Employing the story of Jesus's encounter with a woman caught in adultery as a final case study, he suggests a number of possible insights that could be (and have been) taken from the story. These include the priority of the heart in assessing one's own motives in law enforcement, injustice in the administration of the law, mercy, the appropriateness of Christian participation in civil government, Jesus' fulfillment of the law's penalty in his own body, and abolition of the death penalty. In a fitting conclusion to the essay, Cochran and his co-author confess their inability to offer a definitive interpretation:

We wish we could tell you which, if any, of the above lessons Jesus

63. *Matthew* 19:3–9 states:

And Pharisees came up to him and tested him by asking, "Is it lawful to divorce one's wife for any cause?" He answered, "Have you not read that he who created them from the beginning made them male and female, and said, 'Therefore a man shall leave his father and his mother and hold fast to his wife, and the two shall become one flesh'? So they are no longer two but one flesh. What therefore God has joined together, let not man separate." They said to him, "Why then did Moses command one to give a certificate of divorce and to send her away?" He said to them, "Because of your hardness of heart Moses allowed you to divorce your wives, but from the beginning it was not so. And I say to you: whoever divorces his wife, except for sexual immorality, and marries another, commits adultery.

Id. (quoting *Genesis* 1:27, 2:24).

64. Cochran & Willard, *supra* note 33, at 175 (quoting Aquinas on the need for distinction between legal and moral standards).

65. Including permitting slavery and sanctioning the death penalty for parental disrespect and homosexual conduct. *See id.* at 177.

66. *See id.* at 179 (citing proposals to modify divorce law as examples of appropriately creative ways of honoring moral standards in a realistic way).

intended to teach us in his encounter with the woman caught in adultery. Jesus does not always explain everything. We hesitate to make things clear where Jesus seems intentionally to have left them unclear. We leave the interpretation of this story to you, as Jesus did.⁶⁷

B. *Legal Theory, Theology and Law: Cochran as Ecumenical*

1. Ecumenical Legal Theory

One of Professor Cochran's most visible early forays into the area of Christian legal thought was a symposium entitled "Christian Perspectives on Law and Legal Scholarship," which he persuaded the *Journal of Legal Education* to include in its March 1997 issue.⁶⁸ The symposium, with contributions from Gerard V. Bradley, David S. Caudill, and David M. Smolin, featured short articles on Catholic, Calvinist, Lutheran, and Anabaptist perspectives on law.⁶⁹ Professor Cochran's introduction to the symposium is instructive for present purposes because he introduces categories that he would continue to use in later years.

Postmodernism was an influential and relatively new movement in legal thought in the 1990s, and Cochran, no doubt partly in order to attempt to find some common ground with an audience that he rightly would have expected to be skeptical, offers a surprisingly "postmodern"⁷⁰ account of the development of his own Christian worldview. He begins with his own story, noting the connection between the postmodern emphasis on narrative and the tradition of personal testimony in his evangelical heritage.⁷¹

67. *See id.* at 182.

68. *See* Robert F. Cochran, Jr., *Christian Perspectives on Law and Legal Scholarship*, 47 J. LEGAL EDUC. 1 (1997).

69. *Id.*

70. I use the scare quotes because postmodernism represents a family of theories that bear some resemblances to each other rather than a school of thought with recognizable principles. *See* JEAN-FRANCOIS LYOTARD, *THE POSTMODERN CONDITION: A REPORT ON KNOWLEDGE*, at xxiv (Geoff Bennington & Brian Massumi trans., 1993) (defining postmodernism as "incredulity toward metanarratives"). Assuming that Lyotard's famous definition is describing something central to the postmodern turn, the definition itself shows the difficulty. It is difficult to conceive of incredulity toward metanarratives as something other than a metanarrative.

71. Cochran, *supra* note 68, at 1. Narratives remained important in Cochran's scholarship. *See, e.g.,* Robert F. Cochran, Jr., *Honor as a Deficient Aspiration for "The Honorable Profession": The Lawyer as Nostromo*, 69 *FORDHAM L. REV.* 859 (2000); Robert F. Cochran, Jr., *Crime, Confession, and the Counselor-at-Law: Lessons from Dostoevsky*, 35 *HOUS. L. REV.* 327 (1998).

It is worth stopping and observing Cochran's approach to engagement with the wider legal academy. First and foremost, the symposium itself illustrates Professor Cochran's view that Christian legal scholars should engage in ongoing conversations within the legal academy, rather than write about law (a) as if Christianity had nothing to add to those conversations, or (b) as if Christians could gain no insights about law or life from secular scholars.⁷² The fact of the symposium was reflective of the first claim; Cochran's introduction, highlighting, as it does, points of commonality with secular scholars, reflects the second.⁷³

Cochran next opposes postmodernism to what he calls, appropriately enough, "enlightenment liberalism." Although, like postmodernism, liberalism is a family of theories, Cochran has in mind the foundationalist aspect of the liberal tradition:

Enlightenment liberalism asserts that it starts with observable data and assumptions that every reasonable person would share and constructs its view of reality by reason alone. Science is its model of knowledge. Everything is reduced to a science; law, as an academic discipline, is one of the social sciences.⁷⁴

Cochran is no foundationalist; the "raw bits of intellectual material" with which he starts consists both of "observations I make of the world around me" and "prerational assumptions . . . that I take on faith, some of which I learned growing up in my home and church, and some of which I learned in the largely secular schools I attended."⁷⁵ Interestingly, Cochran traces his (critical realist) anti-foundationalism both to "the postmoderns" and the Dutch Calvinists.⁷⁶ "Enlightenment liberalism's faith in individualism, rationalism, autonomy and scientific naturalism," he writes, "is just that, faith—faith that may *or may*

72. An alternative approach is to attempt to construct Christian perspectives on law that strive to be entirely universal and that are typically presented without any acknowledged engagement with extrabiblical sources. See, e.g., Roger Bern, *A Biblical Model for Analysis of Issues of Law and Public Policy: With Illustrative Applications to Contracts, Antitrust, Remedies and Public Policy Issues*, 6 REGENT U. L. REV. 103 (1995). The cited source is more indebted to modernism than the author seems to be aware. See generally NOLL, *supra* note 9.

73. These features of Cochran's work are reflected in his work as a movement-builder, discussed *infra* Part V.

74. Cochran, *supra* note 68, at 2.

75. *Id.*

76. See, e.g., David S. Caudill, *A Calvinist Perspective on Faith in Legal Scholarship*, 47 J. LEGAL EDUC. 19 (1997).

not be justified.”⁷⁷

This observation has more than abstract importance. As Oliver O’Donovan has observed, “[E]pistemology is a function of political theory.”⁷⁸ Those who would silence religious discourse about law appeal to the irrationality of such discourse, but if there is no gold standard for rationality, and everyone relies on prerational assumptions to some degree, then it is much harder to exclude religious speech about law out of hand.⁷⁹ Cochran again offers a narrative to buttress inclusion of diverse voices in legal discourse: he recounts entering the legal academy when “enlightenment liberalism” was the hegemonic discourse and remarks that “to be accepted in academic circles *and* to be true to my view of reality,” would have required him to restrict his thinking to the zone of overlap between his worldview and enlightenment liberal dogma.⁸⁰ He worried that he would write things he didn’t believe in order to achieve professional success and that his intellectual understanding of the parts of his faith that didn’t square with such dogma would wither away from disuse.⁸¹

Cochran recognizes that the legal academy, then as now, includes scholars with wildly differing worldviews, and that “[i]f the only scholarship were based on common assumptions, there would be little to write about.”⁸² And yet he notes that there may be wide areas of agreement between scholars with differing assumptions about fundamental realities.⁸³ We can still learn from each other: “The best scholars are also considering the viewpoints of others. They are discovering odd combinations of shared beliefs, as well as disagreement, between various groups. Some who start from very different assumptions ultimately reach some of the same conclusions.”⁸⁴

77. Cochran, *supra* note 68, at 3 (emphasis in original) (citing THOMAS KUHN, THE STRUCTURE OF SCIENTIFIC REVOLUTIONS 92–110 (2d ed. 1970); and then ALASDAIR MACINTYRE, WHOSE JUSTICE? WHICH RATIONALITY? (1988)).

78. See OLIVER O’DONOVAN, RESURRECTION AND MORAL ORDER: AN OUTLINE FOR EVANGELICAL ETHICS 86 (2d ed. 1994).

79. For a more extended discussion of the reasons religious speech should be admitted into legal discourse, see CHRISTIAN PERSPECTIVES, *supra* note 20, at xxii.

80. Cochran, *supra* note 68, at 2.

81. *Id.*

82. *Id.* at 3.

83. *Id.* (“Examples are the similar conclusions on lawyer advocacy, pornography, and the nature of morality that some feminists and Christians have reached.”).

84. *Id.*

2. Ecumenical Theology

Cochran's recognition of apparently intractable difference when it comes to starting points, and, at the same time, his optimism about the possibility of finding common ground in unlikely places, seems also to have led him to a welcoming approach toward intellectual collaboration across theological lines. This is evident, of course, in the "Christian Perspectives on Law and Legal Scholarship" symposium itself, with its treatment of Catholic, Calvinist, Anabaptist, and Lutheran viewpoints on law, and, as we will see later, it is also quite evident in Cochran's work as a conference organizer and movement builder.

Perhaps this is not so remarkable. After all, nothing in Cochran's position as outlined above requires anyone to change her mind about her own most cherished beliefs. Still, and as noted above, Cochran assumes that one's beliefs are likely to change at least in spots, and, perhaps dramatically, through encounters with others.⁸⁵

In a landmark book written in the 1950s, H. Richard Niebuhr developed a taxonomy that grouped theologians and Christian traditions according to their attitudes about involvement in cultural matters.⁸⁶ Niebuhr's taxonomy is still in use today, even if it is heavily criticized in some quarters.⁸⁷ His five groupings include *synthesists*, *conversionists*, *separatists*, *dualists*, and *culturalists* (the distinctive features of each group are explained briefly below).⁸⁸ Professor Cochran employs these categories to bring order to the diverse theological contributions in the 1997 symposium mentioned above.⁸⁹ I will use

85. Cochran's introduction uses the image of a cone to represent a person's worldview. He describes his experience: "At times the cone grows, as I gain insight—or, at least, think I gain insight. At times the cone shrinks, as I reconsider and reject earlier conclusions, as I determine that aspects of my view of reality do not fit with reality. In fact, a cone is a very inadequate picture: a better picture would have irregularly shaped limbs growing out (and shrinking) at all sorts of odd places." Cochran, *supra* note 68, at 2.

86. H. RICHARD NIEBUHR, *CHRIST AND CULTURE* (1951).

87. As Cochran notes, two prominent separationists criticize Niebuhr's categories for implicitly suggesting that "Christians are in an all-or-nothing relationship to the culture; that we must responsibly choose to be 'all,' or irresponsibly choose to be sectarian nothing." See Cochran, *supra* note 68, at 8 (quoting STANLEY HAUERWAS & WILLIAM H. WILLIMON, *RESIDENT ALIENS: LIFE IN THE CHRISTIAN COLONY* 38 (1989)).

88. NIEBUHR, *supra* note 86, at xliii.

89. Cochran uses the categories again in one of his contributions to *Christian Perspectives on Legal Thought*. See Robert F. Cochran, Jr., *Christian Traditions, Culture, and Law*, in *CHRISTIAN PERSPECTIVES*, *supra* note 20, at 242, 250.

three of the five categories⁹⁰ to describe elements of Cochran's own work, taking up the question of how his work can reflect so many of these viewpoints coherently in the conclusion of this Essay.

a. Cochran the Synthesist

In Niebuhr's taxonomy, the synthesist theologian begins with the idea that human culture is an affirmative good—that reason and creation, like revelation, are from God.⁹¹ The knowledge creation and reason give is incomplete, but it can be improved and augmented with theological truths. For Niebuhr, the primary exemplar of this point of view is Thomas Aquinas, whose

system of thought . . . combined without confusing philosophy and theology, state and church, civic and Christian virtues, natural and divine laws, Christ and culture. Out of these various elements he built a great structure of theoretical and practical wisdom, which like a cathedral was solidly planted among the streets and marketplaces, the houses, palaces and universities that represent human culture, but which, when one had passed through its doors, presented a strange new world of quiet spaciousness, of sounds and colors, actions and figures, symbolic of a life beyond all secular concerns. . . . Like Schleiermacher later, he spoke to the cultured among the despisers of Christian faith . . . [b]ut with a Tertullian he acknowledged that what was hidden to the wise was revealed to babies.⁹²

Cochran's synthetic approach is most obviously on display in his regular interactions with Catholic legal thought, which tends to be synthesist.⁹³ Indeed, much of Cochran's approach to the relevance of Scripture to modern civil law bears a strong family resemblance to what Aquinas has to say in the

90. I leave aside Niebuhr's *dualist* and *culturalist* categories. Cochran largely rejects these approaches. See Cochran, *supra* note 68, at 10 (describing the failure of the *Journal of Legal Education* symposium to include a culturalist perspective as "just as well"); Cochran & Willard, *supra* note 33, at 173 (rejecting "two-kingdoms" approach to the Sermon on the Mount).

91. NIEBUHR, *supra* note 86, at 130.

92. *Id.*

93. See, e.g., Robert F. Cochran, Jr., *Tort Law and Intermediate Communities*, in CHRISTIAN PERSPECTIVES, *supra* note 20, at 486; Robert F. Cochran, Jr., *Catholic and Evangelical Supreme Court Justices: A Theological Analysis*, 4 U. ST. THOMAS L.J. 296 (2006).

Treatise on Law.⁹⁴ Like Aquinas, Cochran affirms natural law but likewise affirms that not every moral precept is to be written into the civil law.⁹⁵ He recognizes that legal codes must vary according to the circumstances of the people who must live under them.⁹⁶ He accepts that studying the laws in the Old Testament may provide insight but at the same time understands that those laws were given to a specific people under specific circumstances and should not be assumed applicable to modern conditions.⁹⁷ Neither the Bible nor natural law answers every question lawyers might want to ask, much less in detail. Cochran thus summarizes the Christian legal scholar's task as follows:

With the moral foundation revealed in nature, and confirmed and clarified in Scripture, Christians must use godly wisdom and prudence to seek to understand the world in which they live and the social circumstances in which particular problems arise. They must apply the norms of Scripture and natural law in ways that produce just and beneficial results for their fellow human beings.⁹⁸

b. Cochran the Separatist

Niebuhr describes the separatist position as “one that uncompromisingly affirms the sole authority of Christ over the Christian and resolutely rejects culture's claims to loyalty.”⁹⁹ On this view, “[t]he counterpart of loyalty to Christ and the [Christian community] is the rejection of cultural society; a clear line of separation is drawn between the brotherhood of the children of God and the world.”¹⁰⁰ Separatists expect that the believer who involves herself in government or the military will often find herself on the wrong side of the line of separation.¹⁰¹ The churches in the Anabaptist tradition, e.g., the Mennonites and Amish, provide the most obvious contemporary examples.

Given the separatist's emphasis on the difference between Christian and

94. See generally THOMAS AQUINAS, *SUMMA THEOLOGIAE* IaIIae 90–108.

95. LAW AND THE BIBLE, *supra* note 27, at 15.

96. *Id.*

97. *Id.*

98. *Id.* at 18. This approach's emphasis on Scripture and lack of explicit reference to church tradition gives it a Reformation accent, but the approach is nonetheless fairly characterized as a catholic (with a small “c”) Christian approach.

99. NIEBUHR, *supra* note 86, at 45.

100. LAW AND THE BIBLE, *supra* note 27, at 47–48.

101. *Id.* at 54–82.

secular communities, one would not expect to see much evidence of separatist thought in legal scholarship.¹⁰² If the realm of law and politics is off limits to the Christian, why spend much time thinking about it? In fact, however, Anabaptist thought has been surprisingly influential in contemporary legal scholarship. Two of the most influential Anabaptist thinkers writing about the law have been Stanley Hauerwas¹⁰³ and Professor Cochran's mentor and co-author, Thomas Shaffer. Interestingly, neither one of these scholars is part of an Anabaptist community,¹⁰⁴ but both are keen to emphasize the disjunction between the ethics of the Kingdom and that of "the world."¹⁰⁵

Perhaps the Anabaptist presence in the world of legal and political thought is not so surprising. Anabaptists do not believe that the Christian faith is irrelevant to politics, or that there is no political role for Christians; rather, "the political task of Christians is to be the church rather than to transform the world."¹⁰⁶ The presence of an alternative community may influence the dominant community's politics and its law, even where that influence is not actively sought.¹⁰⁷

Augustine's contrast between the city of God and the worldly city is an important image in separationist thought. The hearts of those in the worldly city are set on the wrong things, and the resulting systems of ethics and politics inevitably reflect these misplaced loves. The apparent virtues of ancient Rome are, for example, in the end, merely "splendid vices," which the Gospel exposes as inconsistent with true love of God and neighbor.¹⁰⁸ The ethics of those in power may have the appearance of goodness but be inimical to the true values of the Kingdom. Not surprisingly, some critical legal theorists have found in Augustine and his critique of Rome a genial source of authority in their own critiques of the American legal system.¹⁰⁹

102. *Id.* at 47–48.

103. See generally Symposium, *Theological Argument in Law: Engaging with Stanley Hauerwas*, 75 LAW & CONTEMP. PROBS. 1–251 (2012).

104. Hauerwas is a United Methodist and Shaffer was a Catholic.

105. See 1 John 2:15 ("Do not love the world.")

106. See HAUERWAS & WILLIMON, *supra* note 87, at 38 (1989); Cochran, *supra* note 68, at 8 n.25.

107. See JOHN HOWARD YODER, *On Not Being in Charge*, in THE JEWISH-CHRISTIAN SCHISM REVISITED 168, 168–75 (Michael G. Cartwright & Peter Ochs eds., 2003).

108. This very Augustinian statement was apparently never made by Augustine himself. See T.H. Irwin, *Splendid Vices? Augustine For and Against Pagan Virtues*, 8 MEDIEVAL THEOLOGY & PHIL. 105, 106 (1999). But see generally AUGUSTINE, THE CITY OF GOD, bk. 19 (Gerard G. Walsh trans., Doubleday ed., 1958).

109. See, e.g., Elizabeth Mensch, *Cain's Law*, 36 PEPP. L. REV. 541, 542–43 (2009).

One does not have to look far to find elements of Cochran's thought that are, though never fully separatist, at least quite critical of prevailing "worldly" thought. Consider his critique of the cultural norm of professionalism.¹¹⁰

Far from defending professionalism as a dominant legal/cultural norm that had been taken to guide legal ethics, Cochran's critique of professionalism takes the ideal to task on economic, cultural, sociological, and ethical grounds. His opening salvo takes aim at then-recent remarks from the presidents of both the American Bar Association and the Association of American Law Schools, accusing them (indirectly) of using *professionalism* "almost as a mantra, a word which if repeated often enough will release mystical moral power" but which, alas, "no longer seems to inspire."¹¹¹ Traditional conceptions of professionalism, he argues, had religious origins that no longer have much influence in the legal profession.¹¹² In the United States, professional ethics became merely the ethics of the aristocracy and "of gentlemen—the generic, Judeo-Christian ethics of the upper-class churches."¹¹³

Cochran provides a number of reasons for the demise of the consensus—the opening of bar membership to outsiders "despite the resistance of the bar's professional elites,"¹¹⁴ the development of a more egalitarian moral sense in the children of the upper class beginning in the 1960s,¹¹⁵ and moral relativism reinforced by postmodern skepticism of universally accessible moral truth.¹¹⁶ And the news gets worse—attempts to establish a "new professionalism" are not only unlikely to be successful, they are affirmatively dangerous.¹¹⁷ "My concern," he warns, "is not only that the new professionalism will fail to inspire lawyers to virtue, but that it will inspire them to vice."¹¹⁸

Cochran identifies the "new professionalism" with a number of disparate themes—a claim to expertise that justified protection of lawyers from market

110. See, e.g., Robert F. Cochran, Jr., *Professionalism in the Postmodern Age: Its Death, Attempts at Resuscitation, and Alternate Sources of Virtue*, 14 NOTRE DAME J.L. ETHICS & PUB. POL'Y 305 (2000).

111. *Id.* at 305.

112. *Id.* at 305–09.

113. *Id.* at 307. Such a critique fits well with the skeptical attitude of the separationist tradition toward powerful institutions, whether religious or otherwise. The ethics of the upper-class churches, it is suggested, have been taken captive by worldly norms rather than those of the Gospel.

114. See Cochran, *supra* note 110, at 308.

115. *Id.* at 310.

116. *Id.*

117. *Id.* at 311.

118. *Id.*

accountability,¹¹⁹ an ethic of role morality that serves client autonomy,¹²⁰ and paternalism toward the client, either in the traditional form of giving moral direction to the client, or in the more modern form of assuming an obligation to pursue the client's selfish ends at all costs, with little consultation of the client in the process.¹²¹ The result of this hodgepodge of understandings of the concept of professionalism, according to Cochran, has been self-regulation that served lawyers at least as well as it served the public,¹²² protection of the autonomy of the wealthy (who can afford lawyers) at the expense of the poor (who cannot),¹²³ imposition of the lawyer's moral code on their clients, and a system that encourages clients to disregard the interests of others.¹²⁴

These concepts of professionalism are, for Cochran, "both too weak and too dangerous to yield the responsible exercise of professional power."¹²⁵ Cochran's proposed solution is surprising: "[M]oral development," he writes, "comes primarily from within communities."¹²⁶ As a result, "we should encourage these communities to develop moralities (and theologies) of lawyering."¹²⁷ Even if these moralities of lawyering will not transform the profession as a whole, they may affect the practice of significant numbers of lawyers.¹²⁸

Cochran anticipates the obvious objection that the law is a public profession, and his proposal seems to invite individual lawyers to practice law according to values that are merely personal.¹²⁹ He has, of course, already noted that there is no universally accepted norm for the lawyer's role; indeed, that

119. *Id.*

120. *Id.* at 311–12.

121. *Id.* at 313–14.

122. *Id.* at 311.

123. *Id.* at 312.

124. *Id.* at 313–14.

125. *Id.* at 314. He continues:

Other existing sources of lawyer guidance have their shortcomings as well. The market generates high quality legal services for savvy, wealthy clients, but gives little aid to the poor and middle-class and tends to exacerbate the problems of lawyer advocacy as lawyers focus solely on the interests of their wealthy clients. The rules of the profession and legal malpractice rules set minimum standards for lawyers, but law can only do so much. It is impossible to require the virtues that the legal profession needs and excessive regulation can undercut the possibility of developing those virtues.

See id. at 311.

126. *See id.* at 314.

127. *See id.*

128. *Id.* at 314–15.

129. *See id.* at 315 ("[I] have little faith that the person, acting alone, will come up with values, professional or otherwise, that are worth living by.").

is a big part of the problem facing the “new professionalism.”¹³⁰ Professional values “have little power to inspire.”¹³¹ The values of virtue-shaping communities not only have the capacity to inspire their adherents, but, Cochran argues, they cannot be dismissed as merely personal: “They draw on memories, stories, virtues, and rules that have their source beyond living memory; they have evolved over long periods of time, based on the wisdom of many that have gone before.”¹³²

Interestingly, Cochran’s proposal contains elements of both the synthesist and separatist positions described above, and also the conversionist perspective discussed next.¹³³ Community values are cultural values, and he will later suggest that “as we go deeper into our particularities, we find commonalities.”¹³⁴ Something like natural law is evident, he argues, when we encounter the needs of the poor, and groups with diverse accounts of human meaning largely agree on the need for an account of law practice with greater space for recognizably humane values.¹³⁵ The proposal has separatist overtones in its focus on the embodied ethics of particular communities and its resistance of the idea of shared civic principles of morality.¹³⁶ At the same time, it lacks the sense of disengagement from the larger culture associated with separatist Christian traditions.¹³⁷

130. *See id.* at 310–14. “The [legal] profession gave up on defining the good lawyer; the Model Rules defined only the bad lawyer. Attempts to establish a new professionalism face a similar prospect.” *Id.* at 310.

131. *Id.* at 315.

132. *Id.* Cochran contrasts the power of the ABA Model Rule’s admonition that lawyers provide at least fifty hours of pro bono service per year to inspire lawyers to serve the poor with Jesus’ famous picture of the last judgment in *Matthew 25:34–46*. Cochran, *supra* note 110, at 316–17.

133. For a discussion of the synthesis and separatist positions, see *supra* Sections III.B.2(a)–(b). For a discussion of the conversionist position, see *infra* Section III.B.2(c). Cochran’s proposal is arguably conversionist in that he seems to be suggesting that the Christian revelation can serve as a corrective force to reigning conceptions of professional ethics. See *infra* Section III.B.2(c).

134. Cochran, *supra* note 110, at 320 (suggesting this was the viewpoint of Martin Luther King, Jr.).

135. *See id.* at 318–19.

136. *See supra* Section III.B.2(a) (explaining that the separatist’s task is to focus on preserving the Christian community as an alternative to the dominant community).

137. Compare Cochran, *supra* note 110, at 315 (suggesting that communal religious traditions that have “evolved over long periods of time” are “resources that their members should look to, explore, critique, and draw from”), with NIEBUHR, *supra* note 86, at 47–48 (explaining that separatism is the “rejection of cultural society” such that a “clear line of separation is drawn between the brotherhood of the children of God and the world”).

c. *Cochran the Conversionist*

In Niebuhr's typology, conversionists resemble dualists¹³⁸ in terms of the seriousness with which they take human sin and its effects on culture. Both believe that sin "is deeply rooted in the human soul, that it pervades all man's work" and "all cultural work in which men promote their own glory, whether individualistically or socially . . . lies under the judgment of God."¹³⁹ Even so, conversionists bring a "more positive and hopeful attitude" to their cultural engagement.¹⁴⁰ This optimism is based on a sense that God, as Creator, remains sovereign over, concerned with, and engaged with his creation: "The Word that became flesh and dwelt among us, the Son who does the work of the Father in the world of creation, has entered into a human culture that has never been without his ordering action."¹⁴¹ Contrary to the separatist position, the conversionist believes Christ's redemption provides hope, not just for the individual and the church, but for culture as well.¹⁴²

As we have seen, Cochran's work includes elements of both the synthesist and separatist positions.¹⁴³ Even so, the conversionist approach to the relation and culture marks him most strongly. In addition to his work in theology and jurisprudence, Professor Cochran also dedicated a large portion of his scholarly energies to the field of professional ethics.¹⁴⁴ As examined in the next part, Cochran is nothing if not a reformer when it comes to legal ethics, not only proposing that Christian lawyers conduct their practices in specific ways that would put them at odds with conventional legal approaches (admonitions that might sit easily with a separatist view), but also proposing reforms to the

138. Niebuhr's dualists, according to Cochran, generally see culture as "necessarily fallen and unredeemable, but . . . believe[] that Christians appropriately play a role within it." See Cochran, *supra* note 68, at 9 (using Martin Luther King, Jr. as a main example of a dualist).

139. NIEBUHR, *supra* note 86, at 191.

140. *Id.*

141. *Id.* at 193.

142. *Id.* at 195–96.

143. See *supra* notes 133–37 and accompanying text.

144. See, e.g., Robert F. Cochran, Jr., *Legal Ethics and Collaborative Practice Ethics*, 38 HOFSTRA L. REV. 537, 538 (2010) (describing the "legal and ethical standards" under which professionals engage in Collaborative Practice—a new process for resolving legal disputes—in the United States); Robert F. Cochran, Jr. & Thomas L. Shaffer, "Technical" Defenses: Ethics, Morals, and the Lawyer as Friend, 14 CLINICAL L. REV. 337, 337–53 (2007) [hereinafter Cochran & Shaffer, "Technical" Defenses] (suggesting that lawyer-client counseling on the issue of "technical" defenses, such as statute of limitations defenses, raises moral issues "worthy of dialogue").

secular rules that govern all lawyers' practice and sanctions for their disobedience, in some cases from professional disciplinary bodies, and in others, by tort sanctions.¹⁴⁵

IV. THE LAWYER AS DISCIPLE AND FRIEND: COCHRAN'S LEGAL ETHICS

The starting point of Cochran's legal ethics is arguably a model of lawyer-client relations that he and Thomas Shaffer first developed in their 1994 book *Lawyers, Clients, and Moral Responsibility*.¹⁴⁶ Their model relied heavily on arguments developed by Shaffer in previous writings.¹⁴⁷ The model proceeds upon two moral premises that would be unremarkable in ordinary life, but seem almost shocking when applied to lawyer-client relationships.¹⁴⁸ These premises are (1) that moral agents (and those who advise them) ought to consider the effects of their choices on other people;¹⁴⁹ and (2) that moral agents (and those who advise them) ought to respect each other in the process of moral deliberation.¹⁵⁰ An important feature of the model is its assumption that decisions taken in the course of legal representation are best understood as *joint* decisions—decisions for which both the lawyer and the client bear some degree of responsibility and authority.¹⁵¹

Cochran and Shaffer apply these principles in both constructive and critical ways to address two common questions that arise in legal ethics: Who controls the decisions being made in the course of legal representation? And, should the interests of people other than the client be considered?¹⁵² It is pre-

145. See *infra* Part IV.

146. THOMAS L. SHAFFER & ROBERT F. COCHRAN, JR., *LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY* 113–34 (1994).

147. See, e.g., SHAFFER, *ON BEING A CHRISTIAN*, *supra* note 20; Shaffer, *supra* note 20.

148. See SHAFFER & COCHRAN, *supra* note 146, at 1–2.

149. See *id.* at 1 (“[A]lmost all decisions made in the law office will benefit some people at the expense of others.”).

150. *Id.* at 2 (“If the law becomes the only limitation on human action, the state will either leave people to be uncivil toward one another, or intrude into more and more aspects of human life.”).

151. See *id.* at 113 (“When lawyer and client together resolve issues in legal representation (as we believe they should), lawyer and client engage in moral discourse; they engage in moral reasoning together.”).

152. *Id.* at 3; see also Thomas L. Shaffer & Robert F. Cochran, Jr., *Lawyers as Strangers and Friends: A Reply to Professor Sammons*, 18 U. ARK. LITTLE ROCK L.J. 69, 69 (1995) [hereinafter Shaffer & Cochran, *Lawyers as Strangers and Friends*]. The latter question is critical and affects

cisely here that the ordinary moral premises noted above become controversial.¹⁵³ Lawyers may or may not agree about the extent to which the client's moral views about the course of the representation should be respected—after all, the lawyer is the expert and may or may not be willing to involve herself in moral taint for the sake of the client's wishes.¹⁵⁴ Lawyers also may not agree that their advice to clients ought to include concern for the effects of the client's decisions on other people—the lawyer's job, after all, is to represent her client!¹⁵⁵

Let us begin with the question of whether the lawyer and the client should be concerned with the effects of their decisions on other people.¹⁵⁶ Here, Cochran takes issue with so-called “client-centered” lawyering, which, consistent with mainstream liberal political theory, makes advancing the individual autonomy of the client a guiding objective.¹⁵⁷ The supposed moral strength of this approach to lawyering—specifically, its respect for the client's autonomy and dignity, and its capacity to place the lawyer in an appropriately “neutral” role in order to achieve that result—is what Cochran finds most objectionable:

The client-centered counselors claim to be neutral, but in fact, their decision-making framework steers the client toward making self-serving choices. It imposes a regime of client autonomy—clients are directed to make choices based on consequences to themselves. . . . The Enlightenment liberal ideal is C.S. Lewis's picture of hell from “The Great Divorce”: Autonomous people on the outskirts

Cochran's insights about issues outside professional ethics. Consider, for example, his endorsement of restorative justice: “Whereas the primary players in the traditional American criminal justice system are the state and the offender, restorative justice brings the victim and the community into the picture.” Robert F. Cochran, Jr., *The Criminal Defense Attorney: Roadblock or Bridge to Restorative Justice?*, 14 J.L. & RELIGION 211, 212 (1999–2000) [hereinafter Cochran, *Roadblock or Bridge*].

153. See SHAFFER & COCHRAN, *supra* note 146, at 3–4.

154. See *id.* at 35; Shaffer & Cochran, *Lawyers as Strangers and Friends*, *supra* note 152, at 69 (explaining that “[t]he lawyer as godfather controls the representation and ignores the interests of others”).

155. See SHAFFER & COCHRAN, *supra* note 146, at 7 (explaining that lawyers as advocates often “attack other people at the behest of their clients”); Shaffer & Cochran, *Lawyers as Strangers and Friends*, *supra* note 152, at 69 (noting the “lawyer-as-hired gun defers to the client and ignores the interests of others”).

156. See Robert F. Cochran, Jr., *Enlightenment Liberalism, Lawyers, and the Future of Lawyer-Client Relations*, 33 CAMPBELL L. REV. 685 (2011).

157. *Id.* at 686–88.

of a city who continually move further and further away from one another.¹⁵⁸

Cochran acknowledges that in many cases, the lawyer's role in empowering the client can be a positive good.¹⁵⁹ This is especially true when lawyers are representing poor people against rich opponents—the rich will have plenty of resources with which to look after their own interests.¹⁶⁰ On the other hand, “[i]f clients with great power make decisions based solely on ‘consequences to the client’ they can cause great harm to others.”¹⁶¹

The second critical question for Shaffer and Cochran is who controls the decisions made during the course of the representation.¹⁶² Note that this question is analytically distinct from the preceding one: a lawyer might believe that she should pursue the client's interests alone without regard for others' interests, and that, as the lawyer, her judgments about where those interests lie should govern the concrete decisions that are actually made.¹⁶³ Or, the lawyer might believe that every decision with moral significance ought to be made by the client alone, with the lawyer in a more-or-less ministerial role.¹⁶⁴

The traditional answer to the second question places both moral and legal decision making primarily in the hands of the lawyer: “The early American gentleman-lawyer asserted control of legal representation based on his [assumed] superior social status, superior influence, superior intelligence, and superior moral sensitivity.”¹⁶⁵ Lawyer authority also protected the consciences of the lawyer and the client, lest, in the heat of battle, immoral decisions might be made.¹⁶⁶ As Judge Clement Haynsworth once wrote, “[T]he lawyer must never forget that he is the master. He is not there to do the client's bidding. It is for the lawyer to decide what is morally and legally right[.]”¹⁶⁷

158. *Id.* at 688.

159. *Id.* at 689 (“In some situations, it may be that the client-centered counselors’ focus on client empowerment is justified.”).

160. *Id.*

161. *Id.*

162. See SHAFFER & COCHRAN, *supra* note 146, at 3.

163. See, e.g., Shaffer & Cochran, *Lawyers as Strangers and Friends*, *supra* note 152.

164. See *id.*

165. Cochran, *supra* note 156, at 689.

166. See *id.* at 690 (“[T]here are troubling aspects of the authoritarian approach. . . . There is danger that lawyers will be confident of their moral judgment when confidence is not justified. Generally, two consciences in conversation are more likely to get moral truth than one.”).

167. See *id.* at 689 (quoting Clement F. Haynsworth, *Professionalism in Lawyering*, 27 S.C. L. REV. 627, 628 (1976)).

Despite the emphasis on morality that underlies this model, Cochran has little patience with it.¹⁶⁸ Indeed, he accepts the liberal lawyer's characterization of it as "authoritarian."¹⁶⁹ There is no reason to believe that lawyers are, as a group, possessed of moral insight superior to that of clients as a group.¹⁷⁰ Cochran believes that humility is an important lawyer virtue.¹⁷¹ Authoritarian lawyering exalts lawyer expertise in a way that is "inconsistent with love of neighbor, inconsistent with a recognition of the client as a fellow child of God[,] . . . [and it] robs the client of the opportunity to grow morally."¹⁷²

The significance of moral development to human flourishing also informs Cochran's reservations about the approach to lawyering that suggests that lawyers ought to be willing to pursue their clients' interests through any lawful means, even when those means contradict the lawyer's conscience. Neutrality toward client ends proves, for Shaffer and Cochran, an illusory basis for justifying immoral acts.¹⁷³ Failure to stand up to immoral conduct is itself a moral choice, and one that does lasting damage to the lawyer:

Morality is a skill like other skills; it is something that we learn by doing. As we address problems morally, we develop the capacity to deal morally with other problems. If moral sensitivity has no place in lawyers' daily lives, they run the risk that their moral sensitivity will atrophy.¹⁷⁴

The foregoing critique of conventional approaches to the lawyer-client relationship yields an evocative taxonomy of approaches to lawyering: lawyers can be *godfathers*, *gurus*, *hired guns*, *legalists*, or *friends* (the latter being the preferred concept):

The *godfather* lawyer ignores the interests of other people, keeps the issue to himself, and does what he thinks will benefit the client. The

168. *See id.* ("Some are surprised that as a Christian, I do not advocate an authoritarian approach to lawyering.")

169. *See id.*

170. *See id.* at 690 ("None of us has the perfect ability to discern moral standards or to determine how they should apply.")

171. *See id.* (stating that the authoritarian approach is "inconsistent with the humility with which lawyers should view themselves").

172. *See id.*

173. SHAFER & COCHRAN, *supra* note 146, at 28–29.

174. *See id.* at 29.

hired gun defers to whatever the client wants to do. The guru considers the interests of other people, and controls the decision by aggressively persuading the client to do what the lawyer believes to be the right thing. . . . [The legalist] assumes and justifies the morality of the law. . . . [N]either the lawyer nor the client controls the decisions. The morality of the law controls the decisions.¹⁷⁵ [T]he lawyer as friend . . . raises the moral issue with the client, engages the client in moral conversation, and seeks to arrive at moral decisions with the client. Only when the client insists on doing something the lawyer believes to be wrong—only, that is, when moral conversation fails—would the lawyer-as-friend insist on following his own conscience.¹⁷⁶

The preferred model of the lawyer as friend does not mean that the lawyers should seek to be friends, in the ordinary sense of that word, with every client they encounter.¹⁷⁷ Rather, the lawyer and client should deal with moral issues that arise in representation in the way that friends deal with moral issues.¹⁷⁸ Even this limitation raises questions, however: How, exactly, do friends deal with moral issues? What does it mean to be a friend?

Shaffer and Cochran recognize that the debate about the lawyer-client relationship cannot be settled simply by invoking the notion of friendship; just as there are competing accounts of the lawyer-client relationship, there are also competing accounts of what it means to be a friend.¹⁷⁹ Shaffer and Cochran's preferred account of friendship is Aristotle's, which includes the idea (surprising today) that friends are engaged in common moral projects.¹⁸⁰ For Shaffer and Cochran, however, the idea of a friend as "a collaborator in the good" is the lynchpin of their application of friendship to the lawyer-client

175. Cochran & Shaffer, "*Technical*" Defenses, *supra* note 144, at 337, 348. The "legalist" is concerned neither with the impact on others, nor with the moral concerns of either the lawyer or the client. The legalist lawyer is governed by the values embedded in the law itself, such that any relevant moral concerns are deemed to have already been taken into account. Whatever courses of action the law permits are thereby deemed moral. *See id.*

176. *See id.*

177. SHAFFER & COCHRAN, *supra* note 146, at 47.

178. *See id.* ("The lawyer should raise moral issues with the client in the way that good friends deal with moral issues, neither ignoring them nor imposing their values on the friend, but raising them as matters for discussion.")

179. *See id.* (noting that "we live in what Alasdair MacIntyre describes as a society of strangers").

180. *See id.* ("We use the term 'friend' in its traditional meaning, as developed by Aristotle.")

relationship.¹⁸¹

Again, we see that Shaffer and Cochran assume that legal representation involves joint decision making (the lawyer and client are, in this sense, “collaborators”), and that decision making involves moral choices (they collaborate “in the good”).¹⁸² Again, following Aristotle, Shaffer, and Cochran agree that friendship (and thus the lawyer-client relationship) is, ideally, a “school for virtue.”¹⁸³ Like a friendship, the lawyer-client relationship can present moral issues that allow both lawyers and clients to better learn to care for others and present opportunities for conversations that allow the collaborators to see more clearly the truth about themselves and the situation they face.¹⁸⁴ Finally, both friendships and lawyer-client relationships involve a shared deliberation about what constitutes a good course of action in a given situation.¹⁸⁵

The friendship relationship relativizes the moral framework of professionalism through which contemporary lawyers and clients are likely to view the lawyer-client relationship: “When a client is your friend,” Shaffer and Cochran write, “client interest is not so much a purpose as a project.”¹⁸⁶ On this account, friends are interested in becoming better, more virtuous people, even if this involves some degree of mutual moral correction.¹⁸⁷

Many would acknowledge that there is a surface appeal to thinking of the lawyer-client relationship in terms of friendship, especially since Shaffer and Cochran are careful to structure the model in a way that attempts to assure that lawyers and clients are equals in the moral deliberation that ensues.¹⁸⁸ On the other hand, however, why should ethical practices for a public profession like law be built around a confessedly controversial notion of what lawyer-client

181. *See id.* at 49 (“Most importantly, friendship is a relationship in which the lawyer sees the client as a collaborator in the good.”).

182. *See id.* at 49, 50 (“Friends can help us to be better people by helping us to determine the right thing to do.”).

183. *See id.* at 47.

184. *See id.* at 45–50.

185. *Id.* at 50 (noting that “[d]etermining what the good requires can be a difficult task” and such “hard thought” requires the help of friends).

186. *Id.* at 50.

187. *See id.* at 47, 48 (citing AQUINAS, *supra* note 94, II, Q.33, 1333–41).

188. *See id.* at 48–52.

relationships should be? Would it not be better to build those rules and practices around moral conceptions that we all share?¹⁸⁹ What is the use of a self-consciously particularist model of the good life as applied to lawyer-client relations?

Professor Cochran's legal ethics scholarship provides a number of answers to these questions.¹⁹⁰ First, he does not concede that the sought-after neutral principles around which we might build a universally acceptable model of legal ethics are available.¹⁹¹ Indeed, as noted earlier, he argues that adverting to broad concepts like "professionalism" to paper over our disagreements is likely to do more harm than good.¹⁹² So, what is to be done?

Interestingly, Cochran makes moves that operate on parallel tracks. The separatist Cochran suggests that even if mainstream practitioners might be uncomfortable with practicing law under a friendship model, some lawyers should do so anyway.¹⁹³ And he buttresses this suggestion with articles attempting to demonstrate that legal rules do not place the friendship model beyond the pale.¹⁹⁴ The Model Rules, he notes, specifically authorize lawyers to bring moral judgments into the lawyer client relationship.¹⁹⁵ More dramatically, relevant ethical standards do not prevent cooperation between lawyers to generate a good result in a given situation, even where such an approach might result in an individual client receiving a smaller recovery than might otherwise be attainable.¹⁹⁶ Even criminal lawyers, he argues, may want to

189. See, e.g., Alice Woolley & W. Bradley Wendel, *Legal Ethics and Moral Character*, 23 GEO. J. LEGAL ETHICS 1065, 1084 (2010) (highlighting the importance of a lawyer's "ability to analyze the moral commitments embedded in and underlying the legal system within which she works").

190. See *infra* notes 193–202 and accompanying text.

191. See Cochran, *supra* note 110, at 308–12 ("There is probably less common moral ground within the legal profession now than in 1983.").

192. See *id.* at 311.

193. See SHAFFER & COCHRAN, *supra* note 146, at 48–49 (discussing four reasons lawyers may be hesitant to discuss moral issues under the friendship model).

194. See *id.* at 52 ("The local nature of law practice makes it likely that lawyers will share, or at least be familiar with, the moral values of their clients, as clients are likely to be attracted to lawyers who share their moral values.").

195. See *id.* at 48 n.11 (citing to MODEL RULES OF PROF'L CONDUCT r. 2.1 (AM. BAR ASS'N 2008)) (stating "in rendering advice, a lawyer may refer not only to the law but to other considerations such as moral . . . factors, that may be relevant to the client's situation").

196. See Robert F. Cochran, Jr., *Collaborative Practice's Radical Possibilities for the Legal Profession: "[Two Lawyers and Two Clients] for the Situation,"* 11 PEPP. DISP. RESOL. L.J. 229 (2011); Robert F. Cochran, Jr., *Legal Ethics and Collaborative Practice Ethics*, 38 HOFSTRA L. REV. 537 (2009); Robert F. Cochran, Jr., *Louis D. Brandeis and the Lawyer Advocacy System*, 40 PEPP. L. REV. 351 (2013).

discuss the moral benefits of confession with their clients (although Cochran is quick to add that there may be good reasons that a client will not want to confess).¹⁹⁷

At the same time, Cochran's thickly conceived account of what appropriate lawyer-client relations should look like gives rise to bold "conversionist" suggestions about what the law governing all lawyer-client relationships should become.¹⁹⁸ For example, Cochran advocates that tort standards and professional rules should place greater limits on the tactical decisions that lawyers can make without client consent when such decisions have the potential to inflict relational harms to their clients.¹⁹⁹ Similarly, he argues that the common requirement that clients plead either "guilty" or "not guilty" has moral ramifications for victims and thus should be abandoned.²⁰⁰ In the absence of a plea, the state would simply be obligated to prove its case as it currently must, but the client should otherwise not be forced to make a plea that a layperson would likely perceive to be a lie.²⁰¹

V. COCHRAN AS COMMUNITY ORGANIZER

As detailed above, Professor Cochran's theoretical and practical contributions to legal scholarship have been substantial and innovative. That said, his most lasting contributions will, in all likelihood, have been made in his work as an important force in helping create and sustain Christian legal scholarship as a field of study. His most influential work, the 2001 Yale University Press volume *Christian Perspectives on Legal Thought* (co-edited with Michael McConnell and Angela Carmella) was the most visible American contribution to self-consciously Christian legal scholarship in decades; so much so, that when Harold Berman wrote the foreword to the book, he suggested

197. See Cochran, *Roadblock or Bridge*, *supra* note 152, at 222.

198. See, e.g., SHAFFER & COCHRAN, *supra* note 146, at 49 (recommending a drastic shift in how lawyers operate and how they are perceived).

199. See Robert F. Cochran, Jr., *ADR, the ABA, and Client Control: A Proposal that the Model Rules Require Lawyers to Present ADR Options to Clients*, 41 S. TEX. L. REV. 183, 197–98 (1999); Robert F. Cochran, Jr., *Legal Representation and the Next Steps Toward Client Control: Attorney Malpractice for the Failure to Allow the Client to Control Negotiation and Pursue Alternatives to Litigation*, 47 WASH. & LEE L. REV. 819, 836–40 (1990); Robert F. Cochran, Jr., *Professional Rules and ADR: Control of Alternative Dispute Resolution Under the ABA Ethics 2000 Commission Proposal and Other Professional Responsibility Standards*, 28 FORDHAM URB. L.J. 895, 901–06 (2001).

200. See Cochran, *Roadblock or Bridge*, *supra* note 152, at 219–20.

201. See *id.* at 227–28; Robert F. Cochran, Jr., *How Do You Plead, Guilty or Not Guilty?: Does the Plea Inquiry Violate the Defendant's Right to Silence?*, 26 CARDOZO L. REV. 1409, 1411 (2005).

that Christianity “ha[d] been a taboo subject in twentieth-century American legal education.”²⁰² The book consisted of essays that began as presentations at meetings of the Law Professors Christian Fellowship, a group that—in the early years—Professor Cochran almost single-handedly organized, recruited speakers for, raised money to support, and in which he remained the leading force for the roughly two decades of its existence.²⁰³ Once Professor Cochran became the founding director of the Nootbaar Institute on Law, Religion, and Ethics at Pepperdine, the annual conferences there became unofficial gathering and networking sites for meetings of Christian law professors.²⁰⁴

Cochran’s ecumenical evangelical approach was visible from the beginning in these meetings, as well as in the books and articles they spawned. As already noted, the 1997 *Journal of Legal Education* symposium featured articles from Catholic, Calvinist, Anabaptist, and Lutheran perspectives about law.²⁰⁵ *Christian Perspectives on Legal Thought*, still in print nearly 20 years later, widens the circle, featuring articles not only from differing theological perspectives, but also offering Christian perspectives influenced by critical race theory, feminist thought, economic analysis, and other approaches.²⁰⁶

Cochran and Richard Garnett organized a group of Catholic and Protestant law professors that produced not only a statement of common Christian principles regarding law, “but many significant friendships among those in [the] two communities.”²⁰⁷ Pepperdine conferences yielded edited volumes published by elite university presses and *Pepperdine Law Review* symposia on subjects including the relationship between law and Christian love, “higher law,” and the Bible.²⁰⁸ These conferences included not only a diversity of theological perspectives, but also those from other faiths and no religious faith.²⁰⁹ And Cochran’s organizing and editing skills resulted in at

202. See CHRISTIAN PERSPECTIVES, *supra* note 20, at xi.

203. See *id.* at xv.

204. See *Annual Conference*, PEPP. L., <https://law.pepperdine.edu/nootbaar-institute/annual-conference/> (last visited Nov. 2, 2019).

205. See, e.g., Cochran, *supra* note 68.

206. See, e.g., CHRISTIAN PERSPECTIVES, *supra* note 20.

207. See Joint Statement by Evangelical and Catholic Legal Scholars, *Evangelicals and Catholics Together on Law: The Lord of Heaven and Earth*, 3 J. CHRISTIAN LEGAL THOUGHT 2, 2 (2013), <https://mirrorofjustice.blogs.com/files/evangelicals-and-catholics-together-on-law—the-lord-of-heaven-and-earth.pdf>.

208. See, e.g., AGAPE, JUSTICE, AND THE LAW, *supra* note 44; LAW AND THE BIBLE, *supra* note 27; Symposium, *Is There a Higher Law? Does it Matter?*, 36 PEPP. L. REV. 5 (2009).

209. See Symposium, *supra* note 208.

least one volume on religious legal thought that moved beyond Christian ecumenism to interfaith dialogue.²¹⁰

The conferences Cochran organized and the publications that resulted did more than simply provide new resources for those desiring to understand the relevance of Christian thought for law, legal theory, and law practice. They provided venues for scholarly publications that facilitated the research itself, opportunities for friendships and professional relationships, a forum for discussion and presentation of ideas that were and remain, for the most part, outside the mainstream of legal scholarship, and an enhanced understanding between scholars of different backgrounds and viewpoints. Future scholars interested in the relationship between Christianity and law will find more and better resources available because of Professor Cochran's investment in others.

VI. CONCLUSION

Even if one appreciates the evident generosity of spirit underlying Professor Cochran's approach to law and legal theory, one might still wonder whether it makes sense to be an ecumenical evangelical. Is it possible to hold together so many disparate approaches (even disparate Christian approaches) with intellectual integrity?

In one of his contributions to *Christian Perspectives on Legal Thought*, Professor Cochran provides three possible answers.²¹¹ The first he calls "balance," suggesting that Christians should be able to gain insights from each other's traditions.²¹² "Synthesists," he writes,

remind Christians that we can learn from culture; conversionists remind us that we can have an impact on this fallen world; separatists remind us of the temptations . . . that accompany involvement with culture; dualists remind us that our views are also corrupted; and culturalists remind us of the ways in which culture may already coincide with Christian teaching.²¹³

210. See ROBERT F. COCHRAN, JR., *FAITH AND LAW: HOW RELIGIOUS TRADITIONS FROM CALVINISM TO ISLAM VIEW AMERICAN LAW* (2008).

211. See *CHRISTIAN PERSPECTIVES*, *supra* note 20, at 250.

212. See *id.*

213. See *id.*

Cochran also argues that responding to culture in one's own moment requires us to "read[] the times."²¹⁴ Taking the Bible as his primary source, Cochran notes that different figures responded to issues of law and politics in different ways, depending on the situation in which the people of God found themselves.²¹⁵ Finally, he argues that the proper response may be a "matter of calling. . . . God might call some to play one role and others to play another."²¹⁶

While I agree with all three of Professor Cochran's suggestions on this front, I am not sure they would be persuasive to, for example, a "committed" separatist.²¹⁷ I suspect that these suggestions are more helpful to explain the benefits of separatist or synthesist thought to conversionists, like Cochran and me, than, for example, to persuade committed separatists that secular culture has lessons to teach them after all, or to persuade committed culturalists that the Bible requires their preferred culture to change its ways in important respects.

My guess is that the drivers of Professor Cochran's ecumenical evangelicalism run deeper than these particular arguments and reflect more the Christian virtues of humility and modesty (too little seen in current times) than a tightly reasoned conception of the way Niebuhr's five categories might somehow fit together after all. One could argue (and I now shall) that for Professor Cochran, the more important categories for his approach to law and legal theory are the old evangelical categories of *creature* and *redeemed sinner*. The full body of Professor Cochran's work reflects not only a commitment to the life of the mind as usually understood, but also a commitment of the heart—his understanding of himself as finite and therefore not in possession of all knowledge, fallen and therefore needing correction wherever it can be found, and called to love the Lord his God with heart and mind and soul and strength and his neighbor as himself.

214. *See id.*

215. *See id.* at 250–51.

216. *See id.* at 251.

217. *See discussion supra* Section III.B.2(a).