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## Bob Cochran on Law and Lawyering: A Catholic Perspective

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# Bob Cochran on Law and Lawyering: A Catholic Perspective

Stephen M. Bainbridge\*

## *Abstract*

*This Essay is a contribution to a festschrift honoring Pepperdine law professor Robert Cochran. In addition to his many other professional accomplishments, Professor Cochran is a leading figure in the study of Law and Christianity.*

*One strain of Law and Christianity scholarship focuses on normative critiques of substantive legal issues based on Christian theology. In other words, it seeks to make the civil law more moral; i.e., to conform Man's Law to God's Law. A second strain seeks to help lawyers deal with the difficulties inherent in being a Christian and a lawyer. As Cochran has put it, one might ask "whether there is a connection between religious faith and what ordinary lawyers do in ordinary law offices on ordinary Wednesday afternoons."*

*Cochran's work has intersected both possibilities. In Part II of this Article, I tackle his analysis of the extent to which we should strive to harmonize God's and Man's Law. In Part III, I turn to Cochran's analysis of the Christian lawyer's vocation. In both parts, I come at his work from the perspective of a Roman Catholic called upon to give religious assent to both Christian scripture and, where I differ from Cochran, the Church's Magisterium.*

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\* William D. Warren Distinguished Professor of Law, UCLA School of Law. I thank the *Pepperdine Law Review* for this opportunity to honor my friend Bob Cochran and thank Bob for commenting on an earlier draft. Any remaining errors are solely my fault.

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## I. INTRODUCTION

As my late friend William Stuntz observed, it long was conventional wisdom that “religious convictions should be kept out of debates about law and politics—or, if that is too much to ask, religious believers should at least translate their beliefs into secular language when participating in those debates.”<sup>1</sup> The prevalence of this attitude is, in very considerable part, due to the hostility of the secularists who dominate American law schools.<sup>2</sup> Yet, it also persists because of the reticence of Christian academics, many of whom have opted to hide their light under a bushel.<sup>3</sup>

Few modern legal academics have done more to resist this conventional wisdom than Bob Cochran. Even a cursory glance at his curriculum vitae shows numerous conferences, books, and articles in which he has addressed the intersection of law, faith, and morality.<sup>4</sup> In addition to standing firmly against the secularization of the legal academy, Cochran also has consistently encouraged Christian legal academics to devote scholarly attention to the intersection of law and faith.<sup>5</sup> By any measure, he thus stands as one of the most important figures in Christian legal scholarship.

But what is the point of Christian legal scholarship and what are its goals? One possibility is that Christian legal scholarship should be concerned with

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1. William J. Stuntz, *Christian Legal Theory*, 116 HARV. L. REV. 1707, 1711 (2003) (footnote omitted).

2. See *id.* at 1707 (observing that the legal academy “tends to treat serious religious commitment as a disease—call it the germ theory of religion—perhaps especially if the religion is Christianity”); see also Teresa Stanton Collett, *A Catholic Perspective on Law School Diversity Requirements*, 15 U. ST. THOMAS L.J. 322, 329 (2019) (reporting on a survey finding that “law professors were almost six times more likely to agree with the statement ‘I don’t believe in God’ than members of the general public”).

3. See Collett, *supra* note 2, at 329 (“Christian law professors felt less free to express their true beliefs at work than all others combined, with Catholic professors registering more discomfort than their Protestant colleagues.”); Robert F. Cochran, Jr., *Christian Perspectives on Law and Legal Scholarship*, 47 J. LEGAL EDUC. 1, 12 (1997) (“Currently, there is little explicitly Christian analysis of legal issues. Part of that may be an unwarranted prejudice against Christian viewpoints in the academy.”).

4. Robert F. Cochran, Jr., *Curriculum Vitae*, <https://law.pepperdine.edu/faculty-research/robert-cochran/cv-robert-cochran.pdf> (last visited Oct. 1, 2019).

5. See Cochran, *supra* note 3, at 12 (blaming the lack of “explicitly Christian analysis of legal issues” in part on “the lack of serious attention by Christians to the critique that our faith can make of the legal issues of the day”). This point has also been driven home by David Skeel. See David A. Skeel, Jr., *The Unbearable Lightness of Christian Legal Scholarship*, 57 EMORY L.J. 1471, 1486–87 (2008) (“Secular academics may have closed the door, but for much of the twentieth century, theologically conservative Christians were not asking anyone to let them in. Especially was this so with Protestant evangelicals.”).

offering normative critiques of substantive legal issues based on Christian theology.<sup>6</sup> In other words, the point of studying the intersection of law and Christianity may be to make the civil law more moral; i.e., to conform Man's Law to God's Law. Alternatively, the point of Christian legal scholarship might be to help lawyers deal with the difficulties inherent in being a Christian and a lawyer. As Cochran has put it, one might ask "whether there is a connection between religious faith and what ordinary lawyers do in ordinary law offices on ordinary Wednesday afternoons."<sup>7</sup>

Cochran's work has intersected both possibilities. In Part II of this Article, I tackle his analysis of the extent to which we should strive to harmonize God's and Man's Laws.<sup>8</sup> In Part III, I turn to Cochran's analysis of the Christian lawyer's vocation.<sup>9</sup> In both parts, I come at his work from the perspective of a Roman Catholic called upon to give religious assent to both Christian scripture and, where I differ from Cochran, the Church's Magisterium.<sup>10</sup>

## II. MAKING MAN'S LAW AS MORAL AS PRACTICABLE

### A. *A Taxonomy of Christian Perspectives on the Law*

Cochran posits that Christians share a commitment to the proposition that "Jesus is sovereign over history," but disagree sharply about what Christ's sovereignty means "for the relationship between the Christian and the state."<sup>11</sup> This disagreement drives a "substantial debate" about "what the laws in modern America should look like, in light of biblical laws, stories, virtues, and principles."<sup>12</sup> Cochran provides a guide to this debate in which, following

6. See, e.g., Skeel, *supra* note 5, at 1479 (defining Christian legal scholarship, in part, as providing "a normative theory derived from Christian scripture or tradition").

7. Robert F. Cochran, Jr., *Introduction: Can the Ordinary Practice of Law Be A Religious Calling?*, 32 PEPP. L. REV. 373, 374 (2005) (using one of Tom Shaffer's phrases).

8. See *infra* Part II.

9. See *infra* Part III.

10. See 1983 CODE OF CANON LAW c.752 (stating that "a religious submission of the intellect and will must be given to a doctrine which the Supreme Pontiff or the college of bishops declares concerning faith or morals when they exercise the authentic magisterium, even if they do not intend to proclaim it by definitive act"). For a useful discussion of Church teaching on the moral obligations attendant upon those—such as lawyers—who participate in the political and legal processes of the state, see Robert K. Vischer, *Faith, Pluralism, and the Practice of Law*, 43 CATH. LAW. 17 (2004).

11. Cochran, *supra* note 3, at 4.

12. *Id.*

Niebuhr, Cochran divides the universe of Christian legal scholars into five categories: Synthesists, who see Christ as being above the culture and seek to synthesize faith and law; Conversionists, who see Christ as transforming the culture and believe the law can be an instrument for helping to convert society; Separatists, who see Christ standing against the culture and therefore withdraw from the world of law and politics; Dualists, who see Christ and the culture as being in paradox and thus see no reason for their faith to intersect with their vocation in the law; and Culturalists, who draw no distinction between the Christ and culture and thus see no tension between faith and law.<sup>13</sup>

Cochran situates the Thomist strain of Catholic legal thought in the Synthesist tradition, while cautioning that St. Thomas Aquinas would find it more difficult to synthesize “Christ with today’s culture (or cultures)” than with the Greek culture that was influential in Thomas’s time.<sup>14</sup> Important modern American legal and political thinkers nevertheless have done much to synthesize America’s cultural traditions with Catholic faith, such as John Courtney Murray’s synthesis of democracy and Catholicism.<sup>15</sup>

Cochran’s taxonomy seems broadly correct. Many modern American Catholic legal scholars would accept the Synthesist proposition “that basic human goods (e.g., life, knowledge, friendship) are the same across cultures and that reason will lead to common methods of achieving those goods.”<sup>16</sup> That proposition is consistent with the Church’s teaching in the key Vatican II document, *Gaudium et Spes*,<sup>17</sup> which emphasized that the common good “takes on an increasingly universal complexion and consequently involves rights and duties to the whole human race.”<sup>18</sup> Accordingly, human “rights and duties . . . are universal and inviolable.”<sup>19</sup>

Similarly, many American Catholic legal scholars likely would accept the

13. *Id.* at 5–11.

14. *See id.* at 5–6.

15. *Id.* at 5 n.16.

16. *Id.* at 5–6.

17. “*Gaudium et Spes*, ‘Joy and Hope’ in English, is the Church’s constitution on the modern world.” Rev. Patrick Flanagan, *Sustaining the Import of Labor Unions: A Common Good Approach*, 50 J. CATH. LEGAL STUD. 205, 210 (2011). It “was one of the sixteen formal documents promulgated by Vatican II.” *Id.* at 209.

18. *Gaudium et Spes*, *Joy and Hope: A Pastoral Constitution on the Church in the Modern World* ¶ 26 (Second Vatican Council, 1965), reprinted in *CATHOLIC SOCIAL THOUGHT: ENCYCLICALS AND DOCUMENTS FROM POPE LEO XIII TO POPE FRANCIS 174, 190* (David J. O’Brien & Thomas A. Shannon eds., 3d rev. ed. 2016).

19. *Id.*

Synthesist belief that natural law provides a vehicle for developing “a common agenda for Christians and non-Christians in the legal arena.”<sup>20</sup> After all, St. Thomas Aquinas famously derived many of his insights about natural law from non-Christian sources.<sup>21</sup> Natural law thus provides Catholics with “a non-religious link to non-Catholics, non-Christians, and non-theists.”<sup>22</sup>

At the same time, however, many Catholic scholars likely would accept the Conversionist view that all cultures—like humanity itself—are fallen and incapable of true reform absent a salvific transformation.<sup>23</sup> As Mark Sargent observed, for example, Catholic social thought recognizes that Man’s Law cannot fully embody the common good.<sup>24</sup> Instead, while the culture can be redeemed, its transformation will come by grace rather than by human effort.<sup>25</sup>

#### B. *Is Conformity of Divine and Human Law the Purpose of Christian Legal Scholarship?*

At the core of both the Synthesist and Conversionist projects is the belief that the purpose of legal scholarship is to make “law and legal theory more moral.”<sup>26</sup> But does that mean that we should strive to conform Man’s law with God’s law? Cochran’s answer is no.

In a book chapter co-authored with Dallas Willard, Cochran offers an extended meditation on the disparities between God’s moral law and the Mosaic

20. Cochran, *supra* note 3, at 6.

21. See Gregory A. Kalscheur, Book Review, 24 J.L. & RELIGION 739, 743 (2009) (reviewing RECOVERING SELF-EVIDENT TRUTHS: CATHOLIC PERSPECTIVES ON AMERICAN LAW (2007) (noting that “Aquinas and other natural law thinkers knew that they could learn from non-Christians”).

22. James V. Schall, S.J., *The Natural Law Bibliography*, 40 AM. J. JURIS. 157, 166 (1995).

23. See Cochran, *supra* note 3, at 6–7 (discussing the Conversionist view of the impact of the Fall on culture).

24. See Mark A. Sargent, *Utility, the Good and Civic Happiness: A Catholic Critique of Law and Economics*, 44 J. CATH. LEGAL STUD. 35, 37 (2005) (stating that Catholic thought recognizes that “no human social, political, or legal arrangements in the fallen world can embody the Good”).

25. See John J. Coughlin, *Sacrifice, the Common Good, and the Catholic Lawyer*, 3 U. ST. THOMAS L.J. 6, 11 (2005) (arguing that “the Catholic tradition . . . teaches that individuals and culture may be transformed through redemptive grace”).

26. See, e.g., Stuntz, *supra* note 1, at 1714–15 (discussing how this purpose has been identified by scholars working in both the Augustinian and Reformed traditions).

civil law.<sup>27</sup> He draws particular attention to Christ's teaching on divorce.<sup>28</sup> When asked by the Pharisees whether divorce was lawful, Christ responded that "what God has joined together, no human being must separate."<sup>29</sup> When the Pharisees objected that the Mosaic law authorized divorce, Christ explained that it was "[b]ecause of the hardness of your hearts Moses allowed you to divorce your wives, but from the beginning it was not so."<sup>30</sup> The Mosaic civil law thus recognized that, as a result of the Fall's deleterious effect on human nature, humans are unable to conform to the demands of divine law.<sup>31</sup>

Conforming to those demands requires one to find the narrow gate and walk the constricted road, which few can do.<sup>32</sup> As C.S. Lewis observed, "The total and secure transformation of a natural love into a mode of Charity is a work so difficult that perhaps no fallen man has ever come within sight of doing it perfectly."<sup>33</sup> The problem is that most humans "are neither saints nor heroes."<sup>34</sup> Accordingly, society cannot assume "heroic or even consistently virtuous behavior" by its members.<sup>35</sup>

The problem is not just that fallen humans are incapable of complying with God's law in full measure. Mandating that they attempt to do so could easily backfire. Penn Dawson draws on popular culture—specifically, *The Blues Brothers* (1980)—to illustrate the point:

An example of this idea in practice may again be found in the Blues Brothers' actions. Throughout the story, the brothers lie to each other and to most of the people they cross. Their act of lying (i.e., making a knowingly false statement to deceive), however, breaks no particular positive law. This would not be the result if the brothers' lying amounted to "perjury" (making a knowingly false statement in order

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27. Robert F. Cochran, Jr. & Dallas Willard, *The Kingdom of God, Law, and the Heart*, in *LAW AND THE BIBLE: JUSTICE, MERCY, AND LEGAL INSTITUTIONS* 151, 177–79 (Robert F. Cochran, Jr. & David VanDrunen eds., 2013).

28. *Id.* at 179.

29. *Matthew* 19:6 (New American Bible).

30. *Matthew* 19:8.

31. Cochran & Willard, *supra* note 27, at 175.

32. *See Matthew* 7:14 ("How narrow the gate and constricted the road that leads to life. And those who find it are few.").

33. C.S. LEWIS, *THE FOUR LOVES* 134 (1960).

34. Donald McCloskey, *Bourgeois Virtue*, 63 *AM. SCHOLAR*, 177, 178 (1994).

35. MICHAEL NOVAK, *TOWARD A THEOLOGY OF THE CORPORATION* 28 (rev. ed. 1990).



to deceive while under a legally enforceable duty to tell the truth). States typically prohibit and penalize perjury but not lying. To enforce a law against lying in all of its forms, because of the pervasiveness of such a vice, would result in a totalitarian, and therefore objectionable, form of government. To maintain society, Human Laws should only prohibit those vices from which most people can abstain and, more importantly, those actions that harm other people.<sup>36</sup>

In sum, because all men have sinned,<sup>37</sup> society's laws must accept behavior that falls short of ideal virtues.<sup>38</sup>

Cochran's realism on this point is consistent with Catholic social teaching. As Cochran points out, for example, St. Thomas Aquinas argued that if "the multitude of imperfect men" are required by the civil law to bear "the burdens of those who are virtuous, viz., that they should abstain from all evil," they will inevitably "break out into yet greater evils."<sup>39</sup> More recently, Pope John Paul II acknowledged that "the purpose of civil law is different and more

36. W. Penn Dawson, *What Can the Blues Brothers Teach Us About the Common Good? A Primer on Thomas Aquinas' Philosophy of Natural Law*, 60 *LOY. L. REV.* 205, 232 (2014) (footnotes omitted).

37. *Romans* 3:22–23 ("For there is no distinction; all have sinned and are deprived of the glory of God.").

38. The late Bill Stuntz, himself a prominent Christian legal scholar, likewise argued that "immorality and illegality . . . cannot possibly *be* coextensive." Stuntz, *supra* note 1, at 1735. Stuntz, however, attributed the disparity between man's law and that of God to the vast breadth of sin:

Christians believe that "all have sinned, and come short of the glory of God," yet punishing "all" is not an option for human governments. We cannot all be inmates. Who would be left to pay for the prisons? Who would serve as guards? The moral law may be absolute, but positive law must be relative. Different societies at different times and places have different behavioral problems, and different resources with which to combat those problems. Law has to respond to those differences. It follows that lines must be drawn not between good and bad but between bad and worse—and also between that which is practically possible and that which isn't. . . .

So the positive law can forbid only a small fraction of what the moral law forbids, if the moral law is seen in Christian terms. Jesus made this clear by defining murder as anger and adultery as lust. A decent society could aspire to punish all murder, but all anger? Perhaps, in some imaginable society (though certainly not ours), law enforcers could punish adultery while avoiding selective prosecution. But not lust. By making sin so expansive, by defining it so radically, Jesus removed any possible justification for the kind of oppressive theocratic state that nonbelievers fear most. Christianity does not imply, indeed does not permit, a Taliban-like regime that seeks to forbid all sin.

*Id.* at 1735, 1737 (footnotes omitted).

39. Cochran & Willard, *supra* note 27, at 178.

limited in scope than that of the moral law.”<sup>40</sup> John Paul II’s conclusion derived from his recognition that the civil law cannot truly transform society because that law cannot change the inner nature of human hearts.<sup>41</sup> He further recognized that legal change could actually backfire if human hearts were not converted.<sup>42</sup>

### C. *Christian Legal Scholarship and Making Man’s Law More Moral*

Although Cochran accepts that the civil law inevitably permits conduct that deviates from God’s law,<sup>43</sup> he contends that it remains appropriate for civil law to strive towards conformity with the latter.<sup>44</sup> Once again, Cochran’s position is broadly consistent with Catholic social thought. Indeed, in making this argument, Cochran explicitly follows St. Thomas Aquinas, who argued that the purpose of the civil law “is to lead men to virtue, not suddenly, but gradually.”<sup>45</sup>

Cochran’s argument finds further support in both ancient and modern Catholic sources. St. Augustine, for example, taught both that “perfection is for the City of God, not the City of Man,” but also that we should still strive for “the creation of an economy and society that is more virtuous, rather than less.”<sup>46</sup> More recently, *Gaudium et Spes* assigned to the laity the task of seeing “that the divine law is inscribed into [the] secular life” of the earthly city.<sup>47</sup>

40. Pope John Paul II, *Evangelium Vitae* ¶ 71 (1995), [http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf\\_jp-ii\\_enc\\_25031995\\_evangelium-vitae.html](http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae.html).

41. See John M. Breen, *John Paul II, The Structures of Sin and the Limits of Law*, 52 ST. LOUIS U. L.J. 317, 322 (2008) (arguing that Pope John Paul II recognized that, “because it cannot reach the recesses of the human heart, law is severely limited in bringing about true social transformation”).

42. See *id.* at 338 (“John Paul was also mindful of the fact that ‘even when such a situation can be changed in its structural and institutional aspects by the force of law . . . the change [often] proves to be incomplete, of short duration and ultimately vain and ineffective—not to say counterproductive if the people directly or indirectly responsible for that situation are not converted.’” (alterations in original)).

43. See Cochran & Willard, *supra* note 27, at 176 (noting that “the Mosaic law permitted and regulated activity that deviated from God’s moral law”).

44. See *id.* at 177 (“Jesus’s comments on divorce suggest that it is appropriate for legislation to seek to get back to God’s moral law.”).

45. *Id.* at 178.

46. Sargent, *supra* note 24, at 55.

47. *Gaudium et Spes*, *supra* note 18, ¶ 43. In contrast, it seems safe to assume that Bill Stuntz would have had doubts about the extent to which we can discern the divine law well enough to inscribe it into positive human law:

The proposition that God’s agenda governs (the idea for which Scalia was castigated) does

Towards that end, Cochran offers a distinctively Christian framework for critiquing the law; namely, agapic love.<sup>48</sup> Cochran argues that Jesus defined agape as “humility, service, sacrifice, forgiving, healing, feeding, teaching, and elevating others.”<sup>49</sup> Cochran further argues that Jesus frequently interpreted and assessed the Mosaic law by whether it achieved and promoted those values.<sup>50</sup> Although Jesus had little to say about the civil law of his time, Cochran—following John Calvin—extends Jesus’s teachings to argue “that the civil law of all nations should be judged by the standard of agape.”<sup>51</sup>

As Cochran acknowledges, “The idea that law should be a manifestation of love seems odd to one immersed in today’s legal academy, where law is generally seen as merely an exercise of power or efficiency.”<sup>52</sup> I must admit that it strikes me as somewhat odd. Indeed, I have elsewhere argued that, at least in some settings, agape is both too indeterminate and high a standard to be useful as a tool of legal analysis.<sup>53</sup> Instead, I argued, that law should hold up agape as an aspirational ideal.<sup>54</sup> Cochran obviously is more optimistic than I on this point, but even he acknowledges that agape often will be a difficult standard to apply.<sup>55</sup> As an example, he perceptively notes the problems posed by the law of war.<sup>56</sup> As he notes, it is hard to square an analytical frame focused on love of neighbor with an activity that involves mass killing.<sup>57</sup> Yet,

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not entail the proposition that Christians know what that agenda is. Indeed, for Christians the real implication is nearly the opposite. My conclusions are suspect because the reasoning that produces them is tainted by my sin. My faith makes me *less* confident about my views, legal and otherwise, not more so.

Stuntz, *supra* note 1, at 1726.

48. Robert F. Cochran, Jr., *Jesus, Agape, and Law*, in *AGAPE, JUSTICE, AND LAW: HOW MIGHT CHRISTIAN LOVE SHAPE LAW?* 13, 22 (Robert F. Cochran, Jr. & Zachary R. Calo eds., 2017) (“Jesus suggested that agape is the standard by which law should be judged.”).

49. *Id.* at 15.

50. *See id.* at 22–28 (discussing examples).

51. *Id.* at 23.

52. *See* Robert F. Cochran, Jr., Book Review, 25 *J.L. & RELIGION* 249, 250 (2010) (reviewing *CHRISTIANITY AND LAW: AN INTRODUCTION* (2008)).

53. *See* Stephen M. Bainbridge, *Must Salmon Love Meinhard? Agape and Partnership Fiduciary Duties*, 17 *GREEN BAG 2D* 257, 265 (2014) (“Despite its attractiveness as a rhetorical device, *agapic* love is unsuitable as a legal standard.”).

54. *See id.* at 267 (arguing that although the law “should not mandate *agape*, the law can point to it as an aspirational ideal”).

55. *See* Cochran, *supra* note 48, at 13 (“Among the many challenging questions concerning Jesus’s kingdom is its relationship to agape and law.”).

56. *See id.* at 35.

57. *Id.* at 35–36.

he replies, we see agape's simultaneous emphasis on "love of the enemy and protection of those at risk" in the international law principle of just war.<sup>58</sup>

My difficulty with that line of argument reflects one of my longstanding concerns about Christian legal scholarship; namely, that Christian principles—such as agape—are useful at defining broad principles but are less helpful when operationalizing those principles as technical rules of law dealing with precise problems. It may well be the case that "the principles of Judeo-Christian ethics offer compelling moral reasons for . . . support[ing] tax reform,"<sup>59</sup> for example, but it is not obvious that those principles tell us very much about whether the top marginal tax rate should be thirty-nine or forty percent.

Having said that, however, it must be acknowledged that it is hard to find any school of jurisprudence that offers us a plausible answer to that question. Jurisprudential theories tend to be better at big picture questions than narrow technical issues. I suspect Cochran therefore would answer my objection by positing that agape's function is to ask questions such as "does this law promote human flourishing" or "is this law just," not to fine tune tax rates.

If so, that would be a very Catholic response. When it comes to issues such as the degree of state intervention in the economy, for example, the Church outlines basic principles but recognizes substantial latitude with respect to their translation into public policy.<sup>60</sup> Nowhere, for example, does the Church state what percentage of the economy should be controlled by the state, thus leaving a great deal of room for prudential judgment by the laity.<sup>61</sup>

### III. CHRISTIANIZING THE LEGAL PROFESSION

Even assuming therefore that agape provides a useful analytical framework for assessing the justice of Man's Law, to what extent can Christian legal

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58. *Id.* at 35.

59. Susan Pace Hamill, *An Argument for Tax Reform Based on Judeo-Christian Ethics*, 54 ALA. L. REV. 1, 5 (2002).

60. See Lucia A. Silecchia, *Environmental Ethics from the Perspectives of NEPA and Catholic Social Teaching: Ecological Guidance for the 21st Century*, 28 WM. & MARY ENVTL. L. & POL'Y REV. 659, 700 (2004) (noting that "Catholic social thought generally lays out broad principles rather than proposes concrete suggestions").

61. See Michael J. Nader, *Towards Reconciliation and Consensus: Catholic Social Thought and Entitlements*, 11 NOTRE DAME J.L. ETHICS & PUB. POL'Y 419, 421 (1997) ("[W]hile Catholic social thought provides moral guidance on welfare policy, it allows a wide range of prudential judgments on its application to the practical, particular[,] and diverse problems of distributive justice.").

scholarship further the goal of making Man's Law more moral? The late Bill Stuntz perceptively argued that Christian legal scholarship often has little to say about the law that is unique and distinctive.<sup>62</sup> Instead, he suggested it would be more useful to focus on "Christianizing the legal profession."<sup>63</sup>

To see why, consider Jesus's occupation for most of his adult life: he made tables, or whatever it was that ancient Middle Eastern carpenters made. Were the tables he made distinctive? Did he use different wood or a different manufacturing process than other carpenters used? The likely answer is no—at least, the gospel accounts offer no reason to think otherwise.

Now change the question: focus less on the noun and more on the verb. Instead of asking whether Jesus's *tables* were different, ask whether he *made* the tables differently—whether his motivations and attitudes toward his work, the ways he treated his customers and his coworker, differed from the practices of other carpenters. The answer to *that* question is surely yes. . . . Jesus said to "love thy neighbour as thyself": genuinely want the best for those with whom you deal (as you want the best for yourself); treat them as something other than tools to advance your own interests. These commands might seem too gauzy to have any real impact, but if taken seriously, the impact is huge—on carpenters, lawyers, or anyone else.<sup>64</sup>

We therefore turn to Cochran's concern with the problem of being a Christian and a lawyer, focusing on two specific aspects of lawyering; namely, lawyering as viewed through the Christian conception of work and lawyering as the expression of agapic love.<sup>65</sup>

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62. See Stuntz, *supra* note 1, at 1721 ("Non-Christians might be excused for wondering why the transcendent God seems to think like a typical American law professor.").

63. *Id.*

64. *Id.* at 1721–22 (footnotes omitted).

65. See Cochran, *supra* note 3, at 12; Thomas L. Shaffer & Robert F. Cochran, Jr., *Lawyers as Strangers and Friends: A Reply to Professor Sammons*, 18 UALR L.J. 69, 69 (1995).

A. *Even Lawyers Participate in God's Creative Work*

Both Protestant Conversionists—as Cochran defines them—and Catholics believe humanity has a role in God's plan to reverse the effects of the Fall and renew His Creation.<sup>66</sup> Indeed, they both teach that all of us who profess the name of Christ are called upon to participate in that creative work, which implies that those of us who labor in the vineyards of the law should promote a legal system that not only restrains evil but also strives to promote the common good.<sup>67</sup> As Cochran explains:

Calvin recognized that the fall—the entry of sin into the world—had infected every aspect of life, but he looked before the fall, to creation as a basis for transforming culture. God originally created a good world. We are called to imitate God not only in his holiness, but in his creativity as well. That creativity can renew God's creation. Every person can be a part of that renewal. Calvin argued that there is no hierarchy of vocations; every vocation (including law professor) has high dignity, for all are called to renew their area of life for Christ.<sup>68</sup>

Although Cochran thus assigns a Calvinist origin to the idea that humans properly participate in God's creative work of renewing Creation, albeit with a nod to Augustine,<sup>69</sup> there is a strong Catholic tradition of encouraging such participation.<sup>70</sup>

Catholic social thought teaches that work is a means by which humans collaborate in God's ongoing act of creation.<sup>71</sup>

By his labor a man ordinarily supports himself and his family, is

66. See Cochran, *supra* note 3, at 7.

67. See *id.*

68. *Id.* (footnote omitted).

69. See *id.* (positing that the “recognition of culture's fallen state has been present, to some extent, throughout the history of Christianity—it was a central theme of Augustine—but it received renewed emphasis from the leaders of the Protestant Reformation”).

70. See Pope John Paul II, *Laborem Exercens* ¶ 27 (1981), reprinted in CATHOLIC SOCIAL THOUGHT: ENCYCLICALS AND DOCUMENTS FROM POPE LEO XIII TO POPE FRANCIS, *supra* note 18, at 380, 415–17.

71. See, e.g., *id.* ¶ 25. See generally Michael Novak, *Creation Theology*, in CO-CREATION AND CAPITALISM: JOHN PAUL II'S LABOREM EXERCENS 17 (John W. Houck & Oliver F. Williams eds. 1983) (discussing creation theology).

joined to his fellow men and serves them, and can exercise genuine charity and be a partner in the work of bringing divine creation to perfection. Indeed, we hold that through labor offered to God man is associated with the redemptive work of Jesus Christ, Who conferred an eminent dignity on labor when at Nazareth He worked with His own hands.<sup>72</sup>

The Creator hid untold riches and possibilities within creation, which it is humanity's vocation to discover and develop through work.<sup>73</sup> Humanity's capacity for creativity is thus one of the ways in which people were made in God's image.<sup>74</sup> This innate capacity, however, requires development. Accordingly, work is not only a process by which we collaborate in God's creative transformation of the world, but also a process by which we are transformed into a more fully human person.<sup>75</sup> This process of self-fulfillment is both a duty and a privilege.<sup>76</sup>

### B. *Lawyering as Friendship*

But how do we operationalize this idea? Put another way, how do we translate it into tangible advice for Christian lawyers thinking about the intersection of their faith and their vocation?

Cochran's extensive writing on professional responsibility acknowledges that there are many received models of effective lawyering, but his longstanding preference is for that of "lawyer-as-friend."<sup>77</sup> What Cochran means by

72. *Gaudium et Spes*, *supra* note 18, ¶ 67.

73. See Novak, *supra* note 35, at 28 (stating that it is the vocation of all people to discover their possibilities for the common good of all).

74. See *id.* at 33.

75. See, e.g., Pope John Paul II, *Centesimus Annus* pt. 3, § 4, ¶¶ 32–33 (1991), reprinted in CATHOLIC SOCIAL THOUGHT: ENCYCLICALS AND DOCUMENTS FROM POPE LEO XIII TO POPE FRANCIS, *supra* note 18, at 473, 498–500.

76. See, e.g., Pope Paul VI, *Populorum Progressio* pt. 1, ¶ 15 (1967), reprinted in CATHOLIC SOCIAL THOUGHT: ENCYCLICALS AND DOCUMENTS FROM POPE LEO XIII TO POPE FRANCIS, *supra* note 18, at 253, 256–57 (stating that "every man is born to seek self-fulfillment" and that humans are "endowed with intellect and free will").

77. Shaffer & Cochran, Jr., *supra* note 65, at 69. I speculate that his work on that model of lawyering informed and perhaps even prompted his more recent work on law and agape. It would be interesting to see him return to these issues to draw more specific parallels between agapic concepts such as servant leadership and lawyering.

that phrase requires careful unpacking. It is clear that he does not mean Aristotelean “true friends[hip].”<sup>78</sup> Likewise, he does not mean friend as most of us use the term in colloquial speech.<sup>79</sup> Instead, he deploys the term as an analogy that captures a moral relationship in which two (or more) people can discuss moral issues.<sup>80</sup> Specifically, he argues that “[l]awyers should identify moral issues as moral issues and encourage clients to make decisions based on their deepest moral values.”<sup>81</sup>

In the process of conducting such a discourse, the lawyer must avoid two extremes. First, out of respect for the client’s human dignity, the lawyer must not impose his or her own moral values on the client.<sup>82</sup> On the other hand, the lawyer must not treat the client’s problem as a mere technical legal question devoid of moral content.<sup>83</sup> Instead, the lawyer-as-friend “would raise and discuss such issues with a client in the manner that friends raise and discuss such issues, neither ignoring such matters nor imposing her views on the client.”<sup>84</sup>

78. See Shaffer & Cochran, *supra* note 65, at 70 (rejecting claim by a critic that they “think the lawyer and client could be or should be what Aristotle called true friends”). For a detailed discussion of the Aristotelean concept of true friendship, see Ethan J. Leib, *Friendship & the Law*, 54 UCLA L. REV. 631, 648–52 (2007).

79. See Robert F. Cochran, Jr., *Enlightenment Liberalism, Lawyers, and the Future of Lawyer-Client Relations*, 33 CAMPBELL L. REV. 685, 691 (2011) (“This notion of friendship differs in important respects from the way that people commonly understand friendship today.”). Cochran quotes Robert Bellah on the key difference:

The traditional idea of friendship included a shared “commitment to the good.” For Aristotle and his successors, it was precisely the moral component of friendship that made it the indispensable basis of a good society. For it is one of the main duties of friends to help one another to be better persons: one must hold up a standard for one’s friend and be able to count on a true friend to do likewise. Traditionally, the opposite of a friend is a flatterer, who tells one what one wants to hear and fails to tell one the truth.

*Id.* (quoting ROBERT N. BELLAH ET AL., *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE* 115 (3d ed. 2008)).

80. See Shaffer & Cochran, *supra* note 77, at 70 (“We chose the analogy of friends because we think it captures the combination of moral responsibility, respect for client dignity, and moral discourse that should be part of the lawyer-client relationship.”).

81. Robert F. Cochran, Jr., *The Rule of Law(yers)*, 65 MO. L. REV. 571, 587 (2000) (reviewing WILLIAM H. SIMON, *THE PRACTICE OF JUSTICE: A THEORY OF LAWYERS’ ETHICS* (1998)). Cochran’s position is not uncontroversial. See generally John J. Coughlin, *Sacrifice, the Common Good, and the Catholic Lawyer*, 3 U. ST. THOMAS L.J. 6, 14–19 (2005) (discussing the debate between Stephen Pepper and David Luban over the relevance of moral values to legal practice).

82. See Cochran, *supra* note 81, at 590 (suggesting that “authoritarian models of lawyering are inconsistent with client dignity”).

83. See *id.* (criticizing a view of lawyering in which “legal problems become primarily technical problems for the lawyer”).

84. *Id.* at 594.



Together, “lawyer and client would seek to resolve issues based on the client’s moral values.”<sup>85</sup>

This process of moral discourse that Cochran sees at the heart of the lawyer-as-friend model has direct implications for the lawyer’s participation in God’s creative process. Not only do lawyers striving to be their client’s friend help the client resolve disputes or transact business, such lawyers are also themselves becoming more fully human. Anthony Kronman wrote that:

[E]arlier generations of American lawyers conceived their highest goal to be the attainment of a wisdom that lies beyond technique—a wisdom about human beings and their tangled affairs that anyone who wishes to provide real deliberative counsel must possess. They understood this wisdom to be a character trait that one acquires only by becoming a person of good judgment, and not just an expert in the law.<sup>86</sup>

The moral discourse between lawyer and client is the means by which the virtue of wisdom is forged. Sadly, however, as Cochran notes, the modern practice of law is making it increasingly difficult for lawyers and clients to engage in the kind of deep relationships that traditionally were part of how lawyers participated in creation:

[T]he growing tendency of clients to hire law firms for narrow legal jobs and of lawyers to devote themselves to narrow specialties have reduced opportunities for lawyers to aid clients in the deliberative process. Lawyers neither build the long term relationships nor develop the big picture that they need to give deliberative advice. All that they can give clients is technical advice. The problem is compounded because practical wisdom is a skill learned through practice; the reduction in opportunities to exercise it diminishes a lawyer’s opportunity to learn it.

Other developments within large law firms also undercut the possibility of deliberative wisdom. Law firms demand increasing numbers of hours from their lawyers. Many lawyers do little more than

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85. *Id.*

86. ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 2 (1993).

work, eat, and sleep. Practical wisdom is a dispositional trait that requires one “to entertain the widest possible diversity of points of view, and to explore these in a mood of deepening sympathy, while retaining the spirit of aloofness on which sound judgment also critically depends.” For most, developing this ability requires breadth of experience, and the modern practice of law provides little opportunity for broadening one’s experience.

In addition, the increased focus on making money within law firms undercuts the possibility of deliberative wisdom. A generation ago, the culture of law firms suggested that lawyers ought to care about things other than making money—money was to be of secondary importance. The focus on money within firms today undercuts both the sympathy and the detachment that are required for prudent counseling.<sup>87</sup>

Under such conditions, the lawyer’s vocation fails to promote—indeed, undermines—human flourishing by both client and lawyer.

If Cochran is correct that the soul-deadening drudgery of much modern law firm practice is a symptom of the more fundamental problem of the radical secularization of the legal profession,<sup>88</sup> as I believe him to be, what is the answer? Cochran’s work in this area strikes me as being broadly consistent with Bill Stuntz’s suggestion that we focus on Christianizing the legal profession.<sup>89</sup> The point is not that the law should become a theocratic profession open only to Christians, but rather to draw on the insights offered by the centuries of Christian thinking about work and human relations.<sup>90</sup>

In Catholic social teaching, for example, the Church speaks not just to the faithful but to the entire world. As the *Compendium of the Social Doctrine of*

87. Robert F. Cochran, Jr., *Lawyers and Virtues*, 71 NOTRE DAME L. REV. 707, 716 (1996) (footnotes omitted) (book review).

88. Cochran observes that “[l]aw schools and bar associations separate the professional from the personal. What one’s church, synagogue, or other community of memory teaches is relegated to one’s personal life, not something which should have an impact on what one does as a professional.” 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, 315 (2000).

89. See *supra* text accompanying note 63 (quoting Stuntz’s suggested focus on “Christianizing the legal profession”).

90. See Cochran, *supra* note 88, at 315 (discussing how religious and moral traditions possess wisdom that should be drawn upon).

*the Church* explains:

The [teaching] has been presented in such a way as to be useful not only from within (*ab intra*), that is among Catholics, but also from outside (*ab extra*). In fact, those who share the same Baptism with us, as well as the followers of other Religions and all people of good will, can find herein fruitful occasions for reflection and a common motivation for the integral development of every person and the whole person.<sup>91</sup>

To be sure, we live in a secular society, one of whose foundational principles is claimed to be a wall of separation between church and state.<sup>92</sup> Even so, however, there are good reasons to take seriously the Church's social teaching. Most notably, the Church has two millennia of "hands-on experience" with a multitude of social ills in its role as "the single largest non-governmental provider of social services."<sup>93</sup> Few other social actors, if any, can match that body of knowledge and practical wisdom.<sup>94</sup>

Catholic social teaching may not have specifically addressed the specific problems of large law firm practice, but that teaching has direct bearing on the concerns Cochran raises. In *Centesimus Annus*, for example, Pope John Paul II expressed his deep concern for the alienation experienced by workers:

Alienation is found also in work, when it is organized so as to ensure maximum returns and profits with no concern whether the worker, through his own labor, grows or diminishes as a person, either through increased sharing in a genuinely supportive community or through increased isolation in a maze of relationships marked by de-

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91. Letter from Angelo Sodano to Pope John Paul II (June 29, 2004), in PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH (2004).

92. See Thomas Jefferson, *Jefferson's Letter to the Danbury Baptists*, LIBR. CONGRESS, <https://loc.gov/loc/lcib/9806/danpre.html> (last visited Oct. 2, 2019) ("[The American] legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' thus building a wall of separation between Church & State.").

93. Lucia A. Silecchia, *Catholic Social Teaching and Its Impact on American Law*, 1 J. CATH. SOC. THOUGHT 277, 292 (2004).

94. See Cochran, *supra* note 88, at 315 (discussing the centuries of Christian thinking of work and human relations).

structive competitiveness and estrangement, in which he is considered only a means and not an end.<sup>95</sup>

Likewise, the *Compendium* criticizes the alienation that is attributable “to over-working, to work-as-career that often takes on more importance than other human and necessary aspects, to excessive demands of work that makes family life unstable and sometimes impossible.”<sup>96</sup>

We see precisely such alienation in large law firms, where the emphasis on leverage and billable hours creates conditions that are “hostile to any attorney’s search for a balanced life.”<sup>97</sup> Because BigLaw<sup>98</sup> treats them as disposable proletariats, young associates are especially vulnerable to this problem.<sup>99</sup> Yet, even highly successful partners often find their sizeable incomes leaving them emotionally and spiritually unsatisfied.<sup>100</sup>

Cochran’s solution depends on lawyers finding meaning in their work, which requires that they be engaged in meaningful work.<sup>101</sup> But how to ensure that their work has meaning? The Church’s response would be to call BigLaw—like all business owners and managers—to respect the human dignity of their employees and fellow partners.<sup>102</sup> Indeed, it is through social

95. Pope John Paul II, *supra* note 75, pt. 3, § 4, ¶ 41.

96. PONTIFICAL COUNCIL, *supra* note 91, ch. 6, pt. III, ¶ 280.

97. Michael Ariens, Book Review, 60 FED. LAW., Oct. 2013, at 87 (reviewing STEPHEN J. HARPER, *THE LAWYER BUBBLE: A PROFESSION IN CRISIS* (2013)).

98. “Although a term of art subject to various interpretations, ‘BigLaw’ generally refers to large and typically prestigious law firms employing at least 100 attorneys, which pay market rates to their associates.” Brook E. Gotberg, *Technically Bankrupt*, 48 SETON HALL L. REV. 111, 114 n.9 (2017). The rapid “growth and pre-eminence of BigLaw” has been called “the biggest change of our time in the profession and in the way law is practiced today.” Wood R. Foster Jr., *A Profession on Edge, Part 5: The Phenomenon of BigLaw*, 77 OR. ST. B. BULL., Aug.–Sept. 2017, at 26, 27.

99. Robert Granfield observes that:

Many scholars have commented on the extensive alienation that lawyers experience, particularly within large law firms. Such alienation can contribute to high levels of stress and job dissatisfaction. Indeed, many lawyers lament that the practice of law is merely a business and that the atmosphere of law firm practice is bureaucratically stifling, leaving many lawyers chronically unfulfilled and discontented. Much of the alienation that lawyers experience, particularly in larger law firms, stems from the “proletarian-like” conditions that operate within these firms.

Robert Granfield, *The Meaning of Pro Bono: Institutional Variations in Professional Obligations among Lawyers*, 41 LAW & SOC’Y REV. 113, 134 (2007) (citations omitted).

100. See Ariens, *supra* note 97, at 87 (“Meanwhile, partner profits and attorney dissatisfaction have risen in tandem as big firms’ lawyers make more money and enjoy it less.”).

101. Cochran, *supra* note 7, at 381.

102. See PONTIFICAL COUNCIL, *supra* note 91, ch. 7, pt. III, ¶ 344. In the *Compendium*, the Church

organizations, but especially the workplace, that humans grow and flourish.<sup>103</sup> The Church further argues that each social organization has an obligation to promote the common good, which it defines as “the sum total of those conditions of social living, whereby people are enabled more fully and more readily to achieve their own perfection.”<sup>104</sup> In order to do so, the workplace must become a “community of solidarity.”<sup>105</sup>

In the specific context of the legal profession, becoming such a community would entail an explicit embrace of so-called religious lawyering, which entails bringing to bear one’s religious beliefs and values on one’s legal work.<sup>106</sup> It would entail holding oneself morally accountable for the choices one makes about which clients to represent and the means by which one represents them.<sup>107</sup> As Cochran observes:

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teaches that:

*Business owners and management must not limit themselves to taking into account only the economic objectives of the company, the criteria for economic efficiency and the proper care of “capital” as the sum of the means of production. It is also their precise duty to respect concretely the human dignity of those who work within the company. These workers constitute “the firm’s most valuable asset” and the decisive factor of production.*

*Id.* (footnotes omitted). In a marginal comment on an earlier draft of this Essay, Cochran wrote:

This makes it sound like meaning comes solely from within the business, rather than from reflecting on the customers they serve. I assume the Church also focuses on the provision of service as a source of meaning. Part of the problem for many lawyers, esp. BigLaw lawyers is that many have no contact with the clients they serve and are very far removed from the customers who ultimately benefit from the services their clients provide. Note that in my introduction to the “Ordinary Lawyers” symposium, I suggest that meaning also should come from realizing that lawyers are contributing to building up commerce to the glory of God.

Stephen M. Bainbridge, *Bob Cochran on Law and Lawyering: A Catholic Perspective* (forthcoming 2020) (unpublished manuscript) (on file with the author).

103. *Gaudium et Spes*, *supra* note 18, ¶ 25 (asserting that “[t]hrough his dealings with others,” through reciprocal duties, and through fraternal dialogue “he develops all his gifts and is able to rise to his destiny”).

104. Pope John XXIII, *Mater et Magistra* pt. II, ¶ 65 (1961), reprinted in *CATHOLIC SOCIAL THOUGHT: ENCYCLICALS AND DOCUMENTS FROM POPE LEO XIII TO POPE FRANCIS*, *supra* note 18, at 87, 98.

105. PONTIFICAL COUNCIL, *supra* note 91, ch. 7, pt. III, ¶ 340.

106. See Amelia J. Uelmen, *Catholics and the Death Penalty—Lawyers, Jurors & Judges: Foreword*, 44 *J. CATH. LEGAL STUD.* 277, 279 (2005) (“The heart of ‘religious lawyering’ is to acknowledge how such beliefs inform one’s perspective and to address openly the questions and difficulties that arise when religious values are brought to bear on one’s work in the legal profession.”).

107. See Robert K. Vischer, *Heretics in the Temple of Law: The Promise and Peril of the Religious Lawyering Movement*, 19 *J.L. & RELIGION* 427, 485–86 (2004) (comparing religious lawyering to cause lawyering).

The clients a lawyer accepts and what she does for them is important. If a client is using the lawyer's services to produce a destructive, rather than a beneficial product, it is hard to argue that the lawyer is building a cathedral that glorifies God. The lawyer who wants to find meaning in work must be doing a worthwhile thing. Some lawyers may need to take another look at the clients they represent, the projects they further, and the way that they practice . . . .<sup>108</sup>

Christianizing the profession also would entail respecting the human dignity of one's fellow partners, associates, and other employees, by paying just wages and ensuring a work-life balance that allows one to do more than eat, sleep, and work.<sup>109</sup> It would use the law and legal processes as a means of remedying injustice and pressing society to respect the preferential option for the poor.<sup>110</sup>

Is it plausible to hope that BigLaw can somehow morph into a community founded on human flourishing rather than the billable hour and pursuit of profit?<sup>111</sup> Probably not. Although BigLaw emerged mainly from the large

108. Cochran, *supra* note 7, at 381.

109. As Rob Vischer observes:

At its best, religious faith motivates individuals to better themselves and their communities, to put others above self, and to invest with meaning the otherwise mundane, materialist conception of existence. Among lawyers, these qualities are sorely needed, both to heighten a lawyer's sense of satisfaction with their chosen vocation and to enrich the quality and ethical aspirations of the legal services provided. In other words, by infusing the practice of law with the sense of being an undeniably moral endeavor, the religious lawyering movement offers the vehicle by which lawyers can transcend the profit-driven malaise that has come to define modern legal practice.

Vischer, *supra* note 107, at 450–51; *see also* Cochran, *supra* note 7, at 379 (“While at the office, they can be good to secretaries, fellow lawyers, and clients. With the proceeds of their practice, they can provide a good living for their families.”); Coughlin, *supra* note 81, at 20 (“A Catholic understanding of nature and grace suggests that the lawyer may sometimes have to sacrifice opportunities for increased wealth and prestige in order to participate in the basic associations of a balanced life.”); Amelia J. Uelmen, *A View of the Legal Profession from a Mid-Twelfth-Century Monastery*, 71 *FORDHAM L. REV.* 1517, 1532 (2003) (noting that Bernard of Clairvaux's critique of the legal profession included “condemnation of the vices of greed and ambition which distort the ways in which knowledge may be used for the service of the larger community”).

110. *See* Uelmen, *supra* note 109, at 1533 (“Bernard also recognized the importance of legal process as a tool to help those who suffer injustice, particularly the poor . . . .”); *see also* Diarmuid F. O'Scannlain, *Catholic Lawyers in an Age of Secularism*, 43 *CATH. LAW.* 1, 5 (2004) (offering St. Ives as an example of how “lawyers, even in their ordinary and mundane work, do something that can be sanctifying”).

111. The question of whether public corporations should be managed so as to maximize shareholder profit presents rather different questions, which are beyond the scope of this Essay. *See generally*

WASP law firms, there has been a “gradual decline of the white-shoe ethos and Protestant values as important characteristics of the large firm, further eroding the religious and cultural identity of the WASP firm.”<sup>112</sup> In its place emerged a mercenary ethos in which lawyers see themselves as hired guns willing to serve anyone with the ability to pay.<sup>113</sup>

This dominant ethos is almost certainly too deeply entrenched to be changed.<sup>114</sup> Turning back the clock would be exceedingly difficult, if not impossible, especially in the face of the ongoing secularization of both the profession and the broader society.<sup>115</sup> For that matter, it is increasingly difficult for the legal profession to coalesce on any shared values, whether religious or secular in nature.<sup>116</sup>

But while Christianizing the profession seems an unattainable goal under present conditions, Christianizing individual workplaces may be a practical goal. To return to Stuntz’s discussion of Jesus’s work as a carpenter, Jesus did not try to change the carpentry industry of his time and place.<sup>117</sup> Instead, he gave an example of how an individual Christian practices his trade. Just as Jesus worked in a small family business, perhaps religious lawyers should withdraw from the legal mainstream and create new firms founded on integrating their faith into their professional lives.

Stephen M. Bainbridge, *The Bishops and the Corporate Stakeholder Debate*, 4 VILL. J.L. & INV. MGMT. 3 (2002) (discussing Catholic social teaching relating to corporate purpose).

112. Eli Wald, *The Rise and Fall of the WASP and Jewish Law Firms*, 60 STAN. L. REV. 1803, 1855 (2008).

113. See Russell G. Pearce & Amelia J. Uelmen, *Religious Lawyering in a Liberal Democracy: A Challenge and an Invitation*, 55 CASE W. RES. L. REV. 127, 148 (2004) (“Gradually the ‘hired gun’ image replaced the governing class as the dominant conception of the lawyer’s role.”).

114. See, e.g., James M. Jenkins, *What Does Religion Have to Do with Legal Ethics? A Response to Professor Allegritti*, 66 FORDHAM L. REV. 1167, 1168 (“Changing what is perhaps only legal piecemeal that is totally impersonal into a covenant relationship may simply be impossible.”). For an extended analysis of the barriers to fundamentally changing the nature of the legal profession, see Amelia J. Uelmen, *Can a Religious Person Be a Big Firm Litigator?*, 26 FORDHAM URB. L.J. 1069, 1097–1100 (1999).

115. John J. Coughlin, *Foreword*, 20 NOTRE DAME J.L. ETHICS & PUB. POL’Y 1, 9 (2006) (“The secularization of society’s public institutions and the legal profession . . . involves the intentional rejection and exclusion of religious values from public discourse.”). Accordingly, even if “many lawyers began to assert and act upon religious convictions in light of the belief that the profession involves a divine call, there would certainly remain many strong and entirely secular voices among lawyers in the public square.” *Id.* at 9–10.

116. See Vischer, *supra* note 107, at 441 (“Any attempt by the legal profession, as an overarching entity, to claim the mantle of community faces an uphill struggle with reality.”).

117. See Stuntz, *supra* note 1, at 1721–22.

What I have in mind here is a version of Rod Dreher’s “Benedict option” for lawyers. In his book, *The Benedict Option*,<sup>118</sup> Dreher proposes an “inward turn toward community-building” in which Christians “step back from the now-futile political projects and ambitions of the past four decades to cultivate and preserve a robustly Christian subculture within an increasingly hostile common culture.”<sup>119</sup> Just so, religious lawyers could come together to form law firms that—while conforming to relevant anti-discrimination laws—explicitly embrace religious values.

I wonder what Bob Cochran would make of that idea.

#### IV. CONCLUSION

In the preface to his great apologetic work, *Mere Christianity*, C.S. Lewis analogized the essential Christian doctrines—the core of the faith, if you will—to an entry hallway off of which branch many rooms.<sup>120</sup> Pushing the analogy further, he noted that a hallway is “not a place to live in.”<sup>121</sup> Instead, “it is in the rooms, not the hall, that there are fires and chairs and meals.”<sup>122</sup>

Given that most of us who claim the name of Christ likely have proceeded into one of the rooms, there is an ongoing risk that Christian legal scholarship

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118. See ROD DREHER, *THE BENEDICT OPTION: A STRATEGY FOR CHRISTIANS IN A POST-CHRISTIAN NATION* (2017).

119. Damon Linker, *The Benedict Option: Why the Religious Right Is Considering an All-Out Withdrawal from Politics*, WEEK (May 19, 2015), <http://theweek.com/articles/555734/benedict-option-why-religious-right-considering-allout-withdrawal-from-politics>. As Paul Horwitz explains:

The “Benedict” in “Benedict option” refers to St. Benedict, who “left Rome . . . out of disgust with its decadence” and pursued a hermit’s existence, eventually forming a strictly ruled monastic order. The story of St. Benedict and the argument for turning inward in response to a decadent or unfriendly “empire” and building insular communities as conservators of traditions and bulwarks against the “new dark ages” that inspired the “Benedict option” is taken from ALASDAIR MCINTYRE, *AFTER VIRTUE* 263 (3d ed. 2007). But it has resonances with some of the statements made by a contemporary Benedict, Pope Benedict XVI, who speculated prior to his pontificate that the Roman Catholic Church might find itself “exist[ing] in small, seemingly insignificant groups that nonetheless live in an intensive struggle against evil and bring the good into the world—that let God in.” Although the words are not Benedict’s, his views were associated during his papacy with interest in a “‘smaller-but-purer’ church.”

Paul Horwitz, *Against Martyrdom: A Liberal Argument for Accommodation of Religion*, 91 NOTRE DAME L. REV. 1301, 1306–07 n.23 (2016) (citations omitted).

120. C. S. LEWIS, *MERE CHRISTIANITY* xv (1952).

121. *Id.*

122. *Id.*



will degenerate into sectarian squabbling that does little to advance either human knowledge or the Kingdom of God. In his scholarship on the core topics discussed in this Article, however, Cochran has demonstrated that the hallway is a congenial place within which to conduct legal scholarship that takes the basics of the faith seriously without relying on narrowly sectarian premises. His work draws on Scripture but also the Church Fathers, the great Reformation theologians but also major Catholic thinkers, and the best Christian legal scholarship. In doing so, he has set a standard of excellence to which all Christian legal scholars should aspire.