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THE FOREST AND THE TREES: WHAT EDUCATIONAL PURPOSES CAN A COURSE ON CHRISTIAN LEGAL THOUGHT SERVE?

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We have gathered to discuss the publication of a new law school textbook on *Christian Legal Thought*.¹ Many law school textbooks are released every year and most do not receive the attention devoted to this one. The collective indifference that often meets the release of a new legal textbook comes about because most textbooks assemble excerpts from conventional sources to address fields of legal inquiry in conventional ways. This textbook, by contrast, sidesteps prevailing law school conventions. The authors assemble excerpts from sources seldom discussed in law school classrooms. They address topics of interest to the law school community from an often-neglected vantage point, and introduce questions that many law professors and law students might never think to ask.

Legal education seeks to accomplish a cluster of related goals. American law schools annually enroll a group of bright and accomplished students, most of whom possess a lay person's understanding of the laws governing our community and the governmental systems through which those laws are implemented. Over the course of three years or so, law schools seek to transform students into legal specialists who can help people pursue activities and navigate systems regulated by law. The transformation involves acquisition of a body of basic knowledge about law, development of several intellectual and practical skills, and internalization of norms important to the

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¹ PATRICK MCKINLEY BRENNAN & WILLIAM S. BREWBAKER III, *CHRISTIAN LEGAL THOUGHT: MATERIALS AND CASES* (Foundation Press 2017) [hereinafter CLT].

legal system. All American law schools more or less share these basic goals, while some may embrace additional educational objectives entailed by a unique mission or sense of identity.

In this short essay, I want to consider the educational purposes a course in Christian legal thought might serve. How could having such a course in the curriculum help accomplish the goals of legal education? One can understand why a law school with a Christian identity would want to offer this sort of course. Such law schools embrace a theology that helps adherents make sense of the world, including the world of human law. The less obvious question I want to consider is why a law school that does not subscribe to a particular theological understanding of the world (or that subscribes to a theological understanding grounded in some other set of religious beliefs) might find a course on Christian legal thought educationally beneficial for its students.

This essay has been shaped by my experience teaching at a secular law school and offering an occasional seminar called *Christian Perspectives on Legal Thought*.² Based on that experience, I will highlight three ways that reflecting on Christian views of law might further educational purposes significant to a secular law school (or non-Christian religious law school). First, sources from the Christian tradition can illuminate recurring questions about human law and jurisprudence. Second, given the influence of Christianity in the history of this country, a course on Christian legal thought can give insight into ideas significant to the development of our law and legal institutions. Third, many people making, applying, or seeking to comply with law in this country identify with some branch of the Christian tradition. A course on Christian legal thought can help students better understand those they will work with, represent, or attempt to persuade in their careers practicing law. Along the way, like other “perspectives” courses,

² The course name derived from the title of a book that came out shortly before I began offering the seminar. See MICHAEL W. MCCONNELL, ROBERT F. COCHRAN, JR. & ANGELA C. CARMELLA, *CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT* (Yale Univ. Press 2001). While I have filled out the syllabus over the years with other readings and do not require students to buy the book, chapters from the book are recommended reading for my seminar students.

a course in Christian legal thought may cast issues in a new light that can expose or call into question preexisting assumptions about law and legal institutions.

Some readers might better envision the educational benefits I am describing through an extended metaphor. Imagine that legal education is like studying a very old forest that stretches over many square miles of hills and mountains. Portions of the forest are heavily populated and others virtually uninhabited. Traveling through the forest can be difficult or hazardous for those who do not know what they are doing. The students in our legal education program are training to guide people through the forest and protect them from its hidden dangers. Sylvan pedagogy includes a variety of courses with different aims and methods of instruction. Many classes take students down among the trees, often in heavily traveled areas of the woods. Other courses give students the opportunity to climb to an elevated position and look out over a large swath of wooded terrain, observing the roads and paths that connect one part of the forest with another.

In this metaphor, I would analogize a course on Christian legal thought to ascending one particular mountain so that students may observe portions of the forest from above. Some things about a forest can be observed from any high elevation that gives a clear view of the forest canopy. This corresponds to my first point, that a course in Christian legal thought can introduce students to important recurring questions about law and jurisprudence. My second point focused on the role of Christianity in the development of U.S. law and legal institutions. Overlooking the forest from this particular mountain is valuable because our ancestors frequently climbed this height when laying out major roads through the woods. The third point was that many lawyers interact professionally with individuals who identify with branches of the Christian tradition. In metaphorical terms, many inhabitants of the forest live on this particular mountain and will be influenced by the unique perspectives available from this location. I offer illustrations of each point below.

I. CHRISTIAN LEGAL THEORY AND RECURRING JURISPRUDENTIAL ISSUES

Many recurring issues in jurisprudence could be introduced to students in a variety of ways, including through a course in Christian legal theory. Take for example the perennial problem of discerning the proper application of a statute or other authoritative legal text. Debates about statutory and constitutional interpretation sometimes focus on whether one should give primacy to the text of a legal provision or the interpreter's understanding of the provision's purpose.³ Saint Thomas Aquinas weighed in on this problem, arguing that one should sometimes ignore the text of a law in order to accomplish its purpose:

Suppose a siege, then a decree that the city gates are to be kept closed is a useful general measure for the public safety. Yet say some citizens among the defenders are being pursued by the enemy, the cost would be heavy were the gates not to be opened to them. So opened they are to be, against the letter of the decree, in order to defend that very common safety the ruling authority had in view.⁴

For Aquinas, the warrant for a decision “against the letter of the decree” flowed from the inherent shortsightedness of a human lawgiver: “Since he cannot envisage every individual case, the legislator frames a law to fit the majority of cases, his purpose being to serve the common welfare.”⁵ A counter-textual application of the law could be justified only in emergency situations when consultation with higher authority proved impossible. “[T]he very necessity carries a dispensation with it, for necessity knows no law.”⁶

³ See Richard H. Fallon, Jr., *Three Symmetries Between Textualist and Purposivist Theories of Statutory Interpretation—and the Irreducible Role of Values and Judgment Within Both*, 99 CORNELL L. REV. 685, 703 (2014) (“Over the past twenty-five years, scholars have labored to distinguish purpose-based and text-based theories of statutory interpretation.”).

⁴ See ST. THOMAS AQUINAS, *SUMMA THEOLOGIAE* pt. I-II, Q. 96, art. 6, reprinted in FROM IRENAEUS TO GROTIUS: A SOURCEBOOK IN CHRISTIAN POLITICAL THOUGHT, 322, 349 (Oliver O’Donovan & Joan Lockwood O’Donovan eds., Wm. B. Eerdmans Pub. Co. 1999) [hereinafter *SUMMA THEOLOGIAE*].

⁵ *Id.*

⁶ *Id.*

Reflecting on Aquinas' hypothetical can generate a good discussion about statutory interpretation and institutional competence. How would a textualist like Justice Antonin Scalia react to the situation Aquinas envisions?⁷ Should the text of an enactment control even when one believes that adhering to its terms will frustrate the intended purpose? Is there a downside to acknowledging extra-textual dispensations from legislation? Is Aquinas perhaps overstating the difficulty of foreseeing the need for textual exceptions? Is he overly confident that those regulated by a statute can accurately discern when departing from the text will best accomplish the enactment's purpose?⁸

A course on Christian legal thought might also illuminate the recurring jurisprudential issue of whether one should distinguish between moral norms and the demands of human law. The laws of the United States routinely impose standards of conduct that arguably fall short of moral ideals. We award damages for tortious conduct that causes injury, but do not recognize a "Good Samaritan" duty to rescue.⁹ We punish racially-motivated assaults, but not racial animosity *per se*.¹⁰ We permit efficient breach of a contract to pursue a better deal, with no consequence for violating one's word beyond compensation for loss of the bargain.¹¹ We allow someone to acquire ownership of another person's property through adverse possession by using

⁷ See, e.g., ANTONIN SCALIA, *A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW* 23–25 (Princeton Univ. Press) (1997) (endorsing textualist theory of statutory interpretation).

⁸ Inspired by this hypothetical from Aquinas, one of my fall 2017 seminar students decided to write about statutory interpretation. See Wheaton Webb, *Aquinas v. Scalia: A Case of Conflicting Approaches to Statutory Interpretation* (Dec. 22, 2017) (unpublished manuscript). He noted that Jesus engages in what might be viewed as purposivist interpretation of the Sabbath command when he allows his disciples to pluck grain when they are hungry on the theory that "[t]he Sabbath was made for man, not man for the Sabbath." *Mark* 2:27 (English Standard). See also Anthony Giambrone, O.P., *Scalia v. Aquinas: Lessons from the Saint for the Late, Great Justice*, *AMERICA* (Mar. 21, 2016), <https://www.americamagazine.org/issue/w-ho-judge>.

⁹ See CLT, *supra* note 1, at 556–58.

¹⁰ *Wisconsin v. Mitchell*, 508 U.S. 476, 485–86 (1993) ("a defendant's abstract beliefs, however obnoxious to most people, may not be taken into consideration by a sentencing judge," but jurisdictions may enact enhanced penalties for crimes motivated by racial bias).

¹¹ *Stop-N-Go, Inc. v. Uno-Ven Co.*, 184 F.3d 672, 680 (7th Cir. 1999) (finding efficient breach generally not treated as disfavored because in theory it makes society better off).

the property long enough without permission.¹² Many law students over the years have been troubled when they encounter legal lines like these, which seem to approve conduct falling short of relevant moral norms.

Christian theology has long wrestled with this question of the relationship between law and morality. Some may be surprised to learn that the mainstream theological position has endorsed adoption of human legal requirements less demanding than the moral standards imposed by divine law. Jesus seemingly drew a distinction between human and divine legal standards in his New Testament teaching against divorce. When the Pharisees challenged his position based on the provisions concerning divorce in the law of Moses, Jesus responded: “Because of your hardness of heart Moses allowed you to divorce your wives, but from the beginning it was not so.”¹³ Jesus’ response separated the moral ideal for marriage as described in Genesis from the more permissive Mosaic law, designed for regulation of less than ideal people. Aquinas drew a comparable distinction:

Law is laid down for a great number of people, of which the majority have no high standard of morality. Therefore it does not forbid all the vices, from which upright men can keep away, but only those grave ones which the average man can avoid, and chiefly those which do harm to others and have to be stopped if human society is to be maintained, such as murder and theft and so forth.¹⁴

In explaining why God laid down divine law in Scripture, rather than simply relying on a combination of human law and natural law, Aquinas argued that human law regulates external conduct, but divine law was needed to speak to the heart.¹⁵ Philipp Melanchthon, a central figure in the Lutheran reformation, similarly taught that civil law was directed at “external morality.”¹⁶

¹² *In re Haynes*, 283 B.R. 147, 151 (Bankr. S.D.N.Y. 2002) (“Adverse possession has been looked upon as being a form of legalized theft.”).

¹³ *Matthew* 19:8 (English Standard Version).

¹⁴ See *SUMMA THEOLOGIAE* Q. 96, art. 2, *supra* note 4, at 348.

¹⁵ *Id.* at Q. 91, art. 4, at 343.

¹⁶ Philipp Melanchthon, *Loci Communes*, reprinted in FROM IRENAEUS TO GROTIUS, *supra* note 4, at 650, 655.

While the reasons for distinguishing human legal standards from moral obligations could be taught in a variety of ways, focusing on Christian legal thought can make the need for such a distinction particularly apparent. What Aquinas calls the divine law—set forth in Scripture—often lays out incredibly demanding moral obligations. Categorizing lust as a form of adultery and unjustified anger as a form of murder, as Jesus does in the Sermon on the Mount,¹⁷ makes it clear that human governments lack the capacity to enforce the full range of moral expectations flowing from the law of God.¹⁸ When the law forbids coveting that which belongs to a neighbor,¹⁹ or requires love for one's enemies,²⁰ or commands a person to “be perfect, as your heavenly Father is perfect,”²¹ it becomes impossible to find anyone (apart from Christ) who is not a lawbreaker.²² As David Skeel and William Stuntz have argued, “[T]he Ten Commandments and the Sermon on the Mount are not made for the world of prosecutors’ offices and prisons, courtrooms and jury boxes.”²³ While the need to distinguish law and morality could be conveyed to students in many ways, highlighting the inability of human governments to enforce certain aspects of Christian moral teaching may be a particularly promising way to make the point.

II. CHRISTIAN LEGAL THOUGHT AND THE DEVELOPMENT OF WESTERN AND U.S. LAW

The previous Part discussed lessons about law that could be taught in a variety of ways, with a course on Christian legal thought offering only one of many options. Some things a Christian legal thought course might offer, though, would be distinct from other courses. For instance, a course in Christian legal thought can help students recognize some of the intellectual influences on the development of our law and legal institutions. Some features of our legal system—perhaps taken for granted by

¹⁷ *Matthew* 5:21-30 (English Standard Version).

¹⁸ David A. Skeel, Jr. & William J. Stuntz, *Christianity and the (Modest) Rule of Law*, 8 U. PA. J. CONST. L. 809, 816 (2006).

¹⁹ *Exodus* 20:17.

²⁰ *Matthew* 5:43.

²¹ *Matthew* 5:48.

²² Skeel & Stuntz, *supra* note 18, at 816.

²³ *Id.* at 819.

the average law student—make sense within a Christian worldview but would not necessarily follow from a different metaphysical or philosophical framework.

Consider, for example, the foundational premise of our system that those exercising governmental power should be subject to law and should respect limits on their power. A number of political systems in human history have emphasized the powers of those who govern without highlighting limits on those powers. A worldview that sees government as the most promising solution to the pressing problems of human existence can generate a strong impulse to throw off restraints on the exercise of governmental authority. On the other hand, the idea of a government under law makes perfect sense to those who, like many of our legal ancestors, believe that government derives its authority from God and is accountable to God for its exercise. In my seminar course, we read a passage from Saint Augustine in which he discusses the emperor Theodosius ordering the slaughter of 7,000 Thessalonians in retaliation for the murder of public officials. Saint Ambrose denied communion to Theodosius until he humbled himself and publicly repented.²⁴ The episode represents one milestone on the journey through which centuries of Christian teaching helped establish the principle that those wielding governmental authority must restrain their exercise of power because they themselves are subject to a still higher authority.

A course on Christian legal thought can likewise help students recognize theological influences underlying the checks and balances incorporated into our constitutional order. Calvinist theology in particular treads a careful line, combining a high view of government with a skeptical view of human nature. On the one hand, Calvin affirmed that God approves of “the function of magistrates” and “has strongly recommended it to us by . . . honourable titles.”²⁵ He called the civil authority “the most sacred, and by far the most honourable, of all stations in mortal life.”²⁶ At the same time, the esteem due to rulers was a

²⁴ Saint Augustine, *The City of God*, Book 5, Ch. 26, reprinted in FROM IRENAEUS TO GROTIUS, *supra* note 4, at 104, 142.

²⁵ John Calvin, *Institutes of the Christian Religion*, Book 4, Ch. 20, reprinted in FROM IRENAEUS TO GROTIUS, *supra* note 4, at 662, 670.

²⁶ *Id.* at 671.

function of the office, and not necessarily the character of the office holder, who might exhibit “folly, or cowardice, or cruelty, or wicked or flagitious manners.”²⁷ The defects of human nature, emphasized in Calvinist theology, moved Calvin to prefer governmental structures that distributed power among multiple individuals:

Owing, therefore, to the vices or defects of men, it is safer and more tolerable when several bear rule, that they may thus mutually assist, instruct, and admonish each other, and should any one be disposed to go too far, the others are censors and masters to curb his excess.²⁸

Calvin’s preferred form of civil government corresponds to the structure of ecclesiastical authority typical in Presbyterian churches, where congregations are overseen by a group of elders, rather than a single pastor.²⁹

Calvinist teachings on governmental structure are significant because of their impact on the generation that framed our constitutional order. King George reportedly thought of the American Revolution as a “Presbyterian war” due to the influence of Presbyterian and other Calvinist preaching on revolutionary sentiment.³⁰ Over half of the mainline churches in America in 1780 were of Calvinist denominations, including Congregational and Presbyterian churches.³¹ Marci Hamilton has described the influence of Calvinist teaching on participants in the Constitutional Convention:

Six of the Framers were Presbyterians, including a Presbyterian minister. The two most influential Framers on the question of the structure of the Constitution, James Wilson and James Madison, were steeped in the Presbyterian tradition,

²⁷ *Id.* at 679.

²⁸ *Id.* at 671.

²⁹ *See, e.g.*, THE BOOK OF CHURCH ORDER OF THE PRESBYTERIAN CHURCH IN AMERICA § 1-5 (2017), <http://www.pcaac.org/wp-content/uploads/2017/07/BCO-2017-for-Web-with-bookmarks.pdf>. (“Ecclesiastical jurisdiction is not a several, but a joint power, to be exercised by presbyters [elders] in courts. These courts may have jurisdiction over one or many churches, but they sustain such mutual relations as to realize the idea of the unity of the Church.”).

³⁰ Richard Gardiner, *The Presbyterian Rebellion?*, J. AM. REVOLUTION (Sept. 5, 2013), <https://allthingsliberty.com/2013/09/presbyterian-rebellion/>.

³¹ JOHN WITTE, JR. & JOEL A. NICHOLS, RELIGION AND THE AMERICAN CONSTITUTIONAL EXPERIMENT 110 (4th ed. 2016) (50.2% of mainline churches in 1780 Calvinist, including Congregationalist, Presbyterian and Reformed churches).

Wilson having been raised and educated as a Presbyterian in Scotland and Madison educated and mentored by the foremost Presbyterian theologian of the time at the College of New Jersey (now Princeton University), the Rev. John Witherspoon. More Framers attended the Presbyterian College of New Jersey than any other single educational institution, including Yale and Harvard. The ten who studied at the College of New Jersey—Bedford, Brearly, Davie, Dayton, Ellsworth, Houston, Madison, Alexander Martin, Luther Martin, and Paterson—were thoroughly educated on Calvinist principles through the curriculum and the compulsory twice-daily chapel.³²

Witherspoon's notes for his lectures on moral philosophy argue, for example, in a manner similar to Calvin, that "every good form of government, must be complex, so that the one principle may check the other," and that a balance was necessary to deal with the problem created when "every one draws to his own interest or inclination."³³

One can also hear distinct echoes of Calvinist theology in Federalist Number 51. Madison displays a very Calvinist distrust of human nature: "If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary."³⁴ He likewise follows Calvin in advocating structural solutions involving dispersion of governmental power: "Ambition must be made to counteract ambition. . . . It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature?"³⁵ A course on Christian legal thought can help students recognize some of the theological influences shaping these familiar constitutional themes.

I have not done much in my seminar to date on Christian theology and the Civil War era. However, one of my students wrote a paper last fall on Abraham Lincoln's Second Inaugural

³² Marci A. Hamilton, *The Calvinist Paradox of Distrust and Hope at the Constitutional Convention*, reprinted in CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT, *supra* note 2, at 293, 294.

³³ John Witherspoon, *Lectures on Moral Philosophy, Lecture XII: Of Civil Society*, in 6 THE WORKS OF THE REV. JOHN WITHERSPOON 114–15 (2005).

³⁴ THE FEDERALIST NO. 51 (James Madison), reprinted in THE FEDERALIST: A COMMENTARY ON THE CONSTITUTION OF THE UNITED STATES 337 (1788).

³⁵ *Id.*

Address, and I am considering including the address in my syllabus for future semesters.³⁶ Lincoln offered profound and humble theological reflections on the sovereignty and justice of God, the culpability of the entire nation for the sin of slavery, and the necessity of pursuing reconciliation when the war ended.³⁷ It was particularly interesting to learn that the President, in a meeting with cabinet members, hesitantly described issuance of the Emancipation Proclamation as his fulfillment of a vow to God.³⁸ In the law school environment, where some would be skeptical of any close connection between law and religion, it may be surprising to learn that the principle of freedom from involuntary servitude initially entered our law when it did because President Lincoln interpreted the events of the Civil War as a divine directive that slavery should be ended. These are insights that come through most clearly in a class on Christian legal theory.

III. UNIQUELY CHRISTIAN PERSPECTIVES ON LAW

We have looked at ways in which a course on Christian legal theory can illuminate questions about law generally and about the intellectual origins of our own legal traditions. Such a course also provides an opportunity to examine human law from a unique vantage point. In this respect, a Christian legal theory course can play a role similar to courses that examine legal institutions from the perspective of particular groups or social theories (for example, feminist legal theory or race and law) or using the tools of particular academic disciplines (for example, legal philosophy, law and economics, or law and sociology). Students who identify with the Christian tradition may find the course helpful in sorting out their own thinking about the legal

³⁶ See Courtney Smith, “*The Almighty Has His Own Purposes*”: Calvinist Themes in Lincoln’s Second Inaugural Address (Dec. 22, 2017) (unpublished manuscript).

³⁷ President Abraham Lincoln, Second Inaugural Address (Mar. 4, 1865). As Lincoln noted, both sides “read the same Bible and pray[ed] to the same God,” a useful reminder that Christian theology has been invoked historically to support causes good and bad. *Id.*

³⁸ Smith, *supra* note 36, at 14; see also ALLEN C. GUELZO, ABRAHAM LINCOLN: REDEEMER PRESIDENT 341–42 (1999); Nicholas Parrillo, *Lincoln’s Calvinist Transformation: Emancipation and War*, 46 CIV. WAR HIST. 227, 242–43 & n.60 (2000).

system, while other students can benefit from better understanding legal implications of a worldview shared by a significant contingent of their fellow citizens.

Christian theology has a great deal to say about the relationship between law and grace, justice and mercy. Scripture portrays God as the supreme lawgiver and Judge.³⁹ His law is good, reflecting his righteous character.⁴⁰ The judgments enforcing God's law are just.⁴¹ But humans regularly violate God's law. Apart from Christ, all humans stand before the divine judgment seat as lawbreakers in need of mercy.⁴² From a New Testament perspective, God's favor cannot be secured through obedience to law, but only through forgiveness extended by divine grace on the basis of faith.⁴³ In this light, perhaps the greatest thing God's law can do for us is to humble us, impelling us to seek God's mercy.⁴⁴

The insight that God's law should produce humility helps explain Jesus' ongoing conflict with the Pharisees as recounted in the gospels. The Pharisees placed great emphasis on obedience to the law of Moses as interpreted by their teachers. One of Jesus' parables featured a Pharisee who fundamentally misunderstood the purpose of divine law:

He also told this parable to some who trusted in themselves that they were righteous, and treated others with contempt: "Two men went up into the temple to pray, one a Pharisee and

³⁹ *Genesis* 18:25 (English Standard Version) ("Judge of all the earth"); *Exodus* 20:1-21 (Ten Commandments); *James* 4:12.

⁴⁰ *Psalms* 119; *Romans* 7:12.

⁴¹ *Revelation* 16:5, 7.

⁴² *Romans* 2:12, 3:23, 5:12-14.

⁴³ *Galatians* 2:16, 3:10; *Ephesians* 2:8-9. The law of God can highlight the broken relationship between man and God, but lacks the capacity to repair the breach. The real hope held out in the gospel is that God will remake the world and that sinners who put their faith in Christ become part of that new creation. 2 *Peter* 3:13; 2 *Corinthians* 5:17; *Galatians* 6:15.

⁴⁴ This function of divine law corresponds to the second of three appropriate "uses" of the law identified by Philipp Melanchthon. Philipp Melanchthon, *Loci Communes*, reprinted in FROM IRENAEUS TO GROTIUS, *supra* note 4, at 655. The first is a "civil" use of the law to restrain the external conduct of those subject to the disciplinary influence of a human government. *Id.* The second use is to reveal God's displeasure with sin, driving some people to embrace the comforts and blessings offered in the gospel. *Id.* at 655-56. The third use is to educate those who have been saved as to what works please God. *Id.* at 658. These three proper uses of the law were consistent with the Lutheran understanding that "[m]an does not have forgiveness of sins through the law, or by the merit of his own works." *Id.* at 655.

the other a tax collector. The Pharisee, standing by himself, prayed thus: “God, I thank you that I am not like other men, extortioners, unjust, adulterers, or even like this tax collector. I fast twice a week; I give tithes of all that I get.” But the tax collector, standing far off, would not even lift up his eyes to heaven, but beat his breast, saying, “God, be merciful to me, a sinner!” I tell you, this man went down to his house justified, rather than the other. For everyone who exalts himself will be humbled, but the one who humbles himself will be exalted.”⁴⁵

In Jesus’ telling, the tax collector was the one with the proper orientation toward the law of God. The law accomplished its purpose of humbling the tax collector, leading him to repent and seek God’s mercy. The Pharisee, on the other hand, fundamentally misapplied the law, treating it as a source of pride and a ground for exalting himself over others. The tax collector left the temple “justified”—that is, in a right relationship with God, as a recipient of God’s mercy—while the Pharisee did not.

A belief that all of fallen humanity stands condemned before the law of God should be a great leveler of spurious moral hierarchies and a powerful antidote to self-righteous tribalism. Self-righteousness typically rests on selective and inconsistent application of moral norms. The Pharisees, according to Jesus, imposed heavy legal burdens on others that they would not lift a finger to carry themselves.⁴⁶ They focused on the manageable minutiae of the law—like whether to tithe mint and other spices—while ignoring “weightier matters” like justice and mercy and the love of God.⁴⁷ They prioritized external actions and ignored the corruption of their own hearts, exalting the appearance of righteousness over the reality.⁴⁸ Those who

⁴⁵ *Luke* 18:9-14 (English Standard Version).

⁴⁶ *Matthew* 23:4 (“They tie up heavy burdens, hard to bear, and lay them on people’s shoulders, but they themselves are not willing to move them with their finger.”).

⁴⁷ *Matthew* 23:23 (“Woe to you, scribes and Pharisees, hypocrites! For you tithe mint and dill and cumin, and have neglected the weightier matters of the law: justice and mercy and faithfulness.”); *Luke* 11:42 (“But woe to you Pharisees! For you tithe mint and rue and every herb, and neglect justice and the love of God.”).

⁴⁸ *Matthew* 23:5 (“They do all their deeds to be seen by others.”); *Matthew* 23:27-28 (“Woe to you, scribes and Pharisees, hypocrites! For you are like whitewashed tombs, which outwardly appear beautiful, but within are full of dead people’s bones and all uncleanness. So you also outwardly appear righteous to others, but within you are full of hypocrisy and lawlessness.”); *Luke* 11:39 (“Now you Pharisees cleanse

followed Jesus, by contrast, were to apply the law to themselves before applying it to others, recognizing that whatever measure they used to evaluate others would also be used to evaluate them.⁴⁹

What ramifications might this Christian teaching about divine law have for human law and legal institutions? To start with, the Christian understanding that all are lawbreakers tends to undermine efforts to divide the world between “law-abiding” citizens and criminal wrongdoers. Some citizens do have more success complying with human law than others, but this does not make the two groups different in kind. It is a result of the separation of law and morality discussed earlier, which amounts to a distinction between two kinds of law.⁵⁰ Seeing fallen humanity as a community of lawbreakers should make Christians more understanding toward those who violate human law, and perhaps less harsh in their response.⁵¹ As Saint Augustine told the Roman judge Macedonius, “you need the mercy which you grant to others.”⁵²

The Christian account of God’s response to law breaking by his people also offers an interesting perspective from which to consider our systems for applying human law. Christian theology teaches us that God was willing to somehow, through the death and resurrection of Christ, absorb the cost for believers’ violations of divine law in order to re-establish fellowship with his fallen creatures. That suggests a very high value on the

the outside of the cup and of the dish, but inside you are full of greed and wickedness.”).

⁴⁹ *Matthew* 7:1-5 (“Judge not, that you be not judged. For with the judgment you pronounce you will be judged, and with the measure you use it will be measured to you. Why do you see the speck that is in your brother’s eye, but do not notice the log that is in your own eye? Or how can you say to your brother, ‘Let me take the speck out of your eye,’ when there is the log in your own eye? You hypocrite, first take the log out of your own eye, and then you will see clearly to take the speck out of your brother’s eye.”).

⁵⁰ Skeel & Stuntz, *supra* note 18, at 817.

⁵¹ William J. Stuntz, *Law and Grace*, 98 VA. L. REV. 367, 373–74 (2012) (“If you look at the long history of English and American criminal law, that history does not support the proposition that Christians tend to make justice systems more punitive. More the opposite: Christians and Christianity made English and early American criminal justice more lenient and more libertarian. The last 120 years have been the exception, not the rule.”).

⁵² Saint Augustine, Letter 153, *reprinted in* FROM IRENAEUS TO GROTIUS, *supra* note 4, at 125.

restoration of broken relationships. The New Testament indicates that God's treatment of believers, notwithstanding their sin, should inform believers' response toward those who harm them. Christians who experience God's forgiveness are instructed to extend forgiveness to others.⁵³ They are taught not to repay evil for evil, but rather to turn the other cheek.⁵⁴ They are to love their enemies and pray for those who persecute them.⁵⁵

The New Testament principle of non-retaliation for evil has produced centuries of theological debate over the extent to which Christians should participate in the operation of human legal systems or avail themselves of remedies afforded by human law. Some of the most interesting discussions in my seminar occur when we study the traditional Anabaptist teaching that Christians should have nothing to do with the temporal magistrate's earthly sword.⁵⁶ Many of my students are impressed by the Amish community's response to the tragic events of 2006, when a man held a group of Amish school girls

⁵³ *Colossians* 3:12-13 (English Standard Version) ("Put on then, as God's chosen ones, holy and beloved, compassionate hearts, kindness, humility, meekness, and patience, bearing with one another and, if one has a complaint against another, forgiving each other; as the Lord has forgiven you, so you also must forgive."); *Matthew* 6:14-15 ("For if you forgive others their trespasses, your heavenly Father will also forgive you, but if you do not forgive others their trespasses, neither will your Father forgive your trespasses.").

⁵⁴ *Romans* 12:17-19 ("Repay no one evil for evil, but give thought to do what is honorable in the sight of all. If possible, so far as it depends on you, live peaceably with all. Beloved, never avenge yourselves, but leave it to the wrath of God, for it is written, 'Vengeance is mine, I will repay, says the Lord.'"); *Matthew* 5:39 ("But I say to you, Do not resist the one who is evil. But if anyone slaps you on the right cheek, turn to him the other also.").

⁵⁵ *Matthew* 5:43-45.

⁵⁶ See The Schleithem Articles (1527), reprinted in FROM IRENAEUS TO GROTIUS, *supra* note 4, at 631, 635 ("Christ did not want to decide or judge between brother and brother concerning an inheritance, and he refused to do so (Luke 12:14f.). Thus, we should do likewise."). There is also good discussion around Martin Luther's less extreme teaching that Christians should not litigate to protect their personal interests. FROM IRENAEUS TO GROTIUS, *supra* note 4, at 590 ("A Christian should be so disposed that he will suffer every evil and injustice without avenging himself; neither will he seek legal redress in the courts but have utterly no need of temporal authority and law for his own sake."). *But see id.* at 600 ("It is permissible to use orderly [court] procedure[s] in demanding and obtaining your rights, but be careful not to have a vindictive heart."). Luther also teaches that one sometimes should litigate to protect interests of others, such as one's children, an exception that might often swallow the general rule. *Id.* at 599.

hostage, fatally shooting four and wounding several others before taking his own life.⁵⁷ After the shooting, Amish neighbors took the Scriptural teaching on forgiveness and reconciliation quite seriously, immediately reaching out to commiserate with the shooter's family and attending the shooter's funeral.⁵⁸

Even when Christians have felt called to participate in temporal politics, the biblical emphasis on peacemaking and reconciliation of broken relationships has sometimes profoundly shaped their engagement in political life. My seminar students read about the Reverend Martin Luther King Jr.'s efforts to organize nonviolent civil disobedience during the civil rights era.⁵⁹ We also consider Archbishop Desmond Tutu's description of his role chairing South Africa's post-apartheid Truth and Reconciliation Commission.⁶⁰ The involvement of Christian clergy in the leadership of the U.S. Civil Rights Movement and the movement opposing apartheid in South Africa helped produce positive social change in those two countries with perhaps less violence than otherwise might have been expected.

As far as I know, none of the lawyers-in-training taking my seminar has ever embraced an Anabaptist-inspired separatism that led them to renounce a career in law. Nevertheless, some have wrestled seriously with questions about when litigation is appropriate and how it should be conducted. American lawyers often pursue litigation in ways likely to exacerbate any rift

⁵⁷ David Kocieniewski & Gary Gately, *Man Shoots 11, Killing 4 Girls, in Amish School*, N.Y. TIMES (Oct. 3, 2006), <https://www.nytimes.com/2006/10/03/us/03amish.html>.

⁵⁸ DONALD B. KRAYBILL, STEVEN M. NOLT & DAVID L. WEAVER-ZERCHER, AMISH GRACE: HOW FORGIVENESS TRANSCENDED TRAGEDY 43–52 (2007). This year, we added video of the bond hearing at which family members of the nine victims in the Charleston church shooting forgave the killer. Mark Berman, “*I Forgive You.*” *Relatives of Charleston Church Shooting Victims Address Dylann Roof*, WASH. POST (June 19, 2015), https://www.washingtonpost.com/news/post-nation/wp/2015/06/19/i-forgive-you-relatives-of-charleston-church-victims-address-dylann-roof/?noredirect=on&utm_term=.e23523723f6b (“One by one, those who chose to speak at a bond hearing did not turn to anger. Instead, while he remained impassive, they offered him forgiveness and said they were praying for his soul, even as they described the pain of their losses.”).

⁵⁹ See generally Martin Luther King, Jr., *Letter from Birmingham Jail*, in 2 THE TEACHINGS OF MODERN CHRISTIANITY ON LAW, POLITICS, AND HUMAN NATURE 371–85 (John Witte Jr. & Frank S. Alexander, eds., Columbia Univ. Press 2006).

⁶⁰ See DESMOND MPELO TUTU, NO FUTURE WITHOUT FORGIVENESS 72–77 (Image Books 2000).

between the parties, rather than move them toward reconciliation. Each lawyer seeks to minimize the fault of his or her client and cast blame on other parties. Denying responsibility and shifting blame are not particularly promising ways to heal a fractured relationship.⁶¹ One response might be that litigation is not intended to promote reconciliation. It serves a less exalted purpose of resolving disputes between parties who cannot work out their differences by other means. But even that realization can be educational for students preparing to become lawyers, helping them to think through the full range of costs imposed by litigation and the real interests of their clients.

CONCLUSION

The New Testament author of Hebrews tells Christians that they have “come to Mount Zion and to the city of the living God, the heavenly Jerusalem.”⁶² Christians have historically believed that they live on the “mountain” where God dwells with his people. However, the arguments offered in this essay do not rest on that premise. A course on Christian legal thought can help accomplish educational goals important to any American law school, even if one does not embrace the presuppositions or conclusions of Christian theology.

⁶¹ KEN SANDE, *THE PEACEMAKER* 158 (2004) (“[Y]ou should not try to talk to others about their wrongs until you have dealt with your contribution to a problem.”).

⁶² *Hebrews* 12:22 (English Standard Version).