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Foreword, Symposium, The Religious Lawyering Movement: An Emerging Force in Legal Ethics and Professionalism

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SYMPOSIUM

FOREWORD:
THE RELIGIOUS LAWYERING MOVEMENT: AN EMERGING FORCE IN LEGAL ETHICS AND PROFESSIONALISM

Russell G. Pearce

INTEREST in the relevance of religion to a lawyer’s work is no longer limited to a small group of legal academics. Religious lawyering has today become a full fledged movement drawing upon a sizeable and significant body of scholarship, and attracting the attention of a growing number of lawyers and judges. In bringing together lawyers, legal scholars, clergy, and theologians from a variety of faiths—including no faith at all—to examine the implications of religion for lawyers, this conference marks another milestone for the religion and lawyering movement. It offers a comprehensive series of articles and essays exploring the implications of religion for lawyering with regard to both broad theoretical issues and specific ethical questions. It also offers a series of agendas for scholarship, teaching, bar programs, and congregational activities.

I. THE EMERGENCE OF THE RELIGIOUS LAWYERING MOVEMENT

Despite occasional attention from prominent authors, such as Bishop James A. Pike\(^1\) and theologian William Stringfellow,\(^2\) and a collection of essays included in a 1962 Association of American Law Schools book on the legal profession,\(^3\) religious lawyering did not emerge as a full fledged movement until recently. The earlier efforts had very limited success in entering mainstream legal scholarship and discourse. Moreover, they did not result in a body of literature that consists of texts responding to each other and progressively developing the complexity of the problems addressed and solutions proposed.\(^4\)

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The current movement originates in the scholarship of Professor Thomas Shaffer. Beginning in the late 1970s, his articles and his book *On Being a Christian Lawyer* offered a brilliant, comprehensive and powerful vision of religious lawyering in conflict with the established understanding of professional responsibility. Christian scholars, such as Joseph Allegretti, have built on Shaffer's contribution to offer their own elaboration of the Christian lawyer's calling. Milner Ball's seminal *The Word and the Law* both proposed a compelling Christian perspective and offered a description of exemplars of religious lawyering which also included two Jews.

A similar, slightly later, development occurred with regard to Jewish lawyering. In 1984, for example, Rabbi Gordon Tucker published an article on applying Jewish concepts to the confidentiality rules. Beginning in the late 1980s, Rabbi Michael Broyde, Rabbi Alfred Cohen, and Mordecai Biser authored publications aimed predominantly at an Orthodox Jewish audience. The first works in mainstream legal scholarship on the general subject of Jewish lawyering appear to be Sandy Levinson's 1991 article *Identifying the Jewish Lawyer*, published in the *Cardozo Law Review* together with responses from Jerome Hornblass and myself. These pieces responded, at least in part, to both the general concerns and texts of Shaffer and other Christian authors.

The religious lawyering literature expanded significantly with the publication of the 1996 *Faith and the Law* Symposium in the *Texas Tech Law Review*. Professors Thomas E. Baker and Timothy W. Floyd brought together 47 "lawyers, judges and law professors . . . to

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reflect on how they have reconciled their professional life with their
faith life.” The Texas Tech symposium elaborated the work of those
who had already written in the area, increased the roster of Christian
and Jewish authors, and extended the literature to include Bahai, 
Buddhist, Hindu, Muslim, Scientologist, and Unificationist authors.

II. THE FORDHAM CONFERENCE

The organizers of The Relevance of Religion to a Lawyer's Work: 
An Interfaith Conference sought to advance the conversation in two 
ways. First, we sought to develop for this issue a scholarly literature 
which would address systematically the range of theoretical issues 
rased by the existing religious lawyering literature. Second, we 
sought to bring together lawyers, judges, law professors, religious 
leaders, and theologians, from many religious faiths or none, to de-
velop agendas for further scholarship, teaching, bar programs, and 
congregational activities.

The initial organizers of the conference were the Auburn Theologi-
cal Seminary, the Louis Finkelstein Institute of the Jewish Theological 
Seminary, and the Stein Institute of Law and Ethics at Fordham Uni-
versity School of Law. Joining as co-sponsors were the American Bar 
Association Section of Litigation and the National Council of Juvenile 
and Family Court Judges. The organizers also solicited suggestions for 
topics and speakers from a distinguished planning committee and ad-
visory board. Making the conference possible was the generous finan-
cial support of the Skirball Foundation, Lilly Endowment, Inc., Lovell 
Family Foundation, Ltd., Nathan Cummings Foundation, and Raskob 
Foundation for Catholic Activities, Inc.

The organizers determined that the conference would focus on two 
primary questions to be addressed from the general perspectives of

theology, political theory and legal ethics, as well as from the particular lens of eight specific issues: Is a lawyer's religion relevant to her work? If so, how? These questions implicate the societal debate regarding the role of religion in the public square.\textsuperscript{27} Even determining whether and to what extent lawyer's work falls in the public square is a complex task. For example, a robust view of lawyers as having significant responsibility for the governance of society,\textsuperscript{28} might very well extend the public square into the law office, while a more limited perspective of lawyers' role or the public square might limit the public square to the lawyers' appearances before courts or legislatures, or their conduct as judges.

Quite appropriately, the opening remarks concerning these issues came from Thomas L. Shaffer,\textsuperscript{29} the father of the religious lawyering movement, and from N. Lee Cooper,\textsuperscript{30} the President of the American Bar Association. The presence of these two speakers underscores the conference's significance to both the religious lawyering movement and the organized bar.

The first panel approached these issues from the perspective of theology. Do our religious duties extend into our work and the public square? In his article, \textit{Lawyers, Clients, and Covenant: A Religious Perspective on Legal Practice and Ethics},\textsuperscript{31} Joseph Allegretti asserts that a Christian lawyer must bring her religion to bear on her work. Allegretti proposes a rethinking of the lawyer-client relationship based on religious imperatives. Responding to Allegretti, Azizah Y. Al-Hibri,\textsuperscript{32} Michael J. Broyde,\textsuperscript{33} Lawrence A. Hoffman,\textsuperscript{34} James M. Jenkins,\textsuperscript{35} Kinji Kanazawa,\textsuperscript{36} Ana Maria Pineda,\textsuperscript{37} Frank R. Pommer-

\textsuperscript{29} Thomas L. Shaffer, \textit{Faith Tends to Subvert Legal Order}, 66 Fordham L. Rev. 1089 (1998).
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Another perspective on the relevance of religion to a lawyer's work is that of political theory. This aspect of the role of religion in the conduct of lawyers, with a special emphasis on the judicial role and courtroom, is the subject of Ned Foley's *Jurisprudence and Theology*, and the responses of Perry Dane, Khaled Abou El Fadl, John Langan, S.J., and Linda C. McLain. Similar questions of religious lawyering and the public square are the subject of Howard Lesnick's *The Religious Lawyer in a Pluralist Society* and Sam Levine's *Religious Symbols and Religious Garb in the Courtroom: Personal Values and Public Judgements*.

The legal ethics panel incorporated these issues plus the additional concern of whether professional role morality excludes (or in Sandy Levinson's term "bleaches out") a lawyer's religious obligations. In *The Relevance of Religion to a Lawyer's Work: Legal Ethics*, Leslie Griffin both argues that legal ethics can benefit from theology and examines whether religiously based disobedience of professional norms should be exempt from sanction. Bruce Green, Anver M. Emon, Monroe H. Freedman, Thomas Morgan, and Burnele

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47. Levinson, supra note 14, at 1578.
Venable Powell\textsuperscript{53} offer responses to her views. In a separate article, Timothy Floyd explores religious lawyering by exploring the practice of law as a calling or vocation.\textsuperscript{54} Other authors discuss religion and professional role from the vantage of particular legal ethics issues: Mark Michaels on indigenous ethics and alien laws,\textsuperscript{55} Teresa Collett on client selection,\textsuperscript{56} Steven Hobbs on the duty of confidentiality\textsuperscript{57} and Nitz Milagros Escalera on mandatory pro bono service.\textsuperscript{58}

This volume also includes the agendas for law schools, bar associations, seminars, and congregations prepared by the eight working groups\textsuperscript{59} using the lead papers for their group as a resource. Each agenda represents the product of that group only, and not the conference as a whole. The agendas differ widely in type of suggestion, ranging from broad theoretical questions to specific programmatic proposals. They also differ in emphasis, with Group 3 on \textit{The Practice of Law as Vocation or Calling}, for example, struggling with how to increase the role of religion in lawyer's work, while Group 8 searched for the limits on religion's role. As a total product, the agendas offer challenging and valuable guides for future scholarship, teaching, and programming.

Just as extraordinary as the work product of the conference was the enthusiasm and excitement it generated. Most of the participants found themselves confronting questions they had not previously considered. The diversity of backgrounds, and of religious (and non-religious) perspectives, resulted in situations where many of us found ourselves engaging in dialogue with people with whom we would not have otherwise had any contact. The exchanges, both in large and small group sessions, were frank and spirited. At the conclusion of


\textsuperscript{54} Timothy W. Floyd, \textit{The Practice of Law as Vocation or Calling}, 66 Fordham L. Rev. 1405 (1998).


\textsuperscript{59} Group 1: The Religious Lawyer in a Religiously Pluralist Society; Group 2: Religious Perspective on Rule of Law; Group 3: The Practice of Law as a Calling or Vocation; Group 4: Moral and Religious Counseling of Clients; Group 5: Deciding Whether to Represent a Client; Group 6: The Duty of Confidentiality and Harm to Others; Group 7: Pro Bono and Service Obligations; Group 8: Religious Symbols in the Legal Workplace and Courtroom.
the conference, a number of the participants asked that they and their organizations be included in our future efforts in this area.  

III. THE FUTURE OF THE RELIGIOUS LAWYERING MOVEMENT

The conditions are right for both expansion and growing pains for the religious lawyering movement. The expansion is likely to result from lawyers’ continuing search for meaning in their work. In part, this is a search lawyers share with others in our society. In part, this search is particular to lawyers. As the crisis of professionalism continues, individual lawyers find themselves unable to discover a satisfactory way to reconcile their personal and professional aspirations with what they perceive as the harsh realities of the legal marketplace. Similarly, the organized bar has not found a successful means of inspiring lawyers to meet their ethical obligations, including their responsibilities to the public interest. The Religious Lawyering movement offers answers to these dilemmas for the individual lawyer and a vehicle for same- or inter-faith lawyers to address these questions collectively.

But as attractive as the religious lawyering movement might be to an increasing number of lawyers, its development faces a number of obstacles. Increased attention to religious lawyering will highlight differences between religious and non-religious lawyers, between lawyers of different religions, and between lawyers of the same religion. It will also highlight the conflict between religious lawyering and the conventional notion of professionalism which demands that lawyers exclude religion from their professional role.

Not all obstacles result from challenges for the lawyer. Another obstacle is that religious institutions may not be prepared to aid lawyers in developing a religious approach to their work. Writing of Americans generally, Peter Steinfels recently observed that they “need, and want, some moral compass to guide their choice of careers.

60. In December, 1998, the organizers together with other interested groups will be cosponsoring a conference intended to develop religious lawyering groups in 10-20 cities.

61. See e.g., David W. Chen, Fitting the Lord Into Work's Tight Schedules, N.Y. Times, Nov. 29, 1997, at Al (describing a growing number of professionals “rediscovering religion”).


attitudes toward work and patterns of spending." He notes, however, that "religion is providing neither a moral language nor a supportive community for making these decisions."

As the Fordham conference demonstrated, these obstacles, while significant, can be overcome. The religious lawyering movement offers both the moral language and supportive community Steinfels finds lacking in religion generally. Moreover, as the Conference demonstrated, people of diverse religious and non-religious perspectives can deliberate together about the lawyer's religious role. Even the prevailing notion of professional role, perhaps the most difficult obstacle to the movement, faces challenge or revision as part of the solution to the current crisis of professionalism.

CONCLUSION

Pirkei Avot, a Jewish text, teaches that "The world is built on three things: on truth, on justice, and on peace." If so, lawyers have an extraordinary responsibility. Their work is crucial to determination of truth, administration of justice, and maintenance of peace in our society. How different this vision is from what Murray Schwartz and David Luban label the "standard conception of the lawyer's role"—"extreme partisanship" and "moral non-accountability." Remaking the standard conception of the lawyer's role is the work of the religious lawyering movement.

66. Id.
67. See Pearce, Paradigm Shift, supra note 63.