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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. Pike¹ 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

1. James A. Pike, *Beyond the Law* (1962).

2. William Stringfellow, *A Lawyer's Work: Selected Writings of William Stringfellow* (1994).

3. Association of American Law Schools, *Selected Readings on the Legal Profession* (1962).

4. Cf. Thomas Kuhn, *The Structure of Scientific Revolutions* 109 (2d ed. 1970) (describing the work of mature scientific communities as "elucidat[ing] details").

The current movement originates in the scholarship of Professor Thomas Shaffer.⁵ Beginning in the late 1970s, his articles⁶ and his book *On Being a Christian Lawyer*⁷ 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.⁸ 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.⁹

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.¹⁰ Beginning in the late 1980s, Rabbi Michael Broyde,¹¹ Rabbi Alfred Cohen,¹² and Mordecai Biser,¹³ 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*,¹⁴ published in the *Cardozo Law Review* together with responses from Jerome Hornbliss¹⁵ and myself.¹⁶ 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*.¹⁷ Professors Thomas E. Baker and Timothy W. Floyd brought together 47 "lawyers, judges and law professors . . . to

5. Howard Lesnick, *The Religious Lawyer in a Pluralist Society*, 66 *Fordham L. Rev.* 1469 (1998) (dedicating his essay to Thomas Shaffer, "whose work has placed [him] (like many others) enduringly in his debt").

6. Thomas L. Shaffer, *The Practice of Law as Moral Discourse*, 55 *Notre Dame L. Rev.* 231 (1979); Thomas L. Shaffer, *A Lesson from Trollope for Counselors at Law*, 35 *Wash. & Lee L. Rev.* 727 (1978).

7. Thomas L. Shaffer, *On Being a Christian Lawyer: Law for the Innocent* (1981).

8. Joseph G. Allegretti, *The Lawyer's Calling* (1996).

9. Milner S. Ball, *The Word & the Law* (1993).

10. Gordon Tucker, *The Confidentiality Rule: A Philosophical Perspective with Reference to Jewish Law and Ethics*, 13 *Fordham Urb. L.J.* 99 (1985).

11. Michael Broyde, *On the Practice of Law*, 20 *J. Halacha & Contemp. Soc'y* 5 (1990).

12. Alfred Cohen, *On Maintaining a Professional Confidence*, 7 *J. Halacha & Contemp. Soc'y* 73 (1990).

13. Mordecai Biser, *Can an Observant Jew Practice Law?: A Look at Some Halakhic Problems*, 11 *Jewish L. Ann.* 101 (1994).

14. Sanford Levinson, *Identifying the Jewish Lawyer: Reflections on the Construction of Professional Identity*, 14 *Cardozo L. Rev.* 1577 (1993).

15. Jerome Hornbliss, *The Jewish Lawyer*, 14 *Cardozo L. Rev.* 1639 (1993).

16. Russell G. Pearce, *Jewish Lawyering in a Multicultural Society: A Midrash on Levinson*, 14 *Cardozo L. Rev.* 1613 (1993).

17. Symposium, *Faith and the Law*, 27 *Tex. Tech L. Rev.* 911 (1996).

reflect on how they have reconciled their professional life with their faith life."¹⁸ The Texas Tech symposium elaborated the work of those who had already written in the area, increased the roster of Christian¹⁹ and Jewish²⁰ authors, and extended the literature to include Bahai,²¹ Buddhist,²² Hindu,²³ Muslim,²⁴ Scientologist,²⁵ and Unificationist²⁶ 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 raised 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 develop agendas for further scholarship, teaching, bar programs, and congregational activities.

The initial organizers of the conference were the Auburn Theological Seminary, the Louis Finkelstein Institute of the Jewish Theological Seminary, and the Stein Institute of Law and Ethics at Fordham University 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 advisory board. Making the conference possible was the generous financial 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

18. Thomas E. Baker & Timothy W. Floyd, *A Symposium Precis*, 27 Tex. Tech L. Rev. 911 (1996).

19. See e.g., Charles R. Ajalat, *Practice, Church, Life, and Society*, 27 Tex. Tech L. Rev. 933 (1996); Perry O. Chrisman, *Confessions of a Baptist Lawyer*, 27 Tex. Tech L. Rev. 1041 (1996).

20. See e.g., Monroe H. Freedman, *Legal Ethics from a Jewish Perspective*, 27 Tex. Tech L. Rev. 1131 (1996).

21. See e.g., James F. Nelson, *The Spiritual Dimension of Justice*, 27 Tex. Tech L. Rev. 1234 (1996).

22. See e.g., J. Nicholas Alexander, Jr., *Faith and Law—A Lifetime of Balancing Interests*, 27 Tex. Tech L. Rev. 941 (1996).

23. See e.g., Ved P. Nanda, *Hinduism and My Legal Career*, 27 Tex. Tech L. Rev. 1229 (1996).

24. See e.g., Azizah al-Hibri, *On Being a Muslim Corporate Lawyer*, 27 Tex. Tech L. Rev. 947 (1996).

25. See e.g., Timothy Bowles, *Scientology Ethics and Psychiatric Injustice*, 27 Tex. Tech L. Rev. 1011 (1996).

26. See e.g., Peter D. Ross, *Beyond Law and Religion: The Liberated Conscience*, 27 Tex. Tech L. Rev. 1303 (1996).

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.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,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,²⁹ the father of the religious lawyering movement, and from N. Lee Cooper,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, *Lawyers, Clients, and Covenant: A Religious Perspective on Legal Practice and Ethics*,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,³² Michael J. Broyde,³³ Lawrence A. Hoffman,³⁴ James M. Jenkins,³⁵ Kinji Kanazawa,³⁶ Ana Maria Pineda,³⁷ Frank R. Pommer-

27. See e.g., Stephen Carter, *The Culture of Disbelief: How American Law and Politics Trivialize Religious Devotion* (1993).

28. David Luban, *The Noblesse Oblige Tradition in the Practice of Law*, 41 Vand. L. Rev. 717 (1988); Russell G. Pearce, *Rediscovering the Republican: Origins of the Legal Ethics Codes*, 6 Geo. J. Legal Ethics 241 (1992).

29. Thomas L. Shaffer, *Faith Tends to Subvert Legal Order*, 66 Fordham L. Rev. 1089 (1998).

30. N. Lee Cooper, *Religion and the Lawyer*, 66 Fordham L. Rev. 1083 (1998).

31. Joseph P. Allegretti, *Lawyers, Clients, and Covenant: A Religious Perspective on Legal Practice and Ethics*, 66 Fordham L. Rev. 1101 (1998).

32. Azizah Y. al-Hibri, *Faith and the Attorney-Client Relationship: A Muslim Perspective*, 66 Fordham L. Rev. 1131 (1998).

33. Michael J. Broyde, *Practicing Criminal Law: A Jewish Law Analysis of Being a Prosecutor or Defense Attorney*, 66 Fordham L. Rev. 1141 (1998).

34. Lawrence A. Hoffman, *Response to Professor Allegretti: The Relevance of Religion to a Lawyer's Work*, 66 Fordham L. Rev. 1157 (1998).

35. James A. Jenkins, *What Does Religion Have to do With Legal Ethics? A Response to Professor Allegretti*, 66 Fordham L. Rev. 1167 (1998).

36. Kinji Kanazawa, *Being a Buddhist and a Lawyer*, 66 Fordham L. Rev. 1171 (1998).

37. Ana Maria Pineda, R.S.M., *Covenanting With The Powerless: Strangers, Widows, and Orphans*, 66 Fordham L. Rev. 1177 (1998).

sheim,³⁸ and K.L. Seshairi Rao³⁹ explore related questions from Buddhist, Christian, Hindu, Jewish, and Muslim traditions.

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*,⁴⁰ and the responses of Perry Dane,⁴¹ Khaled Abou El Fadl,⁴² John Langan, S.J.,⁴³ and Linda C. McLain.⁴⁴ Similar questions of religious lawyering and the public square are the subject of Howard Lesnick's *The Religious Lawyer in a Pluralist Society*⁴⁵ and Sam Levine's *Religious Symbols and Religious Garb in the Courtroom: Personal Values and Public Judgements*.⁴⁶

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"⁴⁷) a lawyer's religious obligations. In *The Relevance of Religion to a Lawyer's Work: Legal Ethics*,⁴⁸ 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,⁴⁹ Anver M. Emon,⁵⁰ Monroe H. Freedman,⁵¹ Thomas Morgan,⁵² and Burnele

38. Frank Pommersheim, *Representing Native People and Indian Tribes: A Response to Professor Allegretti*, 66 Fordham L. Rev. 1181 (1998).

39. K.L. Seshagiri Rao, *Practitioners of Hindu Law: Ancient and Modern*, 66 Fordham L. Rev. 1185 (1998).

40. Edward B. Foley, *Jurisprudence and Theology*, 66 Fordham L. Rev. 1195 (1998).

41. Perry Dane, *Spirited Debate: A Comment on Edward Foley's Jurisprudence and Theology*, 66 Fordham L. Rev. 1213 (1998).

42. Khaled Abou El Fadl, *Muslims and Accessible Jurisprudence in Liberal Democracies: A Response to Edward B. Foley's Jurisprudence and Theology*, 66 Fordham L. Rev. 1227 (1998).

43. John Langan, S.J., *How Far can We Separate Theology and Jurisprudence? Comment on Edward B. Foley's Jurisprudence and Theology*, 66 Fordham L. Rev. 1233 (1998).

44. Linda C. McClain, *Deliberative Democracy, Overlapping Consensus, and Same-Sex Marriage*, 66 Fordham L. Rev. 1241 (1998).

45. Howard Lesnick, *The Religious Lawyer in a Pluralist Society*, 66 Fordham L. Rev. 1469 (1998).

46. Samuel J. Levine, *Religious Symbols and Religious Garb in the Courtroom: Personal Values and Public Judgements*, 66 Fordham L. Rev. 1505 (1998).

47. Levinson, *supra* note 14, at 1578.

48. Leslie Griffin, *The Relevance of Religion to a Lawyer's Work: Legal Ethics*, 66 Fordham L. Rev. 1253 (1998).

49. Bruce A. Green, *Lawyer Dicipline: Conscientious Noncompliance, Conscious Avoidance, and Prosecutorial Discretion*, 66 Fordham L. Rev. 1307 (1998).

50. Anver M. Emon, *Negotiating Between Two Convictional Systems*, 66 Fordham L. Rev. 1283 (1998).

51. Monroe H. Freedman, *Religion is Not Totally Irrelevant to Legal Ethics*, 66 Fordham L. Rev. 1299 (1998).

52. Thomas D. Morgan, *The Relevance of Religion to a Lawyer's Work: Legal Ethics: A Response to Professor Griffin*, 66 Fordham L. Rev. 1313 (1998).

Venable Powell⁵³ 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.⁵⁴ Other authors discuss religion and professional role from the vantage of particular legal ethics issues: Mark Michaels on indigenous ethics and alien laws,⁵⁵ Teresa Collett on client selection,⁵⁶ Steven Hobbs on the duty of confidentiality⁵⁷ and Nitz Milagros Escalera on mandatory pro bono service.⁵⁸

This volume also includes the agendas for law schools, bar associations, seminaries, and congregations prepared by the eight working groups⁵⁹ 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 *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

53. Burnele Venable Powell, *Risking the Terrible Question of Religion in the Life of the Lawyer*, 66 Fordham L. Rev. 1321 (1998).

54. Timothy W. Floyd, *The Practice of Law as Vocation or Calling*, 66 Fordham L. Rev. 1405 (1998).

55. Mark A. Michaels, *Indigenous Ethics and Alien Laws: Native Traditions and the United States Legal System*, 66 Fordham L. Rev. 1565 (1998).

56. Theresa Stanton Collett, *Speak No Evil, Seek No Evil, Do No Evil: Client Selection Cooperation with Evil*, 66 Fordham L. Rev. 1339 (1998).

57. Steven H. Hobbs, *The Lawyer's Duties of Confidentiality and Avoidance of Harm to Others: Lessons from Sunday School*, 66 Fordham L. Rev. 1431 (1998).

58. Nitz Milagros Escalera, *A Christian Lawyer's Mandate to Provide Pro Bono Publico Service*, 66 Fordham L. Rev. 1393 (1998).

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.⁶⁰

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.⁶¹ In part, this search is particular to lawyers. As the crisis of professionalism continues,⁶² 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.⁶³ 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.⁶⁴

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 Steinfelds 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 A1 (describing a growing number of professionals "rediscovering religion").

62. Russell G. Pearce, *The Professionalism Paradigm Shift: Why Discarding Professional Ideology Will Improve the Conduct and Reputation of the Bar*, 70 N.Y.U. L. Rev. 1229 (1998) [hereinafter Pearce, *Paradigm Shift*].

63. Chris Klein, *Associate Job #1: Land Clients*, Nat'l L.J., Mar. 31, 1997, at A1.

64. Levinson, *supra* note 14, at 1578; Russell G. Pearce, *Jewish Lawyer's Question*, 27 Tex. Tech L. Rev. 1259, 1261 (1996); see generally Bruce A. Green, *The Role of Personal Values in Professional Decisionmaking*, 11 Geo. J. Legal Ethics — (forthcoming 1998); Symposium, *Faith & the Law*, *supra* note 17.

attitudes toward work and patterns of spending.”⁶⁵ He notes, however, that “religion is providing neither a moral language nor a supportive community for making these decisions.”⁶⁶

As the Fordham conference demonstrated, these obstacles, while significant, can be overcome. The religious lawyering movement offers both the moral language and supportive community Steinfelds 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.⁶⁷

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 Luban⁶⁸ 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.

65. Peter Steinfelds, *Beliefs*, N.Y. Times, Aug. 23, 1997, at A1 (discussing the conclusions of Robert Wuthnow, *The Crisis in the Churches: Spiritual Malaise, Fiscal Woe* (Oxford Press 1997)).

66. *Id.*

67. See Pearce, *Paradigm Shift*, *supra* note 63.

68. David Luban, *Lawyers and Justice: An Ethical Study* 20 (1988) (suggesting that extreme partisanship and moral non-accountability are basic principles of lawyer ideology); Murray L. Schwartz, *The Professionalism and Accountability of Lawyers*, 66 Cal. L. Rev. 669, 671 (1978) (same).