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N. Lee Cooper

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REMARKS

RELIGION AND THE LAWYER

*Remarks of N. Lee Cooper
President, American Bar Association*

I wonder how many Americans noted a legal issue that came before the Supreme Court recently, challenging the inclusion of the figure of the prophet Mohammed in the Supreme Court Chambers. This challenge was telling in many ways. It was clearly meant to demonstrate that separation of church and state challenges are not limited to government entanglement with the majority religion. Moreover, it took the issue directly to the highest court in the land and asked it to look in the mirror instead of engaging in abstract reasoning affecting unknown people in remote places.

The Supreme Court response was equally telling. Chief Justice Rehnquist, speaking for the Court, defended the image of Mohammed—who keeps company with other great leaders in law and religion throughout history including Hammurabi, Moses, Solomon, Confucius, Augustus, Justinian, Charlemagne, Napoleon, and John Marshall.

But Rehnquist sidestepped the issue of religion. He did not talk about the historical significance to the law of all these leaders, religious and secular. He did not delve into the spiritual roots of secular law. He did not cite Hammurabi as deriving his authority as a worshiper of the gods to cause righteousness to prevail in the land. Nor did he quote Jefferson that we are endowed by our Creator with the rights we hold as Americans under the protection of civil government. Nor did he note the common preoccupation of law and religion and the topic of justice.

As Stephen Carter of Yale has pointed out in his book, *The Culture of Disbelief*,¹ these are not proper topics of civil, much less legal, discourse in this country today. Rehnquist ingeniously skirted the problematic topic of religion in the law by observing that removing Mohammed would violate the architectural integrity of the Supreme Court chambers—a conveniently secular solution to one of the many dilemmas posed to the law by religion.

There are many reasons why the discussion of religion is *verboten* in acceptable legal discourse. There are obviously complex constitutional issues arising from the First Amendment.

We know as we sit here that there are many good reasons for removing the religious authority cited by Hammurabi from the law. Few people today would like to see the Code of Hammurabi or the

1. Stephen L. Carter, *The Culture of Disbelief* (1993).

law of the Inquisition or Aztec human sacrifice mandated by religious authority. The congressmen who would like to impeach judges today for decisions that do not conform to the congressmen's beliefs would be loath to accept the dictates of the Ayatollah as a proper civil law system, through Moslem fundamentalism dominates society in several Arab countries today.

We live in a pluralistic society. That is increasingly true, to the point that it will test the tolerance devised in the much more homogeneous society of Madison and Hamilton. We accept the notions that government cannot impose religious values on citizens with different religious beliefs, and that governments should never follow the dictates of church dogma. We can recognize that even religious institutions are not perfect, that they are subject to human frailties which our system of government is designed to protect against.

We should also recognize that our religious tradition has played an important role in the struggle against the rule of church hierarchies. Take Martin Luther and the Protestant Reformation as a notable example.

For lawyers, this pluralistic approach has had a more tangible effect. Instead of representing the cause of the church and the state, lawyers in our society are duty-bound to represent all sides in a cause—a feature of our system that can certainly create crises or personal conscience in the lawyer. But something more has happened to repress the roll of religion in civil discourse and attorney conduct. Carter's premise is that in our effort to insulate legal discourse from religious dogma and majority oppression, "we have created a political and legal culture that presses the religiously faithful to be other than themselves, to act publicly, and sometimes privately as well, as though their faith does not matter to them."²

Gone are the days when Moses would bring before God the request of the daughters of Zelephhad, who died without sons, to succeed to their father's property. The fact remains, however, that many hard issues of the law are resolved in the realm of religion, and many cases come down to value judgments based in religious tradition. There is no way, hard as we may try, to overlook what is actually happening or give it a completely secular veneer.

The challenge that remains before the law is to maintain respect for religion, to draw on religious values where there is little legal precedent or other secular resource on which to draw—while at the same time respecting religious pluralism, tolerance, and the separation of church and state. That is a tall order for the law. It is a taller one for lawyers and judges.

We may never be able to resolve some of these more complex tensions between what is required of us as lawyers and our personal reli-

2. *Id.* at 3.

gious beliefs. What we may be able to do—that will be more helpful in our daily practice—is to simplify and try to arrive at a common sense plateau. If the question is how to do what our conscience requires, then we need to look at what our religion demands from us. Most religions emphasize service to others. We as lawyers are blessed with an incomparable ability to serve those in need.

Even if our own practices are geared toward FERC regulation or corporate finance, whose benefits may appear abstract to the individual, there is always a wealth of pro bono opportunities available. In fact, the need for pro bono legal assistance has never been greater. I will not mention by name the fine organizations that serve needs not satisfied by market forces, or the ones that could or should be established to strengthen families, to protect our environment, to help the homeless, or to serve any number of other worthy causes.

Let me just mention a few organizations that I have observed first hand in my role as president of the American Bar Association (“ABA”)—in the hopes that someone in the audience will be inspired to act. Right now the reality of our justice system does not meet its promise of equality under the law. O.J. gets dream team justice while poor people get access denied. Timothy McVeigh gets excellent assistance from court-appointed legal counsel. But a battered wife trying to get a restraining order to prevent child abuse may go helpless if she cannot afford to pay a lawyer’s fee. The Legal Service Corporation was created to fill that gap and reduce that disparity. However, Legal Services faces year in and year out a battle to preserve its dwindling funding and fight off congressional restrictions on the services its lawyers can provide.

The future of Legal Services must consist of meeting a growing and already unmet demand for its services with fewer resources. This presents a challenge to our profession and an opportunity for us as lawyers to meet the service obligations of our faith, regardless of our practice area. Many ABA members have given their time and energy in the association’s constant battle to prevent Washington ideologues from eliminating Legal Services outright. We feel we must preserve this opportunity for service which cannot be maintained on the scale in which it is needed by individual law firms or individual lawyers.

Another ABA initiative over the past year has dealt with the legal problems in adoption. Today there are over 100,000 American children in foster care. There may be more families looking to adopt children. Many of these children could be placed in a permanent home with a family to love and care for them if it were not so hard. These children and families need advocates who can find their way through the maze of bureaucracy and legal obstacles that differ from state to state, who can push to prevent cases from stagnating through neglect. There is a crying need for lawyers to perform this service on a pro bono or reduced fee basis. The ABA, via the Young Lawyers Division

Center for Children and the Law, is working to educate lawyers to this need and recruit and train lawyers who can provide this very much needed and rewarding service. The Young Lawyers Division is perhaps the most active service wing of the Bar, with an emphasis on the too often overlooked legal needs of children. Serving those needs can only fulfill the demands of faith and conscience.

The ABA has also been very active in its CEELI program, which helps to develop democratic legal institutions in Eastern Europe. This work is done at great sacrifice by volunteers. It is also impossible not to notice that this work reflects the concern of a democratic society, informed by our religious tradition.

Indeed, religion can always be observed through good works. The more pressing question for the modern lawyer may be finding the time for religious expression through aid to the poor or the elderly. There is no doubt that it will take an extra degree of dedication and personal sacrifice to give the necessary time and energy on top of earning a living, caring for family, and other responsibilities.

Those are not responsibilities we can shirk, but I think it is safe to say that, as lawyers, if we avoid becoming obsessed with financial rewards, our ability to fulfill the demands of our consciences and spiritual needs will improve. Part of faith is believing that if we keep our priorities straight, if we decline to worship Mammon, then our needs will be fulfilled.

To be honest, lawyers are not known for taking that approach, but we have the power to change that reputation through our actions. By our everyday acts, we can make the profession less greedy, less disrespectful, less self-serving, and hypocritical. Each of us has the ability to add the sum of honesty and integrity that we believe should be maintained, and that reflects in the profession the values we profess in our churches, temples, mosques, and synagogues.

One of those values, which I believe is also a universal religious belief, is respect for our fellow human beings. Again, we as lawyers have perhaps an unmatched power to help people bring dignity to their lives. We can help a child find a home. We can help the elderly keep their homes. We can help people find and keep a place of dignity in their lives. That is a form of religious observance in itself. And while we cannot all practice the law of landlord-tenant, elder care, or child custody—which directly affects the station of our fellow citizens—there are unlimited outlets for pro bono assistance. I believe it should be a more fundamental component of our legal education, our self-conception as lawyers, to ask what service we can give back to our communities. And, to satisfy our own religious needs, we should do it with the genuine spirit of public service.

We must also show the same respect to our fellow lawyers. One of the biggest challenges to religious faith in our profession is the desire to win at all costs. The effects of that attitude on honesty and civility

within our profession have been devastating. Many of us as lawyers have seen discovery abuse and misrepresentation that are hard to reconcile with what we learned growing up in Sunday School. We have seen abuses in the system. We have seen lawyers and judges treating each other with disrespect, taking unfair advantage, and acting in an untrustworthy fashion. Sometimes, it can make us doubt the decision to maintain our integrity. How can we survive as lawyers in such a treacherous environment? It may look bleak at times, but never as bleak as if we all went down the same path. We must resist those who drag the profession into the gutter and make it conform to our values.

We can do that by making our dealings with all lawyers a model of civility. The first and easiest way we can do that is to treat all lawyers and judges with professional courtesy whether they deserve it or not. We can exercise our own convictions to make respect, honesty, and integrity the rule and not the exception for the legal profession. We should heed Moses's admonition in Deuteronomy to the Israelites on the border of Canaan to remember who they are and not be absorbed by the Canaanites.³

Another fundamental common denominator of religious beliefs is appreciation for the gifts we have received. Most of us as lawyers have been given many gifts—gifts of intelligence, gifts of education—that enable us to serve the needs of society. So my advice, especially to young lawyers and law students, is to practice law religiously. That is, practice with joy, strive for perfection, have pride in your work, and appreciate the talents bestowed by your creator.

The fact is that our profession has its roots in awe and piety. Today we work in a secular realm. That secular realm can test our faith and conviction. There is no doubt that religion is often subordinated to other values. Where that serves a greater good for society, like Jesus in his self-abnegation, we can appropriate that effort to form a more perfect union as an expression, not a denial, of our religious conviction.

There will always be the differences between God and Caesar and what we render unto each. But there will also be many times, when the law is pushed to its limits, as it frequently is by today's advances in science and technology, where the law will be decided with reference to our theology. The law is already trying to cope with issues of parental rights, spousal property, and testamentary succession where science has opened all kinds of possibilities of parenthood by people who are no longer living, much less living together.

When a researcher recently cloned an adult sheep, it gave us a preview of another legal issue for which there is no solution in precedent. When we face the prospect of human cloning, we are forced to ask questions about the role and identity of humans in the universe. Some

3. *Deuteronomy* 33:1-27.

may say there is a rational positivist approach to this question. But I think most people would agree that this is an issue which demands a moral position. It is, in essence, a religious question.

That will make it all the more difficult to deal with in our secularized environment. It will require us to set aside pluralism to some degree in a search for shared values and universal truths. The tension between law and religion will come into even sharper focus as the legal system processes what is fundamentally a religious question. These new issues created by science only remind us of the moral and religious questions already placed before the law by the death penalty, abortion, euthanasia, and many other issues that require us to define and place a value on life itself. As far as the law has traveled over the centuries, it is yet to break the basic connection to religion that it held for Hammurabi.

As lawyers, we can still always find room for our faith, work by faith, and have confidence that through our faith we will help create a better secular world.

Don't expect this to be easy. Or else it would not require faith.