

Draft

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Foreword

“CLS” was an acronym with two very different meanings when I was a fledgling law student thirty years ago. For most, it meant “critical legal studies,” a burgeoning new movement of sundry neo-Marxist jurists and philosophers collectively bent on exposing the fallacies and false equalities of modern law. Many of my first-year law professors were the high priests of this CLS movement. They were making serious waves at the time with their shrill denunciation of much that was considered sound and settled in the law. The best CLS professors taught black letter doctrine, and then shredded it with rhetorical and analytical power. That instruction appealed to my native ethic of *semper reformanda* – always reforming and working to improve our traditions. Other professors simply taught their pet critical topics, sending us students scrambling to the bookstore in search of study guides that would acquaint us with the legal basics. After a year of such CLS instruction, I couldn’t wait to take the upper level electives that would no doubt unveil the new and better legal system CLS had in mind. Little was on offer. The crits, I soon learned, were better at deconstruction than reconstruction of the law. Not surprisingly, this movement has now faded and fractured into sundry special interest groups, held together it seems only by their “critical” approaches to the law.

“CLS” in the early 1980s also meant the “Christian Legal Society,” a small handful of law students who gathered for periodic worship, prayer, reflection, and occasional good works in the community. We were very much a fringe group at my law school, the last remnant of the superstitious in the eyes of many. Ours happened to be a particularly weak local student chapter of a quite vibrant national Christian Legal Society of lawyers, law students, and religious liberty advocates. But, even at the national level, the Christian Legal Society then was still a rather small group struggling to come to terms with what it means to be a Christian and a lawyer. The Christian Legal Society has become more substantial since then, and the United States Supreme Court case has lifted the name to permanent prominence with the recent case of *Christian Legal Society v. Martinez*.

“CLS” is rapidly acquiring an additional meaning today: to describe a growing “Christian legal studies” movement in legal education – led, in no small part, by the authors of the pages that follow. These scholars are part of a group of some 300 Catholic, Protestant, and Orthodox Christian law professors in North America – and several hundred more around the world – who have dedicated themselves to studying the “weightier matters of the law: justice and mercy and faith.” These Christian law professors are not just abstract legal theorists who have “neglected” the technical aspects of the law: the “mint and dill and cummin” as Matthew 23 puts it. Many of them are leading scholars of the core doctrines of public, private, penal, and procedural law. They have mastered the power of legal science and method – the special ability that lawyers have to build and break down arguments, to separate salient from superficial fact, to argue from analogy and precedent. Some of the weightier matters of the law that they do address are familiar to scholars of law and politics, whatever their persuasion -- questions concerning the nature and purpose of law and authority, the mandates and limits of rule and obedience, the rights and duties of officials and subjects, the care and nurture of the needy and innocent, the justice and limits of war and violence, the nature of fault and the means of punishing it, the

sources of obligations and the procedures for vindicating them, the origins of property and the means of protecting it, among others. On many such questions of legal doctrine, science, and philosophy, Christian law professors are not noticeably different from their peers with different convictions. A first year class in contracts, criminal law, or civil procedure looks mostly the same whether taught at Harvard or Columbia, Notre Dame or Pepperdine.

But Christian law professors also address questions that are more specifically Christian in accent but no less important to understanding law, liberty, and politics: Are persons fundamentally good or evil? Is human nature essentially rational or relational? Is law inherently coercive or liberating? Is law a stairway to heaven or a fence against hell? Did law and government predate or postdate the fall into sin? Should authorities only proscribe vices or also prescribe virtues? Is the state a divine or a popular sovereign? Are social institutions fundamentally hierarchical or egalitarian in internal structure and external relations? Are they rooted in creation or custom, covenant or contract? What is the place of law and legal procedure in the church, and how must it be enforced? What is the place of democracy in the church, and how is it to be exercised? What is the role of the church in exemplifying and advocating justice for itself and for other institutions, for its own members and for other individuals? What is the relationship between crime and sin, contract and covenant, justice and righteousness, mercy and love? What do the Bible and the Christian tradition teach about the fundamentals of law and liberty, faith and order?

It is this last question – about the legal teachings of the Bible – that is at the central focus of this volume, and the ultimate source of the fundamental legal questions that occupy Christian jurists in particular. In the chapters that follow, pairs of theologians and lawyers march through the Bible -- from Genesis to Revelation, from the laws of the Garden to the laws of the City -- in search of basic biblical legal teachings. This is a sage method of exegesis, allowing theologians to keep the lawyers canonically honest, and forcing the theologians to address close legal questions. The authors have left much of their heavy hermeneutical and jurisprudential machinery parked in their home disciplines, and worked hard to present the Bible's teachings on law in learned but accessible interdisciplinary terms. This makes the book an ideal text for the college, law school, and seminary classroom as well as for legal conferences, church study groups, and individual meditation. No one can come away from these provocative chapters and not be struck anew by the enduring relevance, prescience, and wisdom of the Bible in dealing with many of the very legal, political, and social questions that still challenge us today.

None of the authors herein pretends that the Bible is a complete legal textbook or a comprehensive legal code. None of them is pressing for the construction of a modern biblical commonwealth in place of our current governments. They understand that for every “nomos there is a narrative,” for every Torah a Talmud, for every biblical legal principle a long set of precepts and procedures to make it real and concrete. The laws of the Bible are part of a larger narrative about God and humanity, sin and salvation, faith and order. The Bible's commandments are the anchors of long traditions of legal reasoning, application, and enforcement that go far beyond the original canon and commandments. The challenge that the authors leave for us today is to find responsible ways of making these biblical teachings on law effective vehicles both for critique and for reform of our post-modern legal systems.

For those who think this exercise is futile, it's worth noting that some of the Bible's basic laws are still at the heart of our legal system today. “Thou shalt not kill” remains at the foundation of our laws of homicide. “Thou shalt not steal” grounds our laws of property and theft. “Thou shalt not bear false witness” remains the anchor of our laws of evidence and defamation. The ancient laws of sanctuary still operate for fleeing felons, refugees, and asylum seekers. The ancient principles of Jubilee are at the heart of our modern laws of bankruptcy and debt relief. “Honor the authorities” remains the starting premise of modern constitutional law. Any good legal historian can show you the biblical genesis and Christian exodus of many of our modern rules of contract and promise, evidence and proof, marriage and family, crime and punishment, property and poverty, liberty and dignity, church and state, business and commerce. Some of these legal creations were wholly original to Christianity, born of keen new biblical insight and theological ingenuity. Others were converted and

recast from Hebrew, Greek, and Roman prototypes. Still others were reworked and reformed by Renaissance humanists and Enlightenment *philosophes* and their ample modern progeny. But whether original or reformed, canonical or casuistical, Western Christian teachings on law, politics, and society have made enduring contributions to the development of law as we know it today.

These legal teachings of the Bible and the Christian tradition still hold essential insights for legal reform and renewal in this new millennium. What would a legal system look like if we were to take seriously the final commandment of the Decalogue, “thou shalt not covet,” especially when our modern systems of capitalism, advertisement, and wealth accumulation have the exact opposite premise? What would our modern law of torts and criminal law look like if we took seriously Jesus’ command to “turn the other cheek”? What would our laws of civil procedure and dispute resolution look like if we took seriously the New Testament admonition for those with grievances to “go tell it to the church”? What would our system of social welfare, charity, or inheritance look like if we followed the Bible’s repeated commands to tend to the poor, the widow, the orphan, the strangers -- the “least” of society -- knowing, as Jesus put it, that “as much as you do it to them you do it to me”? What would our public and private laws look like if we worked hard to make real and legally concrete the biblical ideals of covenant community or sacramental living?

It’s a fair question whether these and many other biblical passages now define the ethics of the communicant and the church rather than the laws of the citizen and the state. That, at minimum, requires that our modern churches get their legal and moral houses in order, and provide the kind of witness and example that the modern polity needs. But I dare say that the Bible’s call for Christians to serve as “prophets, priests, and kings” provides lawyers with a unique vocation: to speak prophetic truth to power, to offer priestly service to all neighbors, and to foster rules and regimes that are marked with justice, mercy, and faith.

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