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Introduction

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Abstract

This is an introduction to an interdisciplinary and international study of whether, how, and where laws (variously defined) teach values and shape moral character in late modern liberal societies. All sixteen authors of these studies recognize the essential value of state law in fostering peace, security, health, education, charity, trade, democracy, constitutionalism, justice, and human rights, among many other moral goods. But they also recognize the grave betrayals of and by law in supporting fascism, slavery, apartheid, genocide, persecution, violence, racism, and other forms of immorality and injustice. The authors thus call for state laws that set a basic civil morality of duty for society but also guarantee robust freedoms that protect private individuals and private groups to cultivate a higher morality of aspiration.

Keywords: law and morality; character formation; state law; church law; customary law; constitutional law; criminal law; legal profession; legal development; morality and duty; morality of aspiration

Introduction

Just as man is the best of the animals when completed, when separated from law and adjudication he is the worst of all. – Aristotle, *Politics*, bk. 1, ch. 2

Now before faith came, we were confined under the law, kept under restraint until faith should be revealed. So that the law was our schoolmaster (*paidagōgos*) until Christ came, that we might be justified by faith. But now that faith has come, we are no longer under a schoolmaster; for in Christ Jesus you are all sons of God, through faith. – St. Paul, Galatians 3:24-26

If men were angels, no [law or] government would be necessary. If angels were to govern men, neither external nor internal controls ... would be necessary. In framing a government which is to be administered by men over men ... experience has taught mankind the necessity of auxiliary precautions. -- James Madison, Federalist Paper No. 51 (1788)

The better the society the less law there will be. In Heaven, there will be no law, and the lion will lie down with the lamb. In Hell, there will be nothing but law, and due process will be meticulously observed. -- Grant Gilmore, *The Ages of American Law* (1977)

This volume brings together seventeen distinguished scholars of law, theology, ethics, philosophy, history, and political theory. Together, they address three central questions: (1) whether, (2) how, and (3) where the *law* teaches values and shapes moral character in late modern liberal societies. While ranging across the Western tradition in addressing these questions, the chapter authors focus on four distinct liberal nations -- Germany, the United States, South Africa, and Australia -- from which they collectively hail. Each author recognizes the essential value of law in fostering peace, security, health, education, charity, trade, democracy, constitutionalism, justice, human rights, and many other moral goods and virtues in many late modern nations. Each author also recognizes, however, the grave betrayals of law in supporting fascism, slavery, apartheid, genocide, persecution, violence, racism, bigotry, intolerance, chauvinism, and many other forms of moral pathos and injustice. Those realities underscore the need to balance the roles and limits of state law in setting a baseline civil morality for late modern liberal societies with the rights and duties of private individuals and non-state institutions to cultivate and enforce morals.

Creative Tensions

Three creative tensions emerge in the seventeen chapters that follow. The first concerns the various forms of law that come under discussion and the various dialectics that cut across them. Our chapter authors variously discuss natural laws of conscience, reason, and the Bible and the positive laws enacted by states, churches, and voluntary associations. Some distinguish laws that are local versus national, domestic versus international, legislative versus judge-made, written versus unwritten, codified versus customary, "condensed codes versus elaborated codes" (in Mary Douglas' phrase). Some focus in on specific types of state positive law – family law, constitutional law, criminal law, human rights law, and laws governing taxation, contracts, property, and inheritance. Some scholars differentiate the law on the books from the law in action; the rules and procedures prescribed by an authority versus the behavior by citizens,

officials, and legal professionals in positive, negative, or indifferent response. And beneath these various distinctions is the reality that laws of various sorts emerge out of an evolving spectrum of normativity: acts become behaviors; behaviors become habits; habits yield customs; customs produce rules; rules beget statutes; statutes require procedures; procedures guide cases; statutes, procedures, and cases get systematized into codes; and all these forms of legality are eventually confirmed in national constitutions, if not regional conventions and international covenants

When discussing the role of “law” in teaching values and forming moral character, it is important to be clear what kind of law is under discussion. It is a lot easier to see the moral values and influences at work in a lofty text like the Decalogue or the Constitution than in a prosaic statute on street parking or food packaging. Representing a defendant on death row has far more obvious moral valence than negotiating a contract for the sale of pencils. The moral “law written on the heart” shapes daily moral behavior far more powerfully than the local laws written in statutes or codes. St. Paul’s statement that Christians are “no longer under the law” reads very differently if the focus is on the Mosaic law as “schoolmaster” rather than the laws of state or church altogether.

A second creative tension concerns the relationship of law (however defined) and other forms of normativity. Several authors note and document the close interaction, confluence, and even integration of law, religion, and morality in earlier legal cultures of the West. But they also recognize that in late modern pluralistic societies the state’s legal system is a differentiated sphere with its own rules and rituals, its own profession and academy, its own methods and practices, its own logics and literature. The modern liberal state claims no monopoly on morality or character formation. It recognizes and supports other internal normative systems at work within families, churches, schools, corporations, charities, clubs, sports leagues, and sundry other voluntary associations. These institutions are often far more important sources of morality for individuals than the laws of the state. A parent’s statement to fighting children: “We don’t do that in our family!” carries much more moral weight than the state criminal prohibition on assault and battery. The conduct codes of schools, churches, or corporations guide their members’ moral lives much more directly than the bureaucratic rules of the administrative state. Today, a number of theories of subsidiarity, sphere sovereignty, social pluralism, and multinormativity help explain this complex latticework of norms and their respective interactions with state law and their impacts on private and public morality.

Third, the chapters herein point to various methods or strategies that state law in particular uses to teach values and form moral character. Despite our emphases on limited government and maximal liberty, the late modern liberal state does still operate with a number of routine “thou shalt” and “thou shalt not” commands -- some of them with ancient religious and moral roots: Pay your taxes. Register your properties. Educate your children. Answer your subpoenas. Obey your conscription orders. Honor your parents. Do not kill. Do not steal. Do not bear false witness. Do not violate your neighbor’s household and its members. Commands like these – both prescriptive and

proscriptive -- are essential to maintaining basic legal, political, social, and economic order, and to fostering the health, safety, peace, and welfare of the entire community. That's what both Aristotle and Madison were underscoring in the opening epigraphs. These state commands set a baseline civil morality, a minimum moral code for the community that the state will enforce, by coercion if necessary. In centuries past, the Western state had much longer lists of moral commands, and much more brutal forms of enforcement. Modern constitutional and cultural norms of liberty, privacy, autonomy, and self-determination have whittled down these state commands and outlawed many cruel forms of punishment. But the late modern liberal state still maintains and enforces a core moral code, a basic civil or public morality.

Between these apodictic poles of thou shalt and thou shalt not commands, the modern liberal state now often operates with softer and more subtle methods of encouraging and facilitating preferred moral behavior and discouraging or impeding immoral behavior. "Nudging" is what behavioural scientists call the common legal strategy of promoting desirable public and private goods in many areas of life. The liberal state commends, licenses, and sometimes even pays for or rewards all kinds of morally desirable behavior: think of voting in a state election, getting a free vaccine, or going to college on a state scholarship. The state imposes taxes or fines or withholds state benefits or opportunities for those who indulge in morally undesirable behavior: think of smoking, not wearing seat belts, or dropping out of school. The theory of nudging stipulates that, over time, the desirable behavior encouraged by the state will become more customary, even natural or reflexive among citizens, and the undesirable behavior will be viewed as aberrant and perhaps even stigmatized.

But the state and its laws can only do so much in the moral field. Late modern societies also need broader communities and narratives to stabilize, deepen and exemplify the natural inclinations and rational norms of responsibility, sociability, and morality that all human beings have written on their hearts if not embedded in their genes. Even the most progressive liberal societies need models and exemplars of love and fidelity, trust and sacrifice, commitment and community to give these natural and rational teachings further content and coherence. They need the help of stable institutions beyond the state – families, neighbourhoods, churches, schools, charities, hospitals, recreational, athletic, artistic, and creative associations, and much more – to form the rich moral characters and refined ethical outlooks of their citizens, to teach both the minimal morality of duty that keeps the sinners within all of us at bay and the morality of aspiration that brings out the angels in all of us who are devoted to love of God, neighbour, and self.

Chapter Themes

The chapters in this volume are divided into three main parts – respectively addressed to whether, how, and where the law affects character formation, ethical education, and the communication of values in late modern pluralistic societies.

Part I probes, theoretically, whether the law -- particularly the law of the state -- can, does and should teach values and virtues, or shape the characters and beliefs of citizens and subjects. The five chapters in this Part offer a range of cautionary answers, with a repeated warning about the inherent and necessary limits of state law, and the need to balance state laws with other formal and informal sources of normativity and character formation.

In **Chapter 1**, Australian family law scholar, Patrick Parkinson takes up the theme of “**Law, Morality, and Fragility of the Western Legal Tradition.**” He argues that the Western legal tradition has long depended, in part, on state law to enforce and reinforce basic moral norms to promote liberty, sociability, exchange, and stability. Those moral norms are not so much creations of state law as reflections of biblical, classical, Christian, and Enlightenment teachings, which have been intermittently reformed in accordance with the changing needs and values of society. The normative power of state law, however, has long rested on three fundamental “pillars” -- the autonomy of state law; the ideal of the rule of law; and the moral authority of law. The first pillar concerning the autonomy of state law -- particularly its separation from religious laws like canon law or Halacha which might still operate independently for their voluntary faithful -- remains firmly in place in late-modern liberal Western societies. But the ideal of the “rule of law,” of the *Rechtsstaat*, Parkinson argues, has come under growing attack with the recent rise of populist authoritarianism in the United States and in parts of Latin America and Eastern Europe. These new governments routinely flout the democratic rules of checks and balances within and across the executive, legislative, and judicial branches that are so central to a just and orderly democratic society. And they often ignore customary, equitable, and international legal standards that have proved so vital to the stabilizing the Western and non-Western world, particularly after the horrors of World Wars I and II. These attacks on the ideal of the rule of law, in turn, undermine the law's moral authority, and create cynicism, scepticism, and sometimes even anarchy among citizens. To have moral power, Parkinson argues, the law must be believed in, and this belief in the legitimacy, authority, and efficacy of the law has been badly shaken in a number of late modern liberal societies. Those who believe in the Western legal tradition therefore must do everything possible to retain and restore these fundamental pillars of legality, along with other sources and institutions of normativity.

In **Chapter 2**, American Catholic jurist and ethicist, Cathleen Kaveny addresses “**Law's Pedagogy in a Pluralistic Society: Challenges and Opportunities.**” She builds on Thomas Aquinas's idea, drawn in part from Aristotle and Isidore of Seville, that just state laws are by definition teachers of virtue, even though state laws are only one form of law, and laws are only one form of normativity. One can see that teaching function of law at work still today in the socially formative objectives of such legislation in the Americans with Disabilities Act and such constitutional cases as *Brown v. Board of Education* -- though, of course other statutes and cases reflect and reinforce less appealing values. Kaveny sifts through the objections and impediments to the pedagogical function of law that come from liberal legal theory, economic analysis of law, and the critical legal studies movement. She confirms their critical calls for a basic

separation of law and morality, and state and religious authority; but she also urges readers to recognize the overlapping jurisdiction and necessary points of cooperation between them. Modern state law can and should foster certain basic virtues and values, Kaveny concludes. She holds up as key examples the ideals of autonomy (defined by Joseph Raz as the capacity to be the part-author of one's life) and solidarity (understood as Pope John Paul II does as a determination to commit oneself to the common good).

In **Chapter 3**, American legal theorist, Brian Bix analyzes **“The Effects of (Family) Law: Frameworks, Practical Reasoning, Social Norms, and Slippage.”** As his title indicates, the effect of state law on character or virtue is complicated. There are grounds for wondering to what extent law *should* concern itself with such matters, with reasonable views on both sides of the question. When these complexities are added to the controversies surrounding issues like sexual expression and relationships regarding which side of issues is the side of good character, and to the concern about unintended consequences, the need for caution on these matters is clear. Additionally, there are ways in which legal rules—even laws that fall far short of being “evil”—can work *against* good character. Law can, as Saul Levmore observed, make “self-help, personal involvement and teamwork less enticing.” Finally, there are many ways in which legal rules can have effects far different from what the lawmakers intended, with normative slippage. This can be seen not only in the common disparity between the law on the books and the law in action, but also in the reality that the formal enactment of a legal rule sometimes triggers deliberate disobedience and organized resistance by some citizens. Think of the reaction to requiring masks or getting vaccinated during the current global COVID crisis.

Chapter 4 reprints an essay by the late American political theorist, Jean Bethke Elshtain which we had commissioned for an earlier project on law and religion. The title of the chapter underscores her cautionary message: **“There Oughta be a Law on This – Not Necessarily! The Limits of Law as a Teacher of Values and Virtues.”** Here Elshtain contrasts Augustine's minimalist dependence on law (just enough rules to govern a “den of robbers”), with Aquinas's more robust theory (laws should serve “to foster the common good”), to even more expansive Protestant views (laws should aim for “the redemption of everyday life”). Immanuel Kant translated this earlier Protestant dependence on state law to establish and enforce Christian values and virtues into a perfectionist rule-of-law ethic for all liberal societies. That last move has sometimes proved dangerous today, Elshtain argues. It has allowed state law to reach too deeply into the interior life of all citizens, risking the tyranny of conscience. It has also allowed those in political power to establish an ever expansive and strangulating network of rules to enforce their own ultraliberal values (think of sexual liberty codes, hate crime legislation, or military operational rules) or pernicious world views (think of the extensive laws of Stalinist Russia or Nazi Germany) that threaten personal freedom and eclipse many other forms and forums of virtue and value formation.

In **Chapter 5** on **“The Law as Educator?”** German philosopher Rüdiger Bittner challenges the very notion that law can and should serve as a moral landmark or

steeple of virtue to orient diverse individuals holding multiple beliefs, values, and perspectives. Bittner allows that state laws can set basic rules of the road, punish violent crimes, and offer basic procedures to enforce contracts, vindicate torts, or transfer property. But beyond that, the law of the state has no capacity or remit. State law cannot form character or teach virtues or values because law is not one thing and does not aim at one thing. The term “the law” covers a vast array of diverse concerns and activities that have only a nominal unity, and this array of legal phenomena cannot muster a coherent pedagogy. Even if it could, state law also cannot be trusted to guide citizens on the right path, as too many examples of tyrannical governments and regimes, even in recent times, can attest. Law thus does not and should not have a moral commission or set about on an ethical project to form character. In the end, Bittner concludes, human beings can only trust their own judgment in figuring out what is right to do.

Part II moves from general principles to concrete cases and statutes in analyzing the roles and limits of the state law’s teaching function. The eight chapters in this section offers several examples of how the law reflects and shapes, if not commands and enforces public and private morality. Constitutions and bills of rights, and judicial opinions interpreting them, offer poignant examples of how the law defines and defends many constitutive values and moral beliefs of a community concerning power, order, justice, liberty, equality, and more. Education laws help habituate the next generation in the basic values of democratic citizenship, with public state schools sometimes teaching more expansive ethical habits of liberal citizenry and private religious schools sometimes fostering the moral formation of a child in a particular faith. Taxation laws prescribe forms and forums of distributive justice that move resources from those with “superfluous” wealth to those who need more. Criminal laws set a baseline of morality to protect each citizen’s person, property, and privacy. Church laws ideally set higher moral standards for their leaders and voluntary members. The laws of contract help facilitate the voluntary relationships and consensual expectations of individuals and offer remedies for harms that result from actions or omissions.

In **Chapter 6**, American constitutional scholar, James E. Fleming take up the question: “**Are Constitutional Courts Civic Educative Institutions? If So, What Do They Teach?**” He argues that constitutional court opinions, in attempting to resolve conflicts between rights in “culture wars”—in particular, conflicts between gay and lesbian rights and religious liberty claims—can teach lessons to citizens concerning how to accommodate such conflicts. Court opinions can model how to secure the central range of application of each conflicting right rather than vindicating one right absolutely to the exclusion of the other, with one side winning it all. They also can teach how to speak with respect concerning both gay and lesbian rights and religious liberty. Moreover, Fleming argues, while religious freedom is a fundamental good and value for modern liberal societies, religious exemptions for businesses from antidiscrimination laws often undercut the significant, moderating influences of trade in large commercial republics. They also undermine the salutary civic function of trade in facilitating contact, moderating difference, promoting tolerance, and securing the status of equal citizenship for all.

In **Chapter 7**, fellow American constitutional scholar, Linda C. McClain, who is also trained in theology, takes up the vexed topic of **“Bigotry, Civility, and Reinvigorating Civic Education: Government’s Formative Task Amidst Polarization.”** In the United States and globally, she argues, concerns over a decline in civility and tolerance and a surge in extremist violence motivated by hatred of religious and racial groups make preventing hatred and bigotry seem urgent. What meaning can *e pluribus unum* (“out of many, one”) have in this fraught and polarized environment? Within the U.S., a long line of jurists, politicians, and educators have invoked civic education in public schools as vital to preserving constitutional democracy and a healthy pluralism. Civic education remains a vital means for fostering civility and decreasing contempt and prejudice, but is challenging amidst democratic discord. This chapter examines the contours of a reinvigorated civic education and best practices for addressing class- and race-based civic inequalities. Religious literacy (nonsectarian education about religion) should be a component because of the harmful effects of widespread religious *illiteracy*. Teaching students to think critically and to deliberate respectfully across differences is no easy task, as this chapter illustrates with the example of controversies over LGBTQ rights.

In **Chapter 8**, Jesuit priest and Australian human rights lawyer, Frank Brennan sets out **“An Australian Case Study on Law and Values: Debating a Bill of Rights.”** Australia is the only Western liberal nation without a national bill of rights, preferring instead to handle rights questions locally and legislatively. Brennan has been at the forefront of those advocating the adoption of a bill of rights for Australia, drawing lessons from European and American constitutional and statutory regimes and regional and international human rights instruments. National protections of human rights, Brennan argues, serve to confirm and protect the essential moral values of human dignity, liberty, equality, and fairness, particularly for racial minorities, new immigrants, and indigenous peoples who often cannot escape the tyranny of the legislative majority or the prejudices of local judicial tribunals. The gravest danger to human rights, he writes, is the constraint placed on discourse and debate about the conditions under which people can participate in shaping the kind of society in which they live, especially in relation to issues which are deemed “politically correct.” In the absence of a bill of rights, Australia needs to enhance public conversation, law, and policymaking in order to root out unfairness, respect the integrity and dignity of those most different from us, while extending mercy to those who most need it.

In **Chapter 9**, German public law scholar, Ute Mager, briefly presents **“The German Constitution as Value System.”** She argues that the Basic Law of Germany, forged in the aftermath of two world wars and repulsed by the horrors of the Nazi regime, strongly affirms several fundamental moral values of Western liberalism and its Christian antecedents: human dignity, equal treatment, personal freedoms, freedoms of religion, speech, assembly, and association, a guarantee of private property, and support for the welfare state and environmental protection. These are national values whose implementation and protection depend on a blend of legislative and judicial actions as well as negotiations with individual *Länder*. These basic moral values of constitutionalism pervade German public, administrative, and private law alike, and also

help shape the German educational system which promotes such values in the next generation.

Chapter 10 is by the late American contracts scholar, E. Allan Farnsworth, who had prepared this text for a volume on *The Ethics of Contract* that did not come together. Titled “**Parables About Promises: Religious Ethics and Contract Enforceability**” this chapter calls for a sharp distinction between the much wider moral obligation and much narrower legal obligation to abide one’s promises. God himself, the Bible records, did enforce moral obligations to abide by divinely-sealed covenants. Medieval church courts used to enforce some informal moral promises as a matter of sacramental penance. But today, whether and how to honor one’s promises is left primarily for individuals to sort out in accordance with the dictates of their own consciences and the duties set by their families, churches, clubs, employers, or other communities in which they voluntarily participate. Modern liberal societies embrace the fundamental right of freedom of contract, Farnsworth emphasizes, and many constitutions forbid states from “impairing” the contracts of their citizens. Liberal state courts will thus enforce contractual promises only if the parties have abided by the proper formalities of making a contract – offer, acceptance, and consideration are the main requirements of Anglo-American common law – and only if one or both parties seek relief from the court. Morality does govern the boundaries of contract law. State courts will not enforce “unconscionable” contracts that foster such immoral behavior as usury, enslavement, prostitution, organ selling, illicit drug sales, criminal conduct, and the like. Courts will work hard to ensure that both parties gave their full consent to the bargain. And they will make equitable adjustments if a contract imposes grave injustice. But beyond those moral minima the modern liberal state does not go – and should not go, Farnsworth concludes. The morality of promises is a much wider field than the legality of contracts, and he offers several parables and stories to illustrate the distinction.

In **Chapter 11**, German contracts scholar, Thomas Pfeiffer reaches much the same conclusion in discussing European private laws of obligations. In “**The Law of Contracts and Ethics: Interrelation in Spite of Separation,**” Pfeiffer argues that the state imposition of a single moral ideal of promise-making or promise-keeping would violate a cardinal axiom of late modern pluralistic democracies – the fundamental freedom of everyone to pursue happiness according to their own choices, including through entering into voluntary contracts with others. Pfeiffer emphasizes some of the same moral limits to contract-making that Farnsworth lifted up, particularly the concerns about unconscionability in contracts and protecting parties who are incapable of giving true consent to a bargain. He further emphasizes that contract law deliberately confirms and teaches society about each individual’s moral agency in protecting their ability to consent and requiring them to abide by their voluntarily adopted bargain. He also suggests that reliance on the market rather than predetermined state rules to set the “just price” of a bargain further affirms the morality of economic freedom and the moral agency of all those “invisible hands” at work in the marketplace.

In **Chapter 12**, American tax lawyer and Scottish-trained theologian, Allen Calhoun presents an innovative study of “**Martin Luther’s Vision of Redistributive Taxation.**” He shows how the 1523 Leisnig Ordinance of a Common Chest represents the first legislative attempt to put into practice Luther’s wish that the poor and needy be helped through redistributive taxation. Redistribution as a theme in Luther’s theology is based in the “happy exchange” of attributes between Christ and the believer that is central to Luther’s doctrine of the *communicatio idiomatum*. The Eucharist or Lord’s Supper is, for Luther, the paradigm of this “happy exchange” and the most salient example of how the physical world mediates God’s gracious dealings with people. The Eucharist thus carries the redistributive logic of the *communicatio* out into the material realities of wealth and poverty. Just as God shares his superabundant grace with all needy communicants in the church through the Eucharist, so all communicants shares their superfluous property – even if only a “widow’s mite” -- with all those needy subjects in the community. Taxes paid to the Christian magistrate, like and tithes paid to the Christian diaconate, help to express the community’s and the individual’s commitment to redistributing God’s gracious favor, and helping the poor and needy in so doing.

In **Chapter 13**, American legal historian, John Witte, Jr. offer a case study of “**Teaching Sexual Morality in Church and State Historically and Today.**” He shows that, for much of the second millennium, sexual morality and criminal law overlapped, and churches and states enforced sundry sex crimes. Today, new constitutional liberties and new reforms of family law and criminal law have dramatically reduced the roll of sex crimes and the roles of churches in maintaining sexuality morality. But sexual misconduct remains a perennial reality in modern societies, Witte documents, including notably within churches, and sex crimes inflict some of the deepest scars on their victims. Modern liberal states must thus maintain a basic standard of sexual morality in its criminal law as a restraint on harmful behavior and as a bulwark against a sexual state of nature where life is often “brutish, nasty, and short” for the most vulnerable. And liberal societies should encourage its citizens and churches to pursue a higher morality of aspiration that views sex and the sexual body as a special gift for oneself and others.

Part III of this volume takes up the question *where* the law teaches value, offering views from the bench and the bar in four final chapters.

In **Chapter 14**, Australian jurist, Reid Mortensen presents “**The Clergy of Liberalism: Lawyers’ Character, Virtue and Moral Education in Pluralized Societies.**” He uses Alasdair MacIntyre’s description that lawyers are the clergy of liberalism, a professional group that, by and large, enables and exemplifies liberalism’s values, including notably its promotion of individual rights and entitlements. In this sense, the role of modern lawyers is analogous to the role of the clergy in earlier Christian societies. The respective moral dispositions, habits, and discipline of these two professions sync with the moral purposes promoted by the community, and these professionals exemplify and help enforce the community’s moral purposes. In late modern liberal societies, lawyers are thus required to be paradigmatic liberal citizens. This is reflected in the three main pillars of the ethical system of the legal profession: partisanship (the single-minded representation of client interests); procedural morality

(promoting client legal entitlements even if they are considered unjust); and moral accountability only for failures to give effect to partisanship or procedural morality. A more complete account of lawyers' ethics should also concede that, in contemporary legal practice, these three ethical pillars may also develop moral character – but a kind of character shaped by a scheme of procedural virtues that respond to the needs of pluralized liberal societies. This kind of character also has implications for the role of the law school in developing the distinctive moral expectations of lawyers in their role as 'the clergy' of liberalism.

In **Chapter 15**, American legal ethics expert, Robert F. Cochran, Jr. offers a meditation on “**Legal Representation and the Character Formation of Lawyers and Clients.**” Legal representation influences the character of both lawyers and clients, he argues. Lawyers generally play a morally responsible role in the legal system or in commerce. Litigators advocate for each side and enable judges and juries to make wise decisions. Business lawyers draft documents and negotiate deals enabling businesses to employ people and meet the needs of customers. Such legal representation should employ and develop the virtues of truthfulness, courage, justice, and prudence. Nevertheless, legal representation carries moral risks. Constant advocacy for clients may cause a lawyer to become argumentative and less forthcoming in areas of life where these qualities are not justified. Legal representation can also be an occasion for moral harm or moral growth for clients. Some lawyers encourage clients to act in self-serving ways, reinforcing the selfish instincts of clients. A better role for the lawyer is that of a friend in the classical sense, initiating moral discourse between the lawyer and the client and encouraging moral growth for both of them.

In **Chapter 16**, South African theologian, Robert Vosloo, provides a striking reflection on “**Law, Conscience, and Character Formation: A South African Case Study in Ricoeurian Perspective.**” Against the backdrop of a court case in apartheid South Africa, as represented in the book *The Trial of Beyers Naudé: Christian Witness and the Rule of Law* (1975), his chapter calls for greater conceptual clarity regarding the relationship between law and conscience. Vosloo draws on the work of French philosopher Paul Ricoeur to argue that one should guard against setting up a false dichotomy between law and conscience in which this polarity becomes a schism. Moreover, the freedom and law of conscience should not be viewed as an arbitrary faculty of the autonomous individual that functions in isolation from the law or the counsel of others. The law of conscience is not a law unto oneself. As the two halves of the word indicate, con-science has a profound relational and societal aspect, requiring the need to give a public account of oneself and one's claim's claims of conscience and their influence on character formation and moral behavior. Particularly when claims of conscience are used to seek exemptions from general laws that bind all others, the claimant has an obligation to explain to courts and communities the moral values and decision-making involved.

Finally, in **Chapter 17**, leading Australian high court justice, Kenneth John Crispin reflects on “**Law, Values, and Moral Influence.**” He argues that the laws of the state obviously reflect moral values, whether arising from religious or philosophical

beliefs or the acceptance of social mores such as support for equal rights and basic freedoms. The converse is also true, however, Crispin emphasizes. While moral consciousness and community values are more obviously influenced by enculturation, religious beliefs and political inclinations, laws also have a profound effect on the circumstances in which people mature and develop social consciences. They shape the institutions of political, economic, social and, to some extent, even family life, within which beliefs are formed and character development fostered. Laws may also be exemplars, providing information and stirring consciences by proscribing conduct that infringes moral standards and upholding the rights of individuals. Judicial rituals, in particular, offer public affirmations of values, and landmark cases provide catalysts for change. The liturgies of the courtroom are critical to confirming the justice of the law and its underlying moral foundations and values. Justice must not only be done with due process and proper representation; justice must also be seen to be done to inspire the confidence and shape the moral character of both officials and citizens, plaintiffs and defendants, the accused and their victims.

It is high time for me to stop hovering in front of these chapters and let the authors speak for themselves, which they do with eloquence and erudition on the pages that follow. Having started this introduction with several epigraphs, however, I cannot resist lifting up in conclusion two choice quotes from among many others herein. Both quotes are in Robert Vosloo's chapter 16. The first is from Cathleen Kaveny, the distinguished author of chapter 2 herein whose contributions builds on her signature 2012 title *Law's Virtues*. There, Kaveny warns against "two opposite and equally damaging extremes."

We should not make the mistake of assuming that law and morality are co-extensive, on the one hand, or of maintaining that they should have as little as possible to do with each other, on the other. In very different ways, both mistakes can be traced to the same fundamental problem: ignoring the full range of ways in which moral considerations enter into wise lawmaking.¹

The second quote is by leading South African theologian, Dirkie Smit, now at Princeton Theological Seminary. Having lived under both the brutalities of an apartheid legal system and the new constitutional democracy of South Africa, Smit writes about the pedagogical role of law in developing habits, customs, and eventually self-guided rules of morality. For Smit, the law can help persons and peoples become better, realizing the good within them, and guided by the moral law written on their hearts by God. Smit writes:

¹ Cathleen Kaveny, *Law's Virtues: Fostering Autonomy and Solidarity in American Society* (Washington: Georgetown University Press, 2012), 45.

Law can even fulfil the role of moral education, formation and transformation. Morality changes, and very often it changes as a result of legal changes. Experience amply shows that forms of racism, sexism, homophobia, prejudice and discrimination, disregard for human dignity, violations of human rights, slavery, abuse, and in fact many practices of corruption, nepotism and exclusion often first have to be prohibited by law, before a major part of the population will change their minds to accept and share these convictions. In this sense, living in a city with just laws is indeed an important form of moral formation – as the Greek philosopher [Xenophon] already taught.²

² Dirk J. Smit, “What about the *ló*? Adam Small on law and morality,” in *Remembering Theologians – Doing Theology: Collected Essays 5*. Edited by Robert Vosloo (Stellenbosch: Sun Press, 2013), 402-403.