

*THE CULTURE OF CONSERVATIVE CHRISTIAN LITIGATION.* By Hans J. Hacker. Rowman & Littlefield 2005. Pp. 211. \$29.95. ISBN: 0-742-53445-6.

Hans J. Hacker's analysis of the culture of Christian constitutional litigation firms is based on a combination of interviews and quantitative analysis of the firms' pattern of legal work. The result is a highly readable portrayal of the worldview and strategies of three conservative Christian non-profit legal organizations. Hacker has structured the book in such a way that the reader primarily interested in his narrative is not overly burdened by the statistical analysis, while the researcher who wants to review the numbers can do so easily. In either case, the numbers and the interview data tend to agree. What Hacker's subjects tell him is a reliable indicator of the truth.

The subjects of Hacker's study are the American Center for Law and Justice (a firm founded by Pat Robertson and run by Jay Sekulow), the Liberty Counsel (founded and run by Mat Staver, now in conjunction with Liberty University School of Law), and the American Family Association's Center for Law and Policy (growing out of the organization founded by Donald Wildmon). Hacker effectively describes the history and current situation of each of these firms, including their legal strategies and their funding arrangements. (31-32, 64, 109) His attention to funding is particularly useful because many examinations of the activities of various conservative Christian organizations fail to notice the resources available to those groups and do not accurately describe the scale of potential projects. In the past, for example, relatively little note was made of the growing juggernaut Focus on the Family while tremendous attention was paid to the shaky Moral Majority.

Hacker's portrayal of the individuals and groups working in Christian conservative litigation is largely sympathetic. Jay Sekulow comes off as a shrewd litigator who pioneered conservative Christian legal appeals to pluralism as a defense against an overweening establishment clause. (18-36) Mat Staver is the determined lawyer who funded a public interest firm out of his commercial work until he found a sponsor in Liberty University. (55-62) The lawyers of the AFA Center for Law and Policy are less interested in finding novel paths to legal victory than they are in vindicating a particular philosophy of law and

government. (91-123) Hacker succeeds in demonstrating the tension between litigating from the standpoint of a minority player asking for toleration and religious liberty against the state, and then being involved with other cases attempting to impede the rise of a new class of rights favoring gay citizens. (39) At the same time, he is able to reconcile their actions to some degree by showing that they see little inconsistency in litigating for a positive right to religious liberty they find in the text of the Constitution, and for the right of the democratic electorate to make policies about substantive issues like marriage rather than having judges legislate. (123) Nevertheless, his own feeling that litigation against gay-rights legislation threatens the logic of tolerance-based religious expression cases augurs potential difficulties ahead for the subjects of his book. (74-76)

Another part of Hacker's book which proves valuable is his description of some of the internal disagreements among members of the conservative Christian legal community. For example, since the Supreme Court's *Smith* decision several years ago, free exercise claims have lost much of their legal potency. Religious liberty litigators have often successfully resorted to free speech strategies in order to prevail where they might otherwise fail. Hacker shows that some of the lawyers in the movement have difficulty with litigating religious liberty claims in a manner similar to that used for pornography, racist speech, and advertising. (153) In other words, there is a tension between what works and what some lawyers think is substantively right. Hacker also effectively notes that Christian litigators don't always have the same ideas about religion in the public square as some of their counterparts in parallel public policy organizations. For example, many of these litigators have little or no interest in seeing public schools begin having a voluntary morning prayer of some sort. They see too much potential for mischief, abuse, and disagreement. In fact, Hacker openly hopes Christian litigators will prove to be good tutors of the public policy counterparts when it comes to religion, politics, and law. (xiv)

Though the book is quite informative and does a nice job of accurately conveying the thoughts and behaviors of Hacker's subjects, there is a missing piece. Hacker focuses on the ACLJ, Liberty Counsel, and the AFA CLP; but where is the discussion of other firms with a powerful presence? There are brief allusions to the Alliance Defense Fund, the Rutherford Institute, and the Christian Legal Society, but no study of their participation in litigation and no interviews with the attorneys working in those groups. And what about the increasingly active Becket Fund? In addition, the conservative Christian legal culture

doesn't end with Protestant efforts. What about the Thomas More Law Center, for example? Hacker shows us that there are different attitudes toward litigation among the members of these firms. Having that knowledge, it would be good to hear from other major players and likewise good to know how they stand financially relative to each other and to their competitors on the left.

On the whole, however, the desire for a more complete treatment amounts to a minor criticism. Hacker's study is an important contribution to understanding the culture of a group alternately cast as warriors for religious freedom and tools of a shadowy movement with theocratic ambitions. If Hacker can be seen as shining a light that more fully reveals the nature of his subjects, then his presentation leads toward a more benevolent construction of the firms' motives and strategies.

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