

## WHY LAW, WHY RELIGION?—A CONVERSATION BETWEEN A LAWYER AND A THEOLOGIAN

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Howard Vogel invited Doug Sturm<sup>1</sup> and me to explain ourselves. Why did we take up law? Why theology? And why law and theology together? He encouraged us to offer personal accounts in response, and I am glad to comply.

### I. WHY LAW?

Why law? The answer is simple. I had no choice. I was ordained to the ministry of the Presbyterian Church in 1961, and in 1962 became minister to a small congregation in a small town in middle Tennessee. In 1966 I was named the Presbyterian Campus Minister at the University of Georgia. My wife, June, our children and I moved to Athens.

The Presbyterian Center was notorious for its faithful witness in difficult, explosive times. I had read about the Center and its work a couple of years earlier in a *New Yorker* magazine article by Calvin Trillin. That article was subsequently incorporated into a well-taken book about the liberating trauma of integration in Georgia, especially at the University.<sup>2</sup>

When Hamilton Holmes and Charlayne Hunter desegregated the University of Georgia, they were greeted by massive, violent riots.

Minority students who followed Charlayne and Hamilton and enrolled in the University, were subject to no less intimidation. The Presbyterian Center was a place of refuge for them, and some lived in apartments on the premises. In due course, the Center became a gathering place for people committed to remedying racism.

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2. Calvin Trillin, *An Education in Georgia* (U. Ga. Press 1992) (originally published Viking Press 1964).

Then the war in Viet Nam came on for attention, and a handful of students began to mount small, periodic, mostly silent demonstrations against it. The crowds would soon enough grow larger and louder. And then, surprisingly early for Georgia, the denial of women's rights drew protests.

Our family arrived just as participants in the separate race, peace and gender movements were beginning to explore their common interests. Many of the same students worked for these different causes. Many who did so were Presbyterian Center familiars. The Center became their meeting place, with lots of interchange.

I think it was Dietrich Bonhoeffer who once wondered what would happen if, on some Sunday morning, a real sinner were to appear in Church. He reckoned that the congregation would be scandalized. The Presbyterian Center was loaded with sinners, and some Presbyterians around the state were scandalized.

The truth is that the students who frequented the Center—black and white—were, for the most part, conscientious young people attempting to discern and fulfill their theological and political responsibilities in a very difficult time. I can substantiate my point about the quality and faithfulness of the students by calling your attention to two of them in attendance here today: Professor Paula Cooley of Macalester College and her husband, Phil Nichols. *Now* they are members of the respectable Journal of Law and Religion community; *then* they were Presbyterian Center sinners and served as our resident “designated adults.”

My predecessors at the Center had acted faithfully and well in trying circumstances and, in consequence of doing so, suffered a high incidence of vocational mortality. I sought to follow their good example and, in due course, I too was fired. At the time, June was in graduate school. We had three small children, no prospect of further employment in the Church, and no income other than some much-needed help from our families.

So, naturally, I went to Law School.

Only later did I come to understand how I had been predisposed to make the move. For example, June had been unobtrusively leaving books about law lying around the house. Included among them were some of Bill Stringfellow's writings.<sup>3</sup> I was deeply affected by him and by the example of his law practice.

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3. See e.g. William Stringfellow, *A Private and Public Faith* (Eerdmans 1962); William Stringfellow, *My People is the Enemy: An Autobiographical Polemic* (Holt, Rinehart & Winston 1964).

Moreover, activist students regularly needed lawyers and bail money, and, in consequence of my ordinary pastoral duties, I came to know the local bench and bar. I saw that, in Athens courts, especially in the Superior Court of Judge James Barrow, all men and women were addressed with respect as Mr., Mrs. or Miss. They had *personae juris*, and their constitutional rights were recognized and enforced. Law offered hope to the embattled and therefore offered me the possibility of continuing my ministry by other means.

The heroically supportive Chair of the local Presbyterian Center was the Dean of the Law School, Lindsey Cowen. He made my enrollment financially possible. It would have been churlish of me to decline.

## II. WHY THEOLOGY?

Again, I simply could not do otherwise.

Imagine the excitement of having as teachers along the way to ordination such theologians as Paul Ramsey, Paul Tillich, James Luther Adams, Dick Niebuhr, Karl Barth, and especially my mentor Paul Lehmann. I was happily immersed in theology and practiced it professionally and openly as a pastor for about a decade. Changing professions did not mean surrendering my self-understanding, practice and identity as a theologian.

Nor has it meant my somehow becoming a “religious” lawyer.<sup>4</sup>

Paul Lehmann noted that God is “doing what it takes to make and to keep human life human in the world.”<sup>5</sup> The purpose of His action is to make us authentically, fully human, not religious or moral. Barth,<sup>6</sup> Bonhoeffer<sup>7</sup> and Stringfellow<sup>8</sup> all warned against the dangers of religion. More recently Talal Asad<sup>9</sup> and then Bill Cavanaugh<sup>10</sup> have been

4. On religious lawyering, see e.g. Russell G. Pearce & Amelia J. Uelman, *Religious Lawyering's Second Wave*, 21 J.L. & Religion 269 (2005-06).

5. This central expression is often and variously repeated. See e.g. Paul L. Lehmann, *Ethics in a Christian Context* 85, 101, 112 passim (Harper & Row 1963).

6. See e.g. Karl Barth, *Church Dogmatics*, vol. 1, pt. 2 at 280-361 (G.W. Bromiley & T.F. Torrance eds., G.T. Thomson & Harold Knight trans., T & T Clark 1956).

7. See Milner S. Ball, *Dietrich Bonhoeffer*, in *The Teachings of Modern Christianity On Law, Politics, and Human Nature Vol. 1*, at 386-389 (John Witte Jr. & Frank S. Alexander eds., Colum. U. Press 2006).

8. Milner S. Ball, *The Word and the Law* 75-76 (U. Chi. Press 1993); Frank Alexander, *William Stringfellow*, in *The Teachings of Modern Christianity On Law, Politics, and Human Nature* 465, at 471-472.

9. See e.g. Talal Asad, *Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam* 27-54 (Johns Hopkins U. Press 1993).

10. See e.g. William T. Cavanaugh, *Does Religion Cause Violence?*, 35 Harv. Divinity Bull. 24 (Spring/Summer 2007); William T. Cavanaugh, *Religion and Violence*, Harv. Divinity Bull. 7

exploring the limits and harms entailed in use of the category “religion.” William James, the great student of religion, concluded that “[t]he pivot round which the religious life, as we have traced it, revolves, is the interest of the individual in his private personal destiny. Religion, in short, is a monumental chapter in the history of human egotism.”<sup>11</sup>

I have been a member of law faculties exclusively in state universities. I have understood it to be my responsibility there to engage in translation and critique. Barth noted that, within the Church, we must speak our own language of the Bible and the Christian tradition. But he also referred to a “public responsibility” of faith that requires translation into “the language of the newspaper.”<sup>12</sup> Martin Luther King is an example for what Barth sought. King translated the Biblical stories into the daily news of the present. He did so in what he spoke, wrote, and performed, employing language understood outside the church. As Barth urged “Let us beware of remaining stuck where we are and refusing to advance to meet worldly attitudes.”<sup>13</sup>

I have worked at translating the Biblical language and faith into the language of American law—the language of legal scholars, practicing lawyers, judges, and politically involved citizens. This labor has not been an exercise in apologetics. I have assumed rather than argued the relevance of the Biblical faith. The same was true for Bob Cover’s engagement in Jewish Jurisprudence.<sup>14</sup> He assumed, drew on and performed its relevance.

### III. CRITIQUE

Biblical texts and faith can be fundamentally judgmental. Translation requires representation of their judgment. The Gospel of John presents a striking example.<sup>15</sup> The Gospel opens with a trial in process. John the Baptist gives testimony and is subject to examination. The law of the Jewish community and that of Rome are in issue throughout.

At the end, Jesus is brought to trial and is condemned to die by Jewish and Roman law functioning as they are supposed to do. In the perspective of the text, the law is correctly upheld. Jewish and Roman

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11. William James, *The Varieties of Religious Experience* 387 (Harv. U. Press 1985).

12. Karl Barth, *Dogmatics in Outline* 30-33 (G.T. Thomson trans., SCM Press 1949).

13. *Id.* at 33.

14. See e.g. Robert M. Cover, *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 Harv. L. Rev. 4 (1983).

15. The material on John is drawn from Milner Ball, *Called by Stories: Biblical Sagas and Their Challenge For Law* 134-137 (Duke U. Press 2000).

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law are a great achievement.

But in executing Jesus, this law condemns itself. The text does not pronounce judgment against the law. Instead it suspends that judgment and tells the startling story of the resurrection. That story places law in a wholly new context: The violence of law has been overcome, and Law has become a medium of the Gospel.