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Abstract

WHAT IS CHRISTIAN LEGAL THOUGHT?

BY WILLIAM S. BREWBAKER III

Discussions about Christian legal thought often proceed from the twin premises that approaching law and legal scholarship from a Christian perspective is both self-evidently a good thing and that it is obvious what “Christian” legal thought is. Neither of these premises is correct. This paper offers a starting point for addressing those premises by posing three questions:

- Is specifically Christian Legal thought a good idea?
- What is Christian Legal thought?
- What payoff, if any, might we expect from thinking about law from a specifically Christian perspective?

IS SPECIFICALLY CHRISTIAN LEGAL THOUGHT A GOOD IDEA?

There are three main objections to thinking about law and politics from an explicitly theological perspective: (1) A “sectarian” approach to public matters like law and politics makes dialogue about political matters difficult, if not impossible. (2) It is disrespectful to appeal to principles which your fellow citizens do not share. (3) Religion generally and Christianity in particular have been the source of significant oppression historically, and the introduction of Christian thought threatens a repetition of those negative experiences.

The paper offers abbreviated versions of the best responses to these objections. The first objection depends on the questionable idea that there is some sort of generically human (tradition-independent) reason that we can always appeal to in discussions with our fellow citizens. The response to the “disrespect” argument is similar. Is it any more “disrespectful” to bring a religious

perspective to bear in public than it is disrespectful to bring a secular perspective that is not universally shared? As to the final objection, Christians must concede that people acting in the name of Christ have a lot to answer for. Whether Christian politics has been more violent than others is an empirical question; Christians, however, would do well to be on their guard on this front.

While not directly relevant to the objections above, one might also defend Christian legal thought on grounds of necessity. Christian legal thought is inevitable. If a person accepts the premise that the Christian faith is true, in the ordinary sense of the word, then such a person is inevitably going to ask how his or her most fundamental beliefs connect to these matters.

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WHAT IS CHRISTIAN LEGAL THOUGHT?

Rather than offer a definition, the paper offers several possible ways of thinking about law from a Christian perspective. The first is a “theology and law” approach. On this view, Christian doctrine occupies some of the same conceptual space as economics

or feminism or psychology does in other familiar “Law and X” schools of legal thought. In Christian terms this means asking how, for example, the doctrine of God, the doctrine of creation, the doctrine of the human person, the idea of the fall, the concept of redemption, our idea of what scripture is, or the doctrine of the kingdom of God shape our understanding of the world, and thus our understanding of law and its operations.

A second approach might be called a bottom-up approach. It would start with jurisprudential concepts like justice or rights, or equality, and seek to retrieve and

learn from what Christian thinkers have had to say about these topics, which are themselves fundamental to contemporary legal thought.

A third approach is historical in that it notices in particular that the church has found itself in many different historical and cultural contexts, sensitizing the jurist to the importance of context as he or she seeks to apply theological truth and practical wisdom to particular situations.

A fourth approach—or, better yet, a fourth emphasis—takes as its starting point the subject matter of law as we find it in contemporary practice. It investigates the relationship between Christianity and Property Law, or Contract Law, or Constitutional Law, or Torts, or Family Law, asking whether there could be an intersection between those topics specifically and our understanding of the Christian faith.

A final approach is to focus on the Bible itself in relation to law. We might begin with the Bible itself—or individual parts of the Bible such as the Pentateuch, Israel's history, the Psalms, the wisdom literature, the prophets, and the New Testament letters and the gospels—and ask what these specific portions of Scripture have to tell us about the questions about law in which we might be interested. Most Christian scholarship is a mixture of these approaches.

WHY BOTHER WITH CHRISTIAN LEGAL THOUGHT?

A pressing question to ask regarding Christian legal thought is whether, at the end of the day, approaching law in these ways is likely to yield anything of significance. The paper argues that the answer to that question may depend on our expectations and that the default mode of much Christian legal thinking is too hastily

oriented toward offering a prophetic word to society. Instead, Christian thinking about law often has a stronger contribution to make in explaining ourselves (our legal practices and the point of those practices) to ourselves, and perhaps even to other humans who would not claim to be Christians.

The balance of the paper illustrates this point by undertaking a short explication of the doctrine of creation as it relates to law, focusing in particular on creation ex nihilo, creation's goodness, dominion and eschatology.

Bill Brewbaker is Associate Dean and William Alfred Rose Professor of Law at the University of Alabama School of Law. He received his undergraduate training at Vanderbilt University and his legal training at the University of Virginia (JD) and Duke University (LLM). Before joining the University of Alabama School of Law faculty in 1993, Professor Brewbaker practiced law in Birmingham with Bradley, Arant, Rose and White (1986-1988) and Wallace, Jordan, Ratliff, Byers and Brandt (1989-1992), and did graduate work in health care law at Duke University. He is co-editor (with Mark Hall) of two books in Aspen's Health Care Corporate Law series and has written law review articles dealing with health care antitrust, price regulation, physician unionization and managed care liability. During the 2001-2002 academic year, he was a Visitor of the Faculty of Law at the University of Cambridge, a Visiting Fellow of St. Edmund's College and a Member of Tynedale House. Professor Brewbaker regularly teaches courses in Health Care Law, Health Care Liability, Property and Jurisprudence. His research interests include health care and legal philosophy, including theological perspectives on law.

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