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What Hath Faith Wrought? (book review)

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WHAT HATH FAITH WROUGHT?

FAITH AND LAW: HOW RELIGIOUS TRADITIONS FROM CALVINISM TO ISLAM VIEW AMERICAN LAW. By Robert F. Cochran. New York University Press 2008. Pp. 299. \$25.00. ISBN: 0-814-71673-3.

While engaged in research on another project in the Lon L. Fuller Papers at the Harvard Law School, I came across a letter from early 1960 from William Stringfellow¹ to Fuller. Stringfellow invited Fuller to speak at a conference on the subject of the relation, if any, between Christianity and the law. Fuller was invited to offer a jurisprudential perspective on whether there was a connection between the two, and was to be joined on the panel by a minister and philosopher. Stringfellow noted the unusual nature of what today would be called an interdisciplinary conference, but thought much could be learned by all.

In the intervening half-century since Stringfellow wrote Fuller, a number of academic lawyers have explored the relationship of religion (and religious belief) and law. The late Harold Berman's *The Interaction of Law and Religion*² represents a starting point connecting the two. Tom Shaffer's books *On Being a Christian and a Lawyer* and *Faith and the Professions* and Milner Ball's *The Word and the Law*³ assay how, if at all, a Christian lawyer can practice law. Professor Samuel Levine, an orthodox Jewish rabbi and one of the contributors to the volume under review, has written extensively concerning both the content of Jewish law and the relevance of Jewish legal thought to American law.⁴ The "religious lawyering" movement⁵ evaluates the role

1. On Stringfellow's influence on Christian lawyering, see *Radical Christian and Exemplary Lawyer: Honoring William Stringfellow* (Andrew W. McThenia, Jr. ed., Eerdmans Publ. Co. 1995). A bibliography of Stringfellow's many works is found in *A Keeper of the Word: Selected Writings of William Stringfellow* 416-426 (Bill Wylie Kellermann ed., Eerdmans Publ. Co. 1994).

2. Harold Joseph Berman, *The Interaction of Law and Religion* (Abingdon Press 1974).

3. Thomas L. Shaffer, *On Being a Christian and a Lawyer* (BYU Press 1981); Thomas L. Shaffer, *Faith and the Professions* (SUNY Press 1987); Milner S. Ball, *The Word and the Law* (U. Chi. Press 1993).

4. See e.g. Samuel J. Levine, *Emerging Applications of Jewish Law in American Legal Scholarship: An Introduction*, 23 J.L. & Religion 43 (2007-08). See also Russell G. Pearce, *Foreword: The Religious Lawyering Movement: An Emerging Force in Legal Ethics and Professionalism*, 66 Fordham L. Rev. 1075, 1076 (1998) (listing articles on lawyering from a Jewish perspective).

5. See e.g. Symposium, *The Relevance of Religion to a Lawyer's Work: An Interfaith*

religious faith has in how lawyers practice law.

*Christian Perspectives on Legal Thought*⁶ extended this discussion beyond the question whether a religious lawyer is a contradiction. The editors divided the contributions in *Christian Perspectives* into three sections: “Christian Perspectives on Schools of Legal Thought,” “Christian Traditions and the Law,” and “Christian Perspectives on Substantive Areas of the Law.” In 2006, the two-volume *The Teachings of Modern Christianity: On Law, Politics and Human Nature* was published.⁷ *Faith and Law* is a largely successful extension of these works, going beyond the narrower topic of religious lawyering and the Christian focus of *Christian Perspectives* and *The Teachings*.

Faith and Law is a compilation of sixteen essays from legal academics intended to offer, to a greater and lesser extent, a meditation on “How Religious Traditions from Calvinism to Islam View American Law.” After an Introduction by editor Robert F. Cochran, Jr., *Faith and Law* is divided into six parts. The first essay is a deeply learned discussion of Augustine by Elizabeth Mensch. Part II consists of four essays from Reformation Protestants, and Part III includes four essays from “Home-Grown American Faiths.” Parts IV and V consist of paired essays from Roman Catholics and from an Orthodox and Reform Jew. Part VI consists of three essays, one each by a Hindu, Buddhist and Muslim. All but one of the contributors (Kisor K. Chakrabarti) is a current or former American or Canadian legal academic, and Chakrabarti taught at universities in the United States and elsewhere and practiced law in India. Each contributor offers a readable, enlightening essay, although several needed the benefit of tighter editing. And the editor offers brief and insightful introductions to many of the contributions.

As noted above, *Faith and Law* builds nicely on prior scholarship. The essays are thoughtful, and the editor has gathered a diverse (both in terms of religious tradition and in terms of ideological outlook) group of essayists. The weakness of *Faith and Law* is a lack of consistency in answering the question posed in the subtitle.

The lack of consistency is largely a result of the varying level of generality used by the contributors. Some contributors evaluate a

Conference, 66 Fordham L. Rev. 1075 et seq. (1998).

6. *Christian Perspectives on Legal Thought* (Michael W. McConnell, Robert F. Cochran Jr., Angela C. Carmella eds., Yale U. Press 2001).

7. *The Teachings of Modern Orthodox Christianity on Law, Politics, and Human Nature* (John Witte, Jr. & Frank S. Alexander eds., Colum. U. Press 2006). In 2007, this work was republished in three volumes, one each on modern Protestant, Orthodox, and Roman Catholic thought.

particular aspect of American law from a religious perspective. For example, Samuel Levine uses Jewish law to assess the American law concerning self-incrimination. Kisor K. Chakrabarti offers “A Hindu Perspective on Euthanasia and Physician-Assisted Suicide,” and Patrick McKinley Brennan uses the Catholic natural law writings of Jacques Maritain to criticize the Supreme Court’s state sovereign immunity cases. More broadly, Anthony V. Baker offers a three-act story providing an overarching view of the African-American church on American law, and the three authors of the essay on the Church of Jesus Christ of Latter-day Saints suggest “footings” (rather than “foundations”) due to the “relatively young mining of the jurisprudential shafts of the [Mormon] tradition.” (150) Timothy L. Hall’s open and eloquent confession as a “dogmatist” concerning “the essentials of Christian orthodoxy” (79) provides relatively little information about how Baptists view American law (instead discussing intolerant understandings of toleration in the secular world). Robert W. Tuttle’s essay “A Lutheran Perspective on Legal Ethics,” a sophisticated account of how Lutheran theology informs his teaching of professional responsibility, left me wondering whether the “four components of Lutheran ethics” (62) provide a Lutheran view of American law as well as a perspective on the teaching and practice of law.

A related difficulty in assessing the role of faith and law is the “Swiss Army knife” problem, which may be exemplified by the essay written by my former colleague Beto Juárez, “Catholic Social Thought and Immigration.” Dean Juárez takes to task a Catholic pro-life activist who objected to the presence in a Roman Catholic church of a California legislator supportive of abortion rights. The legislator was invited to speak about proposed legislation allowing undocumented immigrants to obtain a driver’s license. (195-196) Dean Juárez noted that this activist was making a charge that the legislator was a “Cafeteria Catholic,” accepting only some of the teachings of the Church. Yet, the pro-life activist appeared to oppose immigration efforts supported by the California Catholic Conference. Dean Juárez then noted that Catholic social thought holds that “national sovereignty cannot be used to limit immigration when this is inconsistent with the universal common good.” (197) This conclusion was that

many Catholics in the United States will continue to be challenged by the Church’s teachings on immigration, and that some will continue to be Cafeteria Catholics who selectively reject the Church’s moral teachings on immigration. (197)

But the teachings of the Roman Catholic Church come in several types. The encyclical *Humanae Vitae* (1968) concerning human life, including contraception and abortion, is a binding teaching on Roman Catholics. The encyclical *Evangelium Vitae* (1995) on human life, which condemns the death penalty in nearly all circumstances, is not a binding teaching. The Church's teachings on immigration are an important challenge to American Catholics unhappy with the presence of undocumented immigrants, and Pope Benedict's statements during his trip in April 2008 to the United States emphasized the importance of those teachings.⁸ But they are not binding, and the charge that the pro-life activist was a "Cafeteria Catholic" for his opposition to the natural right of persons to immigrate to the United States seems to me to be misplaced.

The Swiss Army knife problem is whether religion is simply another tool in the kit of lawyer rhetorical techniques. If my secular arguments are unavailing, then what if I use this argument based on my (our?) religious faith? Are you now persuaded? Mere explication rather than persuasion may be the best approach for those whose legal stances are informed by their religious beliefs.

Of the eighteen contributors (the essay on Latter-day Saints was jointly written by W. Cole Durham, Jr., Michael K. Young and Brent G. Scharffs), six also contributed to *Christian Perspectives*, a remarkable number considering that five contributors to *Faith and Law* are not Christian. Additionally, three contributors teach at Pepperdine University, two at Villanova, two at Brigham Young University, and two at SUNY-Buffalo. Although the overlap of scholars interested in the relation of faith to understanding law is unsurprising, surely the number of legal academics interested in the relevance of religious faith to American law is sufficient to allow other voices to be heard. *Faith and Law* would have benefited from a greater number of new voices.

Despite these concerns, *Faith and Law* is a valuable contribution. The next step might be to draw from the original movie *I'm Not There*, released in 2007. The director, Todd Haynes, has a number of different actors, including Cate Blanchett, play irreconcilable versions of Bob Dylan during different periods of his life. Likewise, a collection of essays from legal academics from different religious faiths on just two

8. See Daniel J. Wakin & Julia Preston, *Pope Speaks Up for Immigrants, Touching a Nerve*, http://www.nytimes.com/2008/04/20/us/20catholics.html?_r=1&pagewanted=1&fta=y&oref=slogin (last accessed Sept. 22, 2008) (noting statements of Benedict supportive of immigrants which "pointedly avoiding any specifics of the American immigration debate, like the issue of whether to grant legal status to illegal immigrants").

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or three topics might bring into better focus the irreconcilability of different religious faith in understanding American law, a type of counter-ecumenism that better presents who we are, and how others present themselves.

Fuller declined the invitation. It is a sign for the better that the contributors to *Faith and Law* accepted.

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