

ISSUES

IN CHRISTIAN EDUCATION

Summer, 1987

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Doing God's Will in a Litigious Society

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EDITOR'S NOTES

Life in these United States includes people's using the law of the land more frequently as a tool for rectifying real and/or imagined injustices. The law can impinge on the church and its members and ministers in unwelcome ways. They cannot, therefore, afford to proceed to work at their parish, district and synodical activities as though nothing has changed... unless they choose to live among the perils of legal ignorance.

The authors of the following pages share their personal experiences and reflections on litigation and what it means in the context of the Christian church in the United States today. The reader, I hope, will find the authors' ideas helpful for getting successful preventive measures into place before some legal problem is at his or her door.

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reflections rejection

There is a goodly amount of quality material in this issue about how Christians can stay within the bounds of civil law. Concordia is pleased to have had the assistance of many writers in preparing the articles on a very specialized area and to be able to send this journal to you as a service to our brothers and sisters in the church.

As I've read materials about "staying within the law" I have found the writers were saying that life will be happier if you do and an unpredictable hassle if you don't. They are right up to a point, but there are other motivations that direct our lives as Christians, and I see these at work in our Concordia family.

For example, there are no local, state, or national laws that tell the residents of Seward to support the campus and community fund raising campaign for student scholarships or be subject to litigation. There was instead, I believe, an awareness in the Seward community that, by example, we had an opportunity to communicate with our church and business community outside of the Seward area how very crucial it is just now for all supporters to double their gifts to Concordia, Seward. Only through scholarships and financial aid to students can our churches and their communities hope to enjoy the benefits of an adequate supply of replacement pastors, teachers, directors of Christian education and other Christian leaders in the 1990s. Graduates should not have to complete college and seminary with debts in the thousands and then be expected to repay them from their modest parish ministry pay checks. It's that simple. Concordia supporters in the Seward community knew no one else could send the "urgency of increasing support" message as well as they could.

The response of Concordia's supporters everywhere, in both business and church, is also motivated by Christian principles and/or a code of ethics for responsible citizenship. Both teach us to share our goods and to be a good neighbor.

And on the lighter side, there is no civil law that requires people to help out when you are subjected to one of the blizzards God permits nature to visit on Nebraska at the most unpredictable of times. The spring 1987 version gave many people special opportunities to go the extra mile, and they did. What a joy it was to see Dr. Ralph Bohlmann and many presidential inauguration guests join the Concordia family in a special event that the Almighty designed to be remembered in many more ways than the committee had planned. Above all we will remember that the Ruler of Wind and Wave is with us always, everywhere, no matter what happens. He always blesses above all that we ask or think.

Ralph L. Reinke
President

editorials

No Matter What; It's Going to Hurt!

October 21st, 1981 was a day to remember in the life of this parish pastor. During our annual harvest festival the floor of our five month old fellowship hall collapsed, sending 275 people into the basement among broken concrete and twisted steel. My first thought was that people were dead. The second, get to the hospital because you're on the trauma team. The third, "Oh, God, help!" At 4:00 a.m. that morning, after seeing over 100 people come to the hospital in our little town, after the Lifeline Helicopter and a hospital jet came to transport the critically injured to major hospitals, when things began to slow down, the county attorney tapped me on the shoulder. His message was one that made me feel afraid, weak, and alone. "You had better get the sheriff to lock the building and post a guard. Let no one in. Get a good lawyer. You're going to be sued." So here we are at 4:00 a.m. being told that not only a Christian, not only a pastor, but a whole congregation is going to be sued. It hurt! We hadn't done anything wrong. Why that?

We do need to protect ourselves from people in the world. We need to use the God-given structure of our government, instituted and directed by God. The courts need to be there. But for a Christian it will not be a pleasant experience. No matter what the outcome is, it's going to hurt. It's going to hurt for a long time. It's going to hurt because of what other people do to you, because of the loss of power over the situation, because of "intellectually superior" attorneys, and because of what you have to do.

For example, I was taught "to tell the whole truth and nothing but the truth, so help you God," but in a courtroom you tell the truth but only what the other person is smart enough to ask about. Don't tell what you think is important to the truth, just keep your mouth shut. For me that borders on dishonesty. But many things in the legal realm for many Christians are on the border of dishonesty.

It's going to hurt for the number one rule is POSTPONE. All say alike, "Try to draw everything out so someone will run out of money or stamina. Don't try to settle your dispute quickly but drag it out. Don't try to get to the truth quickly. Stall. One might win by default." This doesn't seem to be very straight forward nor honest, but that's the way to play the suing game. The legal system poses problems for Christians. More examples could be cited but let the above suffice. We have to use the courts, but courts and lawyers are going to cause Christians a lot of hurt.

Georg Williams

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Suing - A Loving Act?

Everything associated with the act of suing someone or being sued appears to have a negative tone. The threat of a lawsuit tends to cause fear in the hearts of many. Love and kindness usually are foreign to the act of litigation.

Usually suits are related to dollars and cents. The amount of the settlements often seems to be extremely high. How many dollars does it take for a person to get even?

When pastors, teachers or congregations become involved in suing one another or the Synod as a whole, there seems to be good cause for questions to be asked or, at least, for eyebrows to be raised. At the Synodical Convention in Indianapolis this past summer there was the rumor of a threat to file suit against the Synod by members of the Synod, if certain actions were taken. That was shocking to many.

It should be equally shocking when one Christian files suit against another Christian or even against an enemy. There seems to be less concern, however, when the suit involves a business or someone other than a clergyman, a congregation or the Synod. At times there appears to be a second standard applied.

To love a neighbor, an enemy or a person who hates you, persecutes you, despises you and does all those other terrible things is the mandate Christ gives. Turning the cheek, forgiving our neighbor and going the extra mile to reconcile a relationship is also asked, not required of us as Christians.

We strive to love our neighbor, and that includes not doing anything that violates his/her rights. To assure that we are not violating his/her rights, and out of love for the neighbor, we may seek legal counsel. To protect ourselves from unloving behavior that may result in a suit, we purchase insurance.

It is difficult to say what I would do if I were faced with an extremely traumatic situation where filing a suit would be justifiably expected by our society. I pray that I would be able to continue to love that individual and be able to withstand the temptation to get even. My faith in the promises of God would be tested. In fact my faith in God would be tested.

"And therefore we conclude, that all things work together for good to those who love and trust God," "And lo I am with you always, even unto the end of the world." It is comforting to know that we really don't need to trust in the acts of litigation to have the "good life" or to enjoy a "just and deserving life."

Erich E. Helge

Corinth or Christ?

Under certain situations and conditions litigations may well be a salutary option. In this litigious society in which we are living today, however, a Christian may well be reminded of St. Paul's words: "All things are lawful, but not all things are helpful. All things are lawful, but not all things build up. Let no one seek his own good, but the good of his neighbor." (I Cor. 10:23-24)

St. Paul is calling on Christians to be discreet and to do nothing to bring the name of Christ into contempt. Christian behavior, he is saying, is to be distinct, especially in showing love, first to those in the household of faith and then also to all men. When Christians find themselves in dispute with one another, such love calls upon them not to air their troubles in the courts. They are to try their own cases rather than to seek redress through some unbeliever.

Have we forgotten St. Paul's words in I Cor. 6:1-8? Notice especially verse 7: "To have lawsuits at all with one another is **defeat for you.**" What do you think these words mean for Christians today? When one thinks of some of the litigation going on among some Christians, one wonders whether these people ever listened to St. Paul or ever shared his profound concern regarding bringing discredit upon the Christian Gospel and the Christian name. Instead of rendering evil for evil, Christians are to strive to do good to all men, particularly their brothers and sisters in Christ (Rom. 12:17, I Thes. 5:15), and they are to leave all retribution to God. They are to endeavor to conquer the evil spirit of their enemies by their own forgiving disposition. (Rom. 12:21)

Of course, why be different? After all, it is much more profitable to adopt the ways of the world. In our current society, we find greed and self-preoccupation to be predominant characteristics among many. The self is certainly one of the most popular idols of worship today (and this is certainly not new). There they are, all those attributes of this god; self-centeredness, self-assertiveness, self-righteousness, self-serving, and self-loving. How many of these attributes predominate in members of the Church today, and among the leaders of the Church? Are we losing the "distinctiveness of the Gospel," the distinctiveness of the "new man" in Christ? Has Corinth invaded the Church?

Some Christians are summoning their fellow Christians before the secular law courts! Instead of casting all thought of revenge from their hearts, as St. Paul admonished, some are all too ready and willing to fly at one another's throats at the smallest provocation. Are people who act in this manner acting in a manner worthy of the Gospel, the center of which is the love and forgiveness of God for the sake of Christ? (I Cor. 13:5; cf. Lev. 19:18)

How do you think all this litigious behavior, especially among Christians, stacks up against the ethics of Jesus or of Paul? What did Jesus say? "A new commandment I give to you, that you love one another; even as I have loved you" (Jn. 13:34). Paul, do you have anything to add here? "Bear one another's burdens, and so fulfill the law of Christ" (Gal. 6:2). This certainly is the good and gracious will of God for us! Yes, but it may be that as we try so hard to be "in the world," we are slowly but surely becoming "of the world" and losing our distinctiveness as well as our discreetness. Finally, in all of this, the question is what will it be - Corinth or Christ?

A. Paul Vasconcellos

FULBRIGHT TEACHER EXCHANGE PROGRAM

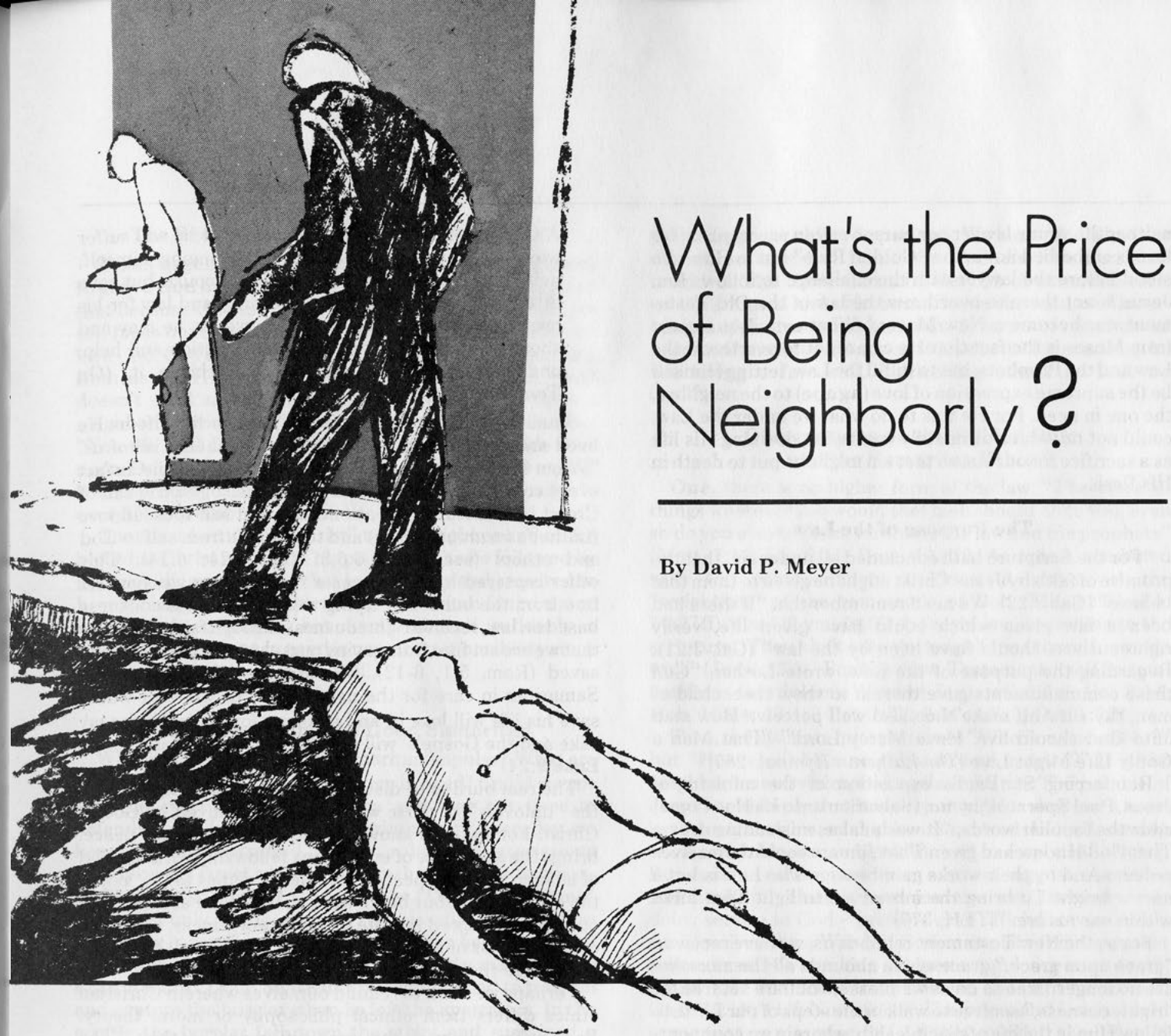
The United States Information Agency has announced details of the 1988-89 Fulbright Teacher Exchange Program.

The Teacher Exchange Program involves a one-on-one exchange for teachers at the elementary, secondary and postsecondary levels with suitable teachers overseas. The 1988-89 overseas exchange program will involve Argentina, Australia, Belgium/Luxembourg, Brazil, Canada, Colombia, Denmark, the Federal Republic of Germany, France, Iceland, the Netherlands, Norway, Panama, South Africa, Switzerland, and the United Kingdom. The number of exchanges available and the eligibility requirements vary by country.

The program also provides opportunities for teachers to participate in summer seminars from three to eight weeks in length. During the summer of 1988, seminars will be in Italy and the Netherlands.

Applications will be available in the summer. The deadline for receipt of completed applications is October 15, 1987. For further information, write:

Fulbright Teacher Exchange program
E/ASX
United States Information Agency
301 Fourth St., S.W.
Washington, D.C. 20547
Contact: Fulbright Teacher Exchange
Program (202) 485-2555.



What's the Price of Being Neighborly?

By David P. Meyer

The Good Samaritan (Luke 10:25-37)

Describing the Christian life and ethic, Luther said "A Christian man is perfectly free lord of all, subject to none," and "A Christian man is perfectly dutiful servant of all, subject to all." For man's relation to God is one in which the Christian is sinner and righteous at the same time. The forgiven, set free from condemnation under the Law, is nonetheless called to radical obedience. For under the forgiveness of sins, the Christian is set free to serve God in a new way - the way of the Good Samaritan. Let's begin by considering the "Golden Rule."

Luke 10:27 can be counted an overarching principle for the ethics of Jesus (Mk. 12:28-34; Matt. 22:34-40). But significantly, it is the religious seeker who speaks the first and second great commandments (Deut. 6:5; Lev. 19:18). This linking of these two Old Testament Words was to be found in the Testament of the **Twelve Patriarchs** (Issachar v. 2, vii.5). The Lawyer seeking eternal life speaks the "Golden Rule." Even though the best of Judaism had

framed the forms of the "Golden Rule" like the word of Jesus (Mk. 12:28-34; Matt. 22:34-40), principles were not enough for the Lawyer. For him and Pharisaism details were also important. Judaism (200 B.C.) had specified some 613 Old Testament Laws, naming 248 positive principles and 365 prohibitions. Hillel had framed the famous Golden Rule [sometimes names the "Silver Rule" since it states the Golden Rule in the negative form (cf. Matt. 7:12)]. Rabbi Akiba (135 A.D.) identified the commandment to love one's neighbor (Lk. 19:8), and Rabbi, Simlai (ca. 250 A.D.) named faith the greatest commandment. What is unique is that Jesus puts the twofold commandment on equal footing, placing love of God and love for the neighbor on the same plane. On them all the law and prophets depend; from them all other commandments can be derived (Matt. 22:40) In like fashion Bar Quappara (ca. 220) had said all the chief things in the Law could be hung on Proverbs 3:6 as from a book.²

And the young lawyer of Luke speaks the Golden Rule himself, but the real challenge from Jesus is what such entails for the would-be disciple. The very thing it demands

neither the young lawyer nor ourselves can accomplish, for love is embodied not in the "Golden Rule" but in Him who stood before the lawyer with the challenge to follow Him. Jesus is not there to overthrow the law of the Old Testament nor become a New Moses.³ What sets Jesus apart from Moses is the fact that He came, not to overthrow the Law and the Prophets, but to fulfill the Law, letting Himself be the supreme expression of love (**agape**) to the neighbor, the one in need. For He was to do what we under the Law, could not do, which ultimately was laying downing His life as a sacrifice for our sin, so that sin might be put to death in His flesh.

The Purpose of the Law

"For the Scripture hath concluded all under sin, that the promise of faith by Jesus Christ might be given to them that believe" (Gal. 3:22). We need remember that "If there had been a law given which could have given life, verily righteousness should have been by the law" (Gal. 3:21). Regarding the purpose of the Law, wrote Luther, "God these commandments gave therein to show thee, child of man, thy sin And make thee also well perceive How man unto God should live. Have Mercy Lord!" (That Man a Godly Life Might Live [*The Lutheran Hymnal*, 287])⁴

Reinforcing St. Paul's exposition of the ministry of Jesus, Paul Speratus' hymn, (Salvation unto Us Has Come) adds the familiar words, "It was a false, misleading dream That God His law had given That sinners could themselves redeem And by their works gain heaven. The Law is but a mirror bright To bring the inbred sin to light That lurks within our nature." [TLH, 377]

For as the New Testament reminds us, we have received "grace upon grace," grace which abounds all the more; we are no longer "free to do as we please," but are set free for "righteousness," set free to walk in the steps of our Lord, to follow Him in the life of discipleship, wherein we count ourselves dead to sin and alive to God (Rom. 6:5), count ourselves free from the curse of the Law, free from condemnation, free from the rule of law, sin, and death. Curiously, the New Testament knows nothing of a "free man," man with "free will," autonomous man. Scripture only describes man as a slave to sin, death, and hell or a slave to God, a servant now of Jesus Christ! But such freedom is not to be an opportunity to fall back into slavery once more. This is why we Christians turn to the Word of Jesus, in command and parable, and above all to His own example of self-sacrificing love, carried to its zenith on the cross.

The illustration of the Good Samaritan gives us insight into our life under the cross. To be a good Samaritan demands a price, the price of love and care, and at times it requires openly exposing self to abuse, ridicule, and even litigation in the courts. To love is to risk. Love makes one vulnerable to rejection, the risk of love unrequited, the risk of "rights" infringed upon. For Luther, the Christian accepts the fact of encroachment upon his own rights, but refuses to acquiesce before threatenings and violations of the neighbor's rights.⁵

A Christian should be so disposed that he will suffer every evil and injustice without avenging himself; neither will he seek legal redress in the courts but have utterly no need of temporal authority and law for his own sake. On behalf of others, however, he may and should seek retribution, justice, protection and help, and do as much as he can to achieve it. (On Temporal Authority)⁶

Small wonder the summons of Christ to live life as He lived and to "Go and do likewise," overwhelms all of us. "When Christ calls a man, He bids him come and die. In fact every command of Jesus is a call to die." For the call of Christ is to uncurl "self-attending" and self-focused love (Luther's *incurvatus in se*) and to direct it from self to God and others (see Rom. 6:6,8; Gal. 5:24; 6:14). This other-centered love becomes a reality when we, now set free from the burden of trying to achieve a righteousness based on law, receive righteousness through faith. And now that we are set free from saving ourselves, for we have been saved (Rom. 5:1, 6-12), we can lose ourselves as the Samaritan in care for the neighbor. "For whoever would save his life will lose it; and whoever loses his life for my sake and the Gospels' will save it. (Mk. 8:35; Matt. 16:25; Luke 9:24)

The real burden of discipleship is the challenge to love the "unlovely" because we have been so loved by God in Christ. For St. Paul knowledge of that love brings peace, brings the assurance of everlasting fellowship with the God of all mercy and all peace. Such peace comes to us, "not in the awareness of our being worthy, but in the assurance of our being accepted in spite of our unworthiness, not in the consciousness of being good enough to be loved, but in the knowledge that Another is good enough to love us."⁸

Perhaps we need to remind ourselves wherein Christian ethics differs from ethical philosophy or moral theory. Bonhoeffer claimed the real difference is this: "The knowledge of good and evil seems to be the aim of all ethical reflection. The first task of Christian ethics is to invalidate this knowledge."⁹

The First Principle in Lutheran Ethics

Bonhoeffer's thesis is clear – knowledge of right and wrong is not ultimate. God is ultimate. **Christian ethics begins with the Gospel, commences with Justification, and ends with the same.**¹⁰ Since we cannot keep the law perfectly, the Law can also crush our pride, stripping us bare of our defenses and excuses. Only when that has happened can the Good News of Jesus Christ lift our spirit and place us into the fellowship of the Father and make us members of the kingdom, and only then can we begin to talk about an ethics of gratitude. For that is precisely what Christian ethics is – an ethics of thanksgiving and gratitude to the marvelous love of God for us in Christ. For even our "good doing" is only acceptable to God for the sake of Jesus Christ, acceptable to God because it is the fruits of faith.¹¹ The Christian lives by faith "all the way." (Rom. 1:16-17)

The Second Principle in Lutheran Ethics

Jesus urges us to love Him, by loving the neighbor, to serve God by serving the neighbor. Luther suggested that because God has adopted us as His dear children, we can focus our love on the neighbor, for in the neighbor we love God. God directs me to my neighbor. He wants nothing from us for Himself, only that we believe in Him. God doesn't need anything from us, but He wants us to be a neighbor, serving another is "neighboring." Said Luther, "You will find Christ in every street and just outside your door. Do not stand around staring at heaven and saying, 'Oh, if I could just once see our Lord God, how I would do everything possible for him.'"¹²

One must become a "Christ" to the neighbor and be for him what Christ is for us. This principle is to be followed by life, including everything that is necessary and required to be a blessing to the neighbor. The Samaritan found a man he never met before, but found himself suddenly a neighbor; for the one in need is now his responsibility since no one else took it upon himself.

The Risk of Being the Good Samaritan

What are the limits of the Samaritan impulse? What are our limits in responding to everyone in need? Could we not soon be emptied of possessions and lose our lives in defending the helpless against criminals?¹³ Everyday we hear of people assaulted, beaten, robbed of possessions openly on the street while crowds rush by or stare helplessly. But we also know of the would-be "Good Samaritans" who help only to be slain by the assailant! And more perilously in our time, we hear of lawsuits where the "Good Samaritan" is the loser. Recently a criminal was robbing an apartment. A "Good Samaritan" neighbor tried to restrain and capture the burglar when he left the apartment. In the scuffle the burglar fell down the stairs and sustained a severe leg injury. He sued the "Good Samaritan" for more than \$150,000 in damages because he couldn't "continue working." In a world of silly "suits" and "Good Samaritan" vulnerability, it is increasingly difficult to be service oriented. Today the lame-healed-by-Jesus might sue him for compensation benefits due to loss of income from begging. The blind might sue for cost in reeducation. Perhaps something akin to medicine's "Good Samaritan" laws need to be considered for those who are in helper professions, especially those who seek to live the ethic of Jesus. As Paul Ramsey reminds us, many states have a "good Samaritan" clause for the physician who seeks to bind up the wounds of accident victims, unable to give verbal consent in life-threatening situations. The physician cannot be held liable for malpractice in such cases along the Jericho road.¹⁴

The Christian servant gives a special place in care ministry to the task of bearing testimony to Christ, a deed done to Christ (Matt. 25:40), winning souls for Christ, as well as serving human need for good as a good in its own right. If we invest in our families, in our congregations, schools, students, the dividends may well best bring about caring ministries for which we ourselves have neither the strength

nor courage nor ability to perform. We know God's love for us has no temporal limit, nor is God's love humanity bounded. The Samaritan took the risk of extended care, cost uncounted and unknown. That is the nature of love – but not of our resources and time. In terms of resources of goods and time, the "best way to love in the long run may be our loving a few well, befriending others as best we can."¹⁵

Observations on the Golden Rule and the Samaritan Ethic

One, there is no higher form of the law. "Therefore all things whatever you would that men should do to you, even so do you also to them; for this is the law and the prophets" (Matt. 7:12; Lk. 6:31; Rom. 13:8ff). As noted, combined with the commandment to love, it serves as the "weightiest" of the commands of God (Mk. 12:31; Lk. 10:27ff). For "if, you fulfill the royal law, according to the scripture, 'Thou shalt love thy neighbor as thyself,' you do well" (James 2:8). For the New Testament itself in total reaffirms this Solemn Word of Jesus. (Gal. 5:6; Col. 3:14; Heb. 10:24; 13:1; I Pet. 1:22; 2:17; 4:8; II Pet. 1:7ff)

Two, the ultimate question is not "Who is my neighbor?" but "How can I be a neighbor to one in need?" It is the neighbor's need which makes claim on me. The parable of Jesus could imply that it is easy enough to shut one's heart to the neighbor's need and be uninvolved. Indeed, serving one's own interest can block the call to responsible living. But as some commentators on our text suggest, the priest and Levite on their several journeys saw themselves as doing service to God – perhaps even official service. They could well evoke a Word of God to explain their apparent callousness. For touching an open wound, one near death, would 'soil' and 'make them unclean and unfit for service' (Lev. 21:1ff; 11ff; Num. 6:7).¹⁶ The priest and Levite could argue that as a service to God they avoided the "Man in their path."

Three, if the parable is one of moral conflict, then it would be a reminder that Christian responsibility requires reflection upon that which is the higher duty, of two supposed *prima facie* duties. As W.D. Ross suggests, a "conditional duty" or "*prima facie* duty" is an act prompted by a particular virtue which would be one's proper duty if it were not transcended by a higher duty, to which one is now morally bound.¹⁷

For most of us, that is precisely the "rub" in Christian experience! Of the several needs of many, which "need" makes the greater claim upon us? Of itself "doing duty" to temple and God could be counted "doing the will of God" – but not so with a beaten and half-dead man in the road. Some have suggested that the Holy Spirit will give us automatic insight into what the Lord's will is in seeming-conflicting obligations. But as most of us have experienced, moral conflict situations abound in our lives, with responsibilities to state, to family, to church, and labor. These divine mandates are inescapable and at times often in conflict. Pulled by multiple *prima facie* duties, a church worker may well anxiously cry out, "I cannot be everywhere

all at the same time." The question most often is, "Where am I needed the most?" The Spirit's guidance is often not an infallible intuition granted to the faithful, to perceive the will of God, for our decision is often made with something less than absolute certainty.

Four, our Lord does by example and word suggest some guides in choosing the higher duty. Not only does our Lord point to higher duties, but reminds us of greater sins, as he said to Pilate, "Therefore he who delivered me to you has the greater sin." The greatest sin He names is the blasphemy of the Holy Spirit. (John 19:11; Matt. 23:23; 22:37-38; 5:22; 12:32)¹⁸

By contrast justice and mercy are the weightier matters of the law overagainst tithing. What we should learn is that one norm can indeed be transcended by another. What lessons can we learn from Scriptures regarding the higher values, transcending *prima facie* duties? (1) **"We must obey God rather than men."** (Acts 5:29). (2) **Virtue should judge that persons are more valuable than things**, a man's welfare more important than the *prima facie* duty of doing whatever priests and Levites do for the moment. (3) **Norms exist for the sake of man, not man for the sake of norms (Sabbath was made for man, not man for the Sabbath.)** (4) **Virtue should determine that a responsible adult is more valuable than the *prima facie* duty to save the fetal child**, i.e. in extreme cases the mother's life must be saved at the expense of the fetal child. Yet (5), even **The fetus and embryo have a higher claim** upon us than things.¹⁹ (6) **Many persons have a greater value than merely one.** There is still some folk wisdom, ironical as it was, in the word of Caiphas, that it is expedient at times that one be lost for the sake of the masses (John 12:50). True, horrendous evil abounds when a people or nation treat a minority as expendable for the greater good of all, as Germany would learn in the Holocaust. Parents know something of this principle from learning to share themselves, their time, money and love as investments, which they distribute as help to their children instead of merely focusing these on one another. Equity in distribution forces the parish worker to attend not only to the straying sheep but to the flock as a whole, which has the greater value. The pastor who chooses to make evangelism calls on Sunday morning instead of feeding and leading the flock, fails to discern a higher duty. (7) **Personal involvement is more important than impersonal service, the former demanding more of us, and personal acts are more valuable than those less so.** We know applications of such in the work of missions – it is better to contribute monies to mission outreach of the church than give nothing at all. It is better to pray for missions than merely give monies; it is better to do mission to the neighbor in direct personal missionary outreach than merely to give monies.

Finally, given multiple responsibilities, how do we find "the higher law" – how can love toward God and neighbor be best realized in us and through us? We begin with repentance and renewal of life under the forgiveness of sins,

(Continued on page 20)



Are the Courts Changing the Ministry?

By Philip E. Draheim

That "the courts"¹ have changed, and will continue to change, the ministry is unarguable. It is also unarguable that in many respects there have been significant benefits from the changes, perhaps even a "net benefit." Many responsible observers would contend that the beneficial changes might never have been realized but for the courts. Whether that is true will be left for others to debate; it is sufficient for our purposes to simply note that court-wrought changes should not reflexively be characterized as bad. This article will refer to some of the important

changes, whether for the good or bad, and the factors which seem to have influenced those changes. A primary objective will be to aid those who are thoughtful practitioners of ministry, who are not yet (and hope never to be!) hardened veterans of the litigation processes, so that they may go forward to ministry prudently, but with a reasonable basis for confidence that they or their congregation or school will not be successfully sued.²

Degree of Risk Varies Among Ministries

In order to be able to understand past, and to anticipate future changes in the ministry resulting from court decisions, categories of active participants in ministry must first be identified. The reason is that all participants in ministry, even in the same ministry, are not equally affected

¹Reference to the courts is meant to encompass far more than judges and juries, and is meant to include the entire civil and criminal judicial system. While in the narrower sense judges and juries, as the loci of decision making, can be regarded as the cause of the change, in fact the broader context within and because of which change has occurred includes the increased number of lawyers available to represent plaintiffs, the yet developing jurisprudential theory of expanded civil law accountability, and certain important changes in social attitudes in general. These will be dealt with in this article and should be understood to be a part of any reference to "the courts."

²As an attorney with a law firm which represents several major national and international religious organizations, as well as hundreds of business enterprises and individuals, I am certainly not oblivious to the fact that nearly anyone can be sued for almost anything. Also, I am not insensitive to the feelings of the person who is simultaneously anguished and also angry because he or she is being sued for something, the propriety of which he or she has no significant doubt, even based on hindsight. Being sued, even when you win, clearly is not fun! However, all of us should, as this article will, address only the areas of risk, and the appropriate defensive measures, as to which there is some reasonable possibility that we might be successfully sued.

ted. Nor are their respective mid-level³ motivations the same, so the perceptions of the degree of risk, the value judgments about avoiding the risk, and the appropriateness of certain defenses will differ.

Some Motivations for Suing the Ministry

While there are many possible participant categories, at the risk of oversimplification I will identify only three: (1) the category that consists of individual pastors, principals, teachers, and directors of Christian education; (2) the category that consists of congregations, educational institutions, social ministry agencies and other "institutional providers of ministry directly to the "consumer"; and (3) church bodies and their districts, synods or judicatories, which to a considerable extent, although certainly not exclusively, provide support to and through those who make up the other two categories rather than engage directly in ministry.

Somewhat curiously, thus far court-made law has had its greatest application to those in the first and the third categories, less so to those in the second.⁴ There are several possible reasons for less involvement in the courts as to ministry participants in the second category.

First, in many cases a large judgment awarded by a court to a plaintiff could not be collected from an institution in this category. Indeed, the very threat of a judgment may serve to drive away its members and contributors, who ordinarily are the source of voluntary support, forcing it out of existence.

Second, such an institution usually exists in the "locality" where the event occurred, and is seldom considered to be a "fat cat" against which there would be substantial jury bias.

Next, what assets it has are often in the form of single-purpose buildings, so that a judgment in excess of any insurance would not be easily collected. Also, these

institutions seldom carry insurance that would cover the risks involved in the new forms of "ministry litigation," a fact quickly learned by lawyers for potential plaintiffs, who most often will stand to financially benefit only if judgments can be collected, not merely by obtaining favorable court decisions on behalf of their clients.

This lower incidence of activity in the courts against the second-category institutions should not be a source of comfort or complacency. In recent years there has been an increase in the number of proprietary hospitals and other health and residential care providers who make up a new market for the purchase of what were once single-purpose facilities. It is only a matter of time before plaintiffs' lawyers begin to sue those who a few years ago would have been thought to be "judgment proof," knowing now that they can force the sale of the non-profit organization's facilities, and knowing there will be buyers looking for fire sale bargains. Congregations and some schools seldom need to worry about this as to their facilities, but non-profit religious providers of health care and residential facilities must realize their vulnerability. Naturally, all organizations with large amounts of vacant land and substantial endowment funds must continue to be concerned.

It would seem logical that if generally the local, second-category institutions have not been much involved in litigation involving ministry, individuals in the first category would have had the same experience. There are at least two reasons this has not been the case.

The first reason is that often there is an "outrage" or "vengeance" element involved. When a wife is thought to have been seduced by a pastor, or when a "child" commits suicide after being counseled, or when a teacher is suspected of sexual abuse of a pupil, the husband, the parents, and sometimes the whole community insists that there be civil and perhaps criminal law retribution. Thus, even when there are no known assets or insurance, a lawsuit seeking monetary damages may be pursued in order to punish the culprit.

The second reason is the connection between first-category and the third-category participants in ministry. Simply stated, it is usually essential that the individual be brought into litigation, even though he or she is without assets or insurance, in order to get into "the deep pocket" of a third-category organization.

This brings us to third-category participants. The organizations in this category have been defendants in the cases which involve the largest amounts of claimed damages. It is generally conceded that the "deep pocket theory" is the basis for most of the court actions now regularly taken against such church bodies. While one legal analysis⁵ noted that judicial social engineering, intended to force large church bodies into pressuring "subordinates" to take action to prevent harm, could be a basis for lawsuits

⁵*Liability in Religious and Other Non-Profit Organizations*, Gaffney & Sorensen, Macon: Mercer University Press, 1984.

against church bodies, most plaintiffs' lawyers are not about to start a case where such social engineering could occur if there isn't a deep pocket from which the judgment and their fees can be collected! Unlike second-category participants, church bodies, even those that are regional, but especially those that are national or international, will not enjoy jury sympathy as does a local institution. Moreover, plaintiffs' lawyers believe that such organizations have sources of contributed dollars that usually will not dry up at the mere threat of a lawsuit, and they have both insurance and substantial assets. Thus, they become targets of litigation.

Now that we're acquainted with the players, we can begin to analyze the game.

A New Risk and Opportunity for Liable Ministries

There is a risk and there is an opportunity inherent in the situation just described. The risk is that church bodies and their judicatories will pull away from, refuse to be involved with, or decline to support "high-risk" ministries. This can result in more difficulty and greater risk to the individuals and the local institutions that directly provide ministry if they decide to go ahead on their own.

The opportunity is that those in all three categories can be moved by their awareness of the risks of being taken to court to acknowledge their mutual interdependence, and to understand that the possibility of avoiding harm to others can be diminished, in some cases even eliminated, by cooperative efforts. This reduces the risks of legal liability. Explaining this will allow me to describe some of the more significant hazards which have been encountered by individuals and religious institutions in the exercise of ministry.

Many pastors and classroom teachers have a strong sense of autonomy as to their respective activities of ministry. Perhaps a reference to "turf" is not entirely called for, but in worst case situations it is descriptive.

Pastors and teachers are scarcely alone in this. Department managers of religious and charitable institutions, like their counterparts in business, can resent intrusion by the chief executive officer, even as the CEO can resent too intensive monitoring by the board of directors or executive committee.

And heaven help us all if the church body or a district "meddles" in what's being done by a pastor or a congregation! Yet permitting this sense of autonomy to prevail over all else can create a vulnerability to a court action which otherwise would not exist.

Three Case Studies

1. Pastor Steve Carr, age 44, married, has always been a naturally affectionate person. He does considerable marital and family counseling, and had long ago concluded that what a currently "pop psych" author writes is valid, namely that "hugs" can be an important part of counseling as well as an effective way of comforting the bereaved.



When the District President urged at a circuit meeting that pastors do away with hugs, pats and handholding unless in the open presence of other adults, Pastor Carr took it personally, and was hostile. He felt he was a good judge of situations and the needs of the people to whom he was ministering. He decided not to raise it with his elders because he was afraid they might side with the District President, so he went on with his past practices.

Some months later he was sued by the husband of a woman who was seeking a divorce. The woman, in the early stages of counseling, while alone with Pastor Carr in his study, had been "hugged" by the pastor after she told him of the long-term mental and emotional abuse she had suffered from her husband. On other later similar occasions, he had also hugged the woman, or held her hand.

As it developed, Pastor's hugging was quite innocent, but the fact that the wife had referred to it in an argument with her husband during which she accused him of never giving her any attention or affection was enough to move the husband, hurt because of the divorce, to retaliate against someone. He sought retribution through the courts. Pastor Carr was eventually vindicated, but the emotional and financial strain on him was enormous. The pre-trial activities and the trial itself dragged on over nearly two years during which the effectiveness of his ministry was severely diminished.

2. Christ the King Lutheran School was the combined effort of several congregations, about one-fourth of which were affiliated with a different Lutheran church body than the others. It was incorporated and operated in all ways separate from the congregations, except that it used the former school buildings of two of the congregations. Since all of this was on "friendly" terms, there was no written agreement involving the building.

The principal was sometimes asked and gave permission to non-religious civic organizations to use school facilities

for certain purposes. Since the organizations usually had local ties, and many of the members of the civic organizations were members of congregations participating in Christ the King School, there was no written agreement involving the building.

Christ the King was approached by an education executive of the district of the church body to which most of the congregations belong about being "recognized" by that church body. One of the criteria required at least 2/3's of the school board to be members of the congregations of the church body that would do the recognizing. The school decided that this was offensive to the other congregations and their members, so it declined to seek recognition.

Later, a local civic organization asked to use the school's gym for a banquet. Permission was granted and, as usual, there was no written agreement. Some months before, the church body of which 3/4's of the congregations were members had sent a bulletin to the schools "recognized" by it, urging that written agreements be entered into between a separately operated school and any constituent congregation the property of which was used by the community school. The church body emphasized that the issue of responsibility for insurance be dealt with in such an agreement. It also urged that arrangements with outside organizations as to their use of the facilities likewise be made under a written agreement, dealing with insurance responsibilities as well as other matters. However, since Christ the King had not sought recognition, it did not receive a copy of the bulletin.

A small boy at the civic organization's banquet pulled on the cord of a coffee pot and was badly scalded by the hot coffee as the pot tipped over. The parents sued the civic organization (which carried no insurance), Christ the King, and the congregation which owned the school building. In addition, they sued the two church bodies to which the member congregations of the school belonged on the theory that there was a responsibility of the church bodies for the congregations and schools.

Only the church body with the recognition process was able to have the case dismissed against it, on the judge's ruling that the church body had a process for identifying schools affiliated with it, but had not recognized Christ the King. The judge concluded that the church body had no express or implied responsibility in connection with the banquet where the boy was hurt. Each of the other defendants appeared to the judge to have some degree of responsibility, so they could not escape the litigation. A jury sympathetic with the little boy and his parents, and confused by all the organizations, awarded a very major judgment against all of them.

3. St. Mark's Lutheran Church serves a "middle-aged" suburb of a large city. When it was founded in the 1930's, the area around it was just beginning to change from semi-rural to suburban, and by the mid-50's it was in the heart of a residential bedroom community. By the late 70's the newest suburbs were well beyond it, and a large proportion of the members of St. Mark's had lived in the area for more than fifteen years. It had a strong tradition of Word and

Sacrament ministry when the pastor who had served since its founding died, after which the congregation called Pastor Chris Jones, just five years out of the seminary.

Pastor Jones was aware when he took the call that the community served by St. Mark's was essentially one of working people who tended toward the lower end of a "middle class" group. There were a large number of older, retired people, many of whom were unmarried or whose spouses had died. However, there were also a large number of young adults, largely because of an apartment complex that had been built just after World War II and still offered inexpensive housing. Few young adults attended church regularly.

The congregation did not surprise the pastor when it responded less than enthusiastically to his suggestions that, from its Word and Sacrament ministry, it build an evangelism program that would reach out to serve those in the community. However, while not enthusiastic, the congregation was willing to experiment. It decided on two "pilot" programs.

Members of the congregation concluded that they, through the church, could provide ways for the older adults to have assurances that advancing age, and the accompanying physical handicaps and mental/emotional changes, would not leave them feeling alone and vulnerable. They decided they could offer to serve as guardians or executors, or both, for those who were alone except for friends and neighbors. This was intended as a ministry to these people, but also one that would involve them in helping others. Its companion program focused on the needs of the young adults and teenagers. The location of St. Mark's was such that it found frequent need to minister to unmarried pregnant girls and women, and women with "problem" pregnancies. Its members decided that in this instance it could best serve by being known as a church with compassionate members who were interested in young people, and that when it had the opportunity, it would show that compassion by showing that there were realistic alternatives to abortion.

Pastor Jones knew that if either of these programs experienced a major set-back it could mean that other efforts would not be made by the congregation, so he read as much as he could find about other programs like the ones St. Mark's was willing to try. In what he read he found references to potential legal problems. This caused him to consult with church district officials, who put him in touch with lawyers with whom his district consulted on its legal matters. Through this contact Pastor Jones was able to obtain more information, which led him to conclude that the problems could not be ignored but that they were not insurmountable.

He went first to the congregation's president and the board of elders. He told them all about what he had learned. He told them, too, that legal protections seemed to exist in a careful education of those who would be involved. With the encouragement of the president and board of elders, the situation was next reported to the church council. It decided that the programs could go forward on the con-

ditions that the congregation's insurance carrier would be informed in writing, and would give written assurance that the congregation's liability insurance would not be adversely affected.

The stewardship committee was assigned responsibility for the program involving guardians and executors, and a new social ministry committee was created to deal with the program involving ministering to and assisting pregnant girls and women. Both committees sought the assistance of appropriate district officials. Both developed outlines of procedures to be followed in educating those who would be actively involved. All of this was submitted to the insurance company, which agreed that the congregation's plans would be within its insurance coverages. It did, however, suggest that the limits of liability should be increased. Even though this meant a higher cost to the congregation for insurance, it agreed.

St. Mark's has been operating its program for two years and has had no claims or threats of litigation. Its members have liked the new "hands on" activities of ministry. It has gained several new members, and it has brought more people from the community into the activities of the congregation even though they have not joined the church. Its programs, and the methods it used to establish them, have become models for other congregations, both Lutheran and non-Lutheran. Based on its experience, it is now developing other programs of mission, social ministry and evangelism.

Why are we confronted by cases like those just described? One reason that there is vastly more litigation is that there are vastly more lawyers practicing law in the United States. That, alone, however, cannot account for the disproportionate increase in successful litigation against those involved in ministry.

One reason for the willing use of the lawyers to bring suits against the church is the de-mystifying of the institutional church, along with the "disillusionment" with institutions generally.⁶ And the reason for more judgments in those suits is largely because of either judicial confusion over the identity of the various elements which make up the "church," or the conscious decision by judges to hold the highest element in a church accountable. In this latter situation judges have seemed to conclude that if there is confusion about what makes up the church, it is the central church bodies which have failed to be clear about themselves and, to the extent there is confusion, it is again the failure of the central church bodies, this time in failing to communicate to individuals and related entities why it is important that they act affirmatively to prevent injury to others. Some courts appear to be eager through financial sanctions to enforce that there shall be actions commensurate with words, to force churches to function responsibly in a society about which they often profess to care more than most!

⁶Megatrends, Naisbitt, New York: Warner Books, 1982.

What Can Those in Ministry Do?

What can be done? There is no simple laundry list, but there are some fairly simple, logical concepts, the practice of which will help:

A. Don't take anything for granted. . . if in doubt, ask; if an adequate answer is not forthcoming, follow through.

B. Don't object when someone else also interested in ministry doesn't take things for granted, asks questions and follows through when the answers don't satisfy. Together you can be so much wiser and more prudent than either or any of you can be alone.

C. Always try to look at what you are doing and how you are doing it as if through the eyes of an outsider, one who doesn't necessarily share all of your knowledge and experience. Ask yourself questions that the outsider might ask. The best risk management is found in answering now the questions that will surely be raised later by an unfriendly lawyer, after harm has been done and he has been hired to sue.

D. Do not let the ideal of gentle Christian love and caring for the people to whom you minister lead you away from making the sometimes hard decisions that most often are required while being realistic about potential problems.

In Conclusion

How have the courts changed ministry? Perhaps more in **how** ministry is done than **what** ministry is done, but certainly some of each. There have been withdrawals from ministry activities because of the experience of the Pastor Carrs who now are less enthusiastic, more embittered, resentful that what worked so well so long, can no longer be, and angry at a system that permits such a result. Such withdrawals can also be seen at the Christ the King schools and in their constituent congregations, which are no longer willing to interact with other organizations in their communities, and in the central church bodies which disassociate themselves from organizations and activities they do not control, in each case fearful of the implication of legal liability. But there is also the style of the Pastor Joneses and St. Mark's Lutheran churches, who find the whole thing not too intimidating, not too burdensome, and who are aware that programs that can produce good are worth careful and openly thoughtful development and execution.

What Should the Church Teach about Legal Matters?

By Walter Rosin

"Do not be conformed to this world but be transformed by the renewing of your mind." These words of St. Paul to the Christians at Rome set forth the principle which is to govern Christians in their daily life, to be in the world and to influence it as salt and light but not to be of it. That, however, is not easy as the situations which confront Christians become more *complex* in the contemporary context in which they live and work. "The world is too much with us" and is constantly seeking to make inroads into the church, and in its efforts it is all too often successful. One among many areas in which this is true is in the area of legal matters.

Given the economic situation, a Christian banker finds that a fellow member of the congregation can no longer meet the payments on his loan, forecloses on the property or business and forces his brother into bankruptcy. He has no choice since he has the welfare of not only one, but of many to consider. Legally, no one can fault his action. The property owner, in order to protect his interests, countersues. Is that conformity to the world and its ways? Each is only seeking simple justice.

A professional church worker is unemployed for one reason or another. He waits to receive a call and, when none is forthcoming, presents his case in court suing the district

president for failure to secure a position for him. He has dedicated his life to this kind of work, has not been prepared to do anything else, and, in his opinion, the church owes him a living. Is that conformity to the world? After all, he is only seeking simple justice.

Two fellow Christians enter into a business partnership. After working together closely and successfully, one begins to feel that because of the long hours which his particular responsibility in the business requires he deserves a greater share of the profits. He takes his partner to court to secure that which he is sure is rightfully his. He is only seeking simple justice.

The list is endless. It involves divorced parents who sue for support or visitation rights, suits for injury, suits for malpractice, suits for slander, equal rights, failure to perform as promised, and a host of other issues. Again and again there are new causes, or at least new forms of causes, for legal action which seem to be discovered. The Christian who lives in the world is well aware of them and often concludes that Christianity, which involves the cause of justice not only has the right, but the duty to utilize those procedures which promote that cause. Is there always a right or wrong in using these procedures? Is there ever a time when legal action is not only proper but required? Obviously, it is impossible to identify and evaluate every situation which might arise. But is it possible to establish some principles which require consideration no matter what the situation might be?

The Scriptural Perspective

A cursory review of some passages of Scripture makes it clear that not all use of legally established procedures is wrong. Laws established by governments are to be obeyed if they do not clearly prohibit the Christian from carrying out his calling as a Christian. The government is God's instrument for good, for maintaining peace and order and for establishing justice in the land. Indeed, there is a need to make decisions when people, even the people of God, disagree as is clear from the responsibility which Moses was called on to carry out among the people of Israel, a responsibility which became so heavy and time-consuming that he found it necessary to appoint assistants. A theocracy did not eliminate the need for resolving disputes. The prophets were incensed when kings did not live up to their responsibilities, but served their own interests, oppressed the people and no longer served as ministers for good. They viewed the monarch as God's intended instrument for justice, peace and order. Paul did not hesitate to make use of his Roman citizenship when incarcerated without trial. He insisted that, having been condemned publicly, his innocence should be made clear publicly also through a

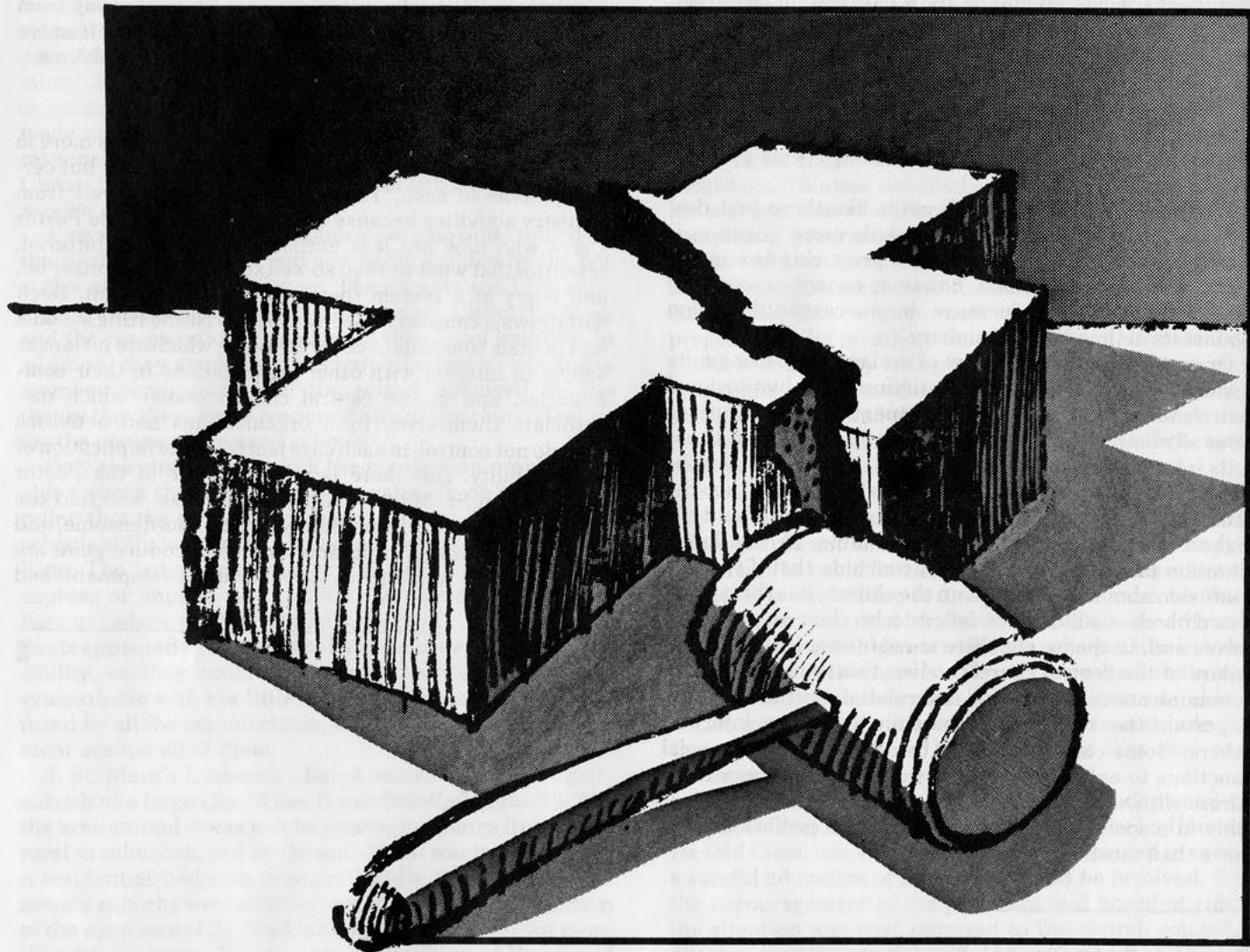
government escort provided to send him on his way to continue his journey. Nor did he hesitate to appeal to even the highest tribunal, Caesar, the supreme court of his day.

Perhaps the clearest Biblical reference from which Christians can obtain guidelines for their actions in legal matters is the Apostle Paul's statement on the issue contained in I Corinthians 6:1-11. At the outset, it needs to be recognized that the situation of that day was quite different from that which presently exists. One cannot properly conclude from the words in 6:1 that any use of the legal process is unwarranted. In a country whose values are in many respects at least compatible with the Judeo-Christian tradition, jurisprudence is a blessing of God. In ancient Corinth, however, there were no Christian judges occupying the bench. There were no Christian values which were reflected in the law of the land. It even contradicted them, a circumstance which made it especially inappropriate for Christians to take their cases before a secular tribunal. Nevertheless, an analysis of this section of the letter does provide insights for establishing principles which are as applicable to and appropriate for offering guidance to the twentieth century Christian as they were for the first.

Paul begins his statement by pointing to the fact that it is impossible for judges in the secular courts of that day to properly view matters which came before them in the way a Christian would. As opposed to members of the church who are "saints," they are "unrighteous," that is, they are not members of the church. Paul had touched on that earlier when he noted that the wisdom of God is a mystery which rulers of that age did not know. They are natural men in contrast to those who have been taught by the Spirit of God and who, being spiritual, are able to judge all things rightly (2:7-8, 14-15). They live and operate in a different world with a different point of view.

Furthermore, Christians have a special responsibility to deal with differences with fellow Christians before they ever become a matter which requires adjudication. The very fact that a situation reaches that point is already a great loss. Arguing from the greater to the lesser, Paul points out that if, as is the case, they are ultimately to be judges of the world and even of angels, it is totally unreasonable that they should find it necessary to bring trivial matters to be decided by judges who will have no part in that final and ultimate function. It is shameful that they have allowed themselves to fall into the trap of following the practices of the world around them and have not even given consideration to finding someone within the brotherhood, the church, who would be wise enough to deal with their disputes.

Furthermore, there is an attitude problem which is reflected in actions of taking the Christian brother or sister



to court. It evidences itself in the fact that no consideration is apparently even given to the possibility of being willing to suffer injustice or even to be defrauded. Such an attitude is nothing less than following a kind of worldly wisdom which is characterized by the desire to seek one's own rights. One must "stand up for them," it is often said, no matter who is hurt by the action. Something is wrong with the heart when this occurs. There is a kind of knowledge which "puffs up" as Paul notes in 8:1, keeping one from seeing his own faults and, instead, viewing something which is a sin as a matter of Christian freedom.

A Matter of Motives

Seeking justice is not the highest value. Greater than justice is the living of a life according to the law of love which includes doing no injustice to others. To seek justice at all costs and to live one's life following the ways of the world by taking the brother to court to serve merely one's own interests places that person in danger of being included in the category of the unrighteous who will not inherit the kingdom of God. The company in which Paul places such persons is not flattering, to say the least. Those who have been washed, sanctified, and justified in the name of the Lord Jesus and by the Spirit of God will not make such actions their way of life.

As is evident from this section of I Corinthians, the question of whether or not to engage in legal action of any kind involves much more than the question of the act itself. Basic to any decision is the motivation for the action. This, it seems, would be true whether or not a fellow Christian is involved, although legal action against a fellow member of the body of Christ has even deeper implications. Analyzing the motives of another in resorting to legal action is, of course, impossible. A Christian's analysis of his own motives, does, however, provide a basis for identifying those which become the source of decisions. What are those motives?

One which immediately rears its ugly head is revenge. The old nature, even in the Christian, is not immune to the desire to "get even" for real or perceived wrong. It hardly seems necessary to observe that such motivation is inconsistent with the Christian way of life. When that possibility arises, the Christian is immediately reminded that he has a Father in Christ Jesus who has his welfare at heart and who reminds him to "Love your enemies. Bless those who curse you; do good to those who hate you; and pray for those who spitefully use and persecute you." "Vengeance is mine. I will repay," says the Lord. "Living in a world where personal revenge is considered to be a simple justice, a Christian needs the reminder that such a motive is both illegitimate and unworthy of the high calling which he has as a member of the family of God, no matter what the circumstances.

Closely related to this motive is that of greed, envy, covetousness. How many times has that become the motive between those who are not only brothers and sisters in Christ but who are actually blood relatives when it comes to "dividing the inheritance." Because one or the other

believes the division has been unfair, the matter is taken to court, the will contested, (if there is one) and accusations hurled back and forth. Again, it hardly seems necessary to identify that motive as an unworthy one. Our Lord Himself has made that clear enough both in His commandments and in the words by which He tells His brothers and sisters not to love the world or the things of the world and to be assured that the heavenly Father knows what things are needed for daily life and will provide them.

The ultimate concern is that whatever action is taken, also in legal matters, should not be self-serving at the expense of the brother or sister. It is interesting to note that the Greek word for going to law which is used by St. Paul is in the middle voice, that is, going to law in one's own behalf. The primary problem is with the one who brings the charges against a fellow Christian demanding his rights, insisting on admission of guilt on the part of his brother or sister, or demanding that he/she be expelled.

Justice and Love

As indicated earlier, Paul's prohibition must be understood in the context in which it was written and should not be understood as a prohibition to **any** use of the secular courts. The situation which exists today, particularly in the United States, is not one in which the courts are devoid of Christian judges and attorneys. Nor are the laws upon which judgments are made devoid of Christian influences. Indeed, it is sometimes necessary to utilize the courts in order, for example, to consummate agreements which have been reached apart from any legal system.

Furthermore, the laws of the land are established by a nation to ensure justice for its citizens. Seeking justice, while not the basic motivation for Christian action, is a Christian virtue and is included among those for which the Christian citizen strives. It was a basic theme of the prophets as they inveighed against those who would trample on the rights of the poor, take advantage of the defenseless, and enrich themselves at the expense of others. The Messiah was the one who would, with His coming, dispense justice in the land. "What does the Lord require of you," the prophet asks, "but to do justly, love mercy, and walk humbly before your God?"

While the motive of the Christian in his actions must be love, putting the interests and needs of others above his own, that love may require him to use all the legal means available, not so much to seek justice on his own behalf but rather in behalf of another.

In contrast to others which have been held, this view is one which has been presented most forcefully by Reinhold Niebuhr, who pointed out that not only are love and justice related to each other but that justice is also the instrument of love as it serves to make it possible for the individual man or woman to do and be what God intended for them. It is therefore incumbent on the Christian, not primarily in his own interest but in that of others, that he fulfill the obligation to work toward both the enactment and impartial administration of laws which will serve to achieve that goal.

Another view is that justice and love are radically opposed to each other. If love is taken seriously one can dispense with justice. That view, however, does not take seriously the nature of man, including the Christian, and assumes that he has the ability to live up to the demands of the law of love.

Still another view is that while love and justice are not radically opposed, they are radically different. Justice is impersonal while love is always very personal and enters in only after the demands of justice have been met. Justice in this view is concerned with a person in relation to a system. Such justice is not concerned with the person himself, and love has no part in the shaping of that system.

Testing the Law

There are, of course, occasions when it may be necessary for an individual or a church body to test the validity of a ruling by an agency or even a court. These situations may, in effect, be considered neutral, or they may be such that the cause of the spreading of the Gospel is involved. An example of the first would be the testing of a ruling regarding the determination of the Internal Revenue Service that commissioned ministers (teachers and directors of Christian education) who our women are, for its purposes, not eligible to be classified as ministers of religion. Here we are dealing with a simple determination of fact and there is no other manner in which a definitive ruling on the question can be obtained. If the ruling upholds the view of the Internal Revenue Service, an effort may be needed to seek a change in the law which would serve the interests of justice, which in turn would be the instrument for demonstrating love to those who are not receiving equal treatment.

An example of the second might be a situation in which the work of the church in spreading the Gospel would be hindered when a Christian day school is not considered to be an agency of the church and is therefore subject to certain regulations which would affect the viability of maintaining such schools. While similar to the first example, it would seem that the matter of defining the task of the church is here more directly involved, since another agency, at least on the surface, appears to be determining for the church what the limits of its activity should be by defining what is or is not intimately related to the church's mission. We are again involved in determining a point of fact regarding the validity of an interpretation of the law. If the church believes that a ruling against its position is incorrect, it may seek to use the influence of its members to bring about a change in the law itself.

Guidelines for Action

While a course of action is not always clear, the Scriptures do provide guidelines for dealing with issues which involve differences between fellow Christians. Among them is Matthew 18:15-18. If one member of the body of Christ offends another, that member is obligated to confront his brother or sister. Other members of the body should be willing, upon request or perhaps even without it,

to assist in resolving the differences which exist and in restoring the relationship which has been broken. Difficult as it may be, that reconciliation may even involve a willingness on the part of the offended brother or sister to be, as St. Paul points out, willing to accept wrong, to let oneself be defrauded. Of course, if that must be done, those who actually do wrong are in no way excused or encouraged to continue in their wrongdoing.

The Lutheran Church - Missouri Synod has taken this seriously by incorporating in its Bylaws procedures for "Reconciliation, Adjudication, and Appeal," which are designed to "find the truth, provide for justice, and safeguard the welfare of the Synod, the members of the Synod... with the expectation that through them and otherwise every effort will be made to affect reconciliation in all cases of disagreement, accusation, or controversy. . ." In effect, these procedures which are in keeping with what is set forth in Matthew 18, I Corinthians 6, and elsewhere, are applicable to all Christians and, it is assumed, are practiced within the local congregation.

A Summary of Principles

What then are some of the principles which the Church should teach and follow with respect to legal matters? Although not intended in any sense to be exhaustive, these appear to be included among them:

- 1) Depending on the situation, it may or may not be wrong for a Christian to engage in legal action. Scriptural statements on this matter are not to be understood in terms of absolute prohibitions.
- 2) The motive for taking legal action is more crucial than the action itself.
- 3) Because of the spiritual insight, which they have and can be expected to exercise, Christians are in a unique position to assess problems among themselves and to resolve them.
- 4) The Christian does not insist on his own rights, but in a spirit of Christian love and concern for the brother, is willing to forego them, if necessary, out of concern for reconciliation. When wronged, he forgives as he has been forgiven by Christ.
- 5) The Christian is concerned about the cause of justice, particularly for others, and therefore promotes and supports the enactment and administration of laws which are designed to provide it, thereby demonstrating love for others.

Perhaps these can serve as a starting point for Christians who seek to do God's will as they live in the world but are not of it.

THE NAKED PUBLIC SQUARE, RELIGION AND DEMOCRACY IN AMERICA by Richard John Neuhaus, Grand Rapids: Eerdmans Publishing Company, 2nd edition, 1986.

The naked public square is a metaphor for a current perception that the United States is a secular society, a view with which the author disagrees. He fears that the secular alternative will lead to totalitarian absolutes because democracy cannot survive a totally secular society, as the Nazis proved in Germany. He also disagrees with the Religious Right's belief that the naked public square is a result of a humanist conspiracy, and he rejects the Right's strident efforts to enact its religious beliefs into public policy. He does credit the Right, however, with forcing Americans to think about the relationship between religion and political matters and to do so beyond the constitutional concerns of the relationship of church and state. Political issues do relate to cultural norms and religious values of the people, a connection, the author notes, that has always been evident in American history.

The author rejects the fundamentalists as deductively authoritarian and unable to adequately deal with the ambiguities of life. The Jerry Falwells of the Religious Right tend toward a theocratic state where moral issues will be resolved by state action. At the same time Neuhaus rejects mainline religious bodies who glorify the goodness of man and work for the perfection of society. These people may have a noteworthy social vision, but they lack a theological one. Too many have traded the miraculous and the transcendental for pragmatism, historicism and relativism. Such views, Neuhaus contends, cannot adequately and successfully clothe the naked public square with a theological and ethical view that will satisfactorily connect religion and culture.

Who will provide such a connection? Neuhaus believes that the Judeo-Christian heritage is best served by Lutherans ("the sleeping giant"), Roman Catholics and Jews. From these must come the theology, philosophy and ethics that can restore the relationship of religion and society.

How this can be done is not really developed in the book. Neuhaus seems to suggest that an ecumenical effort of some sort will be needed, but he does not explore the possibility in any detail. Whether such cooperation on the level envisioned is possible will be a major problem. After all, some church bodies have few ecumenical bones. The author does promise a second book in which he will pursue a potential solution; consequently, the reader has the opportunity in this volume to read an excellent presentation of the issue and of the inadequacies of current solutions. We look forward to a second volume with the author's ideas of a more satisfactory answer to the naked public square.

The author, a Lutheran pastor, is variously described as a neo-conservative and a neo-liberal. He writes for the *National Review*, and edits *The Lutheran Forum* which is published by the Rockford Institute in New York.

Larry Grothaus

TRIAL AND ERROR, THE AMERICAN CONTROVERSY OVER CREATION AND EVOLUTION by Edward J. Larson, New York: Oxford University Press, 1985.

"This study analyzes the legal controversy (between creation and evolution) both as a central manifestation of the popular response to evolutionary thought in America and as an episode in the use of law to redress the relationship of science and society. Based on an examination of all statutory and judicial actions arising out of the controversy, it emerges that the creation-evolution legal actions primarily represented efforts to reconcile public science - that is, publicly supported science teaching and related activities - with popular opinion." (p. 4)

In the quote just cited the author, a practicing attorney with a Ph.D. in the history of science, describes his goal and his prime conclusion. It is a bit stuffy and not representative of the text as a whole. This is a well-written, careful, very readable, historical account of the introduction of Darwinian evolution into high school biology texts in the public school and the responses of anti-evolutionists, evolutionists, creationists and portions of the religious community and the public who through popular opinion have attempted to influence the shape of that inclusion.

The history of evolutionary teaching, the statutes, and the court cases are sketched from the gradual introduction into textbooks up to the turn of the century, through the increasing opposition led by William Jennings Bryant culminating in the Scopes trial and the anti-evolution laws of the 20's, then the quietus from 1930 through 1960, and finally the modern debate based on the thesis of equal treatment.

The book does not include a direct debate of the issues, but rather of their treatment by the antagonists in the court cases, and laws of significance and how the ground of the controversy has shifted in time from moral-religious grounds to legal, philosophical and constitutional arguments. It is the saga of the interaction of science, religion and society. The author rarely lets his own biases impact the discussion.

This book is a genuine contribution to the literature of this debate because it is a comprehensive treatment of the statutes and court cases and it contains extensive bibliographic documentation. For the reader well versed in the debate it will fill a special niche, with perhaps a few gaps, and provides an excellent source of primary literature. For the novice this historical and legal treatment can provide an excellent base from which to begin a more complete study of the issues and the debate.

Gilbert Daenzer

PASTOR, CHURCH & LAW by Richard R. Hammer, Springfield, Missouri: Gospel Publishing, 1983; and PASTOR, CHURCH & LAW SUPPLEMENT by Richard Hammer, Springfield, Missouri: Gospel Publishing, 1986.

Having scanned libraries and books within these libraries for pertinent information relating to private school law, I can agree with Richard Hammer who says in the preface of his book, PASTOR, CHURCH & LAW, that no comprehensive book on church law has been written in over 50 years. However, after reading his book it is my opinion that we now have such an edition.

As in any valuable law book, the author chooses topics of concern for the reader with regard to statutes and regulations. In this case in the area of church law he has supplied a readable analysis of how these laws affect churches and clergy. Taking the basic structure of most books written on law for laypersons, he cites cases to prove points relative to the courts' interpretations of the statutes. The analysis provided was written for both casual reading and for those concerned about legal implications. However, the book is not a law textbook, and it was not written to circumvent legal counsel. In my estimation, it is a book that should be read by all pastors, since most seminaries do not include a course on church law.

Since this book on law is topical, not thematic, it is impossible to do a complete review of the material. A quick perusal of the Table of Contents demonstrates my point and also verifies how thorough the author was in covering the many legal problems facing churches today. There are a few that I have found interesting and which I will describe so that the reader might get an idea of how the author pursues his intent.

The chapter entitled "The Pastor-Church Relationship" begins with the definition of church types: congregational, which describes the independent church which owes no obligation to any higher authority, and the hierarchical church, where the church is partially controlled and is a part of an organization in a higher ecclesiastical order. The issue of calling or releasing a pastor from his office, for example, and any cases resulting from either of the two issues, depends completely upon the type of church body involved. Those churches of the congregational type deal with a contract by congregational vote, whereas the hierarchical generally involve the ecclesiastical tribunal. However, precedent in court cases regarding hierarchical removal from office have been dismissed from court on the grounds of First Amendment noninterference.

There have also been cases in the courts that pertain to confidential communication privilege for clergy. More recently, pastors of congregations have become involved in pastoral counseling, some of which may be related to civil suits. The author realizes that interpretation of the right of privileged communication varies among the states, but the pastor should still be aware of what most state statutes include in protected disclosure. The contact with the counselee must be communication, not just conversation; pastoral confidentiality must be maintained; the counselor must have the title of minister, and not

book reviews

be a lay assistant; he must be acting as a spiritual advisor; the communication is to be made in the course of discipline.

Related to the above topic, there have been lawsuits filed against ministers in which counsel given has been defined as having been negligent and even in some cases the counsel has been qualified as malpractice. Negligence is defined as the failure to observe care for the protection of the interests of another person with precaution and vigilance. Negligent conduct need not and usually is not intentional. Malpractice is a failure to exercise the accepted degree of skill in the performance of professional duties and results in injury to another. Cases cited as malpractice usually received greater court awards for the plaintiff. One example is a recent California case in which the pastoral staff was sued by the parents of a suicide victim for allegedly dissuading the youth from seeking psychiatric help. This type of case might persuade churches and pastors of the importance of obtaining malpractice insurance.

One chapter of the book deals with the administration of church schools. School administrators should be required to have a course in school law, but for those who do not, this chapter is one way of being made aware of pertinent laws for private schools. There are many differences between public school laws and their private counterparts. Due process does not apply to the private sector, because they are not state instrumentalities. One concern that church schools should become aware of is the recent enactments of state law requirements of private schools. In several states, private schools must now meet the same requirements as state schools including the employment of state certified teachers and following a state regulated curriculum. Our famous Nebraska case of *Douglas vs. Faith Baptist Church* is cited by the author as an instance of the State Supreme Court taking action against a non-certified school for failure to comply with state regulations.

Recently, in the *St. Louis Post Dispatch*, several articles appeared in a Sunday edition pertaining to law. One article quoted Laurence Tribe, a law professor at Harvard University. "In the two centuries that have passed since the Supreme Court's first marshall said his first,

'Oyez,' the courts importance has grown by slow but steady accretion, until today there is hardly an aspect of American life that has not been touched by the hands of our highest tribunal." This book by Richard Hammer shows many of the "touchings" of church and clergy.

One final quote by the author is cited for reflection.

"The decision to take others to court, like most ethical determinations, is thus not a private decision. It is a decision that also affects outsiders' perception of the Christian faith. And it is a decision that, in many cases, will directly contradict Paul's command in I Corinthians 6. Such considerations at least should encourage utilization of the various methods of private resolution - avoiding litigation. Their effect, however, would be cosmetic, covering over real and festering disputes among believers for whom Jesus prayed 'that they may be one.' Only grace - not courts or neutral principles - can resolve these disputes."

Donald Urbach

TEACHERS AND THE LAW by Louis Fischer, David Schimmel and Cynthia Kelly. New York: Longman, 1986.

TEACHERS AND THE LAW is a continuation of an earlier text entitled, THE RIGHTS OF STUDENTS AND TEACHERS, by Louis Fischer and David Schimmel. Like its predecessor, TEACHERS AND THE LAW provides a good, basic survey in the area of school law. It would be particularly valuable for the undergraduate in a survey type course. It is written in non-technical terms and can be covered in a reasonable period of time.

As a graduate level text or professional reference, however, this book has several shortcomings. Each section is brief - too brief to give adequate coverage to many important areas. At times the book oversimplifies some rather complex areas. It sacrifices content for the sake of brevity.

To adequately cover this area, the graduate level student and teacher will have to read the opinions of a number of landmark cases. Only then can the student fully explore the legal reasoning which underpins these cases and obtain the necessary background to coherently analyze this body of law.

An expanded version of this text containing the verbatim opinions of the leading cases would make it a much more effective tool for a school law course and for use as a reference. In its current format, it needs heavy supplementation and will tend to be a peripheral part of a graduate level course in school law. While this was not the intent of the authors, it seems to be its probable use in advanced level study. The book would therefore be considered mainly for undergraduate survey type courses.

Randy R. Stoll

(Continued from page 8)

beginning with justification; then through openness and prayer we ask for the aid of the Spirit in seeking knowledge of the newness of the situation before us—*viz*, the condition of the injured and needy; and thirdly, we use the Biblical norms in sorting out principles from historically conditioned rules—love dictated service by the Good Samaritan. Real love seeks out the best case for the injured and needs of others. What is the best way to care for others? Here it may be well that we call upon the aid and assistance of the church, other members of the body of Christ, in resolving conflict situations in our lives, ministries, and homes. The Christian community can help us identify the higher values. No small task is the Christian life.²⁰ Don't look into heaven to find a way to help the needy; pay attention to the needy—and also listen for counsel from the caring church which searches the Word with you to “try to learn what is pleasing to the Lord.” (Eph. 5:10)

FOOTNOTES

¹Martin Luther, “The Freedom of the Christian 1520” *Luther's Works*, Vol. 31. Career of the Reformer: I, (Philadelphia: Muhlenberg Press, ca. 1957), p. 344.

²Schnackenburg, Rudolf. *The Moral Teaching of the New Testament* (New York: Herder and Herder, ca. 1965) 91-93. Old Testament students may enjoy Walter C. Kaiser Jr's *Toward Old Testament Ethics* (Grand Rapids: Academie Books, 1983), regarding topic of the first and great commandment, pp. 130, 131, 142, 165, and the close tie between the Ten Commandments and the structure of Deuteronomy. Rabbi Joseph Klausner in *Jesus of Nazareth, His Life, Times and Teaching* (New York: The Macmillan Co., 1925, p. 384) claimed that everything Jesus taught in the sphere of ethics could be duplicated in the Old Testament, Apocrypha, and the Talmud.

³Solid Declaration, The Formula of Concord, *The Book of Concord*, edited by Th. Tappert (Philadelphia: Fortress Press, ca. 1959), pp. 559/10, 560/12.

⁴See Paul Althaus, “Law and Gospel,” *The Theology of Martin Luther*, translated by Robert C. Schultz (Philadelphia: Fortress Press, ca. 1966), 261-273, wherein Althaus defends Luther and Lutheran tradition against Antinomian tendencies in recent times and also is illustrative and instructive of the function of the Law as found in the Good Samaritan. Also instructive is Bonhoeffer's *Ethics*, pp. 263-319 regarding the *tertio uses*; Fagerberg, Holsten, *New Look at the Lutheran Confessions*, translated by Gene J. Lund (St. Louis: Concordia publishing House, ca. 1972), p. 79-87.

⁵John Warwick Montgomery, *Human Rights & Human Dignity* (Grand Rapids: Zondervan Publishing House, ca. 1986), p. 201.

⁶*Ibid*, p. 201.

⁷Dietrich Bonhoeffer, *The Cost of Discipleship*, trans. R.H. Fuller, rev. ed. (New York: Macmillan, 1959), p. 79.

⁸T.B. Maston, *Biblical Ethics* (Waco, TX: Word Books, Publishers, c. 1967) p. 170 citing John Knox, *The Ethic of Jesus in the Teaching of the Church* (New York and Nashville: Abingdon Press, 1961), p. 18.

⁹Dietrich Bonhoeffer, *Ethics*, edited by Eberhard Bethge (New York: The Macmillan Company, ca. 1955), p. 1.

¹⁰Apology, *The Book of Concord*, edited by T. Tappert, p. 163/367-368. See also George W. Forell's comments on Luther's *On Christian Liberty*, George W. Forell, *Faith Active in Love* (Minneapolis: Augsburg Publishing House, 1954), pp. 84-85.

¹¹Althaus, p. 133.

¹²*Ibid*, p. 135.

¹³We know of non-involvement in our day. We know of the oftmentioned case of Kitty Genovese of New York City, slain with at least 38 witnesses standing by. Isabel Rogers, *In Response to God* (Richmond, VA: Covenant Life Curriculum, ca. 1969) pp. 239-240.

¹⁴Paul Ramsey, *The Patient as Person* (New Haven and London: Yale University Press, ca. 1970), p. 6-7.

¹⁵Norman L. Geisler, *Ethics: Alternatives and Issues* (Grand Rapids: Zondervan Publishing House), p. 194.

¹⁶Hermann L. Strack and Paul Billerbeck, *Das Evangelium nach Markus, Lukas und Johannes und die Apostelgeschichte: Kommentar zum Neuen Testament*, Band II (Muencheon: C.H. Beck'sche Verlagsbuchhandlung, 1924), p. 183.

¹⁷Fred Feldman, *Introductory Ethics* (Englewood Cliffs, NJ: Prentice Hall, Inc., 1978), p. 149. Feldman reflects standard criticisms of William David Ross's *The Right and the Good* (Oxford University Press, 1930). Ross lists as examples of *prima facie* duty such obligations as (1) keeping promises; (2) gratitude; (3) reparations; (4) justice; (5) self-improvement; (6) nonmalfeasance and (7) beneficence.

¹⁸Helpful discussion on greater and lesser evils, as well as higher virtues can be found in Adolf Koeberle's *The Quest for Holiness*, “The Significance of Sanctification in the Preservation or Loss of the State of Faith,” (Minneapolis: Augsburg Publishing House, ca. 1936), p. 206-268.

¹⁹Normal Geisler, *Ethics: Alternatives and Issues*, p. 118-119.

²⁰Milton Rudnick in his helpful volume *Christian Ethics for Today: An Evangelical Approach* (Grand Rapids: Baker Book House, ca. 1979), reminds us that in our study of Scripture (1) New Testament material has precedence over Old Testament materials; (2) Clear imperatives have more authority than moral examples; (3) Clear imperatives have more authority than directives inferred from doctrines; (4) Historically and culturally conditioned commands must be distinguished from those which are binding for all times; and (5) Ethical norms should be based on at least several clear passages of Scripture. p. 141.

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