WHAT'S A NICE CHRISTIAN LIKE YOU DOING IN A PROFESSION LIKE THIS?

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Throughout history, lawyers have been unpopular.[1] But today they are more unpopular than ever.[2] Last year, a Harris Poll revealed that

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1 *See* ROTH & ROTH, DEVIL'S ADVOCATES: THE UNNATURAL HISTORY OF LAWYERS i (1989):

> Lawyers are upset. They have discovered what they believe to be an alarming new trend: People don't like them. The American Bar Association recently appointed a special panel to investigate the legal profession's bad image. The California State Bar has commissioned a survey to find out why so many people dislike lawyers. Legal conventions regularly include sessions on the public's negative perception of lawyers.
>
> We wish to reassure lawyers. This wave of anti-lawyer feeling is nothing new. People have always hated you.

Id. Cicero reserved a section of his work *On Oratory* for berating lawyers who were ill-prepared and knew nothing of the law. *Id.* at 11. Chaucer says of his "man of laws": "Though there was nowhere one so busy as he,/ He was less busy than he seemed to be." GEOFFREY CHAUCER, THE CANTERBURY TALES 28 (Nevill Coghill, trans., Penguin Edition 1977). Luther, whose legal training was cut short by the now-famous bolt of lightning and a vow to enter the priesthood, had this to say:

> God will keep his Word through the writing pen upon earth; the divines are the heads or quills of the pens, the lawyers the stumps. If the world will not keep the heads and quills, that is, if they will not hear the divines, they must keep the stumps, that is, they must hear the lawyers, who will teach them manners.

THE TABLE TALK OF MARTIN LUTHER 172 (Thomas Kepler ed., Baker 1952). Several centuries later, Coleridge gave us a glimpse into the "Devil's thoughts":

> He saw a Lawyer killing a Viper
> On a dunghill hard by his own stable;
> And the Devil smiled, for it put him in mind
> Of Cain and his brother, Abel.

SAMUEL TAYLOR COLERIDGE, *The Devil's Thoughts*, *in* COLERIDGE: POETICAL WORKS 319, 320 (Ernest Hartley Coleridge, ed. 1969). *See also Matthew* 23:13-36 (the "seven woes" spoken by Jesus to the teachers of the law and the Pharisees); CHARLES WARREN, A HISTORY OF THE AMERICAN BAR 4-5 (William S. Hein & Co., 1980) (1911) (noting the strong anti-lawyer sentiment reflected in the early colonial era laws); Stephanie B. Goldberg, *Identity Crisis*, A.B.A. J., Dec. 1994, at 74 (quoting Deborah Rhode: "For much of its history the American bar has perceived itself in decline. And throughout the last century, there has been no lack of laments about the loss of some hypothetical, happier era, when the law was more a profession than a business."); Jerome J. Shestack, *President's Message: Respecting Our Profession*, A.B.A. J., Dec. 1997, at 8 (quoting Timothy Dwight, telling graduates in a 1776 Yale commencement speech, to "shun legal practice like 'death or infamy'").

lawyers' prestige had "plummeted at a pace unmatched by that of other professions" during the twenty-year period from 1977-1997.[3] Similarly, in a 1995 poll, only car salesmen were ranked lower than lawyers in the public's assessment of their "honesty and ethical standards."[4]

Experience reveals similar attitudes within the Christian community. Professor Joseph Allegretti practiced and taught law for a decade before leaving the law to attend Yale Divinity School. He writes that he had been at seminary only a week, when another student, who had also been a lawyer, told him that she had quit practicing law because "a Christian can't be a lawyer."[5] Recently, one of my law students reported that his pastor "wasn't sure that a Christian can be a lawyer." My own experiences are similar. Many laymen have asked me how a Christian can be a lawyer, and more than one Christian businessman has confessed to me that he "hates lawyers." When I tell people that I teach at a Christian law school, many quip that "Christian lawyer" is an oxymoron.

I admit that I enjoy poking fun at lawyers' lousy reputation, and I'm a fan of lawyer jokes.[6] But "a Christian can't be a lawyer"? That is not a joke.

The causes for lawyer unpopularity over the past two thousand years are difficult to pinpoint and vary with the individual lawyers and

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[2] *See, e.g.*, DEBORAH L. ARRON, RUNNING FROM THE LAW (1989) (evaluating the reasons why large numbers of lawyers were leaving the legal profession due to personal and professional dissatisfaction); MARY ANN GLENDON, A NATION UNDER LAWYERS 7 (1994) (suggesting that Watergate, the Bork and Thomas confirmation hearings, and the Savings & Loan scandals of the 1980's, among other trends, have alerted the public that "all is not well in the world of lawyers"); ANTHONY KRONMAN, THE LOST LAWYER: FAILING IDEALS IN THE LEGAL PROFESSION (1993); SOL LINOWITZ, THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY (1994); Carl T. Bogus, *The Death of an Honorable Profession*, 71 IND. L.J. 911 (1996); Edward D. Re, *The Causes of Popular Dissatisfaction with the Legal Profession*, 68 ST. JOHN'S L. REV. 85 (1994); Gary A. Hengstler, *Vox Populi: The Public Perception of Lawyers: ABA Poll*, A.B.A. J., Sept. 1993, at 60; Chris Klein, *Poll: Lawyers Not Liked*, NAT'L L.J., Aug. 25, 1997, at A6; Randall Samborn, *Anti-Lawyer Attitude Up*, NAT'L L.J. Aug. 9, 1993, at 1 ("resentment of lawyers is running at a fever pitch").

[3] Klein, *supra*, note 2, at A6. A mere 19% of the public viewed the law as a "very prestigious" occupation. That figure was as low as 36% in 1977, but the 17-point drop was the biggest among occupations in the survey. *Id.*

[4] *Gallop Poll Monthly*, Nov. 1995, at 30-31.

[5] JOSEPH ALLEGRETTI, THE LAWYER'S CALLING 1 (1996).

[6] I enjoy lawyer jokes because they are funny, not because they tell the truth about lawyers (although they sometimes do):

Question: *What do you have when you bury a lawyer up to his neck in sand?*

Answer: *Not enough sand.*

Question: *What's the difference between a dead skunk in the middle of the road and a dead lawyer in the middle of the road?*

Answer: *The skid marks in front of the skunk.*

political climate of any given historical period.[7] For contemporary Christians though, it seems to be one issue—or a group of related issues—that causes skepticism about "Christian" lawyers. In my experience, at least, there is one burning question on the lips of laymen who have genuine doubts whether a Christian can really be a lawyer. This one question, which I have been asked by serious believers scores of times, seems to sum up the skepticism: "How can you represent a guilty person?" [8]

While the vast majority of lawyers will *never* represent even an *accused* criminal[9] and could not find the county jail without a map, this narrow question does, in a variety of ways, illustrate the central issues facing legal professionals and their observers. First, it raises the common perception that a lawyer must always subordinate his own conscience and personal morality to those of his clients. Second, the question implies that the lawyer is more interested in personal financial gain than in justice. These concerns apply to all sorts of lawyers—whether they represent criminal defendants, utility companies, middle-class homeowners, or the poor. The root of the most common complaint about the legal profession is the perception that lawyers are simply mercenaries who will pervert justice for money.

This perception has come about, at least in part, because lawyers *and* laymen have abandoned a biblical view of law and of the legal process. On one hand, laymen sometimes criticize lawyers for principled, moral conduct. On the other hand, lawyers do sometimes act like mercenaries, encouraging the perception. Because it illustrates the principle misunderstandings at the heart of these issues, I will first examine the foundational question of "representing the guilty." Then I will evaluate the broader concerns that are implicit in that question: public mistrust of "the system" and lawyers' professional pride.

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[7] *See, e.g.*, KRONMAN, *supra* note 2, at 1-7; ROTH & ROTH, *supra* note 1; WARREN, *supra* note 1, at 3-20; Re, *supra* note 2, at 91-110.

[8] The issue of representing "guilty" people has been discussed in the academic literature from a variety of perspectives. *See, e.g.*, Barbara Babcock, *Defending the Guilty*, 32 CLEVE. ST. L. REV. 175 (1983); Monroe H. Freedman, *Professional Responsibility of the Criminal Defense Lawyer: The Three Hardest Questions*, 64 MICH. L. REV. 1469 (1966).

[9] Only a small percentage of lawyers represent criminal defendants on a regular basis. In fact, less than twenty percent of lawyers, including prosecutors, are involved in criminal law at all. In 1985, fewer than two percent of ABA members were members of the bar association's Criminal Justice section. JOHN FLOOD, THE LEGAL PROFESSION IN THE UNITED STATES 56 (1985); *see also* Deborah Rhode, *Ethical Perspectives on Legal Practice*, 37 STAN. L. REV. 589, 595 (1985) ("[M]ost legal practice occurs outside any formal adversarial framework.").

I. REPRESENTING THE GUILTY

Moral lawyers may represent guilty clients. First, not all "guilty people" can be held accountable to human legal systems. An obvious example is found in the Sermon on the Mount.[10] Jesus tells those gathered, "You have heard that it was said to the people long ago, 'Do not murder, and anyone who murders will be subject to judgment.' But I tell you that anyone who is angry with his brother will be subject to judgment."[11] He continues, "You have heard that it was said, 'Do not commit adultery.' But I tell you that anyone who looks at a woman lustfully has already committed adultery with her in his heart."[12] Clearly, those who commit murder or adultery in their hearts are "guilty"—and will be held accountable to God (they are "subject to judgment"). Yet, because it is not possible for us to judge the hearts of men, these sins are not and cannot be subject to the jurisdiction of human courts.

Second, lest the reader think I am unfairly stretching the definition of the term "guilty" for the sake of argument, let us turn to some legal procedures instituted by God for the children of Israel. The Lord told Moses, "One witness is not enough to convict a man accused of any crime or offense he may have committed."[13] Jesus later applies this provision to himself before the Pharisees: "In your own Law it is written that the testimony of two men is valid. I am the one who testifies for myself; my other witness is the Father, who sent me."[14] In the context of convicting the guilty, this means that some obviously guilty people cannot be punished by men. For example, if a very reliable source with perfect eyesight were to witness a murder in broad daylight from a close distance, we would be quite sure that the murderer was indeed guilty. Yet, if the murder occurred under the jurisdiction of the Mosaic procedural law, there could be no punishment by the state. The obviously "guilty" person would be free. I am not suggesting that we must adopt the requirement of "two witnesses" as a universal procedural requirement (in fact, it is not a requirement in any State today). I am suggesting, however, that moral legal process is necessary to determine properly who can be held accountable in temporal legal systems. The "two witnesses" requirement ensured that the civil state did not execute judgment unless there was a significant degree of certainty that the party was, in fact, guilty. With this requirement, the state erred on the side of letting the guilty go unpunished, rather than overstepping its authority

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10 *Matthew* 5-7.

11 *Matthew* 5:21-22 (New International).

12 *Matthew* 5:27-28 (New International).

13 *Deuteronomy* 19:15 (New International).

14 *John* 8:17-18 (New International).

and punishing the innocent. This has also, of course, been a sound principle of the English and American common law for hundreds of years. As William Blackstone wrote in 1769, "It is better that ten guilty persons escape, than that one innocent suffer."[15]

The state does not have the authority from God to punish all who are "guilty" of any sin. Neither does it have the biblical authority to cast so broad a net in pursuit of justice that it punishes the innocent as well as the guilty. While Christians have disagreed for centuries over where to draw the line on the authority of the civil government, we generally agree that procedural safeguards have to be instituted, just as God provided safeguards to Israel in the form of the two witness requirement.[16] Today, we view these safeguards as largely a matter of prudence; that is, various jurisdictions, using common sense and wisdom, adopt safeguards that they believe best protect the interests of the people. These safeguards range from guarantees of a trial by jury[17] to complicated rules about the admissibility of certain types of evidence.[18] Collectively, they are designed to ensure that the state does not overstep its authority in punishing its citizens, for which it is accountable to God.

When the woman who had been caught in adultery[19] was brought to Jesus, the Pharisees told him that "[I]n the Law Moses commanded us to stone such a woman."[20] The law actually commanded that the woman *and the man* caught in adultery be put to death.[21] When Jesus said, "If any one of you is without sin, let him be the first to throw a stone at her,"[22] he may have been referring to their sin of allowing the man to go free, in violation of the process required under the law. Since the process required for stoning had been violated, no one threw a stone. Jesus did not condemn her, though she was almost certainly "guilty."

Legal process—"technicalities"—are not mere complexities arbitrarily built into the law to confuse laymen. Legal procedure is a collection of moral safeguards that protect the state (from God's judgment for exceeding its authority) and the people (from oppression). Even "guilty" people may not be punished until the prosecution has shown through

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15 4 WILLIAM BLACKSTONE, COMMENTARIES *27.

16 *Deuteronomy* 19:15.

17 U.S. CONST. amend. VI.

18 *See, e.g.*, FED. R. EVID. 801-806, dealing with "hearsay." There is a "general rule excluding hearsay, but [it is] subject to numerous exceptions under circumstances supposed to furnish guarantees of trustworthiness." FED. R. EVID. 801 advisory committee's note.

19 *John* 8:3-11.

20 *John* 8:5 (New International).

21 *Leviticus* 20:10.

22 *John* 8:7 (New International).

moral process that the state has the right to enter judgment. It is therefore important to make the state prove its authority.

In short, there are moral reasons that "guilty people" need lawyers. First, a person adjudged to be guilty (by the police, public opinion, or the local radio talk shows) might not have actually committed a crime. Second, a person actually guilty of a sin, an anti-social act, or immoral conduct might not be punishable by the state under its laws. In such cases, as we have discussed, the state must prove that it has the authority to punish the wrongdoer. Third, a wrongdoer who is in fact guilty and subject to punishment by the governing authorities is entitled to insist that the state properly "follow the rules" in convicting him and sentencing him, so that the punishment does indeed "fit the crime."

Christian doctrine holds that earthly justice systems are imperfect, but God's perfect justice *can* right every wrong and will in fact require all of us to account for every word and deed.[23] Therefore, believers trust God, not human beings, for ultimate justice. Human justice cannot do what God's justice can: punish all who are truly guilty.[24]

II. THE BROADER CONCERNS

How does all of this help us in evaluating the broader complaints about the legal profession? For starters, it should dispel the notion that lawyers are simply amoral "hired guns" for their clients—highly-paid prostitutes who sell their services and scruples to the highest bidder. Lawyers have additional duties to the court and to society to guard and protect the process that is fundamental to the legal system. In addition, the myth that a lawyer must "check his conscience at the door" to the courthouse or his client's office loses much of its force in light of a biblical view of advocacy. He acts in his client's best interest, as long as it is consistent with his larger duties to God and to the public. In this way, the lawyer acts as a buffer between the civil authority and the people who answer to it. While this is an ideal—and there are certainly abuses by lawyers—the claim by some that the entire profession has elevated financial gain above its role as guardian of the legal system[25] is not accu-

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[23] *See, e.g., Matthew* 12:36; *Romans* 14:12; *Colossians* 3:17.

[24] Neither, however, can human justice provide salvation. On the day when we, the truly "guilty," are called to account for our sins, thank God that "we have one who speaks to the Father in our defense—Jesus Christ, the Righteous One." *1 John* 2:1 (New International). While God has given us examples of procedural safeguards in his law, he has also provided Jesus, the ultimate Advocate for the guilty.

[25] *See, e.g.*, Re, *supra* note 2, at 95 ("Materialism has become the predominant motivation of the search for cases and the initiation of litigation."); Kenneth Jost, *Public Image of Lawyers: What Image Do We Deserve?*, A.B.A. J., Nov. 1988, at 47-8 ("Mark Harrison [then-chair of the ABA Standing Committee on Professionalism] agrees that the salary spiral is unhealthy for the bar's public image: 'It exacerbates the growing feeling that the

rate. The complex procedural "rituals" in which lawyers engage are designed not to make lawyers richer, but to hinder the state from exceeding its authority at the expense of individuals.

Of course, the sad truth is that many contemporary lawyers, including Christians, have lost the sense of calling as guardians of legal process that earlier generations of lawyers embraced.[26] Stories abound of lawyers using costly delaying tactics in order to exhaust the opposing parties,[27] lawyers using unethical means to win lawsuits,[28] and lawyers who advance their clients' interests beyond the bounds of the law for personal financial gain.[29]

As a result of these and related developments, the public has lost confidence in the profession's ability to carry out its role and no longer trusts the procedural morality so important to the proper administration of justice.[30] As the public cynicism toward the legal system grows, so does general mistrust of the results of that system. That mistrust is fueled by individual stories of unethical lawyers and gross miscarriages of justice, as the public increases its focus on the failures of the system. As a result, any remaining public regard for legal procedure is lost. Instead, the public demands "justice" without burdensome and time-consuming legal procedure, and lawyers, eager for public approval or monetary reward, abandon their role as guardians of those procedures. As lawyers fail to act with integrity in increasing numbers of cases, the system becomes more arbitrary than before, and cynicism increases. And so on.

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profession is becoming tilted toward the commmercial rather than the service component of what the profession is supposed to be.'").

[26] For examples of some principled approaches to the law in earlier generations, see JOHN DOS PASSOS, THE AMERICAN LAWYER 13 (Fred B. Rothman Co. 1986) (1907); DAVID HOFFMAN, A COURSE OF LEGAL STUDY xiii (William S. Hein & Co. 1968) (1846); JAMES PIKE, BEYOND THE LAW (1963).

[27] For example, two attorneys were sanctioned $5000 for "an 'ambush' designed to 'discombobulate' the two solo practitioners representing the plaintiffs" in a discrimination suit. Bill Alden, *Counsel Fined $5,000.00 Despite Grounds for Dismissal Motion*, NEW YORK LAW JOURNAL, June 3, 1997 at 1, col. 3. They had waited until after the opening statements at trial to object to improper service of the plaintiff's claim, which objections they could have made weeks before trial. *Id.*

[28] *See, e.g., id.*

[29] *See, e.g., Was Client Sold Out?*, NAT'L. L.J., Sept. 1, 1997 at A4 ("Ava Dean Butler, the widow of a Mississippi barber who died of lung cancer in 1994, sued two prominent plaintiff's lawyers . . . , alleging they were more concerned with earning huge fees from a proposed $368.5 billion global tobacco settlement than in prosecuting her wrongful death lawsuit against the tobacco industry . . . ." The two also represented attorneys general of most of the states suing "Big Tobacco." While representing the attorneys general, they negotiated an agreement that would have prevented Ms. Butler, also their client, from suing for punitive damages.)

[30] *See* GLENDON, *supra* note 2; KRONMAN, *supra* note 2; LINOWITZ, *supra* note 2; Re, *supra* note 2.

What is to stop this downward spiral of cynicism?[31]

A. Biblical View of Process

The first step is to recognize, again, that man's legal system is imperfect. Of course, one problem is that we want the "good guys" to win and the "bad guys" to get punished, so we sometimes confuse "justice" with "right results" in every lawsuit or investigation. The danger lies in believing that the legal system can right every wrong and that lawyers and legislators need to do "whatever it takes" to make sure that bad guys are put in jail (or pay civil judgments) and only "good" people are set free. We should, at a minimum, expect some "bad" results from an imperfect system that values protecting people from the state over punishing every potential offender.

B. Get the Facts: Mass Media as Judge

It is interesting that, as a substitute for burdensome legal procedures, the public usually turns to the media, a source with few rules, regulations, or procedural limits. There is hardly a less reliable source for justice than today's partisan press.[32] Yet the tendency is to jump on the bandwagon of whatever cause, legislation, or crisis the press presents as worthy. This mentality will also often lead the lay public to decide what justice is before the legal process runs its course—based on the "testimony" of talk show hosts and newspaper op-ed columns.

As part of this process of ending the downward spiral of cynicism, we need to understand that the mass media is often a poor vehicle for communicating the complexities and subtleties of the legal process.

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[31] Jean Bethke Elshtain describes the same growing cynicism in the political sphere. *See* DEMOCRACY ON TRIAL 24-25 (1995).

> I think of the words now used to characterize American politics: stalemate, grid-lock, cynicism. American politics is a miasma, so argue many experts and journalist as well as ordinary citizens. This growing cynicism about politics promotes a spiral of delegitimation. How does a spiral of delegitimation get a society in its grip? Over time, the "culture of mistrust" grows, aided, as I already indicated, by public scandals; by an evermore litigious and suspicious society; by a determination to "get mine" no matter what may happen to the other guy; and by salacious snooping into the private lives of public figures, which further fuels cynicism about how untrustworthy our leaders are even as we delight in their downfall.

Id.

[32] *See, e.g.*, AND THAT'S THE WAY IT ISN'T (L. Brent Bozell, III and Brent H. Baker, eds., Media Research Center, 1990); PAUL H. WEAVER, NEWS AND THE CULTURE OF LYING (1994); MARTIN LEE & NORMAN SOLOMON, UNRELIABLE SOURCES: A GUIDE TO DETECTING BIAS IN NEWS MEDIA (1990).

When a talk show, newspaper headline, or the six o'clock news describes the legal process as it relates to a particular case, it must, of necessity, paint with a very broad brush. The precise nature of the dispute or motion being decided, the procedural posture of the case, and the "real" parties and issues before the court are often left out of the discussion entirely. For example, some reports of cases don't tell us that certain information they are conveying to us was not made known to the jury during the trial. Sometimes, for tactical reasons that are not discussed in the news, certain issues in a case are not appealed and the appellate court is deciding one very narrow issue in the case. Often, we are left wondering how certain results can be "right" by any standard. In many cases, we simply do not know the whole story from a "legal" perspective—a perspective sharpened by inclusion of those procedures so crucial to justice.

C. Lawyers as Social Planners

At some point during the last century,[33] legal professionals got the idea that lawyers and judges should do more than *merely* decide cases based on law, time-honored procedures, and statutes adopted by governing bodies. Instead, we reasoned, the law should be a tool to work positive social change,[34] and any mere technicalities that get in the way, such as hundreds of years of legal history or formal rules of process, must be ignored—for the sake of the good of society.[35] Lawyers and judges were no longer the protectors of process and order in the legal system, they became its enemies—for the "good of society." This premise—that law is merely an instrument to reach the desired ends of any

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[33] The movement that peddled the law as merely a social "instrument" began in earnest with the career of Oliver Wendell Holmes, Jr. The instumentalist position took over American legal theory with the publication in 1881 of Holmes's THE COMMON LAW and various later works by Roscoe Pound and Karl Llewellyn. *See, e.g.*, Karl N. Llewellyn, *Some Realism About Realism: Responding to Dean Pound*, 44 HARV. L. REV. 1222, 1236 (1931) ("[W]e view law as means to ends; as only means to ends."). During this time, the pragmatism of philosophers William James and John Dewey became deeply imbedded in the law. *See* ROBERT S. SUMMERS, INSTRUMENTALISM AND AMERICAN LEGAL THEORY 30-31 (1982).

[34] *See* SUMMERS, *supra* note 33, 60-100, 137 nn.3-5 (citing JOHN CHIPMAN GRAY, THE NATURE AND SOURCES OF LAW 94 (1921) ("The great gain in its fundamental conceptions which jurisprudence made during the last century was the recognition of the truth that the law of a state . . . is not an ideal, but something which actually exists. . . . It is not that which ought to be, but that which is."); OLIVER WENDELL HOLMES, JR., THE COMMON LAW 1 (1881); KARL N. LLEWELLYN, THE BRAMBLE BUSH 67-72 (1930); KARL N. LLEWELLYN, THE COMMON LAW TRADITION: DECIDING APPEALS 38 (1960); Jerome Frank, *Mr. Justice Holmes and Non-Euclidean Legal Thinking*, 17 CORNELL L. Q. 568, 572-79 (1932); Roscoe Pound, *Mechanical Jurisprudence*, 8 COLUM. L. REV. 605 (1908).

[35] The theories of Holmes, Pound, Llewellyn, and Gray all advocate this approach to varying degrees. *See, e.g.*, SUMMERS, *supra* note 33, at 136-75, and sources cited therein.

given society[36]—assumes that law is not a fixed system based on pre-existing truth, but is always changing in response to societal needs and goals.[37] This theory, advanced by such luminaries as Oliver Wendell Holmes, Jr.,[38] is today the prevailing legal theory in America.[39] There are, however, legal scholars who believe that this view is based on a faulty understanding of the nature of law. For example, in his popular book *Reason in the Balance*, law professor Phillip Johnson rejects the modernist view, explaining that "there is a moral order independent of what human rulers may from time to time prefer, and law is just to the extent that it comports with that moral order."[40] Of course, the debate is more subtle and involved than I can demonstrate here, and it implicates issues as controversial and diverse as Darwinism,[41] the authority of the Bible, the nature of morality, and the role of the State.

At minimum, however, the system itself is damaged when lawyers see themselves as autonomous forces empowered to use the law for wholesale societal change. Judges decide cases based upon who can pay rather than who is at fault.[42] Lawyers are emboldened to develop litigation (with or without clients) seeking to restructure social relationships or redistribute social costs[43] (regardless of whether any *individual* has

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[36] *See* SUMMERS, *supra* note 33, at 60 (citing Oliver Wendell Holmes, Jr., *The Path of the Law*, 10 HARV. L. REV. 468, 469 (1897); Pound, *supra* note 34; Herman Oliphant, *The New Legal Education*, 131 THE NATION 495 (1930)).

[37] "The first requirement of a sound body of law is that it should correspond with the actual feelings and demands of the community, whether right or wrong." SUMMERS, *supra* note 33, at 46 (quoting HOLMES, THE COMMON LAW 41). "To the instrumentalists, however, a legal precept can never be self-justifying. Rather, it is always necessary to inquire whether it does (or would) maximize present wants and interests by apt and defensible means." SUMMERS, *supra* note 33, at 61.

[38] Summers calls Holmes "one of the most profound of the instrumentalists." SUMMERS, *supra* note 33, at 146. For a discussion of Holmes's instrumentalism and its relationship to the poor reputation of lawyers as a class, see Michael P. Schutt, *Oliver Wendell Holmes and the Decline of the American Lawyer: Social Engineering, Religion, and the Search for Professional Identity*, 30 RUTGERS L. J. 143 (1998).

[39] SUMMERS, *supra* note 33, at 26. *See also* ROBERT L. HAYMAN, JR. & NANCY LEVIT, JURISPRUDENCE: CONTEMPORARY READINGS, PROBLEMS, AND NARRATIVES 11 (1994).

[40] PHILLIP JOHNSON, REASON IN THE BALANCE: THE CASE AGAINST NATURALISM IN SCIENCE, LAW AND EDUCATION 38-139 (1995).

[41] *See* PHILLIP JOHNSON, DARWIN ON TRIAL (1991), *and* REASON IN THE BALANCE, *supra* note 40.

[42] *See* Escola v. Coca Cola Bottling Co. of Fresno, 150 P.2d 436, 441 (1944) (Traynor, J., concurring) ("Even if there is no negligence, however, public policy demands that responsibility be fixed wherever it will most effectively reduce the hazards to life and health inherent in defective products that reach the market.").

[43] *See id.* ("Those who suffer injury from defective products are unprepared to meet its consequences. The cost of an injury and the loss of time or health may be an overwhelming misfortune to the person injured, and a needless one, for the risk of injury can be

been seriously wronged),[44] adopt abusive tactics that demean opposing counsel and the legal system,[45] and advertise in ways that discredit the profession.[46] Recently, for example, lawyers have reaped millions in fees in the rash of class action settlements, while their "clients" received little or nothing,[47] securities litigation firms have searched for a dip in a particular stock's value and then searched for a client to make a claim,[48] and lawyers have used the new products liability regime to sue retailers who neither manufactured the dangerous product nor knew that it was dangerous.[49] These phenomena are not necessarily the result of lawyers' greed, but of an historical and collective arrogance that transforms lawyers from guardians of a discernible moral order to social engineers[50] empowered to restructure society based on an evolving value system.

This arrogance strikes me as the professional sin of lawyers. It is the predator that crouches, waiting to devour our profession.[51] If lawyers

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insured by the manufacturer and distributed among the public as a cost of doing business.")

[44] *See infra* notes 49-51.

[45] *See* John R. Woodard III, *Discovery Abuse: "I KnowIt When I See It"*, 26 THE BRIEF 32 (1997); Jean M. Cary, *Rambo Depositions: Controlling an Ethical Cancer in Civil Litigation*, 25 HOFSTRA L. REV. 561 (1996); Kathleen P. Browe, *A Critique of the Civility Movement: Why Rambo Will Not Go Away*, 77 MARQ. L. REV. 751 (1994); Lenard Pertoney, *Order in the Court*, 43 SYRACUSE L. REV. 1159 (1992).

[46] Watch any local television station after midnight for an illustration of this phenomenon.

[47] *See, e.g.*, Richard B. Schmitt, *Payments to Plaintiffs' Lawyers in Failed Asbestos Deal Stir Anger*, WALL ST. J., July 31, 1997 at B10; Paul A. Gigot, *$50 Million Men: Tobacco Lawyers Become Sultans*, WALL ST. J., June 27, 1997, at A14; Dean Starkman, *BankAmerica Unit's Suit Accord Assailed on Size of Lawyers' Fees*, WALL ST. J., Apr. 10, 1997, at B2 ("A proposed class action settlement involving the mortgage-finance unit of Bank America Corp. is drawing fire for giving more cash to plaintiffs' lawyers than to the plaintiffs themselves.")

[48] *See* John C. Coffee, Jr., *Understanding the Plaintiff's Attorney: The Implications of Economic Theory for Private Enforcement of Law Through Class and Derivative Actions*, 86 COLUM. L. REV. 669, 682 (1986).

[49] *See, e.g.*, Vandermark v. Ford Motor Co., 61 Cal. 2d 256, 37 Cal. Rptr. 896, 391 P.2d 168 (1964).

[50] *See, e.g.*, SUMMERS, *supra* note 33, at 193:

> Almost uniformly the instrumentalists viewed the law as a kind of technology that social engineers used to serve goals. Pound led the way:
>
> > I am content to see in legal history the record of a continually wider recognizing and satisfying of human wants or claims or desires through social control; a more embracing and more effective securing of social interest; a continually more complete and effective elimination of waste and precluding a friction in human enjoyment of the goods of existence—in short, a continually more efficacious social engineering.

Id. (quoting ROSCOE POUND, AN INTRODUCTION TO THE PHILOSOPHY OF LAW 47 (1922)).

[51] *See Genesis* 4:7 (the sin that crouched at Cain's door, waiting to devour him, was pride).

humble themselves and learn to serve the system and the public in their role as ministers of the law, the law and the public cynicism toward it will be transformed. As lawyers learn to guard the system, rather than exploit it, they will demonstrate to the lay public that technicalities and procedures safeguard justice, rather than obstruct it. The result may be a fresh—and favorable—perspective on lawyers and the legal system.

III. CHRISTIAN LAWYERS?

The truth is that we need lawyers to influence the profession and reform the system so that it reflects a moral view of process and the substantive law. Who better to serve humbly than one identified with Christ, the humble servant?[52] As counselors, advocates, and negotiators, lawyers serve God in productive and biblical service.

First, as counselors, attorneys advise and guide parents, businessmen, and employees in their relationships with others. For example, in drafting a will, a Christian lawyer can help a father to be a "good man" who "leaves an inheritance for his children's children."[53] In structuring business entities and relationships, he can assist men and women in fulfilling their duties before God as stewards of wealth and talents.[54] As an officer of the court and an advocate, he can assist people in approaching the civil magistrate, who as God's "agent,"[55] punishes evildoers and rewards those who do right.[56] As the reformer Phillip Melancthon wrote:

> As a true saint, [] a member of *Christ* may use other orders of God such as food, drink, arithmetic, measures, and matrimony to exercise in such works his obedience to God; he may also use the authority of government, courts, the law of inheritance, and punishments without feeling that such works are against God. A saint, a member of Christ, may be a prince, a judge, a servant of the court; he may seek redress in the courts, sue and reply; and he may serve in just wars according to his calling. . . .
>
> And mark well that the works of these orders, that is, works in the government, courts and wars, are true services of God if knowledge of *Christ* and a faith are present. If the heart believes that God has received us for the sake of his Son, we then may fulfill the calling of our office, to the praise of God and to the good of our neighbor.[57]

Just like the calling of a minister, doctor, or soldier, the lawyer's calling to service before the Lord, if exercised in faith, is true spiritual service.

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[52] *See Philippians* 2:1-11; *id.* at 3:7-11.

[53] *Proverbs* 13:22 (New International).

[54] *See Matthew* 25:14-28; *Genesis* 1:28-30.

[55] *See Romans* 13:3-4.

[56] *Id.*

[57] MELANCTHON ON CHRISTIAN DOCTRINE 329, 331 (Clyde Manschrek, ed. and trans., Baker 1982) (emphasis in originial).

As Christian lawyers focus on their calling to serve, and laymen learn not to resent the burdens associated with an imperfect legal system, the public disdain for lawyers will gradually recede. But more importantly, we will be better able to "live peaceful and quiet lives in all godliness and holiness"[58] as a result of the proper administration of justice in our society.

[58] *1 Timothy* 2:2 (New International).