The Professional Responsibility of the Christian Lawyer

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1) In the profession which I represent, some of the biggest names — John Calvin, Martin Luther, Tertullian, St. Paul — have been ex-lawyers (in the cases of Calvin and Luther, at least ex-law students.) The switch they made could be interpreted, I suppose, as a switch from the law to the gospel. But in the case of no one of them did the law (spell it with a capital L, if you like, though I believe the distinction is a relative one) — in the case of no one of them, did the law cease to play a determinative role in their theology. Quite the contrary, for all of them the law remained second in importance only to the gospel.

With an introduction like that, any Lutheran theologian finds the temptation almost overwhelming to launch into a discourse on law and gospel. But I shall withstand the temptation, in view of the fact that this university has distinguished itself as a kind of national headquarters for the proper distinction between law and gospel, and anything I would say on that score would be carrying coals to Newcastle. But I do want to observe that, at least in my experience, there seems to be an extraordinary affinity between the theologian and the thoughtful Christian

lawyer. This happy suspicion used to be confirmed for me by my colleagues in this school of law, especially in our annual encounter in their course on jurisprudence. And the suspicion has been confirmed for me again today by the unusually perceptive essay (and I mean also theologically perceptive essay) by Mr. Kuhlmann.

Of course Mr. Kuhlmann does not need me to say he is right. But I should like to say so just the same, if for no other reason than that I have no choice, theologically.

2) What I take Mr. Kuhlmann to be saying, in answer to the question before the house, is this: Yes, there is indeed a conflict between the lawyer in his practice and in his Christian vocation, just as there are the sane conflicts for the conscientious non-Christian lawyer, but that these conflicts are one very good reason why the legal profession can use Christians – not always to resolve the conflicts and certainly not to explain them away, but to have the courage to take the conflicts with dogged seriousness, in the fear of God, and to do one's godly best to choose the stronger horn of the dilemma, committing the results to the same God.

3) Almost all the cases of conflict which Mr. Kuhlmann cited illustrate what, in the technical terminology of ethics, would be called the moral dilemma. And, as he proved to us again and again, the moral dilemma is hardly the exclusive problem of Christians. It is simply a fact of human life generally that even though two wrongs never make a right, two rights, if they are opposed, will surely make a wrong. If it is right not to defend a client who you know is guilty, it is also right to defend him, in order to uphold due process – according to which you are the man's lawyer, not his judge. Both alternatives are right. But the minute you choose one (and you must) you are wrong. This universally human phenomenon has been celebrated in

all great literature. In the Book of Judges Jephtha saves Israel but, in keeping his vow to God, has to kill his own fair daughter. It was one of the glories of ancient Rome that Brutus, who was required by law to impose the death sentence upon his own sons, had the courage to do so out of a superior respect for justice. In the Trojan war, King Agamemnon heroically appeased the goddess Artemis by sacrificing Iphigenia, his daughter, for the good of the fleet and the nation. It is the same sort of conflict, essentially, which plagues Socrates in the trial-scene in Plato's Apology, Herman Melville's Billy Budd, the sea-captain in Nicholas Monsarrat's The Cruel Sea – who performed his grim duty with the words, "A man must do what a man must do and then say his prayers."

But not only is the moral dilemma not exclusively Christian. Most often it is not even very dramatic. It occurs, as Mr. Kuhlmann showed us, not only in cases of litigation, in the comparatively dramatic atmosphere of the courtroom, but also in the dull routine of the office lawyer. I remember, back in the days when I still had coeds in class, how they tended to be over-sold on the heroic possibilities of the moral dilemma – every girl a Joan of Arc or an Anna Christie, daring to commit a wrong for a greater right. You didn't have the nerve to tell them it would all happen very prosaically when, as mothers someday, they would be standing in the kitchen and little Sally would run in and tattle on John for going outdoors without his clothes. Which one would she punish, the exhibitionist or the informer?

4) But Mr. Kuhlmann took us much farther than that. True, it is already a substantial gain when we recognize that the moral dilemma faces everyone, the non-Christian as well as the Christian, the office lawyer as well as the courtroom lawyer. But once you make that discovery, it is a huge temptation to shrug one's shoulders and to say, "Oh well, then, the conflicts

aren't as serious as I imagined they are." Precisely because everyone has the problem, the problem loses its glamour, its originality, its fearfulness. What is everybody's problem becomes nobody's problem. If every lawyer is caught in these moral binds, even in such a commonplace operation as filing a tax return, and if these are not the distinctive crosses of Christian lawyers, then, presumably, there's nothing particularly Christian about letting these conflicts bind one's conscience.

But that, I thought, was where Mr. Kuhlmann excelled. Any Christian lawyer who is worthy of the name (either the noun or the adjective) will indeed become sensitive to the conflicts, and will in fact agonize over them – not because there is any inherent virtue in feeling bad about the problem but because the problems really are bad. Before God, they are, whether or not they are bad before men. You're damned if you do, and you're damned if you don't. But the number of lawyers in any generation who are capable of caring about that – or, for that matter, the number of theologians – is terribly meagre and, I would guess, terribly lonely.

5) But this brings me, finally, to what I take Mr. Kuhlmann to be saying is the unique conflict which confronts the Christian lawyer, and only the Christian lawyer: the built-in conflict within his Christian faith itself, between knowing he is a sinner (as he most certainly is) and knowing he is not a sinner (as indeed he is not.) How can he believe he is both? And how can his believing both these contrary things be the very "conflict" which makes a man of him, makes him grow from weak to strong, from dead to alive, makes him bold and adventuresome and serviceable? It is hard to imagine that this conflict – unique to Christians because it is unique to the gospel which they believe – could do anything but paralyze a man's professional activity and distract him from the work at hand. So it would

seem.

If it is a rare specimen in the legal profession who works with fear and trembling before God, even over a tax return, then it is rarer still for such a sensitive conscience (I would have said, a "penitent" conscience) to be able to believe that, despite his wrong, he is nevertheless in the right before God. That is, to be able to believe he is right, not because he has made the right decision, not because his wrong decision was unavoidable, not even because he repents for having made an unavoidably wrong decision, but simply because his wrong has been righted, rectified, in the personal conflicts, the suffering and death and resurrection, of another Man. It isn't only that, through this strange and incredible mercy, his sin has been forgiven, if "forgiveness" here is taken to mean something merely negative. Rather, his sin has been replaced by its holy opposite, and he the sinful Christian lawyer is as positively delightful to his heavenly Father as the only-begotten Son is. Only a Christian lawyer, however, faces this happy conflict: saint and sinner simultaneously – and the conflict of trying to believe both simultaneously. Moral conflicts? Every sinner is cursed with those. But forgiveness and new life in Christ? Only the Christian is blessed with those. And between the curse and the blessing there is a distinctively Christian conflict. But that is a conflict which no Christian would want to be without.

But as we said, those in the legal profession (or in any profession) who understand this conflict are few and far between. It is not only hard to believe but, even if you do believe it, it seems utterly impractical, just plain irrelevant to professional life – so irrelevant in fact, that it would seem to have little bearing on this conference. So it would seem. And, to prove my point, it could easily happen that this conference would go all the way to adjournment without another

word being spoken about this conflict which the Christian lawyer does face, and only the Christian lawyer: the conflict between his conflicts, on the one hand, (which every lawyer commits and which some few take seriously) and, on the other hand, his gracious vindication in Christ. With that concern in mind we shall be watching, hopefully, the next two sessions, which deal with the "resources" and not, as this first session has, with the "conflicts." If in our sessions here we do ignore this conflict, which is nothing less than the gospel, we shall do so, not because we disbelieve it but (what is just about as bad) because we doubt that it is germane and usable. Yet we all know better than that. And thanks to Mr. Kuhlmann for the persuasive reminder.

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