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*Fides et Iustitia*

## ESSAY

# GOD'S LAW AND MAN'S LAW: CAN THEY PEACEFULLY CO-EXIST IN THE LIFE OF A CHRISTIAN APPELLATE JUDGE?

KARIN A. MOORE\*

A new breed of Christian has emerged in recent decades. Prior to the 1980's, the widespread view was that people of faith shouldn't get involved in politics and government—that ambition and power sullied a person's commitment to and dependence upon Christ.<sup>1</sup> But as the church watched the moral fiber of the nation wither in the absence of Christian values,<sup>2</sup> the call went forth for Christians willing to engage the culture of the United States through governmental service. As believers began to serve in the public sphere, the role faith plays in their decision making prompted heated discussion, much of which took place in the legal academy.

Starting with Kent Greenawalt's lectures entitled "Religious Convictions and Lawmaking" in 1985,<sup>3</sup> the legal academy abounded with debate on the proper place for religion in the public sphere.<sup>4</sup> When focused on the judiciary, most of the discussion on the topic centered around a judge's duty to the state. Must the judge be a morally neutral actor, or may a devoutly religious judge employ religious values in the decision making process?<sup>5</sup> This line of argument left a

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\* J.D. candidate, University of St. Thomas School of Law; B.A., Fordham University. I have a wonderful family, and I take this opportunity to thank them for the amazing support, encouragement, and love they have heaped upon me throughout my law school career, and throughout my lifetime. I also thank Jesus Christ, for giving me the words to say, the mind to understand, the knowledge to share, and the heart to love Him. My desire in all this has been to bring Him glory.

1. See Mike Huckabee, *Character Is the Issue: How People with Integrity Can Revolutionize America* 53 (Broadman & Holman Publishers 1997).

2. See Robert H. Bork, *Slouching Towards Gomorrah: Modern Liberalism and American Decline* ch. 9-10 (Harper Collins Publishers, Inc. 1996); William Bennett, *The De-Valuing of America: The Fight for Our Culture and Our Children* 17-38 (Summit Books 1992).

3. Kent Greenawalt, *Religious Convictions and Lawmaking*, 84 Mich. L. Rev. 352 (1985).

4. See John Garvey & Amy Coney, *Catholic Judges in Capital Cases*, 81 Marq. L. Rev. 303 (1998); Stephen Carter, *The Religiously Devout Judge*, 64 Notre Dame L. Rev. 932 (1989); Scott Idleman, *The Limits of Religious Values in Judicial Decisionmaking*, 81 Marq. L. Rev. 537 (1998).

5. Carter, *supra* n. 4, at 937-44; Idleman, *supra* n. 4, at 543-67.

gap in the discussion. In focusing on the state's interest in the matter, the dialogue failed to consider the individual judge's obligation to God.<sup>6</sup> Several scholars have begun to consider this part of the issue.<sup>7</sup> This paper seeks to add to that body of work, discussing whether or not Christians, working with all their hearts as if for God and not for man,<sup>8</sup> can be true to their faith and still be impartial judges.<sup>9</sup>

Subsequent analysis operates on three assumptions. First, religious beliefs cannot and should not be separated from the task of judging. There is no such thing as a neutral judge. Every judge comes to the bench with a system of life values already in place. Just because those values happen to be informed by a religious tradition does not make them invalid. As Libertarians or Secular Humanists on the bench would use their underlying moral values in their judicial decision making, religious judges should have the same opportunity to allow religious moral values to inform their decisions.<sup>10</sup>

Second, living as a disciple of Christ requires that the Christian submit to the Lordship of Christ in every aspect of life. When a Christian accepts salvation through the sacrifice of Jesus Christ he is no longer on his own,<sup>11</sup> and the disciple's mandate is to live for the glory of God at all times in all circumstances.<sup>12</sup> This cannot be accomplished if a Christian chooses to compartmentalize his or her faith to only hours outside of work or only an hour on Sunday.<sup>13</sup>

6. W. Robert Godfrey, *What Do We Mean by Sola Scriptura?*, [http://www.the-highway.com/Sola\\_Scriptura\\_Godfrey.html](http://www.the-highway.com/Sola_Scriptura_Godfrey.html) (accessed Jan. 11, 2005). This paper accepts *Sola Scriptura* and assumes an individual's obligation to God can be discerned from Biblical texts.

7. See Garvey & Coney, *supra* n. 4; Teresa S. Collett, "The King's Good Servant, But God's First": *The Role of Religion in Judicial Decisionmaking*, 41 S. Tex. L. Rev. 1277 (2000).

8. *Colossians* 3:23 (New Intl.).

9. As pertaining to this paper, an impartial judge is one who does not substitute her own judgment when the law is clear on an issue and employs discretion within accepted judicial norms.

10. See Carter, *supra* n. 4, at 935-44. Carter provides a fuller discussion of the idea that religious judges should have the same opportunity to reason based on deeply held moral values as other judges do. Carter states that our system of law frequently calls on judges to rely on moral knowledge to inform their decisions. The current ideal of "liberal theory," as Carter calls it, is an "objective" judge, or a judge that would promise not to allow personal religious conviction to affect their judging. The problem with this ideal is it elevates certain other sources of moral knowledge, while denigrating moral knowledge stemming from religious belief, without a justifiable reason why moral knowledge based on a religious perspective should be excluded from the debate.

11. 1 *Corinthians* 6:19-20 (New Intl.).

12. 1 *Corinthians* 10:31 (New Intl.).

13. Michael L. Tooley, *Faith and the Bar*, 45 Res Gestae 46 (Sept. 2001) (discussing the fallacy that a religious believer can choose to keep religious convictions out of daily life); James L. Nolan, *To Engage in Civil Practice as a Religious Lawyer*, 26 Fordham Urb. L.J. 1111, 1114-16 (1999) (suggesting that seeking to compartmentalize faith outside the workplace is detrimental to personal and professional life).

Third, Christians should engage the world to bring about cultural change. This assumption most closely identifies with the Calvinist position of the Christian's relationship to the culture, which asserts that culture is radically sinful and Christians are to be actively working through the power of Christ to transform the culture around them.<sup>14</sup>

Section I discusses judges' biblical responsibilities when their job calls them to enforce a law violative of God's law. Section II discusses the practical application of these principles for judges at the appellate court level.

### I. MAN'S LAW IN DIRECT CONFLICT WITH GOD'S LAW

Judges, politicians, and other government officers, in both their personal and professional capacities, are often faced with decisions that pit man's laws against God's laws.<sup>15</sup> As the laws of the United States become more and more adverse to the tenets and teachings of the Bible, the number of faith conflicts for Christian judges will only become more numerous. It is this problem that led many Christians to question whether or not Christian judges can faithfully serve God and still faithfully adhere to their judicial oath.

The discussion regarding what a Christian judge should do when personal beliefs conflict with the secular law has been limited. The legal community has focused largely on recusal for religious beliefs:<sup>16</sup> whether an openly pro-life evangelical Christian or an anti-death penalty Catholic perspective forces one to recuse oneself when deciding a case that concerns the respective view.<sup>17</sup> Commentators generally agree that religion should not mandate recusal, but that judges should recuse themselves if their beliefs do not permit a fair application of the secular law.<sup>18</sup>

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14. Robert F. Cochran, Jr., *Christian Perspectives on Law and Legal Scholarship*, 47 J. Legal Educ. 1, 6-7 (Mar. 1997); David Caudill, *A Calvinist Perspective on Faith in Legal Scholarship*, 47 J. Legal Educ. 19, 24-26 (Mar. 1997).

15. Current examples include laws legalizing the practice of abortion and same-sex marriage. The Bible recognizes the humanity and personhood of the fetus while still in the womb (*Psalm* 139:13-15 (New Intl.)), and therefore, the practice of abortion would violate the 6th Commandment that orders "[y]ou shall not murder." *Exodus* 20:13 (New Intl.). Judicial enactments recently set forth in Massachusetts (*Goodrich v. Dept. of Pub. Health*, 798 N.E.2d 941 (Mass. 2003)) concerning the right of homosexual couples to marry would violate biblical prohibitions against homosexual behavior (*Romans* 1:26-27; *Genesis* 19:4-7 (New Intl.)) and the biblical proscription of marriage as between a man and a woman (*Genesis* 2:24; 1 *Timothy* 3:2 (New Intl.)).

16. Collett, *supra* n. 7, at 1278-90; Richard Saphire, *Religion and Recusal*, 81 Marq. L. Rev. 351 (1998).

17. See Garvey & Coney, *supra* n. 4, at 304-06.

18. Collett, *supra* n. 7, at 1281-82.

Professor Candyce Beneke discussed the issues surrounding a conflict between personal beliefs and public duties in a recent article.<sup>19</sup> After a general discussion of the issue, Professor Beneke proposed that judges with “strong religious convictions . . . balance their personal philosophies with their public judicial duties.”<sup>20</sup> She stated that “[t]his does not equate to denying one’s religious beliefs, but rather contemplates considering and balancing the many sources of moral knowledge.”<sup>21</sup> Though Professor Beneke was attempting to provide a workable solution, her suggestion falls into the same trap as those who call for the exclusion of religious faith as a moral justification.<sup>22</sup> It asks believers to compartmentalize their faith. When a person becomes a Christian they become a new creation.<sup>23</sup> Simply putting on a black robe does not mean that a Christian loses his Christian identity. Christianity cannot be relegated to simply another source of moral knowledge that gets balanced against the forces of the state because that denies the Christian’s true nature. Nor does the problem require this course of action.

Both Professor Beneke and those calling for mandatory recusal of devout Christian judges are working from a false premise.<sup>24</sup> The underlying assumption of their argument is that the Christian faith would not allow a Christian judge to uphold and enforce a law abominable to the laws of God. This assumption ignores the Bible’s command that believers are to submit to governmental authority and the model of biblical characters submitting to, and enforcing, decrees repulsive to God.

In the book of Romans, the apostle Paul gives believers this command:

Everyone must submit himself to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God. Consequently, he who rebels against the authority is rebelling against what God has instituted, and those who do so will bring judgment on themselves.<sup>25</sup>

Paul wrote the book of Romans in 57 A.D.<sup>26</sup> Paul’s audience was Gentile and Jewish believers in Rome.<sup>27</sup> Those receiving this letter were under the authority of the pagan government of Rome. Paul penned the letter toward the beginning of the reign of Nero (54-68 A.D.), one of the

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19. Candyce T. Beneke, *The Separation of Personal Religious Faith and Professional Identity: Is This Really Possible? Is It Truly Desirable?*, 41 S. Tex. L. Rev. 1423 (2000).

20. *Id.* at 1428. Professor Beneke’s proposal is not novel, it comes from her discussion of the work of Professor Tom Shaffer.

21. *Id.*

22. Saphire, *supra* n. 16, at 351-52.

23. 2 *Corinthians* 5:17 (New Intl.).

24. *Cf.* Garvey & Coney, *supra* n. 4, at 329-31.

25. *Romans* 13:1-2 (New Intl.).

26. *The NIV Study Bible* 1705 (Kenneth Barker ed., Zondervan Publ. House 1995).

27. *Id.*

most violent persecutors of the early church.<sup>28</sup> It is against this backdrop that Paul charged the Christian congregation of Rome with the task of submitting to governmental authority.

Peter's words before the Sanhedrin in Acts chapter five juxtapose Paul's radical call for submission to authorities. The high priest threw Peter and some of the other apostles in jail and ordered them not to preach in the name of Jesus.<sup>29</sup> In jail an "angel of the Lord" visited and released them telling them to preach the message of the gospel in the temple courts.<sup>30</sup> They immediately obeyed and were subsequently brought before the Sanhedrin and asked why they disobeyed the order not to preach.<sup>31</sup> In reply, Peter and the other apostles stated, "we must obey God rather than men!"<sup>32</sup> For this infraction the chief priests had the apostles flogged.<sup>33</sup>

The Sanhedrin, though made up of Jewish spiritual leaders, was a governing body authorized by Rome to pronounce sentences and laws for the Jewish people.<sup>34</sup> It would almost certainly qualify as one of the "governing authorities" Paul calls for Christians to submit to in Romans chapter thirteen. In application, there can be tension between the biblical principles of obedience to God and submission to government, but this tension does not create inconsistency. One owes obedience to God at all times, as well as submission to the governing authorities. If obeying the governmental laws would entail disobeying a law of God, the Christian should submit to the consequences of disobeying the law rather than disobeying God. The apostle's response to the Sanhedrin in Acts chapter five,<sup>35</sup> along with other biblical records of persecution,<sup>36</sup> demonstrate how Christians responded to these problems in the first century church. These principles provide the general rule for believers when the government asks them to act in a manner contrary to God's law.

The question not answered by these passages is a believer's responsibility when he is an arm of the government. Throughout the Bible, Jews and Christians performed duties in their professional capacity that God

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28. Tacitus, *Tacitus (c. 55-117 CE): Nero's Persecution of the Christians*, [http://www.wsu.edu:8080/~wldciv/world\\_civ\\_reader/world\\_civ\\_reader\\_1/tacitus.html](http://www.wsu.edu:8080/~wldciv/world_civ_reader/world_civ_reader_1/tacitus.html) (Richard Hooker trans.) (accessed Jan. 6, 2005).

29. *Acts* 5:28 (New Intl.).

30. *Id.* at 19-20.

31. *Id.* at 27-28.

32. *Id.* at 29.

33. *Id.* at 40.

34. Catholic Encyclopedia, *Sanhedrin*, <http://www.newadvent.org/cathen/13444a.htm> (accessed Jan. 26, 2005).

35. *Acts* 5:40-42 (New Intl.). Peter and the apostles broke the law, but they submitted to the law by accepting the punishment. In accepting the penalty, they recognized the governing authority of the Sanhedrin.

36. See *Acts* 16:19-25 (New Intl.); *2 Corinthians* 11:23-26 (New Intl.). Paul submitted to beating and imprisonment at the hands of both the Jewish and Gentile governments. While not obeying the law, he did submit to the law and the governing authorities.

would not permit if they acted in their individual capacity. Both the Old<sup>37</sup> and New Testaments<sup>38</sup> prohibit murder, yet God commands men to kill in the Old Testament,<sup>39</sup> and Jesus commends the Centurion for having unmatched faith in the New Testament when he was, almost certainly, actively participating in killing.<sup>40</sup> When acting on behalf of a governing authority, a believer's obligations differ somewhat from what they would be in an individual capacity. The actions undertaken by the soldiers in the examples above were legitimate uses of force sanctioned by God,<sup>41</sup> but what about a situation when the government asks a believer to enforce a law within his or her official duties that clearly violates God's law?<sup>42</sup>

Many of the characters of the Old Testament addressed this question in times of crises. In 479 B.C.,<sup>43</sup> while the nation of Israel was living in exile under Persian rule, the king of Persia chose a young Jew named Esther to be queen.<sup>44</sup> During her reign, and without knowing her ethnicity, the king passed a law calling for the annihilation of every Jew in the province of Persia.<sup>45</sup> Queen Esther revealed her identity to the king and petitioned him to reverse the decree.<sup>46</sup> The king could not reverse the earlier decree, so instead he issued another edict permitting Jews to fight back against any who might come against them.<sup>47</sup> Esther worked within the law and within her office to bring about change.

Shortly before Esther's reign, another Jew named Nehemiah<sup>48</sup> found himself in the position of cupbearer to the king.<sup>49</sup> Though the king had allowed some Jews to return to Jerusalem, the city's walls were in ruins,

37. *Exodus* 20:13 (New Intl.).

38. *Matthew* 5:21-22 (New Intl.).

39. See *Joshua* 2-13 (New Intl.) (provides the account of the Hebrew people conquering the region of Judea at God's command).

40. *Matthew* 8:5-11 (New Intl.). Rebellions were frequent in Israel under the Roman Empire. E.g. *Luke* 23:19 (New Intl.); *Acts* 5:33-37 (New Intl.). As a Roman centurion stationed in Israel to keep peace, it is almost certain that this man would have either been directly involved in battle, or at least ordering the hundreds of men under him to fight and kill. *Matthew* 8:5-11 (New Intl.). Yet Jesus heals this man's servant and holds him up as a paradigm of faith making no incriminating remarks about his occupation or the actions he was almost certainly participating in by virtue of his office. *Id.*

41. *Numbers* 31:1-3 (New Intl.); *Deuteronomy* 7:2 (New Intl.); *Romans* 13:1-4 (New Intl.).

42. Godfrey, *supra* n. 6.

43. *The NIV Study Bible*, *supra* n. 26, at 712 n. 2:1.

44. *Esther* 2:17 (New Intl.).

45. *Id.* at 3:8-15.

46. *Id.* at 7:2-3.

47. *Id.* at 8:8-11.

48. *The NIV Study Bible*, *supra* n. 26, at 663 (dated 430 B.C., Queen Esther's reign began in 479 B.C.).

49. *Nehemiah* 1:11 (New Intl.). The cupbearer's responsibilities included tasting the king's food and drink both for quality, and to ensure it was not poisoned. *The NIV Study Bible*, *supra* n. 26, at 686 n. 1:11. The one fulfilling this role must have earned the unreserved trust of the king. *Id.*



leaving the inhabitants defenseless against their enemies.<sup>50</sup> Moreover, the king had ordered the Jews not to repair them.<sup>51</sup> Nehemiah used his position as cupbearer to petition the king to allow him to rebuild the walls.<sup>52</sup> He used the power he achieved to appeal to the one with the power to make the change.

Nehemiah and Esther both faced situations that pitted God's law against man's law. However, because both were able to find other avenues to bring about change, neither story provides a good analogy for a judge whose role asks him to enforce a law that violates biblical morality. The Constitution gives the legislature the power to make laws, not the judiciary.<sup>53</sup> A judge does not have the same ability to affect the operative law as Esther and Nehemiah did. The biblical character that most closely reflects the theological crises faced by the Christian judge administering an ungodly law is David's general, Joab.

Joab was the commander of David's army during most of his reign as King of Israel.<sup>54</sup> In his capacity as commander of the army, David told Joab to execute an order for the murder of Uriah.<sup>55</sup> It is unclear whether Joab was aware that the reasoning behind David's request was David's adulterous affair with Uriah's wife, but we do know that David specifically ordered Joab to put Uriah on the front line during the fiercest of fighting and then withdraw around him so that the Ammonites would kill him in battle.<sup>56</sup> If Uriah violated Jewish law or military law, there were legal avenues through which he could have been punished.<sup>57</sup> The secrecy of David's request would signal to Joab that this was a personal issue between David and Uriah and not a public wrong for which the law could publicly reprimand Uriah. Most likely unaware of David's reasoning, yet certainly aware that this was an unjust act, Joab acted as David requested and Uriah died on the battlefield.

In chapter twelve of Second Samuel, through the words of the prophet Nathan, God calls David to account for his actions and he suffers the conse-

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50. *The NIV Study Bible*, *supra* n. 26, at 686 n. 1:3. In prophecy, the Lord spoke through Jeremiah saying that, "the city will be rebuilt on her ruins." *Jeremiah* 30:18 (New Intl.). The law prohibiting the building of the walls prohibited the Israelites from restoring Jerusalem. *Nehemiah* 1:3, 4:8-23, 6:15-16 (New Intl.). It also prevented Jews in exile from returning because without walls they would be constantly threatened by their enemies. *Id.*

51. *Ezra* 4:7-23 (New Intl.).

52. *Nehemiah* 2:1-9 (New Intl.).

53. U.S. Const. art. I, § 1; Charles Fried, *A Meditation on the First Principles of Judicial Ethics*, 32 Hofstra L. Rev. 1227, 1233 (2004) (articulating the view that Article III judges are limited in their authority and should not be "activist" in their decision making).

54. 2 *Samuel* 8:15-16 (New Intl.).

55. *Id.* at 11:1-26.

56. *Id.* at 14-15.

57. *See Leviticus* (New Intl.) (Leviticus details much of the Jewish law).

quences of his sin.<sup>58</sup> Even though David did not commit the act of murder with his own hand, God rebukes him as if he did. On the other hand, God does not reprimand Joab.<sup>59</sup> Joab acted in submission to the governing authority and therefore God spared judgment for his role in Uriah's death. David alone bears the condemnation.

Joab is eventually put to death because of the part he played in murdering two other innocent individuals.<sup>60</sup> Before King Solomon's officer took Joab's life, Solomon had the officer list the charges against Joab.<sup>61</sup> The officer did not mention the murder of Uriah, and nowhere in the detailed accounts of the affairs of King David and Joab is there any indication that Joab was in any way rebuked for carrying out the murder of Uriah.<sup>62</sup>

For Christian judges appalled by the laws the state calls them to enforce, the story of Joab is one that should give them comfort. When acting in their professional capacity, judges are called to uphold the law, even when the law is unjust.<sup>63</sup> There are different avenues by which they can work to change laws, but until those changes happen, their oath of office<sup>64</sup> and their faith, obligates Christian judges to uphold the laws of the land in submission to the ruling authorities as described in Romans chapter thirteen.

Commentators have generally viewed mandatory recusal as an extreme option not warranted by the history of judging.<sup>65</sup> The legal academy would probably view Professor Beneke's position as a mild attempt to allow religious judges to impose religious values on the state. But the fear of religious zealotry that underlies both proposals is unwarranted if disciples of Christ take seriously their obligation to submit to the body of law created by the *government established by God*,<sup>66</sup> and recognize that the moral responsibility for the unjust act falls on their superiors rather than on themselves. The Christian judge has an obligation to work to bring about changes in the law, as Nehemiah and Esther did. That obligation does not give them authority to step outside the bounds of their office. Instead, the Bible directs them to submit to and administer the law, under fear of God.

58. 2 *Samuel* 12:1-14 (New Intl.) (the prophet Nathan calls David to account for his sins because he did evil in the eyes of God by striking down Uriah and taking his wife).

59. *Id.* at 26-28 (after the section where David is rebuked, the story immediately returns to Joab and the account of the battle, but Joab is never condemned for his participation in Uriah's death).

60. 1 *Kings* 2:31-34 (New Intl.). In 2 *Samuel* 3:26-27, Joab killed Abner son of Ner, and in 2 *Samuel* 20:9-10, Joab took the life of Amasa. He essentially murdered the men to keep his position as commander of David's army. *The NIV Study Bible*, *supra* n. 26, at 423 n. 3:25, 450 n. 20:10.

61. *Id.*

62. *Id.*

63. Fried, *supra* n. 53, at 1233.

64. *Id.* at 1233-35.

65. Collett, *supra* n. 7, at 1278-90.

66. *Romans* 13:1 (New Intl.) (emphasis added).

## II. CHRISTIAN INFLUENCE IN MATTERS WITH DISCRETION

The appellate level is where most of the fear over religious judges resonates. Cases on appeal frequently include disputes about interpretations of law, and judges on appeal sometimes have opportunities to shape the law in substantial ways.<sup>67</sup> The power and influence of a devout Christian judge at the appellate level, still working within the law, can serve to shape the legal culture in significant ways.

In his essay detailing his spiritual pilgrimage in law and faith, Judge Raul Gonzalez candidly detailed eight decisions in his tenure as a Supreme Court Justice for the state of Texas in which his faith played an important role in his decision-making process.<sup>68</sup> The cases involved a wide array of legal issues where his faith was visibly instrumental in his reasoning. Judge Gonzalez's opinions present some of the most explicit appeals to Christian moral virtue used in the last 20 years.

In the case of *Jilani by and through Jilani v. Jilani*,<sup>69</sup> the court addressed the issue of whether a wife could sue her husband on behalf of children who were hurt in an auto accident her husband caused. In his opinion, Judge Gonzalez quoted a previous Texas Supreme Court decision which stated:

There are God given ties of love, loyalty and devotion between parents and children that do not exist between the children and other people. We do not think these ties should be cut asunder or endangered by permitting a minor unemancipated child to sue its parent for damages based on ordinary, unintentional negligence.<sup>70</sup>

Judge Gonzalez couched the opinion specifically in terms of "God given" family values.

In *In re Unnamed Baby McLean*,<sup>71</sup> the appellee presented the court with a case of a gender-based distinction in the family code that made it difficult for a father to legitimize his child. In a subsequent article, Judge Gonzalez articulated that the value he placed on preserving the family and the rights of fatherhood played a part in his decision, and that these values stemmed from his Christian beliefs.<sup>72</sup> Though Judge Gonzalez's values of preserving the family and the rights of fatherhood played a part in his decision, he based the decision on the Equal Rights Amendment of Texas.<sup>73</sup>

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67. For the purposes of this paper, I define "shaping law" as working within existing law to define ambiguities while still respecting the legislative process. I define "making law" as departing from enumerated laws or contradicting existing law because a law violates a judge's personal sensibilities.

68. See Raul A. Gonzalez, *Climbing the Ladder of Success—My Spiritual Journey*, 27 Tex. Tech L. Rev. 1139 (1996).

69. 767 S.W.2d 671 (Tex. 1989).

70. *Id.* at 679 (Gonzalez, J., dissenting).

71. 725 S.W.2d 696 (Tex. 1984).

72. Gonzalez, *supra* n. 68, at 1150-51.

73. *McClean*, 725 S.W.2d at 696.

In both of these cases, Judge Gonzalez admitted that his faith played a part in his decision making. In *Jilani*, he stated so specifically in the opinion, but in *McClellan*, the opinion itself did not discuss the religious basis for his decision. If the state ordered judges to rule based on non-religious moral values, devout Christian judges would not be able to do so because, to some degree, every moral determination they make stems from their religious values.<sup>74</sup> That being said, isn't it disingenuous for a devout judge to avoid discussing those religious values in an opinion? This is especially so at the appellate and high court level where opinions become the operative law. This level of transparency is not the norm in the legal community.

Judges that operate from a libertarian moral base, or a socialist set of moral beliefs, do not discuss their basis for the use of discretion in their opinions. In general, they do not openly discuss the role their personal beliefs play in their judging. Because religious moral values are a legitimate base for moral reasoning, the legal profession should not single out religious judges to explain the underlying values of their discretionary decisions.

The legal standard should be the same for every judge regardless of where his moral compass comes from. Judges' obligations before God, however, may be different.

The Bible suggests that a Christian judge's decision whether or not to explain his reasoning based on biblical values is a matter of conscience each individual believer must consider before God. In Mark 8:38, Jesus says that "[i]f anyone is ashamed of me and my words in this adulterous and sinful generation, the Son of Man will be ashamed of him when he comes in his Father's glory with the holy angels." In any given case, the individual judge needs to figure out what his reason is for not discussing underlying religious values. If it is fear or shame, Mark 8:38 is the warning they should heed. In my opinion, there are valid reasons for not expressing a decision in terms of religious values. Maybe appealing to an accepted ethic of secular norm would be the wiser decision, or not discussing the ethics of the decision at all. But personal fear or shame should not be a part of that decision in the mind of the judge.<sup>75</sup>

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74. See *supra* sec. I (for a more complete discussion on a Christian judge's use of moral values in judging).

75. There is one other way Judge Gonzalez brought his faith into his decision making. In *Nelson v. Krusen*, 678 S.W.2d 918 (Tex. 1984), a wrongful birth and life suit for a child born with muscular dystrophy, Judge Gonzalez used the platform of his office to comment on the impact *Roe v. Wade* was having on our nation, and to entreat the people and legislatures to consider the meaning and value of life in the hopes that "the pendulum of public opinion will swing toward the recognition of the rights of the unborn." Gonzalez, *supra* n. 68, at 1148-50; see also *Roe v. Wade*, 410 U.S. 13 (1973). He did not violate the law, but he did use his office to make a public plea for change.

The legal significance and appropriateness of dicta of this nature is a paper in itself. The Bible does offer examples that suggest an individual acting in his or her individual capacity is obligated by his or her faith to try to educate people to bring about change. *Exodus* 4:29-31 (New Intl.). There are not the same clear examples for individuals acting in their official or public capacity.

### III. CONCLUSION

Consider carefully what you do, because you are not judging for man but for the Lord, who is with you whenever you give a verdict. Now let the fear of the Lord be upon you. Judge carefully, for with the Lord our God there is no injustice or partiality or bribery.

—2 *Chronicles* 19:6-7

Christian judges have a high calling. Christ calls Christians to live as disciples in every aspect of their lives. When God places them in the position of judge, they have the added obligations of their oath of office and the biblical considerations placed on those individuals serving in a governmental capacity. Understanding and applying their obligations to God when they are subjects, servants, and arbiters of man's law is not an easy task.

Living as a disciple of Christ does not necessitate that a judge violate the principles of impartiality. In fact, the applicable biblical texts and examples suggest that it is the obligation of the judge to submit to the ruling governmental authority and apply the secular law. When given discretion, the judge is to use it wisely, under the fear of God. As disciples are to daily submit their lives, so too judges should daily submit their work before God, considering carefully what they do, knowing that some day they will have to stand before a much stricter judge and give an account for how they applied biblical principles in daily life.<sup>76</sup>

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76. 2 *Corinthians* 5:10 (New Intl.).