Liberty University

From the SelectedWorks of Jeffrey C. Tuomala

2008

The Bible and American Law: A Response to Dean Herbert W. Titus

Jeffrey C. Tuomala, *Liberty University*

Available at: https://works.bepress.com/jeffrey_tuomala/12/

RESPONSE

THE BIBLE AND AMERICAN LAW: A RESPONSE TO DEAN HERBERT W. TITUS

Jeffrey C. Tuomala†

Dean Herb Titus once counseled me as a young law professor not to address controversial issues too gingerly because it is important to evoke a lively response from students. He then acknowledged that his own teaching tended at times not to evoke a response, but to provoke a reaction, and that reactions can sometimes interfere with learning.

The proclamation that the law governing people and nations is revealed in the Bible, as Dean Titus asserts in *The Bible and American Law*,[1] is bound to provoke a reaction in some listeners. They will scoff. Other listeners will respond and want to hear more. Still others will believe it, and their professional lives will be inexorably changed.[2]

The claim that the Bible is singularly important for American legal education is not novel. As Dean Titus notes in *God, Man, and Law: The Biblical Principles*,[3] David Hoffman, professor of law at the University of Maryland, required his students to read the Bible as part of their legal education. His contemporary, Joseph Story, in his inaugural discourse as Dane Professor of Law at Harvard University, stated: "There never has been a period in which the Common Law did not recognize Christianity as lying at its foundation."[4] Dean Titus has provided examples and, in effect, argued the case that God's truth as revealed in the Bible not only establishes the foundation of civil law, it provides the superstructure and many of the furnishings as well.

At the heart of the Western Legal Tradition is an idea that there exists a body of law, a *corpus juris*, in which all of the particular rules of a polity are related to one another and are summarized by principles in ascending levels of generality.[5] That law forms a *corpus juris* in which all rules cohere as a comprehensive and consistent whole is distinctly biblical. Christ instructed the

---

† Associate Dean for Academic Affairs and Professor of Law, Liberty University School of Law, Lynchburg, Virginia.

1. 2 Liberty L. Rev. 305 (2008).

2. "When they heard about the resurrection of the dead, some of them sneered, but others said, 'We want to hear you again on this subject.' At that, Paul left the Council. A few men became followers of Paul and believed." *Acts* 17:32-34(a). All references are to and quotations are from the New International Version unless otherwise indicated.

3. HERBERT W. TITUS, GOD, MAN, AND LAW: THE BIBLICAL PRINCIPLES 15 (1994).

4. THE LEGAL MIND IN AMERICA 178 (Perry Miller ed. 1962).

5. HAROLD J. BERMAN, LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION 9 (1983).

legal experts of his day that the Two Great Commandments, to love God and to love your neighbor, provide the general principles, or foundation, if you will, upon which all the particulars are understood as holding together. We must turn to the entire Bible in order to build the superstructure and provide the furnishings of the body of law. Conversely, it is to all the particular articulations of truth revealed in the Bible that we must look in order to fully understand the meaning of the Two Great Commandments.

The Ten Commandments stand in something of an intermediate position between the Two Great Commandments and all the particular commands of the Bible.[6] While the Ten Commandments provide a particularized exposition of the Two Great Commandments, they also provide a general framework for understanding all the particulars.[7] The relationship is such that to change particular rules risks changing the meaning of the general principles.[8] For example, to know when we may take life without violating the Sixth Commandment we must look to the entire Bible. The more particular expositions of the law found in the Bible enable us to understand when life begins, whether capital punishment is lawful, when and how it is proper to

---

6.

> Hearing that Jesus had silenced the Sadducees, the Pharisees got together. One of them, an expert in the law, tested him with this question: "Teacher, which is the greatest commandment in the Law?"
>
> Jesus replied: "'Love the Lord your God with all your heart and with all your soul and with all your mind.' This is the first and greatest commandment. And the second is like it: 'Love your neighbor as yourself.' All the Law and the Prophets hang on these two commandments."

Matthew 22:34-40.

The Bible communicates a moral order in which all of the particulars ("the law and the prophets") are summarized in the Ten Commandments, and these Ten Commandments are in turn summarized by the Two Great Commandments. The Bible in this way reveals law as a *corpus juris*, so much so that a violation of any one law is a violation of the entire law. *See, e.g.*, *James* 2:10.

7.

> Let no debt remain outstanding, except the continuing debt to love one another, for he who loves his fellowman has fulfilled the law. The commandments, "Do not commit adultery," "Do not murder," "Do not steal," "Do not covet," and whatever other commandment there may be, are summed up in this one rule: "Love your neighbor as yourself." Love does no harm to its neighbor. Therefore love is the fulfillment of the law.

Romans 13:8-10.

The Golden Rule also provides a summary of all the entire law found in the Bible. Jesus said; "So in everything, do to others what you would have them do to you, for this sums up the Law and the Prophets." *Matthew* 7:12.

8. "For this is the love of God, that we keep his commandments." 1 *John* 5:3 (KJV).

wage war, whether we may be angry, and whether we may be angry without sinning. Left with only the general principles, to love God and your neighbor, we would be unfettered in following the vain imagination of our hearts as we think about law.[9] Any course of action might be rationalized as the most "loving." As we study and practice law, we must approach the Bible expecting that God will answer when we pray the Psalmist's prayer, "Open my eyes that I may see wonderful things in your law."[10]

Not surprisingly, most lawyers and law professors believe that the Bible is irrelevant for the study and practice of law. Even many Christian professors, lawyers, and law students share the perspective that the Bible has little or no relevance for civil law. Perhaps more tellingly, many have never given it any thought. There are also Christians, of extremely diverse theological perspectives, who having given it thought, share a "natural law" perspective. They assert that appeals to the Bible are unnecessary, imprudent, or even improper.[11] For the sake of convenience, I will refer to those holding these views as naturalists, and, for the sake of brevity, I will only address their assertions that appeals to the Bible are unnecessary. The naturalists' basic argument is that the general principles of moral law, the content of which is, incidentally, quite similar to the Ten Commandments, is revealed in nature or written on the heart.[12] They believe that it is not necessary to look to the Bible

---

9.

> The goal of this command is love, which comes from a pure heart and a good conscience and a sincere faith. Some have wandered away from these and turned to meaningless talk. They want to be teachers of the law, but they do not know what they are talking about or what they so confidently affirm.
>
> We know that the law is good if one uses it properly. We also know that law is made not for the righteous but for lawbreakers and rebels, the ungodly and sinful, the unholy and irreligious; for those who kill their fathers or mothers, for murderers, for adulterers and perverts, for slave traders and liars and perjurers—and for whatever else is contrary to the sound doctrine that conforms to the glorious gospel of the blessed God, which he entrusted to me.

1 *Timothy* 1:3-11.

10. *Psalm* 119:17.

11. *See, e.g.*, C.S. LEWIS, THE ABOLITION OF MAN (1943), *in* THE ESSENTIAL C.S. LEWIS 428, 435, 441, 448 (Lyle W. Dorsett ed. 1998); J. BUDZISZEWSKI, WHAT WE CAN'T NOT KNOW (2003). I have encountered this natural law perspective among Episcopalian, Baptist, Roman Catholic, Reformed, and Church of Christ law faculty members.

12. *Romans* 2:12-16 is often cited in support of the naturalists' position. *Romans* 2:12-16 reads:

> All who sin apart from the law will also perish apart from the law, and all who sin under the law will be judged by the law. For it is not those who hear the law who are righteous in God's sight, but it is those who obey the law who will be declared righteous. (Indeed, when Gentiles, who do not have the law, do by nature

to gain an understanding of the general principles of the moral or natural law. Because the moral or natural law is written on every person's heart, naturalists believe that we simply "can't not know" it.[13]

Some naturalists believe that they can convince non-Christians to acknowledge the content of the moral law written on their hearts.[14] Presumably, once this task is accomplished, the naturalist and non-Christian legal positivist are able to agree on a conception of the common good—that state of society in which people abide by the moral law written on their hearts. The formulation and enforcement of the civil law becomes an important, if not *the* most important, means of promoting the common good.

Unless the naturalists believe that the particulars of the civil law are also written on the heart, they must switch methodologies as they attempt to formulate the particulars of civil law. Naturalists fail to reckon with the fact that they are in the same untenable predicament as the legal positivists, and must rely upon the same impoverished methodologies, when it comes to generating the *particulars* of civil law from the extremely general moral principles written on the heart. For example, legal positivists are unlikely to disagree with the basic principle that murder is wrong. But how are particular laws regarding the taking of the lives of burglars, enemy combatants, convicted murderers, and unborn children to be determined? By some utilitarian calculation of societal costs and benefits?

The legal positivists' methodology of choice for generating the particulars of civil law is happiness-enhancing, efficiency-maximizing, empiricism.[15] For the naturalist and legal positivist alike, the civil law becomes little more than a utilitarian instrument for creating a social order in which people are compelled to do that which promotes the common good. Civil law, when enlisted as an instrument for establishing the desired social order, contains little necessary

---

> things required by the law, they are a law for themselves, even though they do not have the law, since they show that the requirements of the law are written on their hearts, their consciences also bearing witness, and their thoughts now accusing, now even defending them.) This will take place on the day when God will judge men's secrets through Jesus Christ, as my gospel declares.

Id.

13. *See* BUDZISZEWSKI, *supra* note 11.

14. *See generally* LEWIS, *supra* note 11; BUDZISZEWSKI, *supra* note 11.

15. For an introduction to classical Benthamite utilitarianism and its impact on legal positivism see GEORGE H. CHRISTIE AND PATRICK H. MARTIN, JURISPRUDENCE 502-17 (2d ed 1995). For an introduction to Law and Economics, a more contemporary school of jurisprudence based on efficiency and hedonic values, see *id.* at 1147-78. Budziszewski does hint at a methodology for deriving particulars not based on a utilitarian calculus. BUDZISZEWSKI, *supra* note 11, at 48-50, 227-34.

moral content. The enterprise of civil lawmaking becomes an invitation for the naturalist and legal positivist to embark on a venture of arm-in-arm social, political, and economic experimentation on a grand scale. Without the more particular formulation of law and guidance found in the Bible, the naturalist becomes in effect a practicing positivist.

The Bible, in both the Old and New Testaments, provides a clear statement of those general principles of moral law that are written on sinful human hearts. It seems to be an unnecessarily daunting task to discern general principles of law without looking to the Bible where they are written. It is even more challenging, if not impossible, to discern more particular principles and their application without looking to the whole Bible. Without that particular direction the naturalist's methodology is likely to become little more than vain imagining.

God has promised to equip us for every good work.[16] The legal profession is a good work—it is a ministry of justice. Our chief equipment is a proper understanding of the weightier matters of the law—"justice, mercy, and faithfulness."[17] Fortunately, we are not abandoned to pursue that good work with little direction other than the moral law written on our sin-darkened hearts. The Apostle Paul tells us that "*all* Scripture is God-breathed . . . so that the man of God may be thoroughly equipped for *every* good work."[18] The entire Bible addresses every good work, including lawyering.

Our nation places itself in a precarious position as it rejects the Bible as irrelevant for law and policy. We are in much the same position as God's Old Testament people, Israel. The prophet Amos pronounced God's judgment on Israel for its perversion of justice.[19] The sanction was a famine of the hearing of God's word.[20] The involuntary removal of God's word from the public life of his people was a curse. Contemporary legal education embraces this curse. It is not simply famished, it is anorexic; refusing the very sustenance that can restore its life. Justice Oliver Wendell Holmes, Jr. was wrong when he wrote

---

16. 2 *Timothy* 3:17.

17. "Woe to you, teachers of the law and Pharisees, you hypocrites! You give a tenth of your spices—mint, dill and cummin. But you have neglected the more important matters of the law—justice, mercy and faithfulness. You should have practiced the latter, without neglecting the former." *Matthew* 23:23.

18. 2 *Timothy* 3:16-17 (emphasis added).

19. *Amos* 1-9.

20. "'The days are coming,' declares the Sovereign LORD, 'when I will send a famine through the land—not a famine of food or a thirst for water, but a famine of hearing the words of the LORD.'" *Amos* 8:11.

that the life of the law is experience.[21] Rather, the life of the law is every word that proceeds from the mouth of God.[22]

Considering the founding and history of this nation, it can be disheartening to realize that the Bible, which is the foundation of law and which gives it life, could be so utterly forgotten, neglected, and discarded. Neglect of the Bible in national life is nothing new, but neither is its rediscovery and restoration. During the reign of King Josiah, as the priests were repairing the Temple, they happened upon the Bible, which had been lost.[23] The high priest gave it to King Josiah's secretary who then read it to the King. Judging from Josiah's reaction, public policy based on the discernment of the law written on his heart had not served him or the nation well. He ripped his clothes and ordered:

> Go and inquire of the LORD for me and for the people and for all Judah about what is written in this book that has been found. Great is the LORD's anger that burns against us because our fathers have not obeyed the words of this book . . . ."[24]

Hopefully, those who hear or read Dean Titus's message will react and respond as King Josiah did. Josiah reacted with horror—not scoffing—when he realized how far astray Israel had gone from the Bible. Then he responded by seeking to understand the full meaning of the law written in the book and implementing it.

Sometimes, Dean Titus, provoking a reaction is a very good thing.

---

21. OLIVER WENDELL HOLMES, JR., THE COMMON LAW 1 (MacMillan 1887) (1881).

22. "Jesus answered, 'It is written: 'Man does not live on bread alone, but on every word that comes from the mouth of God.'"" *Matthew* 4:4.

23. 2 *Kings* 22.

24. 2 *Kings* 22:13.