

# JOURNAL *of* CHRISTIAN LEGAL THOUGHT

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1 Who Is My Neighbor?  
MICHAEL P. SCHUTT

---

3 The Good Samaritan  
PASTOR THABITI ANYABWILE

---

7 Professing Professionals  
SAMUEL ERICSSON

---

10 Speaking of Religious Freedom  
KIMBERLEE WOOD COLBY

# JOURNAL of CHRISTIAN LEGAL THOUGHT

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### **The Institute for Christian Legal Studies (ICLS),**

a Cooperative Ministry of Trinity Law School and The Christian Legal Society, founded as a project of Regent University School of Law.

**The Mission of ICLS** is to train and encourage Christian law students, law professors, pre-law advisors, and practicing lawyers to seek and study Biblical truth, including the natural law tradition, as it relates to law and legal institutions, and to encourage them in their spiritual formation and growth, their compassionate outreach to the poor and needy, and the integration of Christian faith and practice with their study, teaching, and practice of law.

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## STATEMENT OF PURPOSE

The mission of the Journal of Christian Legal Thought is to equip and encourage legal professionals to seek and study biblical truth as it relates to law, the practice of law, and legal institutions.

Theological reflection on the law, a lawyer's work, and legal institutions is central to a lawyer's calling; therefore, all Christian lawyers and law students have an obligation to consider the nature and purpose of human law, its sources and development, and its relationship to the revealed will of God, as well as the practical implications of the Christian faith for their daily work. The Journal exists to help practicing lawyers, law students, judges, and legal scholars engage in this theological and practical reflection, both as a professional community and as individuals.

The Journal seeks, first, to provide practitioners and students a vehicle through which to engage Christian legal scholarship that will enhance this reflection as it relates to their daily work, and, second, to provide legal scholars a peer-reviewed medium through which to explore the law in light of Scripture, under the broad influence of the doctrines and creeds of the Christian faith, and on the shoulders of the communion of saints across the ages.

Given the depth and sophistication of so much of the best Christian legal scholarship today, the Journal recognizes that sometimes these two purposes will be at odds. While the Journal of Christian Legal Thought will maintain a relatively consistent point of contact with the concerns of practitioners, it will also seek to engage intra-scholarly debates, welcome inter-disciplinary scholarship, and encourage innovative scholarly theological debate. The Journal seeks to be a forum where complex issues may be discussed and debated.

## EDITORIAL POLICY

The Journal seeks original scholarly articles addressing the integration of the Christian faith and legal study or practice, broadly understood, including the influence of Christianity on law, the relationship between law and Christianity, and the role of faith in the lawyer's work. Articles should reflect a Christian perspective and consider Scripture an authoritative source of revealed truth. Protestant, Roman Catholic, and Orthodox perspectives are welcome as within the broad stream of Christianity.

However, articles and essays do not necessarily reflect the views of the Institute for Christian Legal Studies, the Christian Legal Society, Trinity Law School, or other sponsoring institutions or individuals.

To submit articles or suggestions for the Journal, send a query or suggestion to Mike Schutt at [mschutt@clsnet.org](mailto:mschutt@clsnet.org).



## WHO IS MY NEIGHBOR?

BY MICHAEL P. SCHUTT, JOURNAL EDITOR-IN-CHIEF

This issue of the *Journal* features the story of the Good Samaritan. Our two guest essays are based on addresses given to law-related gatherings, and the speakers, 35 years removed from each other, chose Luke 10 as the text from which to encourage lawyers in their work in the world.

This is especially appropriate, of course, because Jesus tells the story of the Good Samaritan in response to a lawyer who attempts to “justify himself” before Jesus. Rather than be satisfied that Jesus told him he had the “right answer” to the Big Question (“What shall I do to inherit eternal life?”), the lawyer would not quit while he was ahead, and felt compelled to pose a follow-up: “Who is my neighbor?” Jesus’ answer-by-parable is one of the most vivid and beloved illustrations recorded in Scripture.

The Good Samaritan is also an appropriate illustration for the occasions of these talks (i.e., speaking to lawyers about their work) because the question of vocational stewardship is essentially grounded in the second great commandment: “You shall love your neighbor as yourself.”

The crux of the doctrine of vocation is that God has called us to particular posts and has equipped us with His gifts to perform the good works associated with those posts. He has prepared good works for us to do—in fact, He created us *to* do them<sup>1</sup>—and He literally “loves our neighbors” through us. In other words, the Christian concept of calling is essentially that God empowers us to love those whom He has placed in our reach.

This truth exposes those of us who desire to justify ourselves by asking “who is my neighbor?” The question is revealed as a red herring, a diversion from the real issue. We might as well ask, “Who are my parents?” when instructed to honor our parents.

Both Thabiti Anyabwile and Sam Ericsson touch on this point in the talks published in these pages. The issue is not the identity of the neighbor at all, but our own

conduct. In short, act like a neighbor, and you’ll never have to ask the embarrassing question.

When we consider the story of the Good Samaritan in light of our callings, it can bring surprising clarity. Jesus is not directing us to “show mercy” in the abstract, but in specific ways and to specific people. As Thabiti and Sam explain, Jesus calls us to consider what we have and why we have it. This helps us to discern our duties in the context of the “post” at which we’ve been placed, and then to focus our resources on those to whom we are called. We are to be faithful to our “real” neighbors—those whom God has placed in our lives—rather than “humanity” in the abstract or “the world.” After all, we are pretty easily distracted. Calvin put it this way:

[T]he Lord bids each one of us . . . to look to his calling. For he knows with what great restlessness human nature flames, with what fickleness it is born hither and thither, how its ambition longs to embrace various things at once. Therefore, lest through our stupidity and rashness everything be turned topsy-turvy, he has appointed duties for every man in his particular way of life.<sup>2</sup>

This way of looking at my calling does not permit me to debate whose parents I am to honor, which boss or pastor deserves my respect, or the country to which I owe my allegiance. We honor the parents God has given us. We respect our employers and obey the authorities in the jurisdiction in which God has planted us. We recognize that God has placed us in particular circumstances to love particular people in particular ways. “Each individual has his own kind of living assigned to him by the Lord as a sort of sentry post so that he may not heedlessly wander about throughout life.”

The implications for lawyers are obvious. Attorneys serve God as instruments of His mercy and love to our neighbor-clients. Law professors are God’s means of equipping neighbor-students to, in turn, love

<sup>1</sup> See Ephesians 2:10.

<sup>2</sup> John Calvin, 3 *INSTITUTES OF THE CHRISTIAN RELIGION*, XX.6 (Ford Lewis Battles, trans.) (1960) (1559).

their neighbors and do justice with the love of God. Judges love the community by administering justice. Prosecutors and defense lawyers serve not only their own clients but assist the civil government as it seeks to punish wrongdoers—and only wrongdoers—and reward those who do right. Estate planners assist and encourage their neighbor-clients' stewardship—loving their families and neighbors according to God's call on their lives. And so on.

The issue is not the "who," of course. The issue is what we have from God that He wants to pour out on our neighbors—and whether we are willing to be His vessels to do the pouring.

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## THE GOOD SAMARITAN

*Opening Address, CLS National Conference  
New Orleans, October 2015*

BY PASTOR THABITI ANYABWILE

I would encourage you tonight, from God's word, from Luke, Chapter 10, verses 25 to 37. You know this section of the Scripture is the story of the Good Samaritan. You'll know this section of the Scripture because if you read the Scriptures and are aware of your own vocation, you know this is one of those sections of Scripture where lawyers are addressed. I want to use this section of Scripture as a window into, or charge and encouragement to you, for how you might think about your calling in these turbulent times.

It's easy to see that there are storms that are here and storms that are on the horizon. We think of the issues that we just heard about, in the area of religious freedom. We think about some of the things that have gone on in our nation's cities over the last year. We think about the re-definition of marriage, and on and on and on. We think about global conflicts and the rise of groups like ISIS. It's not hard to tell; you just need twenty minutes on your local news station to know that we're in the midst of storms.

How do we hear from God? What might God be saying to us as attorneys and professionals in legal fields in this very storm? Luke, Chapter 10, Verses 25 to 37:

And behold, a lawyer stood up to put him to the test saying, "Teacher, what shall I do to inherit eternal life?" He said to him, "What is written in the law? How do you read it?" And he answered, "You shall love the Lord your God with all your heart and with all your soul and with all your strength and with all your mind and your neighbor as yourself." And he said to him, "You have answered correctly; do this, and you will live." But he desiring to justify himself said to Jesus, "And who is my neighbor?"

And Jesus replied, "A man was going down from Jerusalem to Jericho, and he fell among robbers who stripped him and beat him and departed, leaving him half dead. Now by chance a priest was going down that road and when he saw him he passed by on the other side. So likewise a Levite, when he came to the place and saw him, passed by on the other side. But a Samaritan, as he journeyed, came to where he was, and when he saw him, he had

compassion. He went to him, bound up his wounds, pouring on oil and wine. Then he set him on his own animal and brought him to an inn and took care of him. And the next day he took out two denarii and gave them to the innkeeper saying, "Take care of him, and whatever more you spend, I will repay you when I come back." Which of these three, do you think, proved to be a neighbor to the man who fell among the robbers?" He said, "The one who showed him mercy." And Jesus said to him, "You go and do likewise."

If you get one thought from this talk tonight, I hope it's something like this: That a justified life with God looks like a compassionate life with neighbors. A justified life with God looks like a compassionate life with our neighbors. This section of Scripture divides easily into two related parts. The first half, verses 25 to 29, just has that scene where the lawyer comes to question Jesus. The second half is verse 29 to the end, verse 37, where Jesus tells a story that really gets to the heart of this lawyer's question.

### A JUSTIFIED LIFE WITH GOD

Let's look at our first part, how to be justified with God. The lawyer comes and questions Jesus. Now I trust that all of you are skilled enough to know that you can't cross-examine Jesus. This man didn't yet know that, so he comes to Jesus, and as verse 25 says, "Stood to put him to the test." He's got Christ in the dock now. He's got Christ sworn in, and he's going to test Jesus. He asked the money question.

In fact, this is the question that's often asked in the midst of storms. If the storm is personal, if it's critical, if it's pressing in, whatever the trouble is, this is often a question that comes up out of the bowels of suffering. What must I do to have eternal life? How can I be saved? How can I live forever? And it's a question that pushes itself up, doesn't it, because there's something in us that instinctively wants to live, wants to go on living and can imagine life beyond this life.

So this Jewish lawyer is asking Jesus that most profound question, what must I do to have eternal life, and

Jesus now sitting in the dock, replies with a question. “What’s written in your law? How do you read it?” One thing to observe here about Jesus’ response is his deep, unshakable dependence upon the Word of God. He doesn’t flinch at all to refer to the Scriptures, the Jewish Scriptures. He doesn’t flinch at all to take people back, on the most important questions of life, back to the Bible itself.

I pray and trust that we would all have such rock-ribbed confidence in the Scriptures. That’s where we hear the voice of God. You want to hear God in the midst of a storm? All we need to do is open our Bibles. The Bible is a talking book. It has lips. You open it and God speaks. So if we would hear God, the best place to do that is in His word where He speaks. Our Master gives us a model of that very thing. Jesus turns his attention to the Word of God. He says, “what do you read there?” Notice what the lawyer says. He gets the question right. He’s in law school class. He didn’t skip on Thursday or Friday. He went to class and he’s there and the prof has asked this question, and he says, “Oh I know, I know the case law here. You shall love the Lord, your God, with all your heart, with all your soul, with all your strength, and with all your mind, and your neighbor as yourself.” You could imagine him feeling a little bit satisfied. Jesus, elsewhere in the Gospels, says that all of the law hangs on these two points. Love for God and love for neighbor. Here this man is reciting the case law, as it were. And Jesus says, “You have answered correctly.” Then he turns a knife. “Do this and you will live.”

It’s not in the text here, but I imagine, the man must have felt something like a question bubble up in his head. Who can love God perfectly? Who can love neighbor perfectly? Can anybody be right with God by obeying the law? Even these two basic points of law. We know the answer to that in our experience, don’t we? We don’t have to have gone to theological schools or to law schools to know that. All we need to do is remember the times we have mistreated our neighbor. Remember the times our neighbors have asked us to borrow a cup of sugar and we refused. Or the kids kicked the ball in our yard once again, and we were a little bit harsh or unkind even to the neighbor’s kids. Or love for God—all we have to do is, as we sing in the hymns sometimes, is remember the times that our hearts are prone to wander; prone to leave the God we love. We have desired things other than God or done things displeasing to God. No, the law condemns us all, the law convicts us all, the law is so much tightening up the noose around our necks.

The Bible plainly teaches us that no one will be justified with God by the words of the law, and yet the law must be obeyed. How do we escape this dilemma? How is it that we offer to God perfect obedience to the law,

when we know we’ve already failed in our obedience to the law? This is where the news gets good, isn’t it?

For Christ has become our righteousness. The Lord Jesus has done everything that the law requires of us. He has satisfied every jot and tittle of the law. In fact, He would tell us in Matthew 5:17 that not one jot or tittle would pass away until all was fulfilled. That’s why He came, to fulfill the obedience that the law requires. He lived as a man, clothed in our flesh, yet was without sin. He obeyed God perfectly and then he paid the penalty of the law in our place. He died on Calvary’s cross. He died for our sins. On that cross, he was punished for our sins. He bore our guilt and our shame. He was crucified and buried and resurrected so that now not only would there be righteousness with God through His obedience, but there would be forgiveness from God through His sacrifice. He was raised from the grave, Romans 4:25 tells us, for our justification, so that anyone who would turn from their sin and confess it to God, trust in Christ, and follow him as savior, would be right with God, would be justified with God.

The passage tells us, in verse 29, that that is precisely what the man wanted. He wanted to justify himself. We can’t justify ourselves before our Holy God. He must justify us through faith in Christ. That language “justify,” there is the language of the courtroom. The language of trials. To be declared righteous in God’s sight. Not a matter of what we do, but of what Christ has done for us.

Now at this point this man he has a problem. He can’t quite imagine, I think, what such a life looks like. Verse 29: “Desiring to justify himself, he said to Jesus, ‘And who is my neighbor?’” After Christ said, yes, you answered correctly, love God and love your neighbor, that was your answer boss. Now he’s slippery. He is a lawyer after all, right? He’s like, “who is my neighbor?” Jesus says, “Okay you want to be clever, let me tell you a story.” It’s in this story that we get a kind of moving picture of neighborliness. It’s in this story that we get kind of the second half of the main thought here. A justified life with God—well that comes with faith in Jesus Christ—looks like a compassionate life with neighbor that is illustrated in the story.

## A COMPASSIONATE LIFE WITH OUR NEIGHBOR

Notice now, four things about this life. You see here, Jesus tells the story, beginning with verse 30, “Jesus replied, ‘A man was going down from Jerusalem to Jericho and he fell among robbers who stripped him and beat him and departed, leaving him half dead. Now by chance, a priest was going down that road and when he saw him, he passed by on the other side. So likewise a Levite, when he came to the place and saw him, passed

by on the other side.” Striking, isn’t it? This road from Jericho, or from Jerusalem to Jericho, was well-known in Jesus’ day. It was a rough road. It was perfect for ambushes and it was used to that purpose a great deal. Many of us know the neighborhoods in our cities and the places in our cities that are the drive-by zones. We drive way around them. We don’t drive through them for concern for our safety or any number of things. Well that’s what this road to Jericho was. Notice, this man, sure enough, fell among robbers who stripped him and beat him and departed, leaving him half dead. The first part of the answer to the question, “who is my neighbor?” in verse 30, is that your neighbor is not the one who robbed you.

The second answer, though: “Now by chance a priest was going down that road, and when he saw him he passed by on the other side.” Your neighbor is not the religious leader who refuses to help you. In verse 32, “So likewise a Levite . . .” also a religious man, offering worship in the Temple, leading the people in worship. He came to the place and saw him. Passed by on the other side. Your neighbor is not the one who passes by on the other side. Who see you hurting and see you in need, but would rather avoid you.

The difference between these persons and the person mentioned in verse 33, the Samaritan, is what you see in that verse. He journeyed the same road, came to where the hurt man was, and when he saw him, “had compassion.” He let himself feel something when he saw the brokenness of the man left for dead. You see, for him that man on the road was not a problem to be avoided, but a person to be assisted. What do you think he saw when he saw the man on the road? I think we are meant to understand that he saw the person’s humanity. He saw something of the value of human life. He saw something of the image of God in that man so brutally and inhumanely treated. He didn’t see a fetus, he saw a baby. He didn’t see a thug, he saw a teenager. He didn’t see a radical Islamic jihadist, he saw a person made in the image of God. However much this man’s behavior may have been criminal, however much this man may have been sort of a jihadi or any sort of thing, what he saw first, what he saw *first*, was dignity; and he let himself be moved by it. He had compassion on the man.

I notice here that compassion knows nothing of ethnic boundaries and ethnic protocol. I love Luke’s Gospel. I hope you do, too. One of the reasons why I love Luke’s Gospel is that he always takes this sort of unusual suspect, and makes them the hero. Often as you read Luke’s Gospel he will juxtapose, for example, women in society with the sort of religious leaders who would have looked down on the women. Women are the ones who demonstrate virtue and demonstrate

godliness. Here he takes a Samaritan, a person who ethnically and religiously would’ve been estranged from Israel, outside the covenants of God and treated with a fair amount of scorn and contempt and prejudice. He no doubt would have had racial epithets hurled at him. There no doubt would have been social ostracization. There no doubt would have been a hundred ways in which prejudice would have been expressed towards the Samaritan.

So here Jesus tells the story, and he starts with the usual suspects, the ones you’d think would be the heroes, the religious leaders, the Levites, and the Pharisees. You can see the crowd kind of thinking, okay, okay, I know what the Levite will do. Why did he go by on the other side? Okay, okay, I know what the Pharisee would do. Really, he went by on the other side, too? In comes the Samaritan, you can see the crowd. Surely he won’t help; but the Samaritan crosses ethnic lines, crosses religious lines because he’s moved with compassion.

That’s what a neighbor looks like. Neighborliness is not defined by ethnicity. It isn’t defined by religious background even. It’s a boundary crossing thing, this compassion. In the same way that Christ crossed the boundaries of glory to enter into our human existence, in order to show us compassion on the cross. It is with us, in whatever fields we’re in—but tonight we’re thinking of legal field—so it is with us, that part of what it means to bear witness to Christ, is in our vocation, in the midst of our vocation. As we’re traveling the Jerusalem road to Jericho. As we’re conducting our ordinary affairs, we allow ourselves to be people of compassion. People who feel with and feel for the broken. That’s what a neighbor looks like.

Notice the third thing. In verses 34 and 35, the “Samaritan went to him and bound up his wounds, pouring on oil and wine, then he set him on his own animal and brought him to an inn and took care of him. The next day, he took out two denarii and gave them to the innkeeper saying, “Take care of him and whatever more you spend, I will repay you when I come back.” He’s generous, isn’t he? I love the title of one of Tim Keller’s books, I highly recommend it to you if you haven’t read it already. It’s called *Generous Justice*. It’s not two words we typically put together, but they do belong together in the heart of God, both justice and generosity. Here he is, this generous man, and he puts him on his own animal, he takes expensive oil and puts it on the man. He tends to the man’s wounds. Notice, he stays overnight with this stranger, caring for him. The next day he says to the innkeeper, listen, here’s two denarii, which was a considerable sum of money. He says use this to care for this man, and when I come

back—and that’s a striking thing in and of itself, isn’t it? I’m going to come back and check on this stranger—when I come back, whatever more is owed, I’ll pay. He wrote a blank check to the innkeeper. That’s generosity. Practical, applied generosity.

One final thing to notice in verses 36 and 37. “Which of these three proved to be a neighbor of the man who fell among the robbers?” At this point I feel like the lawyer is, he’s feeling what tight spot he’s in, he probably drops his head and kicks a couple of rocks and shuffles a little bit, and mumbles it out, the one who shows mercy. Jesus says, “You go and do likewise.” The neighbor is the one who doesn’t just talk about these things, but does these things.

## OUR NEIGHBORS IN THE LAW

How does this come home for you? No doubt in a room like this there’re people in all kinds of fields when it comes to your profession. Maybe some of you are litigators, some of you are prosecutors, perhaps, or defense attorneys. Some of you are practicing nonprofit law or working in business fields. Many working on religious freedom. Whatever your particular vocation or area of specialization, what would it look like for you to live out the justification you have with Christ by being compassionate to your neighbor *in that field*?

This feels pressing to me because when I think about the storms, the cultural and political and social storms that we face, isn’t it the case that many of them are either advanced by lawyers and legal professionals, or require the expertise of legal professionals? Arguments from the Supreme Court to state courts. Arguments before policy makers and the crafting of public law and public policy. All these things are things that very often come to a head with people like you, in your field, with your responsibilities and with your expertise.

When I think about the problem of mass incarceration in this country, I’m well aware that the most powerful persons in our criminal justice systems aren’t the judges, they’re not the sort of patrolman out trying to do his job and bearing all kinds of risk to keep our community safe. The most powerful persons are the prosecutors who have incredible latitude and discretion as to what cases get prosecuted, what charges are brought, if any charges at all. I’ve never been more convinced than I am right now that we need more Christians in the legal profession. I’m never more convinced than I am right now that given the scale and the magnitude and the sort of difficulty level of some of the issues that we are facing, that we need more Christians in this field; that we want people with the mind of Christ thinking about the most difficult issues facing us and facing the world that you belong in.

We want persons there, not just Christians in some nominal sense, but Christians like the Samaritan who are deeply committed to living out their faith in an applied way. So that they might, for example, meet the young man who’s arrested for some petty drug offense, arrested for some other kind of lesser charge as I was as a sophomore in high school. He meets with an attorney, he meets with a judge who sees not the stereotype of some young African American male who is tossed away with the epithet “thug,” but they see more promise than perhaps the proceeding suggests. They see more potential than the various charges suggest. They don’t ignore their responsibility, they don’t ignore their duty. They don’t sort of squelch justice. They are able, because they’re Christians, who believe in a cross where their sins were nailed, able to couple justice with mercy. Justice with compassion. There’s too little of that in our society right now.

How I long to have attorneys and judges and clerks and paralegals thinking with the mind of Christ as they are preparing briefs for the highest courts in our land. As they are preparing motions for city councils to think about the use of public buildings, for example. Or thinking about the definition of family and marriage, that the light of Christ might be brought to bear on those issues. And so that we would think in a deeply Christian way, not reflexively Christian, not guilty of a kind of cultural Christianity, a kind of nominal knee-jerk response, for example, to our gay and lesbian neighbors. That we would find within ourselves the same capacity that Christ has. To distinguish right from wrong and to tell the truth about the nature of human flourishing and the reality of sin, and at the same time really be compassionate and really be loving. That Christ would govern everything from our speech about such persons to our service to them. This, I think is your calling. To bear witness to Christ and His Gospel. To reveal His compassion and His generosity in the midst of troubling times when people need to hear a word from the Lord. We have just such a word in the Gospel of Christ. May we be faithful.

Let’s pray together.

*Oh Father, it would be better to be Samaritans, born to the “wrong ethnic group” practicing “the wrong religion” than to be religious muckety-mucks and leaders and professionals who have the right theology and belong to the right sect, but who betray the essence of biblical religion. Grant that we would be faithful to the truth and faithful to people, that we would be justified with You by faith in Christ alone. And that that same faith would express itself in love, especially to the hurting. It’s striking that You tell this story, Lord, of*

*a man beaten and left for dead in the street. We have seen so many such instances in this last year of people literally gasping for breath in the streets of our big cities and our small towns. It would seem, Lord, that You would have us be compassionate even as we bear witness to the truth. Help us to be full of grace and truth just as You are. We ask this Father, in Jesus' name. Amen.*

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*ington, DC and the Cayman Islands. After a few years as a practicing Muslim, Pastor Thabiti was converted under the preaching of the gospel in the Washington DC area. He and his wife, Kristie, have three children. Thabiti is the author of several books, including The Life of God in the Soul of the Church; The Gospel for Muslims; What Is a Healthy Church Member?; The Decline of African-American Theology; and The Faithful Preacher. He blogs regularly at The Front Porch and Pure Church.*

*Pastor Thabiti delivered these remarks in New Orleans in October 2015 to open the 2015 CLS National Conference. They are slightly edited and reprinted with his gracious permission.*



## PROFESSING PROFESSIONALS

BY SAMUEL ERICSSON

*This essay is based on and excerpted from an oral address given by Sam Ericsson at a gathering of pastors and teachers sometime in 1980.<sup>1</sup>*

**W**e're going to touch briefly on one of Christ's encounters with lawyers from Luke 10. Fortunately, Christ gave the legal profession—and every Christian—a job description in the story of the Good Samaritan. The job description applies to whatever occupation you're in, whatever you do in life, wherever you're at. If you want to know what you're supposed to be doing with your life, here it is, the story of the Good Samaritan. I'm going to give you my interpretation of this parable and apply it to the legal profession.

"And behold a certain lawyer stood up," very odd in a way to find a lawyer standing on his feet, "and put Him to the test." Again, as we see elsewhere in Scripture, a lawyer driving Him, testing Him, trying to trip Him up, trying to be critical rather than embracing Christ. The passage continues, "'Teacher, what shall I do to inherit eternal life?' And He said to him, 'What is written in the law? How does it read to you?'" The lawyer then comes back with an answer. "'You shall love the Lord your God with all your heart, with all your soul and with all your

strength and with all your mind and your neighbor as yourself.' Christ said to him, 'You have answered correctly. Do this and you will live.'" Answer to the question, that's all. Do that and you will live.

"But wishing to justify himself . . ." Have you ever done that? Have you ever tried to justify yourself? My wife tells me, though I don't believe a word of it, that I have a defensive tone of voice. Ever heard anything so ridiculous, a "defensive tone of voice"? That's not defensive. That's very rational, matter of fact, just communication between the wife and the husband. That's not defensive, but she says that I have a defensive tone of voice, and I tend to trigger it whenever I'm out to justify myself.

This lawyer wanted to justify himself. By the way, I'm very curious to find out what this lawyer's problem was. What was it? Was he ready to evict the widow from her apartment? Was he ready to foreclose on an orphanage? Was he ready to rip somebody off in the contract that was sitting on his desk? What was his problem? Again, Christ never taught in a vacuum, He never taught in a vacuum. I'm very curious to find out what this lawyer's problem was at this point in his life.

"Wishing to justify himself, he asked Christ, 'And who is my neighbor?'" Note here what we are often prone to do with Christ. "Point Him out to me." "Would

<sup>1</sup> It is available at [SermonAudio.com](http://SermonAudio.com).

you show him to me?” Would you give me the list of all my neighbors? “If I could have a list, then I would know who I’m supposed to love.” As we’ll see, the problem here is that we are looking for, and our emphasis is on, the *object*, the *other guy*. Christ will turn it around and make the issue not “who is my neighbor,” but instead turn it around. In a few verses we’ll see Him say, “Who proves to be the neighbor to the man at the side of the road?” The issue is never the other person. The issue is always you, me.

Jesus replied and said, “A certain man was going down from Jerusalem to Jericho and he fell among robbers and they stripped him and beat him and went off leaving him half dead. And by chance, a certain priest was going down on that road and when he saw him, he passed by on the other side and likewise a Levite, also when he came to the place and saw him, passed by on the other side. But a certain Samaritan, who was on a journey, came upon him and when he saw him, he felt compassion and came to him and bandaged up his wounds, pouring oil and wine on them and he put him on his own beast and brought him to an inn and took care of him. On the next day, he took out two denarii and gave them to the innkeeper and said, ‘Take care of him and whatever more you spend, when I return, I will repay you.’ Which of these three do you think proved to be a neighbor to the man who fell into the robbers’ hands?” The lawyer said, “The one who showed mercy toward him.”

The definition for the word *mercy* is “to have compassion for the unfortunate.” What was Christ teaching? He said to him, “Go and do the same.”

What is the job description for a lawyer? To show mercy. What is the job description for any Christian in whatever occupation, whatever walk of life? Show mercy. What is mercy? To have compassion for the unfortunate. You know the thing that we see least in Christianity today is compassion for the unfortunate. I agree with Francis Schaefer wholeheartedly when he says the most basic thing that the American church values today, Evangelicals included, is affluence. Affluence is a love for things, things and personal peace, which is the attitude that “I don’t want to get involved.” I just want to have time to myself to enjoy my things. Those are the basic values of the Church today. Make no mistake about it. This is the exact opposite of what the Good Samaritan did. By going to the side of the road and getting involved, he violated his own cultural customs and acted contrary to what “the system” might require.

We are called to do the same.

I want to look at five things that the Good Samaritan did. I think it tells us what we as lawyers are to do as well. First, is job description number one. It says, “A certain Samaritan was on a journey, came upon him, and when he saw him, he felt compassion.” First and foremost, as Christians, as Christian lawyers, we must have a heart for people. If you don’t have a heart for people, don’t use the word Christian when describing yourself because the word Christian means Christ-like. Christ had—and has—compassion. So often, we will not get involved in people’s lives because we see it as their problem. They made their bed, let them sleep in it. “I don’t want to get involved.” This is not the attitude of Christ. So, first, we have got to have compassion, a heart for people.

Second, it says in verse 34, “And he came to him.” Four words: “he came to him.” So what? That’s totally contrary to what we see happening most often today: “Hey, if you need me, call me.” And how often are we really available for those in need? It is our responsibility as believers to take the initiative. First, you’ve got to have a heart for people, and second, you’ve got to take initiative.

We had a situation with a family at our church who took somebody in need into their home, and the only problem that the family had was all the questioning they got about ulterior motives. People thought that there must be something fishy here, because people don’t just embrace people when they have needs. Folks don’t just open up their homes unless it somehow pays. Everyone assumed that people wouldn’t simply show love and compassion free of charge! That’s tragic in our country that the reputation of Christians is such that people find it unusual for people to open up their homes and they question whether the motives are righteous.

As a lawyer, it’s easy to take the initiative when there’s money at the other end. But one of the most rewarding parts of being a lawyer is simply helping people in need by solving their legal problems. I admit that I hate charging clients. It is sad that in our society, the three professions that are best paid, and I’m not speaking to any individual, but I’m just speaking generally in terms of professions, because I know there are exceptions in every profession, but the three professions that are best paid, physicians, attorneys, and psychiatrists, are the ones that charge the most. And the services are rendered because of people’s most basic problems. Physical problems that are beyond people’s control, legal and social problems, generally beyond people’s control, and emotional or mental problems. It’s too bad. I think this is an area in which we’ve lost the concept of servanthood.

Third, “He bandaged up his wounds, pouring oil and wine on them and he put him on his own beast.” What that says to me is that when you see a need, you have got to be ready to use the best resources available at that moment to meet the immediate need. You’re not signing up to be responsible for the person until their retirement, necessarily, but if there’s an immediate need, you have a responsibility to have a heart for the person that has the need, to take the initiative, and to use your best resources. Oil and wine—that was not just any Johnson & Johnson Band-Aid, it was expensive stuff that he used—that he was willing to give in the care for the injured man.

Fourth, the Good Samaritan “brought him to an inn and took care of him, and on the next day, he took out two denarii and gave them to the innkeeper and said, ‘Take care of him and whatever more you spend, when I return, I will repay you.’” This reminds me that the commodity that lawyers are least willing to part with is time. I think it was Abraham Lincoln that said, “The only commodity a lawyer has to sell is his time.” Here, this businessman, this Good Samaritan, was willing to take time. He spent the whole day, that evening, and then the next day. He took time out of his schedule and was willing to part with time, a commodity that is totally irreplaceable, to give to this person. You must be willing to give of your time.

Fifth, and finally, he did something that makes me breathe a lot easier. He went on his way, having delegated the caretaking to someone else. We might assume that the Good Samaritan had inherited someone that was going to move in with him for the rest of his life. We are certainly afraid to show compassion for fear of something like that. But Christ allowed the Samaritan to go on his way and to delegate the responsibility to someone else to take care of the need. Note that this is different than just dropping it. What he did was to say to the innkeeper, “You take care of him. Charge it to my account.” This implies that we don’t have to change occupations. We don’t have to become a full-time nurse. You don’t have to quit your job in order to show compassion. You don’t have to move to Chicago and you don’t have to do all the things, necessarily, in order to meet somebody’s need personally. You don’t have to stop all

else that you’re called to do. You can “see to it that the need is met.” That’s very encouraging.

The passage closes with Christ asking the lawyer, “Which one of these proved to be the neighbor?” Again, the issue is not the man on the side of the road. The issue is always the subject. The one who *demonstrated* mercy. Mercy is to have compassion, to have a heart for people. In whatever profession you find yourself, you must have a heart for people. You want to be Christlike. You’ve got to have a heart for people. You’ve got to be willing to take the initiative when you see a need. You’ve got to be willing to meet the immediate need with the best resources you have available at that time and that may cost you something.

Christ never calls a person to be successful. We don’t really understand that in our society. We are never called to be successful. We are only called to be faithful. Success is not a thing that Christ has ever asked of any of us, but He has asked us to be faithful. To use the resources we have. To be willing to use our time. To see that the person’s needs are met, even after we are out of the picture.

That’s a tremendous responsibility.

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*Sam Ericsson (1944-2011) was the Executive Director of the Christian Legal Society from 1985 to 1991 and founder of Advocates International, for which he served as the Executive Director from 1991 until his death in 2011. Prior to becoming ED at CLS, he served as the director for the Center for Law and Religious Freedom.*

*Sam’s life and words inspired hundreds of thousands around the world, and his legacy lives on in Advocates International, his family, and the community of Christian lawyers around the world. Advocates International has truly made disciples of nations and the lawyers who work within their systems. Thousands of lawyers around the world have benefited from the influence of Advocates.*

*Sam opened his home to hundreds of men and women, gave most of his money away, and cheerfully gave himself to the mission that God had called him to: encouraging and equipping lawyers to serve Jesus in a thousand different ways. He wholeheartedly loved the Lord and life. He was a mentor and friend to many, but particularly to lawyers.*



## SPEAKING OF RELIGIOUS FREEDOM

*The Current Legal Landscape Regarding Same-sex Marriage, Religious Liberty Protections, and Nondiscrimination Laws*

BY KIMBERLEE WOOD COLBY, DIRECTOR,  
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It's an obvious understatement to say that this year has seen numerous changes in the legal environment surrounding religious liberty, same-sex marriage, and nondiscrimination laws. The *Obergefell* decision, in which the Supreme Court re-defined marriage for the entire country, received the most attention, but it is only one piece of the legal puzzle that faces religious institutions and religious citizens who sincerely believe that marriage is only between one man and one woman. The purpose of this article is simply to give a broad overview of some of the puzzle pieces that need to be considered in protecting religious liberty for individuals, churches, schools, and other religious institutions.

This article provides only the most cursory survey of the current legal landscape, but I would suggest that readers take the time to read two things. First, set aside an hour to read the *Obergefell* opinions, including Justice Kennedy's majority opinion and the four dissenting opinions. All of the opinions are concise, well-written, and highly readable. Clearly, the justices wrote their opinions for the American public, not the academy. The contrast between Justice Kennedy's legal analysis and Chief Justice Roberts' rigorous analysis in dissent should be required reading for everyone. (Chief Justice Roberts read his dissent from the bench for the first time in his decade sitting on the Court.) Justice Thomas' insistence that humans derive their dignity from God, rather than from government, exposes Justice Kennedy's fundamental analytical error.

Second, on the heels of *Obergefell*, Professor Carl Esbeck has written two articles that lawyers interested in these issues should read. The first is a thorough examination of the meaning of "religion" in Title VII and whether it encompasses religious standards of conduct and not just "belief."<sup>1</sup> This will be a critical question in coming months as courts are urged to expand Title VII's protection against "sex" discrimination to include

"sexual orientation" and "gender identity." Professor Esbeck's second article suggests one way forward in this new era: a compromise that agrees to add "sexual orientation" and "gender identity" to nondiscrimination laws in return for robust religious liberty protections in those laws.<sup>2</sup> Regardless of whether one agrees, this article is a thoughtful discussion of the current legal landscape.

*Two Supreme Court decisions regarding same-sex marriage:* Twice in the past two years, the United States Supreme Court has addressed whether American governments must recognize marriage between persons of the same sex. In 2013, in *United States v. Windsor*,<sup>3</sup> the Supreme Court narrowly ruled (5-4) that it was unconstitutional for the federal government to define marriage as only existing between a man and a woman.

Writing for the majority in *Windsor*, Justice Kennedy emphasized that marriage had always been a matter of definition by the States rather than the federal government, and therefore, since New York had legislatively approved of same sex marriage, the federal government's law treated unfairly different sets of married couples in New York. Justice Kennedy asserted that Congress's only reason for the law had been to demean persons who engaged in same-sex conduct. Essentially, in Justice Kennedy's view, the traditional definition of marriage was based on animus, or hostility toward homosexual persons. In the wake of the *Windsor* decision, many lower federal courts applied *Windsor*'s "animus" rationale to strike down about half of the States' laws that defined marriage as between only a man and a woman.

On June 26, 2015, in *Obergefell v. Hodges*,<sup>4</sup> the Supreme Court narrowly ruled (5-4) that it was unconstitutional for any state government to define marriage as only existing between a man and a woman. Writing for the majority, Justice Kennedy relied on two provisions of the Constitution, the Fourteenth Amendment's Due Process Clause and its Equal Protection Clause, to

<sup>1</sup> Carl H. Esbeck, *Federal Contractors, Title VII, and LGBT Employment Discrimination: Can Religious Organizations Continue to Staff on a Religious Basis?*, 4 Ox. J. Law Religion 368 (2015).

<sup>2</sup> Carl H. Esbeck, *A Post-Obergefell America: Is a Season of Legal and Civic Strife Inevitable?*, (University of Missouri School of Law Legal Studies Research Paper No. 2015-24).

<sup>3</sup> 133 S. Ct. 2675 (2013).

rule that States cannot have laws that define marriage as only between a man and a woman. Justice Kennedy specifically claimed that the right to marry is a fundamental right that cannot be denied to same-sex couples.

Emphasizing the historical understanding of marriage, the four dissenting justices wrote powerful opinions. Their many potent arguments centered on the fact that the federal Constitution left the definition of marriage to the States and to the People, and should not be dictated by five unelected judges. The dissenters urged that the democratic process be permitted to work, as it had been doing for the past twenty years in the state legislatures, state courts, and public debate.

In addition, three dissenting justices expressed concern for the religious freedom of persons holding the traditional definition of marriage. In the majority opinion, Justice Kennedy acknowledged that “[t]he First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered.”<sup>5</sup> But none of the dissenting justices thought the majority had gone far enough to assuage religious believers’ legitimate concerns about practicing their faith under a constitutional regime requiring all States to recognize same-sex marriage.

The dissenters’ religious liberty concerns were fueled by answers given to their questions at the *Obergefell* oral argument by the United States’ top attorney, Solicitor General Verrilli. In response to Justice Alito’s question, General Verrilli had agreed that religious colleges’ tax-exempt status would likely become an issue for colleges that prohibited same-sex conduct by their students.<sup>6</sup> In response to Chief Justice Roberts’ question, General Verrilli avoided answering whether religious colleges would be allowed to prohibit same-sex couples in their married housing facilities. As Justice Thomas observed in his dissent, it is “all but inevitable” that the new definition of marriage and the religious definition of marriage “will come into conflict, particularly as individuals and churches are confronted with demands to participate in and endorse civil marriages between same-sex couples.”<sup>7</sup>

## RFRA LEGISLATION TO PROTECT RELIGIOUS LIBERTY

As a result of the Court’s decision, federal and state laws that protect religious liberty are crucial. Because twenty-five years ago, in *Employment Division v. Smith*,<sup>8</sup> the Supreme Court greatly diminished the First Amendment’s protections for religious liberty, the primary protection for religious liberty at the federal level is the Religious Freedom Restoration Act (“RFRA”).<sup>9</sup> Enacted in 1993 by nearly unanimous bipartisan votes in Congress, RFRA recently has been attacked by organizations that support same-sex marriage. Keeping RFRA strong is crucial to preserving religious liberty in this country.

Similarly, where they exist, state RFRAs may provide critical protection for religious liberty at the state and local levels. To date, 21 States have enacted their own RFRAs, but each State should have its own RFRA. The campaign of massive misinformation against Indiana’s RFRA was a significant setback, but state RFRAs are vital and should be enacted. The key is to enact state RFRAs that are identical to the federal RFRA and do not try to add new terms or definitions to the federal RFRA. For example, the exemption for discrimination laws that was added to the Indiana RFRA in an attempt to resolve the fight does not provide adequate protection for religious individuals and many religious institutions, so it is important that it not be extended to other RFRAs.

Another important protection is for state nondiscrimination laws to include explicit and expansive protections for religious liberty. While nondiscrimination laws traditionally contain some protection for religious liberty, organizations that support amending nondiscrimination laws to include sexual orientation and gender identity increasingly seem hostile to including any protection for religious liberty.

The federal RFRA and state RFRAs, as well as other laws aimed at protecting religious liberty, have never been more necessary, or more under attack. As Christian institutions and individuals brace for further attacks on their religious liberties, RFRA and similar state laws offer essential protections.

<sup>4</sup> 135 S. Ct. 2584 (2015).

<sup>5</sup> *Id.* at 2607.

<sup>6</sup> Transcript of Oral Argument in *Obergefell v. Hodges*, No. 14-556, U.S. Supreme Court (April 28, 2015), available at [http://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/14-556q1\\_3j4a.pdf](http://www.supremecourt.gov/oral_arguments/argument_transcripts/14-556q1_3j4a.pdf) at 36 (last visited May 24, 2015).

<sup>7</sup> 135 S. Ct. at 2638 (Thomas, J., dissenting).

<sup>8</sup> 494 U.S. 872 (1990).

<sup>9</sup> 42 U.S.C. §2000bb-1.

## INCREASING SOGI PROTECTION IN PUBLIC ACCOMMODATIONS, HOUSING, AND EMPLOYMENT

While sexual orientation and gender identity (“SOGI”) are not protected classes under most federal laws,<sup>10</sup> 22 states and many local jurisdictions have passed laws making sexual orientation and/or gender identity protected classifications. Generally speaking, such laws make discrimination on the basis of sexual orientation or gender identity illegal with respect to: 1) public accommodations;<sup>11</sup> 2) housing; and 3) employment. Sometimes these laws include narrow exceptions for religious institutions or individuals, but the protections are highly dependent on the specific language of the different laws.

Whether such laws exist in a state or local jurisdiction is very important in determining what religious institutions or individuals are legally required to do. Note that a religious institution or individual may be in a state that does not have a SOGI law but may still be in a city or county that does have a SOGI law. Regardless of whether an institution or individual is in a state or local jurisdiction with a SOGI law, it is wise for every church, school, or other religious nonprofit to be prepared. I outline some specific steps in my article in *The Christian Lawyer* mailed with this edition of the *Journal*.

**Employment:** Religious organizations have at least two basic federal protections for their employment decisions. First, the federal law known as Title VII allows religious schools to require all employees to conform to their religious doctrine,<sup>12</sup> which includes conduct based on Biblical beliefs. In other words, religious schools may act on the basis of religion in their employment practices as to all employees. Notably, however, this federal protection applies only to federal discrimination claims; it does not protect against claims brought under state or local discrimination laws, for which similar protections may or may not exist.

Second, with respect to other potential discrimination claims, such as sex, disability, or age, religious schools may make whatever employment decisions they want as to employees who are “ministers” in the school. The U.S. Supreme Court affirmed religious schools’ religious freedom protections under the “ministerial exception,” in *Hosanna-Tabor Evangelical Lutheran School & School v. EEOC*.<sup>13</sup> In that 2012 decision, the Court ruled that the First Amendment barred a claim by a teacher at a church school, thereby recognizing that churches and religious schools must be left alone with respect to employment matters of their ministers. Consequently, defining staff members (such as the teachers who regularly give devotions in class, teach Bible and participate in chapel as in *Hosanna-Tabor*) as “ministers” may significantly increase protection against legal liability if a religious organization’s beliefs or conduct policies are challenged.

**Housing:** Although Congress has passed no law prohibiting sexual orientation or gender identity discrimination in housing, the Department of Housing and Urban Development in 2012 issued a final regulation that HUD’s Office of Fair Housing and Equal Opportunity would ensure that HUD’s core programs (e.g., federally assisted housing) would be “open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status.”<sup>14</sup> In addition to this federal action, 21 states and the District of Columbia have laws prohibiting discrimination in housing on the basis of sexual orientation, and 16 states and the District have laws prohibiting discrimination on the basis of sexual “identity” and/or “expression.”<sup>15</sup>

Two students filed complaints against Christian colleges, alleging that these schools violated state and federal law in not allowing them to live in dormitories of their choice.<sup>16</sup> These schools both requested and received a letter from the U.S. Department of Education exempting them on religious grounds from Title IX’s sex discrimination provisions, but this exemption does not relieve the colleges from compliance with state and local laws. Moreover, because of the language in Title IX, it

<sup>10</sup> Notably, the federal Equal Employment Opportunity Commission ruled on July 15, 2015 that a complaint based on sexual orientation falls within Title VII’s protection against sex discrimination. See EEOC Agency NO. 2012-24738-FAA-03; Appeal No. 0120133080. This decision, however, is completely contrary to numerous federal courts that have uniformly ruled against such an unwarranted extension of Title VII’s legal protections.

<sup>11</sup> 45 states have a public accommodation statute. All prohibit discrimination on the grounds of race, gender, ancestry and religion. In addition, 18 jurisdictions prohibit discrimination based on marital status, 22 prohibit discrimination based on sexual orientation and 18 prohibit discrimination based on gender identity.

<sup>12</sup> 42 U.S.C. §§2000e-1(a), 2000e-2(e)(2).

<sup>13</sup> 132 S. Ct. 694 (2012).

<sup>14</sup> 77 Fed. Reg. 5662 (Feb. 3, 2012).

<sup>15</sup> See [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/LGBT\\_Housing\\_Discrimination](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination).

<sup>16</sup> See <http://www.nytimes.com/2014/07/25/us/transgender-student-fights-for-housing-rights-at-george-fox-university.html>.

is uncertain whether independent institutions that are not “controlled by” a specific religious denomination or other religious order are eligible for this exemption.

This overview cannot cover all the developments in this area, but CLS presented three webinars and prepared three documents suggesting practical steps that religious ministries, including churches and schools, should be taking to decrease their legal exposure on some of these issues. Please review those resources at **[religiouslibertyguidance.org](http://religiouslibertyguidance.org)**.

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