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## Civil Resistance Or Holy Obedience? Reflections From Within A Community Of Resistance

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# CIVIL RESISTANCE OR HOLY OBEDIENCE? REFLECTIONS FROM WITHIN A COMMUNITY OF RESISTANCE

ANDREW W. McTHENIA, JR.\*

## INTRODUCTION

There is a long tradition in American society of individuals and groups resisting enforcement of the state's law and asserting obedience to higher moral authority as the reason for their opposition.<sup>1</sup> Such resistive activity is generally labeled "civil disobedience" and discussion has centered on whether or not it is "justifiable."

As a preliminary matter, I want to argue with the characterization of this activity as "disobedience" and to suggest that a less pejorative term should be used for its description. The term "civil resistance" is both more inclusive and less conclusionary. It is by no means a foregone conclusion that those who resist enforcement of the law are disobedient. Their actions may or may not constitute civil disobedience. However, the longtime practice of using negative phraseology to describe this conduct has depicted the state's claim as having the greater credence. To grant the high ground to the state, without considering the resisting community's argument that it is seeking to be obedient to its own authority, summarily relegates the "resister" to the inferior position of always having to play catch up or seeking to justify her "disobedience."<sup>2</sup> In fact the real issue may be, and could be from most points of view, that it is the state which should justify its law.

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1. W. STRINGFELLOW, *FREE IN OBEDIENCE* (1964); M. L. King, *Letter From Birmingham City Jail*, in *A TESTAMENT OF HOPE—THE ESSENTIAL WRITINGS OF MARTIN LUTHER KING, JR.* 289 (J. Washington ed. 1986); H. D. Thoreau, *Civil Disobedience*, in *WALDEN AND OTHER WRITINGS* 85 (J. Kautch ed. 1962); *SWORDS INTO PLOWSHARES: NONVIOLENT DIRECT ACTION FOR DISARMAMENT* (A. Laffin & A. Montgomery ed. 1987) [hereinafter *SWORDS INTO PLOWSHARES*].

2. Professor Robert Cover has made the point that from its own perspective the resisting community "that has created and proposed to live by its own, divergent understanding of law makes a claim not of justifiable disobedience, but rather of radical reinterpretation." Cover, *The Supreme Court, 1982 Term—Forward: Nomos and Narrative*, 97 *HARV. L. REV.* 4, 46-47 (1983). The issue, he contends, is one of interpretation; to concede that role to the courts is to deny the resisting community "the integrity of a law of its own." *Id.* at 47.

The term "civil resistance" includes not only those activities which may prove to be "disobedient," but also those acts of opposition which ultimately may be validated by state law. In the 1980s, for instance, nuclear protestors requested and, on occasion, were permitted to interpose, the legal defense of "necessity" to acts of resistance. In at least two regionally well-known cases, juries instructed on the necessity defense acquitted all defendants. On occasion courts sitting without juries acquitted on the grounds of necessity as well. It is illogical to continue to portray these protest activities as "disobedient" when the state's own legal machinery has declared their actions not in violation of law.<sup>3</sup> In general, I will describe those activities used to challenge existing legal structures as "civil resistance."

A second preliminary and a caveat. While I approach this topic seeking to better understand the place of civil resistance in American law, I am not a dispassionate observer. I am a friend of and have been an advisor to Christian communities of resistance. Additionally, I was a participant in an active civil resistance campaign in connection with United Mine Workers of America strike against the Pittston Company in 1989.<sup>4</sup>

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The description of a bucket as being half-full or half-empty conveys as much information about the one assessing the water level as it does about the volume of water in the bucket. That is also true for the topic of civil resistance. Lawyers seek to explain the world in terms of one's obligation to obey the law. There is some wonderful scholarship exploring this topic from the perspective of the legal community, but there are few instances of a resisting community describing to the law what it thinks the stakes are.<sup>5</sup> One of the unfortunate aspects of this silence is that discussion focusing on the legal justification for civil resistance often remains abstract and

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3. *People v. Jarka*, No. 002170, Circuit Court of Lake County, Waukegan, Illinois (1985); *Chicago v. Streeter*, No. 85-108644, Circuit Court of Cook County, Chicago, Illinois (1985). For a discussion of the necessity defense allowed in those cases, see Boyle, *Defending Nonviolent Civil Disobedience Against the Reagan Administration Under International Law*, in *CRIME AND SOCIAL JUSTICE* 110 (1985); Lumpkin, *The Necessity Defense: A Report*, in *WORDS INTO PLOWSHARES*, *supra* note 1, at 191.

4. This strike was one of the longest coal strikes in recent history, lasting nearly 12 months. While it involved only 1,700 UMWA miners and a single coal company, the Pittston Company, and was confined to a four or five county area in the central appalachian region, the strike achieved world-wide publicity. The workers drew support from a wide spectrum of American society. There were more than 60,000 workers from around the world who visited the picket lines in Virginia. Without question one of the major reasons for this widespread interest in what normally would have been a small regional strike was the nonviolent strategy of the union. See, e.g., "Pittston Should Stand By Its Promises," *BUS. WEEK*, Oct. 9, 1989, at 182; "Pittston Power," *THE NATION*, Oct. 16, 1989, at 409; "Strike Zone, The Appalachian Intifada Rages On," *The Village Voice*, Aug. 29, 1989, at 32.

5. See, e.g., Ball, *Obligation: Not to the Law But to the Neighbor*, 18 *GA. L. REV.* 911 (1984); Greenawalt, *Promise, Benefit, and Need: Ties That Bind Us to the Law*, 18 *GA. L. REV.* 727 (1984); Olsen, *Socrates on Legal Obligation: Legitimation Theory and Civil Disobedience*, 18 *GA. L. REV.* 929 (1984); see also R. DWORKIN, *TAKING RIGHTS SERIOUSLY* 81-130 (1977).

devoid of passion. Another and perhaps even more unfortunate result of the one-sided nature of this debate is that we are left with a language monopolized by the law. The discussion would be richer, and I think sharper, if we considered the story from the perspective of a community of resistance. I hope that I can bring that perspective to this discussion. As a lawyer I know that many of my sisters and brothers at the bar sometimes appear unable to understand the claims that civil resisters make. On the other hand, it is all too often the case that resisting communities think that law and lawyers are beyond redemption. There is a very real tension between these worlds—the majoritarian community, with boundaries to a large degree defined by law, and a smaller community of resistance, which places its primary allegiance in a power beyond itself. And the tension will not, indeed cannot, disappear with greater understanding. But understanding of the resisting community's position would allow the law to recognize its own limitations and to be clear about what it might do when challenged. Likewise, some understanding of the law and lawyers might force a community of resistance to know that so long as it believes the law to be beyond redemption, then that community itself is not yet redeemed.

In the first part of the essay I want to discuss some aspects of obligation and resistance from the perspective of a resisting community. I am at the outset troubled by the need to describe this community. Even the use of the word community may be claiming too much. In some sense the groups I am talking about are fringe coalitions, temporary in nature, never large or permanent enough to have a plan of action for the reconstruction of the world—a blessing I think; but still coherent enough to hear and exercise the prophetic voice of the Hebraic tradition which is now so atrophied in the institutional church. What these groups all have in common is that they confess that Jesus is Lord. It is on that basis then that I assert the claim, which is at the same time normative as well as descriptive, that what I am talking about as a community of resistance is the church.<sup>6</sup> It may seem

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6. My equating a community of resistance (composed of various fringe groups of the church) with the church has caused some concern for initial readers of this essay. Their concern is twofold: first, some think it factually inaccurate to claim that the church is a resisting community, or a community apart in American society. In effect, they make the point that the concept of an American civil religion is so pervasive that one cannot, in any meaningful way, call the church a resisting community. They contend its institutional interests so closely parallel the interest of the existing order and its personnel are so intertwined that in reality the church and state are one. The Constantian arrangement is so pervasive that the public perception is that we are still a "Christian nation." Second, some readers think my view of church is too limited and excludes from that larger body other competing visions of the gospel.

The first criticism assumes that I am factually incorrect. The church is not, they say, a community apart. The second is that I am too exclusivistic in my claimed description of church. It is to the effect that I am making a normative claim when describing what the church is. I recognize both of these problems. All I can suggest by way of defense is to confess and avoid. Factually, I know that the Christian church is a minority group in America, and I know that my particular vision of the gospel is at one corner of that minority group. But at the same time I contend that I am on sound theological grounds by claiming that when

strange to describe the church as a resisting community. But there is a very real sense in which the church as church, by its very nature, always stands opposed to the state—as well as all other principalities and powers in the world. When it is not in some state of tension with the law—that is, when it does not resist the seduction to violence which is so integral a part of the law—it is in all likelihood failing in its role as the church.

Briefly, I will argue that the church has the political and spiritual obligation of witnessing the absoluteness of God in a secular state which claims no higher power than its own aspiration. Civil resistance is then not only a morally acceptable form of witness, it may be required of the Christian community.<sup>7</sup> The relationship between smaller or insular communities and the larger society whose norms are expressed in the law is affected by many things, not the least of which is the relative size of each body. The status of the Christian community as a minority one in a pluralistic and secular society ought to offer some insight on what civil resistance by that religious group implies. While resistance is permissible—and perhaps even required—the Christian community may be obliged to speak *to* the state, but it cannot speak *for* the state.

There are many smaller communities both secular and religious within the larger body known as the state. It is by no means the case that the nature of obligation owed by the membership to these communities is coterminous with the obligation to the state as defined in the law.<sup>8</sup> It is to be expected that obedience to the norms of the smaller community will put such a group in tension with the law. How the church views the law is then of critical importance in deciding when it can obey.

The calculation which a secular group generally makes is based on both a consideration of its claim to obligation and its *power* to effect change. I am thinking here of some environmental groups, Greenpeace for example, or gay and lesbian rights activists such as ACT-UP. Does the group have the power to force the state to change or at least to back off and let its members live in peace? The resistance of the church, on the other hand, is not based upon a claim to power, but on the invocation of memory. And

two or more are gathered together in His name, we are the church.

My view of what the church ought to be, its vocation, is not what the church is to most Americans. I understand that. I also understand that my view of the vocation of the church is not that of a majority of my sisters and brothers who also claim that Jesus rose. At least since the Reformation there have been peculiar and different versions of the Jesus story. When sufficiently large numbers coalesce around one particular version of the story, they are called a denomination. If those who coalesce around a version of a story are small in number and radically challenge the dominant story, we generally label them “sectarian.” That is always a safe way to exclude and ostracize groups within the church. In fact, that is often the way that the Supreme Court excludes and ostracizes all religions by equating the term “religious” with sectarian. See Baer, *The Supreme Court’s Discriminatory Use of the Term Sectarian*, 6 J. OF L. & POL. 449 (1990).

7. See W. WINK, *UNMASKING THE POWERS: THE INVISIBLE FORCES THAT DETERMINE HUMAN EXISTENCE* 98 (1986); see also W. STRINGFELLOW, *supra* note 1, at 89.

8. See M. WALZER, *OBLIGATIONS: ESSAYS ON DISOBEDIENCE, WAR, AND CITIZENSHIP* 16-23 (1970).

that memory is of a people whose charge was to be faithful and know that its power is in powerlessness.<sup>9</sup>

Because the Christian community is one which, when true to its own tradition, reasons differently from many secular communities, I will attempt in the second part of the essay to suggest how the church gains clarity on the nature of obligation. This portion of the essay is nontraditional and may appear strange to readers who are unfamiliar with that community. It is in the form of a reflection on one of the sacred stories of the Christian tradition. It is offered not as a model of reasoning for the law and the legal order, but as an illustration of the way in which this particular community—apart called the church discerns what questions are important when it looks at the nature of obligation. My experience has been that it is very difficult for the secular world to understand how religious communities themselves come to decision. On the one hand, detractors of civil resistance often talk of the danger of anarchy<sup>10</sup> and cannot fathom that the community is not seeking power, but merely to be faithful. Even among those who support the claim of resisting communities, there is often a grave misunderstanding of what the community is about. Many see the goal as replacing an existing order instead of transformation.<sup>11</sup>

This reflection on obligation is set in the fabric of the 1989 United Mine Workers of America-Pittston Company strike.<sup>12</sup> I offer it as an illustration of the way in which a community of resistance comes to knowledge in the midst of the anguish and bitterness of a fallen world; that is, how the church becomes the church.

When the obligations and norms of a smaller community conflict with and cannot be accommodated by the law of the state, then that smaller entity must decide whether to resist the state, and if so, what form that resistance should take. Here the Christian community must confront the Pauline admonition to be subject to the governing authorities.<sup>13</sup> In addition, if the community engages in activity which is determined to be disobedient, then it needs to acknowledge the reality that the state must be willing to resort to violence to secure the primacy of its law.<sup>14</sup> I conclude with a brief consideration of these issues in the third part of the essay.

### I. STANDING WITHIN A COMMUNITY OF RESISTANCE

Most discussions of this topic begin by phrasing the issue as whether one has an obligation to obey the state's law. But then one must ask what

9. See Shaffer, *The Tension Between Law in America and the Religious Tradition*, in *LAW AND THE ORDERING OF OUR LIFE TOGETHER* 28-53 (R. Neuhaus ed. 1989).

10. Powell, *A Lawyer Looks at Civil Disobedience*, 23 *WASH. & LEE L. REV.* 205 (1966).

11. See the discussion of the political revolutionary in Simon, *Visions of Practice in Legal Thought*, 36 *STAN. L. REV.* 469, 494-95 (1984).

12. See *supra* note 4.

13. *Romans* 13:1. "Let every person be subject to the governing authorities. For there is no authority except from God, and those that exist have been instituted by God." (Revised Standard).

14. See, e.g., Cover, *Violence and The Word*, 95 *YALE L.J.* 1601 (1986).

is the law, the enforcement of which is being resisted? That question, often assumed to be relatively straight forward, may be more complex than it appears on first blush. To decide what the law is requires some interpretation.<sup>15</sup> And that immediately raises the question, whose views shall prevail? Since an act of interpretation is never carried out in a vacuum, a decision about what the official law *is* depends to a considerable extent on what activity is presented as a challenge to it.

That leads to a host of inquiries about the nature of the resisting community, the relationship of that group to the larger community called the state, and the proposed activity of resistance.<sup>16</sup> Those questions, in turn, require that consideration be given to the nature of the moral obligation which the resisting group asserts as the controlling authority of its life as a community. The resisting community's own requirement of obedience to moral precepts must be considered in light of the demand for obedience asserted by the state. And that takes us back to the starting point. What is the claim that the state makes as it asserts the primacy of its law? And so on.

Where to enter the debate is essentially an arbitrary choice, but it is not without consequence. If it is assumed that the state's law is clear (an assumption often unexamined in many of these discussions), then the question is posed in terms of an obligation to the state. Law reviews and legal writers generally present this as the question to be examined—is there a proper role for civil resistance in American law?<sup>17</sup> If it is granted that, in certain instances, resistance is permissible, then the discussion turns to what sorts of protest activities are within the canon of acceptability.

If, on the other hand, the inquiry begins with an assumption that the resisting group has an important internal obligation, then the next series of questions would be quite different. It would become necessary to articulate the nature of that internal obligation and to determine what obedience to the authority of the community entails. Finally, the resisting entity would have to confront the state and distinguish between those requirements for civil obedience which honor the authority of the tradition and those which betray that authority.<sup>18</sup> How the analysis proceeds depends to a large extent on where one stands.

I am part of a community which, in the course of the last two thousand years, has often found itself at odds with the official policies of the state.<sup>19</sup>

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15. See, e.g., J. WHITE, *HERCULES' BOW—ESSAYS IN THE RHETORIC AND POETICS OF THE LAW* (1985); J. WHITE, *WHEN WORDS LOSE THEIR MEANING: CONSTITUTIONS AND RECONSTITUTIONS OF LANGUAGE, CHARACTER AND COMMUNITY* (1984).

16. See Cover, *supra* note 2, at 46-53.

17. See Simon, *supra* note 11, at 490-95.

18. Tom Shaffer puts it this way: we must distinguish between "the civil obedience that honors God and the civil obedience that betrays the Hebraic ideal of love of neighbor." Shaffer, *Jurisprudence in Light of the Hebraic Faith*, 1 *NOTRE DAME J. OF L., ETHICS AND PUB. POL'Y* 77, 86-87 (1984).

19. See W. STRINGFELLOW, *supra* note 1, at 89.

That community is the Christian church. I have spent a good deal of time with smaller groups of Christians who challenge state authority. I have friends who are members of self-described Christian communities of resistance. During the last decade, many of these groups engaged in active resistance challenging our government with respect to its national defense and Latin American policies. On occasion, I have served as a lawyer or legal advisor to these groups.<sup>20</sup>

I want to attempt to describe what the concept of obligation means and to suggest some ways in which it is appropriate to live out that obligation in a society in which Christians are very much a minority people. In part, this effort is designed to get "our side" of the story out to a culture which all too often hears only the voice of the law and lawyers. In a very real sense, I think that unless Christian resisters can tell their stories unhampered by the imposition of another's translation, the witness has little chance of being understood and will unfortunately be discounted even by their allies.

However, an equally important reason to start from within and tell the story from the perspective of a resisting community is so that we, as Christians, will get our own story straight. Often when we think and talk of civil resistance, we tend to forget who we are. Instead of thinking of the Ten Commandments, we think of the United States Constitution.<sup>21</sup> We think less of witnessing to a God who has determined the course of history and often assume that we can by our own actions take control of history.<sup>22</sup> We sometimes think less of joining with the powerless as suffering servants and more of using the power of rhetoric to overwhelm the state. So I write not just to persuade Caesar that what we do is justifiable when we resist the law, but to urge the resisting community to tell the truth about itself. Until we in the church can be the church, we can have little to say to Caesar about civil resistance that is useful.

### A. *The Nature of Obligation of the Community*

Faith in and obedience to one God is the starting point in our narrative.

The first commandment is this: Hear, O Israel: the Lord our God is the only Lord. Love the Lord your God with all your heart, with

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20. While my formal involvement has been with those having left-leaning political agendas, I have maintained friendship and informal relationships with anti-abortion Christian activists. It is difficult to unite these disparate ends of the political spectrum in the church. Although my politics place me on the left of the political spectrum, I think it is crucial that all of us somehow extend to each other what we claim we offer Caesar—an alternative to violence based on the love of God. Perhaps one way we can do that is to talk with each other about who and whose we are. For an admirable effort in that regard, see DiSalvo, *Abortion and Consensus: The Futility of Speech, the Power of Disobedience*, 48 WASH. & LEE L. REV. 219 (1991).

21. See J. YODER, *THE PRIESTLY KINGDOM* 172 (1985); R. BELLAH, *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE* (1985).

22. See W. STRINGFELLOW, *CONSCIENCE AND OBEDIENCE, THE POLITICS OF ROMANS 13 AND REVELATIONS 13 IN LIGHT OF THE SECOND COMING* 89-94 (1976).



all your soul, with all your mind, and with all your strength. The second is this: love your neighbor as yourself. There is no other commandment greater than these.<sup>23</sup>

All else and all other claims to obedience must be judged against this standard. The state is not God; the law is not God. Only God is God. Whenever we transfer our ultimate allegiance to anything else, including specifically the law, we are guilty of idolatry. While there are many questions we must puzzle through as we figure out how we will live and act in a secular world, we cannot lose sight of our primary obligation.

The second obligation is to our neighbors. How we deal with these two obligations, to love God and to love our neighbors, determines whether we are a faithful people. Implicit in the command to love God and neighbor is the assertion that all human law is founded on God's law and that the purpose of and justification for our legal system is to create the kinds of structures which permit these relationships to grow.<sup>24</sup> We do not think law is evil; indeed it is a gift from God. We are charged to respect civil authority, not because the state says we should, but because our own sacred text tell us to do so.<sup>25</sup> However, we cannot be lulled into accepting the notion that submission to civil authority is the same as unthinking obedience to that authority. There will always be times and places where our obligations to God and neighbors put us at cross purposes with the state. But before we confront that issue, we need to consider our place in the larger community known as the state.

### *B. The Minority Status of the Christian Community*

The story to which we try to be faithful—our generative narrative—is a very specific one.<sup>26</sup> It is that God entered into human history in the person of an itinerant rabbi named Jesus. He spent some time in an occupied territory teaching and associating with all sorts of people, most of whom seem to have been at the margins of society. He preached a message and lived a life which offered a whole new definition of what it means to be human. His agenda was personal and extremely threatening to the political and religious establishment because almost everything he said and did called into question the administered arrangements of the existing world. The message was so radical and he so threatening that he was tried and killed in the name of the law. If the story ended there, it would be just one more tragic event in a fallen world. However, it does not end there, because three days later he rose from the dead. The resurrection is what makes the story unique—and we believe that therein lies God's ultimate saving power.

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23. *Mark* 12:29-31.

24. See H. BERMAN, *THE INTERACTION OF LAW AND RELIGION* 81-86 (1974).

25. See *Matthew* 5:17-20; *Romans* 13:1.

26. See generally M. GOLDBERG, *Jews and Christians, Getting Our Stories Straight: The Exodus and the Passion-Resurrection* (1985); M. GOLDBERG, *Theology & Narrative—A Critical Introduction* (1982).

A small minority of the first century world believed the truth of that story and became part of the Jesus movement. Today, some two thousand years later, those of us who still believe the story to be true have inherited the challenge of affirming a particular witness without being concerned about the need to show that others who do not believe the story are "bad."<sup>27</sup> We do not claim to be able to prove that our view of the world is right. Our job is not to establish empires or even to persuade others to change the law. It is instead to try to live out the awesome truth of that simple story: that the suffering of the crucified Christ represents the wisdom and power of God and that the resurrected Christ here and now represents God's victory over the fear and thrall of death. It is in the everyday ordinariness of life that this God who defies all commonsense is revealed to us. Ours is a particular heritage and our task as Christians is not to persuade the world that the Jesus movement makes sense, but to decide every day "whether—when he meets us in our world, as he does in fact—we want to follow him."<sup>28</sup>

A major problem for many of us who seek to follow Jesus is that from the perspective of our own faith, we do not reason correctly. We reason as if everyone, or at least a majority of the world, accepted our story as true. We have forgotten that we are, as were the early Christians, a minority people.<sup>29</sup> The church lost a critical purchase on its ability to see the world clearly when, at the time of Constantine, the church and the state united.<sup>30</sup> From that time forward, too often we have seen our duty as less to be obedient to a call of radical servanthood and more as an obligation to contribute to the success of the state. That radical shift in position—seeing the world from the top down instead of from the bottom up—left us disoriented. Ours is a failure of memory. We reason and think as if we were a majority and yet we are, in fact, strangers in a strange land.

The early church considered Jesus as Lord who sat at the right hand of the Father and ruled over history. While first century Christians were not convinced that the world had been totally subdued, they did believe that the principalities and powers could not prevent the ultimate Christian victory.<sup>31</sup> But following the conversion of the Emperor Constantine, the state and the church were partners. God's presence was understood as supporting the rulers of the world. That was a critical move in shifting thought patterns and premises for reasoning. Before these events, the church knew that it was a small confessing community; it knew that God was in control of history.

After Constantine's conversion, Christendom included everyone and all knew for a fact that the sovereign was God's own agent. The revised goal

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27. See J. YODER, *supra* note 21, at 55.

28. *Id.* at 62.

29. See W. MEEKS, *THE MORAL WORLD OF THE FIRST CHRISTIANS* 161-62 (1986).

30. See J. YODER, *supra* note 21, at 135-47.

31. See *id.* at 61.

was to strengthen the sovereign because God was concurrently present in the government. The issues to be decided revolved around what those in power should do with that power, not what a powerless minority should do to remain faithful. The sovereign as God's agent had all sorts of interests to balance in the running of an empire. He could not be a weakling. He had to protect the public order, and as God's agent, he had a warrant to resort to violence to accomplish that purpose. This type of reasoning led to compromises with state power such as the just war concept.<sup>32</sup>

In the Christian community, servanthood became less important than the glorification of God's empire.<sup>33</sup> This new universality loosened the bond of solidarity which had existed within the early Jesus movement. It changed the sorts of questions asked of sisters and brothers. The great "what if" appeared. "What if" everyone eschewed violence, "what if" everyone loved their enemies? Such questions must have been unknown to the early movement. The form of language had to change to accommodate a people who had come to view themselves as God's agents in running a government. One would not, in such a newly configured world, ask what Christian conscience demanded. The thought process turned to what was "effective."<sup>34</sup>

But once the church starts worrying about "effectiveness," it has succumbed to the power of death by doubting the power of the resurrection. If God is in control of history—that is, if the resurrection is what we claim it to be—then we do not need to worry about success or effectiveness.<sup>35</sup> Our job is to follow that God who is in control of history. To be obedient means not to let other institutions (*i.e.*, the law) claim our primary obligation and subvert that obligation to our neighbor. That means the Christian community must be respectful but wary of the claims of the law.

### C. *How the Community Might View the Law*

My friend, Tom Shaffer, suggests that we believers who also are lawyers need to look out from the church at the law to see if the law has become an idol.<sup>36</sup> If it has, we must proclaim that fact even if the law and many

32. See J. YODER, *supra* note 21, at 137; J. YODER, *THE POLITICS OF JESUS* (1972).

33. That same move from servanthood to empire was also a problem for the nation of Israel.

When the liturgy moves from the experience of the peasants to the sponsorship of the king, a new dimension is added. The king also has to translate this TALE-BECOME-LITURGY into PUBLIC POLICY. That translation of tale into policy is both difficult and dangerous for the tale will scarcely sit still long enough to become policy. . . . [T]he king wants to take the tale-become-liturgy seriously, but he is faced with a deep dilemma. Will he allow the liturgy its full voice, thus perhaps jeopardizing his very empire, or will he allow the empire its full voice thus perhaps jeopardizing the very "world" mediated in the liturgy? Clearly the king cannot have it both ways, but either choice is extremely costly.

W. BRUEGGEMANN, *ISRAEL'S PRAISE: DOXOLOGY AGAINST IDOLATRY AND IDEOLOGY* 90 (1988).

34. J. YODER, *supra* note 21, at 138-39.

35. W. STRINGFELLOW, *supra* note 22, at 75-85.

36. See Shaffer, *supra* note 9.

of our most sincere fellow believers do not like it or do not care what we think. Shaffer uses the image of believers standing on the steps of the church looking across the street at the courthouse (the law) and trying to figure out what goes on over there.<sup>37</sup> If we were to do that, then I think we would have to report our puzzlement. We would have to report that there is much that is positive about the law and the legal system. We could point to the fact that much of what is positive about the law can be traced to the union of church and state occasioned by the baptism of Emperor Constantine. While that Constantinian arrangement may have skewed the church's view of who it is, most would agree that the law is much richer for its rootedness in the papal revolution of the eleventh century.<sup>38</sup> The church can be proud of the claim made by Professor Harold Berman that "[w]ithout the fear of purgatory and the hope of the last judgment, the western legal tradition could not have come into being."<sup>39</sup> So we would report that our law owes its existence to a belief system, the linchpin of which is that Jesus rose. That is the good news for a believer. The sobering news is that while our legal rationality is still rooted in Christianity, the law has only a vague knowledge of the claims of that belief system from whence it came.<sup>40</sup>

Realism would seem to counsel that the Christian community should be less interested in urging the creation of a Christian nation or even of "reintegrating law and theology"<sup>41</sup> than in trying to discern what it means to be faithful in a world which increasingly considers its basic story either incredible or irrelevant. But we continue to sponsor symposia on the reintegration of law and theology and to have White House prayer breakfasts attended by many religious leaders who seek to make the United States a Christian nation. All of which goes to show how seductive power is. Even

37. *See id.*

38. *See generally* H. BERMAN, *LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION* (1983).

39. *Id.* at 558.

40. "Long after the legal tradition forswore itself of any dependence upon medieval faith and well after many of its operators lost all religious faith, the conceptual infra-structure, the basic categories, the skeleton of the formative world still remain." Bradley, *Book Review*, 39 *EMORY L.J.* 217 (1990) (reviewing J. WITTE & F. ALEXANDER, *THE WEIGHTIER MATTERS OF THE LAW: ESSAYS ON LAW AND RELIGION* (1988)).

41. *Id.* at 251. Bradley concludes a long essay on the break up of law and religion with what I think is the sensible admonition that we need to recognize the world as it is rather than forge some short-lived reconnection.

An underlying common fault of public theology as a whole is that we do not have completely pre-linguistic experiences which are merely, or subsequently, symbolized. Rather, our nurturing, in a tradition of symbols, constitutes our experience. Hence, we cannot leap over religious pluralism by Winstanley-like appeals to common core experiences. Because of this, the break-up of Christendom and the resulting pluralism is the starting point for all further discussion of community. Woody Allen put it well: "The lion may lie down with the lamb, but the lamb won't get much sleep.

as a minority people we continue to have dreams of imperialism.<sup>42</sup> So we must take care that we are not blinded as we look at the law. Berman's account of the roots of the law and his vision for its reunification are both dependent on the persistent and irritating presence of the prophets, and that is difficult because the prophet, who has to have a place to stand within the church, is without a voice in the imperial palace.

While we in the church did not have much trouble accommodating ourselves to the relationship of power when the church and Caesar were united, we have had a great deal of difficulty accepting the reality that we are once again a confessing minority. We still prefer models of partnership with power as opposed to servanthood for the powerless. We think more of effectiveness than obedience. There is some hidden impulse which seeks to place the power of political authority behind our particular belief system. We continue to search for some way—and we see the law as the tool for that operation—to define a kind of universal ground, a meta language, which saves us from admitting that ours is a claim grounded in a particular belief system. This affects the way we who are lawyers think about the law. We worry more of reintegrating law and theology and less of telling the truth to the law. That impulse to power and quest for universality weakens our ability to be detached and skeptical.

We need to be particularly skeptical of the claim the law makes to justify itself. The secular state acknowledges no higher power than its own idolatrous aspiration and seeks to subvert the church to the role of legitimating the state's claims.<sup>43</sup> We can justifiably celebrate the influence of Christianity on the development of the western legal tradition without succumbing to the temptation of idolatry by putting our faith in the service of the law. However, we also need to understand that our obligation is less to change the law and more to say who and whose we are. Because we have ourselves been less than vigilant about being centered in the particularity of our own story, we have been open to seduction by the law. All too often we allow the state to frame moral arguments in terms of good citizenship, instead of insisting that our job must be to carry out the often lonely and unpopular political and spiritual task of proclaiming the absoluteness of God.<sup>44</sup>

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42. Writing nearly twenty years ago, William Stringfellow said:

The incidents which occasioned the Constantinian Arrangement, as such, are not as significant for contemporary Christians, or for either church or state today, as the ethos spawned and nourished by that comity and the mentality which has been engendered and indoctrinated by it over so long a time. It is, put plainly, an ethos which vests the existence of the church in the preservation of the political status quo. . . . [T]hat has caused radical confusions in the relations of church and nation, church and state, church and regime. It has encouraged and countenanced stupid allegiance to political authority as if that were service to the church . . . and to God.

W. STRINGFELLOW, *supra* note 22, at 48-49.

43. W. WINK, *supra* note 7, at 96.

44. *Id.* at 96-98.

There is little tension between the keepers of the law and the institutional church so long as the church's offering of a morality of aspiration remains at the safe level of abstraction. That is, when the church acts as a chaplain to the law and asks God's blessing on the enterprise, all or nearly all, applaud. But when the church seeks to recover its nearly atrophied prophetic voice, the witness is not so welcome.<sup>45</sup> How then does the church come to be the church, and what does it mean to be the church when its witness involves active resistance to the law? It is to those questions that the essay now turns.

## II. COMING TO KNOWLEDGE—A REFLECTION ON NEIGHBORLINESS

### A. *A Word About the Process*

Professor Milner Ball has asserted that there is no duty to obey the law,<sup>46</sup> but there is an obligation, which admits of no exception, to the neighbor. Ball, who speaks from within the Hebraic tradition, makes a persuasive case, and while I find myself in basic agreement with his thesis, I might phrase it somewhat differently. The major, and perhaps the only, justification for the law is to create those structures in which the obligation to love one's neighbor can be nourished. Opening our hearts to the neighbor begins the redemption of the world. The political and spiritual obligation of the Christian Church is to "create a society where it is easy for people to be good."<sup>47</sup> In the likely event that the law gets in the way of or compromises that obligation to the neighbor, then the Christian community needs to decide how and whether it will confront the law.

Consistent with the approach of this essay, I want to explore, from within the tradition, what is involved when the Church sees those claims—obligation to law and to neighbor—as being in conflict. This is a matter of some importance to me and my thinking does not rest on a comfortable level of abstraction. As a participant in church-based civil resistance during the United Mine Workers of America-Pittson strike of 1989, I had to wrestle with the matter of obligation long and hard. And like Jacob, I now walk with a limp as a result of that wrestling match.<sup>48</sup> The limp is an important reminder of how difficult it is to be faithful and how dangerously vulnerable to the seduction of power we always are. So to a large extent, I shall be reporting on my own experience and that of my sisters and brothers as we tried to discern how to act when a major issue for us was the apparent conflict between what the law of the state seemed to mandate and what we thought was required to be faithful to the obligation to our neighbors.

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45. W. WINK, *NAMING THE POWERS* 113 (1984).

46. See Ball, *supra* note 5, at 113.

47. A news article in *57 Catholic Worker* 2 (Aug. 1990) attributes this comment to Dorothy Day and Peter Maurin.

48. See *Genesis* 32:24-32.

That process of coming to knowledge is, I think, of crucial importance. It is, in fact, more important to the resisting community than the decision as to the form the ultimate witness will assume.<sup>49</sup> It has been my experience that those outside the church, often including political allies, do not recognize the significance of this focus on process. That failure to understand often begins with lawyers who serve resisting communities.<sup>50</sup>

The theological point is that God *is* in control of history; the victory has been won, death is vanquished. Nothing we can do would be more

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49. While there is a surface parallel between the emphasis on process here and the emphasis on process in American law, the reason why process is important in biblical religion is that it is so imperfect while the truth we seek is perfect. The reason process is so important in American law is because we know that the law is so imperfect and, therefore, we rely much more on process to keep us from making serious substantive mistakes as we stumble along.

50. My discussions with representatives of the peace movement, who come at the issue from a faith-based perspective, reveal that this "client group" often (generally?) perceives that it is inadequately represented by lawyers. At the risk of overgeneralization, let me describe my impressions of what the religious left perceives about its attorneys. First, they are all good-hearted, generally sympathetic to the cause, and very competent. But. And from here on, my comments are very impressionistic. Basically, there are three types of lawyers that represent the left religious movement in this country.

There are the associates and partners in large law firms who are sympathetic to liberal causes. These lawyers tend to think not of the power of witness to the system, but focus on freedom of religion. For this kind of lawyer, freedom and autonomy are paramount values. These lawyers see the "system" as defined by traditional law and want to ensure that the law is tolerant of dissenting views. I think they would "sanitize" the political nature of dissent and urge tolerance to make civil resistance fit in.

A second group is composed of the criminal defense lawyers who think first and foremost about keeping their clients out of jail—a worthy goal in most all instances. However, jail may be the most appropriate place for this sort of witness. Although I have never done very much criminal practice, my limited experience with that kind of work leads me to believe that the mindset of the criminal defense lawyer is not likely to be one which sees the goal of civil resistance as transformation.

There is a third group, the radical lawyer group, which sees their representation as intensely political. However, often that group sees itself as an outside group, and its goal is not to transform and thereby vindicate the existing order, but to overthrow it.

What I think the left religious community wants is not the cool, detached representation of liberal lawyers, nor even the passionate representation of the criminal defense bar, nor the system-bashing of radical lawyers. Instead it wants lawyers who are willing to enter into representation with the possibility that they too may be transformed. For instance, in a planning session on civil resistance, rather than have lawyers who appear at the appropriate time to fit into an allotted ten-minute slot and discuss procedures to be followed on arrest, the religious community wants a lawyer who will become an integral part of the spiritual process of discernment and decisionmaking on whether to engage in civil resistance itself. That is a hard fit for us, given the traditional notion of what lawyers do and who lawyers are. But I think it is necessary to really come to terms with the political nature of the witness. It is also necessary if lawyers are to get beyond the distinction between working within and being outside the system. What the religious community seeks is to transform the system. The view is that initially we are all outsiders. Until all of God's people can sleep in peace, none of us can. Until all are fed, we are all hungry. Until all have a place to lay their heads, we are all sojourners. The Hebraic tradition is radical precisely in that it refuses to recognize a distinction between insiders and outsiders. That is the theological position which drives the religious left, and unless its lawyers can appreciate and in some sense live out that radical position, then the entire witness is weakened.

effective than that which God has already done.<sup>51</sup> The job of the church is to be faithful and to love the neighbor knowing that it is only possible to love one's neighbor because God first loved us. To act as if our witness, whatever form it takes, is one which would put God's word in triumph over the power of death is fundamentally to misunderstand the resurrection. It is to assume that the resurrection is somehow not yet complete.<sup>52</sup> It is to succumb to all the temptations to power which Jesus wrestled with and defeated in the wilderness.

To live in grace is to live knowing who and *whose* we are. What we do is far less important than that. Our witness for a more just society results from the knowledge that Christ will come again as judge and king, and in the meantime, we are charged with witnessing to the power of the resurrection. It is not so important that we be right. The church does not have, hold, or exercise any strength against the principalities. The church is free to proclaim the resurrection, and because the God whose victory we proclaim is a merciful God, it is not so bad if we are wrong.

I offer these comments and this reflection not in an effort to justify to my critics my own resistance, nor in an effort to persuade a reader that civil resistance is "acceptable." What follows is offered in the hope that those who do not share our common story will at least have some better idea of who we are and why we do what we do.<sup>53</sup>

While this account draws heavily on the experience of attempting to sort out what it means to be a neighbor in the pain and bitterness of an Appalachian coal strike, the basic process of discernment is not limited to that situation. It is as old as the church itself.

The theoretical and spiritual underpinning of the process is that the church, in order to discern what it is to do, must first know who it is. The goal is personal transformation of the participants.<sup>54</sup> Civil resistance is an act of corporate witness; it is never a solitary act. One of the major fears which plagues Christian communities of resistance is that good-hearted, but often self-deceived, political activists will drop in for a "CD action" and then ride off into the sunset. That type of "blow-in, blow-off and blow-out" action destroys the sacred nature of the witness. There is no assurance that a corporate discernment process can subdue the big "I," but there is a good deal of evidence to support the proposition that without some serious and sustained corporate effort at discernment, self-righteous moralism will take the place of true Christian witness.<sup>55</sup>

51. See W. STRINGFELLOW, *supra* note 22, at 84.

52. *Id.*

53. What we are about is learning how to tell the world of the sovereignty of the word of God acting in history. We live in anticipation of the second coming which is the consummation of Christ's reign so that what is now secret, or known dimly, is known to all so that what is witnessed biblically is publicly vindicated. W. STRINGFELLOW, *supra* note 22, at 83.

54. Douglas, *Civil Disobedience as Prayer*, in *WORDS INTO PLOWSHARES*, *supra* note 1, at 94-95.

55. T. MERTON, *MYSTICS AND ZEN MASTERS* 287-88 (1967).



The process of discernment is basically twofold. First, the community gathers and together explores the sacred story. Following an initial reading, one or more members may offer some initial exegesis which is designed not to lead toward finality of interpretation but to open the story for further reflection. The goal is to reenter the world of the story—to probe it for its own treasures. In the Good Samaritan story,<sup>56</sup> for instance, the effort is to go beyond the abstraction of the command to love one's neighbor and to appreciate what Jesus meant when he quoted the necessity for the love of a neighbor in his conversation with the lawyer. Before we in later times declared that Jesus was Lord and put our own interpretation on his ministry, how did Jesus understand the obligation to one who was a neighbor? That sort of inquiry involves looking backward at the story with as little gloss of our own world view as is possible.<sup>57</sup> That is a far different exercise than one which seeks to pull the unexamined letter of the text forward and apply it to life in present day America.

As a second step, and only after the community has attempted to project itself backward into the world of the first century, the group then examines the story in light of existing reality in order to better understand how the word can shape its response as a community. The goal is to find that subtle intersection between the story and the life of the community where the "aha" happens, where "the corner is turned,—where in short, we encounter the living God addressing us at the point of our and the world's need."<sup>58</sup>

I want to replicate a slice of that process in this portion of the essay. What is reported here is necessarily truncated and incomplete, but I hope that it is sufficient to give some sense of a community struggle. I am almost embarrassed to write this section without surrounding it entirely in quotation marks, for in a very real sense I am merely reporting what I learned from small communities of Christians as we struggled with the story of the Good Samaritan and attempted to come to grips with its power in our own lives. The words are mine, but the insights came from corporate discussion.

### *B. An Examination of the Text*

The place to begin this examination of the obligation of neighborliness is in the all-too-familiar story of the Good Samaritan. We all know the story, or have at least heard it scores of times. It is so comfortable that we are tempted to close our minds as we mouth the words. But if we suspend our preconceived understanding and come to the story afresh, we will see something of the radical nature of the command to love one's neighbor. It collapses all our familiar categories and turns traditional thought patterns inside out.

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56. *Luke* 10:25-37.

57. W. WINK, *TRANSFORMING BIBLE STUDY* 126-27 (1980).

58. *Id.*

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?'

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 right; do this, and you will live.'

But he, desiring to justify himself, said to Jesus, 'And who is my neighbor?'

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, and went to him and bound up his wounds, pouring on oil and wine; then he set him on his own beast 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 neighbor to the man who fell among the robbers?'

He said, 'The one who showed mercy on him.'

And Jesus said to him, 'Go and do likewise.'

The parable begins with a question. But we know that the lawyer is not altogether an honest seeker of truth. He wants to test Jesus to determine whether his views are acceptable to the religious establishment. But the question sounds innocent: "[W]hat shall I do to inherit eternal life?"

Jesus, in a classic rabbinical manner, turns the question back on his interlocutor: "How do you read?" He treats the lawyer in a straightforward manner and does not allow himself to be drawn into a defensive discussion. The lawyer then responds with the passage with which we are all familiar. His answer comes in the vein of the Old Testament tradition and combines language from the texts of Deuteronomy and Leviticus. Jesus joins the argument, and they both stand squarely within the Hebraic tradition. There is no attempt to proof text or pull in additional authority. The passage becomes a basis for reflection, and presumably, the answer is in the story.

Jesus' answer is both affirming and at the same time challenging. He responds: "You have answered right." But he goes on to refine the question and place the issue in the here and now—"do this, and you will *live*." It is not 'do this and you shall achieve eternal life in the hereafter.' The

Kingdom is now.<sup>59</sup> The obligation to one's neighbor is turned from a theological abstraction to a social event in the reality of the present.

And this is where the story gets interesting. The lawyer must have realized that he painted himself into a corner. The text imposed a seemingly impossible burden, but so long as it remained abstract, it was not so threatening. Jesus' spin on the lawyer's question forces him to confront the world as it really is. Nonetheless, the lawyer asks the next question, as the text says, "desiring to justify himself."

If I must love my neighbor as myself, then tell me: who is my neighbor? The questioner might be thinking to himself that 'if the universe of neighbors is sufficiently small,' or 'if the list is fairly short,' or 'if you draw the circle tight enough' or 'if the notion of obligation is confined within the bounds of reasonableness,' 'then perhaps I can do it. . . .' To a lawyer, these distinctions are perfectly reasonable avenues for inquiry. That is what the law is for; to draw lines and give us clarity in an otherwise uncertain world. So where do you draw the line—who is an insider and who is an outsider? Is a neighbor only a good practicing Jew? Does it include all Jews? What about proselytes? Certainly there is a line somewhere which defines the obligation of community and of neighborliness. We all want help in drawing that line.

But Jesus does not give the sort of response that the lawyer seeking clarity hoped for or expected. Instead he tells a short but powerful story, which, like all parables, raises more questions than it answers.

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We are introduced to a scene which is both stark and brutal. A man has been stripped, beaten, and left for dead beside the road. He is never identified, and that causes a problem. Identification is an important issue in ascertaining one's obligation. If the man had been identified, it would be possible to know whether he was inside or outside the community; that is, whether he was one of those people to whom an obligation was owed. One way to identify a stranger is by his dress. But since this man has been stripped, he cannot be identified by visual means. Another way of identifying a stranger is through conversation, which would involve talking with him. In this instance, that is probably impossible, since a man who is half-dead is most likely unconscious.

By chance, a priest is going down the road. He is most likely returning from his fortnightly duty at the temple in Jerusalem. And this priest has a problem. How is he to discover whether the wounded man is in fact a member of his community? The system makes it important that he find out. If the stranger is a member of the community, the priest has an obligation to lend him assistance. If he is not, then there is no obligation. But the structure which defines his obligation so clearly is of no aid in this circumstance because the priest does not know who the man is.<sup>60</sup>

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59. See J. YODER, *supra* note 31, at 39.

60. This insight into the importance of and difficulty in identifying the stranger was

To make matters even more complicated, it is possible that the man is dead already or that he will die while the priest is attending him. If the priest comes in contact with a dead man, then the priest will be defiled. If one is defiled, he must go through an extremely elaborate cleansing ceremony which would require the expenditure of a great deal of time and money. He cannot, while he is defiled, collect tithes or eat. Nor can the priest's family collect tithes and offerings until he has been cleansed. In short, the priest's whole world of relationships will be upset if he comes under the ban of defilement.<sup>61</sup>

The priest is really between a rock and a hard place. If he assumes that the man is not a member of his community, then he can proceed down the road and avoid any possible interruption of his life that might result if he stops. By deciding that the stranger is not a member of the community, the priest is able to keep his orderly world intact. At the same time, he fulfills the letter of law.

Next the Levite comes to the place. Although the text is silent about the facts, it is possible that he has been assisting the priest at the temple and is also on his way home from Jerusalem. If this is the case, he would know that the priest was on the road ahead of him. That makes his decision an easy one. If the priest passed this stranger by, then the priest must have made a determination that the man was not a member of the community. The Levite would not want to second guess a priest and so he goes on after making only a cameo appearance. Deference to hierarchy and to authority have always been convenient substitutes for the agony of moral choice.

Note that the progression of those on the road is first a priest and second, the Levite. An attentive listener might well expect the third person that came along would be a lay representative who also has served as a participant in temple services. These lay representatives formed an important bridge between the "professional" religious establishment and the regular community. And how would that individual evaluate the situation?

But here comes the radical reversal. The third person who came along was a Samaritan. And this Samaritan had compassion, went to the man, "bound up his wounds", took him to the inn, and paid from his own pocket for his keep. Here was a Samaritan, a hated foreigner, who "had compassion." Imagine the courage of Jesus even telling the story to that audience. The two words—good and Samaritan—simply do not work together. Jesus is asking the audience here to "test" themselves, to think the unthinkable.

Finally, Jesus turns the question inside out and back on his interlocutor. He never responds to the lawyer's self-centered question which was who is

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taken from a tape recording furnished to a bible study group considering the parable of the Good Samaritan. Although the tape was obviously a commercial one, identification of the speaker could not be determined. He was very insightful and had obviously thought a good deal about the parable. I cannot give appropriate credit for the insight.

61. See generally *Numbers*, ch. 19.

*my* neighbor? Jesus asks the lawyer who is neighbor *to* the wounded one? The neighbor is one who has broken free of the bonds of narcissism and has poured out his life for the wounded and broken man by the side of the road.

### C. *Some Community Responses*

As with a first century audience, the story compels us to reach to the very center and conceive that which our culture tells us is inconceivable. It does not tell us what to do. Parables never do that. Instead they tease and finally shock us into radical uncertainty by breaking down all our preconceived notions about what is right and proper. This story destroys our commonsense by showing how ultimately nonsensical our own line drawing is.

Yet the law depends on the daily exercise of drawing lines. The law must have some way of defining right conduct. One way is to exclude certain forms of behavior and to say simply that illegal conduct is that which is on the other side of the line. There are countless other illustrations of the same phenomenon. That is troublesome theologically because now the legal definition of our own rectitude means that our goodness is only shown by its absence in someone else. That is our sin—our all too human goodness—and it is more debilitating than we like to think. We do not like to see it in ourselves, we can only sneak up on it and take a quick glance at it through stories like that of the Good Samaritan. It is important to recognize that the priest and the Levite are not some depraved figures; they are instead respectable, law abiding people—moral pillars of the society. That is finally what is wrong with the priest and the Levite and what is deficient about the law as any repository of moral aspiration. Any system that requires that we define our goodness by another's lack of it inevitably leaves us in the position of drawing lines, of separating sheep from goats, righteous from unrighteous, good from bad, sick from well. And as long as we draw lines, we carefully and with consummate skill will place ourselves on the right side. As long as we draw lines, we will be hard pressed to remember that, in this context, we are exactly like our neighbor, lost and in need. Just like the priest, who defined his moral obligation by the law, we will pass on by. Just like the Levite, who allowed the necessity for the ordered world of hierarchal relationships to determine his response, we will pass on by.

During the course of the strike of 1989, there were scores of prayer meetings in which Christians of diverse social and cultural backgrounds wrestled with the precise questions raised by the story. Our gatherings were to pray for wisdom and strength as we decided whether and how to resist enforcement of the law when we were told to move from the public way so that coal trucks could pass. Most of us came to these gatherings with a good dose of self-righteousness. We were, after all, standing on the side of justice. Many of us had spent days on the picket line, talking to our neighbors, and planning various events designed to attract attention to our

cause. Few of us were prepared for what happened as we began to listen to the word.

We would rather quickly conclude that the law placed a much greater premium on order than it did on justice. It was relatively easy to discern that the state, by entering the dispute to limit picket line activity and arresting protestors who sat in the road to block coal trucks, was siding with the oppressor. After all, it was Pittston that unilaterally had terminated health benefits to widows, pensioners, and disabled miners—surely among the most vulnerable groups in the region—fourteen months before the strike began. We were simply standing in solidarity with those neighbors whom Pittston had neglected. How could we be better neighbors?

But ever so slowly questions would bubble up which we did not want to hear. And they would not go away. Is my neighbor the oppressor? Is my neighbor the one who would take my job? How do I love my neighbor? It is easy to love my neighbor when she is on the picket line standing in solidarity with me, but what about the replacement worker who is now doing my job? Is Paul Douglas, the CEO of the Pittston Company, my neighbor? Is my neighbor the replacement worker that I have conveniently dehumanized by referring to him as a scab? Sometimes the questions were too painful and we shut them out, but when we trusted the process some incredible things happened. Let me offer two brief vignettes.<sup>62</sup>

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One occasion involved a woman from the Appalachian region who had been active in the recovery efforts following the Buffalo Creek disaster of 1973,<sup>63</sup> a flood which killed more than 100 people and which was caused by Pittston's negligent construction of a dam. She confessed her long-term hatred for Pittston. She asked for the strength to love the CEO and to think of the employees at the home office in Connecticut as sisters and brothers. In response, another woman, the wife of a disabled miner whose health care benefits had been terminated by Pittston, told her own story of the destructive power of hatred. This woman, who also had lost a father and brother to coal mining accidents in Pittston mines, told how difficult it had been for her to ever forgive the company, but that she had finally discovered she would never be free to live her own life unless she surrendered that bitterness. Only when her faith had penetrated so deep that she could actively pray for the person who was acting like her enemy, had she been able to let her bitterness go.

An older man I knew, who in prior strikes had often resorted to destruction of property, expressed strong dissatisfaction with the entire nonviolent strategy of the strike. For weeks he complained that in the old

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62. I have many of those stories, but I only offer two of them here.

63. There are numerous accounts of the Buffalo Creek disaster, many of which are familiar to lawyers. Perhaps the best known of those is the account of the subsequent class action lawsuit by Gerald Stern, which has become a staple of many civil procedure courses in the last several years. G. STERN, *THE BUFFALO CREEK DISASTER* (1976).

days they would have had the strike settled in a couple of days. "All it would take was blowing a bridge or tipple and that would have stopped the production of coal." He stood on the picket line watching a replacement worker, whom he knew, taking over his job. He cursed the nonviolent strategy as inaction. He came to those prayer sessions with great reluctance and only because a relative dragged him there. He often asked what God had to do with the strike. For him, real power was in dynamite planted under a bridge or a coal tipple. Yet somehow he came and listened to his friends wrestle with the problem of obligation to love one's neighbor. Finally one evening he asked if his friends would pray for him so that he might be able to pray for the replacement worker doing his job.

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To the extent that the witness of the church was valuable it was because the community thought small. The Good Samaritan story has that effect. The discernment process forced us time and again to realize that if we were to reach out to the stranger by the side of the road, it had to be a very personal encounter. Living out that story in the reality of a broken world does not permit the church to hide behind the anonymity of large numbers.

As we were repeatedly required to examine our own attitudes about our adversaries, we were forced to pray that in the confrontations with police, replacement workers, security guards, or company officials, we would remember that we were all bound together in our desire for safety and in our complicity with violence. Somehow that recognition took away the preoccupation with violence and on occasion permitted us to recognize that our strength was not in our ability to change another's behavior; instead, it was in our willingness to trust in a power greater than ourselves. We came to appreciate that the absolute vulnerability of the Samaritan, who risked his own life to aid the stranger in the road, was finally his strength. And that was true for the church when we acted as the church. That focus on powerlessness finally allowed us to abandon the quest for some measure to judge our effectiveness.

Whether sitting in the road and disobeying the command of the Commonwealth to move on was the right thing to do can never be known. There is no safe ground. There is no assuredly correct answer. We always live contingently. Ours was a claim that we were fulfilling an obligation to neighbors. We did come to know that the position we were asserting could only have validity as long as we were prepared to live it out as our own vision. We prayed that the same God who on the cross at Calvary absorbed the violence of the world, would absorb the violence in us which all too often made us insist on being right at the expense of being obedient. When we forgot those lessons, which we did on more than one occasion, it was usually because we did not take the time to explore together the awesome task of loving our neighbors.

### III. CONFRONTATION WITH THE STATE

At some level, the church is always in conflict with law; and that conflict intensifies when the church acts in ways inconsistent with the

apparent command of the sovereign. But that conflict is, I think, healthy for both the church and the law. When world views are challenged, then the protagonists to the conflict must look at their respective foundations to see what is really at stake.

All too often the church recites its liturgy and sings its hymns but neglects to remember the transformative stories that give it life. It mouths the words but cannot hear the voice which wants to question and challenge what has been settled by conventional wisdom.<sup>64</sup> The priests of the law talk of its aspirations and point with some justifiable pride to its origins in the church, and yet never acknowledge that to insure its own survival the law must rely on a willingness to resort to violence.<sup>65</sup>

And that is the divide. The church, when it challenges the law, if it is to be the church, cannot resort to violence. The law, on the other hand, to be effective must stand ready to back its pronouncements with force.

No matter how much the law seeks to justify its activities strictly as matters of interpretation, no matter how many levels of bureaucracy separate and isolate the Supreme Court from the executioner who pulls the switch, there should be no mistake—the law is in bondage to violence. It is not that the law is evil, merely that it is fallen. Most of the world knows only two responses to violence—fight or flight—and that version of reality is woven into the fabric of the law. Robert Cover captures its essence: “Were the inhibition against violence perfect, law would be unnecessary; were it not capable of being overcome through social signals, law would not be possible.”<sup>66</sup>

But there is another way; a third way which is neither fight nor flight. It is the example of Jesus, who overcame the violence of the world by absorbing it himself. The church, as the body of Christ, has that same fundamental mission to proclaim an alternative to violence.

The witness of the church when it is in conflict with the law is, I believe, twofold. On the one hand it stands over and against the law and proclaims its freedom from the bondage of violence. At the same time, the church is in the position to stand with the law and celebrate those aspects of the law which permit justice to flourish. The law is, after all, a gift from God; to honor that gift which is so much a part of our common life together is to honor God. If the church is to be that sort of witness to and against the law, it cannot withdraw and remain aloof. The relationship between the church and the law is never “one of uncritical allegiance or obedience.”<sup>67</sup>

While opponents of civil resistance point to Romans 13<sup>68</sup> as ruling out disobedience as a form of witness, the text does not support that argument.

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64. W. BRUEGGEMANN, *supra* note 33, at 90.

65. See generally Cover, *The Bonds of Constitutional Interpretation: Of the Word, the Deed, and the Role*, 20 GA. L. REV. 815 (1986); Cover, *supra* note 14.

66. Cover, *supra* note 14, at 1613.

67. W. STRINGFELLOW, *supra* note 1, at 93.

68. *Romans* 13:1.



A thorough examination of that text is beyond the scope of this essay.<sup>69</sup> However, it should be noted that the text itself does not command obedience. The instruction is to be *subject* to government. A Christian who is subject to the state still retains her moral independence and judgment. The authority of government is not self-justifying. The government is ordered by God, but the biblical text does not say that whatever the government does or asks of its citizens is good. What the text calls for is not obedience but subordination, and that is significantly different from obedience. The fact that Jesus accepted subordination but not obedience and was willing to suffer death, is itself an act of participation in the affairs of the government.

The Sermon on the Mount admonishes us to love our enemies and to be nonresistant in our relationships within the social order.<sup>70</sup> Both the Sermon on the Mount and Romans 13 call us to respect and be subject to the state and to bring about a new kind of order by our suffering witness. The power of the Gospel is that we are freed of the responsibility of making sure that everything turns out to suit our taste. God is in control of history. We are called to be obedient to him. That means to act in love. It does not mean to always obey the existing order, only to be subject to it.

To accept the view that we are obliged to be obedient to the state is to fail to remember that both the cross and the holocaust are symbols of what humans do to each other in the name of the law. We can be subordinate without also being obedient. But to contest the power of the state we must, I think, do it in love.

When the church and the state offer conflicting views of obligation, that minority community, the church, must consider what it will do when the state asserts the primacy of its own system. That is, the church must explain its stance in the face of opposition. Acquiescence in the state's interpretation reinforces the state's claim. Confrontation or resistance on the other hand challenges that claim. Resistance to the official law, if it is to capture our imagination and permit the law to grow, must be based on a powerful story. But it cannot be based on power. It must be redemptive. Any story of resistance which deviates from the example of the life and death of Jesus and substitutes violence for the loving resistance and suffering made normative in Jesus is not holy obedience.

#### CONCLUSION

I have gone on long enough. Those who came to this essay seeking direction for the law's proper response to religious based resistance will remain unsatisfied. Those in religious communities seeking a blueprint and justification for civil resistance will likewise remain unsatisfied. What I have tried to do is to tell a story of resistance from within; how we come to decision, how we reason about things and what we see from our point of

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69. For extremely valuable accounts of the apparent conflict between Revelations 13 and Romans 13, see J. YODER, *supra* note 32, at 193-232; W. STRINGFELLOW, *supra* note 22.

70. *Matthew* 5:1-7:29, specifically 5:43-47.

view. I am sensitive to the problem that any attempt to justify or claim superiority for the story undermines it. How well we tell it has not a little to do with how it will be received. But whether the story is persuasive is ultimately beyond our control. Even more important than the telling is how we live it out. It is a simple story to tell but it is not easy to live. If we tell it honestly, it may be possible to find the courage to live it. At least that is my hope.

