

The Christian's Use and/or Abuse of the Legal System in Our Litigious Society

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Ever since the Fall of man into sin, disputes have arisen between individuals and between groups because of differences of opinion or because of some wrong that was committed that have required settlement in one way or another. Sometimes the settlement was accomplished by force. The revenge Lamech took on someone who injured him (Genesis 4:23 ff) would be an early case in point. In the period after the Flood, we read of Jacob having to come to terms with his uncle Laban, but being able to do so without having to resort to bloodshed (Genesis 31:31ff).

Because man's nature hasn't changed from the time of the Fall, Christians today continue to be faced with the question of how to settle disputes or how to deal with the matter of whether and/or how to recover damages from losses or wrongs they have suffered at the hands of others. In our society, as has been the case with societies from early on, a legal system has been established to fill that need. For various reasons, though, the Christian may have questions regarding the appropriateness of using the legal or court system in our country. One would be a recollection of the words of 1 Corinthians 6 where Paul speaks in a disapproving manner of lawsuits among Christians. Another would be the general low repute in which many people hold the legal system and those associated with it. The attitude that had the rebel butcher in Shakespeare's *King Henry VI*, Part II, saying, "The first thing we do, let's kill all the lawyers," (IV, ii, 86) is not unknown today, and even some lawyers are dismayed by the actions and attitudes of various of their colleagues (e.g. the comments of Chief Justice Warren Burger earlier this year regarding the situation with our legal system¹). Questions of finances and the fame or infamy that might result from a suit are also matters that are taken into consideration.

It would be nice if we could just close our eyes and have the question disappear, but that would be wishful thinking. What some people consider to be an ever-increasing glut of lawyers in this country which causes us to have more lawyers per capita than any other nation in the world, the constantly growing number of civil lawsuits that are filed annually in this country (13.3 million in 1981 or, one for every seventeen Americans²), the recently granted right for lawyers to advertise, the "I-have-my-rights" attitude that we are often told that we should have, and, of course, the continued influence of the devil, the world, and the sinful flesh all make it quite clear that WELS Christians and their pastors will continue to face a greater likelihood of being involved in a lawsuit as time goes on. So it is that we find ourselves addressing the matter of the Christian's use and/or abuse of the legal system in our litigious society.

Let it first be stated that this paper is not intended to be an exhaustive treatment of all aspects of the legal system and what use Christians would want to make of it. The purpose of this presentation will be to peruse the principles pertinent to the subject of establishing and recovering damages in the adversarial system as it is practiced in our country today.

That there is a need to have a system for establishing and recovering damages is obvious. Because of sin there will be disputes even among believers. That there will be the need to insure

¹ *U.S. News and World Report*, 96:12, February 20, 1984.

² *U.S. News and World Report*, 94:15, March 17, 1983.

that justice is established and allowed to prevail is also evident. Both of these thoughts are in keeping with what we learn from Scripture. Regarding the first, one may cite any number of examples from both the Old and New Testaments. When the children of Israel left Egypt, the people recognized that Moses was to be an arbiter of disputes and so they came to him with their problems. At the suggestion of his father-in-law, Jethro, a more organized system was established for handling these matters (Exodus 18:13ff). When the Lord gave his people the Law at Mt. Sinai, a portion of what he said dealt specifically with adjudicating conflicts, grievances, and losses among the people, stating both procedures and penalties that were to be invoked in various cases (Exodus 21:1ff). Moses re-emphasized the need for godly judges before he took his final leave of the people (Deuteronomy 16:18ff), and he refers to courts as a matter of course (Deuteronomy 17:8; 25:1). At the time of King David, one of the lines which Absalom used to draw the hearts of the people away from his father was, "If only I were appointed judge in the land? Then everyone who has a complaint or case could come to me and I would see that he gets justice" (2 Samuel 15:4). His comments, by the way, would seem to indicate that even at that time it was not difficult to induce people to complain about the legal system. Solomon, too, recognized it as one of his responsibilities as king to be a final arbiter of disputes, and his wisdom in doing so became legendary (1 Kings 3:28; 4:29ff).

In the New Testament, the examples are not nearly so numerous, but certain passages may be considered which will help to shed light on the subject. While the Savior looked for a level of sanctification among his own that would have obviated the need for a justice system, he recognized that the requirement would be there for legal procedures. This is evident in his answer to the Pharisees when they questioned him in regard to the matter of divorce and the Savior stated a procedure had been established because of the hardness of their hearts (Matthew 19:7f). He castigated that same group of people because they had neglected, among other things, the responsibility to see that justice was preserved among them and through them (Matthew 23:23; Mark 12:40). He used the example of an importunate widow pleading with a godless judge to teach his disciples persistence in prayer (Luke 18:2ff).

Elsewhere in the New Testament, the actions of Paul need to be considered together with his words in 1 Corinthians 6 to get a complete picture of his attitude toward courts. When the situation demanded it, he did not hesitate to take advantage of the legal rights afforded to him as a Roman citizen. There was nothing inherently sinful in letting the courts get involved in a dispute. His words to the Christians in Corinth were not so much an attack upon the legal system as they were upon the almost complete lack of a truly Christian attitude among the saints in that city, a lack that had evidenced itself also in their squabblings over preachers, their misunderstanding of the nature of God's Word, their disrespect for or misconceptions about the apostolic office, and their cavalier attitude in regard to the matter of the manifestly impenitent sinner in their midst, not seeing that their lack of discipline was itself a sin. In Paul's view, there was nothing essentially amiss with establishing or using a system for arbitrating disputes or adjudicating wrongs. He never called for the destruction of the system that had been established, just as that call had never been issued in the Old Testament. In Corinth, a weightier matter was involved and this was Paul's concern.

The preceding makes it clear that there is nothing essentially sinful or unscriptural about using a court system itself, and this fact was also recognized in the Lutheran Confessions. In his discussion of the Eighth Commandment in the Large Catechism, Luther accepts it as a matter of fact that there will be Christians who are judges and magistrates and that their responsibilities in observing the commandment according to their public office will differ from those to which the

Lord will hold them accountable in their private lives. Both the Augsburg Confession and the Apology to the same also touch upon this matter, the latter at greater length than the former. In Article XVI of the Augustana we find the words, "It is for Christians to bear civil office, to sit as judges, to judge matters by the Imperial and other existing laws, to award just punishments" (*Triglot*, 51). In the Apology, those are condemned who said, "That not to hold property, not vindicate one's self at law, (not to have wife and child), were evangelical counsels" (*Triglot*, 331), and shortly afterward it is stated, "Therefore private redress is prohibited not by advice, but by a command (Matthew 5:39; Romans 12:19). Public redress, which is made through the office of the magistrate, is not advised against, but is commanded, and is a work of God, according to Paul (Romans 13:1 sqq). Now the different kinds of public redress are legal decisions, capital punishment, wars, military service" (*Triglot* 331). Lest the words be misunderstood, it must be noted that the sense of this section is not that we must go to court if we have a grievance. Rather it is the thought that, if we have a grievance which must be settled, it is not to be taken care of by a private, one-sided decision, but is to be adjudicated according to public ordinances. Also, the term in the Latin for "capital punishment," *supplicia*, is not limited in meaning to the death penalty, but covers all punishment that would be imposed by the state up to and including the death penalty.

Furthermore, the desire for justice (tempered with mercy) will be a characteristic of the Christian as he reflects the attributes of his God. The reason for the courts in the Old Testament was so that the people of God might reflect the nature of their God in their daily lives. It was for this reason that condemnations were pronounced upon those who accepted bribes (Amos 5:12) and Amos was inspired by the Lord to encourage the people to "maintain justice in the courts" (Amos 5:15). It was this desire for righteousness and justice as it would be perfectly known in the Lord's kingdom that led the psalmist to plea in the Forty-Third Psalm, "Vindicate me, O God, and plead my cause against an ungodly nation," and to look forward with anticipation to the time when the Lord would come to "judge the world in righteousness and the people with his truth" (Psalm 96:13).

In the light of the foregoing, then, it becomes obvious that it would be wrong for a Christian to burden another Christian's conscience with an absolute prohibition against lawsuits, or even against seeking redress or satisfaction in general for wrongs suffered in life. There is no command in Scripture stating specifically, "Thou shalt never use the court or legal system," even in 1 Corinthians 6, and there is ample evidence of such systems being used by God's people. Furthermore, the legal system being part of government, it would be included in the general sense as something that has been established by God for the good of man as Paul indicates in Romans 13:1ff. Thus the matter of the Christians use of the legal system in our litigious society is an adiaphoron and can properly be considered under a "use and/or abuse" basis. What will be involved, then, for a Christian facing a litigation situation is a review of the basic principles governing Christian life and how they come to bear on the present circumstances. It will be the Christian's desire to follow whatever course of action he decides upon with a clear conscience and out of faith toward God, remembering that "everything that does not come from faith is sin" (Romans 14:23). It will be the attitude of the heart which determines whether the Christian's involvement with the legal system will be one of use or abuse, whether it is sin or sanctified living. Different Christians, or even the same Christian, in different situations may find themselves following very different courses of action.

The two principles which will be the touchstones for evaluating every circumstance will be those given by the Lord himself in Matthew 22: "Love the Lord your God with all your heart

and with all your soul and with all your mind... Love your neighbor as yourself.” Of these twin statements the Lord could say, “All the Law and the Prophets hang on these two commandments” (Matthew 22:6). The first question, then, that would have to be asked regarding any legal matter would be, “Would this action demonstrate a true fear, love and trust of God, or is it being initiated for ungodly reasons?” One of the aspects of this question would be whether the action would bring dishonor upon the name of God. It was for this that Paul berated the Jews in Romans 2:17ff, saying that their ungodly lifestyle had caused God’s name to be blasphemed among the Gentiles, and it was undoubtedly part of the reason he criticized the Corinthian Christians so severely. By their lack of love toward one another, they were making a mockery of the God of love they claimed to serve. It was because his use of the legal system would keep dishonor from coming upon God’s name that Paul had no compunction about demanding his rights in Philippi (Acts 16:35ff) or when he was captured in Jerusalem (Acts 22), or when he was on trial before Festus (Acts 25:10-11). His actions were an expression of love for God and his Word.

A second aspect of this principle would involve trust in God to provide for us and stewardship of what he has given us. Whether the sum sought in a damage suit is large or small, there is always the distinct possibility that the Old Adam in us is looking for a free ride all the time it is trying to excuse itself with the most godly of motives. The desire to recapture that which was “ours” can lead the Christian to forget that he is merely the steward of that with which the Lord has blessed him, that it is the Lord’s blessing which determines how much he has, that the Lord can replace any loss more richly and more quickly than he might ever expect, or take away that which the believer thinks he has won for himself as the Lord made clear, for example, through his prophets Haggai and Malachi. The fact that this was part of the problem in Corinth is evident from Paul’s words, “Why not rather be wronged? Why not rather be cheated? Instead, you yourselves cheat and do wrong, and you do this to your brothers” (1 Corinthians 6:7-8). This is not to say that seeking damage awards is in and of itself wrong. The Christian may see this as an aspect of exercising good stewardship and it can be a means by which the Lord provides for his own. A parallel might be drawn to the story about the man at heaven’s gate who complained that he hadn’t been rescued from a flood even though he had trusted in the Lord, all the time not realizing that the two boats and the helicopter he had waved off had been the means by which the Lord had sought to provide for him.

The Christian who is initiating a lawsuit in our suing society will also want to insure that in doing so he hasn’t been caught up with the current of the times that always seeks to put the blame or fault for anything wrong that we do or any injury that comes to us on someone else. By his admonitions to confession in Scripture the Lord reminds us that he made us responsible individuals who were to be in control of this earth and not controlled by it. To have any other attitude is to reveal a lack of respect for him and his work of creation.

The fourth aspect that would have to be considered in determining whether or not the Christian is showing love to God by his use of the legal system would be whether he is placing God’s desires above his own. Christians today confess with the saints that have gone before that we are God’s servants and that he is our Lord. We are not independent agents. In a day and age when the statement, “I have my rights,” seems to be a prevalent theme in the lives of many people, the Christian will recognize that there will be those occasions on which the Lord and his glory will be better served by setting aside the exercise of our rights for the moment. This, too, was something at which Paul was driving when he asked the Corinthians, “Why not rather be wronged? Why not rather be cheated?” (v. 7)

The second principle that will be considered in deciding what course of action the Christian will follow in resolving a dispute with another individual is that in all things he will want to show perfect love toward his neighbor. Any course of action he follows will reflect the truth that he sees in his fellowman, including the one who has wronged him, a person whom God loves and for whom Christ died, and will value and treat him accordingly. This thought was emphasized by Christ himself when, in his Sermon on the Mount, he included the matters of grievances with one's brother and those of legal action in his discussion of the Fifth Commandment Matthew 5:21ff). The propriety of his doing so becomes evident when we consider that a possible paraphrase of the Fifth Commandment would be, "You will not regard your neighbor as one who is unworthy of God's love." This attitude will express itself according to Jesus' words by the Christian not using his relationship with God as an excuse to ignore the relationship with his neighbor (vv. 23-24), and by always being ready to make the first move toward reconciliation, whether he is the one who has been wronged or who has committed the wrong (v. 25). It was the complete lack of such a spiritual attitude among the Corinthians that led Paul to tell them that in their lawsuits they had lost even before they had begun because there was a complete want of this perspective among them (1 Corinthians 6:7-9).

What will be best for his fellowman and neighbor if it is the Christian who has been wronged may vary from situation to situation. In any case, there will be the need to establish that a wrong has been committed against both God and man, and that there is an imperative to establish both repentance and forgiveness. At that point, divergent cases may take divergent courses to best carry out the principles of perfect love toward God and man. In one situation, Peter's statement that "love covers over a multitude of sins" (1 Peter 4:8) may prove to be the overriding thought as we recognize the fact that we are all sinners living in a sinful world. In other cases, it may be best for the individual and the wider circle of our fellowman that the individual at fault be made to bear the responsibility for his actions. And while the procedures may be different when dealing with fellow believers versus dealing with non-believers, the principles will be the same. According to the Lord's word, we will not seek our own revenge (Romans 12:19), but the Lord's glory and our neighbor's welfare. Nor will the Christian let his sinful flesh use outwardly pious actions and expressions to cover up for sinful motives (1 Peter 2:16) or let the evil of the world determine what course of action he will follow (Romans 12:21). Whatever the course of action followed and whatever the result, the Christian will remember the words of Proverbs 29:26, "Many seek the ruler's favor, but justice for man comes from the Lord."

In this connection, people who want to try to avoid an adversary situation in a dispute or lawsuit may want to explore the services and program offered by the Christian Legal Society. The thrust of their work can be seen from the title of a booklet they publish, *The Resolution of Disputes Between Christians*. Information regarding this group came to the attention of the writer of this paper too late to allow an in-depth study or review of it, but those who would like to find out more may do so by contacting their offices at P.O. Box 2069, Oak Park, Illinois, 60303, (312) 848-7735.

The Christian being taken to court or considering the possibility of taking another person to court will need to consider all the aspects involved to determine whether it is something that can be done in a God-pleasing way or whether it will be an abuse of something which God has provided for our benefit. Whatever the case, the course of action will always have to be decided keeping in mind another courtroom – God's. It is a courtroom in which the Christian should have been condemned but has been acquitted, one in which he could daily be accused of "breaking

parole” but has every day been forgiven, one in which God could “nail him to the wall” but graciously declines to do so. That thought will serve as the one basis on which the Christian will be able to use and not abuse the legal system in our litigious society.

Bibliography

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