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TEN COMMANDMENTS FOR CHRISTIAN JURISTS

Sermon delivered by: Reverend Robert F. Drinan, S. J., Dean, Boston College Law School, Brighton, Massachusetts

At: Red Mass, St. Augustine's Cathedral, Bridgeport, Connecticut

Time: Wednesday, September 9, 1964, 11:00 A. M.
Within the next few days more than 52 million young persons in America will return to classes in the schools of this nation. Of this number some 45 million or about one-fourth of the total population of the entire country will be students in state-sponsored public schools. The education within these schools must not include, two recent Supreme Court decisions have ruled, religious practices of a devotional nature. These schools, however, the staunchest of American traditions affirms, must develop the character of their students by implanting high standards of morality and citizenship.

Some 7 million students will shortly return to church-related schools, institutions not financed in any way by the state. These schools have as their fundamental purpose the transmission of learning integrated with piety and the formation of character by religious motivation.

It seems clear that a new era of Church-State dilemmas is upon us. The nation has to some extent accepted the disappearance of sectarian practices from the public school and is searching for other means by which moral values may be communicated. The nation on the other hand seems undecided about the wisdom of granting tax support to church-related schools.

At this historic moment of transition, at this hour of truce in the war about the place of religion in education let us ponder upon some reflections which may assist Christian jurists to understand the momentous Church-State struggle which seemingly must be resolved within the next decade or the next generation. Let us try to construct a table of Ten Commandments for Christian jurists. These counsels may hopefully be of assistance to all Christians amid the storms ahead; they may be of particular help to Christian jurists who will continue to stand in the very eye of the needle of the storm that will continue to rage in America for the foreseeable future about the proper relationship of Church and State.
TEN COMMANDMENTS FOR CHRISTIAN JURISTS

1. The first Commandment for every Christian member of the bench and bar is a mandate to be scrupulously fair to all our fellow citizens, -- believer and non-believer, religionist and atheist, Christian and non-Christian. Such a resolve is not always easy for a Christian to endorse or to follow; Christians -- like most groups of convinced religionists -- tend to insist that the nation in which they form a majority of the population has a duty to recognize and even promote the religion of the majority of its citizens.

In America the Bill of Rights, -- those articles of peace by which we live, -- guarantees not merely freedom of religion but freedom from religion. Any legal establishment of religion, therefore, however non-sectarian or multi-denominational, cannot be squared with the commitment made by all citizens under the Constitution that they will not use the power or prestige of the state to advance their own religious beliefs.

2. The second Commandment for Christian jurists may seem to be inconsistent and even contradictory with the first: the second duty is to insist that the American state clarify, cherish and communicate those basic moral principles on which the Republic is founded and without which the nation cannot really survive.

In many cases these fundamental moral ideals derive from the spiritual norms brought into the world principally by Judaism and Christianity. The role therefore of the American state is to preserve and promote these bases of morality without, however, infringing upon any citizen's right of religious freedom or anyone's right to be free from state-sponsored religion. The work of the Christian jurist, it will be clear, is a task that demands the most sophisticated and subtle formation of principles in order to construct a symbiosis of sacred and secular truths. It is a task which has particular relevance for the public school but its importance and urgency reaches into almost every aspect of our country's foreign and domestic policies.
The Catholic member of the bench and bar has a special mission with regard to the development and the deepening of the moral principles by which American society is governed; it is the Catholic jurist, more than most others, who possesses within his religious tradition a highly developed notion of that natural moral law which has so frequently constituted the inarticulated major promise of American society.

3. If religious jurists must be rigorously fair to believers and non-believers while simultaneously being articulate and vigorous in defending the wellsprings of American morality their obedience to these two commandments will lead them to a third duty, -- a critical but respectful regard for the dignity and the opinions of the United States Supreme Court.

It is not uncommon to find among Catholic lawyers and judges the view that the Supreme Court initiated and perpetuated a fundamental error in the very first of the seven major Church-State cases on which it has ruled since 1947. This view is more frequently an emotional outlook than a viewpoint grounded in a thorough knowledge of the Supreme Court’s actual opinions and the alternatives available to the Court.

One can, to be sure, argue that the Court in the past generation has followed a fundamental error in its construction of the establishment clause of the First Amendment. But this line of reasoning leads logically to a result that contravenes the first commandment of all of us, -- the axiom that every citizen has a right to religious freedom as well as a right to be free from religion. The Supreme Court in its construction of the establishment clause has sought to give to the state an attitude of benevolent neutrality towards all religions. Those who would insist that the Court has been in error since 1947 when first it construed the establishment clause have the burden of demonstrating how an alternative line of reasoning would have been both consistent with the Constitution and more advantageous to the nation.
What is even more disturbing than the poorly thought-out accusations that the Court is in error regarding the establishment clause is the even less thought-out attempts by Congress to change the wording of the First Amendment of the Bill of Rights. The thoughtful Christian jurist, regardless of his views of Supreme Court's opinions on Church-State issues, will not lightly endorse a constitutional amendment which would alter those 16 words about religion in the First Amendment which have preserved religious liberty in such a remarkable way in our pluralistic society.

The Constitution is always amendable; so is the Bill of Rights although its provisions have in fact never been altered by any amendment in all of American history. But before one recommends a revision of the first and the foremost of the ten Amendments by Congressional action to be ratified by two-thirds of the states one should be completely certain that such drastic action is urgently required. No such action is required by any decision or series of decisions of the Supreme Court of the United States.

One could argue persuasively that the Christian jurist's obligations would be satisfied if he fulfilled these first three Commandments, -- the duty to be fair to non-believers, the obligation of preserving the nation's moral bases and the requirement of being critically respectful of the opinions of the nation's highest tribunal. Even though the religious man of the law could probably fulfill all his duties by obeying these three principal commandments it may be helpful to spell out briefly some seven other mandates which, although possibly contained in these first three crucially important commands, are nonetheless worthy of consideration.

4. Every person of the Catholic, Protestant, and Jewish faith as well as every person of no faith must be scrupulously careful to avoid taking a position alleged to be for the common good but in reality a position unconsciously dictated by the attitude that what is good for his own church or consistent with his own philosophy is good for America. The Catholic who advocates public support for parochial schools
the Protestant who seeks a return of prayers to the public school and the person of the Jewish faith who requests exemptions from Sunday laws for Sabbatarian observers must all realize that their position should not be defended primarily because it benefits their own interests but because it is deemed to be consistent with the constitution and the rights of those who might be penalized to some extent by the exercise of the privilege that is claimed.

5. If self-interest is to be subordinated in connection with Church-State requests a fifth commandment tells us that emotional arguments and appeals are even more to be avoided. The Christian jurist in America today sometimes feels that religious values are being dis-established and that the courts are oversensitive and too responsive to the ideology and even the idiosyncrasies of the non-believer. But even such a feeling -- unsupportable incidentally by decisional law -- cannot excuse the intemperate, abusive, discourteous and truly un-Christian tone and language adopted by so many Church-State publicists of every persuasion. America's newly controversial topic of religion and the law can hardly be expected not to evoke emotional responses since it touches upon the most fundamental truths cherished by citizens. But the admittedly delicate and sensitive issues involved in Church-State disputes should forewarn every jurist that he above all others has the opportunity and the obligation to bring calm, reason and dispassionate analysis into the continuing great national debate about the place of religion in education.

6. The fourth commandment to avoid positions based on self-interest and the fifth commandment to avoid emotion and exalt reason have immediate applicability to the Sixth Commandment: be objective about the quality of Catholic schools.

It is obvious that the issue of tax support for Catholic schools is central in today's Church-State controversy. And crucial in the discussion of this
burning question are the facts regarding the curriculum, the academic quality and the
effect upon students of parochial schools. Within the near future we shall have more
accurate information on these questions than ever before.

But even this new information to be compiled from studies and
surveys now in progress will not necessarily change the attitudes or prejudices of
Catholics and non-Catholics regarding the parochial school.

The religiously minded attorney and judge must, above all
others, be objective about the achievements and limitations of Catholic schools.
The jurist's training and vast experience in weighing evidence will be indispensably
necessary in the forthcoming controversies over the nature, the purpose and the future
of Catholic schools. It is the jurist who more than anyone can challenge with valid
evidence the contemporary attempts by some Catholics to denigrate Catholic schools.
It is the jurist who is uniquely trained to question and qualify the allegations of some
non-Catholics that Catholic schools are academically inferior and socially divisive.

7. If the Christian man of law is to live up to these demands on
his time and talent he will need to have the requirement of the Seventh Commandment:
the courage to speak out and to lead.

Lawyers too frequently forget that in American history it was
the lawyers more than any other group who were the symbol-makers and the fashioners
of the ideals of public life. Today's officers of the court have a unique challenge
to become the architects of a Church-State entente which will guarantee full
religious freedom to all the citizens of a religiously pluralistic society. But to achieve this
goal the bravery of a James Otis will be necessary. The courage to defend unpopular views
and to take issue with well-settled convictions held by powerful groups will be
indispensable qualities of the Christian jurist who seeks to give birth to a new vision of
religious freedom in American life.
8. This courage will be exercised only by those men of the law who realize the urgency of the present situation and will follow an eighth directive, -- the contemporary Church-State crisis is so pressing and so urgent that its resolution cannot be deferred.

In November 1948 the Catholic hierarchy in its annual message urgently requested all Catholic lawyers to study and work "patiently and perseveringly" on Church-State problems. That invitation is now even more imperious and challenging. Those who accept it must have the courage to explain and advocate positions which almost certainly will result in controversy and which may well result in trials of a personal nature.

9. But to his courage and to his sense of urgency the Christian jurist must add the mandate of the Ninth Commandment: great patience.

It has been observed that the current controversy over the place of religion in education has been almost a century in the making. The once pan-Protestant public school has now become a secularized school; the central issue before the American people is whether the secularized public school should be continued as the only tax-supported school. The alternatives seem to be to permit the public school to cooperate more fully with religion or, in the alternative, to perpetuate the public school as a secularized institution and extend tax-support to the Church-related school.

The many issues involved in this complex dilemma are so obscure, so unsettled, so emotion-laden that the jurist who seeks even to clarify the situation must possess a degree of patience commensurate with the complexity and sensitivity of the problem. And patience means that we respect the good faith of those who may disagree with us and that, even after all argument has failed to change their position, we continue if at all possible to believe in their good faith even if we must say that they have bad judgment.
10. The final commandment for the Christian jurist should possibly be the first and only commandment: - the iron law that your effectiveness as a Christian cannot rise above the level of your own personal sanctification.

A Christian jurist who is a student and advocate in Church-State matters must, of course, expound the law and explain its inner morality. He must do this with courtesy, courage and patience. But in nothing which he does can the religious man of the law forget that he is a believer, a lover of Christ and an apostle of His church; he is not in any way seeking to impose his beliefs or his church on any other person. But the Christian's beliefs and his devotion to Christ's church deepens and intensifies all of his aspirations to bring justice and the fullest religious freedom to all his fellow citizens. His faith enables him to understand more fully and love more ardently those central truths of Judaism and Christianity on which the American republic was founded.

Sanctity, therefore, — prayer and penance — are the twin cornerstones on which the Christian jurist must ground all of his thoughts and aspirations with regard to Church-State controversies.

All of these ten Commandments for Christian jurists can be summed up in very simple words. The first three commands urge us to guarantee religious freedom to believer and non-believer, insisting, however, that moral norms must be safeguarded by the state and that the Supreme Court deserves the loyalty and constructive criticism of the lawyers of America. The second seven mandates urge us to put aside our self-interest, avoid an emotional approach to Church-State problems, remain objective about the merits of Catholic schools, deepen our courage to speak about unpopular issues, realize the urgency of the task before us, resolve to have unfailing patience and, most important of all, recognize that our mission as jurists can be successful only to the extent that by our prayer and sanctification we have prepared ourselves to communicate the
beauty of the Church as the voice and vicar of Christ across time and through space.

The lives of the 52 million children who will return to school within the next few days will be influenced in important ways by what the American people decide within the near future about the place of religion in education. What the American people will decide will depend to a significant degree upon the action or the silence of religiously minded members of the bench and bar.

Let it be the prayer of each one of us today that in the forthcoming judicial year, -- and in all the years to come, -- we may never fail to give witness to the sacredness of religious freedom and the majesty of that moral law which God has implanted in the heart of each one of us. And let us pray that we may always continue to give this witness -- with calmness, with clarity, and with the greatest confidence that our voices will be heard.