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## Peacemakers: Biblical Conflict Resolution and Reconciliation as a Model Alternative to Litigation, The

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# THE PEACEMAKERS: BIBLICAL CONFLICT RESOLUTION AND RECONCILIATION AS A MODEL ALTERNATIVE TO LITIGATION

Judith M. Keegan\*

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## I. INTRODUCTION

They call themselves peacemakers,<sup>1</sup> and they are committed to a method or process for the resolution of disputes based upon biblical mandate and spiritual principles.<sup>2</sup> Biblical conflict resolution, as administered by the Christian Conciliation Service, associated with the Christian Legal Society,<sup>3</sup> is an

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1. Christian mediators and arbitrators from *Matthew 5:9*, "Blessed are the peacemakers for they shall be called the children of God."

2. Scriptural law in contrast to the legal rule of law.

3. All my association with Christian conciliation has been through the Christian Conciliation Service associated with the Christian Legal Society. This article is focused on their methods of conflict resolution. I am not aware of any other Christian conciliation organization.

alternative dispute resolution ("ADR") system for resolution of conflicts in a wide variety of contexts.<sup>4</sup> It is a process that gives priority to restoring the relationship, with the ultimate goal being reconciliation between the disputing parties, and reconciliation between each party and God. Christian conciliation which applies Biblical conflict resolution is founded on the belief that disputes between Christians belong in the church and not the court, because the issue is not winning, not in deciding who is right and who is wrong, but "determining God's will in [each] specific case."<sup>5</sup> It is situational justice rather than rule-making and precedent.<sup>6</sup> Christian conciliation is also built on the belief that the preferred method of dispute resolution is mediation or arbitration, and litigation is the alternative.<sup>7</sup> The Christian Conciliation Service is intended primarily as a means for resolving disputes among Christians, but is also a means of dispute resolution available to any person or group that is prepared to recognize the foundational Biblical principles. The fee is minimal, and peacemakers serve without compensation except for out-of-pocket expenses.

The purpose of this article is to examine Biblical conflict resolution as a model or method for dispute resolution:

- (1) to determine its development, purpose and goals, theoretical basis, and procedure or process;
- (2) to evaluate Biblical conflict resolution as an alternative to the legal system; and
- (3) to establish the contemporary value and validity of Biblical conflict resolution.

## II. BIBLICAL CONFLICT RESOLUTION AND OTHER MODELS OF ALTERNATIVE DISPUTE RESOLUTION

ADR has been called informal justice,<sup>8</sup> justice without law,<sup>9</sup> delegatization of community, or at its worst, second-rate justice.<sup>10</sup> More specifically,

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4. For example, types of cases filed with the Christian Conciliation Service of Metropolitan Washington include family, marital, debt, contract, business, employment, landlord and tenant, intra-church, etc.

5. L. BUZZARD & L. ECK, *TELL IT TO THE CHURCH*, 19 (1985).

6. Nelson, *Alternative Dispute Resolution: A Supermart for Law Reform*, 14 N.M.L. REV. 467, 468 (1984).

7. F. Mather Archer, Executive Director, Christian Conciliation Service of Metropolitan Washington. Historically, in the United States arbitration and mediation were preferred to litigation. Considering these antecedents it is the litigious nature of American society, and not the existence of alternatives [to litigation], that might seem curious. J. AUERBACH, *JUSTICE WITHOUT LAW*, 4, 8 (1983).

8. THE POLITICS OF INFORMAL JUSTICE (R. Abel ed. 1982).

9. J. AUERBACH, *supra* note 7, at 5.

10. Trubek, *Turning Away from Law?*, 82 MICH. L. REV. 824, 826 (1984).

it is an effort to design workable alternatives to our traditional judicial system, to bypass or minimize the role of courts and litigation, and perhaps,<sup>11</sup> to assure more equal access to justice for all persons in our society. The current popular movement gained impetus from the 1976 Pound Conference on the Causes of Popular Dissatisfaction with the Administration of Justice sponsored by the American Bar Association and various judicial organizations. It gained respect from the support of judicial leaders, especially Chief Justice Warren Burger, whose annual report at the mid-year ABA meeting in 1982, addressed the need for a "better way" than litigation to handle conflict and enable lawyers to "serve as healers" of human conflict.<sup>12</sup>

Alternative dispute mechanisms include processes such as less formal courts (small claims), rent-a-judge and mini-trials, mediation, negotiation, and binding and non-binding arbitration.<sup>13</sup> These mechanisms can be classified as public or court annexed (for example, neighborhood justice centers and court annexed arbitration) or private (such as mini-trials, commercial arbitration, or private divorce mediation). They may be managed by lawyers, non-lawyers, or a combination of both.<sup>14</sup> Biblical conflict resolution uses mediation and binding arbitration in a private forum where, although associated with the Christian Legal Society, the actual arbitration or mediation is conducted by teams which may or may not include a lawyer.<sup>15</sup>

The justifications for alternative means to resolving disputes are varied.<sup>16</sup> First, there is a concern over barriers to accessing the legal system. Litigation costs money and time, which prohibits access for some litigants and certain types of disputes: low income persons lack the finances to pay private counsel. Some prospective litigants have to forego litigation when stakes are equal to or less than the potential cost of litigation, because some claims are just not economical.<sup>17</sup> Other persons do not have the ability to recognize that

11. I use "perhaps" because some critics of alternative dispute resolution suggest that it is an attempt to push the powerless out of court.

12. Burger, *Isn't There a Better Way*, 68 A.B.A. J. 274 (1982).

13. Edwards, *Hopes and Fears for Alternative Dispute Resolution*, 21 WILLAMETTE L. REV. 425, 427 (1985).

14. The combination is increasing in popularity; for example, where lawyer and psychiatrist team up. See also Fox, Book Review, 33 CATH. U.L. REV. 517, 521 (1984) (reviewing J. AUERBACH, *JUSTICE WITHOUT LAW* (1983)).

15. When I attended a local training seminar for the Christian Conciliation Service of Metropolitan Washington, there were three lawyers out of about 15 attendants.

16. See generally, Tornquist, *Why Create a Dispute Resolution Center?*, 21 WILLAMETTE L. REV. v-vi (1985); Sarat, *The Litigation Explosion, Access to Justice and Court Reform: Examining the Critical Assumptions*, 37 RUTGERS L. REV. 319, 323 (1985).

17. Galanter, *Reading the Landscape of Disputes: What We Know and Don't Know (And Think We Know) About our Allegedly Contentious and Litigious Society*, 31 UCLA L. REV. 4, 15 (1983).

they possess a legally enforceable right, nor do they understand the means available for redress. The second concern is court congestion and delay, supposedly caused by a litigation explosion or hyperlexis, although there is dispute as to whether such exists.<sup>18</sup> Delay may also be caused by complex procedural rules that are part of court justice. Third, formal litigation's adversarial winner-take-all process and remedies may be inappropriate for certain disputes especially those between related parties or parties in continuing relationships, and those involving unrepresented defendants. Fourth, competence and resources of opposing lawyers are rarely equal.

The goals of ADR are to respond to the problems of the traditional legal system. Even if ADR does not succeed in that task, we may find that "ADR forms are superior processes for many cases."<sup>19</sup> They rate high on user satisfaction, fairness, and they reduce levels of litigation.<sup>20</sup> ADR may even reduce cynicism about law in our society.

Because ADR is a varied movement, there is another, though much debated, goal: using non-legal community values to resolve disputes. Or, put another way, approaching dispute resolution by way of community.<sup>21</sup> ADR is not solely based on efficiency, but on the idea that although law can be justice, justice is really more than just law. There is a constant tension between formal institutions and informal alternatives. When there is community, there is a trend toward informalism, but when shared moral vision of the group disintegrates, there is a shift toward legal rule and procedures.<sup>22</sup> It should not surprise anyone that with the current trend toward community, family, and church in the wake of the contemporary social dilemmas,<sup>23</sup> we should be moving more towards community and informal alternatives, and that Biblical conflict resolution is a natural addition to the growing number of ADR models.

### III. HISTORICAL PRECEDENT FOR RESOLUTION MADE ON THE BASIS OF RELIGIOUS AND COMMUNITY VALUES

It seems that community justice was the norm in colonial America: lawyers and the law were unappreciated and under-utilized. In the Christian community of Dedham, disputes within the community and among neighbors

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18. See Bunch & Hardy, *A Re-Examination Of Litigation Trends In The United States: Galanter Reconsidered*, 1986 Mo. J. DISP. RES. 87 (1986); Manning, *Hyperlexis: Our National Disease*, 71 Nw. U.L. REV. 767 (1977). *Contra*, Galanter, *supra* note 17.

19. Nelson, *supra* note 6, at 472.

20. *Id.*

21. Edwards, *supra* note 13, at 432; McThenia & Shaffer, *For Reconciliation*, 94 YALE L.J. 1666 (1985).

22. J. AUERBACH, *supra* note 7, at 7.

23. Dilemmas such as AIDS, teenage pregnancy, divorce, and drugs.

were resolved without law.<sup>24</sup> The Puritans had no distinct ecclesiastical court, but each church functioned as a court for a wide range of disputes including commercial and property matters, business ethics, breach of contract, and fraud.<sup>25</sup> Quakers resolved disputes among themselves based on *Matthew* 18:15-20,<sup>26</sup> but did appear in court with non-Friends. Their courts were cheap (no lawyer fees required) and arbitration could be requested at any time.<sup>27</sup> By mid-18th century, commercial arbitration and labor arbitration were established as alternative dispute mechanisms.

Twentieth century immigrants to the United States relied on previously established dispute resolution patterns that they brought with them. Jewish arbitration was one of the most enduring of the forms,<sup>28</sup> which is central to Biblical conflict resolution, a contemporary manifestation of Old Testament Hebraic tradition adhering to a higher moral authority, combined with New Testament procedure.

To preserve religious and communal values, the Jews that came to America established the Kehillah (Hebrew for "community"), to coordinate activities and to represent New York Jews. Dispute settlement figured prominently in its duties.<sup>29</sup> The Bet Din, or Rabbinical Courts, date back to biblical times and found their meaning and source in the Torah (the first five books of the Old Testament) and Rabbinical teachings. In theory, they were to hear religious issues, but "Judaism made no clear demarcation between religious and secular spheres."<sup>30</sup> Jews were not to use gentile courts in disputes among themselves.<sup>31</sup> The Bet Din of the Rabbinical Council of America still functions in the United States today, as do other Jewish Courts in New York that hear both religious and business disputes.

There are currently a number of Jewish arbitration and conciliation boards. The Jewish Conciliation Board of New York is the best known.<sup>32</sup> Cases come before this Board if they are not resolved during mediation sessions with the executive secretary. The Board consists of a Rabbi, a busi-

24. J. AUERBACH, *supra* note 7, at 25.

25. *Id.* at 23.

26. "If your brother sins against you, go and show him his fault, just between the two of you. If he listens to you, you have won your brother over. But if he will not listen, take one or two others along so that 'every matter may be established by the testimony of two or three witnesses.' If he refuses to listen to them, tell it to the church." *Matthew* 18:15-17.

27. J. AUERBACH, *supra* note 7, at 30.

28. *Id.* at 73.

29. *Id.* at 79.

30. *Id.* at 77.

31. The Twelfth Century Talmudic Authority, Maimonides, branded litigants in gentile courts as "evildoers" rebelling against Torah, and referred to them as "informers."

32. This Board handles nearly 1,000 cases annually, including family and domestic matters. L. BUZZARD & L. ECK, *supra* note 5, at 93.

nessman and a lawyer. Proceedings are informal, but judges issue a written opinion. A case is decided by “[M]ishpat [S]halom [or] (judgment of peace), a process that focuses on reconciliation without adjudication of fault or blame.”<sup>33</sup>

Beyond the examples given, equity and equity courts in this country reflect the application of religious principles. These principles stem from a time when the English king had a duty as a Christian to do justice beyond the dictates of law. The king acted through the Court of Chancery and his Chancellor who was a leading church official, to decide cases on the basis of what seemed just and equitable and not on legal principle.<sup>34</sup>

Biblical conflict resolution founded on Christian community ideals is thus no aberration. “The enduring Edenic vision of a harmonious community may invariably be undercut but even in the American experience, where law reigns supreme, the vision is never entirely stifled.”<sup>35</sup>

#### IV. CHRISTIAN CONCILIATION: THE DEVELOPMENT OF CONTEMPORARY BIBLICAL CONFLICT RESOLUTION

In 1979, Larry Eck, who is now Director of New Mexico’s Christian Conciliation Service, and National Coordinator of the Associated Christian Conciliation Services, began working with the Christian Legal Society on the concept and principles of Biblical conflict resolution. The Albuquerque pilot project that established the first Christian conciliation service started in 1980, and by December 31, 1981, there were eight chapters west of the Mississippi.<sup>36</sup> Currently there are twenty-five chapters throughout the country; all are independent, non-profit, tax-exempt corporations.<sup>37</sup> Prior to 1985, each chapter was formally affiliated with the Christian Legal Society, but this relationship has been changed to an agreement to associate.<sup>38</sup>

Each individual chapter of the Christian Conciliation Service, by applying to associate with the Christian Legal Society, agrees to apply biblical principles in processing cases, and to print in promotional literature an associational statement provided by the Society. Furthermore, association members furnish the Christian Legal Society with an annual report and a quarterly fee of five percent (5%) of receipts. In return, the Christian Legal Society

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33. *Id.*

34. *Id.* at 95.

35. J. AUERBACH, *supra* note 7, at 7.

36. The local chapter typically consisted of lawyers, businessmen, professional counselors and others from a variety of professions and vocations. For more on the Albuquerque project see L. BUZZARD & L. ECK, *supra* note 5, at 51.

37. Three more are in the process of being independently incorporated.

38. This change was made because persons who had been mediated by the Christian Conciliation Service were appealing their cases to the Christian Legal Society.

pays the national director and provides administrative help and materials. The Christian Legal Society is not the authority of the Christian Conciliation Service. The local "church" (meaning all Christian churches in the local area whether they decide to exercise their authority or not) is viewed as the authority for the Service. The Service sees itself as an arm of the "church."<sup>39</sup>

The various Christian Conciliation Service chapters have formed the Associated Christian Conciliation Service, a network of local peacemakers. This Association provides a means for chapters to communicate, support each other, and receive assistance from the Christian Legal Society's national office. There is an annual conference for presentations and discussions of relevant issues and procedures so that participants can share in their successes and failures.

#### A. *The Concept of Christian Conciliation: Purpose and Goals*

Christian conciliation is a focus on persons. Its purpose is to help conflicting parties, individual or corporate, negotiate their own agreement through Biblical conflict resolution. But its goal reaches further. "To resolve issues but leave persons essentially unchanged—unforgiving, isolated, unaware of the peace of Christ—is not an adequate mission for Christian peacemakers."<sup>40</sup>

Christian conciliation's deepest commitment is to the ministry of reconciliation given to the "church," that is, reconciliation of parties to each other and each to God.<sup>41</sup> This is the central theme of Jesus' story about a worshipper who brings a gift to the altar and is instructed that, if he has an unreconciled brother who holds something against him, he is to leave the gift, go to be reconciled, and return to make his offering. The purpose of this story was to demonstrate that holding anger against someone, and not just breaking the law of "thou shall not kill," will cause a man to be in danger of judgment.

Christian Conciliation also has as its goal the training of members of the Christian community in the principles and processes of Biblical conflict resolution so that they might serve as Christian peacemakers. The purpose of each chapter is to provide trained persons who are willing to serve as mediators or arbitrators and to maintain administrative offices with staffs who will select the mediators and arbitrators. The chapter is arranged to provide sessions that implement Biblical conflict resolution for parties who want to utilize this service.

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39. Christian Conciliation is meant to serve all Christians and all Christian churches no matter what denomination.

40. L. BUZZARD & L. ECK, *supra* note 5, at 67.

41. "All this is from God, who through Christ reconciled us to himself and gave us the ministry of reconciliation." 2 *Corinthians* 5:18.

Christian Conciliation seeks to equip local churches in carrying out their responsibility to resolve conflicts among their members. The chapter serves as a continuous resource to the churches and their members. This resource includes educating church leadership in the nature of conflict and its resolution as seen through the scriptures, in the role and responsibility of the church in conflict resolution, in the methods and tools available in resolving conflicts, and in the availability of a Christian Conciliation Service as a resource for resolution of conflict. The Service also educates church members and Christians generally about reconciliation by Biblical principles. It provides educational materials that promote an increased recognition of the need for Christians to find alternatives to the traditional adversarial structure of law. It also assists local groups of attorneys, pastors and lay leaders in establishing ministries that bring reconciliation and healing to legal conflict within their communities. Some of this assistance is in the form of conferences, seminars, training programs and literature related to Biblical principles and procedures for peacemaking.

#### B. *Foundation and Theoretical Basis for Christian Conciliation*

The theoretical basis for Biblical conflict resolution is a preexisting set of Biblical rules, laws, or principles taken from scripture that are to be applied in cases to be mediated or arbitrated (indeed, each participant will be instructed in these principles as a preparation for mediation or arbitration and will agree to follow them).

First, the scripture offers a three-step process for dealing with situations where one party feels he has been wronged by another:

1. Go to the brother in person, talk with him and tell him what he did that injured you.
2. If step one fails, take others with you as witnesses. This is the mediation or arbitration step.
3. If step two fails, air the dispute before representatives of the church.<sup>42</sup>

This last step authorizes the "church" to serve as judge and forum for final resolution of disputes that cannot be resolved by mediation or arbitration.<sup>43</sup> The process is fortified by St. Paul's admonition that Christians should not take each other to law,<sup>44</sup> because it injures the oneness among Christians that is to attest to the oneness between Jesus and God.<sup>45</sup>

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42. *Matthew* 18:15-17, *supra* note 26.

43. "Whatsoever you shall bind on earth shall be bound in heaven: and whatsoever you shall loose on earth shall be loosed in heaven." *Matthew* 18:18.

44. *1 Corinthians* 6:1-7.

45. "That they all may be one as you, Father, are in me, and I in you, that they also may be one in us: that the world may believe that you have sent me." *John* 17:21.

Other scriptures set forth rules for the Christian participating in dispute resolution. Christians are to keep unity and peace among themselves,<sup>46</sup> for they are not owners but stewards of what God has given to them.<sup>47</sup> Christians are to have a forgiving attitude toward the wrongdoer<sup>48</sup> and have a duty to pray for and bless those who wrong them,<sup>49</sup> trusting God to supply their needs no matter what happens in the course of mediations.<sup>50</sup> Christians must also confess their sins to each other,<sup>51</sup> refrain from vengeance and leave vengeance and repayment to God,<sup>52</sup> and be peaceful.<sup>53</sup> These Biblical principles, although by no means inclusive, set the foundation for the mediation or arbitration process described in the next section.

## V. HOW BIBLICAL DISPUTE RESOLUTION IS APPLIED IN THE MEDIATION OR ARBITRATION SESSION: PROCEDURES<sup>54</sup>

### A. *Preparing for Mediation or Arbitration*

Christian conciliation has its foundation in the Bible, but it is associated with the Christian Legal Society. Therefore, the process is concerned with legal issues and procedures before, during, and after mediation or arbitration. In fact, it could be said that this dispute resolution mechanism is another example of how lawyers "legalize" the alternatives to litigation—much like what has been done in commercial arbitration.<sup>55</sup> However, in a secular world where it is easy to recall all the unchristian acts done in the name of Christianity, where innocents have been part of religious scams for money, and where the rational man looks askance at whipped up emotionalism displayed in religious fervor, a little legalization is a blessing. And, as with any contemporary mediation or arbitration, Christian conciliation uses established

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46. "Now I beseech you, brothers, by the name of our Lord Christ Jesus that you all speak the same thing, and that there be no divisions among you." 1 *Corinthians* 1:10. See also *Ephesians* 4:1-6; *Psalms* 133:1.

47. "As every man has received the gift, even so minister the same one to another as good stewards of the manifold grace of God." 1 *Peter* 4:10.

48. "Be kind to one another, tenderhearted, forgiving one another, even as God for Christ's sake forgave you." *Ephesians* 4:32.

49. "But I say to you, love your enemies, bless them that curse you, do good to them that hate you, and pray for them which despitefully use and persecute you." *Matthew* 5:44.

50. "All things work for good to them that love God, to them who are called according to his purpose." *Romans* 8:28.

51. *James* 5:16; *John* 1:8.

52. *Romans* 12:19; *Luke* 18:1-8.

53. *Colossians* 3:15; *Matthew* 5:9.

54. Many of the examples in this section are taken from the Christian Conciliation Service of Metropolitan Washington.

55. J. AUERBACH, *supra* note 7, at 139.

methods to facilitate the negotiation while adding some very important techniques of its own.

Ninety-nine percent of the disputes arrive at the Christian Conciliation Service because one party has heard of the service and sought it out. The other one percent are by referrals. In general, the individual need not be a Christian; in fact, the Christian Conciliation Service is open to mediating non-Christians if they agree to the Biblical principles.<sup>56</sup>

A preliminary meeting or intake conference is scheduled to hear the conflict,<sup>57</sup> and to determine if the parties have met face to face for a private resolution of differences.<sup>58</sup> Christian Conciliation Service will not mediate or arbitrate unless this step has been taken. The intake case worker that is assigned to the case may also be a peacemaker in the reconciliation process, but regardless, will nurture and follow the case until it is closed. The Service tries to get all the parties to participate in this first formal session,<sup>59</sup> and each party is free to bring a lawyer, a friend, a pastor, or any combination thereof. If certain parties are not present, the Service attempts to reach them through a pastor or friend or by letter (generally telephone calls are not made). A second session is then set.

When these meetings are complete, a committee of intake case workers meets to determine whether the case can be handled by the Christian Conciliation Service. Criminal matters are always referred to an attorney, and cases that require professional counseling will also be referred. The peacemakers, some of whom will conduct the actual session, then meet to prepare an approach and determine the issues as they see them. The next step is to get the parties to agree on the issues, and select the process: mediation or binding arbitration. In many instances the parties choose mediation but will agree to binding arbitration if they cannot come to an agreement between themselves.

After choosing the process, disputants select peacemakers that are acceptable to both. Usually these peacemakers are drawn from a panel that is

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56. Matt Archer of the Christian Conciliation Service of Metropolitan Washington says that the type of Christian that uses Christian Conciliation Service runs the spectrum of Christianity from the "pew sitter to the Born Again."

57. In 1984-85, at the Christian Conciliation Service of Metropolitan Washington, the 89 new cases were classified as: marital (49), debt (9), business (7), intra-church (6), family (5), contract (4), landlord tenant (3), employment, intra-ministry and consumer (2 each), neighbor and "other" (1 each).

58. This is the first step as set out in *Matthew* 18:15—"if your brother sins against you, go and show him his fault just between the two of you."

59. At this meeting certain points can be explained: the legal consequences of agreeing to mediation or arbitration and the distinction between the two processes, biblical teaching about reconciliation, and costs for the process (usually \$50). According to the Christian Conciliation Service of Metropolitan Washington, in 50% of the cases only one party comes to the first meeting.

chosen by the local Christian Conciliation Service,<sup>60</sup> although sometimes pastors will want to use church members as peacemakers. Peacemakers usually work as a team of three, which will include a lead mediator and two other mediators, one who may act as moderator, and another who may act as an intercessor, praying for a just solution during the negotiations. When peacemakers are selected, the parties will sign an agreement, or submission, to mediation or arbitration.<sup>61</sup>

A major tool utilized by Christian conciliation in the mediation or arbitration process is a self-study workbook that prepares each participant for reconciliation. It is an eight-day study with life inventory and scripture readings on the topics of reconciliation, unity of Christians, sin and confession, forgiveness, love, peace, and the Biblical steps to resolving disputes. Each section contains questions and a place for the participant to answer.<sup>62</sup>

Generally, the Christian Conciliation Service sets the case to be heard two weeks after the parties are given the workbook. Prior to or during this time, parties are informed of the confidentiality of the sessions, that they may submit relevant documents to Christian Conciliation Service for review, and that they may schedule an attorney, pastor, friend or all three to be present throughout the session. Christian Conciliation also alerts pastors of disputants, and if the pastors or church leaders do not wish Christian Conciliation Service to mediate or arbitrate the dispute, it will not do so.<sup>63</sup>

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60. The panel consists of persons who have attended a training class. The training class I attended was three days long and given by a professional mediator for the U.S. Department of Labor. Peacemaking is not looked upon as a passive role. Christian Conciliation wants people-centered peacemakers who believe in the possibility of change, and will maintain a hopeful attitude while being nonjudgmental, trustworthy, and an active listener. The peacemaker must be patiently persistent, but also must be able to confront others with the nature of their conduct and its implications on their lives. In short, peacemaking is a gift and not everyone has it.

61. A submission agreement will be a mediation agreement, a mediation/arbitration agreement, or an arbitration agreement. These can be in short or long form, and are frequently modified, especially when the parties are not Christian. At the beginning of each agreement is a statement that the parties are Christians, accept the Bible as God's word, wish to resolve according to spiritual principles, and will pray for guidance. Following this section is a statement of the issues in dispute, the names of the mediators or arbitrators, and signatures of parties and witnesses. The longer form generally contains a confidentiality and privilege clause which states that the information disclosed during mediation or arbitration will not be used in a future legal proceeding. There may also be a fee statement, a severability clause, a statement that the arbitration is binding, and a clause that future disputes after mediation or arbitration will be submitted to Christians for resolution. Christian Conciliation Service follows the Uniform Arbitration Act, which is also stated in any agreement.

62. An outline of the self-study, entitled *Readiness for Reconciliation*, is reprinted in L. BUZZARD & L. ECK, *supra* note 5, at 121.

63. This is because of local "church" authority over reconciliation. As stated in the third step in *Matthew* 18:17, the "church" has the final authority.

### B. Mediation or Arbitration

The joint session with all parties in attendance opens with a prayer followed by a statement that is meant to welcome, to establish ground rules, and to summarize what will transpire. The first segment is the uninterrupted storytelling where each participant briefly and simply tells the conflict from his point of view, and vents feelings. After the storytelling each disputant may respond to the other. A private session or caucus with the individual parties then follows. It has been determined that disputants are generally more willing to disclose in private. There is an opportunity to confer on the parties' positions, facts, concessions and solutions, attitude barriers, hidden agendas and common interests. At this time, the peacemakers go back and forth between the parties to determine more facts and discuss perceptions, assumptions and issues.

There is a second type of caucus that occurs, called the mediators' meeting, in which the peacemakers discuss progress and pray for a just and fair resolution, as well as reconciliation between parties and any personal healing or resolving of hurts the parties may need. If necessary, after the private caucuses, there will be another joint session with both parties for more negotiation. The final step is a written agreement or the arbitration decision resolving the dispute, and hopefully a total reconciliation of the relationship between the parties involved. There is a follow-up six months after the session to determine the status of the agreement and relationship between the parties.

## VI. BIBLICAL CONFLICT RESOLUTION: CONTEMPORARY VALUE AS A MODEL FOR ADR

If the obligation of the legal profession is, or is thought to be, to serve as healers of human conflict<sup>64</sup> then Christian Conciliation Service helps to fulfill this obligation. The Chief Justice's statement is evidence that the ADR movement is not just to relieve court congestion, nor because of undue cost and delay as some have argued.<sup>65</sup> The "soundest and deepest part of the ADR movement . . . rests on values of religion, community, and workplace."<sup>66</sup> This concept is exactly what Auerbach determined about alternative methods of dispute resolution: all the examples of justice without law, without lawyers, and without courts rested on community, and in this country alternative dispute resolution movements, both current and antecedent, had religious dimensions.<sup>67</sup> While there may be dispute over the healing obligation

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64. Burger, *supra* note 12, at 274.

65. Fiss, *Out of Eden*, 94 YALE L.J. 1669, 1670 (1985).

66. McThenia & Shaffer, *supra* note 21, at 1664.

67. J. AUERBACH, *supra* note 7, at 4-8.

of the profession, there is a certain criticism of the ADR movement that will also be directed toward Christian Conciliation, and I would like to address these criticisms while looking at the contemporary value of Biblical conflict resolution.

It has been suggested that ADR is somehow less valuable because it is a form of "settlement" (impliedly for something less) where resources between the parties (money) can influence the outcome. Viewed from this perspective there may be a great deal of injustice going on in this country.<sup>68</sup> In ten court studies by the Civil Litigation Research Project, about 88% of the cases were settled and only 9% ever went to trial.<sup>69</sup> It is much healthier to acknowledge that most cases are never going to be litigated, and then develop workable alternatives for resolution.

Biblical conflict resolution between Christians is one of these alternatives. As to the imbalance of power in the "settlement type" process, "[t]he legal process can be threatening, inaccessible, and exorbitant—usually it is all of these for the least powerful people in society. It is more likely to sustain domination than to equalize power."<sup>70</sup> The imbalance of power is not unique to settlement. The use of three peacemakers that are acceptable to the parties in Biblical conflict resolution is an attempt to equalize power.

In this same "imbalance of power" vein, critics imply that ADR is an attempt to: (1) push the powerless out of court, and (2) create a two-track justice system dispensing informal justice to poor people with small or minor claims.<sup>71</sup> But already "it is estimated that one percent of the population receives ninety-five percent of the legal services provided,"<sup>72</sup> and many poor or middle class citizens are not exercising their rights. The same critics also view the courts as reserved for the affluent.<sup>73</sup> However, it is now well known that even the "supposed power elite" are using non-judicial resolution.<sup>74</sup> A party can always refuse to abide by the decision of the peacemakers, and there is always recourse to the courts after or during Biblical conflict resolution even though the "church" may discipline its members for doing so.<sup>75</sup> No court will allow the decision of an alternative dispute mechanism or a private agreement to stand if it violates a public policy or the Constitution.

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68. Fiss, *Against Settlement*, 93 *YALE L.J.* 1073, 1076, 1085 (1984).

69. Galanter, *supra* note 17, at 28.

70. J. AUERBACH, *supra* note 7, at vii.

71. *Id.* at 144; see also Edwards, *Alternative Dispute Resolution: Panacea or Anathema?*, 99 *HARV. L. REV.* 668, 679 (1986).

72. Nelson, *supra* note 6, at 471.

73. J. AUERBACH, *supra* note 7, at 144.

74. Nelson, *supra* note 6, at 472.

75. L. BUZZARD & L. ECK, *supra* note 5, at 189. Some of the signed agreements to mediate or arbitrate will continue clauses that explain that if there is any recourse to secular courts the church will have a right to discipline its member.

One of the strongest criticisms of ADR is the application of community or religious values instead of the rule of law to resolving conflict.<sup>76</sup> Without law there would be no one to "explicate and give force to the values embodied in the authoritative text such as the Constitution and statutes,"<sup>77</sup> nor when "justice needs to be done," to give an "authoritative interpretation of law."<sup>78</sup> No one is suggesting that Biblical conflict resolution or any other alternative be applied in all cases. Nor is there an attempt to model law and the legal system of modern America on religious community.<sup>79</sup>

Christian Conciliation recognizes the importance of the legal system. As one set of commentators noted,

[w]hile we believe the courts are not the proper place for disputes among believers, they nevertheless provide effective means for assuring civil liberties, calling government and private institutions to accountability, protecting constitutional freedoms and structures, administering the criminal law, and resolving myriad issues that emerge in a complex, pluralistic society.<sup>80</sup>

In other words, the simple fact is that ADR forms are superior processes in certain cases. Many disputes "are not well served by the paraphernalia of our system, including elaborate pleadings, discovery, evidence and complex rules of review."<sup>81</sup>

ADR seems particularly suited to marital disputes, according to statistics compiled by the Christian Conciliation Service of Metropolitan Washington where over one-half of the new cases were typed as marital. It also seems ideal for small claims where the injured party would have had to settle for nothing without some sort of ADR mechanism.

The determination that ecclesiastical subjects do not belong in public courts at all was recently noted. On May 5, 1986, Judge Robert Hall, U.S. District Court for the Northern District of Georgia, refused to hear a disagreement between members of the Southern Baptist Convention.<sup>82</sup> The ruling stated that any resolution of an ecclesiastical controversy by a civil tribunal would be in violation of the First Amendment separation of Church and State.<sup>83</sup>

## VII. CONCLUSION

If the American legal system has not been able to produce equal justice, Auerbach feels "[i]t is chimerical to believe that mediation or arbitration can

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76. Edwards, *supra* note 13, at 432.

77. Fiss, *supra* note 68, at 1085.

78. *Id.* at 1087.

79. Fiss, *supra* note 65, at 1671.

80. L. BUZZARD & L. ECK, *supra* note 5, at 26.

81. Nelson, *supra* note 6, at 472.

82. *Crowder v. Southern Baptist Convention*, 637 F. Supp. 478 (N.D. Ga. 1986).

83. *Id.* at 480-82.

now accomplish what law seems powerless to achieve."<sup>84</sup> But, Biblical conflict resolution and other dispute resolution options are not substitutes for courts—it is not an either/or proposition. Options should be viewed as part of a composite system of remedies for people in trouble.<sup>85</sup> Just because the legal system alone will not produce the desired result does not mean that, in combination with other resolution mechanisms, equal justice will remain illusive. There is no reason why the Christian community's Biblical conflict resolution cannot be a fair and effective component in a total system.

According to Fisher & Ury, any method of negotiation may be fairly judged by three criteria:

It should produce a wise agreement if agreement is possible. It should be efficient. And it should improve or at least not damage the relationship between the parties. (A wise agreement can be defined as one which meets the legitimate interests of each side to the extent possible, resolves conflicting interests fairly, is durable, and takes community interests into account.)<sup>86</sup>

The Biblical model for negotiation of conflict meets all three.

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84. J. AUERBACH, *supra* note 7, at 145.

85. Nelson, *supra* note 6, at 471.

86. R. FISHER & W. URY, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* 4 (1981).

