

The Lawyer's Calling Revisited: Second Look or Second Thoughts?

Joseph G. Allegretti

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

Allegretti, Joseph G. (2001) "The Lawyer's Calling Revisited: Second Look or Second Thoughts?," *St. John's Law Review*: Vol. 75 : No. 2 , Article 9.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol75/iss2/9>

This Symposium is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in *St. John's Law Review* by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

THE LAWYER'S CALLING REVISITED: SECOND LOOK OR SECOND THOUGHTS?

JOSEPH G. ALLEGRETTI[†]

I was invited to speak about a book I wrote a few years ago entitled *The Lawyer's Calling: Christian Faith and Legal Practice*.¹ I was asked to talk about what I got right, what I got wrong, what I would do the same, and what I would do differently. I'll do all that, but first, an anecdote or two.

When I began to write *The Lawyer's Calling*, I encountered some support, especially from my Jewish Dean at my Jesuit law school. But occasionally I felt like a solitary voice crying in the wilderness. Most non-lawyers I spoke with thought I was concocting a lawyer's joke to top them all. Many lawyers greeted my project with blank stares and nervous chuckles. My two favorite stories include a conversation I had with a friend and a conversation I had with a New York editor.

When I told my friend I was writing about the relationship between Christianity and the practice of law, he responded that it was great. He then asked me how I would fill up the whole page. When I spoke to the New York editor, she stated that she liked the book a lot and might be interested in publishing it. She then asked if I could take out all that Jesus stuff. When I patiently explained that I really could not do that, she paused, and then she asked if I could put Him in the footnotes.

I am gratified to report that many responses to the book were more encouraging than the responses of my friend and the New York editor. The best part about writing the book for me has been the opportunity to meet and talk with many lawyers and law students. Although there are a lot of things we do not share, we share an interest in thinking about the relationship between faith and work. In these conversations lawyers have

[†] M.Div., Yale Divinity School; J.D., Harvard Law School; B.A., Colgate University. Douglas T. Hickey Professor of Business at Siena College.

¹ See JOSEPH G. ALLEGRETTI, *THE LAWYER'S CALLING: CHRISTIAN FAITH AND LEGAL PRACTICE* (1996).

often challenged me and forced me to think about what I did. So I want to share with you some general observations about my thinking. Then I will turn to a more painful topic, a couple of things that I think I got wrong. But first, I offer a couple of general observations.

Contrary to the suggestion from the New York editor, I did not relegate Jesus, God, or talk about faith and religion to the footnotes. I wrote as a Christian because that is what I am. I am convinced that there are resources in my faith and tradition that can help lawyers connect their faith and their work. I worried about the use of explicitly Christian language, namely, whether it would be off-putting to those from different religious traditions. I did go to great lengths in the book to translate, or to encourage people to translate, my words into their own traditions. I stated at one point that, regardless of our theological differences, lawyers are hungry for meaning. They want their work to count for something. They want it to connect to the fundamental values that sustain them. That hunger, that desire, is all that is needed to join with me in a conversation about faith and work.

Well, I learned that I need not have worried. Since writing the book I have learned that religious, philosophical, and political differences count for some, but not too much, when discussing faith and work. I spoke to Christians of all denominations—and to Jews, Muslims, agnostics and atheists—all of whom were struggling to tie together parts of their lives. In this we are more alike than different. I found that my discussion of specific themes—such as my ideas of calling or vocation, the lawyer-client relationship as a covenant, and litigation as a healing ministry—transcended religious differences. So I am happy to report that when it comes to this issue at least, there are not any experts, but there are fellow pilgrims on the journey.

On the other hand, that New York editor was onto something. Using religious language can divide and separate. Several lawyers told me they would not read a book with the word Christian in it. By the way, most of them were Christians. One lawyer told me, that he was amazed to find that I was open and tolerant of people from different perspectives. I asked him, "Why are you surprised?" He replied that anybody talking about the Christian faith must be some sort of right-wing fanatic.

Sometimes when I was invited to speak about the book I was asked if I could tone down the religion and whether I could substitute secular terminology. In one instance I was asked to talk about the lawyer-client relationship and my idea of covenant. In that instance I agreed to use secular language. Instead of talking about the covenantal model of relationships based upon my understanding of human worth and our value in the eyes of God and each other, I left out the references to Scripture. I did not talk about covenant but I instead talked about a moral community of lawyers and clients. The talk was a success but it left me feeling sad and a bit ashamed of myself.

I understand a little about what Daniel Callahan means when he talks about medical ethics. He writes, "time and time again I have been told by religious believers at a conference or symposium that they feared to reveal their deepest convictions. They felt that the price of acceptance was to talk the common language and they were probably right." In a small way I think I appreciate the arguments of Stephen Carter in his book, *The Culture of Disbelief*, when he talks about the trivialization and marginalization of religion.² I learned that if you use religious language your arguments will sometimes be dismissed out of hand. Religion comes from a Latin word meaning to reconnect, to tie together our life. Sometimes it does connect, but other times religion cuts and severs like a knife.

When I sat down to write *The Lawyer's Calling*, I knew what I did not want the book to be. I did not want it to be like many books and articles in legal ethics that spend most of the time analyzing in exhausting detail the codes of the legal profession. That kind of writing functions as a kind of road map to warn lawyers how to steer clear of trouble with the disciplinary agencies. On the other hand, I wanted to focus on the forest rather than the trees.

I believe ethics is much more a matter of who you are rather than what you do by obeying or disobeying a code. Rules are certainly important but they are only part of the moral life. It is more interesting and rewarding to look at questions such as: What does it mean to be a lawyer?; What does it mean to be a

² See STEPHEN L. CARTER, *THE CULTURE OF DISBELIEF: HOW AMERICAN LAW AND POLITICS TRIVIALIZE RELIGIOUS DEVOTION* (1993). The author states that the examples of media trivialization "refuses to accept the notion that rational public-spirited people can take religion seriously." *Id.* at 6.

Christian or Jew or religious believer and a lawyer?; How can I stay true to my clients and my courts while remaining true to my God? I have never understood how anyone could ever answer the question "What should I do?" without asking first "Who am I?" and "Who do I want to be?"

As theologian Stanley Hauerwas observes, "[T]he kind of quandaries we confront depend upon the kind of people we are The question of what I ought to *do* is actually about what I am or ought to be."³ This seems self-evident to me. When I think about duties to clients or to adversaries, I do so with an understanding of myself as a disciple of Christ, called to live out the Gospel message. I cannot think about a lawsuit without remembering the Sermon on the Mount and agonizing a bit about the Last Judgment.

Many lawyers and law students agree with me. They have told me about their dissatisfaction with traditional legal ethics courses. One veteran litigator in Denver told me this was the first time anyone had ever asked about what kind of lawyer and person he wanted to be. I received an e-mail from a student in law school that said, "You're the only law professor I know of who uses the word *love*. We never talk about things like justice, compassion, or healing in my legal ethics class." The student wondered why. I did not have an answer.

So I do feel vindicated in my decision to use this kind of language. Sure, rules are important and of course you need to know the codes of your profession, but rules cannot tell you whom to accept or reject as a client. They cannot teach you how to balance your obligations to your client with the harm done to opponents or third parties. They cannot tell you whether a tactic or strategy that *can* be used *should* be used. Rules certainly cannot empower you to be caring or courageous. To me, these are the kinds of issues that are interesting, and I have learned that these are the kinds of issues that are interesting for many lawyers.

I will now discuss a couple of things that I feel I did poorly or that I wish I had done better when I wrote the book. When I first sat down to write *The Lawyer's Calling*, I did not want to write a lawyer-bashing, nay-saying book. There were already a

³ See STANLEY HAUERWAS, *THE PEACEABLE KINGDOM: A PRIMER IN CHRISTIAN ETHICS* 117 (1983).

few of those on the market. I did not want to attack and ridicule the decent women and men that I know in this profession. I wanted to be optimistic.

I am afraid that, in my well-intentioned effort to be fair to lawyers and to focus on the good rather than the bad, I sometimes pulled my punches. A good example would be my discussion of pro bono work. I wanted to move beyond what I called legalistic questions such as: whether the duty should be mandatory or permissive; how to enforce the duty if it does become mandatory; how many hours do you have to do; can you buy your way out of performing pro bono work; *et cetera*. I wanted to get back to basics.

I wanted to examine the Christian's duty to help those in need. I did conclude that pro bono is not a matter of charity but of justice. Lawyers are obligated to serve the poor and disadvantaged. But as to the form that duty should take, I was, let us say, wishy-washy. I concluded that it is not as important *what* I do so long as I do *something*.

I think I was right to move beyond the debate about rules and focus first on principles. The logic of my own argument, however, should have led me to take a much more forceful position. I wish now that I had spent more time focusing on the Papal encyclical *Laborem Exercens* or the 1986 statements made by the U.S. Catholic Bishops on the economy.

I will say now what I should have said then. Christians have a responsibility to see that the poor and needy have access to the legal system. If the legal system does not work, does not provide that access, Christian lawyer should be fighting to change the system. If the system is too slow to recognize its obligations, or if the profession is too slow, the Christians should be leading the fight to change the profession. I am afraid that I just let us, as lawyers, off the hook. My old theology teacher said a prophet is one that afflicts the comfortable and comforts the afflicted. I may have done it the other way around.

Finally, I think I gave in at times to the temptation to privatize. Many lawyers liked my book because it is focused on the individual. By focusing on the individual lawyer, I may have given too little attention to systemic problems that require systemic reforms. The book's strength was also its weakness. Although I gave some guidance and resources to the lawyers in the trenches, the guidance I gave was too narrow.

I exhort individual lawyers to bring their values to the workplace, but I did not deal enough with the effects of organizational and professional culture. I did not spend enough time talking about the spectacular growth of law firms nor the change of the law firm from a profession to a business.

In short, I warned against bracketing your ethics. I did not, however, explain how you hold onto your ethics when you are the junior associate in a 500-person law firm, and you have got \$100,000 in law school debt, a baby on the way, a spouse you rarely see, and a boss who says ethics are like the measles—you may catch it once, but then you will be immune for the rest of your life.

When the pressures of legal practice tempt lawyers to jettison their moral values in a quest for money and success, it is not enough to warn lawyers of those risks and to urge them to hold onto their values. Although these warnings are important, they are not enough.

William Droel says that spirituality is about seeking and responding to God's presence.⁴ Of course, the reform of institutions should be a key ingredient in spirituality. Therefore, we have to resist the temptation to privatize. I am afraid that at times I did not resist.

⁴ See WILLIAM L. DROEL, *THE SPIRITUALITY OF WORK: BUSINESS PEOPLE* 24 (1991).