


1-20-2005

## The Lawyer's Humble Walk

Mark Osler

Follow this and additional works at: <http://digitalcommons.pepperdine.edu/plr>

 Part of the [Ethics and Professional Responsibility Commons](#), and the [Legal Profession Commons](#)

---

### Recommended Citation

Mark Osler *The Lawyer's Humble Walk*, 32 Pepp. L. Rev. 2 (2005)

Available at: <http://digitalcommons.pepperdine.edu/plr/vol32/iss2/13>

This Symposium is brought to you for free and open access by the School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Pepperdine Law Review by an authorized administrator of Pepperdine Digital Commons. For more information, please contact [Kevin.Miller3@pepperdine.edu](mailto:Kevin.Miller3@pepperdine.edu).

# The Lawyer's Humble Walk

Mark Osler\*

## I. THE SIMPLEST TRUTH

In Lawrence Kasden's 1991 film *Grand Canyon*,<sup>1</sup> the movie characters do the usual movie-character things: Save one another from danger, interact with strangers, and drive around Los Angeles. The characters are divided by race and class, but, predictably, learn to understand one another. At the end of the film, however, something unexpected happens. Instead of hugging one another or winning a prize of some kind, the disparate characters gather together and drive to the Grand Canyon. Once there, they stand on the edge of the precipice and take in the great majesty of that place. Without words, the story concludes with two families gazing over the Canyon, their features calm and at rest for the first time in the story. In the end, they are brought to the presence of God.

We all take from art what we want, of course.<sup>2</sup> Whether the filmmaker meant this or not, what I saw in those characters was the calm and focus that comes with the recognition that there is a God, even amongst the chaos that was their lives in Los Angeles.<sup>3</sup> In a word, they were humbled. Is there a stronger wordless transformation?

---

\* Associate Professor of Law, Baylor University Law School, B.A. William & Mary, J.D. Yale. The author would like to thank Michael Beaty of Baylor University and Robert Cochran of Pepperdine University Law School for serving as mentors in my many adventures in faith and learning. In this essay, I draw on my experience as a panel attorney for indigent defendants and as a prosecutor. It is highly doubtful that the views expressed here reflect those of my former employer.

1. GRAND CANYON (20th Century Fox 1991).

2. For example, one Seattle minister has used this same film in a sermon, with the Grand Canyon as a symbol of the gap between the rich and poor in the United States. Rev. Jean H. Vandergrift, *Closing the Gap*, Feb. 18, 2001, available at <http://www.scn.org/spiritual/ucc/sermon1217.html> (last visited Dec. 14, 2004).

3. The film enhances this perception of calm in several ways. Throughout the film's setting in Los Angeles, helicopters are constantly overhead, searchlights downcast to the ground. The sound of this constant drone is finally gone once the Los Angelenos escape to Arizona. Also, as the credits

In reflecting on the inaugural conference for Pepperdine's Institute for Law, Religion and Ethics<sup>4</sup> and the remarkable people gathered there, I was struck by the calm I had seen amongst these busy, accomplished attorneys—a calm akin to the men and women gathered on the rim of the Canyon. Therein lies the root of my thesis here: The commonalities among lawyers of faith are born of humility, not acclaim.

My thesis is not a common one, because it is not putting us lawyers in an easy, popular or profitable place. My point, after all, is that lawyers of faith are not marked by being right while others are wrong, or by representing our clients more successfully, or by having the Lord favor us in our profession. Rather, I am saying that we will be known by our common humility, born of a shared belief that there is a God, who is far greater than any one of us.

What follows comes in two parts. First, I will briefly examine the internal effect of a faith-based humility on a lawyer—that is, how we might look at ourselves. Second, and at more length, I will look at the external manifestations of this humility on lawyers—that is, how others might see us. In short, I see this humility as having four primary effects on the lawyer of faith. First, at the internal level, it leads to a constant questioning and a consistent uneasiness with the conflicting demands placed upon us by our faith and our vocation. In addition, there are at least three markers of faith which might be more visible to others: First, faith often enhances the emotional engagement of the lawyer with the human aspect of her work; second, acknowledgment that there is a God leads to a sense that there is right and wrong and steers us away from relativism; and third, this humility leads to a balanced perspective and a focus on lawyering as just one of many callings an individual may have.

## II. THE INTERIOR LIFE OF THE LAWYER OF FAITH

The life of faith is necessarily one of questing for the way that God would favor. The answers, however, are often confusing and contradictory once we try to put them into practice. At least two types of conflicts trouble the lawyer of faith: The contradictory demands of faith itself in the context of legal practice, and the conflicts between faith as a whole and the distinct moral code of the law, including the ethical rules regarding the conduct of attorneys.

The conflicts between the imperatives of faith are often particularly stark in the context of a legal practice. For example, *Micah* 6:8 is often quoted and famously directive: “He hath shewed thee, O man, what is good;

---

begin, the camera leaves the characters behind and swoops down into the canyon itself, like a soul taking flight from a body to answer a higher call.

4. At that conference I served as the moderator of a panel on Civil Law and Appeals. Because I was a moderator rather than a panelist, this essay reflects my thoughts after the conference rather than my comments at the session (which were largely limited to directing questions to the panelists).

and what doth the LORD require of thee, but to do justly, and to love mercy, and to walk humbly with thy God?"<sup>5</sup>

For an attorney, the first two requirements pull at one another.<sup>6</sup> If justice is to treat people similarly,<sup>7</sup> and mercy means to forgive,<sup>8</sup> it is hard to reconcile these two goals as a practicing attorney. For example, a judge might give all similarly-situated defendants accused of a given crime the same sentence, because such uniformity is just.<sup>9</sup> However, such a policy eliminates the possibility of mercy—which necessarily means treating one defendant differently than the others.

Another example can be drawn from civil litigation. Imagine that an attorney represents a client who has been harmed by a doctor with a drinking problem, who operated on the client while under the effects of alcohol. The patient says that the doctor should pay for the mistake and not be allowed to practice in the future. However, when the attorney investigates, he finds that the doctor has already retired from the practice of medicine and given up her license. In this situation, bringing suit is, on the one hand, seeking justice for the client, but is hardly kind to the defendant. To reject the client and refuse to take the case would be to show kindness while neglecting justice (in some, though not all, people's view)—and the client would probably go out and retain another attorney to bring the suit, anyways.

There are, of course, justifications for continuing the practice of law as usual, where a conflict between justice and mercy is rarely recognized. For example, the civil lawyer in the latter case might imagine that she is being both just and kind—insofar as the kindness is directed towards the client.

5. *Micah* 6:8 (King James). The New Revised Standard Version offers us the word "kindness" in place of "mercy": "He has told you, O mortal, what is good; and what does the LORD require of you but to do justice, and to love kindness, and to walk humbly with your God?" As reflected in actions, mercy and kindness will likely be the same. Professors Shaffer and Cochran appropriately conclude a discussion of mercy by discussing love, quoting Martin Luther King, Jr. as saying that "[L]ove is the only force that is capable of transforming an enemy into a friend." THOMAS L. SHAFFER & ROBERT F. COCHRAN, JR., *LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY* 81 (1994) (quoting MARTIN LUTHER KING, JR., *STRENGTH TO LOVE* 47-55 (1969)). Acts of kindness and mercy would be the manifestations of love that would accomplish such a transformation.

6. Shaffer and Cochran describe justice and mercy as "two sides of the coin of biblical morality." *Id.* at 76.

7. The definition of justice as treating similarly situated people the same way, is deeply rooted in American law. One current example, reflected in the following discussion, is found in the federal sentencing guidelines. In setting out a justification for the guidelines, the United States Sentencing Commission (hereinafter the "Commission") first acknowledges that its "principal purpose is to establish sentencing policies and practices for the federal criminal justice system that will assure the ends of justice by promulgating detailed guidelines prescribing the appropriate sentences for offenders convicted of federal crimes." U.S. SENTENCING GUIDELINES MANUAL § 1A1.1, app. A(1) (2003). The Commission then describes such a just system as having three components: honesty (expressed through an absence of parole); uniformity (sentencing like offenders to like sentences), and proportionality (sentencing of unlike offenders to different sentences). *Id.* at § 1A1.1, app. A(3).

8. The conflict exists regardless of the definition given "mercy."

9. This policy is accomplished on a jurisdictional level through sentencing guidelines such as those recently struck down by the Supreme Court in *Blakely v. Washington*, 124 S. Ct. 2531 (2004).

But it is hard to accept such a limited justification where the expression of kindness to one side but not the other so closely coincides with the enrichment of the person presumably showing that kindness. Perhaps even more common is justification based on the ethical duty of the lawyer to zealously represent a client,<sup>10</sup> which sometimes is turned into a moral license to do whatever is requested or approved by the client.<sup>11</sup>

There is no easy answer to the quandary posed by *Micah* 6:8.<sup>12</sup> The challenge posed to the lawyer of faith by these competing objectives may have been best answered by Thomas Shaffer, who asked himself the question at the center of this debate: "Is it possible to be a Christian and a lawyer?"<sup>13</sup> In response, he concluded that "[I]t is possible to be a Christian and a lawyer only if the question remains unsettled—so that the tentative nature of the answer is an admonition to attempt in the practice of law more than the practice itself, the conventional professionalism of it, can bear."<sup>14</sup>

That is, the Christian lawyer is distinct not because she has neatly reconciled competing agendas, but because she *has not*. What makes her different is the continuation of the internal struggle to reconcile conflicting moral demands. While others might claim fulfillment in one or the other goal (for example, a prosecutor can easily trumpet justice, while a defense attorney lays claim to kindness), the Christian practitioner must constantly struggle with the challenge of both imperatives simultaneously tugging in often different directions.

To constantly struggle with the morality of one's work is both emotionally draining and humbling. It is draining, in that it takes emotional energy to constantly address largely incompatible goals. At the same time, it is humbling to lack the easy answer and to second-guess one's own choices. But is that struggle wrong? Not if we are to accept the third direction in *Micah* 6:8, to "walk humbly with your God."<sup>15</sup>

Amidst the pressure created by internal moral struggle and conflict between our private morality and the public moral code of the law, there is some comfort in that enduring image of walking humbly with your God, of divine company on the path filled with stones and roots. This isn't a walk in which we are exalted, but one in which we are humbled by the very existence of a God which is beyond our comprehension, whose existence ensures that we will forever be imperfect.

---

10. The Texas Lawyer's Creed, for example, directs that "A lawyer shall employ all appropriate means to protect and advance the client's legitimate rights, claims, and objectives." TEXAS LAWYER'S CREED, Part II (1989).

11. Viewing the duty of zealous representation as license to be dishonest or unfair is usually going to be in conflict with any honest reading of that duty. See *id.*

12. See *supra* note 5 and accompanying text.

13. THOMAS L. SHAFFER, ON BEING A CHRISTIAN AND A LAWYER 32 (1981).

14. *Id.* Shaffer expressly addresses the conflict between justice and kindness (though not in the context of *Micah* 6:8) later in his book, aptly noting that "Justice as a professional aspiration is corrupting to the extent that the culture of justice finds it hard to say that a lawyer's life is ministry and that ministry aims beyond justice to compassion and hope." *Id.* at 162.

15. See *supra* note 5 and accompanying text.

Again, I realize that the image of a successful attorney does not usually include the amount of self-questioning Shaffer urges; we prefer the image of strength and confidence in the corridors of power and the courtroom. However, while it is imperative that the lawyer of faith have the interior monologues and doubts Shaffer describes, this need not be the public side of such an attorney. Rather, clients, other attorneys, and courts will see other manifestations of the humility wrought by the existence of God.<sup>16</sup>

### III. HUMILITY'S EXTERNAL EFFECTS ON THE PRACTICING ATTORNEY

As discussed in the preceding section, attorneys of faith will be defined in part by a largely private and internal struggle to reconcile competing concerns.<sup>17</sup> What about the *public* work of a lawyer, then, will reflect a life of faith? At least three commonalities might exist. First, if we see others as fellow creatures of a loving God, we are more likely to express empathy and caring for those with whom we come into contact. Second, if God's intentions for the world can be viewed as "right," and deviations from those intentions can be viewed as "wrong,"<sup>18</sup> then there must be such a thing as right and wrong, which we seek to discover and live out—we cannot be relativists. Third, the life of a person of faith is usually constructed of intentional choices informed by that faith—leading to a balance between work and other parts of life sometimes missing in the character of successful men and women. Each of these three is a distinct view of that inner faith-based humility—a different refraction of the light of God.

#### A. *Humility and the Ethic of Care*

If we are to acknowledge the existence of a God, and that we humans are commonly beneath Him, many of us tend to look at others with more empathy. Instead of living in a complex hierarchy of many strata, faith gives us a simple two dimensional perspective: We have a vertical relationship with God, who is superior to us, and a horizontal relationship with our fellow men, who are similarly insignificant in the presence of God. In other words, it eliminates the importance of superiority over others, and opens us up to the ability to care deeply for our fellow men and women who also occupy that broad plain of imperfection and humility. The Quakers have a

---

16. I am not suggesting that lawyers of faith live a double life, or that their values differ between work and other parts of their life. Rather, I think that it is unlikely (and unnecessary) that lawyers of faith perform their re-evaluations in a public way, rather than within their own study of scripture or within their congregational life as part of a specific faith.

17. See *supra* Part II at 5-9.

18. This assumes that the belief in God extends beyond the simple Deist belief that God created the world and then left it to operate of its own devices.

simple way of describing this, referring to it as the light of God reflected within each person:

“Recognizing that God’s Light is in every person overcomes our separation and our differences from others and leads to a sympathetic awareness of their need and a sense of responsibility toward them.”<sup>19</sup>

If there is a God, and we are created by God, we are commonly humble before that God. Once that is recognized, it is easy to look upon our fellow men with empathy.<sup>20</sup>

### 1. Other Voices on the Ethic of Care

Of course, I am not the first person to reach the conclusion that faith would lead us to care for others within our vocation. This ground has been well trod by Thomas L. Shaffer and both of the keynote speakers for the inaugural conference for Pepperdine’s Institute for Law, Religion and Ethics (ILRE)—Joseph Allegretti and Lee Hardy.

In any modern discussion of faith and lawyering, one is wise to begin with Thomas Shaffer’s seminal 1981 book, *On Being a Christian and a Lawyer*,<sup>21</sup> a work which inspired many of the participants at the inaugural conference for Pepperdine’s Institute for Law, Religion and Ethics. In that book, Shaffer made the somewhat revolutionary claim that “the ethics of care, which are the ethics of Jews and Christians, have relevance in law offices, and that the ethics of care are not served by either deference or paternalism.”<sup>22</sup> In his work, Shaffer often returns to this theme—the role of mercy in the actual work of a lawyer, urging us on in the struggle to make mercy relevant in a trade often hostile to it.<sup>23</sup>

At the ILRE conference, this theme was echoed by keynote speaker Joseph Allegretti, who also teaches that Christian lawyers should share an “ethic of care” which balances against a secular emphasis on rights and allows the lawyer to include Christian imperatives in work decisions,<sup>24</sup> despite the fact there may be a resulting financial cost to the lawyer.<sup>25</sup> Allegretti also asserts that the lawyer of faith has a “*personal* moral obligation not to let a lawsuit degenerate into bitterness and revenge.”<sup>26</sup> To honor this moral obligation is to fulfill a moral duty not to one’s own client,

---

19. THE PHILADELPHIA YEARLY MEETING, FAITH AND PRACTICE 17 (1997).

20. Within Christianity, there is specific direction to care for and serve others. Christ, upon finding the disciples arguing amongst themselves which of them was the greatest, told them that “Whoever wants to be first must be last of all and servant of all.” *Mark* 9:35 (New Revised Standard).

21. SHAFFER, *supra* note 13.

22. *Id.* at 33.

23. Shaffer and Cochran suggest that even raising the subject with a client would be a change from standard practice: “The lawyer can at least ask clients *whether* they would like to try and find a solution that would not cause harm to others.” SHAFFER & COCHRAN, *supra* note 5 at 77.

24. JOSEPH G. ALLEGRETTI, THE LAWYER’S CALLING: CHRISTIAN FAITH AND LEGAL PRACTICE 96-102 (1996).

25. For example, in urging a client to seek reconciliation and avoid litigation, the lawyer is cutting out her own business. *Id.* at 108-09.

26. *Id.* at 97.

but to the opponent and the process of litigation as a method of dispute resolution an obligation that has more to do with the Light of God in each of us than it does the duty of zealous representation.

In concert with these concerns of Shaffer and Allegretti, Lee Hardy argues that there is something wrong when the content of our work is seen as nothing more than “scratching out a living on the grim surface of the earth . . . .”<sup>27</sup> To allow it to be more than such scratching, Hardy says that work should be “a social place so structured that it is possible for people to serve others through the free and responsible use of a significant range of their gifts, talents and abilities.”<sup>28</sup> His point is well taken, especially for those of us with the responsibility for structuring the workplace, whether in a law firm, a courthouse, or a law school.

All three men urge that the vocation of lawyering should include service to others, service which is inspired by an overarching ethic of care for others. Such an ethic, however, comes at a cost: the cost of conflict with other professional responsibilities to be, depending on one’s position, either objective or a strong advocate for one side at the expense of the opponent.

## 2. Professional Conflicts with the Ethics of Care

An ethic of care, as Shaffer well knew,<sup>29</sup> is in tension with two essential aspects of what the world expects from lawyers. First, it is in opposition to the professional objectivity expected of lawyers in the role of judge<sup>30</sup> or prosecutor.<sup>31</sup> Second, it is often in conflict with the adversarial system which expects the lawyer to advocate the rights of a client at the expense of all else, with the justification that the system of justice as a whole will sort things out.

### a. Judges

If at first you feel a bit of shock at the idea that an ethic of caring might be at loggerheads with the professionalism and objectivity expected of

27. LEE HARDY, *THE FABRIC OF THIS WORLD* 44 (1990).

28. *Id.* at 127.

29. SHAFFER, *supra* note 13, at 159.

30. The Texas Code of Judicial Conduct, for example, not only requires impartiality on the bench, but requires that, “A judge shall conduct all of the judge’s extra-judicial activities so that they do not: (1) cast reasonable doubt on the judge’s capacity to act impartially as a judge; or (2) interfere with the proper performance of judicial duties.” TEXAS CODE OF JUDICIAL CONDUCT, Canon 4(A) (2002), available at [http://www.sjcc.state.tx.us/texcode\\_txt.php](http://www.sjcc.state.tx.us/texcode_txt.php) (last visited Dec. 14, 2004).

31. Prosecutors are generally urged to “uphold justice” rather than simply serve as an advocate. For example, the Texas Rules of Professional Conduct note that “[a] prosecutor has the responsibility to see that justice is done, and not simply to be an advocate.” TEXAS R. PROF. CONDUCT R. 3.09, cmt 1 (1989), available at [http://www.txethics.org/reference\\_rules.asp?view=conduct&num=309](http://www.txethics.org/reference_rules.asp?view=conduct&num=309) (last visited Dec. 14, 2004).



judges and prosecutors, consider an incident which became somewhat legendary in my former life as a federal prosecutor.<sup>32</sup> A detention hearing was held for a defendant on a particularly cold day in Detroit. The Magistrate Judge conducted the hearing, and at the conclusion of argument held that the defendant would be released on bond pending trial. At the hearing, it became apparent that the defendant would be sent out into the streets without a coat; he probably had been arrested while in bed first thing in the morning. After a moment's hesitation, the Magistrate Judge stood, took off his robe, and gave the defendant his own coat before sending the defendant into the darkening snow-covered streets.

Something about that incident provoked strong reactions, particularly amongst my fellow prosecutors, who expressed contempt for the Magistrate Judge based on his lack of professional distance from the situation. However, it certainly reflected an ethic of caring, and crystallized the potential conflict between these two goals.

### *b. Prosecutors*

While prosecutors have a role as advocates, they also have the unique role of serving the general and objective interests of justice in dealing with their cases. This objectivity is one reason that prosecutors are entrusted with such great discretion in criminal cases. This requirement of objectivity, as with judges, can create an air of impartial professionalism which conflicts with the duty of care that faith demands.

At the inaugural ILRE conference, I reflected on an incident in my own direct experience which brought this type of conflict to the fore. As a prosecutor, I indicted a man in his late forties charged with armed bank robbery. He had previously been convicted of bank robbery several years before. The evidence against him was very strong,<sup>33</sup> and it was not a case which required much of my attention. In the midst of a busy week preparing for another trial, I received a call from that defendant's wife asking to meet with me. While I had a legal duty to talk to victims and their families,<sup>34</sup> I had no such duty to meet with a defendant's family. I acceded to her pleas, however, and agreed to meet with her.

On the day of the meeting, I was late coming back from court. As I walked into the office, there was an older black woman in the lobby, huddled in prayer with her pastor. She was the wife of my defendant, and came back to my desk to talk, leaving the pastor in the lobby.

She told me a tragic story. Her husband had been a good man, but in his early thirties he had tried crack cocaine, which transformed him into someone she did not recognize. He was gone for weeks and committed

---

32. I did not handle the case discussed here, but was part of several conversations with colleagues after the incident occurred.

33. In fact, the defendant had purchased a gun with a credit card, then went to the bank with that gun and a demand note written on the back of the credit card receipt, which contained his name and credit card information.

34. 42 U.S.C. § 10606 (2004).

crimes, including the bank robbery I had seen in his criminal history. However, when he emerged from prison after that conviction, he had conquered his addiction to cocaine and again became gainfully employed, a good father, and a loving husband. This went on for several years, during which the children grew into adults.

Then there was a knock on the door. Old friends of her husband arrived and, against her protestations, took him out to have some fun. She did not see him for two weeks. Those few weeks of cocaine use concluded with his buying the gun and robbing the bank.

The wife begged that I dispose of the case in a way that would allow him to receive treatment for his drug addiction, rather than serve a long prison term. It was difficult to hear her pain and fear, knowing that it would be irresponsible to give him such a chance, given that he had twice committed armed robberies that could have lead to violent deaths, especially combined with the drug use to which he was prone. In the end, all I could tell her was no.

At the end of the meeting, she stood to go. For a moment I stood next to her by the door, shook her hand, and turned away. It was what I did not do which I regret—that I did not take her two hands in my two hands, justice and kindness, and pray with her for her husband and for wisdom for both of us. Perhaps it was many things that stopped me; the differences between us of relative power, race and culture, and wealth. A large part of it, however, was that professional distance which I felt my office required. On reflection, there is solace in the fact that I did struggle with that decision—and in that marked my faith in my vocation.

### *c. Criminal Defense Attorneys and Civil Practitioners*

Criminal defense attorneys and civil attorneys, including those who are not involved in courtroom work, have an overarching duty to represent and, if necessary, advocate for a client. Very often, this comes at the expense of the opposing party, especially where the dispute is a zero-sum game, such as a fight over an inheritance or a sales commission.

Contract negotiation and litigation both involve, by their very nature, trying to get an advantage on someone else. That advantage may be based on a legitimate right, but it is not uncommon for both sides to feel that way. It simply is not a lawyer's job, some would say, to care what happens to the other guy (or, in a criminal case, the victim). Again, this constant battle for position is in conflict with the basic worldview of the faithful: That we, under God, have common interests more important than any dispute.

Of course, it is hard to keep this in mind in the middle of a bitter discovery dispute. People find ways to fight the battles they are paid to fight. Joseph Allegretti describes the coping mechanism some lawyers use when called upon to be such an advocate, which is to compartmentalize their

faith separate from their work.<sup>35</sup> Such a lawyer “deludes himself into believing that what he does at the office bears no relation to his moral and religious values.”<sup>36</sup> This, of course, is not the mark of a lawyer of faith, but rather a lawyer who is forcibly holding faith at bay.

For the lawyer of faith, then, it is crucial to avoid such rigid moral compartmentalization. Rather, the lawyer of faith treats the ethics praised on Sunday (or Saturday) as an active challenge during the rest of the week, regardless of the problems created through conflicts with the expectations of our profession. These values may be those that inform and enliven us, but they may also keep us from getting very rich.<sup>37</sup>

### *B. Humility and the Rejection of Moral Relativism*

*Micah* 6:8, quoted earlier,<sup>38</sup> is popular with preachers and public speakers. On its face, it is directive and comforting. Less often heard is the next passage:

The voice of the LORD cries to the city (it is sound wisdom to fear your name): Hear, O tribe and assembly of the city! Can I forget the treasures of wickedness in the house of the wicked, and the scant measure that is accursed? Can I tolerate wicked scales and a bag of dishonest weights? Your wealthy are full of violence; your inhabitants speak lies, with tongues of deceit in their mouths.<sup>39</sup>

#### 1. The Existence of God and the Existence of Right and Wrong

If there is a God, there must be a right and wrong. The higher consciousness of God knows what is true in ways we cannot. Thus, sometimes our thoughts and actions might be consistent with God, which would be morally “right,” and other times inconsistent with God, which would be “wrong.” To admit there is a God, then, is to admit that there must not be a moral equivalency to all acts. The person who sees the hand of God at work in our world also finds it easier, perhaps, to see the wrong in the crooked merchant and his “bag of dishonest weights.”<sup>40</sup> The law itself, of course, is all about right and wrong, truth and lie. The criminal laws define the limits of right and wrong, and in some respects, comprise their own moral systems. Similarly, civil laws in the fields of torts, contracts, and even property law, reward some behaviors and punish others, thus differentiating right from wrong. The law itself does not shy away from separating bad and

---

35. ALLEGRETTI, *supra* note 24, at 67.

36. *Id.*

37. Integrating faith actively into a lawyer’s work means that there may be clients she will not want, and that there will be clients who do not want her, seeking instead an advocate for whom there are no limits, ethical or otherwise, in serving a client.

38. *Supra* note 5 and accompanying text.

39. *Micah* 6:9-12 (New Revised Standard).

40. *Id.* at 6:11.

good, and lawyers often talk publicly in precisely those terms. In that sense, then, faith and lawyering are a good fit. People of faith are generally not relativists, and the law has little use for a form of relativism which excuses responsibility.<sup>41</sup>

## 2. Faith and Relativism

Relativism, as a philosophical doctrine, has several varieties, but generally revolves around two core beliefs:

1. That an understanding of something (such as moral values, beauty, meaning, etc.) is relative to a particular framework or standpoint (such as culture, language, etc.), and
2. That no one standpoint is uniquely privileged over all the others.<sup>42</sup>

Neither point is consistent with the belief that God exists. The first point, that meaning is relative to standpoint, breaks down when faced with the existence of a common creator who is actively engaged in the world. If there is a God, that single God (and his intentions) rules the entire creation, and expects the same thing of his subjects, regardless of the language they speak.<sup>43</sup> Relativism, in other words, is a poor fit with the view that we are children of the same Father.

Similarly, the second point is inconsistent with faith, if that faith includes any aspect of revelation to man of God's intentions. To Jews, for example, the Commandments<sup>44</sup> are quite clear as to how God intends people to act—there is no ambivalence about whether or not it is right to steal.<sup>45</sup> Obviously, then, the perspective of those who have access to God's explicit directions are uniquely privileged—they have the advantage of God's word.

So the lawyer of faith is not a relativist. Instead, she is more likely to believe that there is a right and wrong (based on God's intentions for the world), and that there is some access to those truths through some form of revealed word.

41. There are exceptions, of course. For example, defense attorneys in death penalty cases will often argue the relative circumstances of the defendant, such as an impoverished upbringing, as a basis for mitigation. This is allowed even in the harshest state in relation to the death penalty, Texas. TEXAS CRIM PROC. CODE ANN. § 37.071(2)(e)(1) (Vernon 2004).

42. Emrys Westacott, *Relativism*, in THE INTERNET ENCYCLOPEDIA OF PHILOSOPHY (2001), available at <http://www.iep.utm.edu/r/relativi.htm> (last visited Dec. 14, 2004).

43. Some might argue that the Torah speaks of a God who views Jews as a chosen people, different from others. Even accepting that view, the diaspora of Jews constitutes many cultures and perspectives, and the Commandments apply to all. *Exodus* 20:2-18 (New Revised Standard).

44. *Id.*

45. *Id.* at 20:15.

### 3. The Danger of Right and Wrong

There is a crucial caveat, however: While the lawyer of faith knows that there must be a right and wrong, humility requires that we acknowledge that we are not God—that we are not the arbiters of God’s intentions. Different faiths have vastly different beliefs regarding the revelation of God’s intentions to man, and within any one faith there is almost always some debate over the meanings of that revealed word. While the faithful attorney may be certain that there is right and wrong, she is probably less certain of exactly what that right and wrong may be. To express certainty on all topics, of course, is to elevate oneself to the status of God, and eviscerate the meaning of faith.

Nearly all faiths contain a warning to the faithful on rendering judgment based on perceptions of right and wrong. In my own faith, one of the most challenging passages in the gospel for the lawyer may be found in *John* 8:3-11.<sup>46</sup> There, Jesus Christ is teaching in the temple when the Pharisees and scribes<sup>47</sup> bring before him an adulteress to be stoned.<sup>48</sup> They cite the law—that “in the law Moses commanded us to stone such women.”<sup>49</sup> At first, Christ seemed to ignore them, turning to write in the dirt floor of the temple.<sup>50</sup> When they persisted, he answers them:

“Let anyone among you who is without sin be the first to throw a stone at her.” And once again he bent down and wrote on the ground. When they heard it, they went away, one by one, beginning with the elders; and Jesus was left alone with the woman standing before him. Jesus straightened up and said to her, “Woman, where are they? Has no one condemned you?” She said, “No one, sir.” And Jesus said, “Neither do I condemn you. Go your way, and from now on do not sin again.”<sup>51</sup>

If the law is about judgments (quite literally), this passage raises great challenges to the Christian lawyer. Thomas Shaffer, in discussing this passage, described Christ as an attorney: “He became her lawyer and won the case, cleverly, even though she was guilty.”<sup>52</sup>

But what of us on the other side, the prosecutors? Is it suggesting that only those without sin (which is none among us) are fit to enforce criminal laws? Or that mercy must play a role in the criminal law? The former demands the dismantling of our legal system while the latter reading requires substantial revision of current practice. The mark of the Christian lawyer is that he believes that it must mean *something*, and cannot simply be ignored.

---

46. The story reflected in *John* 8 is sometimes questioned; the footnotes to the New Standard Revised Version of the Bible note that “the most ancient authorities lack 7.53-8.11; . . . some mark the passage as doubtful.” *John* 8:8, n. j (New Standard Revised).

47. Thomas Shaffer, in describing this passage, refers to the Pharisees and scribes as “law professors.” SHAFER, *supra* note 13, at 222.

48. *John* 8:3.

49. *John* 8:5 (New Standard Revised).

50. *Id.* at 8:6.

51. *Id.* at 8:7-11.

52. SHAFER, *supra* note 13, at 222.

Thus, another tenuous balance is struck: just as the lawyer of faith must teeter between the demands of faith and the demands of the profession, she must also simultaneously acknowledge that there is right and wrong *and* allow for mercy and uncertainty. We cannot be faithful and relativists, nor can we pretend to be closer to God than anyone else in the courtroom. To pretend that we are would undermine the very humility that should most clearly define us. The trick, it seems, is to have a bedrock-certain faith in God, and a less certain belief in our own conclusions and importance.

### C. *Vocation, Humility and Balance*

When I hear lawyers of faith speak, such as at the ILRE conference, I am often struck by the way in which they do not speak narrowly about vocation, but rather of their work as part of a fuller life. On my own panel, Tracy Dalton, Mark Hiepler, and Ken Starr each spent a significant portion of their speaking time discussing teaching Sunday school, raising children, and mentoring young people—and never did it seem unconnected from their significant professional accomplishments.<sup>53</sup> This, too, reflects the humility of faith. At a time when one could boast of awards, judgments, and fame, these lawyers put the focus elsewhere—on those corners of their lives where faith worked more quietly.

Lawyers of faith tend to be passionate about their work, and morally committed to it. In speaking of the role of vocation as part of a balanced and humble life, I do not mean to denigrate this passion, but to explain part of the basis for it—that it is part of a larger whole, the moral being, which exists both in and out of the work environment. Lee Hardy described this very well in saying that vocation, informed by the knowledge of God's existence, must encompass more than just our work: Work and vocation are not the same thing.<sup>54</sup> Work may be part of my vocation, but it is not the whole of my vocation; work may be one thing that I am called to do, but it is not the only thing I am called to do. As a husband I am called to love, honor and encourage my wife; as a parent, to care and provide for my children; as a citizen, to be an informed participant in the political process; as a parishioner, to identify and make use of my spiritual gifts.<sup>55</sup>

As described above, one striking aspect of the ILRE conference was the topics chosen by the speakers. Often the discussion involved not just professional activities, but the whole of their lives. The arc of a career described in hallways did not reflect ambition so much as balance—despite the impressive achievements of the participants. In the words of speaker

---

53. Audio format: Civil Litigation and Appellate Practice Panel (Feb. 6-7, 2004), available at [http://law.pepperdine.edu/visitors/ilre/religious\\_calling.jsp](http://law.pepperdine.edu/visitors/ilre/religious_calling.jsp) (last visited Dec. 14, 2004).

54. HARDY, *supra* note 27, at 44.

55. *See id.* at 46-47.

after speaker, what was described was an *intentional* faith—one that directed, from common principles, the simple acts that make up a life within which work is just a part. For example, when attorney La’Chelle Woodert recalled the manner in which she chose law school and her vocation, it was of a whole with the rest of her life—an intentional choice made with a certainty which came from her faith.<sup>56</sup> I was struck, in listening to her, that it was very clear which came first—that the contours of her work (and the rest of her life) were intentionally shaped by her faith, rather than her faith being shaped by the demands of her work.

This was in stark contrast to most professional conferences where the air of professionalism keeps at bay any discussion of personal lives. Why was it different? At least part of the answer is in the topic addressed: The Lawyer of Faith.<sup>57</sup> By defining participants as the faithful, the gathering focused on a more whole version of the participants than their mere job title would suggest, one which defined the attorney as something else as well.

Too often, perhaps, it is the other way around—our faith makes accommodations to our work, and work keeps us from tending to spiritual needs. Legal work is time-intensive and emotionally draining, and can leave us with little time or energy to attend church, temple or mosque, much less to be an active voice there. Yet, if faith is to be the basis of our choices at work and otherwise, we must reverse those priorities.

Joseph Allegretti, echoing the construct of H. Richard Niebuhr, describes the ideal Christian lawyer (which he calls “model four”) in terms of precisely these priorities.<sup>58</sup> The sense of a faith-based vocation that includes (but does not consist entirely of) work:

Model Four insists that a lawyer’s faith is relevant to his work. Christ and the Code are related. Model Four asserts that Christ is the Lord of all, even the legal profession, and that Christians are called to serve Christ in all of life, even their life as professionals. It rejects the artificial separation of life into private and public spheres, with faith-commitments relevant only to the private.<sup>59</sup>

It is not an impossible task. There remain among us those who live out the vocation of law as an act of faith, flowing from a position of belief.<sup>60</sup> Within my own faith, those of us in the law are assigned by Christ a specific task. Christ lived in a world governed by law, and though he often defied

---

56. Audio format: Civil Litigation and Appellate Practice Panel (Feb. 6-7, 2004), available at [http://law.pepperdine.edu/visitors/ilre/religious\\_calling.jsp](http://law.pepperdine.edu/visitors/ilre/religious_calling.jsp) (last visited Dec. 14, 2004).

57. Inaugural Conference of the Pepperdine Institute on Law, Religion, and Ethics: Can the Ordinary Practice of Law be a Religious Calling (Feb. 6-7, 2004), available at [http://law.pepperdine.edu/visitors/ilre/religious\\_calling.jsp](http://law.pepperdine.edu/visitors/ilre/religious_calling.jsp) (audio excerpts available online) (last visited Dec. 14, 2004).

58. ALLEGRETTI, *supra* note 24, at 20 (drawing on H. RICHARD NIEBUHR, CHRIST AND CULTURE (1951)).

59. ALLEGRETTI, *supra* note 24, at 21.

60. The value of the ILRE conference, perhaps more than anything, was to expose us to new heroes who are intentional in creating a work life which reflected the idea of faithful vocation. I have found myself often remembering the words of my fellow panelists, and sought to live up to their examples.

the expectations of those laws, he did not strike down the whole. Rather, he said: "Do not think that I have come to abolish the law or the prophets; I have come not to abolish but to fulfill."<sup>61</sup> That job of fulfilling the law is left to us to complete, mindful of the paradox of serving justice and mercy at the same time.

#### IV. CONCLUSION

The remarkable ILFE conference at Pepperdine posed a simple question: "Can the ordinary practice of law be a religious calling?" The answer, I must conclude, is no, because the practice of law as a religious calling is not "ordinary." Rather, lawyers of faith must be extraordinary. The very humility we feel based on a belief in God keeps us from being ordinary. We should be anything but ordinary in our ability to challenge ourselves to the point of discomfort, in our concern for those involved in a case, in our bedrock sense that there is such a thing as right and wrong, and in our passion for a vocation that includes roles other than that of mere lawyer. We must be extraordinary for our sake and His; His world needs us, and we need His world.

---

61. *Matthew 5:17* (New Revised Standard).



\*\*\*