

10-16-2002

The Ethical Professional: Consecration in the Workplace

Constance K. Lundberg

Follow this and additional works at: https://digitalcommons.law.byu.edu/life_law_vol1



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

Recommended Citation

Lundberg, Constance K., "The Ethical Professional: Consecration in the Workplace" (2002). *Vol. 1: Answering God's Interrogatories*. 23. https://digitalcommons.law.byu.edu/life_law_vol1/23

This *Unto What Were Ye Ordained?* is brought to you for free and open access by the Life in the Law at BYU Law Digital Commons. It has been accepted for inclusion in Vol. 1: Answering God's Interrogatories by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

The Ethical Professional: Consecration in the Workplace

Constance K. Lundberg

I am often asked, although there was some respite during President Hunter's term, how can I be a lawyer and be moral, ethical, or raise my head in civilized company. As an environmental lawyer I have been accused, within a single week, of killing children who lived in the same community with one of my "smoke stack" clients and also of killing families who might have accidents on a road the Department of Transportation couldn't expand because I was suing to stop the construction. Clearly, at least in the minds of my self-appointed critics, lawyers do get away with murder.

Believe it or not, when I was in school, the morality of lawyers was not a major issue. Lawyers were the champions who brought German and Japanese war criminals to justice, who stood between innocent blacks and hate-driven lynch mobs, who tried to make corporate America accountable for the essentially unrestrained contamination of our air, water, and soils.

In my high school and college years, questions of morality surrounded other professions:

- Nuclear physics was a morally questionable profession. We agonized over the conflict between J. Robert Oppenheimer and Edward Teller. Was the Hiroshima bombing a morally justifiable act? Was the United States foreign policy of mutually assured destruction viable or a death sentence to the world? The Committee of Concerned Scientists began while I was in high school. I was thrilled that there were scientists that were not, as most seemed to me, moral ciphers.
- Doctors and medical researchers were in the ethical spotlight. Tennessee Williams wrote a play and film script focusing on the immorality of indiscriminate prefrontal lobotomies. Disclosures in the aftermath of World War II raised the specter of human subject experimentation, and we learned that forced sterilization had been an American practice for fifty years.

- State government was the *bete noire* of my generation. It was crabbed, counter productive, and regressive. State and local government meant the Scopes trial and George Corley Wallace stirring hate against the lone black child, Sharlane Hunter, who was escorted to school each day by U.S. marshals to protect her life. Bull Connor, turning the water hoses of Birmingham on civil rights demonstrators was the symbol of states' rights, which meant segregation, Jim Crow, lynching, third-rate education, and economic exploitation of the poor.

Publicly perceived heroes and villains change with varying political currents. You cannot assure yourself morality or an ethical life by category, by associating with an “ethical” discipline or profession. So how can we identify and follow the pathways of righteousness Monday through Saturday? I address the special challenges of morality among the professions since our common challenges are greater than our differences.

J. R. R. Tolkien wrote *The Lord of the Rings*, a trilogy of morality in troubled times in a fantasy feudal world. In *The Two Towers* (volume 2 of the trilogy), Eomer, a warrior of one country, speaks to Aragorn, a stranger, a warrior hero on a quest from another land.

“The world is all grown strange. . . . How shall a man judge what to do in such times?”

“As he ever has judged,” said Aragorn. “Good and ill have not changed since yesteryear; nor are they one thing among Elves and Dwarves and another among Men. It is a man’s part to discern them, as much in the Golden Wood as in his own house.”¹

So if we must judge good and ill the same, whether among elves, dwarves, lawyers, physicists, or musicians, how do we judge? What is the hallmark of an ethical professional?

The ethical professional is a servant and a steward, using her knowledge, wealth, power, and position in service of her God and her fellowman. Paraphrasing Moses’ farewell sermon to the Israelites, in a speech entitled “How to Get Rich,” Hugh Nibley wrote:

The first rule, and one never to be forgotten, is that everything you have or ever will have, individually and collectively, is a gift from God, something that he blesses you with, has blessed you with, or will bless you with—you owe it all to him. . . . Throughout the book [of Deuteronomy], the refrain is repeated at the end of almost every pronouncement: You must do this in recognition of your dependence to God, because first and foremost he has given you your lives, he rescued you from Egypt, and he redeemed you—that is, he paid the price for you that you could not pay yourself.²

As King Benjamin taught, we cannot withhold from one another a portion of all God has given, when he has asked us to give, since all we have is his (Mosiah 4:21). The rich man in the account in Luke did not understand this first rule. He said he kept the commandments from his youth, but Jesus said, “Yet lackest thou one thing: sell all that thou hast, and distribute unto the poor, and thou shalt have treasure in heaven: and come, follow me.” The man was “very sorrowful: for he was very rich” (Luke 18:22–23).

In the scriptures, consecration has two forms. One can consecrate himself, his time, talents, and service. King David called the people to build the temple: “And who *then* is willing to consecrate his service this day unto the Lord?” (1 Chronicles 29:5). Or one can consecrate one’s wealth, as Christ commanded the rich man, and as saints did in the primitive Church and in the early days of the latter-day Church. Both forms of consecration are partial obedience to the first commandment, as explained by Moses in Deuteronomy. Both forms require both giving and receiving. Again, Dr. Nibley explains the offerings required of the Israelites:

The great gathering and feasts, whose strict observance makes up such an important part of the old law, all have the same purpose, to remind the Israelites that everything they had was a free gift from God. In holding these solemn conferences “you and yours—sons, daughters, servants, . . . strangers, orphans, widows must all come together and rejoice and be happy,” as one big happy family. That is the spirit in which this must be done, and that is the spirit of the law of consecration and the United Order. “Remember that thou wast a bondman in Egypt”—if some are slaves, all are slaves. This is to show where we stand with each other and the Lord.³

How does this translate into your lives as professionals? First, you must share your gifts—knowledge, skills, talents—with others in need, whether or not they can pay for your services. Lawyers and doctors have professional obligations to provide service *pro bono publico*—for the good of the public. Does this mean you oppress the poor until four o’clock Friday afternoon and then spend one hour giving nonreimbursed service to a poor person? I think not. Neither do I think it means providing service to the poor only when someone else (Legal Services, Medicare, the Peace Corps) pays you to do so.

You should, of course, pay all your tithes and offerings. Your donations to the Church do not discharge your obligations to support community service organizations, ranging from the food bank to the opera, with your donations, time, and efforts. You have a special obligation, I think, to use your professional skills and income as a stewardship to repay those whose contributions gave you those skills. Whether you graduated from a private school like BYU or a state-supported school, you should replenish, with generous interest, the resources that supported your education—scholarships, income, tuition subsidies, library resources, etc. Those of us with

multiple degrees may not be able to support all our alma maters to the same level, but the principle of repaying, for the benefit of the next generation, what we received from past generations is a good starting point.

When I think of our obligation to train future generations in our profession, I think of musicians. I know few musicians unwilling to spend time and energy helping young musicians grow. An example for me is that of a young musician in Utah with a promising career as a concert pianist. He was stricken with a nerve disease that ended his career as a pianist, but not his vocation. He began a chamber music group that has grown and now has several records and tapes and a regular concert season. This year, his third season, Grant Johannesen, the concert pianist and former head of the Cleveland Institute, came to Utah to appear as a guest artist with the group. I thought, as I watched this young man conducting the silver-haired, gracious master musician, how committed Johannesen is to the future of his profession. He drastically reduced his performing career to serve as director of the Institute, because it is the obligation of musicians to help the next generation, and here he was, gently and elegantly, helping a young conductor through the use of his name, his talents, and his subtle, unseen assistance in teaching the conductor how to accompany a soloist. It was the equivalent of a senior litigator from a national firm coming to Utah to sit at counsel table with a young lawyer in a major trial, coaching, but not trying the case himself.

Beyond the obligation to use your skills and position to pay for your own education debts and for the benefit of any in need, there are constraints on how a professional functions. If it is your intent to sell apples or clean streets, your obligation is to work hard, do your job well, and give a full day's work for a full day's pay. A true professional has other obligations. The original professions were the Church, medicine, and law. We have added others, to the irritation of some members of the original three. I define a profession as one where specialized higher education and a specific code of acceptable conduct and responsibilities are recognized by a legal or societal monopoly to give the service for which the professional is trained. I once did research on the chartering of professional licensing organizations. I learned that almost the first thing engineers, social workers, psychologists, librarians, and others did in establishing themselves as professionals was adopt codes of ethics.

What should those ethics include? Thomas L. Shaffer, a legal ethicist, identifies four roles for lawyers. For Shaffer, these are counseling roles. For me, counseling is when the lawyer interacts with his client in the full gamut of their professional relationship. The superficial elements of each of these roles will be used by any lawyer at one time or another. The question is not the facial elements of the roles, but the nature of the relationship underlying them—*that* determines whether the representation is ethical.

The Godfather

[T]he godfather controls the action and serves the interests of his client, the godchild. Don Corleone, as his son Michael says, is a “man who is responsible for other people.” Also . . . the godfather acts without regard to the harm his action causes to other people. Godfather lawyers either decide what their clients’ interests are, without consulting their clients, or they persuade their clients to accept lawyers’ views on what their interests are. They pursue client interests with their own “technical” devices, without much interest in their clients’ moral reservations.⁴

In President Ezra Taft Benson’s famous conference address on April 1, 1989, he spoke about the sin of pride and how it affects our relationships.

[A] major portion of this . . . sin . . . is enmity toward our fellowmen. We are tempted daily to elevate ourselves above others and diminish them.

The proud make every man their adversary by pitting their intellects, opinions, works, wealth, talents, or any other worldly measuring device against others.⁵

Lawyers in the godfather role use their intellects, opinions, and skills against their opponents in the guise of being an advocate for their clients. In reality, like the lead character in the movie *The Godfather*, the godfather lawyer establishes and maintains her own power, in her case, over both opponents and clients. In the elevated status of godfather, the lawyer no longer needs to interact with her client or her opponents—their concerns are irrelevant. She pretends to serve the interests of the client, whose reality she has denied. This pretense is no less acceptable if she deludes herself as well as others.

The double tragedy of the godfather role is that the professional overrides the client’s moral reservations, but can leave her own at the door, arguing that she is merely pursuing the client’s agenda, not her own. This is the classic defense of the scientist. “I am not a policy maker, I am a scientist. It is the politician’s job to decide what to do with my work.” This means there is no moral dialogue at any time in the representation.

Clients do not necessarily want a godfather lawyer. One third of all divorces granted in the United States never become final. Lawyers in my acquaintance comfort themselves with the often repeated observation that clients in family matters really don’t know what they want. I suggest that the lawyers don’t know what the clients *really* want and, as godfathers, deliver what they know how to deliver without inquiring too closely. If clients in one third of the cases have the determination to extricate themselves from their lawyers’ imposed solutions, how many more are divorced because they do not have the will or ability to fight back?

The Hired Gun

The hired gun, or client-centered counselor, focuses on the desires of the client. “The lawyer should not act in ways that would influence the client’s choice. The lawyer should be ‘neutral’ and ‘nonjudgmental.’”⁶ Shaffer points out the limitations of the hired gun, though literature is replete with examples. One example from recent pulp fiction is John Grisham’s *The Firm*. In that book, an entire law firm surrenders moral autonomy to the mob and becomes owned by it. Autonomy is no virtue to be bought. By allowing clients moral autonomy, the right to make moral judgments with no controls and to have those judgments implemented unquestioningly, we are consigning clients to hell—people, as described by C. S. Lewis, “on the outskirts of a city who continually move further and further away from one another.”⁷

Our own values and beliefs support the idea that we exist as part of a community. The autonomous model is unacceptable to a Christian, particularly a Mormon Christian, either as client or as lawyer. In addition, the hired gun model requires the professional to accept the moral code dictated by the client. This model is surely as unacceptable to a lawyer. But I think it equally unacceptable to a doctor counseling a pregnant-out-of-wedlock woman or terminally ill patient, a psychologist counseling a suicidal patient, a businessman whose partner wants to engage in predatory pricing, or a government scientist when a general is suggesting testing nuclear weapons in populated areas.

The Guru

Shaffer’s lawyer as guru is an appealing role for those of us from a proselyting background. Shaffer quotes Judge Clement Haynsworth in a speech to a law school graduating class:

[The lawyer] serves his clients without being their servant. He serves to further the lawful and proper objective of the client, but the lawyer must never forget that he is the master. He is not there to do the client’s bidding. It is for the lawyer to decide what is morally and legally right, and, as a professional, he cannot give in to a client’s attempt to persuade him to take some other stand. . . . During my years of practice, . . . I told [my clients] what would be done and firmly rejected suggestions that I do something else that I felt improper.⁸

Philosopher Martin Buber advocated what he called I-thou relationships. We should approach others as moral human beings capable of moral dialogue. However, he felt that professional relationships were rarely a source for moral counseling. The professional looks at the client and sees, not a *thou*, another person, but an *it*. “The sides are too *unequal*: ‘I see you *mean* being on the same plane, but you cannot. . . . [T]he situation . . . may

sometimes be tragic, even more terrible than what we call tragic.' Not only tragic, he said, but, for the professional, also morally perilous. Professionalism is an invitation to arrogance."⁹

The guru is arrogant. Here, as in the godfather role, the professional dictates to the client. The difference is that the godfather gets what the client says he wants with no consideration for moral judgments the client might make. He is paternalistic and controlling. The guru makes moral judgments for the client and in essence says to him, "This is what you should do/want." It is another form of paternalism and, like the first, leaves the client out of the equation. This role has the same pitfalls as the godfather, or the father-knows-best model of professional behavior, but this model has one additional problem: By removing the client from the moral dialogue, the professional as guru denies the client his free agency.

The Friend

Shaffer says the godfather wants client victory, the hired gun wants client autonomy, and the guru wants client rectitude. He proposes a fourth model, one more difficult to follow and less likely to achieve its goal: the lawyer as friend. His goal is client goodness.

The model that we advance for the lawyer who is concerned with the goodness of the client is the lawyer as friend. We are not suggesting that the lawyer can become a friend to every client, but that the lawyer and client should deal with moral issues that arise in representation in the way that friends deal with moral issues. Our point of view here does not turn on friendship as a bit of good luck, but on being like a friend—as a counseling skill. . . . A friend is concerned with the other as a person. In Martin Buber's terms, a friend treats the other as a "thou" rather than an "it." Or, in Kant's terms, perceives the other as an end and not merely as a means to some other end.¹⁰

By friend, Shaffer means Aristotle's definition of friendship in *Nicomachean Ethics*: "Friends must enjoy one another's company, they must be useful to one another, and they must share a common commitment to the good."¹¹

Why is commitment to goodness important? Consider the constellation of professional problems surrounding the family. One in ten women lives in an abusive situation. The statistics for children are similar. Separation of the family may or may not eliminate the abuse—as we all know from news accounts, separated partners often return with violence and devastation. However, regardless of the abuse, twenty percent of children in Utah live below the poverty line, mostly children in single-head-of-household families. National statistics are worse.

If you are a lawyer, doctor, psychologist, nurse, social worker, or teacher representing one of the partners or the children in a troubled family, the

model becomes a critical issue. Will you help those children, that family, if you seek victory of one member of the family over the others, or autonomy for your client from the rest of her family? Will externally imposed rectitude alter the internal dynamics of the family or leave the family in as great a distress as ever but give the professional a self-satisfied feeling?

Imagine that you are the lawyer contacted by the husband of a family in town. He is making \$1,500/month and has a wife and three children ages 1, 3, and 5. He says he has had it with the marriage. The children have no discipline and are always crying and whining. His wife, of whom he speaks in ugly and derogatory terms, is nagging, he says, and getting uppity. She is turning the kids against him. She does not work—has a high school diploma but no particular skills and is unlikely to get more than minimum wage in any job, unlikely to get enough to pay for child care while she works. Her mother is an interfering old witch. The bishop stuck his nose into things that weren't any of his business. The man wants to be free, to get out of the marriage, to get enough of the \$1,500/month to live on (all of it if he can). If you listen carefully, what do you hear from this man? He is poor. His family lives in poverty. Divorce or separation will make it impossible for the family to live without assistance. It seems probable that there is abuse in the home. There may be a support system for the wife—mother, Church leaders—but it is unlikely. It is equally unlikely that there is much support for the husband. How do you become a friend in this case? How do you establish a moral dialogue? The fact that you are handling this case *pro bono* should make it easier, but probably won't. Charity clients are more likely to be defensive and hostile than grateful.

Here is the real challenge of the consecration of a profession. It is so easy to be moral in the abstract; so much harder in the dirty, raging, hate-filled reality that is muttering and swearing a blue streak in your office. Moses didn't get nice, clean, well-educated, upper-middle-class Hebrews. He got illiterate, superstitious slaves. As he reminded them in Deuteronomy, they were not the chosen people because they were more pure, more upright than others. But from these people came the seeds of the people of the covenant—they preserved the scriptures through war and pestilence. Finally, they were the family of the Savior. By the same token, Paul didn't get a nice, clean, well-behaved BYU ward in Corinth. He thanked God he didn't baptize the Corinthians, because they are so quarrelsome (1 Corinthians 1:14–15). He found the Corinthians carnal, envying, and full of strife and division (1 Corinthians 3:3). They were greedy, withholding support for missionary work and for the Church, but providing for themselves (1 Corinthians 4:10–14). What did Paul find in these quarrelsome and sinful Corinthians? He found them epistles from God, written on the fleshy tables of his heart (2 Corinthians 3).

As professionals, you will minister to the needy, the weary, those who are falling by the wayside. The whole do not come to the healer. If you wish to share a common commitment for the good, as described by Shaffer and Bellah, after Aristotle, you will have to look carefully. And it will not be enough to say it is a miracle of God that good could come from such people. They are the children of God, and you have consecrated your time and talents to serve them, to bring them into goodness.

How do you do that? Not as one young LDS associate in my very genteel law firm did. He stayed isolated in his office and increased the isolation by putting a very large painting of Moroni burying the gold plates on the wall in his office. Perhaps he could have created a greater division by putting a sign on his door reading “Desolation of Dragons,” but I doubt it. Paul came to know the Corinthians. He listened to their quarrels, their concerns, their contentions. He scolded and upbraided them. But ultimately, he accepted them as God’s children and looked for their strengths. Then he saw them as God’s recommendation to him.

I spent a lot of time traversing the intellectual no-man’s-land between the requirements of my clients and the demands made upon them by government representatives or by opponents in the community. I learned that people often do not know what they want or need. Like children, their demands may be tokens or talismans for other unidentified and misunderstood needs. It takes patient and careful listening to hear the needs behind the demands. What does the young, confused father need?

One of my students, faced with a similar problem in a class assignment, showed his capacity as a representative of Christ, as well as a creative problem solver, when he sought out educational opportunities for the young man. He counseled him about the need to expand his capacities, asking about his willingness to take classes, seek additional training, and enter counseling. He gently explored the problems of dividing a pittance among two households. He explored ways to reduce family tensions, provide greater face with in-laws. He reached out to the young man and found the pain and need within him. From there he was able to suggest meaningful solutions.

Often it also takes the good fortune of a person well prepared to instinctively react to challenges that appear in the process. Atticus Finch is a hero in *To Kill a Mockingbird* because of who he is. He is successful, not in the trial, where he fails, but in his instinctive act of courage and defiance before the lynch mob.¹² You can probe an apparently insoluble problem for months, even years; but you must understand it—and the capacities of your client—to see the light eking through a small crack in the opposition and know it suggests a solution acceptable to both parties. This understanding comes, I suggest, from love. “A good man out of the good treasure of the heart bringeth forth good things: and an evil man out of the evil treasure bringeth forth evil things” (Matthew 12:35).

I came to understand friendship and love in problem-solving from the man who is now my husband. Boyd Erickson was the head of environmental control for U.S. Steel in the western United States. I was his lawyer—out-house counsel, as we sometimes laughingly called it. He was committed to keeping Geneva Steel open and operating. I do not ask you to agree with him but to understand him. He felt a stewardship for each of the 4,500 employees of the plant. He worried about their families, their homes, their debts, and their children. Those were not institutional concerns in Pittsburgh. The plant operated under a constant shadow of threatened closure.

We were negotiating with EPA for new standards that would allow the plant to operate while meeting EPA established clean air standards. The standards we wanted would work if Geneva employees did every maintenance and repair procedure that was required. Much trust was necessary, however. It was difficult and cumbersome for EPA to enforce the standards. During a discussion with the agency about trust, agency representatives protested that it was difficult to trust the plant when employees were shutting down the pollution control equipment then in place to save the \$56,000/month of power bills that came when the equipment operated. This fact was unknown to me and to the Pittsburgh representatives. Pandemonium broke loose. The senior USX official from Pittsburgh threw the EPA representatives out of their own meeting, held in their offices. I sat with my head in my hands saying, “You can go to jail for this. People go to jail for this.” The Pittsburgh people were having a contest to see who could come up with the foulest and most profane epithets for the Geneva operators, one of whom was literally backed up against a wall grinding his teeth.

Boyd finally found a small window of quiet in the uproar and said, “You just have to understand . . .” and proceeded to make sure we did. He did not say the operators were right or justified. He just said they were human, doing their best under frightening and trying circumstances. That day I saw that a professional, operating with understanding and love, acts as the Savior’s representative on earth. He mediates with the judge. He does not pretend things are other than they are, but places them in their true context. Like Paul, he found a recommendation from God written in the fleshy tables of the heart. He never spoke directly of God, or the Savior, but he brought their spirit into a room that had, moments before, been filled with a spirit of anger and contention.

I believe that is the way consecration figures in our professional lives. It is not an artificial or externally imposed thing. But, by bringing understanding and love to our contacts with others—clients, opponents, judges—we can share those things most sacred to us—the spirit of the Savior, the eternal concepts of Christ’s love and the atonement—not through preaching, but through demonstration, not by announcement, but by letting others feel its sweetness and peace. I believe that we cannot

perform immoral acts and pursue unethical courses if we remain true to that spirit as we bring it to our daily service.

This Honors Devotional was given at BYU on February 7, 1996. Reprinted from the Clark Memorandum, Spring 1996, 6–13.

Constance K. Lundberg received her J.D. from the University of Utah in 1972. She is currently Associate Dean of the BYU Law School and Director of the Howard W. Hunter Law Library in Provo, Utah.

Notes

1. J. R. R. Tolkien, *The Two Towers*, Lord of the Rings 2 (New York: Ballentine, 1965), 15.
2. Hugh Nibley, “How to Get Rich,” *Approaching Zion*, The Collected Works of Hugh Nibley 9, ed. Don E. Norton (Salt Lake City: Deseret Book, 1989), 178, 179–180.
3. *Id.* at 181.
4. Thomas L. Shaffer and Robert F. Cochran Jr., *Lawyers, Clients, and Moral Responsibility* (St. Paul: West, 1994), 8. Shaffer originally defined the four lawyer roles in *On Being a Christian and a Lawyer* (Provo, Utah: Brigham Young University Press, 1981).
5. Ezra Taft Benson, “Beware of Pride,” *Ensign*, May 1989: 4–6.
6. Shaffer and Cochran, 19.
7. See C. S. Lewis, *The Great Divorce* (New York: Macmillan, 1946), as quoted in Shaffer and Cochran, 28.
8. Shaffer and Cochran, 35–36.
9. See Martin Buber, *The Knowledge of Man*, 171–172, trans. M. Friedman and R. Smith (1965), as quoted in Shaffer and Cochran, 37.
10. Shaffer and Cochran, 45.
11. Robert N. Bellah, et al., *Habits of the Heart: Individualism and Commitment in American Life* (1985), 115, as quoted in Shaffer and Cochran, 45.
12. See Thomas L. Shaffer, “Christian Lawyer Stories and American Legal Ethics,” *Mercer Law Review* 33 (1982), 890.