





# CHRIST & THE CODE

THE DILEMMA  
OF THE  
CHRISTIAN ATTORNEY

JOSEPH G. ALLEGRETTI

Professor of Law and Assistant Director of the  
Center for Health Policy and Ethics, Creighton University

As a professor of law at Creighton from 1979–1986, I had a particular interest in questions of legal ethics and the legal profession. In 1986 I left Creighton to pursue a degree in theology. My decision to go to divinity school reminds me of a law school story that has been making the rounds for years. Once there was a first-year student who had to deal with a pompous and overbearing professor. One day she was called upon, and after the usual amount of pressure and pain, she succeeded in stating the holding of the case. As she finished she blurted out, "But it's just not right!" To which the professor responded, coolly, "Listen if you want to study what's right, you should have gone to divinity school."

Reprinted from *The Creighton Lawyer*, Spring 1990,  
the Alumni Magazine of the Creighton University School of Law

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I seem to have taken that advice rather literally, for I've been at divinity school thinking about questions of right and wrong, good and bad. I've been struggling to make sense of how religion does (and should) shape our approaches to questions of personal and social ethics—more to the point, how religion intersects with law, public policy, and the work of the lawyer. I present here a theological perspective on the ethics and role of the lawyer. Although I write as a Christian, I hope my thoughts will prove useful to any lawyer who is seeking to ground issues of professional ethics within a larger and more encompassing frame of meaning. Here I take my cue from the Supreme Court. When the Court was faced with the delicate question of how to define religion, it held that a belief in a personal God was not necessary. Relying on the distinguished theologian Paul Tillich, the Court concluded that your religion is whatever is of ultimate concern to you, whatever occupies a place in your life parallel to the belief in God. In this broadly functional sense, most if not all of us are religious, and therefore I urge you to translate my thoughts into the language of your own faith/tradition.

I've entitled this article "Christ and the Code: The Dilemma of the Christian Attorney." You may have caught the faint echo of a classic work of modern theology, H. Richard Niebuhr's *Christ and Culture* (N.Y.: Harper & Row, 1951). The allusion is not accidental. Niebuhr identified and evaluated a number of typical approaches that Christians

have taken towards the larger culture, ranging all the way from the absolute rejection of secular culture in the name of Christ, to the whole-hearted embrace of secular culture on behalf of Christ. I intend to adapt Niebuhr's topology and examine a number of approaches open to the Christian attorney as she seeks to balance her loyalty to God with her professional obligations to courts, clients, and the public. How

Zealousness and Nonaccountability. First, the lawyer is the zealous partisan of her client. Her client is her only master, and she must do all that she can to achieve her client's lawful objectives, despite any doubts she may have about the moral or social merits of the client's cause. Second, the lawyer is neither professionally nor morally responsible for the means she uses, or the ends she achieves, as long as she stays within the

of the wide variety of options we confront.

Let me begin, then, with an adaptation of Niebuhr's first model, what he called "Christ against culture." The First Letter of John is a good example of this type. It views the world as a place of evil which the Christian must avoid. Secular society is rejected for the sake of Christ. This approach to culture has had a long and honorable history in Christian practice and belief. According to Niebuhr, it is represented in some strands of monasticism, in groups like the Mennonites, and in thinkers like Tertullian and Leo Tolstoy.

When applied to the legal profession, the analogous model might be termed "Christ against the Code." Let me illustrate it with a story I'd been in divinity school only a few weeks when I met another student who was also a lawyer. She told me that she had quit the practice of law because she could not square it with her Christian beliefs. She had grown tired of being a hired gun whose job was to help clients avoid their moral obligations. "I couldn't be both a lawyer and a Christian," she told me. She even had Biblical support for her view, in I Corinthians 6, where Paul expresses his dismay that Christians are bringing lawsuits against each other. Christians should not bring each other before pagan courts, writes Paul. They should suffer wrong rather than seek a legal remedy.

There are other ways to read this passage, of course, in light of the particular pastoral problems confronting Paul at Corinth.<sup>2</sup> Few of us would adopt this student's reading, and few if

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is she to render to Christ what is Christ's, and to the Code what is the Code's?

I use the word Code as a shorthand to signify the basic principles of professional ethics that govern the attorney's work in our legal system. We need not examine in detail the provisions of the Code of Professional Responsibility, or the more recent Model Rules, for despite their differences they express a common vision of legal ethics. Each embodies what I will call the standard paradigm of the lawyer's role.<sup>1</sup>

The standard paradigm is marked by two principles:

boundaries of the law and the profession's own rules. The principle of nonaccountability is meant to insulate the attorney from moral scrutiny for her actions.

I intend to present several models or types that represent alternatives open to the attorney as she seeks to balance her obligations to God with her professional responsibilities as expressed in this standard paradigm. Like all models, mine will sacrifice some accuracy for greater clarity. I present them not as rigid categories, but as a way to help orient us and to give us some sense

any of us would consider the practice of law off-limits for Christians. Nevertheless, my story illustrates one model of the appropriate relation between Christ and the Code. This model insists bluntly that a Christian cannot be a lawyer. Between Christ and the Code is a gulf that cannot be bridged. In its more moderate form, this model motivates those who seek to establish Christian tribunals, divorced from the normal legal process, where Christians can bring their disputes with each other for mediation and fraternal correction.

Although I cannot comment in detail on the strengths and weaknesses of this model, certainly we can respect its single-minded devotion to following Christ. At the same time, such a view runs the risk of forgetting that sin resides not just in social structures, but in the human heart as well, and that God is at work redeeming not only individuals but all of creation. It forgets that Christ came to reconcile all things to God, and that Christians are called to follow Him into the world and to make disciples of all nations. Still, even for those of us who do not hold to this model, it can serve as a cautionary note. Have we been too quick to accommodate our religious beliefs to the dictates of our culture and our Codes? Have we sold out? Have we bought in?

This leads me to a second model. Niebuhr talks of the "Christ of culture." In this view, there is no tension at all between the Gospel and the world. Instead, Christian values are thought to be identical with the

highest values of civilization. In the life and teaching of Jesus, we see the goal towards which the world is moving. This model too has had a long and respected history in Christian thought. Perhaps it reached its culmination in 19th century liberal Protestantism, which so often saw Jesus as a Victorian gentleman who came preaching liberty, tolerance, and evolutionary optimism. The values of democratic society were

providing a moral justification for the standard paradigm. The justification typically takes one of two forms. Sometimes, ethical scrutiny is shifted away from what the lawyer does and onto the adversary system as a whole. The claim is made that the adversary system is the most effective means available to determine truth, or achieve justice, or protect individual rights. So, for example, it is said that in the event of a dispute

accountability for their actions, or else they will be tempted to reduce their commitment to their clients, thus undercutting the basic assumptions of the adversary system.

A second approach justifies the standard paradigm in deontological terms. There is a personal relationship—a covenant, we might say—between lawyer and client. This relationship engenders duties of fidelity, confidentiality, and assistance. This explains why the attorney acts on behalf of the client alone. What she does for her client is good and right in and of itself, regardless of the consequences that ensue.

I'm not interested today in a critique of these two arguments. Suffice it to say that both have come under searching criticism in recent years. For our purposes, the important point is that under either view attorneys are said to act morally as long as they abide by the standard paradigm of legal ethics. And so it seems to many to raise no ethical problem if a lawyer makes an honest witness look like a liar, or reveals only that portion of the truth favorable to her client, or defends what she knows to be an unjust cause. What the Code says you can do, you can do, and what the Code says you must do, you must do.

It is this understanding that underlies the model of "Christ in harmony with the Code." There is no tension between Christian values and professional life, because the practice of law serves noble ends or is noble in and of itself. By fulfilling the role set for her by the adversary system, the attorney can be confident that

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equated with the core of the gospel message.

As applied to the legal profession, we might call the analogous model "Christ in harmony with the Code." Its adherents see no conflict between their work as lawyers and their lives as Christians. When lawyers act in accordance with the standard paradigm, they not only avoid legal trouble, but they act in a manner that is fundamentally right. The Code itself embodies a morally appropriate vision of the lawyer's role.

Those who hold this view are committed to

between two parties, the truth can best be arrived at if there is a neutral decision maker and if the parties are given the task of presenting their own positions as forcefully as they can while challenging the presentations of their opponents. In the clash of truths, Truth will emerge. In this view, the standard paradigm is seen as necessary for the effective operation of the adversary system. The system will work only if lawyers have the responsibility to act zealously and single-mindedly for their client's cause. And attorneys must be freed from moral

she is doing what is good and right in the eyes of God

This model has its own strengths. For one thing, it reminds us that the world is the arena in which God's kingdom is being realized. It recognizes that God is at work in institutions as well as in individuals. At the same time, it gives rise to a risk that whatever is acceptable to the wider culture will be seen somehow as God's will. As Niebuhr put it, loyalty to culture takes precedence over loyalty to God, and Christian values cease to serve as a check upon the idolatrous aspirations of culture.

There are risks for the lawyer in such a model as well. It can lead the lawyer to abdicate moral responsibility for her actions, which in turn can lead to the collapse of her moral universe. I suspect that it is society's recognition of this moral abdication which leads to so much of the criticism levied at the legal profession, the scathing attacks on lawyers as prostitutes or hired guns.

Maybe this is what led Carl Sandburg to ask, "Why does a hearse horse snicker hauling a lawyer away?" Or a Medieval poet to pen the immortal lines, "St. Ives was a lawyer and not a thief, a thing almost beyond belief."

The cynics and the skeptics might assume that all lawyers fit this model. But in my experience, many attorneys are aware of the unavoidable tension between Christ and the Code. They want to be both a good person and a good lawyer, and they realize that the two may not be identical. I suggest that once an attorney begins to reflect

upon the problem of serving two masters, she no longer fits within this model. Instead, we need to consider a third model, based upon what Niebuhr called "Christ and culture in paradox."

Our third model stands between the first two. The first, remember, rejects the secular world as incompatible with Christian values. The second accepts the secular world as embodying Christian values. Our third model avoids this



"either/or" for a "both/and" approach. Like the first model, it admits that all human culture is sinful and to be involved with it leads to sin. Like the second, it insists that our sinful world is sustained and redeemed by a loving God.

Christian theologians who favor this model are fond of paradoxical language. They juxtapose law and grace, God's wrath and mercy. They talk of the person as simultaneously a saint and a sinner. We see these moves in Augustine at times, in Martin Luther, and more recently in Reinhold Niebuhr. Christians

inhabit two worlds, a private realm in which they relate to God as individuals and are bound by the teachings of Christ, and a public realm where they live and work and must make accommodations to the sinfulness of the human condition. Christ and culture are in conflict, yet each must be obeyed. Hence, the Christian is subject to two moralities, and must live precariously, sinfully, with no way out of the impasse on this

side of history.

So Luther speaks quite eloquently of the Christian duty to obey the Sermon on the Mount. Don't resist evil, turn the other cheek. Yet he can say that as members of the state, Christians are to serve the state and must at times be willing to take up the sword and kill.

This model has its own advantages. It is bluntly honest about the moral ambiguities, the interwoven joys and tragedies of everyday life. It captures the central insight of the Reformers that nothing we do can make us right with God. That's the whole point!

While we were yet sinners, Christ died for us and reconciled us to God.

As applied to the legal profession, we might call the analogous model "Christ in tension with the Code." Here the attorney admits that sometimes she does things that a nonlawyer should not do. She admits that ordinary morality would sometimes condemn her actions. She argues, however, that everyday morality is not applicable to her professional life. Her professional obligations give rise to a unique set of concerns. As an agent of the client, she should be judged solely by the rules of legal ethics embodied in the Code. According to Richard Wasserstrom, the result is that the lawyer becomes, in essence, an "amoral technician," who inhabits a moral world far simpler and less ambiguous than the moral world of everyday life. It becomes easy to turn aside difficult questions with the reply, "That's not my concern. My job is not to second-guess my client, but to achieve my client's interests."<sup>3</sup>

As in our second model, we can note the appeal to the principles of zealousness and nonaccountability. The lawyer in the second model has no doubts that a good lawyer can be a good Christian, while the lawyer in the third model hopes that both are possible, fears that both are not, and knows no way out of the dilemma. The result can be a kind of moral schizophrenia. The attorney compartmentalizes her life. She separates the public from the private and concludes that her Christian values apply only to the private. In her professional life she insists that she be

judged only by the rules of the profession.

Here there is a denial of moral agency, a form of bad faith. When challenged to justify her actions, the attorney doesn't respond, "I chose to do this and I take responsibility for my choice." Instead, she distances herself from her action by shifting to the third person language of role. This is what lawyers do. "This is what the system demands." Such a situation is inherently unstable. Something has to give, and it's no surprise that studies of the legal profession indicate that if a lawyer argues positions that conflict with her personal values, over time those values will change. Taken to an extreme, the role can absorb the personality. Consider, for example, the distressing gravestone eyed in a Scottish cemetery: Here lies John McDonald, born a man, died a grocer.

As a final model, Niebuhr speaks of "Christ transforming culture." In some ways this resembles our third type. It too realizes that culture is sinful, yet acknowledges that Christians have obligations to culture. But unlike the third type, this model claims that the Christian need not be immobilized between the demands of Christ and the demands of culture. The Christian is one under the power of Christ, and Christ is the one who redirects and reinvigorates our world. The gospel is seen as penetrating all of life, converting both people and institutions. This model is exemplified in Christian theology by thinkers like Augustine and John Calvin. Although Niebuhr doesn't make the

point, I suggest that the model has strong Biblical warrant as well. Jesus teaches that the kingdom of God has arrived. It is present, in our midst, growing like a mustard seed, penetrating all of life. It is here, but it is not yet fully realized.

Lawyers who hold an analogous view fit the model that I will call "Christ transforming the Code." This talk of transformation can be difficult



Critics of Niebuhr have long commented on the slipperiness of terms like transformation and conversion. What does it mean to say that Christ is at work transforming culture? What counts as evidence? And how would this apply to the work of lawyers?

Despite these difficulties, at the very least this model asserts that Christ is the Lord of all, even the legal profession, and that Christians are called to serve Him in their lives, even their professional lives. Moreover, this model has the great advantage of rejecting the artificial separation of life

into private and public realms, with religion relegated only to the private. The Christian attorney is to bring her values into the workplace, with the hope and trust that these values might revitalize and transform her relationships and the profession itself. The lawyer is not a hired gun, nor an amoral technician. She cannot avoid moral responsibility for her actions by appealing to professional rules and roles. She is a

moral agent, whose actions have moral consequences for which she is responsible, not just to herself and to others, but ultimately to God.

I suppose that Thomas More could be called the patron saint of this model. More was willing to give up much for his King and his career, but not at the cost of his soul. As he explains in the play *A Man for All Seasons*, "But there's a little . . . little area . . . where I must rule myself."<sup>4</sup> Why this obstinance? Because, says More, "God is love right through, and that's my true self." More's religious

convictions gave him the courage to draw a line, to step outside of his professional role and to declare that his beliefs in a loving God would let him go this far, but no further.

This model is unfamiliar to most attorneys. Its scope is unclear, its implications uncertain. It seems to threaten traditional attorney-client relations. Let me try to advance the discussion by briefly sketching three avenues for reflection. Each is an attempt to make real the goal of a legal profession transformed by the saving power of Christ.

First, I suggest that we need to take a fresh look at the concept of vocation. A profession is what one professes to be, but a vocation is what one is called to be, what God calls me to be. Luther and Calvin were aware that any occupation can be a calling if its primary motive is to serve God and neighbor. In an insightful article, Charles Kammer has argued that the concept of vocation can serve as a check upon the tendency of professionals like doctors and lawyers to prefer their own self-interest to the public good.<sup>5</sup> According to Kammer, a profession that understands itself as a vocation "can escape many of the problems generated by . . . narrow self-interest because it is governed by a higher vision of the purposes the profession is intended to serve." As the professional is liberated from self-interest, she is set free to serve others. Work becomes an avenue of discipleship to Christ. "Our vocation becomes that of loving our neighbor through our occupation."

Several questions come

to mind. Does it make sense to talk of a lawyer's vocation? In what ways can a lawyer's work be a vehicle of service to God and neighbor? More concretely, how would viewing law as a vocation affect the attorney's relationships to clients, courts, and adversaries? What would be the impact on the standard paradigm of legal ethics and the principles of zealotry and nonaccountability?

A second approach would be to focus on the traditional Biblical notions of priest and prophet. Max Weber defined the priest as a specialist in the cultic enterprise, and sociologists have been quick to point out that the legal system plays a cultic role in society. It is the mechanism by which society resolves conflicts that threaten the social fabric. It has its own myths and rituals, its own language, its own garb. To the layperson, the legal system is the mysterious dispenser of blind justice. In the "Temple" of the law, lawyers and judges are its priests.

Yet we know from Scripture—from Jeremiah, Ezekiel, and Jesus—that priests can also be prophets. Lawyering can be seen not only as a priestly profession but as an avenue for prophetic ministry.

A prophet interprets the signs of the time in the light of faith, and speaks God's word for that time and place. The prophet criticizes people and institutions, but not as an outsider. The prophet stands with the sinful as one of the sinful, confronting the terrible majesty of God's justice, yet at the same time the prophet holds out a vision of God's mercy and faithfulness and of the new life possible on

the other side of judgment. The task of the prophet is to bring "to expression the new realities against the more visible ones of the old order."<sup>6</sup> The prophet offers an alternative vision of reality based upon God's freedom and God's will for justice.<sup>7</sup>

What would it mean to claim a prophetic role for lawyers? What is the alternative perception of reality to which they might point?

Legal rights without the means to enforce them are a sham.

By and large, and with some notable exceptions, lawyers in America have served as defenders of wealth, power, and entrenched privilege. An appreciation of their prophetic role would spark a new concern for the weak and the poor, those who have little voice in today's system. It would lead lawyers to question the

they achieve or the means they employ. The prophetic dimension raises disturbing questions about the social and personal costs of the principles of zealotry and nonaccountability.

A prophetic role for Christian attorneys would build upon the rich legacy of the Hebrew prophets. Amos and Isaiah and the rest refuse to separate worship of God from the duty to help those who cannot help themselves. They attack all who trample the poor, turn aside the needy, exploit the weak, and corrupt the legal process. Indeed, the plea of Isaiah could almost serve as credo for the Christian attorney: "Make justice your aim; redress the wronged, hear the orphan's plea, defend the widow." (1:17). Jeremiah puts it succinctly: To know God is to do justice to the poor and needy (22:15-16).

Finally, we might follow the lead of Thomas Shaffer and begin to explore a vision of lawyering which puts the stress less on the dictates of role and more on the duty to care.<sup>8</sup> The conventional wisdom too often views lawyers as possessing only two options when they have moral qualms about their client's case. The lawyer must do everything she can to win for her client—or she can quit! This view of the lawyer-client relationship assumes that lawyers and clients are morally isolated from each other. They do not influence each other. Neither is open to change.

On the contrary, an ethic of care recognizes that lawyers and clients are not morally autonomous. They are not islands unto themselves. As they come together they become

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First and foremost, the acceptance of a prophetic role would mean a new commitment by lawyers to the just distribution of legal services. Today in America the poor have little access to legal counsel, and the middle-class is finding it increasingly difficult to afford legal assistance. As long as legal representation is a commodity to be purchased like any other, those who can afford lawyers have them, and those who cannot are left without the means to assert their legal rights. As the old law school adage goes, a right without a remedy is no right at all.

prevailing assumption that *pro bono* work is a deed of charity rather than a duty of justice.

Furthermore, the prophetic role shines a new light on the ethical problems that lawyers confront in their daily practice. A heightened sense of social justice, for example, would force attorneys to reexamine their cherished commitment to the standard paradigm. Perhaps unqualified loyalty to the client produces injustice and social harm. Perhaps attorneys should no longer be immune from moral criticism for the ends

mutually dependent. In their dependence each is open to change. Conversion is possible. What Buber called the I-Thou relation can emerge. Openness and risk and vulnerability characterize such a relationship.

The recognition of an ethic of care would produce an epochal shift in lawyering, away from the amoral provision of technical assistance, towards service to the client as a person. Shaffer writes:

*The broader professional consequences could be revolutionary: Lawyers would have to become morally attentive, attending, that is, to the persons of their clients as much as to the problems clients bring to them. Law students would come to insist on education which trains them in the skills of sincerity, congruence, and acceptance. Every level of the legal enterprise would come again to think of moral development as part of its task, all toward a professional ethic of receiving as well as giving—of unfurling, rather than imposing, to use Buber's phrase.*

Such an ethic rests ultimately upon the conviction that God is at work in human relationships, and therefore all things are possible. God is the invisible third party in all human encounters.

Again, we need to consider the implications of such a view for traditional attorney-client relationships. Would an ethic of care intrude upon client autonomy? How would it inform the attorney's approach to particular ethical duties like confidentiality? Would attorneys who adopted an ethic of care become more or less committed to the

principles of zealousness and nonaccountability? Is an ethic of care even possible? Perhaps an attorney can have a relationship of openness and vulnerability with a flesh-and-blood client, but what about the attorney who represents a corporation, a union, a pension board?

An ethic of care is tentative and open-ended. It provides no definitive answers to ethical questions because only in the give-and-take of



the relationship can the morally responsible course of action be discerned. Nevertheless, the ethic of care deserves further exploration by those who are concerned to integrate the personal values and professional life of the attorney. What is it really but an attempt to bring the force of the Gospel message to bear upon the lawyer-client relationship? Perhaps here is the seed of a new conception of the Christian lawyer, not a hired gun anymore, but (dare I say it?) a minister to her clients.

These are just a few of the ways in which Christian

attorneys could begin to explore the model of "Christ transforming the Code." My guess is that such a model will lead to some surprising results. At times we may find ourselves less committed to the single-minded pursuit of our client's interests, while at times we may find ourselves more deeply committed to the client than ever before. For example, maybe the hard question is not, "How can an attorney

we are serious about the transformation of ourselves and our profession, then we can hardly avoid these little dyings, for we know that there is no growth without change, no conversion without repentance, and no Easter Sunday without Good Friday.

#### Notes

1 Two articles which discuss the standard paradigm of legal ethics are M. Schwartz, "The Professionalism and Accountability of Lawyers," 66 Cal L Rev 669 (1978), and G. Postema, "Moral Responsibility in Professional Ethics," 66 NYU L Rev 63 (1980). I am indebted to both.

2 For the modern historical reading of I Corinthians 6, see C. K. Barrett, *A Commentary on the 1st Epistle to the Corinthians* 134-143 (1968); W. Orr and J. Walther, *I Corinthians* 193-199 (1976).

3 R. Wasserstrom, "Lawyers as Professionals: Some Moral Issues," 6 *Human Rights* 1 (1975).

4 R. Bolt, *A Man for All Seasons* (1962) 34. The subsequent quotation is from Bolt, at 70.

5 Kammer, "Vocation and the Professions," in T. Ogletree, ed., *The Annual of the Society of Christian Ethics* 151 (1981). The two subsequent quotations are from Kammer, at 174-175, and at 170.

6 W. Brueggemann, *The Prophetic Imagination* 23 (1978).

7 Brueggemann, at 110.

8 T. Shaffer, *On Being a Christian and a Lawyer* (1981). The subsequent quotation is from Shaffer, at 30. I am indebted to Shaffer for much of my discussion of the ethic of care.

9 Shaffer, at 56.

#### Dean's Note:

*The Clark Memorandum is interested in continuing the dialogue introduced by Professor Allegretti. If you would like to share your views in a letter to the editor or in an article, please write: 342 JRCB, Brigham Young University, Provo, Utah 84602.*