



# IS IT POSSIBLE TO BE A LAWYER AND A CHRISTIAN?

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BOOK REVIEW: Joseph G. Allegetti.  
*The Lawyer's Calling: Christian Faith and Legal Practice.*  
New Jersey: Paulist Press, 1996.







Joseph G. Allegratti's book *The Lawyer's Calling* is an accessible, thoughtful, challenging defense of the view that it is possible to be both a lawyer and a Christian. Picking up a theme sounded by Yale Law School Dean Anthony Kronman in his book *The Lost Lawyer*, Allegratti maintains, "At its core the legal profession faces not so much a crisis of ethics or commercialization, or public relations, but a spiritual crisis. Lawyers and the profession have lost their way" (pg. 3).

Whereas Kronman looked to the historic ideals of the legal profession and the Aristotelean concept of practical wisdom in search of an anecdote for the "crisis of morale" in the legal profession, Allegratti looks to Christianity as a way of transforming our legal culture inwardly, one lawyer at a time, by identifying and applying "resources in the Christian tradition that can help lawyers reconnect their work with their deepest and most profound values" (pg. 5).

It is a formidable project, and it is a tribute to Allegratti, a professor of legal ethics at Creighton University Law School, that he undertakes it. The author recounts an anecdote about a friend who, upon hearing that he was writing a book about what it means to be a Christian and a lawyer, replied, "But Joe, what will you do with the rest of the page?" (pg. 1). The remarkable thing is not that Allegratti did find enough to fill an entire page, but that he manages to pack a very wide discussion of many facets of legal practice into a brief and readable 125 pages.

#### *The Basic Typology*

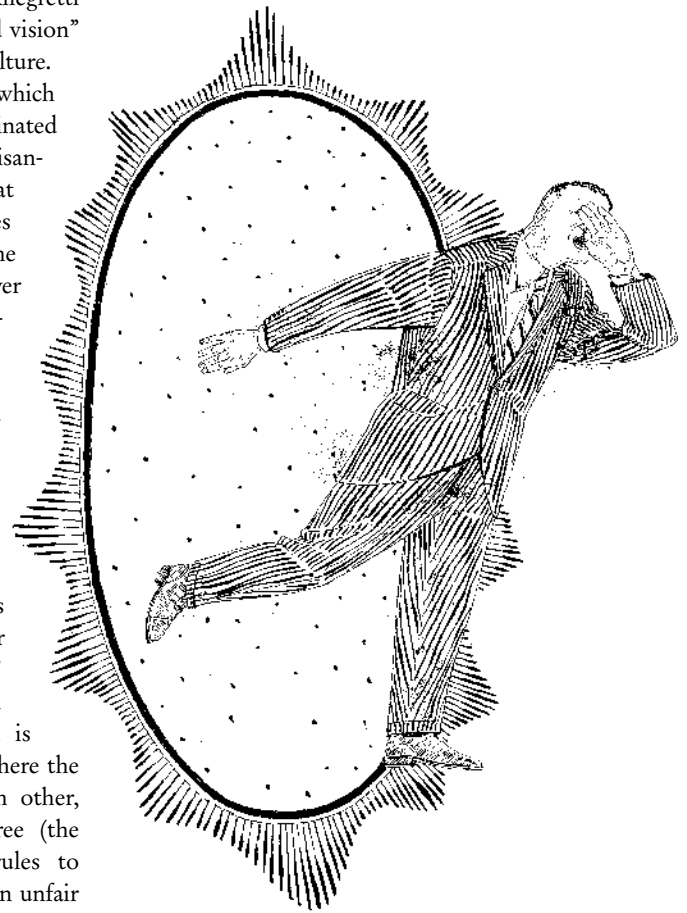
Allegratti uses as a point of departure Richard Niebuhr's effort in his monumental book *Christ and Culture* to identify and evaluate a number of approaches that Christians have taken toward the wider

secular culture. In applying Niebuhr's typology to the legal profession, Allegratti begins by identifying the "standard vision" of the lawyer's role in American culture.

The standard vision, which Allegratti calls the "Code," is dominated by two values, neutrality and partisanship. The lawyer "is neutral, in that he does not let his personal values affect his actions for clients; and he is partisan, in that he does whatever he can to achieve his client's objectives, whatever they might be, limited only by the law itself" (pg. 9). According to the standard vision, "a lawyer's primary responsibility is to represent his client to the best of his ability and leave questions of 'truth' and 'justice' to others" (pg. 8). Rather than letting his own moral scruples intrude on his work, the lawyer acts as the "proverbial hired gun," constrained only by what is legal (pgs. 8-9). Accordingly, "[a] trial is seen almost as a sporting event, where the two lawyers face off against each other, while a neutral umpire or referee (the judge and jury) enforces the rules to ensure that neither party obtains an unfair advantage" (pg. 9).

Adapting Niebuhr's analysis of various attitudes a Christian can adopt towards secular culture, Allegratti discusses four contrasting approaches that a Christian lawyer might take in response to the standard vision of the lawyer's role. Allegratti explains that each of these models represents an ideal type, and as individuals we may find ourselves exhibiting different aspects of more than one of these responses.

The first model Allegratti calls "Christ Against Culture." According to this view it is simply not possible to be a Christian and a lawyer. An example of this approach is a former lawyer Allegratti met at Yale Divinity School, who had abandoned the law because she found that what she did as a lawyer was incompatible with her Christian faith. Adherents of the Model One believe that lawyers "inevitably do things for clients that no true follower of Christ could countenance. Between Christ and the Code is a chasm so wide and so



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deep that it can never be bridged" (pg. 11). If this model is correct, a Christian lawyer is faced with a choice of either abandoning one's professional life or abandoning one's commitment to living as a Christian.

A second approach, a mirror image of the first, is "Christ in Harmony with the Code." According to Model Two, there is no perceived tension between the gospel and the Code. Allegratti notes that lawyers who adopt this model are often surprised and even a bit insulted by the question of whether it is hard to be a Christian and a lawyer (pg. 14). Model Two, which Allegratti seems to believe is the dominant attitude of most lawyers, has certain benefits. It frees lawyers from self-doubt and

introspection, enabling them to focus entirely upon their duty to their clients. But there are significant problems with this attitude as well. For one thing, it tends to "blunt the radical message of the gospel and domesticate its countercultural thrust" (pg. 15). More troubling, it enables the lawyer to view himself, in the words of Richard Wasserstrom, as an "amoral technician" (pg. 16). A lawyer in the grip of this approach also fails to see that "God may call us to something *more or different* than the Code" (pg. 16).

Allegretti's third model is "Christ in Tension with the Code." According to this dualist vision, "Christians inhabit two worlds, a private realm in which they relate to God as individuals and are bound by the teachings and example of Christ, and a public sphere where they live and work and must make accommodations to the sinfulness of the human condition" (pg. 17). According to Model Three, there is no way to bring the two realms of Christ and the Code together. Life is compartmentalized, and the two spheres of life are separated. At home, the lawyer "tries to live out his Christian values, but when at work he looks to the Code" (pg. 18).

In response to questions such as "How could you represent such a client?" or "How could you do that on behalf of a client?" the compartmentalizing dualist will respond, "I was only doing my job" (pg. 18). This approach is ultimately dissatisfying, Allegretti argues, because while honest about moral ambiguities, it results in a kind of moral schizophrenia. Allegretti recalls the response of a lawyer friend he complimented for donating time and talents to church service on Sunday. "I've got to do something on the weekend to make up for what I do the rest of the week," the friend explained wearily (pg. 1).

Model Three dualists "forget a simple yet profound truth of the Christian message: God is the God of *all* of life, and so God's claim is on us always and everywhere" (pg. 19). Allegretti also notes that a schizophrenic life is inherently unstable. "Something has to give, and it comes as no surprise that if a lawyer takes positions at odds with his personal values, over time those values will change to comport with his public behavior" (pg. 19). Model

Three slides slowly and imperceptibly into Model Two.

The fourth model Allegretti calls "Christ Transforming the Code." 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" (pg. 21). Model Four asks the lawyer to seek to live an integrated life, "to bring his religious values into the workplace, with the hope and trust that God will work through him to revitalize and transform his life as a lawyer, his profession, and ultimately the wider community as well."

Allegretti concedes that while we might feel an attraction to Model Four, it is difficult to know what it means for us in everyday life. He remembers a divinity school professor who, in response to Niebuhr's typology noted, "Everyone wants to be a transformationist, but nobody is quite sure what it means!" (pg. 21).

#### *Living the Transformationist Ideal*

Allegretti spends the rest of the book trying to explain what it might mean to try to integrate one's life as a Christian with the secular culture's vision of the Code. In successive chapters Allegretti focuses upon what it means to be part of a "profession" and to have a religious "vocation" or "calling" (chapter 2), the idea of the lawyer-client relationship as one characterized not simply by "contract" but by "covenant" (chapter 3), and the "prophetic ministry" of the lawyer who can be a voice calling her clients back to their better selves (chapter 4).

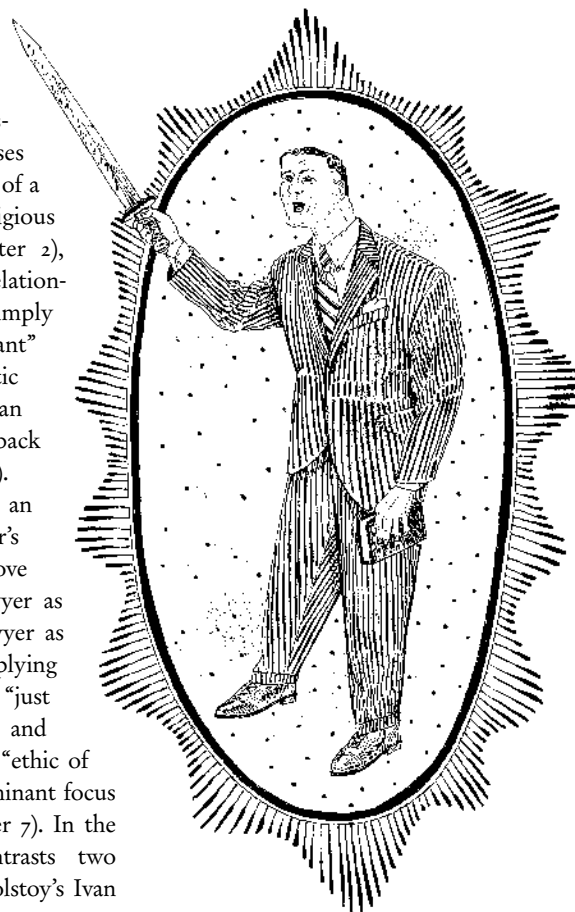
The book then takes an extended look at the lawyer's role in litigation, urging a move from the paradigm of the lawyer as "hired gun" to that of the lawyer as "healer" (chapter 5), applying Christian teaching regarding "just war" to litigation (chapter 6), and advocating the adoption of an "ethic of care" to complement law's dominant focus on an "ethic of rights" (chapter 7). In the final chapter, Allegretti contrasts two lawyers from literature, Leo Tolstoy's Ivan

Ilyich, who is a paradigmatic Model Two "amoral technician," and Robert Bolt's Thomas Moore, who illustrates the Model Four integrationist ideal.

Each of these chapters provides rich food for thought, and each contains concrete bits of helpful advice for the lawyer seeking to integrate her professional life with her religious commitments. Especially for a lawyer feeling dissatisfied with her professional life, the book contains a number of insights and suggestions that might enable lawyers to better integrate their professional work with their moral ideals.

For example, Allegretti stresses the importance of lawyers treating their clients as whole persons deserving of respect, sympathy, and counsel, rather than just a case to be won or settled, or a transaction to be completed. I suspect that by follow-

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ing this simple suggestion, which is surprisingly difficult in the hectic workday of the average lawyer, many lawyers could significantly increase the level of satisfaction they get from their professional life.

In the interest of time and space, I will focus my attention on Allegratti's analysis of the lawyer's "calling" or "vocation" and the implications of lawyers seeking to cultivate an "ethic of care."

### *The Lawyer's Calling*

Medieval theologians such as St. Thomas Aquinas taught that the highest human activity was contemplation of God. In contrast, "normal secular work had no real significance, and was thought to be a hindrance to the religious life, for it distracted one from the leisure that was necessary for divine contemplation" (pg. 27). This view changed with the Reformation. "Luther and Calvin reacted to the medieval devaluation of everyday work by attacking the notion that one could live the Christian life only by abandoning the secular world for the monastery" (pg. 27). Charles Kammer summarizes Luther's thought as follows: "Any occupation becomes a 'calling' if its primary motive is serving God, responding to God's wishes and intentions for human existence" (pg. 27). Thus, after the Reformation, while it is no longer necessary to join the monastery to serve God, "no Christian is exempt from the duty to follow Christ and to serve the neighbor in love" (pg. 28).

Any job, including that of a lawyer, may be a "calling" if our attitude and disposition make it one. The professions—until recently a concept that included only the ministry, medicine, and the law—have a "natural propensity" to be a calling because they exist to serve others (pg. 29).

Having a sense of calling involves both an internal and an external dimension. The "internal call" is a "private realization that one is chosen by God to serve the church as an ordained minister" (pg. 30). For a lawyer, Allegratti describes the inner call as a desire to serve others coupled with "an intuitive sense that one has the right kind of talents, attributes, and life experiences to become a lawyer" (pg. 31). According to Allegratti, "[t]hose who enter law with the intent to bring justice

to a broken world, to vindicate the rights of the weak and vulnerable, to heal broken relationships, to ensure equality to all persons—these persons have responded to a true calling" (pg. 31).

The decision of the church to ordain a person a minister is what Calvin spoke of as the "outward call" (pg. 31). Allegratti suggests that we think of law school "as the rough equivalent of the minister's outward call." So viewed, the law school "is the means to an end—it is the instrument by which we develop the competencies to implement our inner call to service. It is the place where our inner call takes on flesh" (pg. 32).

BYU law school professor David Dominguez's efforts to encourage law students to remember and reclaim the ideals that drew them to the legal profession can be seen as a way of enabling students to reclaim their sense of "inner call" that drew them to the law. Professor Dominguez places before second- and third-year law students the essays they wrote when applying to law school, essays in which they often speak in idealistic terms of the service they hope to provide as lawyers. He then challenges them to bring their current attitudes and plans into harmony with this earlier, more idealistic self.

Having a sense of calling serves several purposes. Seeing her vocation as a calling places a curb on a lawyer's sense of self-interest, which "places limits on certain behaviors that have contributed mightily to the current dissatisfaction with the profession, such as the padding of bills and the neglect of clients" (pg. 33). Allegratti maintains that a lawyer "who regards herself as having a calling cannot help but see her clients differently. A client is not a mere commodity, but a human being, a human being in pain and emotional turmoil, who has come to the lawyer for help" (pg. 33).

The concept of vocation or calling also has the effect of expanding the lawyer's moral universe. "The concept of a calling gives the lawyer a kind of moral compass: it constantly reminds her that her ultimate loyalty is not to a client, or to the Code, but to God" (pg. 33).

Allegratti acknowledges that it is not easy to cultivate a sense of calling "when

our days are a chaotic jumble of constant phone calls, impending deadlines, hurried research, endless meetings, and no-time-to-leave-your-desk-lunches" (pg. 35). Having a sense of calling does not resolve all problems. Nevertheless, "a sense of calling can help us endure and flourish in our work. It can put things in perspective. It can give us hope" (pg. 35).

### *The Ethic of Care*

Once a decision has been made to resort to litigation, Allegratti notes, "there is a near-irresistible drift toward all-out warfare" (pg. 96). In response to the question of what a lawyer's conduct should be during the conduct of a lawsuit, Allegratti endorses Calvin's "admonition about the proper disposition that should accompany a lawsuit" (pg. 96). According to Calvin, "it is not out of order for Christians to pursue their rights with moderation, so long as no damage is done to love" (pg. 96). While this may appear to set an impossibly high standard, Allegratti maintains that "[a] lawsuit can be brought if and only if it can be prosecuted without impairing Christian love. If anger, bitterness, or the lust for revenge infects a lawsuit, even a just cause becomes unjust" (pgs. 96–97).

Building upon the work of Carol Gilligan and Rand and Dana Crowley Jack, Allegratti suggests that such an attitude can be cultivated if the lawyer seeks to develop an "ethic of care" rather than just an "ethic of rights."

*In their research, Jack and Jack discovered that while some lawyers conceive of the moral life primarily as a matter of following the rules of the game embodied in the adversary system and the codes of professional responsibility, others are more concerned with minimizing harm and preserving relationships. While an ethic of rights stresses competition, the ethic of care emphasizes cooperation; instead of rights, responsibilities; instead of formal and abstract thinking, contextual reasoning; instead of the fair resolution of disputes, the avoidance of harm. [Pg. 100]*

Allegratti cites a hypothetical case from the Jacks' research that illustrates the difference between an ethic of rights and an ethic of care. A lawyer is asked to



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imagine that he represents a client seeking custody of children in a divorce action. The lawyer inadvertently learns that the client poses a risk of serious harm to the children. The information will remain unknown to the other party unless the lawyer reveals it. If he reveals the information, his client will lose custody of the children, but if he keeps the information secret, his client will win custody of the children. There is no doubt in the lawyer's mind that the other party is the superior parent who should have custody of the children.

The ethic of rights focuses exclusively upon the rights and interests of the client, focusing upon the role of the lawyer as advocate and nothing else. In contrast, a lawyer motivated by the ethic of care will place more weight on the best interests of the child. This approach, Allegretti maintains, provides less certainty. Perhaps the lawyer will urge his client to get counseling. Perhaps the lawyer will have developed sufficient trust that he is able to have

a heart-to-heart talk with his client and get the client to acknowledge that the child is better off with the other parent. Perhaps the lawyer will support the appointment of a guardian to represent the best interests of the children.

This hypothetical case brings into focus a significant shortcoming of Allegretti's book. Stated simply, it leaves unanswered, in fact almost entirely unaddressed, the question of whether, and under what circumstances, one would want to hire a lawyer who manifests Allegretti's transformationist ideal. If we would not want to trust such a lawyer with the representation of our most precious interests, it is difficult to see how we could justify seeking to become such a lawyer ourselves. The question we must ask is whether we would knowingly choose a lawyer whose advocacy is significantly tempered—much more than the professional norm—by values and commitments other than our own best interests.

It is difficult to imagine a client engaged letter in which a lawyer informs a

client that he will pursue the client's rights with moderation, so long as no damage is done to love. If a lawyer would be reluctant to give such disclosure to a client, it is difficult to imagine a justification for secretly adopting such an attitude.

In fairness, Allegretti does touch upon related questions. We can easily imagine ourselves as a client in need of a devoted lawyer's tough love, telling us to forsake a course of conduct that would be wrong or self-defeating. Allegretti quotes lawyer-statesman Elihu Root, who said, "About half the practice of a decent lawyer consists in telling would-be clients that they are damn fools and should stop" (pg. 51). I suspect he is right, although doing so in today's legal market may be much more difficult for a lawyer who has been hired for his expertise with a particular area of the law, than in Root's day when the lawyer-client relationship was much more stable.

The question I found myself asking was this: If I am facing the loss of life, lib-

erty, or property, is it in my interest to want a Christian lawyer who is seeking to live Allegratti's transformationist ideal? Especially if I am guilty, or if I am innocent but the available evidence strongly implies that I am guilty, perhaps what I want is a lawyer who will be wholehearted in his allegiance to my interests. Should I want a lawyer who is going to "pursue [my] rights with moderation, so long as no damage is done to love?"

Allegratti does emphasize the importance of the lawyer as a friend who will stand by his client, but my lawyer isn't going to follow me into prison. Maybe I don't want a friend who will bid me an affectionate farewell as I am led away in shackles, perhaps I want an advocate who will do battle on my behalf without reservation—the prototypical Code-driven lawyer.

At times one feels that while Allegratti recognizes this problem, he does not altogether come to terms with it. For example, in the hypothetical child custody case, Allegratti stipulates that the lawyer is *certain* that the other party is the superior parent that should have custody of the child. But the more likely reality would be that the lawyer is not certain, although he might have nagging questions about what is really in the best interests of the child.

Allegratti's ideal lawyer, we suspect, might work quietly, perhaps even unconsciously, against his client's own interests, while pretending to be a faithful advocate and friend. Allegratti does not face as squarely as he might the possibility that the Christian integrationist might inadvertently thwart justice and the underlying rationale of the adversary system by acting himself as judge and jury of what is best or right.

This is not to say that the integrationist ideal does not deserve our allegiance. There is much about it that is inspiring and encouraging. For one thing, it does not let us off the hook by simply invoking the lawyerly "role." Surely there are things that lawyers should do that would be wrong to do in other contexts, but just as surely Allegratti is right that lawyers can use the Code as a rationalization for turning off their moral lights.

## Conclusion

Allegratti is not a lone voice calling in the wilderness. The last few years have seen a small deluge of books commenting upon the deterioration of our legal culture and lawyers' many discontents. Allegratti's offering is distinctive in two primary ways. First, it sounds a tone that is hopeful and optimistic. Near the beginning of the book, Allegratti notes, "This is not a book that expends much sound and fury castigating lawyers and the profession. This is not a naysaying, doomsaying book about all that is wrong with the law and with lawyers." (pg. 5) Rather it is an optimistic book, based upon the author's observation that there are many lawyers who have successfully bridged the gap between their faith and their work.

The second distinctive characteristic of Allegratti's book is that its recommendations focus not primarily upon the legal profession as an institution but upon the hearts and minds of individual lawyers. It is not a call for systemic change, although there would be wide-ranging effects if the book's message were widely embraced and followed. Rather, it is primarily a call to conscience, an entreaty to individual lawyers in their everyday workaday lives, to recognize and find ways to minimize the gap between their personal moral ideals and the professional imperatives that push them away from their ideals.

Indeed, Allegratti's book may best be read as an example of what he calls the prophetic ministry of the lawyer. "The prophet calls the people back to their covenant obligations, holding up the idea of covenant faithfulness against the reality of human faithlessness" (pg. 52). Similarly, Allegratti asks the lawyer who also aspires to be a Christian to seek to be their best selves. Allegratti notes that the prophet's role is both to afflict the comfortable and comfort the afflicted (pg. 57).

Allegratti's book should be read both by lawyers feeling afflicted by the demands and constraints of their professional lives and by those who feel unduly comfortable in those roles, those, perhaps,



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who make the Model Two mistake of believing that there is complete harmony between their professional roles and their obligations as aspiring disciples of Christ. For the comfortable, Allegratti's book raises a warning that thoughtless adherence to the Code may result in a moral schizophrenia that will lead to the gradual wearing down of the lawyer's preprofessional ideals and aspirations. For the afflicted, Allegratti's book contains a message of hope that it is possible to integrate being a good lawyer with being a good Christian, as well as a number of useful suggestions for ways of going about that integrationist work.