

1998

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Recommended Citation

Ana Maria Pineda, *Convenanting with the Powerless: Strangers, Widows, and Orphans*, 66 Fordham L. Rev. 1177 (1998).

Available at: <https://ir.lawnet.fordham.edu/flr/vol66/iss4/11>

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COVENANTING WITH THE POWERLESS: STRANGERS, WIDOWS, AND ORPHANS

*Dr. Ana Maria Pineda, R.S.M.**

FOR Christians, covenant is an inheritance of faith which establishes a privileged relationship between them and God. Covenant permits humans to be imbued not only with the capacity to covenant with God but also with each other. While acknowledging this reality, Professor Joseph Allegretti uses the words of Bouma to admit that “[h]uman covenants are not all-encompassing . . . and their origins are not as one-sided as is God’s covenanting with us.”¹

It is this particular truth that creates the space for my reflection: the fact that human beings are limited, fragile, and still very much enroute to achieving wholeness. The journey to achieve wholeness and integration is a life-long undertaking. It cannot be accomplished easily or completely. Humans hope for a wholeness that is not fully within their immediate grasp. Consequently, human beings live more aptly with the hope of attaining this reality rather than ever possessing it.

In an ideal world, the theological concept of covenant as it might play out in the lawyer-client relationship *might* make it possible to take mutual actions of risk and commitment. We, however, do not live in an ideal world. We live in a world still in need of redemption; a world in which men and women struggle daily with the challenge of confronting evil and restoring good. In this kind of world, is it really possible to count on an equality of relationship between lawyer and client such as is suggested in Allegretti’s paper? We turn to the Christian tradition to seek an answer to this question.

The Christian tradition has throughout its history upheld the preferential concern for “widows and orphans” precisely because they were the members of society most disenfranchised, least protected, most vulnerable, and most exposed to harm. This reality obligated the stronger, more influential members of society to look out for the needs of the less fortunate, those who had no options or recourse.

The Old Testament also contains a moral imperative of hospitality for “aliens and strangers” because in human societies they have often

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1. See Joseph Allegretti, *Lawyers, Clients, and Covenant: A Religious Perspective on Legal Practice and Ethics*, 66 *Fordham L. Rev.* 1101, 1119 (1998) (quoting Hessel Bouma III et al., *Christian Faith, Health, and Medical Practice* 84 (1989)).

been in danger. This obligation was made clear in the Old Testament's Book of Leviticus:

When an alien resides with you in your land, do not molest him. You shall treat the alien who resides with you no differently than the natives born among you; have the same love for him as for yourself; for you too were once aliens in the land of Egypt. I, the Lord, am your God.²

In the New Testament, Jesus identifies with the person of the stranger when he says: "For I was hungry and you gave me food, I was thirsty and you gave me drink, a stranger and you welcomed me . . ."³ In doing so, Jesus makes the care of the unprotected stranger a responsibility, a moral imperative because Christ is seen in each face.

In the case of migrants for example, in looking out for the aliens and strangers of today, the National Conference of Catholic Bishops has said the following: "The Church, the People of God, is required by the Gospel and by its long tradition to promote and defend the human rights and dignity of people on the move, to advocate social remedies to their problems . . ."⁴

In this context of migrants, those that stand in danger of death, of suffering injustice, or that which violates human dignity, require special consideration and have a moral right to receive such care and protection from others. In the Christian tradition, the most needy must be favored, and among these are the migrants, refugees, and culturally different groups.⁵ In fact, "[i]t is against the common good and it is deemed unacceptable to have a double society, one visible with rights and one invisible without rights . . ."⁶ In the case of persons displaced from their homelands due to persecution and threat of death, the trauma of their experiences gives them a claim to enjoy the protection of others. They are often subjected to threats and intimidation and have a special moral claim to sympathy and assistance.⁷

The case of the stranger and the alien points out the inequality that exists among humankind. While all are created by God and possess the right to dignity, the unequal circumstances experienced by people, as in the case of immigrants, make some privileged and others vulnerable and in need of protection. This kind of inequality makes it difficult for such persons to establish an equal relationship like the covenant model offered by Allegretti.

2. *Leviticus* 19:33-34 (New American 1987).

3. *Matthew* 25:35 (New American 1987).

4. National Conference of Catholic Bishops, *Resolution on the Pastoral Concern of the Church for People on the Move* (November 11, 1976), in *Pastoral Letters of the United States Catholic Bishops* 169 (vol. IV 1975-1983), quoted in U.S. Bishops' Committee on Migration, *One Family Under God* 7 (1995).

5. U.S. Bishops' Committee on Migration, *One Family Under God* 9 (1995).

6. *Id.* at 8 (quoting National Conference of Catholic Bishops, *Together a New People* 9-10 (1987)).

7. *Id.* at 9.

There are other aspects of Allegretti's model that require further exploration. What does one do when dealing with a client from another culture where the limitations of local customs and language make them even more vulnerable and less likely to understand the basic implications of making certain decisions? What does one do in situations where the cultural values and norms operate differently than those upon which the U.S. legal system is founded? How are differing codes of honor and communal responsibilities dealt with in a legal system that is not one's own? What does a lawyer do with clients whose experience or knowledge of the legal system is based on the legal systems in their home countries or cultures that have been sources of oppression and have a long history of violating human rights? The trust factor between lawyer and client is compromised at best. Is it possible under these circumstances for lawyer and client to have a covenant relationship?

The covenant concept is an important one. It is an ideal model to consider in the relationship between lawyer and client. Perhaps, it is even a model that should be pursued by lawyers in the service of their clients, as Allegretti proposes. At the same time, the broader realities that enter into the daily lives of clients provide an on-going challenge that merits the careful consideration of lawyers. While a covenant relationship may be held out as an ideal, a lawyer must still face the unequal factors that ultimately demand the breadth and depth of his/her professional skills and responsibilities. In fact, if the covenant idea is to be carried out to its fullest, those espousing it must keep in mind that the ultimate sealing of the covenant is the death and resurrection of Jesus. How is this kind of self-giving translated to have meaning and purpose in the relationship between lawyer and client? Perhaps the covenant's most foundational truth is that it exists precisely because of the vulnerability of the relationship. It is the need and weakness of the client that requires more from the lawyer than the establishment of an equal relationship. If a lawyer is to realize the potential of a covenant relationship with a client, s/he will be led to a modern day preferential concern for the "widows and orphans" that seek out their professional services. In responding to this Christian imperative, it will ultimately require the lawyer to give of his/herself in order to protect and secure the client's right to fair and just legal representation. In fact, the lawyer will seek to use his/her skills to make up for whatever vulnerability places the client in an unprotected legal situation. Following the covenant ideal, the lawyer must bear in mind that the ultimate sealing of the covenant in the Christian tradition was based on the vulnerability of humankind.

Notes & Observations