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## ON GIANTS AND SHEPHERDS

Edward McGlynn Gaffney, Jr.\*

In his history of the Law School on the occasion of its 125th anniversary, Mike Swygert writes that three Lutheran Deans—Knute Stalland, Louis Bartelt, and Alfred W. Meyer—“put principle over self-interest. They were leaders who not only had strong religious convictions, but who also conducted their professional lives and careers in accordance with the ethical principles of integrity, service, and compassion.”<sup>1</sup> For this reason I thought it appropriate to offer a biblical reflection on my colleague Al Meyer, focusing on the strength of his religious convictions and the way in which these convictions guided his career as an academic.

In this collection of reflections on Al Meyer, Bruce Berner wrote: “In my faith, we understand humans to be formed in the image of God. But God has a variety of faces, a variety of images, and different ones appear more clearly in different persons.”<sup>2</sup> The scriptures of ancient Israel and of the early Christian community speak in human language of the God who is ever beyond us—the source, guide, and goal of our lives. Bruce chose a biblical metaphor, one of Al’s favorites, to recall Al’s deep respect for the founders and leaders of the university he served faithfully for so many decades: “There were giants in the land in those days.” Bruce also uses the same metaphor in a way that Al never did—to describe Al himself as one of these legendary “giants” whose memory we must now revere.<sup>3</sup>

I once told Al that the original meaning of the biblical phrase “giants in the land in those days” is a little bit unsavory, or as Al used to say, “pejorative” (pronounced “peejorative” with an accent *egu* on the “pee”). He told me that I should write a note for the *Law Review* about it, and I told him I would, but I regret that I never got around to writing it until Al was no longer capable of rebuttal.

The phrase “giants in the land” first occurs in *Genesis* 6:4. The translation of this verse in the New Revised Standard Version reads as follows: “The Nephilim were on the earth in those days—and also

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<sup>1</sup> MICHAEL IRVEN SWYGERT, “AND, WE MUST MAKE THEM NOBLE”: A CONTEXTUAL HISTORY OF THE VALPARAISO UNIVERSITY SCHOOL OF LAW 1879-2004, at 290 (2004); *see also* Michael I. Swygert, *Teacher – Mentor – Friend*, 41 VAL. U. L. REV. 1037 (2007).

<sup>2</sup> Bruce G. Berner, “*There Were Giants in Those Days*,” 41 VAL. U. L. REV. 1029, 1029 (2007).

<sup>3</sup> *Id.* at 1035.

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afterward—when the sons of God went in to the daughters of humans, who bore children to them. These were the heroes that were of old, warriors of renown.”<sup>4</sup> This story is an etiological legend<sup>5</sup> that accounts for the history of violence in the world: through the breaching of the boundaries of heaven and earth by the “sons of God,”<sup>6</sup> or divine creatures who belonged to the heavenly court, but who lusted after the “fair daughters” of men and had sex with them, from whom came the “*nephilim*,” who were mortals, but special mortals—“people of gigantic stature whose superhuman power was thought to result from divine-human marriage.”<sup>7</sup>

The *nephilim* are also discussed in *Numbers*, chapter 13, in a story focused on explaining the failure of nerve that gripped the community of liberated slaves, none of whom believed they were headed toward a “land without people.” This story identifies by name leaders from each of the twelve tribes who were sent by Moses and Aaron to survey the land and to observe any difficulties that the tribes might have if they were to enter into the land.<sup>8</sup> Caleb and the other spies bring back fruits of Canaan, which they describe as a land “flow[ing] with milk and honey.”<sup>9</sup> But the spies describe the people who live in the land as “strong” and their towns as “fortified and very large,” and conclude, “We are not able to go up against these people, for they are stronger than we . . . all the people that we saw in [Canaan] are of great size.”<sup>10</sup> In particular, they warn: “There we saw the Nephilim (the Anakites come from the Nephilim); and to ourselves we seemed like grasshoppers, and

<sup>4</sup> THE OXFORD ANNOTATED BIBLE: NEW REVISED STANDARD VERSION 9 (Bruce M. Metzger & Roland E. Murphy eds., 1991) [hereinafter NSRV]. Except for my translation of Psalm 23 below, all other citations of the Bible are from this version.

<sup>5</sup> Etiology is a medical term to describe a physician’s search for the cause or origin of an illness. For a discussion of the application of this term to biblical narratives that have a similar purpose or function, see, e.g., KARL RAHNER, “Ätiologie,” in 2 LEXIKON FÜR THEOLOGIE UND KIRCHE 1011-12 (2d ed. 1957).

<sup>6</sup> In *Genesis* 1:26, plural pronouns are used for the Creator: “Let us make humankind in our image, according to our likeness.” (emphasis added). See also *Genesis* 3:22, 11:7; *Isaiah* 6:8. This plural may simply be a way of underscoring the majesty of the one God who, according to the first commandment, does not allow Israel to worship any “other gods.” *Exodus* 20:3; *Deuteronomy* 5:7. Or it might “refer to the divine beings who compose God’s heavenly court.” NRSV, *supra* note 4, at 3 (note on *Genesis* 1:26).

<sup>7</sup> NRSV, *supra* note 4, at 9 (1991) (note on *Genesis* 6:4); see also Richard S. Hess, “Nephilim,” in 4 THE ANCHOR BIBLE DICTIONARY 1072-73 (David Noel Freedman ed., 1992) [hereinafter FREEDMAN, ABD]; Umberto Cassuto, *The Episode of the Sons of God and the Daughters of Man*, in UMBERTO MOSHE DAVID CASSUTO, 1 BIBLE AND ORIENTAL STUDIES 17-28 (1973).

<sup>8</sup> *Numbers* 13:1-16.

<sup>9</sup> *Numbers* 13:26-27; see *Exodus* 3:8.

<sup>10</sup> *Numbers* 13:28, 31-32.

so we seemed to them.”<sup>11</sup> In this text, the legend of the origins of the *Nephilim* or giants in *Genesis* takes on new dimensions—the entire people of Canaan is much stronger than the tribes militarily and the land of Canaan is one that “devours its inhabitants.”<sup>12</sup> This narrative explains why the sojourners encamped for such a long time at an oasis in the wilderness: they were immobilized by their fear of the gigantic occupants of Canaan.

A third reference to legendary giants occurs in *Deuteronomy*, which is structured as a day-long farewell address or sermon delivered by Moses shortly before his death. The text reads: “The Emim—a large and numerous people, as tall as the Anakim—had formerly inhabited [the land]. Like the Anakim, they are usually reckoned as Raphaim, though the Moabites call them Emim.”<sup>13</sup> The note in the NRSV explains: “Emim, Raphaim [are] names reflecting the legendary view that the aborigines were giants.”<sup>14</sup>

I share Al Meyer’s respect for the great ancestors of Valpo in its Lutheran phase. They include his father, and of course the great O.P. Kretzmann, who during the decades of his leadership in this place shared a bold vision of a future hidden to the eyes of others. Before O.P., there were other “giants,” such as Reverend George F. Schutes, pastor of Immanuel Lutheran Church in Valparaiso, where we gathered for Al’s memorial to hear Bruce Berner’s moving eulogy. In 1925, at a moment when this university was in utter shambles, Schutes boldly urged the German Lutherans of this part of the country<sup>15</sup> to remake this place into a

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<sup>11</sup> *Numbers* 13:33.

<sup>12</sup> *Numbers* 13:32.

<sup>13</sup> *Deuteronomy* 2:10-11.

<sup>14</sup> NRSV, *supra* note 4, at 220-221 (note on *Deuteronomy* 2:10-11).

<sup>15</sup> For a brief account of this important moment in the history of the university, see JAMES W. ALBERS, *FROM CENTENNIAL TO GOLDEN ANNIVERSARY: THE HISTORY OF VALPARAISO UNIVERSITY FROM 1959 TO 1975*, at 6-10 (1976). For a fuller account of the failed attempt of the Klan to buy the University in 1923, see RICHARD BAEPLER, *FLAME OF FAITH, LAMP OF LEARNING* 102-09 (2001). See also Lance Trusty, *All Talk and No “Kash”: Valparaiso University and the Ku Klux Klan*, 82 *IND. MAG. HIST.*, Mar. 1986. For a contemporary parody of the flame of hatred and racial contempt that would have prevailed under “Klan U” and its honor society “Phi Beta Ku Kluxa Kappa,” see *The New Republic* (Sept. 5, 1923). Baepler describes the subsequent efforts of the local Lutherans to purchase the University in 1925 and to mark it with a Lutheran perspective on academic life and instruction. BAEPLER, *supra*, at 131-61. After 1925 the only “flame” to burn on this campus was the flame of faith, a faith that in Augustine’s happy phrase is “*fides quaerens intellectum*,” faith seeking understanding. And the lamp burning here was not simply divine illumination—“In your light we see light” (*Psalms* 36:9)—but also the enlightenment that derives from the insight that at the heart of human intelligence is “the pure, detached, disinterested desire to know.” See BERNARD J.F. LONERGAN, *INSIGHT: A STUDY OF HUMAN UNDERSTANDING* (1959).

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“university under the Cross”<sup>16</sup> rather than one that would teach students to burn crosses on the lawns of those they despised (especially African Americans, Jews, and Catholics), and even to hang their enemies on a tree,<sup>17</sup> in mockery of the cursed way in which Jesus suffered and died on a Roman cross.<sup>18</sup> Bruce Berner is surely right in concluding that we must

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The Christian apologist Tertullian (155-230 CE) once asked famously: “What has Athens to do with Jerusalem?” The short answer of Valparaiso University in its Lutheran phase is “a lot.” As Bruce Berner noted, Al Meyer cherished the ways in which our university speaks – not only in its hymn but also in its ethos – of a happy union of Jerusalem (and the biblical traditions) with Athens (and the commitment to the rigor of philosophy and science). Berner, *supra* note 2, at 1031. For a powerful account of the fusion of faith and reason in the setting of Valparaiso University, see MARK SCHWEHN, *EXILES FROM EDEN: RELIGION AND THE ACADEMIC VOCATION IN AMERICA* (1993).

<sup>16</sup> Martin Luther did not think of the theology of the Cross as a “subsidiary theme or a special kind of theology,” but as “the criterion and subject of all true theology . . . . [T]he expression [*theologia crucis*] serves as an indication of the object of his constant concern, the fundamental orientation of his theological thought.” GERHARD EBELING, *LUTHER: AN INTRODUCTION TO HIS THOUGHT* 226-227 (1970); see also HEINRICH BORNKAMM, *THE HEART OF REFORMATION FAITH: THE FUNDAMENTAL AXIOMS OF EVANGELICAL BELIEF* 45-55 (1965); JAROSLAV PELIKAN, *4 THE CHRISTIAN TRADITION: REFORMATION OF CHURCH AND DOGMA* (1300-1700), at 157-167 (1984). For recent applications of this central theme in Luther’s thought to human suffering, see JÜRGEN MOLTSMANN, *THE CRUCIFIED GOD: THE CROSS OF CHRIST AS THE FOUNDATION AND CRITICISM OF CHRISTIAN THEOLOGY* (1974). Moltmann concludes: “To recognize God in the crucified Christ means to . . . understand oneself and this whole world with Auschwitz and Viet Nam, with race-hatred and hunger, as existing in the history of God. God is not dead, death is in God. God suffers by us. He suffers with us. Suffering is in God.” Jürgen Moltmann, *The Crucified God*, in *THEOLOGY TODAY*, 1974, at 18; see also DOUGLAS JOHN HALL, *THE CROSS IN OUR CONTEXT: JESUS AND THE SUFFERING WORLD* (2003); DOUGLAS JOHN HALL, *LIGHTEN OUR DARKNESS* (2001). For the use of this theme as the matrix within which to undertake a feminist theology, see DEANNA A. THOMPSON, *CROSSING THE DIVIDE: LUTHER, FEMINISM AND THE CROSS* (2004). See also GERHARD FORDE, *ON BEING A THEOLOGIAN OF THE CROSS* (1997); ALISTER MCGRATH, *LUTHER’S THEOLOGY OF THE CROSS* (1990); WALTER VON LOEWENICH, *LUTHER’S THEOLOGY OF THE CROSS* (1976).

<sup>17</sup> On the particular animosity of the Ku Klux Klan against African Americans, Jews, and Catholics, see, e.g., GUSTAVUS MYERS, *HISTORY OF BIGOTRY IN THE UNITED STATES* 267-313 (1943); and BAEPLER, *supra* note 15, at 103-04. For a general description of lynching in America, see ARTHUR F. RAPER, *MASS VIOLENCE IN AMERICA: THE TRAGEDY OF LYNCHING* (1933). Raper includes a description of the lynching of two nineteen-year-old African Americans were in Marion, Indiana, on the night of August 7, 1930. *Id.* For a full study of this event, see JAMES H. MADISON, *A LYNCHING IN THE HEARTLAND: RACE AND MEMORY IN AMERICA* (2001). For a study of lynching in two Southern states, see WILLIAM FITZHUGH BRUNDAGE, *LYNCHING IN THE NEW SOUTH: GEORGIA AND VIRGINIA, 1880-1930* (1993). For classic statements of resistance to lynching, see IDA B. WELLS, *ON LYNCHING* (1892); and NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *THIRTY YEARS OF LYNCHING IN THE UNITED STATES, 1889-1918* (1919).

<sup>18</sup> The Apostle Paul argues that by becoming accursed for humanity, Jesus “redeemed us from the curse of the law.” *Galatians* 3:13. Paul is referring to the view expressed in Torah that execution by hanging was a curse. *Deuteronomy* 21:23. Paul acknowledges that “the

now add Al himself to the group of giants who contributed powerfully to this place.<sup>19</sup>

And yet, this phrase—“giants in the land in those days”—does not adequately describe the characteristics of the great heroes of Valpo. Berner is again right in saying that Professor Charles Kingsfield at Harvard is based on Al Meyer, not the other way round.<sup>20</sup> For all his gruff exterior, Al was more mild and tender than he let on in the classroom. Valparaiso University under the Klan would have become a “house of bondage,”<sup>21</sup> a “den of thieves,”<sup>22</sup> a “haven for hatred.”<sup>23</sup> All of these Valpo heroes of a former moment—from Pastor Schutes and the leaders of the Central District of the Lutheran Church-Missouri Synod and Al’s father through O.P. Kretzmann to Al himself—gave us a profoundly different vision for higher education. They guided this place by behaving not like terrifying giants, but like the courageous shepherds of old who guarded their flocks by going out in front of them. Far from being terrifying giants, they were more like the Norwegian Lutherans of Minnesota described by Garrison Keillor as folks who need to be nourished by Powder Milk Biscuits™ because these biscuits give shy people the courage to get up and do the things that need to get done (as Garrison says: “Heavens, they are tasty and expeditious!”). So I propose another biblical metaphor to describe Al’s days among us. He was a good shepherd.<sup>24</sup>

Although this metaphor seems to me to be entirely consistent with Mike Swygart’s description of Deans Stalland, Bartelt, and Meyer noted

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message about the cross is foolishness to those who are perishing, but to us who are being saved it is the power of God.” 1 *Corinthians* 1:18.

<sup>19</sup> Berner, *supra* note 2, at 1035.

<sup>20</sup> *Id.* at 1031.

<sup>21</sup> Egypt, the land of slavery in the Hebrew imagination, is referred to as the “house of bondage.” *Exodus* 13:3, 14, 20:2; *Deuteronomy* 5:6, 6:12, 7:8, 8:14, 13:5, 10; *Joshua* 24:17; *Jude* 6:8.

<sup>22</sup> Jesus excoriated the commercial traffic at the Jerusalem Temple which turned “a house of prayer” into a “den of robbers.” *Matthew* 21:13; *Mark* 11:17; *Luke* 19:46 (citing *Isaiah* 56:7; *Jeremiah* 7:11).

<sup>23</sup> The prophet Hosea noted that a prophet is a “sentinel” who does not allow “hostility into the house of his God.” *Hosea* 9:8.

<sup>24</sup> As I note below in a comment on Psalm 23—the classic text in the Hebrew Bible that speaks of a good shepherd—God is not only like a shepherd. He is also like a generous host and like a couple of sheepdogs called “goodness” and “mercy.” See *infra* note 37. At the Memorial Service for Al Meyer at Immanuel Lutheran Church on February 1, 2007, Margaret Franson described travels with Al and Nancy Meyer. Her portrait of Al the pilgrim illustrated that the metaphors of host and sheepdog also have particular application to Al. But it is enough in this memory of him simply to explore the metaphor of a good shepherd. I refer to the other two metaphors below.

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above, it may seem to others an odd image for Al Meyer. Having been trained by Jesuits, I offer three reasons why it may be inappropriate to use the metaphor of a good shepherd to describe Al Meyer.

First, Al greatly believed in rigorous precision when it came to words, about which he was ready for an argument at the drop of a yarmulke, let alone a sombrero. So let's get something straight about his habitat. Al was more a city slicker than a farm boy, and certainly more accustomed to creature comforts than shepherds enjoy. Al may have sung Christmas carols about the shepherds of Beit Sahour guarding their flocks by night and suddenly seeing a great light and angels in the sky announcing the birth of a new king. He may have even cuddled a sweet little lamb at a petting zoo with a grandchild. But Al probably never spent a day—let alone a night—of his life trying to herd sheep or to protect them from wolves. Hence it is wildly unempirical to describe a contented urbanite as a shepherd in any rigorous sense of the term.

Second, the term “shepherd” in the Hebrew Bible has overtones of royalty; one of the titles of a king is רֹעֵ (roe', pronounced: ro-ay).<sup>25</sup> King Alfred the Great? I don't think so. Al liked his Beefeater's, but that

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<sup>25</sup> For example, in the story of the anointing of David as King of Israel, the tribal leaders say to the new king: “The Lord said to you: It is you who shall be shepherd of my people of Israel, you who shall be ruler over Israel.” 2 *Samuel* 5:2. Before this anointing as king, David is unknown to King Saul, but comes to prominence as a pint-sized teenage shepherd boy who can't stand the daily ridicule heaped on Saul's army by a Philistine (from which we get the modern term “Palestinian”) champion named Goliath. See Carl S. Ehrlich, “Goliath,” in 2 FREEDMAN, ADB, *supra* note 7, at 1073-74. Goliath's height is described in the MT as “six cubits and a span” (or ten feet tall); even if a variant reading of “four cubits and a span” (or seven feet) is preferred, Goliath still towers over the small youth. 1 *Samuel* 17:4. Goliath's armament is described with grand hyperbole: a coat of mail weighing about 150 pounds and a spear the head of which weighed about nineteen pounds. 1 *Samuel* 17:5, 7. By contrast, when Saul gives David his armor, a bronze helmet, a coat of mail, and his sword, the little shepherd boy cannot even walk because he is so unused to military garb; so David removed this protection and abandoned the typical weapon of choice, the sword. 1 *Samuel* 17:38-39. “Then he took his staff in his hand, and chose five smooth stones from the wadi, and put them in his shepherd's bag, in the pouch; his sling was in his hand, and he drew near to the Philistine.” 1 *Samuel* 17:40. The giant ridicules his tiny opponent, invokes a curse on David in the name of the Philistine gods, and gives a little victory speech promising to give David's flesh “to the birds of the air and to the wild animals of the field.” 1 *Samuel* 17:42-43. David returns the taunt with an even longer victory speech concluding that “the Lord does not save by sword and spear.” 1 *Samuel* 17:47. Then “David put his hand in his bag, took out a stone, slung it, and struck the Philistine on his forehead; the stone sank into his forehead, and he fell face down on the ground. So David prevailed over the Philistine with a sling and a stone, striking down the Philistine and killing him; there was no sword in David's hand.” 1 *Samuel* 17:49-50. David thus reverses the stories of timidity in the face of “giants in the land” described in the text accompanying notes 4-14 above.

didn't make him a monarchist. On the contrary, he couldn't stand pomp and circumstance, and didn't like people fawning over him with obsequious behavior. More to the point, he was not bossy; it just seemed so when he was in a classroom. As noted above, Al always demanded precision in terminology, so—aware that he has already reserved not time, but eternity, to refine this point—I will venture a tentative description of his basic political stance in Jeffersonian terms as a “democratical republican.”<sup>26</sup> Whatever further precision or refinement is needed, he had no great love of monarchy or any concentrated power. Hence it is incongruous to use an ancient term for king—shepherd—to describe Al.

Third, for Christians, the metaphor of a good shepherd has a specific reference to a passage in the Fourth Gospel in which Jesus says: “I am the good shepherd. The good shepherd lays down his life for the sheep.”<sup>27</sup> So some of Al's fellow Lutherans might deem it blasphemous (or, worse yet, downright “unsynodical”) to describe Al or any human being under a rubric that Christians use to describe the ministry of Jesus. Hence—heaven forbid!—it may even be heretical to describe Al as a good shepherd.

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<sup>26</sup> Thomas Jefferson was, of course, committed to the “republican form of government” secured by the Constitution that he swore to uphold. U.S. CONST. art. IV, § 4. For example, on April 30, 1800, Jefferson wrote to Edward Livingston: “The people through all the States are for republican forms, republican principles, simplicity, economy, religious and civil freedom.” 10 THE WRITINGS OF THOMAS JEFFERSON 164 (Albert Ellery Bergh ed., 1907). Jefferson was emphatically for popular participation and self-government, but realized its practical impossibility in a large nation. For example, on August 26, 1816, Jefferson wrote to Isaac H. Tiffany: “A democracy [is] the only pure republic, but impracticable beyond the limits of a town.” 15 WRITINGS OF THOMAS JEFFERSON, *supra*, at 65. Jefferson settled for the term “democratical.” In the same letter to Isaac Tiffany cited above, he wrote:

The full experiment of a government democratical, but representative, was and is still reserved for us. The idea . . . has been carried by us more or less into all our legislative and executive departments; but it has not yet, by any of us, been pushed into all the ramifications of the system, so far as to leave no authority existing not responsible to the people; whose rights, however, to the exercise and fruits of their own industry can never be protected against the selfishness of rulers not subject to their control at short periods. The introduction of this new principle of representative democracy has rendered useless almost everything written before on the structure of government . . . My most earnest wish is to see the republican element of popular control pushed to the maximum of its practicable exercise. I shall then believe that our government may be pure and perpetual.

*Id.* at 65-66. This edition of Jefferson's *Writings* is now available at <http://www.history1700s.com/etext/html/texts/jefferson/Jeff10.txt>

<sup>27</sup> *John* 10:11.



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As far as I know, Al never became familiar with the theology of Thomas Aquinas. That did not keep him from employing the dialectical method that is at the heart of the *Summa Theologica*. Al was ever ready with a *sed contra* to require a second thought about any point worth discussing. So to honor Al's capacity to rebut, I offer three sound reasons to proceed with a memory of Al Meyer as a good shepherd. In fact, like Aquinas—who led with his weaker authorities or less persuasive arguments, then stated the transitional moment (“*sed contra*” or “on the other hand”), and then offered his stronger authorities or weightier arguments—I too have saved the best wine for last. First, the shepherd thing is a metaphor. So don't take it literally. As Al's father, one of the founding giants of this university, well knew as a scientist, the earth was not created 5,000 years ago, and those who read *Genesis* to that effect could have their literalism, and good luck to them, for they'd need a lot of luck.

Second, Al “ruled” (in the current vernacular of teenagers, synonymous with “rocks”) by forging ahead, blazing a path, showing a way, and leading by example rather than by dictate. That is precisely why the metaphor of a good shepherd is apt. As I note below in my comment on Psalm 23, the protection of flocks of sheep by shepherds in the ancient world was a risky business, as it remains for modern Bedouin shepherds in modern war-torn Israel/Palestine.<sup>28</sup>

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<sup>28</sup> In the spring of 2005, I witnessed Palestinian Bedouins going in front of their flock to lead the sheep to pasture at Al-Tuwani in the hills south of Al-Halili (Hebron). The principal danger these shepherds now face is violence from Israeli settlers who beat the shepherds, or shoot or poison their sheep, in order to lay claim to land owned by the same Palestinian family for nearly 200 years. See, e.g., Promise Partner, *Crash Course in Occupation*, <http://www.afsc.org/israel-palestine/news/Crash-Course.htm> (last visited Feb. 14, 2007) (eyewitness account based on experience of writer during trip to Israel and Palestine sponsored by American Friends Service Committee in October 2005). A Westlaw search of all news sources for the past two years discloses that the story was thought worthy of publication only in the following instances: Jo Clare, *At-Tuwani: Shepherds and Nonviolence*, FELLOWSHIP, May 1, 2005, available at 2005 WLNR 10109356; Matthew Gutman, *Who Poisoned Sheep at First Evacuated Outpost?*, JERUSALEM POST, Apr. 4, 2005, available at 2005 WLNR 5229077; Donald Macintyre, *Israeli Settlers Poisoning Our Sheep, Say West Bank Farmers*, INDEPENDENT (UK), Apr. 27, 2005, available at 2005 WLNR 6556729, and in BELFAST TEL., Apr. 27, 2005, available at 2005 WLNR 6563955; Paul Michaels, *Some Truths Are Not So Pleasant*, CAN. JEWISH NEWS, May 26, 2005, available at 2005 WLNR 10123116; *Michigan Group Witnesses Kahanist Poisoning of Palestinian Livestock*, ARAB AM. NEWS, Apr. 9, 2005, available at 2005 WLNR 8732453; *No Electricity Here, But Lots of Light; Settlers' Belief in Divine Right Threatens Village*, ARAB AM. NEWS, Apr. 23, 2005, available at 2005 WLNR 9153447; Orit Soudry, *Poison in the Pastures of Tuwani: The White Shirts*, CHALLENGE: A JERUSALEM MAG. ON THE ISRAELI-PALESTINIAN CONFLICT, July 1, 2005, at 12, available at 2005 WLNR 12145977; Alison Weir, *Heroism in the Holy Land: Americans Beaten for Walking Children to School*, WASH.

Third, the very Gospel that contains the teaching that Jesus is a “Good Shepherd” also insists that his disciples accept him as a humble servant performing a task that in his culture hosts did not normally provide for their guests and to perform this kind of service for others. The Gospel according to John gives us an image of God who gets down on his knees to wash the dirt and smell of guests’ sandaled feet.<sup>29</sup> To Peter this role is so demeaning that he refuses to accept this service from Jesus. To this objection, Jesus replies that unless Christians accept Jesus as a humble servant, they can have no communion, no table fellowship with him. Christian faith sees in the humility of Jesus an authentic path to God.

The encounter between disciple and master-teacher in this story has a second movement: not faith, but love; not ideas, but action. The Christian is not asked to wash the feet of Jesus, the master-teacher, but to get down on our knees and wash *one another’s* feet, a metaphor for loving service of others.

What does this have to do with Al’s career at Valpo Law School? He served as a dean, so I’ll say a word about that. The term “dean” is derived from the Greek term διάκονος (diakonos), from which we also derive the term deacon. Deaning is a ministry of service, not one of lording it over others.<sup>30</sup> Al Meyer exercised power to challenge each

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REPORT ON MIDDLE EAST AFFAIRS, Dec. 1, 2004, available at 2004 WLNR 14586117. In addition, the Westlaw search disclosed two AFP stories: *Amnesty Calls on Israel to Halt Poisoning of Palestinian Livestock*, AGENCE FR.-PRESSE ENG. WIRE, Apr. 25, 2005; and Samih Shahine, *Palestinian Villagers Accuse Settlers of Poisoning Their Flocks*, AGENCE FR.-PRESSE ENG. WIRE, Apr. 11, 2005. Over a year after these events, the *Los Angeles Times* published a story alluding in passing to settler violence against the shepherds of Al-Tuwani. See Ken Ellingwood, *Young Students Get Escort to School*, L.A. TIMES, May 14, 2006, available at 2006 WLNR 8287040. I have not found any instance of coverage of this story in any other major American newspaper. To put this small point on the record, Al hated it when the media failed in their duty to inform.

<sup>29</sup> Holy Thursday is also called “Maundy Thursday” because of the *mandatum* or commandment that the disciples love one another as Jesus loved them. *John* 15:12. Earlier in the Gospel, this command is expressed in a narrative: Jesus “got up from the table, took off his outer robe, and tied a towel around himself. Then he poured water into a basin and began to wash the disciples’ feet and to wipe them with the towel that was tied around him.” *John* 13: 4-5. This gesture of foot washing is repeated each year in the liturgy of many Christian communities on Maundy Thursday, because the gesture is connected to the commandment of love for one another: “if I your Lord and Teacher, have washed your feet, you also ought to wash one another’s feet. For I have set you an example, that you should also do as I have done to you.” *John* 13:14-15. For a highly perceptive commentary on this text, see RUDOLF BULTMANN, *THE GOSPEL OF JOHN* 466-79 (1971); and RAYMOND E. BROWN, *THE GOSPEL ACCORDING TO JOHN* 547-72 (1970).

<sup>30</sup> Jesus said:

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person to achieve their fullest capacity, not to dominate or to control. That's why he could conclude his messages to his colleagues—even when he aimed to correct their views or their behavior—with his famous signature line wishing them “Peace, Power, and Joy!”

When I served in the capacity of dean, I cringed when a staff member thought it a good idea to celebrate “Boss Day.” There are three reasons for my discontent; I hope that Al will smile on at least two of these rationales. First, the roots of Boss Day in American culture are either perverse or shallow. It is unworthy of celebration either because it is ancient (as in patriarchal dominance), or because it is recent (as in made up by Hallmark a couple of years ago to fill a marketing gap between Groundhog Day and Valentine's Day).

Second, even if Boss Day had an excellent pedigree in American history, it would never work at Valpo, where a dean is simply a member of the faculty (which governs the school in a sense more vivid than in most American law schools) who has additional responsibilities to the alumni and the students (designated, in the happy phrase of Dean Curt Cichowski as “alumni in residence”).

Third, there is a major disconnect between Boss Day and the Johannine story of foot washing described above. The first movement of this story is about defining Christian faith: a disciple is required to accept that Jesus is not the kind of anointed king (*messiah*) or boss who “lords it over others as the rulers of the Gentiles do,” but is a humble servant who performs a menial task for guests who were supposed to look after their own foot hygiene when they came into a home from dusty paths.<sup>31</sup> This point is highlighted by Peter's refusal to accept Jesus

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‘You know that the rulers of the Gentiles lord it over them, and their great ones are tyrants over them. It will not be so among you, but whoever wishes to be great among you must be your servant, and whoever wishes to be first among you must be your slave; just as the Son of Man came not to be served but to serve, and to give his life a ransom for many.’

*Matthew* 20:25-28.

<sup>31</sup> One distinguished commentator notes:

Since feet shod in sandals tend to get dusty on unpaved roads, it was customary hospitality to provide water for a guest to wash his own feet. But as the Midrash Mekilta on Exod xxi 2 tells us, the washing of a master's feet could not be required of a Jewish slave. As a sign of devotion, however, occasionally disciples would render this service to their teacher or rabbi; and Jesus seems to allude to this custom in vss. 13-14.

BROWN, *supra* note 29, at 564.

in this way, and the reply of Jesus that the consequence of this denial of faith is excommunication. As long as Peter persists in this state of denial of the mission of Jesus, he can have no fellowship with Jesus, no portion in his inheritance.

The second movement of the story is an invitation to love: not *eros* (eros) or romantic love, but *ἀγάπη* (agape)—serving others, washing their feet, attending to their needs.<sup>32</sup> This attitude was to become a hallmark of early Christianity. According to Tertullian, outsiders said of the disciples of Jesus, “See how these Christians love one another.”<sup>33</sup> Or as Marian Wright Edelman put it, “[S]ervice is the rent we pay for living. It is the very purpose of life and not something you do in your spare time. . . . [E]ducation is for improving the lives of others and for leaving your community and world better than you found it.”<sup>34</sup> Al understood the teaching of the gospel that service is the purpose of life, and that education is for improving the lives of others. In other words, he was a good shepherd.

As Al lay dying, about all I could think to do was to recall the familiar words of Psalm 23, the ancient Hebrew prayer that people in many faiths revere as a prayer of hope for the dying. I said them softly in Hebrew, not because I think that God can only hear people speaking in that language, but because I remain a novice in this tongue. Hence when I pray these words, I can’t race through them in a hurry; I have to say the words slowly. This has the salutary effect of enabling me to think of each image latent in the biblical text.

In homage to two other “giants” of this university who taught me to read what little Hebrew I know, Walt Rast and Fred Niedner, I conclude

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<sup>32</sup> See C.S. LEWIS, *THE FOUR LOVES* 131-60 (1960) (eros as the “kind of love which lovers are ‘in’”); *id.* at 163-192 (charity as gifted love that is “wholly disinterested and desires what is simply best for the beloved”). On *ἀγάπη*, see 1 *Corinthians* 13.

<sup>33</sup> Tertullian informs us that non-Christian Romans were aware of the capacity of their fellow Romans to hate and even kill one another; for that very reason they admired the capacity of Christians to love one another, even to be ready to die for one another. “Sed eiusmodi vel maxime dilectionis operatio notam nobis inurit penes quosdam. Vide, inquit, ut invicem se diligant; ipsi enim invicem oderunt: et ut pro alterutro mori sint parati; ipsi enim ad occidendum alterutrum paratiores erunt.” TERTULLIAN, *THE APOLOGY*, at 39:7. The text is in volume sixty-nine of the series of patristic texts edited by the Commission for Editing the Corpus of the Latin Church Fathers (CSEL), and can be found at [www.tertullian.org/latin/apologeticus.htm](http://www.tertullian.org/latin/apologeticus.htm) (last visited Feb. 14, 2007). For a brief comment on the purpose of Tertullian’s *Apology*, see ROBERT L. WILKEN, *THE CHRISTIANS AS THE ROMANS SAW THEM* 45-47 (1984).

<sup>34</sup> MARIAN WRIGHT EDELMAN, *MEASURE OF OUR SUCCESS: A LETTER TO MY CHILDREN AND YOURS* 6, 10 (1992).

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these reflections with a transliteration of Psalm 23 in the left column, and my translation in the right column. Sometimes the translation is a literal reading of a word in Hebrew, sometimes it is rendered in language that give the ancient words greater resonance with modern language, while preserving the rhythmic pattern of the poem and the meaning of its imagery. In a couple of instances where my version is sufficiently different from translations we are more used to, I offer an explanatory note for my word choice.

**Psalm 23**

mizmor l'david 'adonai roi lo echsar binot deshe' yarbitseni 'al me menuchot yenhaleni nafshi yeshovev	A Song ascribed to David <sup>35</sup> The Lord rules me. That's all I need. In lush green pastures he lets me lie down. He leads me to refreshing waters. He restores my spirit.
yancheni bemagle sedeq l'ma'an shemo gam ki 'elek bege' tsalmavet lo ira' ra' ki atah immadi shivteka umish'antekah hema yenchamuni	He goes out in front <sup>36</sup> to show me the right path. He remains faithful to his name. Even if I were to trip and fall in a death dark canyon, I won't be afraid of any evil, since you're there for me. He has two staves, one for walking, one for rescuing; They give me comfort.
ta'arok l'fanai shulchan neged tsorerai dishanta bashemen roshi kosi revayah	He sets a banquet table right in front of me Smack dab in the middle of encircling foes. He anoints my head with oil. My cup is overflowing.

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<sup>35</sup> Although the editor of the *Psalms* ascribes this poem to King David, the final line speaks of returning to the "house of the Lord," a term commonly used for the Jerusalem Temple. See, e.g., *Deuteronomy* 23:18; 2 *Samuel* 7:1-13; 1 *Kings* 3:1, *Psalms* 118:26, 122:1, 134:1, 135:2. Thus it might have first been sung around 535 BCE by those who came back to rebuild the Temple after Cyrus the Persian liberated the Judeans who had been exiled to Babylon, and allowed them to return to Jerusalem. See T. Cuyler Young, Jr., "Cyrus," in FREEDMAN, 1 ABD, *supra* note 7, at 1231-32.

<sup>36</sup> This verb is frequently translated as "he guides me," but I have rendered it differently to reflect the way that shepherds in the ancient world performed the hazardous task of guiding their sheep: by going out in front of the flock, where he can scan the horizon for dangerous ravines or for wild animals.

2007]

*On Giants and Shepherds*

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'ak tov vachesh yirdefuni  
kol yeme chayai  
veshavti bebet 'adonai  
l'orek yamim

Two dogs, "Goodness" and "Mercy," chase me<sup>37</sup>  
all the days of my life.  
And I will turn back to the Lord's house  
and stay for a long while.

Al was large in stature and his impact upon us is enormous. So I'm happy to call him a giant. But I'd rather think of him as a shepherd who was unafraid of giants. Like the Psalmist, Al trusted in God's capacity to govern our lives. This faith was central to his life; nothing else mattered as much. And he behaved like a shepherd of old, going out in front of the vulnerable to protect them from harm, and going out in front of us academics to show us a more excellent path. The path on which he led us toward justice demanded much more of us and our students than some would have wanted, but Al never regretted that the journey was arduous. Nor did he much care that the path he walked on was often lurking with dangers; he stared down fears and refused to yield to timidity. He carried two staffs, one to support himself as he walked along the path of life, another with a little crook at the top to be able to lean down and save someone in need of his help. Those of us who enjoyed his hospitality can remember good things to eat and a cup of kindness that fairly invited hearty laughter at some stage of the meal; as I recall, the laughter was especially raucous when mention was made of pompous fools of the world who pretend to encircle and control us. And when we got out of line, we could count on Al to scurry around like a sheepdog, nipping at our ankles to get us back to where we belong. Now Al is entitled to rest a while in God's own house.

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<sup>37</sup> Fred Niedner first pointed out to me the dynamism of the verb *rodef*, which is usually translated "follows," but which indicates the scurrying activity of a sheep dog chasing after a stray sheep and returning it to the safety of the flock. Since shepherds generally give names to their dogs, I have suggested that "goodness" and "mercy" might be thought of not as abstract attributes of God, but as two names for divine care, akin to the reassurance that God is "there for us" or "Immanuel" (a "with us God") referred to in the second strophe of the poem above. See also *John* 10:14 (mutual awareness between a good shepherd and those entrusted to the care of the shepherd); and 10:16 (sheep, even from other flocks, "listen to the voice" of the good shepherd). The Victorian poet Francis Thompson (1859-1907) employs a similar metaphor in his poem about the relentless desire of God for a mystical union with his creatures. Even when we prefer to abandon the Creator ("I fled Him, down the nights and down the days;/ I fled Him, down the arches of the years;/ I fled Him, down the labyrinthine ways/ Of my own mind; and in the mist of tears/ I hid from Him . . ."), he pursues us to the end ("Still with unhurrying chase,/ And unperturbèd pace,/ Deliberate speed, majestic instancy,/ Came on the following Feet,/ And a Voice above their beat—/ 'Naught shelters thee, who wilt not shelter Me.'"). Francis Thompson, *The Hound of Heaven*, in *RETURN TO TRADITION: A DIRECTIVE ANTHOLOGY* 103-04 (Francis Beauchesne Thornton ed., 1948).

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For our part, we can be grateful to have known a colleague who was not only a giant in Valpoland, but also a really good shepherd.

The first draft of this Article concluded with two words: “good shepherd.” With the sad news of the death of Nancy Meyer on March 17, 2007, I must now conclude differently, but I cannot stray far from the images of Psalm 23 that have haunted me since hearing that Al was in his last days.

As we pass through the death dark canyon of grief in which we find ourselves again after the sudden loss of a friend, people for whom the flame of faith still burns brightly need not be afraid of any evil since God rules our lives, including our comings and goings. God remains there for us. The metaphor of two staffs—one for walking and one for rescuing—still comforts us at a moment where it is not easy to be comforted; the divine mission includes both walking upright and stooping down to save a sheep in peril. And the two sheepdogs that God is likened to in Psalm 23 have names, Goodness and Mercy. Here, Goodness! Here, Mercy! Chase after Al and Nancy and gather them into your home for a very long while.