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Reflections on the Contents of the Lawyer's Work Three Models of Spirituality—and Our Struggle With Them

by Charles R. DiSalvo* and William L. Droel**

Growing up Catholic in the fifties and sixties, as we both did, meant growing up with an easy-to-read road map to holiness, handed to us by our Church. The map routed us through familiar spiritual pieties and disciplines ranging from daily prayer to the sacraments. The map took us deep into the interior life and away from the world. At its core the map was based on a monastic model—that is, it assumed its user had unlimited time, no spouse, no children, and no job. It was only natural, therefore, that the prevailing orthodoxy was that, to be truly holy, one ought to seek the life of religious orders and become either a celibate priest, brother, or nun.

American Catholics of our age took the route outlined in the map, joining seminaries and convents in great numbers. We both personally accepted the official church recommendation and entered the seminary in 1962. But by 1971, in the wake of the Second Vatican Council, we, as well as all eighty-eight of our seminary classmates and thousands of other young Catholic men, had left the seminary and gone our separate ways.

Our departure left us at the side of the road. If we were to find salvation, we would have to do it without a map, for there were no maps to help lay people find holiness while they worked in the world. We would have to forge our own way. Bill served as a community organizer before becoming a free lance writer, a lay campus minister, and a philosophy instructor. Charlie worked as a poverty lawyer in Appalachia before entering his current employment as a law professor. While each of us took great satisfaction from our work, we lacked the sure sense of wholeness and completion we had when we were in the seminary. We *believed* we were on paths to holiness, but we lacked a clear and precise understanding of how work in the world related to our identity as Catholic Christians. What did our faith have to do with our work?

We quickly learned that this was a question that plagued many of our fellow Catholics. Indeed, we were soon swept up into a Chicago-based

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organization, the National Center for the Laity, whose sole purpose is to promote and explore the idea that all lay Christians have vocations in and to the world. We became active members of the Center's Board of Directors, with Bill editing its newsletter and Charlie serving as its counsel. Eventually Bill wrote and edited *The Spirituality of Work*, a series of booklet-length essays under the Center's auspices, on the "lay vocations" held by nurses, teachers, homemakers, business people, and others. When it came time to tackle the subject of lawyers, Bill asked Charlie to collaborate with him.

As we volleyed drafts back and forth, we realized that the two of us had two very different ideas about how to encourage lawyers to connect their faith and their work. Bill's goal was to open a dialogue among lawyers, bringing as many lawyers as possible into the debate about what makes a lawyer's work holy. Charlie had his own specific idea of lawyerly spirituality and wanted to argue for it in the booklet. Eventually we agreed that the booklet would offer the reader three different models of lawyer spirituality without proselytizing for one over the others. The booklet was published and soon thereafter was given a favorable review in *The New York Times*, to our pleasant surprise.¹ A deluge of requests for the booklet poured in to the National Center for the Laity.

We continue to debate the wisdom of our different paths. This symposium permits us to grapple with our differences in the hope that doing so will provoke others to give some hard thought to the spiritual nature of the lawyer's work. We welcome the opportunity here to present our ongoing argument.

But, first, allow us to review the models we have devised for understanding how a lawyer's life might be a spiritual life.

Three Models of Lawyer Spirituality

We have interviewed scores of lawyers about their understanding of the relationship between their work and their faith.² Based on what we learned from them and based upon our own theorizing, we propose three different ways to understand the spiritual content of the lawyer's work. We put forth these understandings as answers to the question "*Who is your employer?*"

We do not advance the typical answers to the question—"the firm," "the attorney general," "my company." Being interested in the spirituali-

1. David Margolick, *At the Bar: Searching for Godliness in a Profession With a Tarnished Reputation*, N.Y. TIMES, Nov. 17, 1989, at B9. [Editors' note: This booklet was an important part of the development of the idea for this Symposium.]

2. Quotations here are from those interviews and we thank our colleagues for their permission to attribute their insights and comments.

ty of the lawyer's work, we ask this question from an entirely different angle, as evidenced by these alternative answers:

"The client is my employer."

"God is my employer."

"I am my employer."

Model One: "The client is my employer"

Lawyers who give this answer mean that they play a small part in a larger system—an imperfect system certainly, but one to which there is no better alternative and thus one that, on the whole, they judge to be good.

"The lawyer's relationship to justice resembles the piano tuner's relationship to a concert," explains criminal defense attorney William Raleigh. "The tuner neither composes the music nor interprets it. The tuner merely keeps the machine running. As a lawyer, I am paid to defend people. It is not for me to decide if the person is guilty or innocent. The judge or the jury must make that decision. The jury can best make that decision if I give my client the best legal advice and representation possible. The other attorney best helps the jury and serves justice by trying to prove that my client is guilty. This is the way the system is set up. I am moral by trying to do the best possible job that I can. The system will take care of justice in the long run."

This explanation, which many lawyers apply with equal force to civil as well as criminal practice, is sometimes lost on the general public. How can lawyers represent people with whom they don't agree? Much worse, how can they defend someone who they know is criminally guilty or civilly liable?

"Some people wonder how lawyers can defend the rights of a neo-Nazi or a Mafioso," says Donna Krier Ioppolo of the College of Law at DePaul University. "Yet the protection of one person's rights strengthens the rights of all of us." This same understanding of the lawyer's role can be applied to the civil lawyer who represents anyone who seeks his or her services: justice is an objective good that can be realized when all parties are given their day in court. One of the most elegant expositions of this proposition occurs in Robert Bolt's play about Thomas More's resistance to the demands of King Henry VIII to renounce Rome in favor of Henry's new Church of England. In *A Man For All Seasons*, More, a lawyer who would later be canonized, takes up this argument with Roper, his son-in-law, who would have More cast aside his allegiance to the law in favor of More's self-interest:

- Roper: So you'd give the devil the benefit of the law!
- More: Yes. What would you do? Cut a great road through the law to get after the devil?
- Roper: I'd cut down every law in England to do that!
- More: Oh? And when the last law was down, and the devil turned round on you—where would you hide, Roper, the laws all being flat? This country's planted thick with laws from coast to coast—man's laws, not God's—and if you cut them down—and you're just the man to do it—do you really think you could stand upright in the winds that would blow then? Yes, I'd give the devil the benefit of the law, for my own safety's sake.³

As Robert Bolt's More implies, many lawyers believe that the legal system is a complex, finely tuned, deliberately designed machine that produces justice by applying objectively fair rules to all parties. As a consequence of this theory, individual lawyers understand that they serve the greater good by staying within their respective roles. It is not a breach of their morality to represent civil or criminal clients whose positions or actions, in other settings, would violate their Christian beliefs.

"As a Christian and a lawyer I try to ensure that my clients get the respect they deserve as full human persons," says attorney and nun Sr. Catherine Ryan. "Young people sometimes run afoul of the law. Crime is wrong. Yet criminals still need protection. My job is to be there for that person, even if the person is guilty. This is my ministry."

"I would represent someone who is guilty," says another respondent. "Our Constitutional rights are maintained only through the vigorous representation of criminal defendants by lawyers. That is how we keep the system honest."

"I am being asked to represent a person and force the system to fulfill its motto: Innocent until proven guilty," says lawyer Lawrence Suffredin. "My oath of office is to uphold the Constitution, which says that everyone with certain limits has a right to a vigorous defense. The limit is not to perjure testimony."

Lawyers who say, "the client is my employer," do not see themselves as amoral "hired guns," catering to the whims of each client. They understand that illegal, uncivil, or immoral tactics do not serve the cause of justice, nor the client's best long-term interest. "I've been known to fire clients," says Gwendolyn Moreland, who became an attorney after a long

3. ROBERT BOLT, *A MAN FOR ALL SEASONS* 66 (1962).

career as a social worker. "I reach a point where the client is making certain demands and I know that we cannot operate in that fashion."

"There is a fundamental tension in the profession," explains William Raleigh. "It is zealously protecting your client while acknowledging your duty to the judicial system. The ability to tolerate and balance this tension differentiates the average lawyer from the exceptional lawyer. An exceptional lawyer has the fortitude and self-confidence to convince a client not to misuse the system."

Still, the lawyer who answers, "the client is my employer," has made a positive moral judgment about the system. The spirituality of work thus requires a lawyer with this perspective to do the best job possible through the competencies expected of a lawyer: thorough research and mastery of the law, thorough investigation of the facts, careful and persuasive writing, meticulous preparation for court appearances, etc. This lawyer's normal, day-to-day work does not have to somehow be "additionally spiritualized." His or her competency within the legal system is the basic element of the lawyer's spirituality of work.

Model Two: "God is my employer"

A small number of lawyers seek a closer identity between the causes and people they represent and their religious beliefs. For example, such lawyers might work for a legal aid society, believing that helping the poor obtain food stamps or housing is a way of fulfilling the Christian corporal works of mercy. Similarly, other lawyers might work in projects to improve prison conditions on the theory that this is the direct legal equivalent of a Christian work of mercy. Other lawyers might do nothing but civil rights work for racial minorities or for women, believing that Christian social teaching demands that they defend the dignity of each person. Still others might focus entirely on process and might try to mediate every dispute, for example, because they believe alternatives to litigation are more harmonious with the message of the Gospel.

While increasingly greater numbers of lawyers, regardless of their areas of practice, perform some pro bono work, lawyers who answer "God is my employer," do this type of work exclusively and think of their work as nearly a literal response to the gospel. Because they do not tolerate much moral ambiguity between the causes they represent and their personal beliefs, these lawyers usually have serious reservations about the legal system itself and the assumptions upon which the system rests. One of those assumptions is fairness—that the parties to a dispute will be able to marshal equal resources and talent on their behalf. "In fact, this assumption is seriously flawed," says one lawyer who practices in

Appalachia. "For a variety of reasons, not the least of which is the uneven distribution of wealth in this country, the system produces lousy results."

"There might generally be equal representation in areas of family law or in mergers," says Thomas Geoghegan, a noted labor lawyer and the author of *Which Side Are You On?*⁴ "But there are vast areas of the law where rich people use the system to protect themselves. Thus the rules are really stacked against certain kinds of outcomes. For example, when I represent participants in pension fund suits against corporations I encounter enormous legal hurdles. There are big, powerful law firms who use those hurdles to achieve ends that are not right, not good. Morally, I could not be representing the other side in such cases. The system is quite often unfair to the poor and to working people."

Or take the example of a landlord-tenant contest between a small shopkeeper renting space in a large complex owned by a corporate agency. The shopkeeper probably will be represented by a solo practitioner of limited resources who is hired for the occasion. The corporation, by contrast, will have in-house counsel or be represented on retainer by a large law firm with all the resources and prestige of a large firm. Does the tenant, represented by an over-worked attorney with a small support staff, get the same quality of representation as the landlord who is represented by a well-paid, well-supported staff of attorneys, paralegals, and investigators? The answer usually—though certainly not always—is no. There are always solo practitioners who can out-hustle any large law firm. But such people are exceptional.

On the criminal side, many lawyers live in jurisdictions where the government fails to adequately fund appointed counsel for indigent defendants. Even where funding is available, it often comes so slowly and in such small amounts as to guarantee that only novice lawyers, trying to build their practices, will put their names on the list for court appointments. These lawyers are then faced by career prosecutors with staff and investigative resources that easily out-match those of the novice. In addition, the appointed counsel in many jurisdictions usually have little or no government money to secure capable expert witnesses. The prosecution, meanwhile, usually has a stable of highly skilled expert witnesses of every sort and description.

"Those who can afford an expensive trial attorney will probably get better quality representation," says one criminal defense attorney. "This is a generalization, of course. But it is also wrong. Sometimes those who need representation the most are the poor or the middle class."

4. THOMAS GEOGHEGAN, *WHICH SIDE ARE YOU ON? TRYING TO BE FOR LABOR WHEN IT'S FLAT ON ITS BACK* (1991).

“The question is whether in real life the advocacy system fosters responsibility to justice or only to certain individual clients,” says Martin Burns, who has practiced labor law for over thirty-five years. “I myself have a problem separating myself as a Christian from myself as a lawyer and so I have to wonder if I should accept a system in which the end results depend so much on the particular qualities of the lawyer.”

Lawyers who believe that God is their employer say that this serious imbalance in the system has undermined their belief in the system itself. They reject the notion that the system will produce justice if each lawyer simply plays his or her appointed role. Such lawyers also reject the adversary system for more personal reasons. They believe that playing by the rules of the system damages their moral sensitivities. What effect does it have on a man or a woman to articulate positions day after day to which that person has no real allegiance, they ask? Can I really do or say things for clients that I would never do or say for myself? Can I really divorce my professional self and my personal self?

The lawyer who answers, “God is my employer,” more often than not is skeptical about the legal system. The spirituality of work for such a lawyer will mean vigorously seeking out those clients who are short-changed by the system. It will still mean that aspiring towards greater competency is a basic element of the lawyer’s spirituality of work. At the core, however, these lawyers have a very personal regard for integrity and for taking personal responsibility for the consequences of their work.

Model Three: “I am my employer”

This answer does not mean that the lawyer is in solo practice. It means that the lawyer appreciates the multi-colored and complex character of his or her work. Such a lawyer believes God’s hand is hidden in the practical details of his or her work—in the deeds and wills drafted, in the contracts reviewed, in the real estate closing performed, in the accused person defended, in the people and institutions represented in a thousand contexts.

Such lawyers think of God as a creator with whom they are in partnership. They believe that lawyers can reach the goal of communion with God by acting as God acts. “It strikes me that lawyers try to put order into a situation,” says one older attorney. “This is what the Lord does to his universe and I see the law as a way of sharing in that creative activity. I try to keep this in mind when I am working on the details of a case.”

Lawyers who share this rather open approach reject the absolutes of the previous two positions. They reject the view that says the only route to salvation is in performing pure work full-time, yet they also do not

believe in representing everyone who walks in the door based on the idea that the system will sort the just from the unjust. Instead, they make regular and frequent judgments about the content of their practice, based on their belief in the holiness of ordinary work.

Such lawyers see everyday responsibilities not as weights dragging them down, but as opportunities to do God's work in the world. These lawyers believe that almost any job can make a contribution to the kingdom of God. For example, a bond counsel must decide whether the projects being underwritten are worthy of respect and, therefore, his or her talent and efforts. Does this water treatment facility, housing project or road contribute to the well-being of humanity and thus to the kingdom of God? Or is it a project that is nothing but a political boondoggle, with no practical justification, from which the lawyer would be better to walk away?

Similarly, a solo practitioner makes judgments every day about the appropriateness of bringing suit on behalf of injured parties. In one instance, a suit against a drug company or a manufacturer will promote better corporate behavior in the future and compensate an injured person. In another case, the lawyer might refuse to represent someone whom the lawyer suspects of being a malingerer, someone only pretending to be hurt or someone whose own behavior was the chief cause of the accident.

"There is a limit to how I can fit the law to a particular set of facts," explains one veteran attorney. "I once represented a union that wanted to file suit for severance pay at the time a company was sold. In this instance I could not think of a justifiable theory to file the suit. The union would have been satisfied if the court turned us down. They could tell the members that they tried. But I cannot tie up the court's time without a theory. This is a somewhat rare situation but it is a moral issue for me and my business suffers if I tell clients things they don't want to hear."

The lawyer who answers, "I am my employer," is, above all, realistic when it comes to the legal system. The spirituality of work for such a lawyer will mean competency and integrity. It will also mean, however, helping the client to see more than the personal dimension of the situation as the lawyer sorts out the just claim or defense from the unjust. Lawyers who see themselves as participating in God's on-going creation do not seek dramatic changes in people or in the system. Rather, they believe in incremental progress, in the notion that ordinary work gradually builds the kingdom.

Reflecting on a Larger Debate: The Prophetic versus the Complex

The question of the lawyer's spirituality has at least two dimensions to it. On the one hand, the way the lawyer chooses to practice law will have an enormous impact on the state of the lawyer's own soul and, presumably,

on the lawyer's ultimate fate as an individual, spiritual being. In other words, the lawyer has an enormous personal stake in the way he or she chooses to practice. At the same time that the lawyer is concerned about personal salvation, however, the lawyer also has to be worried about the social impact of his or her lawyering. A lawyer, let us remember, is a professional whose advocacy affects the commonweal. What the lawyer does in representing a client has an effect on other people, government, businesses, and the public, not just in the raw terms of civil and criminal law—a financial settlement here, a transaction there, a plea bargain here—but in much broader terms as well: the lawyer's conduct helps shape the culture. A legal profession, for example, that puts the substantive justice of claims ahead of procedural defenses will have an influence not simply on how people view lawyers but on how people view their obligations in society.

A lawyer must, of course, be concerned with both of these dimensions. Do the models we have offered here provide guide posts to both personal salvation and community redemption? Each of us takes a different route. Our reader needs to hear from us separately.

Charlie's View

Charlie's view is that only the second model, in which God is considered the lawyer's employer, is defensible in the light of the Gospel and the twin goals each Christian lawyer should have. Here is how he summarizes his point of view:

I take as my starting point the proposition that Christianity is a call to a radically different way of life. Jesus Christ did not come to live an ordinary life. Rather he came to get beyond ritual, formalism, class, and structure and on to love, compassion, equality, and sacrifice. Indeed, he expected his followers to suffer because they had chosen a path different from that of the prevailing culture. Thus Christ does not call us to an easy complacency with the status quo in which the poor remain poor and the powerful remain powerful. In fact, challenging the status quo is an inevitable consequence of heeding the Gospel call to feed the hungry, clothe the naked, and perform the other corporal and spiritual works Christ prescribes.

Given this clear challenge, it seems irresponsible to be lackadaisical, as an attorney, about the social dimensions of one's work. As an advocate, the lawyer is always taking a position. Each position the lawyer takes has to be understood as being in the service of *some* social philosophy. Even no social philosophy is a social philosophy—it is a concession to the status quo. If the lawyer's work is inevitably in service to some social philosophy, the lawyer has an obligation to decide what philosophy his or her work will serve. In this there can be little choice

for a committed Christian. The lawyer's work must have as its primary and overriding purpose to serve substantive Christian goals. What are those goals? About that there can be great debate, but one thing is certain: unconscious lawyering is not in service of Christian goals. Yet, this is the essence of the first and third models. They accept the lawyer's position—with a firm, with government, with any employer whatsoever—and then they try to find some good in it. This is law for the dead. A Christian lawyer must be conscious, alive to the choices life offers. A Christian lawyer must take the initiative and make a deliberate choice about his or her life and profession. Whom shall we serve?

Apart from the question of what impact the lawyer's work has on society is the question of the impact the lawyer's work has on the individual lawyer's soul. The sharpest threat to the lawyer's soul is the pernicious notion among lawyers that the profession's ethics permit conduct that would be blocked in private life by the lawyer's personal morality. This notion is especially appealing to lawyers who are by nature a competitive lot, a characteristic that is reinforced and encouraged by clients who expect their lawyers to make any move necessary to win. This notion of doing whatever is necessary to prevail is complemented by the further notion that the lawyer's soul bears no personal responsibility for actions taken in the profession. Work is considered work and life is considered life. Work actions are considered somehow separate from all else. This artificial division, this false dichotomy, this concession to the world, however, has the inevitable consequence of damaging the lawyer's moral sensibilities and eventually the lawyer's soul.

My position does not mean every firm and government lawyer must quit and go to work for legal aid, the public defender, or some other public interest organization, although I believe those are the clearest choices for the good. No, a lawyer at work in some less clear setting has choices, too. The central choice is the choice of clients. Who is it that the firm is serving? What are the ends of one's clients? Are those ends consistent with the lawyer's Christianity? Is the lawyer's work for these clients simply in service to the status quo? If it is in service to the status quo, how can the lawyer justify doing nothing for the poor, for God's air and water, for those who are discriminated against because they are the wrong color, gender or religion? How can the lawyer justify work that keeps the poor, poor? Should the firm aim for a different clientele? This discussion should call to mind, as an extreme example, the lawyers for Charles Keating's financial empire who not only failed to blow the whistle on a thief, but actually helped advance his cause. How many of these lawyers were Christian? How many consciously took personal responsibility for the consequences of their work upon their individual souls and upon society? My thesis is that there should be no separation in roles between the lawyer as lawyer and the lawyer as a moral agent whose actions affect the lawyer's soul and society.

Throughout the New Testament, we find the expectation that Christians are to be *palpably different* from non-Christians. If lawyers

do not treat their professional lives as integral to their entire spiritual lives such that they take responsibility for being faithful to a radical gospel in their personal *and* professional lives, how then can they call themselves followers of Christ?

Bill's View

Bill takes what he believes is a more balanced approach:

I believe each of the three models has its rewards and its risks.

The lawyer who believes that the client is his or her employer can take satisfaction in his or her faithful service to people in need, regardless of status or cause. But such a lawyer must worry about a schizoid-like division between who she or he is as a lawyer and who she or he is as a critical, moral human being possessed of a free will.

The lawyer who believes that God is his or her employer works with confidence and a clarity of purpose perhaps unequaled by others. But such a lawyer is subject to burnout, prone to self-righteousness, susceptible to a single-mindedness that excludes other priorities like personal health and family obligations, and too often gives in to a certain intolerance of others who follow a different path to holiness.

The lawyer who believes that she or he is ultimately her or his own employer has an integrated and realistic set of responsibilities. But this lawyer too runs great risks, the chief of which is complacency. It is too easy for this approach to result in a *pro forma* view of the Christian obligation—a view that equates the unreflective performance of a job with the discharge of spiritual obligations, a view that fails to distinguish the Christian lawyer from other humanists who do not have a spirituality of work rooted in the Gospel.

The question of which of these models is best is not the issue with which we ought to be concerned. There is no one best answer. To say that one model is universally the best is to espouse a narrow-minded fundamentalism that takes no account of individual personalities, histories, limitations and circumstances. What might be proper for one, might be wholly improper for another.

Even apart from individual circumstances, the choosing of a specific model is ill-advised. For these reasons, I believe that none of the answers to the question "Who is my employer?" offers a perfect model for every lawyer in search of a spirituality of work. Each offers advantages and disadvantages. Indeed, there are not many lawyers on this earth whose practices fit perfectly into any one of the three answers suggested. I am reminded here of Reinhold Niebuhr's experience in the world and his principal message: people and their societies are imperfect.⁵ Niebuhr came to understand that human nature is so limited as to

5. See generally REINHOLD NIEBUHR, *MORAL MAN AND IMMORAL SOCIETY* (1932); REINHOLD

make any idealized and over arching philosophy (such as pacificism which he came to reject) simply unattainable and thus wholly unacceptable. Thus he rejected the path that identified idealism with salvation, choosing instead to argue that one's salvation is worked out in a real world characterized by sin and failure. He saw man as an entity struggling to make smaller journeys in life, from the imperfection of here to a somewhat less imperfect condition there. That is how I view our struggle for spirituality. We live in a very, very complex and imperfect world that makes many conflicting demands upon us. How we resolve these conflicts should not be a matter of dogmatically following some universal principle, but should be, instead, a matter of experimentation in faith and work, guided by the virtue of prudence. We begin in the world as it is; we work toward the world as it should be. By the necessity of human nature, this will mean an experiment flawed by sin, imperfection, and at least some failures.

I do not mean to argue that this condition of imperfection relieves the Christian lawyer from choosing his or her path and from reflecting on the nature and direction of the lawyer's practice. Lawyers who care about developing a spirituality of work will carefully analyze these approaches, squaring them against their capabilities, limitations, and experiences. The question, "Who is my employer?" I believe, forces lawyers to think about the spiritual dimensions of their work and the moral quality of the untidy legal system in which it takes place. If lawyers will simply do this, I would be quite happy.

A postscript

Just as we cannot resolve this debate between ourselves, we cannot resolve it for you, our reader. By examining and debating it, however, even in this most cursory manner, we hope that we have provoked you to take responsibility for the state of your practice, your community and your soul.