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Clients, Courts, and Calling: Rethinking the Practice of Law

Joseph Allegretti*

“The place God calls you to is the place where your deep gladness and the world’s deep hunger meets.”¹

The work of a lawyer is referred to by many names - it is a job, an occupation, a career, and a profession. Each of these words captures something true and important about being a lawyer. But is it possible to approach the practice of law as something else, something more than a job or a career or even a profession? Can law be viewed as a form of service, a kind of ministry? To explore these questions, I propose to examine the practice of law through the lens of the religious doctrine of *calling* or *vocation* (I will use the words interchangeably). This article will consider several related issues: What is a calling? Is law a calling? If so, what are the implications for lawyers? And how does the idea of a calling promote an understanding of legal practice as a form of healing?²

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1. FREDERICK BUECHNER, *LISTENING TO YOUR LIFE: DAILY MEDITATIONS WITH FREDERICK BUECHNER* 186 (1992).

2. Throughout this article, the author extensively draws upon the ideas set forth in his publication JOSEPH G. ALLEGRETTI, *THE LAWYER’S CALLING: CHRISTIAN FAITH AND LEGAL PRACTICE* 24 (1996).

I. THE IDEA OF A CALLING

It is instructive to compare the ideas of a *profession* and a *vocation*. The word profession comes from the Latin “to profess.”³ In the early Middle Ages, the word was used to refer to the taking of religious vows.⁴ By the late Middle Ages, the word was used to refer to occupations - usually law, medicine, and ministry, which required specialized knowledge, extensive academic preparation, and high ideals. The original idea of a religious vow was not completely lost, because an aspiring doctor or lawyer had to profess a commitment to the highest ideals of his chosen field. A doctor professed to cure and not kill, a lawyer to serve justice.

The idea of a profession includes a commitment to service and the community. Professionals dedicate themselves to the higher good. Why, then, do I propose another way of envisioning law, as a vocation rather than as a profession?

There are a number of reasons why the idea of a profession needs to be supplemented. Today our view of the professions is decidedly ambivalent. On the one hand, over the last few decades there’s been a great expansion of the concept. For example, nurses, accountants, and engineers are classified as professionals by themselves and society alike. Beyond these examples, a look at the classified section of a newspaper under “professionals” reveals a bewildering profusion of jobs - carpenters, teachers, customer service representatives, dental hygienists, and massage therapists. It seems as if everyone is or hopes to be a professional. Apparently, many workers view the label “professional” as a free ticket to greater prestige and higher earnings.

At the same time, we have witnessed a decline in trust and respect for professionals. The term professional sometimes seems to be nothing more than a cloak for greed, hypocrisy, and paternalism. Too often professionals seem to profess little more than a commitment to serving themselves and their own selfish interests. Some professionals think of themselves as better than the people they are hired to serve and treat their clients, not as human beings to be helped, but as children to be ordered around. And sometimes loyalty to the profession becomes more important than service to the public good (witness, for example, the way professionals often rally around one of their own who is charged with wrongdoing).

For these reasons, I believe lawyers should approach their work as something more than a profession, as defined by society today. I suggest that the concept of a vocation offers lawyers a deeper, richer, and more-fulfilling way to practice law.⁵ The word vocation comes from the Latin

3. 8 THE OXFORD ENGLISH DICTIONARY 1427 (1933).

4. LEE HARDY, *THE FABRIC OF THIS WORLD: INQUIRIES INTO CALLING, CAREER CHOICE, AND THE DESIGN OF HUMAN WORK* 45 (1990).

5. My discussion of calling owes much to JOSEPH G. ALLEGRETTI, *LOVING YOUR JOB, FINDING YOUR PASSION: WORK AND THE SPIRITUAL LIFE* (2000); ALLEGRETTI, *supra* note 2; HARDY, *supra* note 4; Charles L. Kammer, III, *Vocation and the Professions*, *THE ANNUAL OF THE SOCIETY OF CHRISTIAN ETHICS* 153-81 (1981).

word for a call or summons.⁶ Nowadays, the word has lost much of this original meaning and usually refers to jobs that are technical, manual, and command little status and salary. For example, if you don't attend college you might go to a vocational school to learn a trade. Throughout much of Western history, however, the word vocation signified a higher, more-exalted kind of work. A vocation was a summons from God. In the medieval Christian church, for example, a vocation was reserved for only those few who undertook a specifically religious ministry - particularly monks, but also priests, brothers, and nuns. Only they had a calling, for only they had renounced the secular world completely to dedicate themselves to God. In contrast, ordinary secular work had no real significance and was often thought to be a hindrance to the spiritual life.⁷ As philosopher Lee Hardy puts it, "Those who remained outside the cloister, who remained involved in the world, may be Christian, but they were less than fully Christian."⁸ Someone like me - a married man with a job and two children - would have been a decidedly second-class Christian.

The Protestant Reformation changed all this. Martin Luther and John Calvin reacted to the medieval devaluation of secular work by attacking the notion that one could live the fullness of the Christian life only by abandoning the secular world for the monastery or religious life.⁹ Luther liberated the concept of calling from its monastic ties and abandoned the distinction between secular and profane work. Charles Kammer summarizes Luther's thought:

Any occupation becomes a 'calling' if its primary motive is serving God, responding to God's wishes and intentions for human existence. . . . Luther understood that in the person of Jesus we have a model which shows that to love God is to serve the neighbor. Our vocation becomes that of loving the neighbor through our occupation.¹⁰

John Calvin's thinking is similar. In his commentary on *Luke* 10:38-42, the story of Mary and Martha, Calvin rejects the notion that Jesus prefers the contemplative to the active life.¹¹ Calvin writes:

On the contrary, we know that men were created for the express purpose of being employed in labour of various kinds, and that no sacrifice is more pleasing to God than when every man applies

6. 12 THE OXFORD ENGLISH DICTIONARY 278 (1933).

7. See HARDY, *supra* note 4, at 24.

8. *Id.*

9. *Id.* at 54-55.

10. Kammer, *supra* note 5, at 170.

11. HARDY, *supra* note 4, at 54-55.

diligently to his own calling, and endeavors to live in such a manner as to contribute to the general advantage.¹²

From this perspective, there are no second-class Christians. It is not necessary to join a monastery to serve God. On the other hand, no one is exempt from the duty to follow Christ and serve the neighbor in love. There is no such thing as a calling in the abstract - we cannot say with confidence that certain work is a calling and other work is not. Any work can be a calling if - and this is a big if - we approach it as a way of serving God and each other. Theologian Paul Althaus puts it this way: "There are no particular holy works. Everything that we do is secular. However, it all becomes holy when it is done in obedience to God's command and in the certainty that [God] will be pleased, that is, when it is done in faith."¹³ Each of us is called to serve God and our neighbor in and through our work, whatever that work may be. Or, to put it more simply, it is not important *what* you do for a living but it is *how* you do it that makes the difference.

Although it was the Protestant Reformation that liberated the notion of work from its medieval confines, it would be inaccurate and unfair to give the impression that the Roman Catholic Church's thinking on work has remained static all these centuries. Vatican Council II, for example, declared:

When men and women provide for themselves and their families in such a way as to be of service to the community as well, they can rightly look upon their work as a prolongation of the work of the Creator, a service to their fellow man, and their personal contribution to the fulfillment in history of the divine plan.¹⁴

Similarly, Pope John Paul II speaks of human work as a sharing in the activity of God.¹⁵ Humans are co-creators with God and share in the redemptive work of Jesus.¹⁶

While Protestants and Catholics may use different terminology, their sentiments are the same. Work is important. It is an avenue by which we serve God and our neighbor. Hardy is correct when he points to an "ecumenical convergence"¹⁷ between Protestant and Roman Catholic thinking about work.

Although there is much more to say about the concept of work as a calling - the tie between Calvinist theology and the rise of capitalism, for one example¹⁸ - our present task is more limited. Now that we have

12. *Id.* at 56 (quoting 2 JOHN CALVIN, A COMMENTARY ON THE HARMONY OF THE EVANGELISTS 142-43 (William Pringle trans., Eerdmans 1949)).

13. PAUL ALTHAUS, THE ETHICS OF MARTIN LUTHER 10 (1972).

14. HARDY, *supra* note 4, at 72 (quoting a statement by John Paul II).

15. HARDY, *supra* note 4, at 72 (quoting John Paul II, On Human Work: *Laborem Exercens*, United States Catholic Conference (1981)).

16. *Id.*

17. *Id.* at 76.

18. See generally MAX WEBER, THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM (1958).

examined the basic idea of a vocation, what would it mean to apply this understanding to the work of lawyers? Does it make sense to talk of a lawyer's calling? And what are the implications for lawyers when they begin to see their work as a calling?

II. LAW AS A CALLING

We should not ask whether the practice of law is a calling, because, as we have seen, it is wrong to think of one kind of work as a calling and another kind of work as something else or something less.¹⁹ Any kind of work can be a calling if we approach it as an avenue of service to God and to neighbor. It depends more upon our attitude, our disposition, than upon the details of what we do.

Several years ago, Christian ethicist James Gustafson asked whether the professions, traditional professions like law and medicine as well as newer professions like social work, could be considered vocations.²⁰ Gustafson noted that there was an overlap between the secular idea of a profession and the religious idea of a vocation.²¹ Professions exist to serve people. "The professional institutions and those who participate in them have the end of benefiting patients, clients, and parishioners; they exist, trite as it is to say, to do good."²² This does not mean that every doctor or lawyer has a vocation (recall our earlier discussion of the problems besetting professions).²³ But it does suggest that the practice of law has a natural propensity or tendency towards vocation, since it exists to satisfy basic human needs for justice and conflict resolution.

According to Gustafson, we cannot know if someone has a calling without examining her motives for practicing her profession.²⁴ A calling implies "some vision of better lives for individuals, for groups, and even for the commonweal[th] of the human community."²⁵ The desire to serve is therefore at the heart of a calling. As Gustafson puts it, our "moral motives" are part of our calling.²⁶ Those who practice law with the intent to bring justice to a broken world, vindicate the rights of the weak and vulnerable, heal broken relationships, or strive to ensure equality for all persons are individuals with a true calling. The law for them is more than just a gateway to financial and social success. As a legal aid lawyer told me, "I believe that God put me here for a reason."

19. See *infra* pp. 5-6.

20. James Gustafson, *Professions as "Callings,"* 56 SOC. SERV. REV. 501 (1982).

21. *Id.*

22. *Id.* at 508.

23. See *supra* pp. 3-4.

24. Gustafson, *supra* note 20, at 510.

25. *Id.* at 511.

26. *Id.*

As a final point, I have been using the religious term calling and have been talking about calling as a form of service to God and neighbor. Does this mean that only lawyers who are religious, or who belong to a church, can have a calling? If you don't believe in God, can you have a calling?

It may seem odd to talk about a lawyer's calling without insisting that the lawyer be religious, but I do not believe that a formal religious affiliation is necessary to approach work as a calling. I have shared my ideas about vocation with lawyers of many religious faiths and with lawyers who profess no faith at all. There have always been more points of convergence than difference within discussions of the concept and implications of a calling. Regardless of theological differences, many lawyers are *hungry* for meaning. They want their work to count for something. They want it to contribute to the common good. They want it to connect with the fundamental values that sustain them. That hunger is all that is needed to approach work as a calling. Readers who are not religious should not be put off by my occasional use of language from my own Christian faith tradition, but should feel free to translate my remarks into language that speaks directly to them. As a lawyer once said to me, "You speak of God's call, but I prefer to speak of a call from that deepest part of myself, the part that makes me who I am."

Is the law a calling? The answer is yes, but not yes in the abstract and not yes in all cases. The lawyers who have a calling approach their work not only as a well-paying job, but also as an invitation use their talents to better the human community to which they belong.

III. PRACTICING LAW AS A CALLING

If the law is or can be a calling, what does that mean for lawyers? What are the implications? I believe that when lawyers approach their work as a calling:

At first glance nothing changes. The lawyer who approaches her work as a calling still spends her time meeting with clients, doing research, drafting documents, and resolving disputes. She is still regulated by the codes of professional conduct. She is still the zealous advocate of her client.

Yet in another sense *everything changes*, because the lawyer now sees herself in a different light. Her work has a different, wider frame of meaning. It has a different orientation. Her personal . . . commitments and values are no longer irrelevant to her work, but are inextricably entwined with her image of herself as a lawyer and a person.²⁷

In short, the idea of a calling gives lawyers a new way of seeing their work and a new way of seeing themselves as lawyers and human beings.

27. ALLEGRETTI, *supra* note 2, at 32-33.

One implication of approaching work as a calling is especially important. The idea of a calling puts an end to the self-delusion that what we do at work is irrelevant or unconnected to what we do with the rest of our life. Too often lawyers and other workers live what I call a *compartmentalized life*. They separate their personal life from their professional life and relegate their deepest personal values to the former. In effect, they split themselves into two persons - they become one person at home and on the weekends, and another, tougher, meaner person at work. At home they are good spouses, friends, parents, and neighbors. They give generously to their community. They try not to lie, cheat, or mistreat others. But at work they feel compelled to be amoral, aggressive, and manipulative. At work the dog-eat-dog mentality and the don't-blame-me-I-was-only-following-the-rules excuse hold sway. Such a schizophrenic lifestyle is unstable. Sadly, studies show that when a lawyer takes positions at odds with her personal values, those values change over time to comport with her public behavior at work.²⁸ Work and the attitudes it engenders have a tendency to gobble up the rest of life.

The idea of a calling breaks down the walls that compartmentalize life into neat pigeonholes labeled "home," "work," "religion," and so on. I am one person, not several, and the work I do is an integral part of who I am. This protects me from giving my work *too little meaning* (treating it as sheer drudgery with no meaning in and of itself but only for the paycheck it provides) or giving it *too much meaning* (making it the focal point and chief end of life).²⁹ Work is part of who I am, so I should not treat it as meaningless or insignificant. But at the same time, I should not give it so much significance that I transform it into a "god" to whom I owe total allegiance.

A sense of calling puts a check on behaviors that have contributed to the current dissatisfaction with the legal profession, such as the padding of bills and the neglect of clients. As we have seen, some lawyers are dominated by a small-minded concern for their own well being at the expense of their clients.³⁰ A vision of law as a calling can change this. As I have written:

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. The concept of vocation opens the

28. Erwin Chemerinsky, *Protecting Lawyers From Their Profession: Redefining the Lawyer's Role*, 5 J. LEGAL PROF. 31 (1980).

29. See Joseph G. Allegritti, *Neither Curse nor Idol: Towards a Spirituality of Work for Lawyers*, in CAN A GOOD CHRISTIAN BE A GOOD LAWYER? HOMILIES, WITNESSES & REFLECTIONS 147-58 (Thomas E. Baker & Timothy W. Floyd eds., 1998) (exploring these polar opposite views).

30. See *supra* note 28 and accompanying text.

door to a relationship in which lawyer and client come to know each other as children of God who share a common spiritual destiny.³¹

The idea of a calling runs counter to the contemporary ideology of selfishness, consumerism, and materialism. It substitutes community and a sense of service for autonomy and lonely independence. As sociologist Robert Bellah writes, in the book *Habits of the Heart*, a “calling links a person to the larger community, a whole in which the calling of each is a contribution to the good of all.”³²

In other words, the idea of a calling “put[s] the financial and business dimensions of lawyering in proper perspective. Money and success are still important, and how could they not be? But they are not the most *important* things [in life]. Our self-worth is not bound to the size of our paycheck or office.”³³ There is a dimension to work that transcends the marketplace: “A lawyer has one foot in the marketplace, but if she takes her calling seriously, she also has a commitment to service that transcends the marketplace. She is governed by a higher vision. Success becomes more a matter of helping others than accumulating riches.”³⁴

The idea of a calling also affects the way a lawyer looks at ethical issues. It broadens her moral horizons. As Bellah says, “The absence of a sense of calling means an absence of a sense of moral meaning.”³⁵ When lawyers lack a sense of calling, they are tempted to see themselves as having responsibilities only to themselves or their clients. In the words of Richard Wasserstrom, they see themselves as “amoral technicians”³⁶ who need not consider the impact of their actions on the legal system or on other persons. They become the so-called hired guns that critics of the legal profession decry.³⁷ The idea of a calling, on the other hand, reminds lawyers that they cannot abandon moral responsibility for their actions. They cannot live up to their moral values at home and ignore them at work:

If lawyers approach their work solely as neutral partisans or hired guns, then the moral wellsprings of behavior dry up. Their moral world comes to be bounded by the desires of their clients and the technical rules of conduct governing the profession. They cease to ask *why* they do what they do.

But if a lawyer sees her work as a calling, she will necessarily confront the moral dimensions of her work. Such a lawyer is motivated

31. ALLEGRETTI, *supra* note 2, at 33-34.

32. ROBERT N. BELLAH ET AL., *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE* 66 (Harper & Row 1986) (1985).

33. ALLEGRETTI, *supra* note 2, at 34.

34. *Id.*

35. BELLAH, *supra* note 32, at 71.

36. ALLEGRETTI, *supra* note 2, at 16 (quoting Richard Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, in *HUMAN RIGHTS* 5, 6 (1975)).

37. See generally Joseph Allegretti, *Have Briefcase Will Travel: An Essay on the Lawyer as Hired Gun*, 24 *CREIGHTON L. REV.* 747 (1991) (exploring the image of the hired gun).

by a vision of public service. She is concerned about justice and whether her actions advance or impede the pursuit of justice. She does not delude herself into believing that whatever she does for a client is somehow immune from moral scrutiny. She understands that she is a moral agent accountable for her actions, and she asks herself *why* she does what she does.

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 [of professional conduct], but to God.³⁸

Perhaps most importantly, the concept of a calling can help lawyers find meaning and fulfillment in their work. According to many commentators, the legal profession is facing a crisis, and the symptoms are many.³⁹ A large number of lawyers report being dissatisfied with the practice of law. Many are depressed. Too many abuse alcohol and drugs. Public respect for lawyers is at a low-water mark. Movies and comedians routinely garner cheap laughs with crude lawyer jokes. Public confidence in the system of justice has eroded. The result is that many lawyers are unhappy about their choice of career and stay in the law only for the external benefits it promises (a good salary, a nice house in the suburbs, etc.). Anthony Kronman, the dean of Yale Law School, claims that lawyers are facing a spiritual crisis, a crisis of meaning.⁴⁰ This crisis of the profession is:

[I]n essence, a crisis of morale. It is the product of growing doubts about the capacity of a lawyer's life to offer fulfillment to the person who takes it up. Disguised by the material well-being of lawyers, it is a spiritual crisis that strikes at the heart of their professional pride.⁴¹

If lawyers are facing a spiritual crisis, perhaps they need a spiritual response:

The concept of calling has something valuable to contribute to tired, disgruntled lawyers who are wondering why they chose the law in the first place. It invites them to take a second look at what they do, to see the ways in which their work contributes to the good of individuals and society. A lawyer who assists an inventor in setting up a corporation is doing something good. A lawyer who counsels a teenager who has had his first brush with the law is doing

38. ALLEGRETTI, *supra* note 2, at 34.

39. See generally ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (1993) (discussing the crisis facing the legal community).

40. *Id.* at 2.

41. *Id.*

something good. A lawyer who stands by a client undergoing a messy and protracted divorce is doing something good. A lawyer who strives to vindicate the rights of a woman unfairly terminated from her job is doing something good.

If lawyers begin to see their work as a vocation, they will find powerful resources for coping with the inevitable tensions and disappointments of their work. They will notice, perhaps for the first time, the opportunities that offer themselves to serve clients and others as a companion, helper, and healer. To the extent that lawyers locate their work in a wider, more-encompassing frame of meaning, and begin to envision it not just as a career but as form of service . . . to that extent they will be freed from the nagging doubts about the meaning of their work. No longer will lawyers have to struggle to create a sense of meaning in what they do . . . they can embrace the meaning that was there all the time waiting to be discovered.⁴²

In my own life, I know that there are times when my work goes badly. There are times when I feel depressed and disillusioned by what I am doing. At such times, I cannot force myself to feel good about my work. But if I can focus on the ways in which my work serves others, I often find myself reinvigorated. A sense of meaning and fulfillment returns. I feel satisfied and even happy with what I am doing.

Theologian and novelist Frederick Buechner makes this point eloquently. Discussing the concept of a calling, he writes, "The place God calls you to is the place where your deep gladness and the world's deep hunger meet."⁴³ In other words, a sense of "deep gladness" can be regained at the moment lawyers become aware of how their work feeds the "world's deep hunger." The world has many great needs - for justice, healing, and compassion just to name a few - that the work of lawyers can help to meet.

Thus far I have been examining the idea of a calling mostly in terms of the individual lawyer, focusing on the *personal dimension* of calling. But there is also a *social dimension* to a calling. A calling has implications for the larger world of business and the economy. Work is not just a personal quest for meaning and fulfillment. It is also a way to help join in the creation of a more just and compassionate world. Let me explain by using the example of my own faith tradition, the Roman Catholic Church.

In 1986 the Roman Catholic bishops of the United States issued an important letter about the United States economy. According to the bishops, the American approach to economic life "must be shaped by three questions: What does the economy do *for* people? What does the economy do *to* people? And how do people *participate* in [the economy]?"⁴⁴ From this

42. ALLEGRETTI, *supra* note 2, at 35.

43. BUECHNER, *supra* note 1, at 185-86.

44. Letter from U.S. Catholic Bishops, National Conference of Catholic Bishops, Economic

perspective, the strength of a business and of the economy should be measured by one all-encompassing standard: "The dignity of the person being, realized in community with others, is the criterion against which all aspects of economic life must be measured."⁴⁵ People are ends, not means; therefore, according to the bishops, the "economy should serve people, not the other way around."⁴⁶

This means that the GNP and the latest economic indicators are not the only measure, or even necessarily the best measure, of the health of an economy, a business, or a profession. The question should always be - how are people being treated? Can they find work that provides a decent livelihood, allows them to express their God-given talents, and permits them to participate fully in the decisions that affect them?

The Catholic bishops posed a number of tough questions about the U.S. economy (or any economy):

[D]oes our economic system place more emphasis on maximizing profits than on meeting human needs and fostering human dignity? Does our economy distribute its benefits equitably or does it concentrate power and resources in the hands of a few? Does it promote excessive materialism and individualism? Does it adequately protect the environment and the nation's natural resources? Does it direct too many scarce resources to military purposes?⁴⁷

These questions are addressed not only to legislators, policymakers, or CEOs of Fortune 500 companies, but also to each of us, including lawyers, judges, law students, and clients. Each person is called to work for economic justice. As the bishops remind us, we cannot separate our private life from our public life and assume that our religious and moral beliefs are relevant only to the private. They warn against the excessive compartmentalization of life:

Our faith is not just a weekend obligation, a mystery to be celebrated around the altar on Sunday. It is a pervasive reality to be practiced every day in homes, offices, factories, schools, and businesses across the land. We cannot separate what we believe from how we act in the marketplace and the broader community, for

Justice for All: Pastoral Letter on Catholic Social Teaching and the U.S. Economy, *available at* <http://www.osjspm.org/cst/eja.htm> (1986).

45. *Id.* at para. 28.

46. *Id.* at para. 15.

47. *Id.* at para. 147.

this is where we make our primary contribution to the pursuit of economic justice.⁴⁸

What does this mean for members of the legal profession? If, for example, the pressures of legal practice (with its ever-rising billable hour requirements and its ever-increasing commercialization) make it difficult for lawyers to serve their clients well, or rob lawyers of time for themselves and their loved ones, then a reform of law firm practices and legal institutions is in order.

If too many lawyers are living overly hectic lives, then the solution is not only for individual lawyers to find ways to slow down and catch their breath (although that would certainly help), but for lawyers to transform legal practice into something more humane - something that serves human beings instead of treating them as disposable commodities. As one writer puts it, “[S]pirituality is about seeking and responding to God’s presence. Good policies and humane institutions make it easier to see God. Therefore, far from being a distraction, the reform of institutions is a key ingredient to a spirituality of work.”⁴⁹ Lawyers who look to the U.S. bishops for guidance should be in the forefront of transforming the legal workplace and the larger economy.

Let me be more concrete. For many years the legal profession has been engaged in a boisterous debate about whether lawyers have a duty to engage in *pro bono* work (uncompensated legal work for the needy). As I have written:

Too often in legal circles the question of *pro bono* is dealt with as just another proposed regulation, and so the discussion focuses on technical, “legalistic” questions: Should *pro bono* be mandatory or permissive? Is it akin to slavery, as many lawyers hyperbolically object, or is it a natural correlate of belonging to a learned profession that is afforded substantial autonomy and status by society? . . . The questions multiply as lawyers turn their fertile, disputatious minds to the problem. Soon the underlying issue of the lawyer’s duty to serve gets lost amidst the hair-splitting and the angels-on-the-head-of-a-pin counting.⁵⁰

Lawyers can argue all they want whether there is or should be a duty to provide *pro bono* legal services. But if I see myself as having a calling to serve others, and if I accept the view of the Catholic bishops that I am called to work for justice, then I will approach the question of *pro bono* from a different angle. The question is not whether I can be forced to provide *pro bono* services; the question is whether I am fulfilling my vocation to serve my neighbor and to help create a just society. Lawyers who approach *pro bono* from this perspective will accept their responsibility to provide the

48. *Id.* at para. 25.

49. WILLIAM L. DROEL, *THE SPIRITUALITY OF WORK: LAWYERS* 38 (1989).

50. ALLEGRETTI, *supra* note 2, at 60-61.

poor and needy with access to the legal system. In their own work, in their own way, they will take steps to provide *pro bono* services. And they will be among the leaders in the struggle to make the ideal of justice a reality for all persons.

IV. A CALL TO HEAL

How does the idea of a calling relate to the understanding of law as a form of healing? This, of course, is a huge and complex issue, and this article can only scratch the surface of it. Nevertheless, a few preliminary thoughts are in order.

If lawyers see their work as a calling, this will certainly affect the way they approach their clients. They will be more likely to try to forge a relationship of mutual equality rather than one in which the lawyer controls the client (in which case the lawyer is acting paternalistically) or the client controls the lawyer (in which case the lawyer is acting as the hired gun of the client).⁵¹ In a relationship of equality, the lawyer and client create a kind of moral community.⁵² Each has obligations to the other but neither is required or expected to surrender her own moral accountability for her actions.⁵³ This means that lawyers can and should raise moral issues with their clients in a respectful, non-paternalistic way. It is appropriate for a lawyer to say, "O.K., you can do this, but do you really want to do it?" Such a lawyer functions as moral companion to her client:

Instead of telling the client . . . what he *can* do, the lawyer can ask her client to reflect about what he *should* do. Sometimes the lawyer need only speak a single word: *Why?* Why do you say that? Why do you want to do that? This is the essence of the lawyer's role as moral companion: to assume the best about our clients, not the worst; to create a space for clients to think before they act; and to help clients to act in accord with their fundamental values.⁵⁴

This attitude encourages the healing of clients in their relationships with people who have hurt them or been hurt by them, in their attitudes towards their lawyer and the legal system, and in their inner lives (by helping them move beyond painful experiences that have inhibited their personal growth). It also allows the lawyer herself to undergo healing (if, for example, she harbors hostility and resentment towards her client).

51. See Joseph Allegretti, *Lawyers, Clients, and Covenant: A Religious Perspective on Legal Practice and Legal Ethics*, 66 *FORDHAM L. REV.* 1101-29 (1998) (examining lawyer-client relations).

52. *Id.* at 1121.

53. *Id.*

54. *Id.* at 1126.

The idea of a calling also leads naturally to an emphasis on healing in the resolution of conflicts. We usually think of lawyers as the zealous partisans of their clients (the image of the hired gun again). Lawyers fight the other party and sometimes the whole world on behalf of their client. Their only loyalty is to their client.

My purpose here is neither to applaud this image (in an adversary system of law as we have in the United States, lawyers must stand up for their clients and not be weak-willed partisans) nor to condemn it (many critics say that this image of lawyers contributes to the low level of respect that the public has for lawyers and the legal system; taken to an extreme, this way of thinking can lead lawyers to abdicate responsibility for their actions and to break or bend the rules to win a case). Instead, I want to make an obvious point, one that is too often overlooked. Lawyers are *healers* of human conflict just as much as they are courtroom champions.

Former Chief Justice Warren Burger explained the image of the lawyer as a healer in these words:

The entire legal profession - lawyers, judges, law teachers - has become so mesmerized with the stimulation of the courtroom contest that we tend to forget that we ought to be healers—healers of conflicts. Doctors, in spite of astronomical medical costs, still retain a high degree of public confidence because they are perceived as healers. Should lawyers not be healers? Healers, not warriors? Healers, not procurers? Healers, not hired guns?⁵⁵

Lawyers are peacemakers. Perhaps a client comes to a lawyer with a problem - she wants to put her estate in order, start a business, draw up a contract, or understand some complex government regulations. The lawyer helps the client anticipate and avoid legal problems before they arise, which is a form of peacemaking.

Or perhaps a client comes to the lawyer with a dispute. The lawyer will first try to resolve the problem through mutual negotiation. Even if that fails, and the parties end up in court, the lawyer still functions as a healer. Studies indicate that well over ninety percent of court cases in the United States are settled before trial - settled, of course, by lawyers.⁵⁶ Once again, lawyers are acting as peacemakers rather than as warriors.

Even if a case goes to trial, this is still a form of peacemaking: “Law is a way to resolve disputes without recourse to self-help and vigilantism. Litigation is a substitute for violence. It lets the parties ‘fight it out’ in the (relatively) safe confines of a courtroom.”⁵⁷

Lawyers are healers, but too often they do not recognize this critical role they play. Law schools and the legal profession still approach litigation more as a battlefield than as a healing vocation, and lawyers therefore see

55. ALLEGRETTI, *supra* note 2, at 69 (quoting Chief Justice Burger).

56. *Id.* at 70.

57. *Id.* at 71.

themselves more as hired guns than as peacemakers. What is needed is a shift of imagination:

What would it mean if legal education and practice took seriously the idea that lawyers are healers and peacemakers? Personal feelings and values would no longer be off-limits in the law school. Training in the skills of interviewing, counseling, and negotiation would become at least as important as courses in trial tactics and litigation strategies. Moral issues would be confronted openly.

Among practicing lawyers, mediation and arbitration would become the norm, and litigation would be looked upon as a last resort, almost an admission of failure. . . . The role of the lawyer would shift from no-holds-barred hired gun to committed go-between. Lawyers would no longer see themselves as “amoral technicians” but as moral agents who are dedicated to resolving human conflict and who bear responsibility for the means they employ and the ends they achieve.⁵⁸

Even in the midst of a trial, lawyers who see themselves as peacemakers will be alert to the possibilities for negotiation and compromise.⁵⁹ They will not be embarrassed by words like reconciliation and healing. They will serve their clients well but will not lie or cheat or cause unnecessary harm. And they will understand that true justice is more than a matter of fair procedures, it is also a matter of fair outcomes.

This idea of law as a healing ministry flows naturally from approaching law as a calling. As we discussed earlier, a calling has at its core the idea of service to something larger than one’s self, helping other people and making our community and our world a better place to live. I believe that lawyers who take seriously the idea of vocation will inevitably come to see themselves not as hired guns but as healers of human conflict. What could be a more attractive and exalted role for lawyers and the legal profession?

58. *Id.*

59. See ALLEGRETTI, *supra* note 2, at 64-109 for an examination of litigation ethics.
