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## A Plumber's Guide to Lawyering

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# A Plumber's Guide to Lawyering

Stephen P. Wink

## **Abstract**

We accept as the natural way that some must lose if others are to win; that some must go hungry, while others eat fully. But, Jesus taught that there is a third way that can arrest the cycle of violence and domination. A way that strikes a chord at the core of beings so that we may fully hear and see the other person we are dealing with. This is what is sometimes called nonviolent resistance. It springs from a conversation with another – beyond just talking – but a dialogue of being with another on a one to one basis. As General Counsel of an investment bank, the author of this Essay finds that he holds certain beliefs that sometimes appear to be, and sometimes actually are, opposed to the role that he is playing in society. This has led the author to a conversation about living with the truth. The answer he keeps finding is that he must start where he is, and follow where the conversation leads him.

**KEYWORDS:** religion, corporate law, ethics, morality

# A PLUMBER'S GUIDE TO LAWYERING

*Stephen P. Wink*

*How can we act humanly in the midst of the Fall? . . . If, then, there be those who find this tract cryptic, it will only be, I think, because it actually bespeaks a theology of hope at a time in America when death is so lively and familiar that death seems to be the only moral reality.<sup>1</sup>*

In my current job as General Counsel of an investment bank, one could say I am in the heart of the beast. That is, to the extent you understand such an institution as a vital organ in the capitalistic beast that is our world, I am certainly a participant in its bosom. I find that I hold certain beliefs that sometimes appear to be, and sometimes actually are, opposed to the role I am playing in society. This conflict is a source of a great depth of feelings: from a sadness and anger that can promote paralysis, to a joy and catharsis which can produce creative epiphany. I am continually wondering about where I can best serve these beliefs and whether the place I find myself is the place to be. This has led me to a conversation I have with other people about living with the truth. The answer I keep finding is that I must start where I am, and follow where the conversation leads me. So, here I am trying to honestly learn from and live with these conflicts.

Some of my beliefs that cause this conflict derive from the teachings of Jesus of Nazareth. His teachings are a radical response to the power that dominates the lives of people in our world. A power that so fully corrupts and pervades our beings that we have great difficulty even pointing to it or naming it. We only get a sense from time to time, when the consequences of its actions are extreme, that there is something fundamentally wrong in the world. At those times we question the role played by society, the family, our institutions and even our capacity as human beings to live in a less violent and damaging way. What we cannot see is that all these things are a part of the beast.

The beast surrounds us. The beast is us.

We accept as the natural way that some must lose if others are to win; that some must go hungry, while others eat fully. But, Jesus

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1. WILLIAM STRINGFELLOW, *ETHIC FOR CHRISTIANS & OTHER ALIENS IN A STRANGE LAND* 21 (1973).

taught that there is a third way that can arrest the cycle of violence and domination. A way that strikes a chord at the core of beings so that we may fully hear and see the other person we are dealing with.

This is what is sometimes called nonviolent resistance. It springs from a conversation with another — beyond just talking — but a dialogue of being with another on a one to one basis. Ultimately, our true transformative power resides in these interactions between individuals. Yes, our institutions bind us and make us feel weak in their presence. But at any moment an individual person can transform an interaction with another into one of support instead of defeat; to warm acceptance instead of cold rejection; to inspiration instead of dejection. This transformative power lies in the individual as our redemptive spirit, not in institutions. “The principalities . . . suffer the fall as truly as human beings . . . all institutions exist, in time, in a moral state that is the equivalent of death or that has the meaning of death.”<sup>2</sup> Yet, these principalities or institutions have no transformative power themselves. Though institutions may be capable of redemption it is not through their own power, but rather through the actions of individuals. It is only the individual that can have this conversation and, thus, the conversation with another person is the fundamental place of impact, the ground zero of this power.

But these are all things that have been written about before, both by myself and others.<sup>3</sup> What I want to address here is what this conversation means to my life in my various roles, particularly that of a lawyer.

Most fundamentally, what I take from Jesus’ teachings is that when searching for an alternative way to respond, I look for what will bring me closer to the other as opposed to that which will put distance between us. In other words, my aim is to create a relation-

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2. *Id.* at 80. Theologically, institutions are fallen and capable of redemption by virtue of their existence as ultimately creations of God.

The simultaneity of creation, fall, and redemption means that God at one and the same time *upholds* a given political or economic system, since some such system is required to support human life; *condemns* that system insofar as it is destructive of full human actualization; and *presses for its transformation* into a more humane order.

WALTER WINK, *ENGAGING THE POWERS* 67 (1989).

3. See, e.g., Stephen P. Wink, *Something's Happening Here*, 27 *TEX. TECH. L. REV.* 1393 (1996); Stephen P. Wink & Walter Wink, *Domination and the Cult of Violence*, 38 *ST. LOUIS U. L.J.* 341 (1993); *RADICAL CHRISTIAN AND EXEMPLARY LAWYER* (Andrew W. McThenia, Jr. ed., 1995).

ship rather than alienation. I search for a dialogue or way of being with another that breaks down our separation.

There are many levels of barriers that are in the way between myself and others. Much of it is part of my own personal psychology: my insecurities and neuroses. There are also many aspects of the legal profession that frustrate my efforts to break through these barriers. For instance, we have a profession that insulates itself through the use of its own language ("legalese" to the laity). Our profession also isolates itself by limiting access to formal justice to our brethren in the trade (only fools and the insane act *pro se* in our courts). Moreover, our profession has established an elite status for itself in our society. (My understanding is that despite the proliferation of lawyer jokes, ours is still among the professions of choice for choosy mothers.)

It is in this context that I hear the laments by lawyers about the demise of the legal profession. "It is becoming just another service business," they say. I, on the other hand, am not saddened by this development. Of course, I am not happy about the lack of respect shown by some colleagues and the apparent failure at times of lawyers' ethics. But, I am not happy when anyone disrespects another or her own ethics. The truth of the matter is, I am rather pleased that lawyering is becoming more and more an everyday business. Like the corner grocer or the local plumber, lawyers have essentially become nothing more than service providers. In fact, the "Esquire" appendage really serves no purpose other than to separate us from our neighbors. Although some non-lawyers (and some lawyers) actually believe it means that lawyers are better than they are, they are sadly mistaken.

I cannot possibly interact with someone in a redemptive, transformative way if I think I am better than she. In fact, I believe I am empowered to have an impact on the relationship only to the extent that I can tell the truth about the relationship and who I am in the relationship, and this depends upon feeling free to tell the truth. This means that I must drop the pretenses that exist by virtue of my professional position. Such pretenses include the trappings of power that the profession has wrested for our use and my own personal security blankets that cloak my feelings of inadequacy, from the plaques on the wall noting past achievements to the suit of clothes that somewhat subtly defines social class.<sup>4</sup>

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4. This is equally true in the counter-cultural sense, particularly in the academy, where political correctness can become a cloak of power.

In the end, this type of interaction means being vulnerable and open. In other words, I must be as open to being transformed myself as I would have the relationship impacted. This requires that in interacting with my clients, the company and the people employed by it, I confess my own role in this particular power play, including my particular needs and wants (to the extent I am currently aware) that could constrict our open communication. Accordingly, the context in which this sort of client counseling is done must be one of a two-way dialogue, not one where the client provides the facts and the lawyer applies the law.

The traditional model of client counseling advocates that a lawyer must put aside one's personal feelings, attitudes, etc., so as to act "professionally" and "objectively" as the best possible advocate for a particular client. Of course, as we know from both our legal practice (to the extent we are honest with ourselves) and quantum theory (from that most "objective" of physical sciences, physics), there are no objective facts. The observer, as part of the totality of the situation, always influences the outcome.<sup>5</sup> Thus, despite our best efforts, we cannot be objective about our clients and merely apply the law. Nonetheless, the profession maintains the pretense that lawyers do just that, and at great cost. One such cost is the tremendous amount of negativity surrounding the profession. Lawyers, instead of being identified with issues, institutions and causes, as our counterparts in the business world are, are considered hired guns who profit by the hour and are without their own moral compass. Lawyers then defend themselves by claiming that their profession made them do it. They are right, but I think they are among the few who do not get the real joke.

To be truly open in interacting with others, however, I must tell the truth about our relative power. The playing field is always skewed and there are many things we cannot change. But, if we can acknowledge the truth, from there we can begin to build our relationships. I cannot change my own color or gender or that of another person, but these immutable facts clearly have an impact on every relationship: from the perceptions of the individuals involved to those of others who observe the relationship and the relative power of these individuals. These are just a few factors among many establishing an entire constellation of beliefs and attitudes that shape our experiences. Thus, although we may be powerless to change these facts, by telling the truth about them we can

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5. This is known as the Heisenberg Principle.

begin to work through our given perceptions to form new ones based on our direct and honest experience of the other.

A cleric at the conference that this volume memorializes stated that many of his parishioners were lawyers and that many had confided in him that they felt they were “dying” inside as a result of their legal work. I have heard many describe this same complaint as prelude to a story about the ills of the legal profession. The story usually ends with a nostalgic recollection of the practice before computers, faxes, email and FedEx. These recollections generally describe the genteel practice of law, where lawyers told clients what was good for them and clients listened.

Actually, in some ways I believe there is something to this nostalgia. In the context of what Tom Shaffer describes as the small town-storefront-green eyeshade-practice of law, the lawyer and client likely knew each other pretty well.<sup>6</sup> They were both members of a small community where everyone knew each other's talents, as well as foibles and assorted other dirt from many years past; thus there was little ability to hide your feelings and biases behind the pretense of professionalism. This is certainly the positive side to the community story.

There has been much good talk of “community.” What I hear at bottom is a desire for groups of people that can provide a support system that promotes this sort of honest living. The idea is that when confronting the powers and principalities in this world, one cannot do it alone. It is certainly true that it can be hard and lonely without that sort of support system. Ultimately, however, I believe we can only succeed together alone. It is a conversation we must have ourselves with another, and the other with another.

But this is not the sort of community that some are talking nostalgically about, where everyone knew each other's story. And this is not the sort of community that might be your neighborhood or town or city. Rather, this can be, at best, only a meta-community that exists by and through this conversation about power. There is no “community” as a being or force that can act in this way. In fact, the danger of a community pursuing this concept (or any set of concepts that are susceptible to becoming dogma) is that the “community” becomes a thing. And all things become part of the beast — an institution that is fallen and is corrupted and corrupting.

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6. JOHNSON ET AL., PROPERTY LAW (1st ed.) (Section on future interests.)

Fundamentally, I think this is because communities and institutions are incapable of carrying on this special sort of conversation. That is, our gift as human beings and that godlike quality of the conversation may not be shared by the powers. Note, however, that I have not described this conversation as speaking truth to power (as some have), as if one (the good one) is on the outside telling the other (the bad one) just how much suffering he has caused. First, this begins as a conversation about telling the truth to another about the power each individual wields. Each of us, whether victim or dominator, wields some sort of power and plays some sort of role in the propagation of the system. "It is, rather, theologically speaking, that all human and institutional relationships are profoundly distorted and so entangled that no person or principality in this world is innocent of involvement in the existence of all other persons and institutions."<sup>7</sup>

This system of power and domination is what lawyers are really complaining of when they speak of dying. The legal profession is a host for this disease that slowly chokes off the breath until the spark of life is finally extinguished. It removes people from people by setting them apart as Lawyers, as people with such special skills that they essentially stand in the role of priests or medicine men of our secular society. As lawyers are removed more and more from the people we serve, our work becomes more mechanical and dry. Many lawyers came to the profession with high hopes and ideals of serving their communities, only to find a chasm, ever widening, open up between those they would serve and their professional lives. Moreover, as lawyers' professional lives have become ever more busy (and here we can rightly blame the computer, faxes, email and FedEx), there is precious little time for anything else that might otherwise fill this void.

Have you ever heard a plumber complain about his profession killing him? Plumbers are regular folk — at least that is true for every plumber I have known — with little pretense about them. Relating with my plumber is like relating to many other people in my life: how much I get out of the relationship depends on what I put into it. But, there is no artifice that acts as a barrier to the possibility of a deep relationship, whether we choose to have that or not.

Even in small towns, the community-based practice where client and lawyer know each other is rapidly becoming an anachronism.

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7. William Stringfellow, *Dissenter in a Great Society*, in *A KEEPER OF THE WORD* 246 (Bill Wylie Kellermann ed., 1994).

Today, most of us need to supply the baseline information about who we are in the relationship. It is far more difficult to do it directly than through the sort of osmosis that occurs in the small town context. For, by exposing ourselves, we are risking loss and ridicule—probably the very things most lawyers sought to avoid by becoming lawyers in the first place (at least I gather this from our risk averse reputation).

To our truly close friends, husbands, wives, partners, children and parents, we are essentially naked. We try to dress ourselves up for them, but most can see through this clothing, though we, ourselves, may not. My wife, Catherine, always knows when I buy new magic clothes for the emperor in my universe. In these instances, my conversation with Catherine is the mirror in which I see myself without the invisible tinsel and trappings I have gathered throughout the days, weeks, months and years. It is a daily process of acknowledging the truth of my condition as a pretender of some kind or another.

This, I believe, is what Jesus' teachings point to. This is the calling that I hear. The third way between win and lose always seems to involve turning inward and opening up—exposing ourselves for who we truly are. As Jesus said, in so many words, if someone sues you for your outer clothes, give him your underwear as well.<sup>8</sup> This is not only an example of nonviolent resistance in the practical sense,<sup>9</sup> but also a metaphor for the conversation that opens and exposes ourselves to those that would attack us. Sometimes this conversation is a gutwrenching process because the pretenses and positions of power we hold have been hard won. But, it seems to me that the mere acknowledgment of the pretense strips it of its mystical power and makes the inequities of power in the relationship more manageable. Although we cannot always change the physical power relationships we have (e.g., man v. woman), we can tell the truth about them. And thus armed, both parties to the relationship can adjust to the playing field.

So, being in the heart of the beast may be as good a place as any to start. We are all of the beast and we must start where we are. But clearly it is hard at times, and there are conflicts I do not resolve and days when my smallness overcomes me. Indeed there are days when I am not honest with myself and others and days when I become deaf and dumb to the conversation. But I will

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8. "If anyone sues you for your outer garment, give him your undergarment as well." *Matthew 5:40* (New Revised Standard Version).

9. See *Wink & Wink, supra* note 3, at 375.

wake the next day, or the next day after that, and hear it calling to me again. And if I do well, I will get up and take my heart in my hand and walk humbly among you, content to just be of you and nothing more.