

2002

Catholic Social Teaching and American Legal Practice: A Practical Response

Jennifer M. Mone

Follow this and additional works at: <https://ir.lawnet.fordham.edu/ulj>



Part of the [Legal Ethics and Professional Responsibility Commons](#)

Recommended Citation

Jennifer M. Mone, *Catholic Social Teaching and American Legal Practice: A Practical Response*, 30 Fordham Urb. L.J. 299 (2002).
Available at: <https://ir.lawnet.fordham.edu/ulj/vol30/iss1/18>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Urban Law Journal by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

Catholic Social Teaching and American Legal Practice: A Practical Response

Cover Page Footnote

The Author is an associate with Farrell Fritz, a Long Island law firm. She works on a broad variety of litigation matters, with extensive deposition, courtroom, and case management experience. Before joining Farrell Fritz, Ms. Mone was an associate with the Manhattan office of Kirkpatrick & Lockhart. Prior to that, she clerked for the Honorable Loretta A. Preska in the United States District Court for the Southern District of New York. Ms. Mone received her Juris Doctorate from Fordham University School of Law in 1993, where she was a member of the Phi Kappa Phi honor society and Editor-in-Chief of the Fordham Urban Law Journal. A special thank you to Dean Feerick, Amy Uelman, and Professor Russel Pearce for the invitation to participate in such a worthwhile and interesting lecture.

CATHOLIC SOCIAL TEACHING AND AMERICAN LEGAL PRACTICE: A PRACTICAL RESPONSE

*Jennifer M. Mone**

I am honored to be asked to participate in this dialogue with such distinguished speakers. I hope to contribute to tonight's discussion by responding to Cardinal Dulles's edifying remarks from a practical perspective.¹ Both Dean Feerick and the Cardinal have illuminated us with broad remarks relating to American jurisprudence and the social teachings of the Catholic church.² I hope to address what some of this means to us in our daily lives as practicing attorneys.

The Cardinal began his remarks by discussing a widespread assumption in American society that religion belongs in church on Sunday, and that it should not enter into our public or professional lives.³ But, as the Cardinal responded, the whole idea behind what we learn in church on Sunday is to gain edification for our everyday lives outside the church, to help us in our daily quest to come closer to God.⁴ That is what being a Catholic is all about. It is not something you can or should turn on and off, depending on who you are with, or what you are doing.

Having said that, some of the key points of intersection between Catholic social principals and the practice of law are a bit hard to swallow as an attorney. The Cardinal commented that lawyers should strive for results that "do justice for the parties," that they "should not blindly support their client's greed for profit at the ex-

* The Author is an associate with Farrell Fritz, a Long Island law firm. She works on a broad variety of litigation matters, with extensive deposition, courtroom, and case management experience. Before joining Farrell Fritz, Ms. Mone was an associate with the Manhattan office of Kirkpatrick & Lockhart. Prior to that, she clerked for the Honorable Loretta A. Preska in the United States District Court for the Southern District of New York. Ms. Mone received her Juris Doctorate from Fordham University School of Law in 1993, where she was a member of the Phi Kappa Phi honor society and Editor-in-Chief of the *Fordham Urban Law Journal*. A special thank you to Dean Feerick, Amy Uelman, and Professor Russell Pearce for the invitation to participate in such a worthwhile and interesting lecture.

1. Avery Cardinal Dulles, *Catholic Social Teaching and American Legal Practice*, 30 FORDHAM URB. L.J. 277, 277-89 (2002).

2. Dulles, *supra* note 1, at 277; John D. Feerick, *Response to Avery Cardinal Dulles*, 30 FORDHAM URB. L.J. 291, 291-97 (2002).

3. Dulles, *supra* note 1, at 277.

4. Dulles, *supra* note 1, at 277-78.

pense of other parties,” and that, in negotiations, they should seek to preserve the rights of all concerned.⁵

But, in the context of litigation, is it my job to do justice for the parties? I do not believe so. It is my job to represent my client's interests, not the interests of all concerned. The judge and the law decide what is greed for profit at someone's expense, and what is simply good business. From my client's perspective, her adversary's actions are at her expense, and vice versa. In fact, I am doing my client a great injustice if I am equally concerned with preserving the rights of my client's adversary as I am in fighting for my client's rights.⁶

In fighting for her client's interests, a lawyer is serving a necessary role in our system of justice and in that way is contributing to the common good.⁷ As Cardinal Dulles noted in his enlightening book, *The Splendor of Faith*, “[t]he Church, for its part, teaches its members to serve the common good of the secular society, to perform their civic duties[.]”⁸

At the same time, that is not to say that reliance on “role” will always excuse a lawyer's choices and decisions. Resorting to role to justify invidious actions is nicely illustrated by a biblical reference: Pontius Pilate relied on his role as Governor of Judea in giving Christ up to be crucified.⁹ As Governor, Pilate's duties included the maintenance of law and order, and he possessed supreme judicial authority.¹⁰ Pilate is portrayed in Luke's gospel as personally believing that Jesus is blameless, yet, Pilate gave Christ up to be crucified.¹¹ Pilate then washes his hands of this act, symbolically separating his personal beliefs from the decision he made in his role as judge and governor.¹² In this circumstance, Pilate's reliance on role to distance himself from his decision could not wash away the crime that befouled his conduct.

When is it okay to justify your actions based on the idea that you are performing a societal role, versus declining to do something for

5. Dulles, *supra* note 1, at 287.

6. See Debra L. Bassett, *Three's a Crowd: A Proposal to Abolish Joint Representation*, 32 RUTGERS L.J. 387, 449 (2001) (arguing that loyalty to the client is one of the best tenets of the legal profession).

7. See Stephen L. Pepper, *Lawyer's Ethics in the Gap between Law and Justice*, 40 S. TEX. L. REV. 181, 183 (1999) (arguing that lawyers serve the common good by competently serving their clients).

8. AVERY DULLES, *THE SPLENDOR OF FAITH* 152 (1999) (citation omitted).

9. *Matthew* 27:2.

10. *John* 18:29-40, 19:1-13.

11. *Luke* 23:3; *John* 19:6.

12. *Matthew* 27:24.

a client, even though it is best for the client, because it is morally repugnant? The answer to this question lies in each lawyer's discretion, which will necessarily be guided by her faith. The preamble to the Model Rules of Professional Conduct obliquely recognizes this point, in stating that where circumstances call for discretion, issues must be resolved through the exercise of sensitive professional and moral judgment.¹³ Guidance in these difficult areas of discretion is something we hope to gain when we go to church on Sunday.

The Cardinal also commented on a lawyer's counseling function, suggesting that lawyers should "persuade clients to do what is socially beneficial, rather than pursue their private gain without regard for others."¹⁴ In other words, the Catholic social teachings direct a lawyer to advise a client morally. In response, I am going to steal a quote from prominent Fordham Law graduate Tom Kavalier which fits in well here: "[Religion] is about beliefs and faith, whereas law is about logic. We lawyers aren't in the morality business. If you want morals, talk to a minister, if you want legal counsel, go to a lawyer."¹⁵

Although Tom makes the point rather bluntly, what he is saying here makes a lot of sense. Clients come to me for legal advice, I am their lawyer. The majority of times, that is the extent of our relationship, lawyer to client. If a client needs moral advice in making a decision, why would they come to me? They would go to their peers or their family, but not to their lawyer. Indeed, if I presumed to give them moral advice, nine times out of ten they would immediately get on the defensive, and then you really have no ability to influence their decision from a moral perspective. If, on the other hand, we have the sort of relationship where the client does seek out my moral advice, they are coming to me not as an attorney, but as a friend or peer. Another reason the idea of giving a client moral advice seems incompatible with my job as an attorney is that I am not trained to be a moral counselor.¹⁶

13. MODEL RULES OF PROF'L CONDUCT Preamble [9] (2002).

14. Dulles, *supra* note 1, at 287.

15. Rose Kent, *What's Faith Got To Do With It?*, 6 FORDHAM LAW., Summer 2001, at 11.

16. See generally Roger C. Cranton, *What Does It Mean To Practice Law "In The Interest Of Justice" in the Twenty-First Century?*, 70 FORDHAM L. REV. 1599, 1604 (2002) (stating that "because clients are uninterested in moral dialogue and firms are motivated to please clients, the relative autonomy of the outside law firm lawyer has shrunk radically from the idealized model of the wise counselor to the purveyor of technical services on behalf of narrowly defined client interests.").

Providing moral advice necessarily involves moral judgment. How can I, who is supposed to be acting as the client's attorney, judge someone's actions from my own moral standpoint? Of course, there will be some areas where the right answer from a moral perspective is clear. But in the day-to-day life of a lawyer, the issues that arise will not lend themselves to such black and white answers of moral and immoral.

I was in the middle of settlement negotiations once involving a land dispute between neighbors. It was during Lent, and the sermon that Sunday had been about forgiveness and love of neighbor. When I met my client, who was Catholic, and who knew I was Catholic, that following week, she began speaking to me about her feelings about the case in light of the Lent season and that week's sermon. Part of her wanted to just give the neighbor what they wanted so they could live in peace. But her husband disagreed, standing by his conviction that they had been wronged. Here were two Catholics, both of whom had attended the same sermon that Sunday and each with different moral beliefs about their case, both on the same side. Although I listened, even in this circumstance, I did not offer my moral advice. For the most part, whether a particular action is moral or immoral, or somewhere in between, will depend on whose shoes you are standing in!

At the same time, as I mentioned earlier, with some issues, there will be an objective moral and immoral response. Cardinal Dulles discusses the objective morality in his book, *The Splendor of Faith*, where he writes of the theological vision of Pope John II:

The recent decline of the West in terms of cultural influence, [Pope John Paul II] asserts, "seems to have its basis in a crisis of truth." This is at bottom a metaphysical crisis. "An objective vision of the truth is often replaced by a more or less spontaneous subjective view. Objective morality gives way to individual ethics, where each person seems to set himself up as the norm. . . ."¹⁷

Thus, unlike Pontius Pilate, who asks Jesus Christ: "Truth, what is that?"¹⁸ implicitly denying the existence of truth, Pope John Paul II speaks in terms of an objective truth "which transcends" reason and human subjectivity.¹⁹

Here is another situation that could arise for a litigator. A potential client, someone you do not have any past relationship with,

17. DULLES, *supra* note 8, at 122 (1999) (citation omitted).

18. *John* 18:38.

19. See DULLES, *supra* note 8, at 122 (1999).

telephones to say that she had signed a contract to buy a residence, and was scheduled to close in one week. The seller had just called to say that she was backing out because she just found out she had a terminal illness. She even offered to pay all of the buyer's expenses, but could not go through with the deal. The potential client, however, wants the house and she wants to retain you to sue for specific performance.

On the surface, from a moral point of view, this may seem horrible. How could someone even think about adding to the stress of someone who just found out she is terminally ill by suing her? But do you say this? Do you decline to take on the case for moral reasons? Do you accept the engagement and advise the client that from a moral standpoint, she should not sue to force the sale? On the other hand, what if the seller's reasons for backing out are not so clear-cut? Perhaps the real reason is that there is a better offer; perhaps she just did not want to sell. In a perfect world, where you could assume the seller was truthful, perhaps the moral question here would be easier, but our training and experience as attorneys precludes us from making these assumptions.

The lawyer's ethical code addresses this issue in an ethical consideration stating, "in assisting the client to reach a proper decision, it is often desirable for a lawyer to point out those factors that may lead to a decision that is morally just."²⁰ Note that this rule does not direct a lawyer to give moral advice, but basically, when conditions allow, to lead a client in the direction of moral justice.

Again, what it comes down to is that most of the big issues that arise in various cases that you are involved in as an attorney and the concomitant advice that you give will naturally involve your discretion, and that discretion, for a Catholic lawyer, will be guided by faith, because that faith is so much a part of who you are.

In addition to filtering into an attorney's discretion, faith intersects with professional life in another very important way: through the way in which you interact with and treat the people that you deal with day to day, adversaries and co-workers alike—what the Cardinal described as "solidarity"—and this holds true for any business, not just for attorneys.²¹ Thus, from my perspective, the synthesis of faith and the profession of law can be found in two areas: in the lawyer's discretion, and in the lawyer's relationships and interaction with others in the day-to-day work life.

20. MODEL RULES OF PROF'L RESPONSIBILITY EC 7-8 (1983).

21. Dulles, *supra* note 1, at 280, 285.

