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Response to the Paper Authored by Professor Joseph Allegretti: Lawyers, Clients, and Covenant: A Religious Perspective on the Legal Practice and Ethics

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**RESPONSE TO THE PAPER AUTHORED BY
PROFESSOR JOSEPH ALLEGRETTI:
LAWYERS, CLIENTS, AND COVENANT:
A RELIGIOUS PERSPECTIVE ON
THE LEGAL PRACTICE AND ETHICS**

Peggy T. Cantwell

PROFESSOR Allegretti's model of the covenantal relationship between lawyer and client was a surprise that generated hope in my mind and soul. In a world where people are often encouraged to litigate in order to gain vengeance or to win a position which may or may not be genuinely theirs, it is refreshing to hear the possibility that a lawyer can go about his work in a way that allows him to value himself, his expertise, and his clients. I find Professor Allegretti's views refreshing and my response is most positive.

At first blush, one might think Professor Allegretti's paper is idealism at its apex. In our mechanical world where people are more skilled at relating to machines than people, we are prone to think that having a covenantal relationship with a client is impossible—particularly in large law firms that deal with complex corporate matters.

Further, it was interesting to see the short history of bioethics and legal ethics and to understand their similarities and differences. I celebrate Professor Allegretti's identification of his tradition, Christianity, as concerned with the meaning of human life, why we are here and where we are going.¹ He states that what we do outside the church is as important as what we do inside.² I would add that Christianity is connected with relationships at every level. I am sure I don't understand all the perplexities involved, but what I do understand is that God is interested in all of our relationships and in every facet of each individual's life, as well as our individual and corporate relationships.

Moreover, the Christian tradition (which is my own) teaches that, in addition, God gives not only the ethic but goes a step further to empowerment. God empowers us! Our relationship with God—personal through Christ—imparts freedom from trying to “live up” to someone else's choice, from trying to look good, from aspiring to success as depicted by the marketing gurus, from focusing on ourselves. With that freedom comes empowerment to take the initiative toward others. It is imperative to have the ethic, but we also need the power to act on that ethical concept.

1. Joseph Allegretti, *Lawyers, Clients, and Covenant: A Religious Perspective on Legal Practice and Ethics*, 66 *Fordham L. Rev.* 1101, 1104 (1998).

2. *Id.*

In part I, under *Religion and Legal Ethics*, under the subsection *The Costs of a Secularized Legal Ethics*, I agree with Professor Allegretti. In addition, I would assert that legal ethics, excluded from the human spirit, lose the personal. Ethics devoid of humanity also loses the uniqueness of each individual. Each individual becomes boxed in a certain code and the honor of the individual is subjugated to technicalities, rules, and precedents. Often, ethics disintegrate into a zero sum game. Winning, the goal of the game, is often defined as the state of the person who is the most accomplished at manipulation. There's no real meeting of people on either side. Even where there is criminal behavior and a victim, there often seems to be no recognition of the value of people involved. The entire focus is on who is going to win. These patterns are, of course, not only present in the realm of legal ethics, but rather are a systemic characteristic of our entire culture, taught to us from our earliest childhood. All professions must bring the best scholarship and research to bear on a task. But what the exclusive focus on academic excellence misses is the fact that what is at stake here is your soul. This does not refer to some religious tradition concerning life after death. "Soul" refers to the inner core of a man or woman. Soul has to do with the deep place of each person's uniqueness. It is in our soul, deep within, where there is a yearning for meaning and hope, for truth and understanding, for something beyond what we can see and measure. Propelled by this unsatisfied longing, it is no surprise that escapes to mechanical stimuli and indulgence in numbing practices and anesthetizing narcotics abound. The famous former coach of the Green Bay Packers, Vince Lombardi, is often quoted as saying: "Winning isn't the first thing. It's the *only* thing." Recently, I read a derivative of that statement applied to the concept of power: "Power isn't the most important thing. It's the *only* thing." That mentality threatens to become the driving force in every profession, and it certainly seems to be what often drives the legal profession.

Professor Allegretti maintains that "[w]hen religion and the deep wellsprings of the human spirit are excluded from legal ethics, law fills the void."³ I note that in our culture, the entire matter of legal ethics has been reduced to the maxim, "[i]t's okay so long as I don't get caught." The only measure of ethics appears to be focused exclusively on the ethical floor: "How much can I get by with?" Such a mentality totally overshadows each person's unique worth: No one considers anyone's true needs or rights.

The same idea recurs in Professor Allegretti's subsection *The Avoidance of Particularity*.⁴ We often view issues from a global perspective causing us not only to miss being the person who we are, but

3. *Id.* at 1105.

4. *Id.* at 1108.

also who the other person is. This categorical style devalues each individual person and tends to inhibit feelings, ideas, and, the presentation of facts. Such thinking causes us to lose sight of our particular individual efforts, responses, and needs.

The professional ethic which tempts us to perpetuate the status quo contributes, in my view, to the societal sense of loneliness and isolation which we currently see everywhere. Our culture is filled with people who are afraid to commit themselves, who have no sense of community and who tend toward depression. Where religion is a relationship to the living God, God calls us to rebel against the status quo, to dare to demonstrate our uniqueness, to honor the uniqueness of others, and to express who we are in relation to others.

In considering the needs of the religious believer, Professor Allegretti discusses *Religion and the Secularization of Bioethics*,⁵ and he rightly points out that the exclusion of religion from legal ethics ignores the personal needs of many lawyers.⁶ The truth is humans are incurably religious. Every person will worship something. What motivates you, what system or concept which you take as your frame of reference, is what you worship.

Professor Allegretti's presentation, in part III, of a covenantal model for the lawyer-client relationship is radical and superb in my opinion. Once again, the themes developed in that section return us to the value of persons. Covenantal relationships are necessary at every level in our society. Individuals scheme to protect themselves, to find loopholes, and to use each other. Today, covenantal relationships are almost unheard of, even in marriage, as evidenced by the frequency of pre-nuptial agreements. Such attitudes reveal that people do not mean to have a relationship at all, but rather that couples intend to use each other until they feel that such use is no longer satisfying. In Professor Allegretti's discussion of the contractual model, I see parallels in dating, marriage, and social relationships.

The attitude, "I won't perform if you don't perform," drives us to ever greater self-preoccupation. Everyone tends to be self-centered and stuck in a narrow and selfish posture. Worst of all, we as a society tend to be proud of our selfish posture.

Throughout Professor Allegretti's paper there is allusion to and support for the fact that everyone longs for both community and relationships—the central thing missing from our current culture. Lawyers may be able to do something about these cultural deficiencies in ways that other professions may not. The contractual model may often devalue and dehumanize all parties, because it says if you do not perform, you are finished. The contract is broken. Professor's Al-

5. *Id.* at 1109 (discussing Daniel Callahan, *Religion and the Secularization of Bioethics*, 20 Hastings Center Report Special Supp. 2, 4 (July/Aug. 1990)).

6. *Id.*

legretti's covenantal model takes an entirely new view of persons and relationships. I appreciate the points made by Lawrence Hoffman of Hebrew Union College, New York, in his response paper regarding the "sacred" quality of contracts, as well as his focus on the truth that "there is a judge and there is justice" and that contracts can mature into covenants.⁷ I believe that all of his points are valid.

Because my own tradition is similar to Professor Allegretti's, I generally agree with his paper. At the same time, for any person who dares to live out a faith—a genuine relationship with God—these principles will apply. If the religion is simply a set of rituals or motions a person repeats at set times of the week or the year, or a system designed to make one a better person or elevate one to higher status, religion will make little difference. The personal interaction with the living God which cuts into our souls and our lives, "religion" which activates our decision-making process and gives us a frame of reference for conduct, behavior and lifestyle—that religion will have great relevance to the lawyer's work.

7. Lawrence A. Hoffman, *Response to Joseph Allegretti: The Relevance of Religion To a Lawyer's Work*, 66 *Fordham L. Rev.* 1157, 1165 (1998).