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WHAT DOES RELIGION HAVE TO DO WITH LEGAL ETHICS? A RESPONSE TO PROFESSOR ALLEGRETTI

*James M. Jenkins**

AS a former practicing attorney for over thirty-seven years and a theologian for none, I had a difficult time reviewing Professor Joseph Allegretti's paper strictly from a theological point of view. From the point of view of a practicing attorney, there are many points made in Allegretti's paper that would make for an interesting debate. This conference, however, is theological in nature, and I will comment accordingly. But having said that, I cannot resist the temptation to make some practical observations about attorneys and clients.

One of the important points of Allegretti's paper is that the lawyer will usually dominate the relationship with his client and that there is an inequality inherent in the relationship because of emotional and professional reasons. It seems to me that the paper focuses on legal matters that are personal in nature, and assumes that the client has little or no knowledge about the matter for which the lawyer was engaged. While I think it is true that the daily work of many lawyers involves personal legal work, there are thousands upon thousands of lawyers, especially in middle-sized to large firms, who primarily deal in business or commercial work, either on the transactional or trial side. The individual client with a personal problem may not be rare in the larger firms, but is certainly not the usual fare. The business or commercial client is not likely to be as emotionally involved as the personal client, and views his legal involvement as a requirement to making a deal, which is designed to make money, or solve a problem, which is the price of doing business. He sees the lawyer as a necessary evil to guide him through the morass of tax and regulatory problems and to negotiate or litigate based upon experience. But many times the client is as knowledgeable as the lawyers—or perhaps more so—about the legal ramifications of his case. This client, when he engages a lawyer, is only buying a means to an end. There may be moral or ethical considerations involved, but typically they are well camouflaged in the way things are required to be done, or are usually done. More often than not, procedure dominates the decision. Since the advent of micro-specialization, it is rare that one lawyer handles a business or commercial matter and, depending upon the complexity of any given legal matter, many and maybe dozens of lawyers will work on

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the project. In this legal setting, there is no "contract" relationship the way Allegretti describes it—there is hardly any client relationship at all except by the client-contact lawyer, whose only responsibility may have been to produce the client, and bill him. Changing what is perhaps only legal piecework that is totally impersonal into a covenant relationship may simply be impossible.

As I see it, the place where a covenant relationship would be most desirable is in those areas of one-shot relationships with high emotional content. Divorce work (especially custody disputes), adoption, family disputes, personal injury, probate and estate planning all come to mind. It is in these areas that the client is likely to know the least about the law and where the lawyer is always dominant, that the lawyer has the opportunity to form the "moral community" Allegretti describes.

To put this in perspective, I have a practical concern with the covenant relationship, and that is objectivity. In my experience, a client is not likely to hire a lawyer to be sympathetic or understanding or to become a friend or a supporter in a covenant relationship, although the client may want all these things and may even get them. What he really seeks is a lawyer well versed in his area of need who will correctly analyze the matter and give competent and totally objective advice—without being influenced by the personal relationship. The client is more likely to want a correct opinion than a caring one. He may not like his domineering lawyer who treats him like a child, but if the lawyer is right and successfully handles the engagement, he will overcome it. By these comments I do not mean to be critical of the desirability of a covenant relationship, but only to suggest that it may not have wide application.

From a theological point of view, it is hard to dispute that having a covenant relationship with a client will be more meaningful and spiritually rewarding for both lawyer and client than a minimal contract relationship. A covenant relationship assumes a willingness of the client to have such a relationship; I will, however, accept that assumption for my purposes. My reaction to Allegretti's position is basic and perhaps overly simplistic. He seems to suggest that a lawyer, once acquainted with the distinction between contract and covenant relationships and the moral and spiritual advantages of covenant over contract, may be persuaded to change from a contract relationship, described by Allegretti as prevalent in the practice, to a covenant relationship. But it occurs to me that such a lawyer would need to have a strong and devout spiritual or moral conviction in his professional life to even be interested in considering such a change in attitude, let alone willing to accept and practice it. I speculate, however, that a lawyer having such a spiritual and moral outlook in his professional life would probably be practicing in a covenant relationship with his client already without knowing it or making a distinction between a

contract and covenant relationship. The only lawyers left to convince are those without a strong spiritual or moral conviction in their professional lives. Therein lies the dilemma. These lawyers will most likely ignore such a change, not because it isn't worthy, but because to embrace it a lawyer must first embrace the concept that his professional life has a spiritual level and that legal ethics are always trumped by morality. So then, isn't it necessary to initially lead a lawyer to a God-centered life where his first priority is loving God and following his religious beliefs in every aspect of his life before any discussion of his relationships with his clients will make an impression? I think so. So, while it is interesting stuff to explore the differences between contract and covenant relationships between lawyer and client, and as religious people to postulate that a covenant relationship is preferable, is it possible that the discussion may only be academic? A lawyer with strong moral convictions and religious beliefs will most likely practice in a covenant relationship with his clients naturally. A lawyer without strong moral convictions or religious beliefs will most likely treat his practice as a bottom line business and have little interest in raising the level of his client relationship from contract to covenant. The question to me is not the relationship a lawyer has with his client, but the relationship a lawyer has with God. It seems that two covenant relationships are in play, and if a horizontal covenant relationship with a client is to succeed, a vertical covenant with God must necessarily precede. To accomplish a covenant relationship with God for the lawyer without one is the age-old quest for revival and conversion, but that discussion is beyond the scope of this conference.

Allegretti's paper asks: What does religion have to do with legal ethics? My answer is "everything or nothing." If God is the first priority in a lawyer's life—private and professional—it's everything. If not, it's nothing. The nature of the relationship between a lawyer and his client will thus be determined.

Notes & Observations