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Cover Page Footnote

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A CITIZEN LAWYER'S MORAL, RELIGIOUS, AND PROFESSIONAL RESPONSIBILITY FOR THE ADMINISTRATION OF JUSTICE FOR THE POOR

Mary Ann Dantuono*

THE Conference's goal to produce an agenda for scholarship and action by professional associations of lawyers on the topic of "The Relevance of Religion to a Lawyers Work" is an exciting one. We are in a process of rediscovering the roots of our noble profession. Roscoe Pound described our profession as:

[A] group of men [and women] pursuing a learned art as a common calling in the spirit of a public service—no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of a public service is the primary purpose.¹

Law is a complex profession, one that Joseph Allegretti urges us to reflect upon as "a calling from God," a vocation in which we can "recognize [our] students and colleagues and clients not as distractions to [our] spiritual journey[s] but as companions along the way, from whom [we] receive sustenance and to whom [we] in turn minister."² The legal profession is also defined as a "public calling," emphasizing our professional obligation to promote equality in the legal system.³

The law is also a profession that is being forced to frantically re-examine its roots and character, not because of a renewal phase in its development, but rather because of how it is perceived by the public and by its own membership. For the purpose of this brief response paper, Allegretti's description of the current situation creates a vivid picture:

The legal profession is in crisis. Public esteem for lawyers has hit rock-bottom. Movies and comedians routinely garner big laughs by ridiculing lawyers. A series of highly-publicized "circus" trials, culminating in the O.J. Simpson case, have eroded public confidence not only in lawyers but in the legal system they serve. Lawyers themselves are increasingly unhappy about their career choice. As

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1. Roscoe Pound, *The Lawyer from Antiquity to Modern Times* 5 (1953).
2. Joseph G. Allegretti, *The Lawyer's Calling: Christian Faith and Legal Practice* 36 (1996).
3. Phoebe A. Haddon, *Education for a Public Calling in the 21st Century*, 69 Wash. L. Rev. 573, 574 (1994).

Harvard Law professor Mary Ann Glendon puts it, "American lawyers, wealthier and more powerful than their counterparts anywhere else in the world, are in the grip of a great sadness."⁴

We can offer many underlying reasons for this crisis, such as the commercialization and corporatization of the practice of law.⁵ The low public regard for the profession and the increasing demoralization of the professional, however, are probably the reasons we are looking for a conversion experience for the practice of law. Can religion help our profession get back on track? Religion is working its way into other areas, such as professional sports, to reinvigorate virtue in their constituencies and professionals.⁶ This integration of religion has been attended by an understandable degree of controversy. Is religion what we need for our profession?

As our Conference speakers indicated, very important themes such as truth, justice, and peace permeate the legal profession as well as most major religions. Can an investigation of this interrelationship enhance the practice of law? I believed upon registering for the Conference, upon reflection, and still believe that such an inquiry would enhance the profession. I believe this study will enhance our religious traditions as well. Our investigation will help us to understand our individual spirituality and our need for an integrated being. Our religious traditions call us to a way of being—living and professing the same values and behaviors at home as well as in the workplace.⁷ These dimensions enhance not only the practice of law, but also our lives as followers of our religious tradition.

Our respective religious traditions can challenge our present notions and behaviors, requiring prayerful reflection and disciplined lives. Our religious perspective—whether Christian, Jew, Muslim, Hindu, or other religious tradition—requires us to continually ask ourselves important life and professional questions. What is work? What is service? What is virtue? What is love? How do I live my religious commitments in post modern times? Who is my neighbor? Who am I in relation to the other? Do I know and do I love my God and my neighbor? Are my life choices those of a sheep or a goat?⁸ Our religious traditions will encourage us to examine our relationship to the least, lost, and left out in our communities. Our religious tradi-

4. Allegretti, *supra* note 2, at 2 (citing Mary Ann Glendon, *A Nation Under Lawyers: How the Crisis in the Legal Profession Is Transforming American Society* 14 (1994)).

5. See Harry T. Edwards, Remarks, *A Lawyer's Duty to Serve the Public Good*, 65 N.Y.U. L. Rev. 1148, 1151-55 (1990).

6. See Chris Smith, *God is an .800 Hitter*, N.Y. Times, July 27, 1997, § 6 (Magazine), at 26.

7. See Thomas L. Shaffer, *On Living One Way in Town and Another Way at Home*, 31 Val. U. L. Rev. 879 (1997).

8. See *Matthew* 25:37-46. The judgment gospel of *Matthew* explains the interrelationship of our treatment of the poor and our love of God.

tions will have something to say about how we must relate to those people.

In this brief response paper, I will suggest that pro bono and service obligations will benefit from an examination of the roles of religion and citizenship. Our working group began its discussion with a review of Nitza Milagros Escalera's working paper entitled *A Christian Lawyer's Mandate to Provide Pro Bono Publico Service*.⁹ The focus of this excellent paper was "to persuade lawyers, but more specifically, Christian lawyers, as to why we must support mandatory pro bono publico service"¹⁰ efforts by the Bar. I hope our working group and this response paper will broaden that discussion. I also hope for scholarship and action to include the concept of citizenship as we try to discern not only our service obligations, but also the more important question of the administration of justice in our society and how to achieve it. Finally, I will offer a few suggestions for future discussion on an agenda for action by practicing attorneys and law schools.

The inclusion of a working group to investigate the relationship of religion to pro bono and service obligations connected this conference to a larger debate that has continued within the profession for the past two decades. The debate surrounds the ABA Model Rules of Professional Conduct that encourage lawyers to render at least fifty hours of pro bono publico legal services each year.¹¹ The description of how those services can be rendered is fairly broad, including providing legal services without fee or at a reduced fee to persons of limited means or to charitable, religious, civic, community, governmental, or educational organizations that address the needs of persons of limited means. Also included is participation in activities for improving the law, the legal system, or the legal profession. The rules also encourage contributing financial support to organizations who do this work. This rule and the amendments were the result of a serious debate and continue to generate substantial commentary. Most of this debate centers around the mandatory versus voluntary nature of pro bono publico service. For the purpose of our response as persons of faith, we chose to avoid this debate because the represented faith traditions require concern for the poor.¹² How we act on that concern, however, may evoke different responses.

Can religion add another dimension to the debate? Once again, I suggest that it can, especially the faith traditions that have acknowledged their role in our society as "public churches." Public churches

9. Nitza Milagros Escalera, *A Christian Lawyer's Mandate to Provide Pro Bono Publico Service*, 66 Fordham L. Rev. 1393 (1998).

10. *Id.* at 1393.

11. Model Rules of Professional Conduct Rule 6.1 (1993).

12. As part of the working group, Roman Catholicism, various Christian denominations, Mormons, Muslims, the Jewish tradition, and Native American Spirituality were represented. We recognize this as a diverse sample and not exhaustive.

are those especially sensitive to the *res publica*, the public order that surrounds and includes people of faith. Their social mission is characterized by three things: 1) respect for the legitimate autonomy of other social institutions; 2) acceptance of some responsibility for the well-being of the wider society; and 3) commitment to work with other social institutions in shaping the common good of society.¹³ Religion in this context brings values to the public square through its reflections on the administration of justice,¹⁴ enhances the ideals of citizenship, and encourages citizenship and political responsibility.

In the Catholic tradition, citizenship is a virtue; participation in the political process is an obligation. The Catholic bishops have stated, "[W]e are not a sect fleeing the world, but a community of faith called to renew the earth."¹⁵ "We encourage people to use their voices and votes to enrich the democratic life of our nation and to act on their values in the political arena."¹⁶ The Catholic faith requires that a person professed and certified in the law also seek participation in the political process. The Roman Catholic tradition is an example of a public church that leads its followers to enlarge the debate to provide for the legal needs of poor people beyond a responsibility to perform charitable works. Including the poor in our system of justice is an obligation. As described by Fred Kammer, S.J., the current President of Catholic Charities USA, this expression of the Judeo-Christian tradition is "faithjustice."

Faithjustice is a passionate virtue which disposes citizens to become involved in the greater and lesser societies around themselves in order to create communities where human dignity is protected and enhanced, the gifts of creation are shared for the greatest good of all, and the poor are cared for with respect and a special love.¹⁷

Faithjustice moves beyond acts of charity, which primarily define person-to-person encounters, to justice, which focuses primarily on economic, social, and political structures.¹⁸

An acknowledgment of our religious responsibilities as lawyers will help define a citizen of good moral character as "[o]ne who, under the Constitution and laws of the United States, . . . is a member of the political community, owing allegiance and being entitled to the enjoy-

13. Michael J. Himes & Kenneth R. Himes, *Fullness of Faith: The Public Significance of Theology* 1-2 (1993) (describing the work of Martin E. Marty, *The Public Church: Mainline-Evangelical-Catholic* (1981)).

14. Stephen L. Carter, *The Culture of Disbelief: How American Law and Politics Trivialize Religious Devotion* (1993).

15. Administrative Board of the United States Catholic Conference, *Political Responsibility: Proclaiming the Gospel of Life, Protecting the Least Among Us, and Pursuing the Common Good* 7 (1995).

16. *Id.*

17. Fred Kammer, *Doing Faithjustice: An Introduction to Catholic Social Thought* 9 (1991).

18. *Id.* at 164.

ment of full civil rights.”¹⁹ These citizens are transformed by examination and oath and become attorneys and counselors at law through admission to the Bar. Citizens of good moral character are those who have chosen to use God-given gifts as practicing and teaching lawyers and are required by their personal values to render legal services to persons who are indigent. If religious lawyers fulfilled this responsibility the small percentage of lawyers—less than twenty percent by most estimates—who are presently participating in any organized pro bono service efforts would increase.²⁰

As citizens, lawyers, and believing persons, we should move beyond motivating attorneys to offer charity care to people who are poor. Perhaps we should even question the appropriateness of requiring people who are of limited economic means to depend on the benevolence of any group of people to access the legal system. The citizens, lawyers, and believing persons would form a profession described by de Tocqueville many years ago: “Lawyers, forming the only enlightened class not distrusted by the people, are naturally called on to fill most public functions. The legislatures are full of them, and they head administrations; in this way they greatly influence both the shaping of the law and its execution.”²¹ As this enlightened class trusted by the people, lawyers would be strong advocates for social justice.

The conversation today distances lawyers from the role of government. Lawyers need to become advocates for the rights of the poor, both as a class and as individual clients. Government is not separate from us; we are government. We need to re-examine the profession and our role as citizens, as people of faith in the political process. Many religious traditions require its members, especially its members gifted in the law, to examine not only what individuals can do, but also what can be done collectively to make our society respond to the needs of the poor.

If we combined our roles as believers, citizens, and lawyers, we would focus more intently on the excerpts from the ABA Committee Report supporting the 1993 Amendment to Rule 6.1. In that report, the Standing Committee on Lawyers’ Public Service Responsibility stated:

[B]ecause the legal problems of the economically disadvantaged often involve areas of basic need such as minimum levels of income and entitlements, shelter, utilities and child support, their inability to obtain legal services can have dire consequences. For example,

19. Black’s Law Dictionary 244 (6th ed. 1990).

20. See Jill Chaifetz, *The Value of Public Service: A Model for Instilling a Pro Bono Ethic in Law School*, 45 Stan. L. Rev. 1695, 1697 (1993) (discussing Michael Caudell-Feagan, *Pro Bono and Legal Education*, 1 B.U. Pub. Int. L.J. 193, 194 (1991) (citing American Bar Association Consortium on Legal Services and the Public, 1990 Directory of Private Bar Involvement Programs 146-47 (May 1990))).

21. Edwards, *supra* note 5, at 1148 (quoting Alexis de Tocqueville, 1 *Democracy in America* 269 (J. Mayer ed. & G. Lawrence trans., 1969)).

the failure of a poor person to have effective legal counsel in an eviction proceeding may well result in homelessness; the failure to have legal counsel present at a public aid hearing may result in the denial of essential food or medical benefits.

The inability of the poor to obtain needed legal services has been well documented: since 1983, when Rule 6.1 was adopted, at least one national and 13 state-wide studies assessing the legal needs of the poor have been conducted. Of those studies reporting unmet legal need, there has been a consistent finding that only about 15%-20% of the legal need of the poor are being addressed. The legal needs studies also confirmed that unmet need exists in critical areas such as public benefits, utilities, shelter, medical benefits and family matters.

....

The Committee firmly believes that the private bar alone cannot be expected to fill the gap for service that exists among the poor. Rather, the federal government, through adequate funding of the Legal Services Corporation (LSC), should bear the major responsibility for addressing the problem. Although the federal government has never provided sufficient funding for the LSC, during the past decade funding has fallen even further, causing the crisis of unmet legal needs among the poor to be exacerbated. Specifically, in FY 1981, the annual budget for LSC was \$321 million, while in FY 1991, the annual budget was only \$328 million. Given the fact that the consumer price index increased by well over 50% from 1980 to 1990 and that during that same time period the poverty population is estimated to have increased by 15.4%, funding for LSC is clearly inadequate.²²

Federal funding for the LSC in fiscal year 1997 has decline to \$283 million.²³ The story is clear. More than 50% of the public funding to support access to civil legal services for persons of limited incomes has eroded. According to the Center for Budget and Policy Priorities, since 1994, nearly 74% of all of the reductions in federal programs to reduce the deficit have come from programs that offer assistance to low income people.²⁴

We need to rediscover what "in pro bono publico" means for our profession as citizen lawyers who are concerned about the administration of justice in our society. We need to understand our role as we see public support for needy people erode. As believers, citizens, and members of this noble profession, we must act in the public's interest.

22. Standing Committee on Lawyers' Public Service Responsibility, Committee Report Supporting 1993 Amendment to Rule 6.1, *reprinted in Regulation of Lawyers: Statutes and Standards 308-09* (Stephen Gillers & Roy D. Simon, Jr. eds., 1995).

23. Jerry Gray, *Senate Approves a Big Budget Bill, Beating Deadline*, N.Y. Times, Oct. 1, 1996, at A1; see *Don't Gut Legal Services*, N.Y. Times, Aug. 3, 1997, § 4 (Week in Review), at 12.

24. Robert Greenstein et al., *Bearing Most of the Burden: How Deficit Reduction During the 104th Congress Concentrated on Programs for the Poor* (visited Feb. 20, 1998) <<http://www.cbpp.org/104TH.HTM>>.

I suggest that both our scholarship and our action center around developing an agenda with other persons of good faith and interest in the common good.

The following are some areas for consideration. We can participate in charitable efforts and encourage others to do so. The more we are in touch with the needs of the poor, the better advocates for systematic change we will be. But we must never allow our charities to be a substitute for justice.

It is not enough just to engage in a commendable service that reaches out to help individuals whose lives touch our own, not in the face of massive structural evil that makes these people needy Instead of a tension between love and justice, love as the soul of justice gives the Christian passion for building a more just world.²⁵

Our religious traditions can help us see need and can become the vehicle for meeting that need. Religious congregations can gather persons who need legal services and connect them with professionals who can service that need. Religious congregations can also help us identify structures that hinder human dignity and freedom, and can help us shape an agenda for change. The values of truth, justice, and peace are shared.

As creative professionals, we need to end this incessant debate over mandatory versus voluntary pro bono. When the working group was able to move beyond that issue, we began a conversation of many creative ideas on how to move forward. The person with religious values, civic values, and professional legal training can develop many creative approaches to the legal needs of persons who are poor. We can look at other systems' approaches and determine if their principles could apply to this agenda. For example, the poor have access to medical care. Managed care principles, while deficient in many areas, have succeeded in making the Medicaid client equally attractive to the health care provider as the person with private insurance benefits. Perhaps our creative solutions need to look at how to make the person of limited means attractive to private attorneys who are concerned about their livelihood. We may need to look at contingency fees paid by the defendant where a court rules that the landlord, government, or other institution has aggrieved a poor person. Perhaps the cost of doing business would support insurance for attorney fees.

We, as professionals in the public interest, could build a better constituency for publicly funded legal services. Have we tried? When I entered the legal profession, the profession was defined by both my law school experience and my colleagues as doing a good job for a client on a case. As the first phase of my career unfolded, I found myself in the general practice of law, working one case at a time for a fee. I enjoyed the work, the complexity of the law, trying to solve

25. Kammer, *supra* note 17, at 181.

problems, and, of course, the satisfaction that followed a “good” result for my client. About six years after law school, I attended a continuing legal education course in Elder Law sponsored by the New York State Bar Association. At least 200 attorneys were assembled in a hotel in New York City to share knowledge and concerns on the need for long-term health care and financial planning strategies. I innocently asked a colleague during a break why we were not considering a legislative solution to this problem. It seemed that there was a need for health care reform for long-term care. He advised me that that was “not what *the practice of law* is all about.” I suggest that our sense of justice, influenced by our faith traditions, requires us to become more involved in the development of these laws. We can conclude that participation in the political process is part of the practice of law.

Finally, we must create opportunities for this type of conversation in the law schools. Law schools are the portals through which all new members of the profession must pass, and attendance at law school may be the single most unifying experience of our profession.²⁶ Robert V. Stover, in his study *Making It and Breaking It*,²⁷ concluded that law school is as much a professional socialization experience as it is a scholarly and skills building enterprise. Most recently, business interests have driven how we train lawyers and continue to dominate our curriculum and our assessment of who we are.²⁸ We do not generally teach our students to view the law as capable of “‘influenc[ing] significantly the distribution of societal resources and power,’ nor do we encourage them to view the lawyer’s role as reformist.”²⁹ How can legal education better contribute to the profession’s concept of its public responsibility? We need to focus our learning on lawyering in an open system, concentrating on the practical and the political, as well as on the theoretical.³⁰

As lawyers and teachers, we must begin to prepare ourselves and our students to play a role in constituting the democracy—political and economic—which can and should mark the future.³¹ “We must train ourselves and our students to create instruments that can empower the values of our community and heighten the integrity and comprehensiveness of public discourse.”³² The promotion of pro bono work by students through clinical projects, teaching professional responsibility in flexible and innovative ways, and the creation of pro

26. James L. Baillie & Judith Bernstein-Baker, *In the Spirit of Public Service: Model Rule 6.1, The Profession and Legal Education*, 13 *Law & Ineq. J.* 51, 65 (1994).

27. *Id.* (citing Robert V. Stover, *Making It and Breaking It: The Fate of Public Interest Commitment During Law School 57-58* (Howard S. Erlanger ed., 1989)).

28. Haddon, *supra* note 3, at 578.

29. *Id.*

30. Harold A. McDougall, *Lawyering and the Public Interest in the 1990s*, 60 *Fordham L. Rev.* 1, 11 (1991).

31. *Id.* at 47.

32. *Id.*

bono student networks, among other creative projects, can and should be encouraged.³³ The law professor is now the substitute for the mentor or role model, who prepared the apprentice for the practice of law, and must assume the mentor's role and responsibilities.³⁴ Legal education is a very important key to the future of a profession. The contribution religion can make is to encourage a sensitivity to the needs of the poor and a willingness to participate in works of justice as citizens and persons of faith with legal skills.

CONCLUSION

The certificate of admission to the Bar states that a member met three criteria: qualified by examination, provided by the statute; being a citizen of good moral character; and having taken and subscribed the Constitutional Oath of Office as prescribed by law. Interestingly, the law prescribed the exam and oath, requiring an affirmative task and definitive criteria for both, but there is no such definition of a citizen of good moral character. The Bar checks into character by questioning past employers and looking into whether a person has any criminal background. Can we also look at activities of service and justice for poor people as criteria for good moral character? Our future needs persons seeking admission to the Bar shaped by the values of a strong religious tradition, educational process, and participation in community. Perhaps our profession will begin to define its professional by a person's care and concern for the least, lost, and left out in our society along with a knowledge of the law. If so, then we will recapture our roots in service to the public. We can become the profession so needed for the future of our democracy.

The Lord rules forever,
has set up a throne for judgment.
It is God who governs the world with justice,
who judges the peoples with fairness.
The Lord is a stronghold for the oppressed,
a stronghold in times of trouble.³⁵

Let us seek to model our profession in the Lord.

33. See Chaifetz, *supra* note 20.

34. Edward D. Re, *Law Office Sabbaticals for Law Professors*, 45 J. Legal Educ. 95, 95 (1995).

35. *Psalm* 9:8-10.

Notes & Observations