

## Book Review

ON BEING A CHRISTIAN AND A LAWYER. By Thomas L. Shaffer. Utah: Brigham Young University Press, 1981. Pp. 288. \$12.95.

Reviewed by Robert S. Redmount

In the September 1976 issue of the *Connecticut Bar Journal*,<sup>1</sup> I reviewed one of the books previously written by Professor Thomas L. Shaffer, formerly Dean of the Notre Dame Law School and currently Professor of Law at the Law School of Washington and Lee University. In commenting on that book, *Legal Interviewing and Counseling*,<sup>2</sup> I observed that "He [Shaffer] is intent on improving his work with clients, does not need to be defensive about this, and is open to learning and searching about himself and the character of his professional work."<sup>3</sup>

Shaffer, in the sometimes painful task of being both a Christian and a lawyer, continues to observe the legal profession, probes for difficult insights and concepts and, withal, exercises a humane conscience while maintaining a strong sense of personal integrity. In discussing the moral dilemmas of an adversary practice, or the matter of how to relate to guilty clients, or the issue of what constitutes truth and honesty in the practice of law he is nobody's man but his own. Without pietism, he would probably say that he is God's creation and subject to God's will. His view of personal integrity and appropriate professional conduct is not that they emanate from the institutions of law and declarations of codes of behavior but from an internal well-spring that is much closer to God than to the institutions of government.

For Shaffer morality in the practice of law is a complex affair that calls into question the kind of relationship that exists between

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1. Shaffer, Book Review, 50 CONN. B.J. 383 (1976).

2. T. SHAFER, LEGAL INTERVIEWING AND COUNSELING (1976).

3. Shaffer, *supra* note 1, at 384.

lawyer and client. Particularly, he questions whether the lawyer can or should remain silent on moral issues, even if the law is not thereby flouted. He does not see the matter of legal counsel as separate from moral awareness and moral analysis. Neither does he see the professional role as a matter properly separated from a lawyer's personal conscience. The lawyer, Shaffer holds, is more than a representative of the client. He properly ministers to a client, a more comprehensive concept that involves the "ethics of care."

On the matter of ministry to the guilty, Shaffer raises the issue of how far a lawyer may (should) go in his dealings with a guilty or lying client. The Code of Professional Responsibility admonishes that a guilty or unpopular client is entitled to be rigorously represented, and that lies perpetrated by a client may not compel disclosure by his counsel. Shaffer argues that a more affirmative personal and moral obligation is owed the guilty and characterologically limited client. The obligation is one of faithfulness to the client's need. Drawing on cases derived from fiction, notably those of the English novelist Trollope, and on religious sources, Shaffer observes that the client does not need condemnation and punishment (which indeed he will probably get), nor does he need exoneration (his tragic acts and healthy respect for the truth require more than that) but he needs love and understanding. He is, after all, one of God's chosen, if straying creatures.

Shaffer challenges in other areas as well. He argues that the legal profession's fetish for "loyalty" to a client involves the suspension of judgment and automatic solution that may be insufficient or inappropriate to the issues and interests at hand. There is in nearly blind loyalty, as Shaffer notes, neither ethical principle nor generosity nor spontaneity. He prefers the idea of fidelity to a client and observes that the distinction is more than semantic. Fidelity is concerned with the quality of relationship, with "mutual human understanding" between lawyer and client more than it is concerned with automatic adherence to a pattern of exclusive behavior based on a deal between the parties or on a so-called ethical stipulation.

Shaffer addresses the issue of a lawyer, or anyone, serving different masters, especially when one master is the voice of conscience and of God warning against moral dereliction, and the other master is the voice of law counseling or compelling in the

opposite, unconscionable direction. Here he uses the historical example of Sir Thomas Moore, whose conscience and rhetorical skill spoke up against the legal dictates of a flawed sovereign, and the example of Franz Jaggerstatter, a simple farmer who refused service in Hitler's army because he regarded such service as immoral, and was beheaded for his disobedience in spite of his personal virtue and integrity. Shaffer is clear-headed in arguing the primacy of an unclouded conscience over the coercion and convenience of legality, even if there is tragic risk.

It is this kind of clear-headedness and moral-mindedness, supported by a self-conscious but not excessive religiosity, that prevails throughout Shaffer's book. And he is not afraid to address the vexatious professional issues, the conundrums presented in juxtaposing law and moral choice, and matters of ethical concern that one would not think to note. As examples of the latter, consider the titles of two instructive chapters in the book, "Moral Moments in Law School" and "A Theology of Law Culture."

In the end, however haltingly or uncertainly the conjunction is made, Shaffer declares for being simultaneously a good Christian and a good lawyer. Aware of the shortcomings of both the institutions of religion and of law he is nonetheless a believer, a man of faith. He is his own best instance and the reflection he offers in this treatise *On being a Christian and A Lawyer* is proof. For lawyers who seldom consider the personal and moral implication of their professional practice and their identification with the institutions of law, and for those who do so regularly, Shaffer is revelation, challenge and example.