

Rev. Francis J. Connell

CATHOLICS IN THE LEGAL PROFESSION



Catholics in the Legal Profession

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ROMAN CATHOLIC BOOKS

P.O. Box 2286

Fort Collins, CO 80522

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PROFESSION

Rev. Francis J. Connell

A Roman Catholic Booklet

THE CATHOLIC LAWYER

The profession of a lawyer offers a career that is both honorable and lucrative. To one who is imbued with humanitarian ideals, it affords abundant opportunity of assisting the poor and the needy to preserve their civil rights. The lawyer who guides his conduct by the principles of Christian faith regards his professional activities as a means of defending and proclaiming the unchangeable law of God, of which every just civil law is a participation. Some of those whom the Church has raised to the honor of the altar were lawyers, such as St. Ives, the patron of lawyers, and St. Thomas More, defender of the faith and martyr. More recent is Contardo Ferrini, who taught law in a secular university, and the cause of whose canonization is now in progress. Evidently, there is no incompatibility between an active and successful law career and an exemplary Catholic life.

However, there are lawyers who profess to be practical Catholics but who, in their professional activities, fail to measure up to the moral standards prescribed by their Church. We are not referring merely to those disreputable individuals who are known to be the protectors of gangsters and the abettors of dishonest transactions, and who themselves are only one step ahead of the law. Strange to say, even in this category of lawyers there are some who account themselves practicing Catholics. Of course, they are a disgrace to the Catholic Church. But we are concerned primarily with those Catholic lawyers who stay safely within the limits of legal immunity, who are in no danger

of being disbarred or indicted by any human tribunal, and yet who transgress, at least occasionally, the ethical code laid down for them by Catholic theology. There are, indeed, mitigating circumstances for such conduct. These lawyers associate daily with men and women whose only rule of action is: "Don't get caught." A good proportion of these Catholic lawyers attended secular colleges and law schools, and never had any formal instruction in Catholic ethics. Their violations of Catholic principles are oftentimes entirely indeliberate. Yet, they should be familiar with the teachings of their Church pertinent to their profession and with the chief applications of these teachings and practical cases. For in the moral debacle of the modern world it is Catholics who have the first responsibility to support the laws of God in their particular spheres of life. And priests who, whether as pastors or as confessors, have the spiritual care of lawyers, should consider it a duty to see that these men are properly instructed in their rights and obligations according to the teachings of the Catholic Church.

The Lawyer in Civil Cases

The cases in which the lawyer's services may be employed are, in general, either civil or criminal. By civil cases are meant those in which the acquisition or the retention of property is at stake or some civil right is being litigated. The first principle

is that he may not undertake a civil case which he knows to be unjust on the part of the one who seeks his services. This principle holds even in the event that the lawyer is quite sure that the opposing party, though in the right, will not be able to prove his claim and will lose the case. When a lawyer is presented with such a case and has studied it sufficiently to assure himself that it is unjust, he must inform the prospective client of this fact and decline to prosecute it.

A civil case which is only probably just can be undertaken, and the lawyer can and should use all lawful means to establish the claim of his client. However, if in the course of the process it becomes evident that the client is entirely in the wrong, the lawyer must withdraw from the case. This teaching of Catholic theology is supported by the *Canons of Professional Ethics*, adopted by the Association of the Bar of the City of New York on December 13, 1938, which includes “when a lawyer discovers that his client has no case” as one of the reasons justifying the withdrawal of an attorney or counsel from employment once assumed. St. Thomas states the matter thus: “If in the beginning the lawyer believed the case to be just, and afterward in the procedure it becomes evident that it is unjust, he must not betray the case, in such wise as to help the other side, or to reveal the secrets of his case to the other party. But he can and must abandon the case or induce his client to yield or to compromise without injury to his adversary.” This last phrase brings out the point that even a compromise with an opponent is unjust if it deprives him of something to which he certainly has a right,

unless for the sake of a quick and final settlement of the matter he is quite willing to yield his right to this extent.

The Catholic moral teaching on the obligation of restitution should give the lawyer food for serious thought. For, according to this teaching, a lawyer who knowingly undertakes an unjust case shares with his client the obligation of making restitution to all who in consequence suffer unjustly. This obligation extends not only to the portion of the unjust gains the lawyer himself may have obtained if he won the case, but also to the entire loss suffered by the injured parties, in the event that the client and others who have profited are unwilling or unable to restore their share. Again, the lawyer who, for personal gain, induces someone to prosecute a civil case which he (the lawyer) foresees will certainly be unsuccessful, is bound by the law of God to make up to his client for the financial loss he thereby sustained if it is evident that his persuasion was the effective cause of the prosecution of the case. Similarly, the lawyer who unnecessarily prolongs a case, so that his fee will be larger, is bound to restore the amount that exceeds a reasonable stipend. Finally, if a case is lost because of the lawyer's culpable neglect in studying the pertinent legal points or in conducting the proceedings, the lawyer must recompense his client to the amount it is reasonably presumed the latter would have gained if the lawyer had done his duty.

It may happen that a lawyer, after having defended and won a case in all good faith, discovers that justice was certainly on the other side. In such an event he would be bound to restore

only that portion of the unjust gain which he still has in his possession. This would be verified only in the supposition that what he received was given explicitly as a definite portion of the gain. If his earnings came as a fee from his client's own money, he could retain them, leaving to the client the obligation of making complete restitution.

In prosecuting suits for damages to person or to property the lawyer must be most conscientious. It is a sad reflection on the standards of honesty prevailing nowadays that so many persons are ready to have recourse to every form of deception, and even to perjury, in order to be successful in establishing a claim for damages. There seems to be a notion, even among some Catholics, that is permissible to use any means whatsoever to extort money from a large corporation, such as a railroad company or an insurance company. The honest Catholic lawyer, when requested to press a claim for damages that is evidently unjust, will not only refuse his services but will take occasion to give the petitioner a lecture on the virtue of justice.

The corporation lawyer who confines himself to expounding honestly and adequately to the members of the firm the points of law relative to their business transactions is not guilty of any sin if they utilize the information to transact dealings that violate the divine laws of justice and charity, but are not punishable by civil law, provided such transgressions are not too flagrant or too frequent. But if the lawyer discovers that his exposition of legal technicalities is being directed regularly toward an evil end—particularly one that involves sins, as when

the information helps to protect the company in its refusal to pay the workers a living wage, or to circumvent laws against the sale of birth-control devices—he must withdraw from his position, lest he be guilty of unjustifiable cooperation in these grave sins.

Wills

In the matter of wills the Catholic lawyer should know that it is a mooted question among theologians whether or not a will which has all the requirements from the standpoint of the natural law but is invalid in the eyes of the civil law is valid in the forum of conscience. Since the affirmative view is solidly probable, it can be followed in practice. Thus, if a dying man says to a friend: “John, I want you to have my watch when I am gone,” John can take possession of the watch after the testator’s death, even though there is no mention of this legacy in his written will. Of course, this presumes that the dying man knew what he was doing. On the other hand, the natural heir may lawfully make use of the opposite opinion which is also probable—namely, that the dispositions of the civil law take precedence over a will devoid of the legal requirements. Thus, in the case just given, the son of the deceased man, to whom the legal will gives all his father’s personal property, may invoke the law to gain possession of the watch, even though he knew his

father actually wished it to go to his friend, but did not record the legacy in a proper legal document.

Similarly, a written will which is technically defective is not binding on the natural heir, who may seek to have it declared invalid by the court if he could profit by such a procedure; and a lawyer may collaborate in such an attempt within the limits of honest means. A case would be this: The deceased left most of his property to a distant relative, and the son of the deceased is trying to have the will invalidated. If the son's lawyer can discover that some requirement of law was omitted when the will was drawn up, he may, with a safe conscience, seek to have it annulled on this score, so that the procedure for one who died intestate will be followed.

However, there is one exception to these rules. According to Canon Law: "In last wills in favor of the Church, let the formalities of civil law be observed, if this can be done; if these have been omitted, let the heirs be admonished to fulfill the will of the testator." Hence, if it is evident that the deceased willed that portion of his estate should be used for the erection of a mission chapel, a burse for a seminary, etc., his wishes must be observed in conscience by his heirs, even though the mode by which he expressed this legacy was not a formal will, recognized by law. A Catholic lawyer who is serving in a case of this nature is ordinarily bound, by charity and loyalty to the Church, to remind the heirs of their obligations.

The Catholic Lawyer and Divorce Cases

May a Catholic lawyer undertake a divorce case? Generally speaking, the answer must be in the negative. As was stated above, a Catholic judge is usually permitted to pronounce a decree of divorce according to the civil law when a case is presented to him which he cannot avoid without grave inconvenience. But it is a different matter with a lawyer, who is free to accept cases or to refuse them. If the divorce is being sought for a marriage of a Catholic, the lawyer may accept the case, particularly if the objective of the party seeking the divorce is to prepare the way for a lawful Catholic marriage. Again, if a lawyer has sufficient assurance that a civil divorce is being sought from a valid marriage merely to protect one of the parties from molestation or to secure a financial settlement, and there is no danger of an attempted remarriage by either party, he may take the case. However, this presupposes that he will thereby cause no scandal. Moreover, the Catholic lawyer should know that the Third Council of Baltimore forbids Catholics in the United States to approach the civil court for the purpose of obtaining a separation *a thoro et mensa* (from bed and board), without first consulting the ecclesiastical authorities. It would be the proper thing for a Catholic lawyer to bring this legislation to the notice of a Catholic seeking his services for the introduction of a suit for a civil separation.

However, the ordinary divorce suit in this country is simply a preparatory step toward a forbidden remarriage.

Accordingly, apart from the cases mentioned in the previous paragraph, the Catholic lawyer must practically always refuse to prosecute a petition for divorce, even though the parties involved are non-Catholics, presumably believing in good faith that their marriage can be dissolved. Some theologians argue that, since it is precisely the remarriage rather than the divorce that is intrinsically wrong, a lawyer could be justified in accepting a divorce case for a very grave reason—for example, if he were in dire financial straits, and this case offers the only avenue of relief. But even this exception would not hold if the danger of scandal were present—which is usually the case when a Catholic lawyer is defending a suit for divorce, above all if the party seeking the divorce is a Catholic.

The Lawyer in Criminal Cases

The general principle governing criminal trials is that accused has a right to be free from punishment until he is proved with moral certainty to be guilty. Accordingly, the lawyer for the defendant, even though he knows that his client committed the crime with which he is charged, can lawfully utilize all objectively honest means to avert the verdict of guilty. In other words, he can point out gaps and inconsistencies in the evidence adduced by the prosecutor, emphasize facts that would seem to indicate that the accused could not have been at the scene of the crime, relate instances that picture the defendant as a person of

integrity, try to invalidate the indictment on legal grounds, etc. Of course, he may not employ perjury, or induce witnesses to lie on the stand. But, as long as he confines himself to facts that are objectively true, he may present them in such a manner that the jury will be inclined to render a verdict of not guilty.

If a witness for the defense, without the foreknowledge or connivance of the lawyer, gives false testimony, the lawyer has no obligation to point out the perjury, when it comes to the summing up of the evidence, however, he would be in a difficult situation, especially if the false statement had a vital bearing on the case. In any event, he could not propose the perjured testimony as something which he himself regards as true. At most, he could assert that the witness has made the statement in question, and then draw a hypothetical conclusion, somewhat after this fashion: "John Smith testified that he saw the accused in New York at 7 o'clock on the evening of the crime. If the defendant were in New York at that time, he could not have committed the crime of which he is accused." It must be admitted, however, that this solution stretches casuistry close to the breaking point.

Professional Secrecy

The lawyer is bound to observe the most exacting type of secrecy, professional secrecy, regarding what he has learned from his client, in the discharge of his professional duties. However, there are times when a lawyer would have the right and duty to reveal information acquired in this way—namely, when otherwise some grave harm would happen to society or even to some individual. This is especially the case when the lawyer discovers that his client is planning to commit a crime. It may be that the client is gravely incensed at someone who testified against him at the trial, and intends to give him a severe beating. In the supposition the lawyer would be obliged in charity to prevent this wrong by warning the individual in question or, if necessary, the police authorities. Similarly, if a lawyer finds out that the man whom he is defending on the charge of robbery has a large amount of stolen property hidden in a certain place, he should reveal this fact, so that restitution may be made, if he cannot persuade the thief to return the plunder. It must be remembered that the retention of stolen property is just as truly a crime as the actual stealing. Bearing this in mind, we can see that the *Canons of Professional Ethics* of the Association of the Bar of the City of New York agree on this point with the teachings of Catholic theology: “The announced intention of a client to commit a crime is not bound to respect. He may properly make such disclosures as may be necessary to prevent the act or protect those against whom it is threatened.”

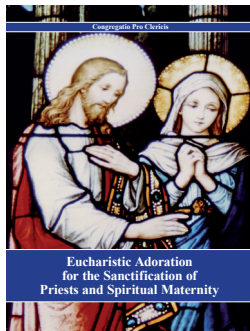
The lawyer's fees must be reasonable, according to the standard employed by men of integrity in this profession. A client's ability to pay does not justify an excessive charge. On the other hand, a good Catholic lawyer will reduce his fee in the case of persons of limited resources. Indeed, like every other professional man, the lawyer is obliged in charity to give his services gratuitously to those in need of them provided he can do so without a relatively great inconvenience. When he is assigned by the court to defend an impoverished prisoner, he should give this unfortunate individual the same service he would render to a wealthy client. "A lawyer assigned as counsel for an indigent prisoner ought not to ask to be excused for any trivial reason, and should always exert his best efforts in his behalf."

It requires considerable self-sacrifice, and at times heroism, particularly in the materialistic and immoral atmosphere of present-day America, for a Catholic lawyer to be consistent with all that Catholic theology prescribes for men of his profession. But every Catholic lawyer should realize that by conscientiously observing the rules of professional conduct that his religion points out to him he will reflect credit on his Church and will promote the causes of justice and of honesty, which are so necessary for the preservation of our nation.

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Published with the approval of the Holy See

Roman Catholic Books, P. O. Box 2286, Fort Collins, CO 80522

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This Roman Catholic Booklet is an excerpt from Rev. Francis J. Connell's postwar book, *Morals in Politics and Professions*. One of the American Church's most-read moral theologians in the mid-20th century, Fr. Connell taught at Catholic University, among other institutions, and served as the founding president of the Catholic Theological Society of America. He was a *peritus* at the Second Vatican Council and wrote numerous books and guides which ironically fell out of fashion after the Council. Of the revolution in Catholic life and thought he once said,

Some theologians have changed, yes. But I cannot see how theology has changed. I do not see how it could be changed radically, since it takes its principles from Revelation as taught by the Church.

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