

The Relationship Between Christian Theology and Legal Ethics in the Thought of Jack Sammons

by Timothy W. Floyd*

Jack Sammons is a man of enormous breadth of interests and expertise. This Symposium, with its diverse topics and contributors, is a testament to his remarkable range of thought, his unmatched creativity and originality, and his influence on generations of scholars. I am convinced that no one who has followed Jack's career for these past decades can keep up with him in all the paths he has trod. Fortunately, none of the contributors here have been asked to comment upon his entire range of scholarship.

Two areas in which Jack and I share an interest are legal ethics and Christian theology. My task in this Article is discussing the relationship between the two in Jack's thought.

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Jack's approach to legal ethics is distinctive and original. For Jack, rather than following rules or principles, ethics is primarily a matter of *character*. The study of ethics must go deeper than knowledge or analytical ability; ethics is fundamentally about the kind of people we are and the kind of life we live. Living life well consists of much more than dealing with dilemmas or quandaries or thinking our way through to the best choice when faced with a problem. No, ethics is a matter of

* Tommy Malone Distinguished Chair in Trial Advocacy and Director of Experiential Education, Mercer University School of Law. Emory University (B.A., 1977; M.S., 1977); University of Georgia School of Law (J.D., 1980).

practice and of habits, which habits lead to virtues, all of which leads to a life well lived.

A view of ethics that focuses on the goal of a life well lived necessarily owes much to the ethics of Aristotle, and Jack is certainly a worthy exemplar of the Aristotelian tradition. Other contributors to this Symposium have much more to say about Jack's work in relation to Aristotle and to character, virtues, and practical wisdom.

Moreover—and this is what is particularly distinctive about Jack's view of *legal* ethics—Jack insists that the practice of law is a “practice” in the Aristotelian meaning of that term, as explicated most fully for us today by the philosopher Alasdair MacIntyre.¹ A practice must itself be located within a *tradition*, and the tradition helps to define the practice with an ongoing inquiry into the ends or purpose of the practice.²

According to Jack, the tradition within which the practice of law is located is the ancient tradition of rhetoric. “[L]egal rhetoric is a particular form of rhetoric located within a particular rhetorical community with its own particular culture. Thus, lawyering is a particular rhetorical practice with its own unique set of excellences”³

As to Jack Sammons and the field of rhetoric, of course, other contributors to this Symposium have a good deal more to say—and those contributors are among the foremost persons in the field of legal rhetoric.

Jack's view of legal ethics is certainly distinctive. Indeed, he has a unique approach and a unique voice among those who write about legal ethics. If you happened to stumble upon one of his articles without seeing the front page, you wouldn't have to read very far to know without a doubt that article is written by Jack Sammons.

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Unlike his writing about legal ethics, Jack has been more circumspect about explicit theological issues or themes in his writing. Jack never hides the fact that he is a Christian, and if you read his work you find references to theologians such as Stanley Hauerwas, James McLendon, Dietrich Bonhoeffer, Karl Barth, and John Milbank. Jack cites scripture, and he sometimes writes about prayer, faith, and hope.

But Jack has not set forth his theology in the same way and in the same detail as he has his view of legal ethics. This reticence is in part due to Jack's genuine modesty. He would claim that he is no expert in

1. See ALASDAIR MACINTYRE, *AFTER VIRTUE* 175-78 (2d ed. 1984).

2. *Id.*

3. Jack L. Sammons, *The Radical Ethics of Legal Rhetoricians*, 32 VAL. U. L. REV. 93, 94 (1997).

theology—although I would dispute that. His reticence is even more, I suspect, a matter of deference to another rhetorical practice. After all, Jack doesn't have much patience with anyone outside the practice of law—including theologians—who attempt to speak to lawyers about legal ethics.

After many years of listening to Jack, I have some insight into Jack's theological commitments. However, I readily confess that what I have seen of Jack's theology is through a glass, darkly. In the remainder of this Article, I will relate Jack's distinctive approach to legal ethics and to his theology and offer thoughts as to how that theology has shaped his view of legal ethics.

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AN INTERJECTION REGARDING JACK'S WRITING STYLE

Jack's writing, on this and other topics, frequently turns to drama and to story-telling. For example, *The Georgia Crawl*,⁴ his introduction to a symposium on the theology of the practice of law, is a fictional dialogue between blues legend Blind Willie McTell and a record company executive. His *A Dialogue Concerning Heresies*⁵ is a modernization of St. Thomas Moore's famous 1529 "Dialogue Concerning Heresies." In Jack's version, a fictional "Judge Moore" defends the legal profession against the zeal of legal ethicists. Most remarkable of all, his contribution to the Texas Tech Law Review Faith and the Law Symposium, entitled *On Being a Good Christian and a Good Lawyer: God, Man, Law, Lawyering, Sandy Koufax, Roger Maris, Orel Hershisier, Looking at the Catcher, and Corked Bats in The Kingdom (with a Brief Guest Appearance by Ty Cobb)*,⁶ is written as a dialogue; persons who speak in this conversation include an old coach, a young player and, of course, the baseball players in the article's title. All of these characters have something worthwhile to contribute regarding the moral value of the practice of law and the relationship of law practice to Christian faith. You may wonder what a dialogue among those folks could have to say about lawyering. No

4. Jack L. Sammons, *The Georgia Crawl*, *Annual Survey of Georgia Law*, 53 MERCER L. REV. 985 (2002).

5. Jack L. Sammons, *A Dialogue Concerning Heresies*, 27 FORDHAM URB. L.J. 1541 (2000).

6. Jack L. Sammons, *On Being a Good Christian and a Good Lawyer: God, Man, Law, Lawyering, Sandy Koufax, Roger Maris, Orel Hershisier, Looking at the Catcher, and Corked Bats in The Kingdom (with a Brief Guest Appearance by Ty Cobb)*, 27 TEX. TECH. L. REV. 1319 (1996).

description of that remarkable article can do it justice; please, do go read it for yourself.

If I were more talented and creative, I would have written and performed this presentation and Article as a dramatic reading, with many disparate characters from law, from music, from baseball, and from history—but only Jack could perform such a feat.

What do drama and narrative have to do with theology? Jack uses this form because he knows that fundamental truths, and especially theological truths, are best described through story, through parable. In *Parables and Pedagogy*,⁷ Jack asserts that parables, that is, extended metaphors in narrative, operate “by orienting, disorienting, and then reorienting the listener” or reader, so that he or she can “view these matters in a way that is radically different from the one with which he or she began.”⁸ Parables are not abstract or philosophical; they draw upon subjects and persons from common, ordinary life. In Jack’s case, this is mainly baseball players and blues musicians. Importantly, parables do not introduce anything new to the reader, but instead provide a jolting reminder of things he or she already knows. Jack’s purpose is to *show* the reader, not to *tell* the reader. Jack’s writing, his “parables,” remain “open-ended, polyvalent, and generative of further inquiry by the listener.”⁹

The narrative and dramatic form in which Jack presents his ideas is unique among legal scholars. His dialogues and dramatic presentations are certainly more fun than most legal scholarship! For all his playfulness and fun, however, Jack writes about matters of ultimate importance. And that is precisely why a straightforward explication won’t do. Jack is always showing us how our human communities are constituted by human conversations in which we find character. He does this by focusing attention upon the human mystery that is the starting point for ethics.

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BACK TO SAMMONS AND LEGAL ETHICS

Jack Sammons has been a powerful and persuasive proponent for the moral worth of the practice of law. Jack regularly reminds us of the

7. Jack L. Sammons, *Parables and Pedagogy*, in *GLADLY LEARN, GLADLY TEACH: LIVING OUT ONE’S CALLING IN THE TWENTY-FIRST CENTURY* 38 (John M. Dunaway ed., 2005).

8. *Id.* at 47.

9. *Id.* at 48.

moral resources within our practice and our tradition. According to Jack, good lawyering *is* good ethics.¹⁰ Jack has been consistent and he has been insistent in defending our practice from those who would critique it based on some standard from outside our practice.

Jack insists that we cannot and should not judge the morality of law practice by some external standard. To do so is profoundly corrupting of the practice. The excellences of the practice—including what is ethical practice and what is not—must be defined from within the practice.¹¹

Most who think about legal ethics see that it is located within some broader social or moral context or community. Most people, and certainly most legal ethicists, believe that the ethics of lawyering must be evaluated from these broader, and therefore more important, perspectives. This, however, is exactly what Jack denies. He insists that any ethical evaluation of the ethics of lawyering must remain internal to it.

Defining the ethics of our practice from within, though, does not necessarily mean we value those things currently admired within it. A current practice can be badly corrupted and the current practitioners of it badly mistaken. We must look to the best of our tradition to define what is ethical—and that is an ongoing and never ending process. We judge the ethics of our profession in the light of a moral ideal, a moral ideal that has been developed by and within the practice. We can and should judge the shortcomings of current practice, but only from within the practice, and in light of our professional ideal.¹²

So, and this is crucial to Jack's thought, the practice of law has intrinsic moral value in *itself*—and not insofar as it contributes to some social good or broader principle. This is true for the everyday, ordinary practice of law just as much as for moral heroes, such as Thurgood Marshall or Atticus Finch.

In his insistence on the moral value of the ordinary practice of law, Jack has always cut against the grain. His approach is deeply counter-cultural among legal academics. Most academic legal ethicists believe

10. See Sammons, *supra* note 4.

11. Jack has made this point many times in many ways. One of the most profound essays in which he makes this argument is Jack L. Sammons, *Rebellious Ethics and Albert Speer*, 1 PROF. ETHICS 77 (1992), reprinted in AGAINST THE GRAIN: NEW DIRECTIONS IN PROFESSIONAL ETHICS 123 (Michael Goldberg ed., 1993), reprinted in DEATH BY DESIGN: SCIENCE, TECHNOLOGY, AND ENGINEERING IN NAZI GERMANY 179 (Eric Katz ed., 2006).

12. Jack published a little book in the 1980s on lawyer professionalism that remains one of the most profound insights into professionalism. JACK L. SAMMONS, LAWYER PROFESSIONALISM (1988). In that book, he defines lawyers' professional ideal as providing to their clients "meaningful participation" in "the prevention [and] resolution of [their] social disputes." *Id.* at 6.

that we must judge the practice of law from some outside source or "master narrative." These legal ethicists are harshly critical of the "role morality," which allows lawyers to engage in conduct that runs counter to what most people believe is right or honorable. Examples include: lawyers preferring the client's interests over other persons or of the public good; because of their duty of client confidentiality, refusing to reveal crucial and sensitive information that others desperately wish to know; or cross examining and attempting to discredit a truthful witness. For these academic critics, lawyers' special role morality should be judged in light of "ordinary morality," including concepts such as commitment to the common good, or always telling the truth, or avoiding harm to third persons.¹³

But Jack rejects claims of a hierarchy of "common" or higher moral principles over the judgments lawyers make of their own craft. And he rejects all spatial metaphors—"above," "before," "overriding," "over against"—as ways of describing the claims of ordinary morality against the lawyer's professional ethics. According to Jack, determining what is "good lawyering," including good in the ethical sense, must be decided from within the practice.

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Having described Jack's distinctive approach to legal ethics, I will next relate that approach to religion and ethics. Some of the strongest criticism of Jack's approach comes from religious voices. At times I have been one of them.

Here is the issue: The religious faith of Jews, Christians, and Muslims insists that nothing can come before God. The God we worship commands that "[y]ou shall have no other gods before me."¹⁴ Putting our trust in anything less than God is idolatry. The religious heritage of the monotheistic faiths is an awesome, demanding, put-it-absolutely-first set of habits, propositions, and pressures. God demands all of who we are, not just a part. God does not permit us to put other things ahead of God—not money, or power, or status, or our profession.

Jack is of course fully in tune with this fundamental monotheistic standpoint. He is a faithful and devout Christian, and he fully

13. For examples of these academic critics of lawyers' role morality, see DAVID LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* (1988); Thomas L. Shaffer, *The Unique, Novel, and Unsound Adversary Ethic*, 41 *VAND. L. REV.* 697 (1988); Gerald J. Postema, *Moral Responsibility in Professional Ethics*, 55 *N.Y.U. L. REV.* 63 (1980); William H. Simon, *Ethical Discretion in Lawyering*, 101 *HARV. L. REV.* 1083 (1988).

14. *Exodus* 20:3.

understands the demands of our monotheistic faith. In fact, I was on a panel with him once in which he asserted that any religion that doesn't tell you what do to with your genitals and your cookware is not much of a religion.¹⁵

In this sense, religious faith is a master story that judges all other stories. But Jack, remember, says that we should not allow any other master story to stand in judgment of the ethics of our practice. How can he justify this?

The first key to understanding is to distinguish "*Lawyering*" from "*Law*." As Jack would put it, the tradition he is defending is the tradition of Rhetoric, not of the Law.¹⁶ Jack is not a defender of the moral value of *Law*. Law is an exercise of power. To put it more bluntly, Law has blood on its hands. Law takes babies from the arms of mothers, it locks people into cages, and it may even decree their death. So, Jack does not defend Law as an exercise of power. He is well aware that God stands in judgment of the principalities and powers of this world. God's prophets decry injustice and oppression, including that done in the name of the Law.

For Jack, therefore, we must keep *Lawyering* distinct from the *Law*. The *practice of law*—the rhetorical legal conversation—stands *opposed to Power*, to the government, to violence. The fallenness, the brokenness, the violence of our world is precisely the reason rhetoric is crucial. This is the theological key to this dilemma, I think.

Jack is a disciple of Stanley Hauerwas¹⁷ and John Howard Yoder¹⁸—and, like them, first and foremost a disciple of Jesus. Non-violence is the heart of the gospel. Jesus insists that we should love our enemies, forgive those that do us harm, do not resist evil with evil means. God's healing and reconciling power is at work in the world to overcome violence and oppression. But God does not overcome the violent forces of this world with violence. Christians are called to be peacemakers, partners with God in this healing, reconciling, shalom-building work.

Jack's insistence upon the rhetorical role of lawyers flows from the non-violent core of Jesus's Gospel. Legal rhetoric, that is, the arguments lawyers make on behalf of their clients, rejects the violence of the powers

15. Jack L. Sammons, *Panel Discussion: Does Professionalism Leave Room for Religious Commitment?*, 26 *FORDHAM URB. L.J.* 875, 901 (1999).

16. *Id.* at 909.

17. See, e.g., STANLEY HAUERWAS, *THE PEACEABLE KINGDOM: A PRIMER IN CHRISTIAN ETHICS* (1983) [hereinafter HAUERWAS, *THE PEACEABLE KINGDOM*]; see also STANLEY HAUERWAS, *TRUTHFULNESS AND TRAGEDY: FURTHER INVESTIGATIONS IN CHRISTIAN ETHICS* (1977).

18. See, e.g., JOHN HOWARD YODER, *THE POLITICS OF JESUS* (1994).

of this world. In providing meaningful participation in the resolution of their clients' disputes, lawyers offer non-violent, peace-building conversation in the midst of social conflict.

Therefore, I am convinced that it is precisely Jack's Christian faith that underlies his faith in the moral value of the practice of law. Lawyers' non-violent rhetoric on behalf of clients is an alternative to power, to brute force, to violence. As such, lawyers' work is God's work. For Jack, a lawyer's work with and for clients is of ultimate and infinite importance. As he likes to say, "Our clock has a 'millennium hand.'"¹⁹

In our fallen world, disputes arise among us. But rather than power and force, the practice of lawyers offers words. I can do no better here than to offer Jack's own words:

There is no complaint in this. There is no yearning for a world in which we are not fallen. It simply is God's wish that it be so for us. So, because it is God's wish, this is not only as it is, but as it should be. For all that God has created is good and, therefore, the divisions among us in our "battles of words" do not reflect a mythology of creation in violence that must be controlled. They are instead, in the musical analogy through which St. Augustine also understands the City of God, rendered harmonious in the truthful mythology of creation in peace. What, then, is central to the goodness of these social conversations is that we accept our harmonious differences as just that; we ask that all voices be heard so that the music is complete, and we play this music for the glory of God's and not our own.

To view language as other than this is to exclude from it the mystery of God and, in that, to sin by making language our own, and, as such, idolatrous.

...
 . . . Legal arguments are always arguments towards the good . . . We argue our moral claims not because morality is universal but because it is not and God's creation is. (In this you can come to love your enemy because you know the good of hearing his voice.)²⁰

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Jack's call for conversation in the midst of our conflicts is especially needed in a world that believes in the myth of redemptive violence.²¹

19. A reference to the song "Particle Man" by the alternative rock band They Might Be Giants. THEY MIGHT BE GIANTS, *Particle Man*, on FLOOD (Rhino 2011) (1990).

20. Jack L. Sammons, *Lawyering and Lying* (unpublished manuscript) (on file with the author).

21. See WALTER WINK, *ENGAGING THE POWERS: DISCERNMENT AND RESISTANCE IN A WORLD OF DOMINATION* 13 (1992) (Volume Three of the Powers Trilogy, in which he

Americans in particular tend to believe that only violence and force can save us from conflict and division. Instead of a resort to violence, Jack calls for conversation and argument that recognizes the humanity of the enemy. His witness on behalf of language and meaning in the midst of conflict is powerful and persuasive.

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Notwithstanding the power and persuasiveness of Jack's argument, I still have a few lingering concerns with his approach to legal ethics.

One reservation concerns the current corrupted state of the practice of law. Perhaps the practice is so corrupt that we cannot trust it to shape our characters for the better. In their pursuit of financial gain and in their aggressive and obnoxious adversarialism, lawyers sometimes seem to have forgotten their fiduciary responsibilities to their clients and to the public. I believe we rightly hesitate to give the current practice of law—contingent, corrupted, and fallen as it is—moral authority over us. Is it really possible to find moral resources within the practice of law?

Conversely, I wonder whether trust in the moral value of our tradition, that is, the practice of law handed down to us by those who have gone before, is misplaced. Given the racism, sexism, and classism that characterizes the history of the American legal profession, is there good reason to look to that tradition for moral guidance? A focus on tradition can lead to a false nostalgia. One problem with the lawyer professionalism movement of the last generation is a belief, often implied, and sometimes stated explicitly, that things were better back in the days when lawyers were much more homogenous. That comes perilously close to asserting that lawyers' morals were better when they were all white males. For what it's worth, I am convinced that ours is a far stronger profession, with many more moral resources to be mined, as we become more and more diverse.

Jack is well aware of these concerns, and I have listened to his response. Over the years, Jack has persuaded me that we must look to the practice to overcome the problems in the practice. Neither the old days of exclusion and bias, nor the current practice with its focus on profit and hyper-aggression, are the standard. No, we must, through rhetoric, argument, and persuasion, together discern the best ideals of our tradition. And then our task is to do our best to live out that ideal in our professional lives. We need not have faith in the current state of

the legal profession. Our faith is in the God who creates, judges, and redeems all things, including our fallen world of law practice.

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I still have one major reservation. This reservation stems from my own faith commitments—and from my struggle with how the Christian is to resist evil, injustice, and oppression (as I and other Christians promise to do when we confirm our membership in the church).

The problem is injustice. We live in a world and a society that is profoundly unjust. When we look around us, we cannot escape the realization that we live in a broken world. Global conflicts rage, and the atrocities that people inflict on one another are staggering. Closer to home, our communities are marked by pain and injustice, racism, and violence. Many people suffer from scarcity and deprivation, while other people waste food and other resources. Our relationship with the environment is broken: fragile ecosystems are ravaged by short sighted exploitation and finite resources are consumed at alarming rates.

The brokenness is likewise manifested in our individual lives. We are alienated from our true selves; we look for meaning and validation in consumerism and materialism; we numb ourselves with substances. In our fear and pain, we feel the pull of violence and hatred. Obviously most of us don't kill or engage in acts of violence directly. But we subscribe to the myth that violence is redemptive, turning to military might and capital punishment to make us secure and save us from harm.

Suffering is real, and it cries out for justice. At the very heart of the Biblical story, the children of Israel groaned in their suffering under Pharaoh.²² God heard their cries, God remembered the covenant with Abraham, Isaac, and Jacob, and God took notice of their suffering and oppression. God's mighty act of deliverance of the people of Israel from their bondage is the central story of the Hebrew Bible, the foundation for Judaism and for Christianity.

The God of the Bible demands that we hear the cries of the suffering, of the widows, the orphans, and the aliens, that we take notice of them, and that we care for them. That is precisely what biblical justice is.

I know that Jack hears the suffering of the oppressed. Indeed, Jack has worked mightily for decades to relieve that suffering in his own communities. He has been tireless in his many endeavors toward a more just community and society.

22. *Exodus* 2:23-25.

But for lawyers, Jack cautions patience. Our task is to do our work on behalf of our clients within the authority of our tradition and our practice. We must not rush to substitute our own notions of peace, of equality, or even of justice, over and above our roles as lawyers, over the moral authority of the practice itself.

How can we be patient in the face of injustice, evil, and oppression? I believe that Jack is patient because he has an eschatological vision. He dreams the dream of Isaiah and Micah—God’s own dream of shalom—of beating swords into plowshares, of lions and lambs lying together, of all living in peace on God’s holy mountain.²³ In Christian terms, this dream is the Kingdom of God. In the vision of Dr. Martin Luther King, Jr., this is the Beloved Community.²⁴

In counseling patience in the face of injustice, Jack’s faith is akin to that of H. Richard Niebuhr. In the 1930s, in the pages of the *Christian Century* magazine, H. Richard Niebuhr engaged in a very public dispute with his brother Reinhold Niebuhr over the role of patience in the midst of tragedy and suffering.²⁵ Reinhold believed in activism in the face of tragedy and suffering. Richard shared the sense of the tragic, but he cautioned patience and urged that action to bring about justice or peace was very often counterproductive.

According to H. Richard Niebuhr, Christians must be sustained by their trust that God is at work in history—even when history seems to defeat their deepest longings and hopes. This is the same sense of tragedy at work in Hauerwas’s *The Peaceable Kingdom*, the last chapter

23. See Isaiah 2:3-4; Micah 4:1-4.

24. See MARTIN L. KING, JR., *WHERE DO WE GO FROM HERE: CHAOS OR COMMUNITY?* (1967).

25. See H. Richard Niebuhr, *The Grace of Doing Nothing*, *CHRISTIAN CENTURY*, Mar. 23, 1932, available at <http://homepages.which.net/~radical.faith/misc/niebuhr.htm> [hereinafter Niebuhr, *The Grace of Doing Nothing*]. In 1932, after Japan invaded Manchuria, H. Richard Niebuhr wrote an essay for the *Christian Century* magazine titled “The Grace of Doing Nothing.” He argued that Christians do not have as much power to alter history as they tend to think. In the face of the Japanese invasion, he wrote, Christians should repent of their own involvement in the nation’s sins and trust that God is still working in history. *Id.* Niebuhr’s brother Reinhold responded with an essay titled “Must We Do Nothing?” in which he argued that lack of moral purity should not prevent Christians from resisting aggression. Reinhold Niebuhr, *Must we do nothing?*, *CHRISTIAN CENTURY*, Mar. 30, 1932, available at <http://homepages.which.net/~radical.faith/misc/niebuhr.htm>. In the third and last installment of the “fraternal war between my brother and me,” titled “The Only Way Into the Kingdom of God,” H. Richard Niebuhr asserted the most significant issue between himself and his brother is not inactivity versus activity, as the essays’ titles misleadingly imply. H. Richard Niebuhr, *The Only Way Into the Kingdom of God*, *CHRISTIAN CENTURY*, Apr. 6, 1932, available at <http://homepages.which.net/~radical.faith/misc/niebuhr.htm>. Rather, the real question is about what sort of activity is most appropriate for Christian believers in this particular situation. *Id.*

of which offers reflections on this exchange between the Niebuhrs.²⁶ Hauerwas insists that the virtues of patience and hope and peaceableness are necessary to sustain the attempt to live joyfully in the presence of the tragic. Jack's patience is like the patience of H. Richard Niebuhr and Stanley Hauerwas—not a resigned patience in the face of tragedy, but a patience that is full of hope and based on faith.

Niebuhr concluded his essay: "But if there is no God, or if God is up in heaven and not in time itself, [this patience] is a very foolish [stance]."²⁷ This is a not so subtle dig at his brother, whom H. Richard Niebuhr was implying did not have sufficient faith in God. Perhaps this dig should be directed at all of us who struggle to live with patience and hope in the midst of suffering.

Jack knows that God is in our world and in time itself. Jack can see this hidden world of Shalom within our own broken and violent world. God—always hidden, usually mysterious—is at work to bring about that Shalom here on Earth, to make the Kingdom come on Earth as it is in heaven. Our task is to live in this world with faith and hope. God is still at work. The fallen will be restored, the broken will be made whole, and all will live together on God's holy mountain.

Lawyers' task, their sacred calling, is to ensure that in this divine harmony all voices are heard—and that none of God's creation is left out of the symphony. In doing this work, lawyers are co-creators with God of this new world, doing the best that they can, the best that can be done.

26. HAUERWAS, *THE PEACEABLE KINGDOM*, *supra* note 17.

27. Niebuhr, *The Grace of Doing Nothing*, *supra* note 25.