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## DEDICATION

### THOMAS SHAFFER: HE BELIEVES WHAT HE TEACHES AND LIVES WHAT HE BELIEVES

REV. JOHN H. PEARSON, C.S.C.\*

The White Scholars, the students who make happen the *Notre Dame Journal of Law, Ethics & Public Policy*, last year voted to make Ethics the topic for this issue of the Journal. And for this issue the students have gathered a large number of articles from a large number of authors, all expressing different views on different questions that arise when people begin to contemplate this topic. The question that remained was how this issue was to be headed, kicked off, or whatever term one wants to use, and the decision was very easy to make. There should be a dedication, and that dedication (and appreciation) should be to a man who, it so happens, published an article in the very first issue of this Journal<sup>1</sup> and publishes an article in this issue.<sup>2</sup> The man is Professor Thomas L. Shaffer, Robert and Marion Short Professor

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I claim no particular right to be the author of this Dedication; others here know more of Tom's work and have been his friend longer than I, but I jumped at the chance to honor this man I've known since before I went to law school (during my days of parish ministry) and who convinced me on my arrival here that property rather than civil procedure ("the death of the mind," said he) should be my area of academic specialization. I am glad to have taken his advice, though I noticed that he then quickly lessened his involvement in the property side of things and poured himself more into the Legal Aid Clinic and into his ethical musings.

1. See Thomas L. Shaffer, *Jurisprudence in the Light of the Hebraic Faith*, 1 NOTRE DAME J.L. ETHICS & PUB. POL'Y, 77 (1984). He also appeared in our pages in 1993. See Thomas L. Shaffer, *The Legal Profession's Rule Against Vouching for Clients: Advocacy and "The Manner That Is the Man Himself"*, 7 NOTRE DAME J.L. ETHICS & PUB. POL'Y 145 (1993).

2. See Thomas L. Shaffer, *Nuclear Weapons, Lethal Injection, and American Catholics: Faith Confronting American Civil Religion*, 14 NOTRE DAME J.L. ETHICS & PUB. POL'Y 7 (2000).

of Law Emeritus.<sup>3</sup> Tom has been a member of the Notre Dame Law faculty since 1963, save for a hiatus from 1980-1988 when he graced the faculty of the Washington and Lee University Law School. In his later years here, his interest has become more and more centered on the Notre Dame Legal Aid Clinic, culminating with his decision to take Emeritus status in 1997 and devote all his law school energies there.

There are many reasons for the choice to dedicate this issue to Tom Shaffer. There are the obvious, very strong academic reasons. Tom Shaffer is one of the most prolific authors in legal academia. His list of publications has passed 300, including thirteen books<sup>4</sup> on topics as far-ranging as wills and trusts, the relationship of the mentally retarded citizen with the law, legal interviewing and counseling, legal pedagogy, property law, a communitarian critique of the ethical practice of law, and legal ethics. In 1985 he was named one of the two most productive senior law faculty members in the early 1980s (1980-1983, to be exact).<sup>5</sup>

This sort of information speaks of numbers of words uttered; it says little of the value of those words or the influence of the speaker, but as it turns out, those words have turned out to be extremely important and extremely influential. In 1993 Tom received the first annual *Journal of Law and Religion* Award for having lived what he taught, "that lawyering is a vocation most faithfully lived in friendship," and, as a prodigious scholar for having "led us as a brilliant pioneer into our past, turning us again toward ethics as a way of life lived in reflection and discomfort, not a decision of the moment, and situating the good lawyer within her community of memory."<sup>6</sup>

Tom's work is frequently cited and discussed. A fairly simple-minded Westlaw search for "Thomas L. Shaffer" found citations to Tom's work in 475 articles in the 1990's alone. According to Milner Ball:

It should be noted that Thomas Shaffer has long served as leader at the forefront of those who explore the biblical tradition's engagement with lawyering, its prophetic chal-

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3. Any praise for Tom is necessarily praise for his wife Nancy—who is in every way possible his partner and his strength and he hers.

4. The number grows if you add the teacher's manuals for the several casebooks he's published.

5. See Michael I. Swygert & Nathaniel E. Gozansky, *Senior Law Faculty Publication Study: Comparisons of Law School Productivity*, 35 J. LEGAL EDUC. 373, 382 n.39 (1985).

6. Thomas W. Porter, Jr., *The Editorial Board of the Journal of Law and Religion Presents This Award to Thomas L. Shaffer*, 10 J.L. & RELIGION 277 (1994).

lenge to American Bar Association notions of professionalism and ethics, and its consequence for such roles as that of counsel for the situation.<sup>7</sup>

The current Religious Lawyering Movement "originates in the scholarship of Professor Thomas Shaffer. Beginning in the late 1970s, his articles<sup>8</sup> and his book *On Being a Christian* [and a] *Lawyer*<sup>9</sup> offered a brilliant, comprehensive and powerful vision of religious lawyering in conflict with the established understanding of professional responsibility."<sup>10</sup> He has been the subject of a critical essay review in the *Journal of Legal Education on Narrative in the Moral Theology of Tom Shaffer*,<sup>11</sup> as well as a series of analyses in the symposium surrounding his reception of the *Journal of Law and Religion Award*, one of which has the intriguing title, *Can Lawyers Be Saved? The Theological Legal Ethics of Thomas Shaffer*.<sup>12</sup> His works spark academic conversations and debates of the type that suggests that what he says needs to be said.<sup>13</sup>

Perhaps more important than the list of academic accomplishments (which could run on for many more pages), to us who know him is that he is who he is. He identifies himself as the "child of frontier women and cowboys, and besides that I grew up a Baptist."<sup>14</sup> He uses his family history of frontier individualists

7. Milner S. Ball, *Lawyers in Context: Moses, Brandeis and the A.B.A.*, 14 NOTRE DAME J.L. ETHICS & PUB. POL'Y 321, 321 (2000).

8. See Thomas L. Shaffer, *A Lesson from Trollope for Counselors at Law*, 35 WASH. & LEE L. REV. 727 (1978); Thomas L. Shaffer, *The Practice of Law as Moral Discourse*, 55 NOTRE DAME L. REV. 231 (1979).

9. THOMAS L. SHAFFER, *ON BEING A CHRISTIAN AND A LAWYER: LAW FOR THE INNOCENT* (1981).

10. Russell G. Pearce, *Foreword: The Religious Lawyering Movement: An Emerging Force in Legal Ethics and Professionalism*, 66 FORDHAM L. REV. 1075, 1076 (1998).

11. John D. Ayer, *Narrative in the Moral Theology of Tom Shaffer*, 40 J. LEGAL EDUC. 173 (1990); see also Mark Weisberg, *Integrating Personal and Professional Lives: An Essay on Thomas Shaffer's On Being a Christian and a Lawyer*, 9 QUEEN'S L.J. 367 (1984).

12. Leslie E. Gerber, *Can Lawyers Be Saved? The Theological Legal Ethics of Thomas Shaffer*, 10 J.L. & RELIGION 347 (1994).

13. See, e.g., Jack L. Sammons, *Rank Strangers to Me: Shaffer and Cochran's Friendship Model of Moral Counseling in the Law Office*, 18 U. ARK. LITTLE ROCK L.J. 1 (1995) and Thomas L. Shaffer & Robert F. Cochran, Jr., *Lawyers as Strangers and Friends: A Reply to Professor Sammons*, 18 U. ARK. LITTLE ROCK L.J. 69 (1995); Thomas L. Shaffer, *Should a Christian Lawyer Sign Up for Simon's Practice of Justice?* 51 STAN. L. REV. 903 (1999) and William H. Simon, *The Legal and the Ethical in Legal Ethics: A Brief Rejoinder to Comments on the Practice of Justice*, 51 STAN. L. REV. 991 (1999).

14. Thomas L. Shaffer, *How I Changed My Mind*, 10 J.L. & RELIGION 291, 292 (1994).

with an “instinctive ambivalence about community”<sup>15</sup> to illustrate his journey from a form of civil libertarianism that thought law existed “primarily to protect the individual from the tyranny of the community,”<sup>16</sup> from the radical individualism of cowboys and civil libertarians “toward a focus on human relationships—in principle—and finally toward the principle that all of law practice is about human relationships, that the best work a lawyer does is to tend her client’s relationships.”<sup>17</sup> He has grown ever deeper in his conviction of the importance of the religious community, not just for law but for all life.

Those who have the privilege to know and work with Tom Shaffer understand that his movement to the mediating force of communities and to the telling of stories<sup>18</sup> to communicate what that is all about, is not just theory. Tom lives that way. Ask his colleagues, both the lawyers and the students, how he works with them in Notre Dame’s Legal Aid Clinic. Ask the clients who come there for help. His Clinic colleagues, whether lawyer or student, will tell you that he treats them with the utmost respect as colleagues, that he genuinely collaborates with them, respecting them as equals in the mission to serve those clients, that he is friend to them. The clients who have felt his touch, I suspect, will tell you that they sense the great care he has for them, the respect for them as persons, and the willingness to help them find their own place in community. His colleagues and friends here on the faculty who have been here long enough to get to know him will tell you of the great affection they have for him and the great respect for all he has done in enriching the intellectual life and the community life of this institution.

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15. *Id.* He illustrates it with the delightful story of the time his great-grandparents in Shaffers Crossing took in a stranger for a couple of weeks work and, after he departed, found out that they had sheltered the bandit Butch Cassidy. A neighbor asked Tom’s great grandfather if he knew who his guest was. “You mean you didn’t even ask him what his name was?” “No,” Grandpa said. “We didn’t figure it was any of our business.” *Id.* at 294.

16. *Id.* at 295.

17. *Id.* at 296.

18. Easily the story most identified with Tom’s way of doing and teaching law is Harper Lee’s *To Kill a Mockingbird*. Tom mines that story many different ways for clues on what the good, ethical lawyer does, or better, who that lawyer is, and, beyond that, what it is to lead a virtuous life. For one example of his taking it beyond the life of the lawyer, see Thomas L. Shaffer, *Growing Up Good in Maycomb*, 45 ALA. L. REV. 531 (1994). Scout and Jem “learned the virtues before they learned that what they had learned were virtues. . . . They grew up good in Maycomb . . . . Their childhood story . . . is about growing up in virtue.” *Id.* at 531-32. Tom quotes his colleague and friend from Washington and Lee, Roger Groot, that “he had to admire an academic who read a novel and made a career out of it.” Shaffer, *supra* note 14, at 297.

So, we in the White Center are most pleased to be able to dedicate this issue of the Journal to Thomas L. Shaffer, a gentleman lawyer faithful to the community of the law and to the Believing Community that makes us whole.

