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Truthfulness and Tragedy (Book Review)

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This is the third book in which Professor Stanley Hauerwas has developed his "story" approach to Christian ethics. It is a collection of essays, almost all of which appeared in periodicals, written while he was developing his theory more systematically in Vision and Virtue (1974), and in Character and the Christian Life (1975). One of the chapters here, on suicide and euthanasia, was written with Dr. Richard Bondi; two others, on story theology and on Albert Speer's Inside the Third Reich, were written with Father David B. Burrell. The essays are arranged so that they explain and defend Hauerwas' thought and then apply it to an array of specific personal, professional, and social situations. It is being reviewed here partly because Hauerwas has been for some time a part of the Journal's intellectual enterprise, but mostly because Hauerwas has something important to say about the ethics of being a lawyer.

Hauerwas is a Texan; a Methodist who has been significantly influenced by Mennonite pacifism and by the Thomistic tradition; a professor of theological ethics at the University of Notre Dame; and a scholar whose interest and background has taken him into professional relationships—especially, to date, into medicine and a little bit of law. His Texas heritage gives him a certain slant, not to mention a certain argot, on America; he has hope for his country, as his frontier forebears had (and, I guess, his contemporaries have), hope for and from the open part of the world they have lived in. Texans, plainspeople, and westerners tend to believe that solutions can be found.

His Methodist heritage, I often think, combines Calvinist gloom and Wesleyan lilt. He is cheerful without being fooled easily. Hauerwas can say "to be a man is to be a lover of illusion" (170); but he can also say that "morality rests on the wager that the rational and social aspects of man's existence will coincide." (53) He is open to Catholic moral traditions; in fact, he appropriates some of the old ones, and puts them to use without being defensive. He says, for instance, of (recently) traditional, natural law moral reasoning: "[T]he search for a center that provides men a way to order their various roles [is] . . . more a matter of virtues than . . . rules." (67) That struck me as radical—meaning it seemed to reach back to the medieval roots of the Catholic tradition on natural law, and meaning, too, that it challenges the codified and coercive cast which natural law has taken in the last century, and which so many of us find irrational and even repulsive.

Hauerwas' idea is that we in fact behave out of habit, and out of the blend of history and choice which makes us the persons we are. Later, and espe-

2. Notably, I gather, from his colleague John Howard Yoder, Professor of Theology at the University of Notre Dame and former president of Goshen Biblical Seminar.
cially after we have gone to college, we append principles and even debate to what we choose to do. But our morality begins more in what we are than in what we choose.

However, we can choose what to be. Hauerwas’ story theology is a rational method and an affirmation of the ability to choose. We are able to test habit and history against the aspirations which are inherent in our personal traditions and in roles each of us plays within his personal tradition (husband, parent, lawyer, teacher). Having chosen, we can develop the habits—the ways of behaving—which will sustain the choices. Aquinas called these habits virtues; Hauerwas often calls them skills. The first requirement for the development of skills—that is, for the moral life—is honesty (truthfulness); the second is the realization that one cannot both live honestly and avoid tragedy.

Hauerwas spreads these insights over a discussable range of personal and professional situations. In doing that, he establishes that his viewpoint is relatively novel. Some examples:

On the direct-indirect distinction in traditional Thomistic ethics, especially as it is applied in medicine: “[A]n attempt to let us have our moral commitments without willing the tragedies that they necessarily involve. . . . [I]t gives us the illusion that we can be honest and faithful without sacrifice.” (69) He means the hardest sacrifice of all. He means seeing people die when it is impossible to save them and still act morally. He believes that tragic choice cannot be avoided without dishonesty.

On suicide, abortion, and euthanasia: “Life [is] the gift of time enough for love” (107); one does not have a right to it, nor can one talk, except in strident political discourse, about a “right to life” in others. But: “Humans never kill more readily than when we kill in the name of mercy.” (112) He is impatient with attempts to distinguish between killing and allowing-to-die, and, sometimes, he is fuzzy on what to substitute for the distinction. His attempt to set limits on health care for the newly born deformed child is an example. He says these are “not yet persons,” but that they should be “regarded as children unless their defect is so severe that there is little possibility that they will ever be able to respond to care.” (177) That is a distinction he would lament if someone else made it; it probably came of trying too hard to be helpful.

On living according to roles: Role is at best a circumstantial dispensation from responsibility. (An example which occurred to me is the lawyer’s dispensation from the responsibility of reporting crime, when the crime has been committed by his client.) A professional may truthfully live according to his professional role, if he does not let his role define him as a person, and if the community provides care for his clients which will make up for the limitations of his role. The professional, as a person who is more than a professional, is part of the community which is to provide the care. The two points combine to say that the professional makes a mistake when

3. The role, say, of being a teacher of ethics and, in that role, giving doctors and parents advice on how to regard a newborn, deformed child.
he supposes that his role provides an adequate story: "[T]he story that sustains our life must give us the ability to spell out in advance the limits of the various roles we will undertake in our lives." (88) 4

On population control: "[W]e should not try to create a world that frees men of the limits of our human condition, for it is exactly such a desire that creates our inhumanity." (126) "[W]hen there is no reason to have children beyond our individual choice then it seems that we must claim full responsibility or none at all." (149) "Children are . . . our promissory note, our sign to present and future generations, that we Christians trust the Lord who has called us together to be his people. (This is the basis of our conviction about abortion, not that life is sacred, but that children should be regarded in this way.)" It is this witness and this trust which form a morality about having children—these and not a set of "natural law" rules about the correct performance of sex. "Our obligation to have children is one of the ways we serve this community formed by such a story, namely, children witness to our determination to exist as a people formed by the cross even though the world wishes to deny that a people can exist without the power protected and acquired through the sword." (151) 5

On the category "persons" in medical ethics, by way of comment on Paul Ramsey's *The Patient as Person* (1970): "We are trying to put forward 'person' as a regulative notion to direct our health care as a substitute for what only a substantive community and story can do." (127-28) That is, what we regard as a person is a result of our morals, a measure of our care, and not a way to decide when to care. "The question of whether a fetus is or is not a person is almost a theoretical nicety in relation to the kind of question that most abortion decisions actually involve." (157)

The narrative, the life project, the story a person is and the stories he treasures, are to Hauerwas the heart of moral life. He contrasts his view with the dominant theory among academic ethicists. That view is an ethics of principles, and a sometimes frenetic attempt to define and redefine principles so that they keep pace with changes in behavior. Hauerwas calls this attempt "the standard account": "[T]he standard account obligates us to re-

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4. One could talk, for example, about lawyers as community leaders—or as personal missionaries—working on the reform of the total institutions in which our clients are imprisoned; or on social justice in rules about taxes, commercial transactions, or investments; or toward a national conscience on an unjust war. Perhaps a lawyer who acts in these ways is an example of a professional who (a) does not let his profession define him; and (b) seeks to bring about a community which provides care for his clients which a lawyer cannot provide. This gives us a way to talk with our students when they wonder how a lawyer is to cope with the suffering of his clients. N. Redlich, *Professional Responsibility* (1976), pp. 26-27, poses a number of dilemmas in the choice between these ideals and the jealous representation of clients.

5. See E. Geissler, "Our Children Our Greatest Teachers," and T. Shaffer, "A Child to Receive the Kingdom," both in J. Burtchaell (ed.), *Marriage Among Christians* (1977), pp. 65-167, for two fathers' struggles to articulate Hauerwas' point and for two attempts to say something about being with one's children. Hauerwas is uneasy with some of the rhetoric of attack on the traditional Roman Catholic (i.e., papal) position on contraception. *Vision and Virtue*, pp 107-08.
gard our life as an observer would . . . we are required to alienate ourselves from the projects that make us interested in being anything at all.” (23)

“Virtues are not feelings or emotions separated from our reasons for action, but rather virtues are the trained skills of the person enabling him to act one way rather than another.” (49) His view is saved from fatalism by his theory about “skills”: “To live morally . . . we need a substantive story that will sustain moral activity in a finite and limited world.” (37-38)

Moral choices follow upon consciousness of one’s story and, then, choices about it, and, finally, upon the discipline of good habits. But the key to the process is what one is to be (and, I think, what others are to be), not what one is to do; “[O]bjectivity, clear-headedness, discipline, authenticity, honesty, courage, fidelity, and even love . . . besides these ‘frames’ our lives must have a design or pattern, or perhaps in more traditional language, character.” (47)

This is unlike the more prevalent views on religious ethics—that is, to a law teacher, it seems to be different. It is not like Richard Neibuhr’s ethics of responsibility (although Hauerwas acknowledges Neibuhr’s influence). Hauerwas’ approach is always more personal than Niebuhr’s. It is also more personal than the prominent modern social ethicists: “For liberal ethical theory, the only ‘ethically interesting’ concerns are those that are duty-bound, public, or legal.” (10) Hauerwas’ thought is not like the more recently traditional logic-of-principles religious morality either: “[T]he question of truthfulness of our theological convictions is most appropriately raised by asking how through our language and character they form and display our practical affairs.” (9)

Hauerwas asserts this difference, first, as an empirical (that is, introspective) finding of fact. But he also believes that the difference is appropriate: “Principles, even understood as rules of thumb, tend to assume independent existence. When they are too consistently applied, they generally result in inhumanity.” (166) His approach is, finally not an ethics of situations: “Situations . . . are what they are because of the presumptions we hold and how we have come to see them.” (170) One’s story defines his situations. And a story, unlike a situation, is open to choices: “[A] true story must be one that helps me to go on. . . . A story that is true must therefore demand that we be true and provide us with the skills to yank us out of our self-deceptions, the main one of which is that we wish to know the truth.” (80)

There are adequate stories and there are stories that lead us to deceive ourselves. It is here that Hauerwas’ theory becomes clearly a theory about personal, private morality. When the distinction between an adequate story and a deceptive story is being made about someone else, the account itself will not disclose whether the story is true: “it is not an account we count on;

6. The sources he cites in criticism of this “standard account” include James Gustafson, Alasdair MacIntyre, and H. R. Niebuhr. The criticised include Kant, William Frankena, and John Rawls.

7. See also J. Burtchaell, Philemon’s Problem (1973); and my attempt to apply the idea to lawyers’ professional ethics in “Christian Theories of Professional Responsibility,” 48 Southern California Law Review (1975), pp. 721, 751-59.

it is simply our recognition of the person’s integrity.” (35) But when I am looking at my own story or stories, I have to know whether I am fooling myself. Hauerwas’ method for that seems to lie in four (if you’ll pardon a law professor’s word) tests. Does the story have:

(1) power to release us from destructive alternatives?
(2) ways of seeing through current distortions?
(3) room to keep us from having to resort to violence?
(4) a sense for the tragic; how meaning transcends power?

Hauerwas does not regard these values—against destruction, violence, distortion, and for meanings which transcend power—as self-evident. They come to him from the Gospels. They are the values which are primary in the Jesus story. They are not a series of propositions: “A theory is meant to help you know the world without changing the world yourself; a story is to help you deal with the world by changing it through changing yourself.” (73)

HUAERWAS AND “LEGAL ETHICS”

Hauerwas revives the study of virtue as fundamental to ethics. That is novel in the sense that it is radical; it is not novel in the sense that it is new. And it may not even be radical for long; it may become a fashion. Professor Philip Rhinelander was found “notable and quotable” by The Wall Street Journal when he argued recently for the revival of the study of virtue: 9

While terms like good and bad have comparatives (good, better, best), terms like right and wrong do not. This points up, I think, a difference between two approaches to ethics. The great classical philosophers considered that character was fundamental. Consequently, they stressed the importance of developing virtues, or dispositions of character, such as courage, temperance, wisdom. For them, rules about particular kinds of conduct were secondary and derivative.

By contrast, a legalistic approach to ethics begins with rules about particular kinds of conduct and makes virtues secondary. Under this sort of view, virtue tends to be reduced to obedience to moral rules.

The first approach tends to be more flexible. It puts much more weight on the judgment of the individual. It also emphasizes the need for practice and training, because acquiring a virtue is like acquiring any other skill. The legalistic approach tends in the other direction. You live by the book. This makes (theoretically) for more precision, but also for more rigidity and for a kind of delusive exactness, since (as Aristotle noted) it is virtually impossible to lay down hard and fast rules for all cases.

9. The Wall Street Journal, Dec. 12, 1977, p. 14, col. 3. The quotation is from a seminar on ethics and professional standards, held at Stanford. Prof. Rhinelander uses the word “legalistic” for what he seems to regard as sophistry. In the law school world we usually say “metaphysical,” and, in some quarters, even “theological.”
I prefer the older view. I note this difference because when people rebel against the tyranny of rules, they often forget that there is an alternative.

Even at the risk of being found fashionable, I hope the revival will be noticed by lawyers and law teachers. We, more than most thinkers about morality, have tended to what Hauerwas calls the "standard account." We tend to talk about responsibility, and chose that word rather than "ethics" to describe our consensus statement about moral behavior in the profession. We prefer principles, especially when they are put procedurally, because we, like the ethicists, cannot find consensus on substantive moral principles. We are more comfortable with resolutions of social issues in terms such as "due process of law" or in ideas of personal insularity such as "free speech" and "the right to privacy." We are, more than most, people to whom the revival of the study of virtue might be addressed. A personal digression, about how one teaches "legal ethics" in law school, may clarify the point and illustrate how I have found Hauerwas' work useful in my teaching.

How do law teachers cope with the inadequacy of the American Bar Association's Code of Professional Responsibility; particularly how do we cope with that fact when the practicing profession insists, with unusual emphasis, that every law school teach "professional responsibility"? The answer is that each of us does something.

(1) Some teachers of legal ethics claim that they do nothing about the Code. They appear to refer moral dilemmas to the Code, analyze the language they find there, as a statute is analyzed; consult bar-association and appellate-court opinions interpreting Code provisions; and leave their students feeling that the subject is trivial. This way of teaching legal ethics in fact teaches something about what the profession says about the moral lives of lawyers. It teaches, by omission, that morals are irrevelant except as provided in the official literature.

10. See T. Shaffer and R. Redmount, Lawyers, Law Students, and People (1977). Dr. Redmount and I have had this hope for some time.


13. American Bar Association, Approval of Law Schools, Standard 302(a) (iii) (1977), which requires:

   instruction in the duties and responsibilities of the legal profession. Such required instruction need not be limited to any pedagogical method as long as the history, goals, structure and responsibilities of the legal profession and its members, including the ABA Code of Professional Responsibility, are all covered.

14. The Code, as reprinted in N. Redlich, note 4 supra, takes 77 pages, 23 of which are devoted to Canon Two, which deals with advertising and solicitation of clients.

(2) Some of us go beyond the Code and identify moral dilemmas even when the official literature does not. We say to our students “What would you do?” We manage classroom traffic and keep a discursive scoreboard on student reaction to the moral dilemmas we put to them. We are beyond the Code, and, as we say at professional meetings, “We make them think about” moral problems. This device, in my experience, results in student answers of the form, “I would/would not do it.” It attracts a few of a similar form, which is regarded in current educational theory as “more open” or more “up front,” and which says, “I just would/would not do it. I’m sorry about it, but it’s the way I am, and I am the way I am because I was raised (in parochial schools) (in the South) (by a Baptist mother).” The latter form tends, probably, to an increased consciousness of what Hauerwas would call the student’s story, and might therefore lead to less deceptive moral choices. That would be a good thing, but does not overcome the fact that moral discussion in either of these forms is implicitly fatalistic. In the educational setting, the tacit acceptance of answers in these forms establishes that the moral life has something to do with the practice of law, but it also establishes the law school norm that moral life in the profession is a private matter. Except as provided in the Code, there is no more accounting for morals than there is for one’s taste in beer. There is no point in, or no time for, moral discourse. One effect of this treatment of lawyers’ morals is the promise of a new generation of vapid bar-association consensus on “professional responsibility.” A more serious effect is in the professional life of the student (lawyer) who has not learned, not even thought about, the skill he needs for conducting moral discourse with his clients.

(3) A third group are teachers who probe a bit when they teach legal ethics. Probing as a pedagogical method is familiar in law schools; it was celebrated in the novel and movie Paper Chase. It can be practiced didactically, as it was there, or humanely, or in both ways. It is practiced in legal ethics classes to identify principles, habits, and moral reasoning, and get the barnacles off them. I had taught the subject two or three times before it occurred to me that I should try to probe. And this was as the dean of a law school which advertently attempts to provide connections among the Gospels, the Roman Catholic heritage, and the lives of lawyers. My prob-

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   Professor: What’s a trial? [to student Smith]
   Student: An adversary proceeding.
   Professor: For what purpose?
   Student: To discover the truth. (Silence for about five seconds, then laughter.)
   Professor: (After pause.) Who cares what the truth is? (Laughter.)
   Student: I care. (Loud laughter.)
   Professor: Well, in your conversations with God, you can take those questions further. Brown, what’s the purpose of a trial?

ing occurred under the conscious influence of my colleague, Stanley Hauer-
was; it had come as a revelation to me that one might, in law school classes,
see a possibility for analyzing ways of thinking about morals, as we analyze
ways of thinking about law. But if one goes no further than analysis, he only
practices a sort of grammar. It helps to make choice conscious, but it does
not guide.

(4) One can go beyond analysis, which is a morally neutral skill at best.
One can begin to evaluate principles in moral reasoning, as the familiar case
method of legal instruction synthesizes, and then evaluates, principles from
the opinions of appellate courts. Students can reason into and out of these
principles as they reason into and out of the doctrine of promissory estoppel
in contracts, or partial performance under the Statute of Frauds (both, by
the way, moral propositions, and both usually treated as moral in law school
discussion). Studying ethics in terms of synthesis and evaluated principle is
an improvement, but I begin to feel that it is not as satisfying as I thought it
would be. This may be because I am not as comfortable when I manipulate
moral principles as I am when I manipulate legal principles. Hauerwas
would say that the manipulation of moral principles—even the synthesis of
them—is an activity which is wide open to self deception. I may be less
satisfied than I thought I would be because it is less possible, in manipulat-
ing moral principles, than in manipulating legal principles, to account for
situation and for change. We lawyers finally reconcile ourselves to the fact
that the law changes every 50 years, but it is harder to think that the moral
principles which (we assume) govern our lives change that often. Moral prin-
ciples are, in this sense, more important than legal rules; reasoning over

Notre Dame's Law School draws its inspiration from two ancient tradi-
tions. It is, first, in the tradition of English and American common
law. . . . The other tradition is the Christian tradition, the tradition of Sir Thomas
More, who was able to say that he was “the King's good servant, but
God's first.” Notre Dame is a Christian university. It is founded and, in
great part, is maintained by Roman Catholics, and its trustees are man-
dated to continue it as a Catholic institution. In a community where
people of every kind of opinion are welcome and are valued for the differ-
ent contributions they have to make, the exact significance of this religious
orientation is difficult to state and, in many ways, is controversial. But
most people here agree on at least this much: (1) Moral and religious ques-
tions are important; no one need apologize for raising them or for taking
them seriously when others raise them. (2) Everyone who comes here
should be encouraged to explore his basic personal commitments, and to
relate them to what he is learning here. (3) The University has an obliga-
tion to Christians, particularly Roman Catholics, to provide assistance in
this exploration. . . . It welcomes and encourages the corporate manifesta-
tions of other faiths and commitments, to meet the needs and desires of
other members of the community.

This statement has been being worked out for the past 25 years and has been
fashioned from contributions, over the years, from several members of the law fa-
culty. As an institutional commitment, it has not always been accepted as com-
monplace; see the 1971-72 Dean's Report, cited above.
them seems to end up either in a tacit contempt for their rigidity or in the same kind of "take it or leave it" resolution I get from students who say, "I would not do that; it's because of the way I was brought up."

(5) A dialogue on lawyers' morals might take a different direction, as legal reasoning did about half a century ago. One can talk about moral choices in terms, not of principles, but of consequences. There is a school of ethics which says that there are no principles and that morality is a matter of assessing consequences; I do not mean here an acceptance of that principle-of-no-principles so much as I mean the ordinary, daily business of thinking about moral choices in terms of what will happen. The Code is, for the most part, a "consequentialist" document, in this empirical sense of consequentialist. If the classroom dialogue takes this bent toward the logic of consequences, it can end up amidst high aspirations (which, in the Code, are to be found in what its drafters called "ethical considerations"), or it can end up in


21. Ethical Consideration (E.C.) 1-4 requires reporting of unethical conduct, and E.C. 1-5 requires high standards of personal morality, in order to maintain the integrity of the profession. Prohibition of legal practice by non-lawyers is necessary because public service requires it; E.C. 3-1 ff. Respect for client confidences in necessary so that clients will talk freely, which talk is necessary for effective representation. E.C. 4-1 ff. Effective representation is necessary because a government-of-laws-and-not-men requires an adversary system; E.C. 7-1 ff. Almost all of the Ethical Considerations can be parsed according to the logic of consequences. The Code is an appendix in N. Redlich, note 4 supra and in M. Freedman, note 24 infra; it is separately published, in pamphlet form, by the American Bar Association.

22. See J. Dewey, note 20 supra. Dr. Robert S. Redmount, my colleague and co-author in many ventures, wrote me that he was disturbed with Hauerwas' use of the tragic as a moral category. In making this point, Redmount also made a useful point about the day-to-day (if you'll pardon the word) utility of consequentialist thinking:

I equate "tragic," somewhat crudely, with "limits." But then, the question arises, limits regarding what? And I think the answer is, limits (or inevitable tragedy) regarding choices or, more specifically, the consequences (utilitarian, indeed) of choices.

Such a view presupposes scarcity, injury, or conflict, and there is some truth as to these conditions. However, to base what is virtually a general theory of ethics or morality, on the distentions in human experience is not, to my mind, either sound or fair. As Holmes said, "Hard cases make bad law." There is much, even most, in human experience that is not in a state of tension but nonetheless requires guidance. It is here that morals and ethics are at their best and Bentham plus Hume, on the one hand, or Kant, on the other, provide some good answers, meaning, guides to decision that can, in truth, be based upon or encourage the person one is rather than the state or status one should have. Of course, the classical figures in ethics have not been reworked so as to produce an idiomatic rather than a nomothetic framework, but it is possible.

One does, if only occasionally, though, have to think that meaning may transcend power—and the frequency with which one finds, or evades, those occasions may say more about his ethics than his principles do.
a narrower, uglier sort of utilitarian reasoning. It often ends up in a bind. 23

Looking at consequentialist discussion as a matter of teacher methodology, I found too much of the bind and too much of the utilitarian; and I noticed that utilitarianism is legal thinking tends to end up in one or another absolutist collective institution—the state, the community, the party, or whatever. That, I guess, is because utilitarian thinking tends to lose sight of a noble vision of human persons. 24 Neither high-aspiration, consequential thinking, nor utilitarian thinking left me feeling intellectually secure—although, in witness to my own moral education, I admit that: (a) consequentialist reasoning is genuinely manipulable; it is more open to the empirical, for instance, than an ethics of principles is; and (b) it can lead to high aspirations; 25 it tends to institutional loyalty; it seems to have social significance.

Any of the ways of reasoning about morals in a lawyer's life can appropriate the heritage of Jews and Christians and be made at home in a discussion which validates religious tradition. But, amidst intellectual comfort, if you really start talking about the religion of Jews and Christians, you run into Abraham leading Isaac up the mountain; or Job on his dung heap; or Jesus on the Cross. There are unsettling and apparently elementary questions: What has a lawyer's life to do with the God of Abraham, Isaac, and Job? How can a follower of Jesus even think about being a lawyer?

I have two theories about these unsettling questions, suggested by Truthfulness and Tragedy and by some of my own work. The first theory is that there are tragic choices in personal moral life, especially for a Christian, and these might extend to tragic choices by a client, or with a client, or even for a client. The Code (and Dean Monroe Freedman's remarkably popular book 26) assumes a qualified ethic of client welfare, but there is no glimmer in either place that welfare might be a cross; an ethics of principles seems to treat tragedy as irrelevant (let the chips fall . . .); and consequentialist thinking tends less toward tragedy than toward silver linings in the clouds. 27


24. M. Freedman, Lawyers' Ethics in an Adversary System (1975), p. 24: "Zealous and effective advocacy is essential to the adversary system, which itself serves the public interest in a uniquely important way." He argues, at ibid., ch. 1, that the duty of confidentiality is primarily a duty to the adversary system. It is then possible—and even likely, especially in civil-liberties work—to "serve" a client and never meet him. That is, I think, not to serve the client at all, but to use him as the occasion for a political argument.


27. See Redmount's comments, note 22 supra, and compare a comment from Ms. Betsy Renaldi, a teacher of religious ethics who also works at the Notre Dame Law School:
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Freedman provides an example of this in his *Lawyer’s Ethics in an Adversary System*. He is celebrated for his contempt for an ethics of principles. He applies his contempt to all of the classic dilemmas in adversary representation. When he is accused of violating principles, his answer is: So much the worse for principles. For example, he says, take Immanuel Kant. "Telling the truth is a universal law...it cannot be violated under any circumstances. Thus, if a victim is fleeing from a would-be murderer, one must answer the murderer truthfully when asked where the victim is hiding. Lying—violation of principles—cannot be justified by mere expediency...." There is something wrong with a system of morality that places a higher value upon one’s moral rectitude... than upon the preservation of an innocent person’s life."28

Freedman is disingenuous, of course. An ethics of principles can get you out of that one—as he, no mean casuist, knows. His way out is utilitarian (tell a lie, because...). It occurred to me that there was also an opening for tragic choice in the example. I could, when approached by the murderer, say: "I know where he is, but (because I value innocent human life) I will not tell you." Or I could say: "I know where he went, but (because Jesus bids me love you even if I have to lay down my life in the process, and in order to prevent, if I can, your doing an evil thing) I'm not going to tell you where he is." Those moral choices do not come from an ethics of principles as much as from an ethics about what to do with principles. Each of them distinguishes between a principle and a principle worth sacrifice. They do not make sense from a logic of consequences, since the probable consequence is what some would call suicide and none would call good. I can imagine the first of these answers to the gunman coming from Thomas More, the second from Francis of Assisi or the Little Flower. "[T]he issue may be that if we are determined to do good we must be prepared to will our own and others' suffering and death." (118)

This seemed to be a unique way of ethical reasoning. It seemed to me to say to, and after, the *Code*: "Prior to the question of 'what should we do' is the question 'what should we be.'" (102)

My second theory, on the unsettling questions about being a lawyer and a Christian, was influenced by Hauerwas' and Burrell's article on Albert Speer (ch. 5, pp. 82-100 in this book). It is that it is easy to fool yourself about what you’re doing in professional life. My own work on interpersonal relations in law practice29 abounds with examples which I noticed, and reveals

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29. Planning and Drafting Wills and Trusts, ch. 1 (1972); Death, Property, and Lawyers (1970); notes 7, 10, and 17, supra.
examples I did not notice. It might be possible to set out systematically to diminish self deception. A system for the reduction of self deception would be worth study, even in a legal ethics course. We might, in that system, begin to look at what we lawyers do to ourselves and our clients when we fashion role-bound answers to moral dilemmas. (I represent the guilty because I have a license to be an adversary and the system—not the client, but the system—needs my function.) We might get further by exploring relationships instead of roles (e.g., Jesus and the repentant, crucified thief).

"Integrity, not obligation, is the hallmark of the moral life... We can only use ought judgments because we presume certain characteristics in others and ourselves that make our 'oughts' intelligible." (41) Hauerwas' work has established itself in my teaching; it might have a significant effect on the way other lawyers talk about their moral lives as lawyers; it seems defensible to offer a review of a collection of his recent periodical work to a journal or jurisprudence.

Nonetheless, I find myself hoping that Hauerwas can develop further than he has the social side of his ethics, and that he will develop more interest than he appears to have developed in empirical information about life stories and how people choose them.

SOCIAL ETHICS

The Gospels are difficult source material for social ethics. Jesus was not a revolutionary in any of the modern senses, but he has not usually been regarded as the author of a social system either. He seems not to have sought the perfection of any of the dominant institutions of his day—temple priesthood, civil (pharisaical) life, the Roman occupation, the underground, the commune, or the monastery.31

Jesus seems to have stood apart from these institutions, except to call the Jews of his day to the consequences of their covenant with God.32 Sometimes, as when he drives the money-changers from the Temple,33 he seems to advocate a revolutionary confrontation with the system; sometimes, as when he saves from death the woman taken in adultery,34 he seems to leave the system untouched and to care for its victims. Professor John Howard Yoder, who has influenced Hauerwas' social thought, makes a convincing case for a coherent political theory in the Gospels and even for the proposition that the Kingdom of God is an institution.35

Yoder's political theory touches Hauerwas' ethical theory at the point where it says—both authors say—that Jesus did not worry about whether

he was effective or not. Yoder sees Jesus as striving for a certain sort of system in the world and accepting the fact that the world would defeat his theory and kill him for advocating it. "To confess Jesus Christ as Lord is to make a statement not only about the confessor but about the world. The Christian can transform human relationships through voluntary subordination not because...Jesus did not change the world, but because he did."36

Yoder's view, which is reflected in Hauerwas' four tests for the truthful story, goes beyond what Hauerwas, in this book, suggests as a Christian social ethic, but it resembles Hauerwas in the critical category of tragic choice. In that respect, if no other, it may point the direction Hauerwas' social thought will take. "The kind of faithfulness that is willing to accept evident defeat rather than complicity with evil, is, by virtue of its conformity with what happens to God when he works among men, aligned with the ultimate triumph of the Lamb."37

What this leads to, of course, is the suspicion that a Christian living in the world will have to wait out his institutions in a posture of dissent. The social ethics indicated seems to be a matter of living responsibility within institutions which are inevitably corrupt. The Lord redeemed people, not institutions, and he redeemed people one at a time—"[A] person is not like a type, but is a proper name." (79)

A lawyer, officer of the court and high priest of American government, could be left confused by all of this. At best he is driven back to a question he should probably ask himself every day anyway: "How can a Christian be a lawyer?" But he is (I am), on most days, even more confused than that clear-headed question suggests. Hauerwas (and Yoder) are not much help. Hauerwas seems, though, to give several partial answers, and the fact that they are, to me, partial explains why I hope he will push forward with his social thought.

Some virtues are not private. They are dispositions formed personally and expressed publicly—"skills crucial to our attempt to build humane communities." (65)

Change in the world—"the system"—is a byproduct of living truthfully. Hauerwas, in discussing charity, or care for the weak (elderly, handicapped, mentally retarded), emphasizes, for those helped, "the skill to be weak without regret" and, for helpers, the principle that "we cannot give charity if we think charity is a means to renew the world—that is, if charity is justified by its effects. . . . The crucial question is how to sustain the life of charity in a world of suffering and tragedy. . . . where helping some means others cannot be helped." (138) Presumably one can exercise that kind of judgment—or integrity—in personal service and as a wielder of the power of the state. Lawyers have to think about wielding power because that is what lawyers do. And if law disciplines power, it is, for a lawyer, in the use of power that the discipline comes about.

Justice is an inadequate public policy. "[I]t may be necessary to qualify the demands of justice in order to have a society that wishes to let friendship flourish." Rights are the way the state recognizes value, but rights are an

36. Ibid., p. 189, n.43.
37. Ibid., p. 245. Hauerwas is at work on an extension of his thinking into social settings.
inadequate way to care for others. (Ch. 13) An example for Hauerwas is the developing legal distinction between killing somebody and allowing somebody to die—both of which categories seem frequently to involve the law. Hauerwas regards that distinction as fatuous (and I agree), but he does not offer a public law alternative; his private alternative is that the distinction offers a too limited view of caring. That is valuable guidance for physicians, but no guidance for judges, who are sworn not to care for one citizen more than for another. Here the personal and the wielding of power seem to require different standards and Hauerwas has not helped the wielder of power as much as I hope he can.

We lawyers tend to test public rules by the extent to which they are impersonal. If a doctor, or parents, or both, are left to decide whether a deformed baby should die or undergo complex surgery, they act humanely to the extent they avoid the general, largely procedural criteria which many scholars of ethics suggest for such cases. "To try to substitute 'impersonal criteria' for what should be the moral agony of such decision is already to sacrifice more of our humanity than we can stand [to lose]." (162) Maybe I agree; but suppose the same case is brought to court, as several of them have been, and more will be.

In a lawyer's life, for an example of my own, one can—maybe should—avoid "impersonal criteria" in deciding whether to represent a client. The most intelligent criterion I have heard about that is from a born-again Christian who practices law in the hills of Tennessee and who ways he takes criminal defense cases only when he thinks he can do some good. We incur, inevitably, "the inherent tragedy that is the plight of all attempts to care" (201), and it is best to do that with love, if we can. But suppose the same case is before a judge who has to decide whether to appoint a public defender.

The social order makes role-determined standards of professional care almost impossible. In what is probably only the beginning of his thinking about our lost American consensus, Hauerwas sees no place for professional role to stand. He writes about physicians treating the deformed, the retarded, the elderly, and the dying (I think one can transfer the ideas to lawyers): "The doctor can limit his care. . .only if he has the assurance that there are other kinds of care present in the community" (181); his is a moral art that will work in a limited, role-dictated way, only until "the breakdown of community that should direct. . .skill. . .It is simply not clear. . .if it is possible to practice medicine as a moral art in a society of strangers." (182) There is no substantive moral consensus within which the narrow role of providing health care can fit.

How would that apply to lawyers? It would seem to mean that our traditional rules-of-thumb, which solve almost all questions by reference to advo-

38. The Fourteenth Amendment to the Constitution of the United States is a much-elaborated example. See also F. Pollock, A First Book of Jurisprudence (1929).

39. I tilt here more at what Hauerwas has not done than at what he has done. His criticism of "impersonal criteria" in decision is that ethical reasoning, particularly in the modern "liberal" religious mold, has despaired of substantive morality and dropping back to "secondary" (i.e., procedural) criteria for moral decision. See notes 6 and 11 supra, and S. Hauerwas, Vision and Virtue (1974), pp. 106-07, 122-23.
cacy (that is, by reference to loyalty to one's client), will not survive—should not survive—when the society around us has lost other ways of arriving at and achieving a moral consensus. All we are left with is a survival of the fittest (i.e., the survival of those who have clever lawyers), and that is like a society in which doctors have to decide who is to live, and how. The global burden placed on professionals makes professionalism impossible. Hauerwas writes about medicine as he might have written about law: "[B]ecause we have failed to account for [law's] tragic (i.e., limited) character we have. . . become too far subject to it. [Law's] attempt to insure us against fate has led us to call our dependence on it the quest for freedom." (197)

The choices are mostly tragic. The special skills in the Christian story are in how to deal with tragedy—including, in this social focus, the tragedy of a community bound together only by law. The social result of the Jesus story may be that we are saved from the deception that we have a community. The personal result may be that we act without effect—we go to the scaffold, as More did, over a legal quibble; or, as Jaggerstatter or Judge Horton did, over a faint cry about justice in the midst of holocaust. "In a world where the value of every action is judged by its effectiveness, it becomes an effective action to do what the world understands as useless." (134) This is a dramatic point (if I'm right) because it emphasizes that what Hauerwas and David Burrell write here (ch. 5) about Albert Speer is not limited, in time or place, to a social setting which we know will get better. We do not often survive our corrupt institutions.

ON EMPIRICAL INFORMATION

Hauerwas is a voracious reader. Much of his material—as one would expect—comes from biography and autobiography. Some of it comes from modern fiction, ranging from the esoteric novels of Iris Murdoch to Harry Kimmelman's detective stories. But little of it comes from behavioral science; in fact, I detect in his work a disdain for social information (a disdain he may need to revise as he begins to write more about social policy and law), and for empirical and clinical information from psychology and psychiatry. I am one reader who hopes he will overcome the disdain, if that is what it is, because on many points I think he would improve his work if he based more of it on behavioral information. Here are some examples:

He disagrees at some length with William F. Frankena, on the usefulness of an ethics of obligation, which he distinguishes from his own ethics of character (virtue). "The language of obligation... fails to constitute how we live morally," he says. (40) It would be valuable to test Hauerwas' position against information on moral development in childhood (Piaget), against learning theory (Jerome Brunner), and against behavioral literature on intuition (Jung, Jerome Brunner again).

40. R. Wasserstrom, note 15 supra.
42. I refer to the television program "Judge Horton and the Scottsboro Boys," which was first broadcast on April 22, 1976, and am grateful to Rev. Dr. George Reed, Pastor of Mountain Plain Baptist Church, Mechum's River, Virginia, for a sermon discussing Judge Horton's Christian witness.
He speaks of our "inveterate tendency to self deception" (82), and offers Albert Speer as evidence. He develops the point with a minimum of Calvinist oppression, but, in doing so, he raises an empirical category: We tend to kid ourselves, always and everywhere. The point suggests to me a category clinicians describe as the defense mechanism. It would be fun to read Hauerwas' looking at defense-mechanism literature, particularly that (fairly conventional) body of clinical literature which regards defenses as necessary to health. In the same (Hauerwas) category is the belief that "we must be trained to be conscious" (85); here again I think of insights into the nature of consciousness (Freud, Jung, Rollo May).

He speaks of "the social meaning of suicide" and one thinks of Erikson, Durkheim, Shneidman, Menninger, Theordore Reik, and even Chesterton, who have useful things to say about how we come to regard suicide with horror, and to use it as an expression of revolt against our survivors. The same point can be made about his discussion of attitudes toward death and grief; 43 of social deviance; 44 of "our endemic need for order" (96); of the nature of compassion and of being a helper (the pay off); and of care for the elderly and dying as a way to avoid our own suffering.

He develops, without significant citation, the familiar principle that the middle class peoples of the earth consume and pollute more than the poor. Most efforts toward population control are aimed at the poor, which means that the result of these efforts will tend to increased pollution. Some who work with that information have suggested that this puts population control and care for the poor at cross purposes, which suggests an attempt by power wielders to arrive at a level of life which would be nondestructive in both directions. Such an attempt is an example of the avoidance of tragic choice. A significant part of that argument is empirical. Hauerwas, when he argues against this avoidance and against survival as a moral category, is eloquent and convincing. His point makes sense when applied to our own culture, but I wonder if he would maintain it in discourse with, say, Julius Nyerere. Nyerere would probably not argue, as we do when we talk about the population explosion, in terms of survival or of the obligation to future generations; he would probably talk about what Hauerwas calls "humane communities." He would hope—and so, I think, would Hauerwas—for population control and for sound stewardship of natural resources. And that sounds like an argument for survival. The differences between the two settings seem to me to be illuminated by empirical information.

There is much here for development in jurisprudence and in the quasi-jurisprudence which is involved in curiosity about the rules, roles, and inspirations we make use of when we serve other people in law offices and courts. Hauerwas is a remarkably hard worker; a brilliant thinker who is never merely flashy; and, if I may be allowed to sign off on a personal note, with a phrase from Texas, one hell of a colleague.

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