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## The Religious, the Ethical, the Communal, and the Future

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**THE RELIGIOUS, THE ETHICAL, THE  
COMMUNAL, AND THE FUTURE  
BOOK REVIEW**

**Choosing the Dream: The Future of Religion in American Public Life** By Frederick Mark Gedicks\* and Roger Hendrix.\*\* Greenwood Press, 1991. Pp. 196.

**American Lawyers and Their Communities: Ethics in the Legal Profession** By Thomas L. Shaffer\*\*\* with Mary M. Shaffer.\*\*\*\* University of Notre Dame Press (1991). Pp. 272.

*Reviewed by David L. Gregory\*\*\*\*\**

As Americans celebrate the bicentennial of the Constitution and the quincentennial of Christopher Columbus' epochal journey to this hemisphere during this last decade of the twentieth century, they are also witnessing cataclysmic events in world history, such as the collapse of Soviet domination of Eastern Europe and the disintegration of the Soviet Union itself. Some even proclaim the "end of history."<sup>1</sup> Because history deserves special commemoration and deep reflection during this period, there have been floods of popular and academic literature addressing these events. Two of the most thoughtful and eloquent books published during our bicentennial and quincentennial era are interdisciplinary works in law, religion, and ethics: *Choosing the Dream: The Future of Religion in American Public Life*<sup>2</sup>

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1. FRANCIS FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* 3 (1992).

2. FREDERICK M. GEDICKS & ROGER HENDRIX, *CHOOSING THE DREAM: THE FUTURE OF RELIGION IN AMERICAN PUBLIC LIFE* (1991).

and *American Lawyers and Their Communities: Ethics in the Legal Profession*.<sup>3</sup> Nothing better encapsulates the past and present and better issues a challenge for a dynamic future than the intersection of the closely related themes of religion, ethics and community. At present, communitarianism and the republican teaching of civic secular virtue are all the rage in legal academia.<sup>4</sup> Therefore, it is especially refreshing to find astute scholars who forthrightly examine the meaning of religion and ethics, and who maintain that these virtues, rather than those of secular republicanism, hold the truly transformative keys for our individual lives, our communities, and our future.

### I. CHOOSING THE DREAM: THE FUTURE OF RELIGION IN AMERICAN PUBLIC LIFE

Professor Frederick Mark Gedicks of the Brigham Young University School of Law faculty is one of the most challenging, provocative, and graceful academic lawyers demonstrating the interdisciplinary potential of law and religion. He and his co-author, Roger Hendrix, a non-lawyer management consultant, present a scholarly study and eloquent advocacy for the future of religion in American public life.

Gedicks and Hendrix define religion as "communication from God,"<sup>5</sup> "men and women talking with God, and God talking back."<sup>6</sup> It is this real, direct and immediate experience that the reader will either embrace or entirely reject; the authors do not temper this experience with academic gloss.

In the public realm, contemporary Americans do not speak with, listen to, or acknowledge God. So is the end of the world well-nigh at hand? Well, not quite—or at least, not quite yet, according to Gedicks and Hendrix. But there is an apocalyptic tone that frequently and almost irrepressibly percolates throughout this provocative book. The reader is frequently told that,

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3. THOMAS L. SHAFFER WITH MARY M. SHAFFER, *AMERICAN LAWYERS AND THEIR COMMUNITIES: ETHICS IN THE LEGAL PROFESSION* (1991).

4. BRUCE ACKERMAN, *WE THE PEOPLE: FOUNDATIONS* (1991); MARY ANN GLENDON, *RIGHTS TALK: THE IMPOVERISHMENT OF POLITICAL DISCOURSE* (1991); CASS R. SUNSTEIN, *AFTER THE RIGHTS REVOLUTION* (1990); Stephen A. Gardbaum, *Law, Politics, and the Claims of Community*, 90 MICH. L. REV. 685 (1992); Stanley Ingber, *Rediscovering the Communal Worth of Individual Rights: The First Amendment in Institutional Contexts*, 69 TEX. L. REV. 1 (1990); Frank I. Michelman, *Law's Republic*, 97 YALE L.J. 1493 (1988); Frank I. Michelman, *The Supreme Court, 1985 Term: Forward: Traces of Self Government*, 100 HARV. L. REV. 4 (1986); Charles A. Reich, *The Individual Sector*, 100 YALE L.J. 1409 (1991); Fred Strasser, *Searching for a Middle Ground*, NAT'L. L.J. Feb. 3, 1992, at 1; Symposium, *Legal Theory*, 85 NW. U. L. REV. 1 (1990); Symposium, *Michael J. Perry's Morality, Politics, and Law*, 63 TUL. L. REV. 1283 (1989); Symposium, *The Republican Civic Tradition*, 97 YALE L.J. 1493 (1988); Symposium, *The Theory of Public Choice*, 74 VA. L. REV. 167 (1988).

5. GEDICKS & HENDRIX, *supra* note 2, at 99.

6. *Id.* at 105.

although it is unlikely, revolt—indeed, revolution—cannot be wholly discounted if the communities of the faithful are continually frustrated by the secular order and if religion is denied its appropriate role in improving public life.<sup>7</sup> Although the authors do not present the prospect of revolt as a threat, they do present it too frequently to be minimized or disregarded.<sup>8</sup>

Gedicks and Hendrix deliberately use the specter of revolution to accentuate the risk if public life in the United States continues to preclude religion. While the stakes indeed are high, the book concludes on an affirming note, asserting that “[r]eligion is in America to stay.”<sup>9</sup> But in what fashion? The focus of the book is the “fascinating and puzzling contradiction: American public life has grown increasingly secular, while American private life has remained deeply committed to religious belief and experience.”<sup>10</sup> While the authors do not detail a programmatic agenda per se, they do show how this tragic bifurcation occurred, and, equally important, they express their personal and prophetic hope that religion can be an instrument for the full flowering of human potential, including the transformation of public life.<sup>11</sup> If this is to occur, religion must be fully reintegrated into both private and public life. Ultimately, the degree to which religion will infuse the public realm, as well as individual lives, will depend on religion, not the state. The authors explain:

The future of religion is in its own hands. If religion adopts a public role which assumes that it, and only it, has access to Truth and Reality, religion will not meet the deepest needs and aspirations of its believers. At best, it will merely continue the cycle of alienation and cultural oppression begun by secularism; at worst, it will disappear. If, on the other hand, religion chooses a role in American public life which emphasizes tolerance and cooperation with other public actors in the never-ending human search for the most satis-

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7. See *id.* at 4. See also HAROLD BLOOM, *THE AMERICAN RELIGION: THE EMERGENCE OF THE POST-CHRISTIAN NATION* (1992).

These are critical times. If religion is not accepted into American public life, then ultimately religious Americans could become so frustrated in their assaults upon the secularism of public life that they would threaten the viability of the current social order—they might revolt. We think this unlikely because of the pragmatic nature of American democracy.

*Id.* The authors also write: “Although we agree that religious revolution in the United States is unlikely, the potential for it is nonetheless present.” *Id.* at 21. Furthermore, according to the authors, “[i]ncredible as revolution may sound, it is not wholly beyond the realm of possibility.” *Id.* at 31; see also *id.* at 82, 88-89, 91-92, 137.

8. The authors take pains to show that most violence in history has been committed by secular or atheistic regimes against religion. *Id.* at 133-145.

9. *Id.* at 181.

10. *Id.* at xiii.

11. *Id.* at 182.

fyng and fulfilling way to live one's life, it will itself flourish: it will help both believers and nonbelievers to choose the dream.<sup>12</sup>

The book proceeds in three stages. Part One presents an overview of religion in America and its development as both a paradox within, and a threat to, the public secular realm. Part Two traces the debilitation of public life due to the unwise divorce of the secular and rational from the religious in the twentieth century. Thus, the pernicious result has been the alienation of religion from public life. Part Three focuses on how this dysfunctional split can be reconciled and how public life can again be transformed by the reintegration of religion.

The authors' best hope for the reintegration of religion into public life lies in the faithful communities of religious believers, not in the current academic fascination with republican civic virtue as the secular humanist instrument to ennoble life.<sup>13</sup> A value-neutral morality based on a secular regime rigorously sanitized of talk of God and with God is ultimately unfulfilled and unfulfilling. The authors offer the Internal Revenue Code (the "Code") as the paradigm of this secular amoral insipidness. They present the Code as an amalgam engineered by political special interests which does not rest on any moral or religious formulation. Consequently, because the Code reflects no commitment to shared moral values, it does not command the moral allegiance of the people.<sup>14</sup> The authors identify the "morality" operating in contemporary public life in America as this sanitized, rational, post age-of-enlightenment secularism; since society stringently excised religion-grounded morality from the political, the result is value-neutral, relativist "morality."<sup>15</sup> Unfortunately, the discredited<sup>16</sup> liberal distinction between the "public" and the "private" persists in removing religious belief from "public meaning in liberal political theory."<sup>17</sup> Religion has always been a valuable instrument for the teaching of ethics;<sup>18</sup> however, value-neutral, secular ethics alone "degenerates into a sterile legalism."<sup>19</sup>

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12. *Id.* at 184.

13. *See supra* note 4.

14. *See* GEDICKS & HENDRIX, *supra* note 2, at 26.

15. *Id.* at 26-29.

16. *See generally* Alan Freeman & Elizabeth Mensch, *The Public-Private Distinction in American Law and Life*, 36 *BUFF. L. REV.* 237 (1987); *A Symposium of Critical Legal Study: Stereotypification of the Fourth Amendment's Public/Private Distinction: An Opportunity for Clarity*, 34 *AM. U. L. REV.* 1191 (1985); Symposium, *On the Public/Private Distinction*, 130 *U. PA. L. REV.* 1289 (1982).

17. GEDICKS & HENDRIX, *supra* note 2, at 28.

18. *Id.* at 172.

19. *Id.*

The authors recognize that this artificial and pernicious liberal bifurcation of secular public life and private life—with religion admitted only to the latter—understandably produces profound alienation.

[T]he unmistakable message sent by the institutions and processes of public life is that religion is less legitimate than secularism, and less worthy of consideration by those who conduct the nation's business and interpret and preserve its public traditions. The knowledge that American public culture rejects the most authentic part of a religious individual's personality as wholly subjective and irrelevant to others makes her feel separated, illegitimate, and inferior. Such feelings erode the pride, loyalty, and support which a religious person might otherwise feel for American government and the culture and society it supports.<sup>20</sup>

This alienation leaves the public realm a dangerous, volatile and barren place.<sup>21</sup> To the extent that religion has any residual role in this regime, that role is only defined by mainstream religions that have unproblematically aligned themselves with contemporary mainstream political parties to support the state.<sup>22</sup> This unpalatable non-choice, between the profound alienation of religion from public life or the secular regime's cooptation of acquiescent religion as reinforcer of secular cultural norms, must be repudiated and transcended. The authors posit:

If public culture can accept religion and the religious experience as full and equal participants as we have described, America can enter a new age. It can proceed to develop public criteria for judging the merits of religion in a transformed and integrated world, a world in which all experiences are recognized, accepted, and judged as desirable or not, irrespective of their origin and epistemology. No longer need we conceive of the world as religion set against secularism . . . . [T]hey should simply coexist in one ecumenical world, displaying the full richness and potential of human diversity as they are variously combined and transformed in individuals and communities.<sup>23</sup>

There is no fail-safe prescription for effectuating this hope. Thomistic scholars have long argued for the synergy of faith and reason, with each

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20. *Id.* at 30.

21. *See supra* notes 2-3.

22. GEDICKS & HENDRIX, *supra* note 2, at 75.

Eventually, acquiescing to its banishment from public life, and saying little to distinguish itself from secular interest groups, religion becomes tamed and domesticated. This kind of religion is neutered. It has "little to say other than what the world wants to hear." It does not pervade the lives of its believers and command their allegiance, and it is unlikely to move them to action.

*Id.* (footnote omitted).

23. *Id.* at 112-13.

enhancing the other.<sup>24</sup> This synergy is, by analogy, the objective which Gedicks and Hendrix seek to achieve by the reintegration of religion into contemporary public life, where religion had been a significant influence on public values until the twentieth century.

Gedicks and Hendrix have a very direct sense of the experience of religion: it is communication with God. They state that nearly one-half of all Americans can identify a discrete moment of spiritual conversion in their lives.<sup>25</sup> For many, they are moments of true epiphany. Individuals are not left isolated and atomized; on the contrary, communities of faith coalesce and are key sources of moral values.<sup>26</sup> Religion enhances both individual dignity and community.

Gedicks and Hendrix disavow a theocratic or utopian agenda.<sup>27</sup> They recognize that "religions do not hold all of the answers to important human dilemmas."<sup>28</sup> They argue, however, that religion must not be separated from the public realm; with religion back in the public arena, it can be the greatest instrument for harmony and unity.

The fundamental problem the authors do not satisfactorily answer is how to prevent theocracy once religion has returned fully to the public sphere. This problem will trouble even their fellow believers, and secularists will probably abandon the book after the first few pages. Indeed, few want theocracy, including the authors; and yet, if theocracy is to be avoided, must this necessarily mean the continuing separation of religion from public life? This will require more than the usual slippery slope and balancing of interests and compromising lawyers' exercises. The authors do not explain how this calculus can be transcended, religion reintegrated, and theocracy and revolution avoided; these are major difficulties for a nonetheless challenging book.

## II. AMERICAN LAWYERS AND THEIR COMMUNITIES: ETHICS IN THE LEGAL PROFESSION

Thomas Shaffer, former Dean of the Notre Dame Law School, where he is now the Marion and Robert Short Professor of Law, is one of the nation's premier teachers of ethics. He is also recognized as one of the most prolific scholars in all of legal academia.<sup>29</sup> A true scholar, he dedicates this book to

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24. JACQUES MARITAIN, *MAN AND THE STATE* (1951); JACQUES MARITAIN, *THE RIGHTS OF MAN AND NATURAL LAW* (1944).

25. GEDICKS & HENDRIX, *supra* note 2, at 110.

26. *Id.* at 151.

27. *Id.* at 174.

28. *Id.* at 157.

29. Professor Shaffer has written ten books. Those most pertinent to the present book are his three most recent books. See THOMAS SHAFFER, *AMERICAN LEGAL ETHICS* (1985);

Professor Robert Rodes, his teacher and faculty colleague at Notre Dame. In his latest book, he and his daughter Mary Shaffer, co-author of three chapters, continue to weave the seamless pedagogical web that constitutes the central theme underlying much of Shaffer's academic career: How do we become good lawyers and good people? Chapters One through Four present this subject by examining the paradigm of the classic "gentleman." He notes that "Socrates went around Athens telling law teachers and law students that their highest concern should be to be good people."<sup>30</sup> Chapters Five through Eight, in the spirit of this quincentennial year, then present the good American lawyer from, and within, the perspective of the Italian-American community in the United States.

Shaffer begins with a discussion of "Legal Ethics After Babel," crediting Richard Nixon and Watergate with the resurgence of, and current barren state of, legal ethics. Shaffer first traces the ad hoc birth of legal ethics in the nineteenth century, and synthesizes its transmutation into the Code of Professional Responsibility, the Model Rules, and the American Law Institute's project to restate the law on lawyers. He then inveighs against the teaching of "ethics without virtue,"<sup>31</sup> and excoriates "[t]he incoherence and ineptitude of the American Bar Association on professionalism and on social issues."<sup>32</sup> Shaffer distances himself and his like-minded fellow teachers of legal ethics from the institutional conventions of the elites of legal culture, and from the philosophers and theologians who teach ethics of other disciplines. Although most of those who teach legal ethics are lawyers, they are lawyers who now read primarily in fields other than "the law" of cases, statutes, and ordinances. Shaffer explains that "those of us who teach legal ethics as ethics are not satisfied to close off discussion of legal ethics by invoking coercion, as the law on lawyers does."<sup>33</sup> Shaffer finds little to ground ethics in "[t]he language of liberal democracy, which is the language of American legal education,"<sup>34</sup> and in the "shallow" language of rights-talk.<sup>35</sup> He wants to relocate the language and discourse about legal ethics by taking them from the approaches used by the conventional, culturally conservative elite

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THOMAS SHAFFER, *FAITH AND THE PROFESSIONS* (1987); THOMAS SHAFFER, *ON BEING A CHRISTIAN AND A LAWYER* (1980). The present book is drawn from earlier essays previously published as law review articles. In 1985, he was expressly identified as the second most published senior law professor in the nation during the early eighties. 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).

30. SHAFFER, *supra* note 3, at 13.

31. *Id.* at 24.

32. *Id.* at 58.

33. *Id.* at 22.

34. *Id.* at 13.

35. *Id.*

lawyer. His purpose in writing the book "is to suggest what it looks like there, in one of the other places where we belong."<sup>36</sup> The objective of the legal ethicist, then, is the same: "ethical discussion is discussion about being good persons and helping others to be good persons."<sup>37</sup>

By emphasizing conversation throughout his work on ethics, Shaffer illustrates some of these general themes. Chapters Two through Four concentrate on the character of the "gentleman" and that of the gentleman's conduct in the professions. These chapters further focus on the gentleman's relations with power, tragedy, and suffering in the community. Shaffer uses figures as contemporary as television lawyer Leland McKenzie of *L.A. Law*, doctor Mark Craig of *St. Elsewhere*, and police captain Francis Furillo of *Hill Street Blues*, and literary figures as classic as lawyer Atticus Finch of *To Kill a Mockingbird*, to exemplify the ethics of the "gentleman." These are not, however, infallible people—they are depicted as all-too-fallible and imperfect on many occasions.<sup>38</sup> Yet, ultimately, they are genuine, integrated people who know themselves. "The essence of the gentleman . . . is that he is all together, of a piece, and consistent . . ."<sup>39</sup> Central to Shaffer's work is this classic "gentleman," who is defined by qualities of both Aristotelian and boy scout virtues.<sup>40</sup> Thus, according to Shaffer, the classic gentleman<sup>41</sup>

36. *Id.*

37. *Id.* at 14.

38. *Id.* at 37. For example, Professor Monroe Freedman of Hofstra Law School has criticized the character of Atticus Finch, one of Shaffer's favorite gentlemen, for racism and sexism. See David Margolick, *To Attack a Lawyer in "To Kill a Mockingbird": An Iconoclast Takes Aim at a Hero*, N.Y. TIMES, February 28, 1992, at B7.

39. SHAFFER, *supra* note 3, at 35.

40. *Id.* at 39, 43.

41. For Shaffer, the gentleman's ethic is male, yet in the future, capable perhaps of non-sexist, prophetic, feminist application.

I agree that the gentleman's ethic is male; I do not want to evade the point by pretending it is not (through the use of "inclusive" language, for example). I need to describe the ethic, and when I do that I seem to overlook women: If I am true to my argument about the ethic being male, though, and if I also describe the ethic adequately, it may begin to become clearer why it overlooked women; then the issue will be whether it can stop overlooking them.

*Id.* at 51 n.3. Later in the same chapter, Shaffer states:

"Gentleman" is a masculine word; the English culture that produced and esteemed the gentleman, as well as the American culture that esteems and imitates the English gentleman, is both masculine and patriarchal. Nineteenth-century England developed, and America imitated, an ethic for the professions that was centered in the lives and values of older, white men, as it endeavored to make its established patriarchal church resolutely Protestant.

If the gentleman's ethic in the legal profession is inherently patriarchal, it can no longer be defended. The injustice of domination and oppression would condemn it, even if equality did not.

*Id.* at 58; see also *id.* at 60 ("The best in stories about the gentleman's ethic is prophetic: These are stories about virtuous women").

leaves contemporary lawyers a rich legacy: “[t]he morals of the gentleman are the American lawyer’s unavoidable ethical inheritance.”<sup>42</sup>

We are grounded in and defined by our communities, and we account for our morality by identifying and explaining the communities to which we belong.<sup>43</sup> This is the approach Shaffer takes in the balance of this fine, insightful book. “The gentleman-lawyer’s ethic is a communal ethic. . . . It is the dominant ethic in the legal profession in North America . . . .”<sup>44</sup> Accordingly, Shaffer examines contemporary legal ethics by focusing on communities, particularly Italian-American—an interesting convergence in this quincennial year. He concludes an incredibly rich, powerful first chapter by reminding everyone, particularly lawyers, of the universally applicable caveat that the social historian Robert Viscusi presented to his fellow Italian-Americans at a conference of the American Italian Historical Association:

[I]t will have been very great harm indeed if we turn and look back at ourselves after long, active, chatty careers and can only see . . . well-established, upwardly mobile endlessly aspirant dullards . . . [who put] our dignity before our conscience or our desire to be accepted before our desire to tell the truth.<sup>45</sup>

Shaffer seeks to place the focus of the lawyer’s emphasis on human relationships with clients, family, friends, and enemies, rather than on the more abstract choices among legal rights.<sup>46</sup> He writes, “[t]he mistake we were led into by the language of rights in the law led to other mistakes. . . . Consideration of persons (lives, relationships, cultures) proceeds differently. . . .”<sup>47</sup> This more demanding route requires entry into lives and loves.<sup>48</sup> Shaffer begins this entry by using the literary figure Atticus Finch in *To Kill a Mockingbird*, and the more *avant garde* Woody Allen film characters in *Crimes and Misdemeanors*, as key analytical models.

All is most definitely not well with legal ethics today, to say the least. Professionalism qua professionalism seems to have become the new “idolatry,” or at least “an instance of the false virtue of honor, an ethical mistake of more modest depth.”<sup>49</sup> Shaffer asserts that ethics are inextricably joined with incidents of power, tragedy, and suffering. In Chapter Four, he examines the charge that the gentleman’s ethic abuses power, has a distorted view

42. *Id.* at 52.

43. *Id.* at 25.

44. *Id.* at 96.

45. *Id.* at 28 (quoting social historian Robert Viscusi).

46. *Id.* at 15.

47. *Id.* at 16.

48. *Id.* at 16-17.

49. *Id.* at 72.

of tragedy, and is unable to endure suffering, and offers the example of the lawyer as a prophet who reminds his community of repentance. In William Faulkner's novel, *Intruder In the Dust*, lawyer Gavin Stevens "shows how a gentleman learns to notice his participation in oppressive uses of power [over clients] and then to repent."<sup>50</sup> In a sense, gentlemen pass through, and learn from tragedy, which Shaffer says is the "triumph of meaning over power."<sup>51</sup> Shaffer taps deeply into the conundrum powerfully articulated by the late Professor Robert Cover.<sup>52</sup> Shaffer's communities are not utopian and idyllic—he recognizes that violence is deeply ingrained into human experience, and that there are elements of warring tribes in the community. Hence, the gentleman will suffer for principles. Shaffer reminds us of Isaiah's poignant story of the Suffering Just One, which Christians regard as the prophecy of Jesus as the Lamb of God.<sup>53</sup> In suffering, the gentleman does not pretend to have all the answers. But suffering leads to, and is transformed by, hope. "Hope is optimism that is truthful. It rejoices in the truth. When it comes to the gentleman's ethic, the virtue of hope can come to terms with and deal truthfully with the certainty that the moral life will cause others to suffer."<sup>54</sup>

In the second part of the book, co-authored by Mary Shaffer, the authors illustrate that many lawyers bring their ethnic communities' perspectives into law, and they subsequently meet the gentleman lawyer in their legal careers. The Shaffers examine lawyers from ethnic moral cultures through the prism of the Italian-American. They chronicle these stories through profiles of prominent lawyers and through long first-person excerpts of stories told by Italian-American lawyers.<sup>55</sup> This part of the book focuses on the Italian-American virtue of *rispetto*, an Italian word meaning "good habit, through which the person learns, practices, teaches, and remembers her membership in the family."<sup>56</sup> The Shaffers' basic premise is that not all ethnic lawyers approach the prevailing legal culture from the same perspective, or with the same objectives. "The Irish sought assimilation; the Italians feared it. The Jews resisted assimilation but managed to understand higher education and entry into the professions as not assimilative; the Italians dis-

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50. *Id.* at 76.

51. *Id.* at 82.

52. See Robert M. Cover, *The Bonds of Constitutional Interpretation: Of the Word, the Deed, and the Role*, 20 GA. L. REV. 815, 816 (1986) (asserting that legal practice is "inextricably bound up with the real threat or practice of violent deeds"); Robert M. Cover, *The Supreme Court, 1982 Term: Forward: Nomos and Narrative*, 97 HARV. L. REV. 4 (1983); Robert M. Cover, *Violence and the Word*, 95 YALE L.J. 1601 (1986).

53. SHAFFER, *supra* note 3, at 87.

54. *Id.* at 90.

55. Other scholars have examined, for example, Jewish lawyers' experiences. See JEROLD S. AUERBACH, *JUSTICE WITHOUT LAW?* (1983); ROBERT A. BURT, *TWO JEWISH JUSTICES* (1988).

56. SHAFFER, *supra* note 3, at 135.

tinguished between education and training and claimed education for the family.”<sup>57</sup>

Finally, Shaffer concludes this intriguing book with a final chapter on the “community of the faithful.” He reminds us that if ethics have meaning, communities will function as grounding for prophecy and priesthood by lawyers to, for, and from their communities. He writes that “Teachers in the community . . . are agents of memory.”<sup>58</sup> Lawyers must therefore take on the indispensable function of hope and of faithful witness that transcends and fulfills law. Thus, when grounded in community, lawyers as moral agents can help revivify life and law as we approach the twenty-first century.

### III. HOPE

Where do we go from here? Has the nation fully reflected upon the meaning of the Declaration of Independence and the Constitution, including the Bill of Rights and subsequent Amendments? Has the nation even begun to consider the meaning of the quincentennial of 1492, when the hemispheres met at the beginning of the modern age? Probably not.

Are we approaching merely the end of a decade, an era, a century, or a millennium? More importantly, into what period are we entering? Will we enter our period as a world, as a nation, as communities, or simply as individuals?

These are the broad and overarching, albeit largely implicit, questions that these two fine books pose. Whatever one may conclude in answering these questions, both books provide much food for thought, reflection, and contemplation. Neither advances a programmatic agenda, but each suggests approaches to better, more decent lives for individuals, communities, and the nation.

Thomas and Mary Shaffer perfectly anchor communitarian ethical reflection on the eve of the quincentennial, and highlight their achievement by choosing to examine legal ethics through the rich prism of Italian-American communities. As one of the nation’s premier ethicists and scholars, Thomas Shaffer continues to draw upon stories from literature, Biblical parables, and novels, and to move forward with his informed telling of stories. From his rich ecumenical perspective, grounded in his personal recollections of his Baptist Colorado pioneer ancestors, Shaffer has devoted much of his prolific academic scholarship to weave the web of the Hebraic Biblical religious tradition into the contemporary legal fabric. Ethics—and, one hopes, perhaps even “legal” ethics—are located firmly within this religious tradition and are

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57. *Id.* at 144-45 (emphasis in original).

58. *Id.* at 215.

especially rooted in communities of faith. There is an affirmative and ultimately optimistic—"prophetic" and "hopeful," in Shaffer's language—tone to *American Lawyers and Their Communities*. But the ethical road is painful and difficult; it is a harsh and dreadful love. Prophetic hope infuses the journey. The hope springs eternal that lawyers' ethics may one day be fully actualized, transformed, and redeemed.

It is not a lonely journey. While each individual must decide to walk the ethical path, those who endeavor to do so can take real comfort from Shaffer's assurance that they will not walk alone. Communities eventually will move in the ethical direction that ethical persons within those communities choose to go. There is a pilgrim, pioneering aspect to ethics. Ethics is more a process and a way of living life than an eschatological end point. Ethics, like heaven, is the ethical way, the journey to heaven, the more decent life for everyone.

Shaffer's book modulates the much more militant tone of Gedicks's and Hendrix's *Choosing the Dream*. There is no talk of overt revolt or revolution by Shaffer. If, of course, ethics operate in communities of the faithful, quiet and deep revolutionary changes inexorably should transform and redeem the social order. This is Shaffer's vision. With a different tone, it is a vision at least broadly shared by Gedicks and Hendrix, who also expressly ground ethics in religion as the best source for moral and ethical values. Moreover, all of the authors share the sense of the prophetic. Gedicks and Hendrix begin their book by citing the prophecy of Joel,<sup>59</sup> suggesting that ethical people, including lawyers, in communities of the faithful will dream dreams and see visions. For Shaffer especially, however, the ethical road is difficult and demanding, yet ultimately fulfilling. The ethical person will inevitably be bound up in a world of suffering, tragedy, and pain as part of the prophetic hopeful role of the ethical person—especially of the ethical person who happens to be a lawyer.

While sharing some of the perspective of the Shaffers, Gedicks and Hendrix assign a much more militant quality to the austerity of the Shaffers' position. The prophetic role in a world of suffering and tragedy will redeem the public realm—or else, according to Gedicks and Hendrix. Readers who do not want a role for religion in public life will find the book fanatically dangerous, and even those readers who broadly agree with this view may find the book disturbing and destabilizing. In contrast, this off-putting, apocalyptic "or else" is not a theme of Shaffer's book. While Gedicks and Hendrix do not threaten revolt or revolution, they do deliberately and re-

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59. "The day shall come when I will pour out my spirit on all mankind; your sons and daughters shall prophesy, your old men shall dream dreams and your young men shall see visions." *Joel* 2:28.

peatedly present it as an alternative, however implausible, if public life continues to stringently excise the religious dimension from the public realm. With the increasing accommodationist perspective now ascendant on the current Supreme Court<sup>60</sup> and in Congress,<sup>61</sup> at least vis-a-vis mainstream Christian religion, the greater danger is the continuing co-optation of religion by the structures of secular statism, rather than of revolt against the secular state per se. Of course, the specter of co-optation and acquiescence to the state is a chilling, insidious prospect, yet is more real, though admittedly less immediately volatile, than the possibilities of literal revolt or revolution.

These works are definitely not liberal centrist books. They are not designed to balance and harmonize themes inherent in the Establishment Clause and the Free Exercise Clause of the First Amendment. Both books are unapologetically written by committed religious believers who present eloquent and elegant statements for the integration of religion and ethics into public life. If this occurs, America is sure to be a more interesting place and, for strict separationists, a more dangerous, threatening place. Yet, for those who believe that civic virtues, constitutional republicanism, and the secular order alone are not fully capable of transforming the human spirit, both *Choosing the Dream* and *American Lawyers and Their Communities* present the alternative vision of communities and persons transformed by integrated ethics and religion. It is a vision certainly worth serious consideration at this important meditative moment in America's history. Both books begin and end in the spirit and place of hope.

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60. See, e.g., *Weisman v. Lee*, 728 F. Supp. 68 (D.R.I. 1990) (holding clergy-led invocation at public school commencement violative of the Establishment Clause of the First Amendment), *aff'd*, 908 F.2d 1090 (1st Cir. 1990), *aff'd*, 112 S. Ct. 2469 (1992) (discussing whether clergy-led invocation at public school commencement violates Establishment Clause of the First Amendment); see also David L. Gregory & Charles J. Russo, *Let Us Pray (But Not "Them!")*: *The Troubled Jurisprudence of Religious Liberty*, 65 ST. JOHN'S L. REV. 273 (1991).

61. See, e.g., *Board of Educ. v. Mergens*, 496 U.S. 226 (1990) (upholding the Equal Access Act as constitutional).

