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BRENDAN F. BROWN LECTURE AND RESPONSE

LEGAL ETHICS AND THE GOOD CLIENT*

*Thomas L. Shaffer***

The distinctive feature of ethics in a profession is that it speaks to the unequal encounter of two moral persons. Legal ethics, which is a subject of study for lawyers, therefore, often becomes the study of what is good—not for me, but for this other person, over whom I have power. Legal ethics differs from ethics generally: ethics is thinking about morals. Legal ethics is thinking about the morals of someone else. It is *concern* with the *goodness* of someone else. In this view, legal ethics begins and ends with Socrates's question to the law professors of Athens: "Pray will you concern yourself with anything else than how we citizens can be made as good as possible?"¹

The subject in legal ethics is, in this way, the client's goodness, but legal ethics does not focus on the client's *conscience*. Legal ethics is complicated by the fact that the discussion of this other person's morals is focused not in *his* conscience but in mine. Legal ethics is thinking about my client's morals, but I am the one who is thinking. Most of our discussions—in committees of lawyers, in bull sessions, in law school, and with our spouses at dinner—are on what a lawyer should do about his client's morals.

This is a very difficult situation. Martin Buber, the great, prophetic, modern teacher of the theology of human relationship, the person who formulated the notion of the I-Thou relationship as a foundation for moral life, despaired of *professional* relationships. He thought it was all but impossible for a professional in the modern world to look at his client and see a Thou rather than an It: I can see that you *want* to do it, he said, but you cannot; the sides are too unequal. The situation is not only difficult, Buber said—it

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1. White, *The Ethics of Argument: Plato's Gorgias and the Modern Lawyer*, 50 U. CHI. L. REV. 849, 860 (1983).

is *tragic*.²

It is also a morally perilous situation for lawyers. It is an invitation to hubris—to arrogance. Most discussion in legal ethics these days is discussion of how a lawyer can protect herself from her client's bad morals. Modern legal ethics assumes that clients corrupt lawyers—that they are, to use an old Catholic notion, occasions of sin, like R-rated movies and bad company. Sometimes lawyers are stern, wise, parental; and clients are children who have to be led, forced, or tricked into behavior that will not make lawyers uncomfortable. (When I was a young lawyer more space was given to advertising, solicitation, and unauthorized practice; but the Supreme Court has abolished that part of the syllabus and we are left to talk about the bad morals of clients.)

If we can manage to regard our client as a Thou and not an It, and if we manage to avoid hubris, the issue is this: What should I want for my client?

The possible answers are three. (Lectures always have three answers. Ten to fifteen minutes each.) The first answer, to the question, "What should I want for my client?" is: I should want my client to be *right*. The second is: I should want my client to be *free*. And the third is the Socratic one: I should want my client to be *good*.

I. RECTITUDE

The first answer—I should want my client to be right—is traditional in American legal ethics. It is associated with Thomas Jefferson, with the republican lawyers who preserved the legal order in our Revolution. Willard Hurst called them the golden era of American lawyers.³ They were "republican" in their denial of a distinction between public and private morals.⁴ Theirs was the legal ethic of the gentleman. David Hoffman first gave it systematic expression, in his essays on professional deportment of 1817 and 1836.⁵ Hoffman was a prosperous, stuffy, resolute Baltimore lawyer and law teacher who typified what Alex de Toqueville noticed about American lawyers of the 1830's: They were aristocrats; they tempered democracy by gaining the trust of the people and then taking charge of the community; they

2. M. BUBER, *THE KNOWLEDGE OF MAN* 171-72 (M. Friedman & R. Smith trans. 1965).

3. J. HURST, *THE GROWTH OF AMERICAN LAW: THE LAW MAKERS* (1950).

4. Bloomfield, *David Hoffman and the Shaping of a Republican Legal Culture*, 38 MD. L. REV. 673 (1979).

5. 2 D. HOFFMAN, *Resolutions in Regard to Professional Deportment*, in *A COURSE OF LAW STUDY* 752 (1817) (2d ed. 1836).

were trusted by the people, but they did not trust the people.⁶

Judge George Sharswood, Chief Justice of Pennsylvania, founder of the law school at the University of Pennsylvania, a Presbyterian Sunday School teacher, brought the republican legal ethic into the next generation. A lot was happening to the legal profession in the middle of the 19th century: The country was getting ready to go to war—its bloodiest war—ostensibly over a set of legal questions; the robber barons were in their youth and they were looking for lawyers to help them. Sharswood thought the moral perils for lawyers were serious: “The temptations are very great . . .,”⁷ he said. “There is no class . . . among whom moral delinquency is more marked and disgraceful.”⁸ His faith was that the republican gentlemen-lawyers could assure rectitude among their restless clients: “It is . . . the duty of counsel,” he said, “to be the keeper of the conscience of the client; not to suffer him, through the influence of his feelings or interest to do or say anything wrong in itself, of which he would afterward repent.”⁹

Hoffman’s and Sharswood’s legal ethic found its way, after the war, into the earliest state codes—most notably into the work of Judge Thomas Goode Jones, Confederate war hero, frontier judge and legislator, eventually governor of Alabama, and drafter of the 1880’s Alabama code that was the model for other state codes and the A.B.A. Canons of 1908: “The client cannot be made the keeper of the *attorney’s* conscience,” Jones said.¹⁰ He was worried about the client as an occasion of sin. He was less confident than Sharswood that lawyers could assure the rectitude of clients: “The attorney’s office does not destroy the man’s accountability to the Creator, or loosen the duty of obedience to law and the obligation to his neighbor; and it does not permit, much less demand . . . any manner of fraud or chicanery, for the client’s sake,” he said.

Republican legal ethics says that what is important is that the client do the right thing, and that it is the lawyer’s job to see to it that his client does the right thing. In this, republican legal ethics paralleled the development of professional ethics in journalism, in medicine, in the clergy, and in teaching.¹¹ It was and is an ethic for professional life that tends to ignore, if not to deny, the possibility that the person served—the client, the patient, the

6. A. DETOCQUEVILLE, *DEMOCRACY IN AMERICA* 288-90 (P. Bradley rev. ed. 1954) (1st ed. 1835).

7. Sharswood, *Essay on Professional Ethics* (1854), in 32 A.B.A. REP. 168 (1907).

8. *Id.* at 170.

9. *Id.*

10. *Code of Ethics Adopted by Alabama State Bar Association*, 118 ALA. REP. xxiii, xxix (1899) (the Association had adopted the code in 1887). Armstrong, *A Century of Legal Ethics*, 64 A.B.A. J. 1063 (1978).

11. T. SHAFFER, *FAITH AND THE PROFESSIONS*, ch. IV (forthcoming 1987).

newspaper reader, the parishioner, or the student—can be a source of sound morals for professional people. It was a later generation in ethics that tried to apply in the professions Karl Barth's principle of conditional advice: He who sets out to counsel his brother, Barth said, must be prepared to be counseled in turn if there is need of it.¹² The legal ethics of rectitude is a one-way street. It speaks to professional responsibility but it tends to hubris, to regard clients as sources of corruption, as occasions of sin. Hoffman said, in reference to the client who came to him as debtor on a debt barred by the statute of limitations, "If my client is conscious he owes the debt, and has no other defense than the legal bar, he shall never make me a partner in his knavery."¹³

II. FREEDOM

The second school of thought in modern legal ethics, the legal ethics of freedom, is, if nothing else, a corrective to hubris. It does not talk about responsibility and rectitude. It says that what I should wish for my client is that he be free. He will, if I serve him well, be informed. He will, to use a trendy theological word, be *empowered*. And he will then have, to use a trendy philosophical word, *autonomy*. I will have acted to protect his autonomy. He will be empowered to act autonomously. Autonomy is compounded from the Greek words for self and law.¹⁴ My client will himself, make law; he will, alone, be his own ruler.¹⁵

In terms of intellectual history, this ethic traces to Immanuel Kant and Enlightenment moral philosophy; it says that a person's moral principles should be his own, not his lawyer's. One of the most prominent exponents of this view in modern American legal ethics is Professor Monroe Freedman, who argued his position in a frequently quoted lecture, given at this law school, in 1977. He said: "The attorney acts both professionally and morally in assisting clients to maximize their autonomy," and then explained:

that is, by counseling clients candidly and fully regarding the clients' legal rights and moral responsibilities as the lawyer perceives them, and by assisting clients to carry out their lawful decisions. . . . [T]he attorney acts unprofessionally and immorally [when he deprives] clients of their autonomy, that is, by denying

12. K. BARTH, *THE HUMANITY OF GOD* 86-87 (T. Wieser & J. Thomas trans. 1960).

13. D. HOFFMAN, *supra* note 5.

14. WEBSTER'S NEW UNIVERSAL UNABRIDGED DICTIONARY 128 (2d ed. 1979).

15. M. FREEDMAN, *LAWYER'S ETHICS IN AN ADVERSARY SYSTEM* (1975) [hereinafter M. FREEDMAN, *LAWYER'S ETHICS*]; see *infra* note 16; Shaffer, *The Legal Ethics of Radical Individualism*, 65 TEX. L. REV. — (forthcoming 1987) [hereinafter Shaffer, *Radical Individualism*].

them information regarding their legal rights, by otherwise preempting their moral decisions, or by depriving them of the ability to carry out their lawful decisions.¹⁶

To deny my clients legal services because I disagree with their moral choices is—Freedman argues—to “deprive them of the ability to carry out their lawful decisions.”

Freedman is a magnificently lucid, forceful speaker and writer. He is the sort of spokesman who makes a difference, and he has come to be a spokesman for the American adversary ethic. I need to make a detour on the adversary ethic, not because my three points require it but because of Monroe Freedman. The adversary ethic is not his ethic, but many people think it is, and I have to clear up the confusion—in his behalf.

This is the detour: The adversary ethic was invented in New York City after the Civil War; it had as its purpose the vindication of lawyers who helped the robber barons bribe judges and sell watered securities. The ethic says that lawyers have no moral responsibility for what their clients do. Lawyers who pursue their clients' interests with single-minded devotion are not accountable in the community for what their clients do. Lawyers are not responsible for sound morals. Justice will result from single-minded advice and advocacy, because the judicial system, or the market economy, or Social Darwinism, are sources of justice: This *system*, and not, as Hoffman and Sharswood thought, the conscience of lawyers, is the source of the goodness that is in the practice of law.¹⁷

On this basis, the adversary ethic justifies legal assistance for rapists, murderers, child-molesters, arms merchants, and people who poison people. Freedman, in some of his more vivid moments, has extended the traditional list to perjurers,¹⁸ people who use lawyers' advice to commit crimes,¹⁹ and the perpetrators of stock frauds.²⁰

The argument made from this quarter is that lawyers are dispensed from ordinary moral restraints on complicity. Ordinary morals say that if I help somebody do something evil, I am an accomplice in evil. The dispensation is necessary if lawyers are to serve the state; and such service to the state is either self-evidently righteous, or it is righteous because the state is the

16. Freedman, *Personal Responsibility in a Professional System*, 27 CATH. U.L. REV. 191, 204 (1978) [hereinafter Freedman, *Personal Responsibility*].

17. Schudson, *Public, Private, and Professional Lives: The Correspondence of David Dudley Field and Samuel Bowles*, 21 AM. J. LEGAL HIST. 191 (1977); see Fortas, *Thurman Arnold and the Theatre of the Law*, 79 YALE L.J. 988 (1970); T. SHAFFER, *AMERICAN LEGAL ETHICS: TEXT, READINGS, AND DISCUSSION TOPICS*, ch. 3 (1985).

18. M. FREEDMAN, *LAWYER'S ETHICS*, *supra* note 15, at 27.

19. *Id.* at 74.

20. *Id.* at 20-21.

source of goodness for its people. Freedman, in his 1977 lecture, found an example of the adversary ethic in the game of tennis:

Manuel Orantes has astounded fans by applauding his opponent's good shots and by purposely missing a point when he felt that a wrong call by a linesman has hurt his opponent. "I like to win," he said in an interview, "but I don't feel that I have won a match if the calls were wrong. I think if you're playing . . . for your country it might be different, but if I'm playing for myself I want to know I have really won."²¹

As Freedman describes the adversary ethic, "One's moral responsibility will . . . vary depending, among other things, upon whether one has undertaken special obligations"²²

I am still on the detour. There are two answers to the adversary ethic: Either it is not a serious ethic at all, it is only an excuse for immorality,²³ or it is an ethic that depends on the power—that depends on the state to provide goodness. It is either a *farce* or it is *idolatry*. The state cannot, will not provide goodness. People of Freedman's and my age, who have seen the Holocaust, and Dresden, and Hiroshima, and Viet Nam, know at least that much. Our hope for Manuel Orantes should be that the integrity he exhibits when he plays tennis will survive the invitation to arrogance that will come to him when he plays for his country. His country needs his integrity more than it needs him to win tennis games. His goodness is in his character not in his citizenship. This is as true of public and professional life as it is of tennis.²⁴ Robert Bolt has Sir Thomas More say, "I believe, when statesmen forsake their private consciences for the sake of their public duties . . . they lead their country by a short route to chaos."²⁵

Freedman's argument (and here is the end of the detour) is based not on statism but on the proposition that the highest good of a human person—at least the highest good that is of social or professional importance—is that he be free. That he be autonomous. That he live according to moral principles that are his own, not his lawyer's.²⁶ That position is attractive against hubristic moral authority. It was attractive against an arrogant church in the 18th century, as it is now attractive against any totalitarian moral order, or even against a domineering parent. It works well as an objection to the

21. Freedman, *Personal Responsibility*, *supra* note 16, at 195-96.

22. *Id.* at 196.

23. Lasky, *Is One Ethic Enough?*, 17 VAL. U.L. REV. 41 (1983); Luban, *The Adversary System Excuse*, in THE GOOD LAWYER 83 (D. Luban ed. 1983).

24. T. SHAFFER, ON BEING A CHRISTIAN AND A LAWYER, ch. 1-3 (1981).

25. R. BOLT, A MAN FOR ALL SEASONS 23 (1962).

26. M. FREEDMAN, LAWYER'S ETHICS, *supra* note 15, at ch. 1 (I have the benefit of using a draft of chapter 1 in a new edition which Prof. Freedman is now preparing.)

traditional republican legal ethic that seems so often to call for us to force or trick our clients into doing the right thing. The ethic of autonomy is apparently democratic, not arrogant, and thus is in tune with the American political tradition. The ethic of autonomy is progressive—a word we Americans have always liked too much.

In these instrumental and patriotic applications, the ethic of autonomy is able to hide its anthropology. It is not obvious, although it becomes clear when you think about it, that this second position on what I should want for my client depends on a certain view of the human person—the view that the human person is essentially alone. The vulnerability becomes clear when the human person is described adequately, as in the Bible and in our stories—from great novels to television commercials.²⁷

In fact, our stories say, the human person is radically connected to other people. The real challenge to autonomy as a doctrine is the ordinary fact that the person comes to *be* in relationships—in families, congregations, communities, friendships, and associations. It is the contrast between being alone and being connected, rather than the contrast between freedom and rectitude, that seems to me revealing in the legal ethics of autonomy.

Consider the proposition in a nonvicarious setting, as if what I wished for my client were what I wished for myself. What I wish for myself, this anthropology says, is that my moral principles will be my own. (Is this move from client to lawyer self, as a way of testing the ethics of autonomy, legitimate? I think so; it is the traditional test that Jews and Christians have followed, since earliest Rabbinic times, for deciding whether what I am doing to another person is moral. It is the way the Torah,²⁸ and Hillel,²⁹ and Jesus³⁰ state the Law of Love. And it is even, in Professor Alan Donagan's formulation,³¹ a way to state Kant's categorical imperative.)

There are, first of all, formal difficulties.³² For one thing, the proposition that my principles should be my own is trivial. Whose principles are my principles likely to be? Who else is responsible for my moral principles? Even if I read them out of a cook book, when I act on them they are mine,

27. Shaffer, *Radical Individualism*, *supra* note 15.

28. *Leviticus* 19:18.

29. B. SHABBATH, OUR MASTERS TAUGHT 51 (J. Petuchowski trans. & ed. 1982).

30. *Matthew* 7:12.

31. A. DONAGAN, *THE THEORY OF MORALITY* 214 (1977).

32. Many of these arguments are paraphrased from Dworkin, *Moral Autonomy*, in *MORALS, SCIENCE, AND SOCIALITY* 156 (H. T. Englehart and D. Callahan eds. 1978), and for all of them I am indebted to this seminal essay on the ethics of autonomy. Stanley Hauerwas builds on Dworkin's argument, to say, "the whole force of the modern concept of autonomy has been to make the individual 'a law unto himself' and thus free from history." S. HAUERWAS, *A COMMUNITY OF CHARACTER*, at 269 n.6 (1981).

aren't they? Adam said, "She made me do it"; Eve said, "The snake made me do it"; but those defenses were trivial.³³

The proposition, my principles should be my own, is also paradoxical; If my principles should be my own, the proponents of autonomy should not insist that I *accept* the principle—their principle—that my principles should be my own. They want me to grant an exception to their proposition, before we even get started.

Those are formal difficulties. The substantive difficulties are deeper and more sensible. The ethics of autonomy leave human context out of account; they posit a here-and-now self that seems unconnected to others or even to his own past.³⁴ The ethics of autonomy do not reflect ordinary sentiment about what people (Americans) want from one another and celebrate in such places as the 100th birthday party of the Statue of Liberty; they do not reflect what we know from stories about American lawyers.

When you describe our lives carefully, you describe lives of moral influence. That is characteristic of the great novels, from Austen and Eliot to Snow and Faulkner and Anne Tyler; it is also characteristic of almost any thirty-minute situation comedy on television, or of *Hill Street Blues*.

In terms of *social* ethics, autonomy is often seen as a guarantor of diversity in the community—of pluralism, if you like. That is, the argument goes, autonomy guarantees that we are not all alike; if each of us rules himself, we will be different from one another, and our strength lies in our difference. This is a social argument, an argument for the common good; it says the common good is served by diversity.³⁵ In fact, though, we have never wanted diversity more than we have wanted goodness. We have never preferred diversity or supposed that diversity is adequate. Pursued logically, diversity, as a social justification for the ethics of autonomy, would require us to prefer a community of liars, sluggards, and philanderers—provided they do not resemble one another.

Our stories, and particularly our American lawyer-hero stories, say that we prefer, in our communities, people who are brave, generous, reverent, cheerful, and honest. Our collective moral judgment, such as it still is, is not as spooked by Sunday-School morality as law professors think. When you get down to the point of the social argument, finally, what we want in our lawyers, and from our lawyers, is not the free individual but the wise individual—what Aristotle called the man of practical wisdom. Think of that in reference to the American lawyer stories you know—Auchincloss's, Coz-

33. *Genesis* 3.

34. S. HAUERWAS, *supra* note 32.

35. Pepper, *The Lawyer's Amoral Role*, 1986 AM. B. FOUND. RES. J., no. 4 (forthcoming).

zens's, Faulkner's, Harper Lee's (*To Kill a Mockingbird*), Perry Mason, Lawrence Preston, Mr. Tutt, and Puddin'head Wilson. If diversity produces wisdom, we want diversity; but, if diversity does not produce wisdom, we still want wisdom. For all of the talk of diversity in this context, it is at least ironic that American law schools, from coast to coast, from Washington to San Francisco, from Miami to Casco Bay, are the most relentlessly uniform, undiverse, and fungible programs in American higher education.

The *meaning* of the legal ethics of autonomy is that lawyers should not be moral influences on their clients. Now, I have to be careful when I say that of Freedman, given my claim that he is the principal spokesman for this point of view. I am going to have to say that he argues against the *meaning* of his ethic.

Freedman argues *for* moral influence.³⁶ He said here in 1977 that lawyers should counsel their clients "regarding . . . moral responsibilities as the lawyer perceives them,"³⁷ and he gave examples from his own practice. Perhaps not all who share his views on legal ethics would agree that lawyers should provide moral influence on their clients, but, clearly, Freedman believes lawyers should do that. Freedman was critical of Manuel Orantes, for example, because Orantes appeared to say he would not influence his teammates to be fair in an international tennis game. "Where Orantes is wrong," Freedman said, is "in assuming that their decision is that winning is all. Perhaps . . . Orantes' teammates would decide that they would prefer . . . the kind of character and reputation for decency and fairness that Orantes has earned for himself."³⁸

Where I differ from Freedman is in over what he says next—still talking about tennis: Perhaps, he says, Orantes's teammates would decide to be unfair. If so, "the choice . . . is theirs," Freedman says,³⁹ and if they decide to play ruthlessly, Orantes is bound by his commitment to them to play ruthlessly himself.

Freedman illustrates both parts of this point—the moral counsel part, and the client-decision part—with examples from his own practice. In one case, the client, a landlord, wanted Freedman to evict a war widow; Freedman said, "If you want to evict her, I will. But why don't you give the matter some thought." The client decided not to evict her. In the other case, the other side had made a damaging error in a contract. Freedman said: "We can clobber them with it," and the client cheered. Then Freedman said:

36. Freedman, *Personal Responsibility*, *supra* note 16, at 199-204.

37. *Id.* at 204.

38. *Id.* at 200.

39. *Id.*

"The other choice is to call them up and point out the error. That way, you are the good guy, and maybe we can put our future relationship with them on a higher plane by setting the example." The client took the latter choice.⁴⁰

But in both cases, Freedman said he would do what the client wanted if the client chose to be ruthless. My argument is that this reservation is inconsistent with moral leadership. It has led my friend Freedman to take untenable positions when he advises other lawyers—even though his own practice is obviously one of persuasive moral advice, and his clients are people of good character, in important part—*no doubt*—because of his influence.

The problem with republican legal ethics was that it put the integrity on the lawyer's side: Hoffman looked at his client and said, "He shall never make me a partner in his knavery." The problem with the legal ethics of autonomy is that it shifts that load the other way. Freedman looks at his client and says, I will tell you what I think you should do, but if you decide to do something else—even something I regard as immoral for you *and* for me—I will help you do it; otherwise I will be depriving you of your ability to carry out your lawful decisions.

This reasoning leads my friend Freedman to the position that a trial lawyer should help his client commit perjury;⁴¹ that an office lawyer should give his client information that will be used to commit crimes;⁴² and that a securities lawyer should keep his mouth shut about frauds on investors.⁴³

The issue is not moral counsel; Freedman and I agree on that. But the question I have is: What makes moral counsel coherent? Moral counsel is a commodity in our oldest ethical traditions, from Moses to the Greeks to Jesus. Moral counsel is what Thomas Aquinas called fraternal correction,⁴⁴ and Karl Barth called conditional advice.⁴⁵ It is, in these old traditions of ours, given by a whole, integrated, human person. It is given by a person who is *admired*; the good lawyer is such a person; we lawyers say we hope to be such persons. But that kind of person may need to insist, as Thomas More put it, on the little, little area where he is himself, where he will have to decide for himself whether he will follow his friend.⁴⁶

You may remember the scene in *A Man for All Seasons* where the Duke of

40. Letter, Freedman to Shaffer, Aug. 22, 1986 (these are similar to examples in the 1977 lecture); Freedman, *Personal Responsibility*, *supra* note 16, at 200-02.

41. *Supra* note 18 and accompanying text.

42. *Id.*

43. *Supra* note 19 and accompanying text.

44. II T. AQUINAS, *SUMMA THEOLOGICA* II, Q33, 1333-41 (Fathers of the English Dominican Province trans. 1947)

45. K. BARTH, *supra* note 12.

46. R. BOLT, *supra* note 25, at vii-xvii, 70.

Norfolk tries to persuade More to take the Oath of Supremacy. Take it, Norfolk says, for *fellowship*. This is a powerful argument to make to More—a man of strong and Aristotelian friendships. Norfolk's argument went to the root of the difficulty More was having with King Henry VIII, the difficulty over the King's marriage. The King needed, for personal and political reasons, to have More's approval, and all he could get was More's silence. More's approval—his participation *as a lawyer* in the King's design—would not be given unless it *meant* something; when More acted, his integrity went with him. More said to Norfolk: “[W]hen we stand before God, and you are sent to Paradise for doing according to your conscience, and I am damned for not doing according to mine, will you come with me, for fellowship?”⁴⁷

Conditional advice—moral advice—fraternal correction—is no good unless integrity is understood. In fact, it is not even moral advice unless integrity is understood, since moral advice depends on character and on the perception, in the person seeking the advice, that the advisor is a person of character. I think Monroe Freedman's clients listen to him because he is a person of character. I think that's why they change their minds and follow his advice. That is what influences them—not his saying that he will do for them whatever they want done.

III. GOODNESS

The problem with the legal ethics of rectitude was that it seemed not to understand that moral advice is not good unless it is open to influence from the client; he who counsels his sister must be prepared to be counseled in turn. My client is, as Justice Wilson said it, the noblest work of God;⁴⁸ that means *he* may have some wisdom for *me*; it also means that he is capable of being and of becoming a good person, and is therefore worth *my* giving *him* moral advice. This theology of the client argues against the legal ethics of rectitude, which has so often seemed to think of him as no damned good.

But there is integrity on the other side of this relationship as well—on the lawyer's side.

Integrity means that the lawyer has moral limits. There are things you will not ask your friend to do, and if your friend is your lawyer, there are things you will not ask your lawyer to do. In part—usually, I suppose—that is because you love her, and you perceive her character, and you want her to be and to become a good person. But also, I think, it is because you know that it would be futile to ask her. There are some things—some *lawful*

47. *Id.* at 77.

48. *Chisholm v. Georgia*, 2 U.S. (2 Dall.) 363, 397 (1792).

things—she would refuse to do. Part of the value of her moral advice is that there are things she will refuse to do. This refusal is part of her character. Her character is what makes her your friend, and you her friend, in the first place.⁴⁹

“Those who wish for their friends’ good for their friends’ sake are friends in the truest sense,” Aristotle said, “since their attitude is determined by what their friends are and not by incidental considerations. Hence their friendship lasts as long as they are good, and (that means it will last for a long time, since) goodness or virtue is a thing that lasts . . . [E]ach partner is both good . . . and good for his friend.”⁵⁰ Because the lawyer is good, her advice is worth having, and worth giving. Its being worth having and worth giving is a function of her character.

Moral counsel, then, depends on character, both inherently—otherwise it would not be moral advice—and in terms of effect. We heed the moral advice of a good person because the person who gives it is good. This is as true of social ethics—of political leadership—as it is of professional ethics. It is as true in tennis as it is in law practice.

What is wrong, then, with Monroe Freedman’s interesting notion about moral counsel is that his theory of client autonomy removes the essential character of the lawyer. Freedman argues for moral advice, but he also argues for the lawyer who says, “I will do whatever you want me to do—regardless.” I argue that such a hypothetical lawyer would not be a person of integrity. And a person who lacks integrity is not a dependable source of moral advice. I would not trust my life, my fortune, nor, least of all, my conscience to such a person.

49. Cooper, *Friendship and the Good in Aristotle*, 86 PHIL. REV. 290 (1977).

50. ARISTOTLE, NICHOMACHEAN ETHICS, BOOK VIII at 219-20 (M. Ostwald trans. 1962).