Realism, Responsibility, and the Good Lawyer: Niebuhrian Perspectives on Legal Ethics

Timothy W. Floyd
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"Jesus said to him, Why do you call me good? No one is good but God alone."


I. INTRODUCTION

Is it morally permissible for a lawyer, when representing a client, to take actions that harm other persons or the common good? When criticized for such conduct, lawyers typically justify their actions by pointing to the professional rules that govern their conduct. Those rules require lawyers to represent clients zealously and diligently within the bounds of the law. Most lawyers believe this professional obligation requires them to help a client achieve any lawful objective, regardless of the effect on other persons or the public good. A lawyer who takes lawful actions to further a client's lawful interests need not fear professional sanction for causing harm to others.

Freedom from professional discipline, however, does not amount to moral justification. Over the past fifteen years, a remarkable number of commentators, including several professional philosophers, have debated the morality of the lawyer's professional duty of client loyalty. The debate is often phrased in terms of whether "a good lawyer can be a good person," a question posed by Charles Fried. Fried employed the metaphor of the "lawyer as friend." Arguing that persons are morally justified in preferring the interests of friends over other persons, Fried concluded that lawyers should be viewed as "special purpose friends." Accordingly, "it is not only legally but morally right that a lawyer adopt as his


dominant purpose the furthering of his client's interests . . . [rather than] some idea, however valid, of the collective interest."

Although Fried concluded that loyalty to clients is a moral duty, most academic writers disagree. One year before Fried published his article, Richard Wasserstrom (who is both a philosopher and a lawyer) also examined the morality of a lawyer's preferring a client's interests over the common good. He explored this issue under the rubric of the lawyer's "amoral professional role." Wasserstrom was not as confident as Fried that the lawyer's loyalty to clients over the common good could be morally justified. Since that time, a flood of academic writers, including several professional philosophers, have criticized the professional ethic of client loyalty.

What makes professional ethics challenging is that professionals act on behalf of other people, not for themselves. This dynamic is at the center of the debate over whether a good lawyer can be a good person. When lawyers attempt to justify doing "bad" things, it is usually on the ground of duty to clients. Many argue that the morality of a lawyer's conduct can only be judged within the peculiar role imposed by the profession; others insist that lawyers must be judged by the standards of "ordinary" morality and must not find refuge in an amoral professional role.

The participants in the debate generally fall into two camps: on the one hand are the defenders of the ethic of client loyalty, who emphasize the importance of individual autonomy and civil rights; on the other hand are the critics of client loyalty, who emphasize the lawyer's responsibility to seek justice over the obligation to assist a particular client. Those who defend the ethic of client loyalty appeal to principles of human dignity and autonomy, or to concepts such as "first class citizenship," or to the

3 Id. at 1066. Many critics have pointed out the deficiencies in the lawyer as friend metaphor. See, e.g., Edward A. Dauer & Arthur A. Leff, Correspondence, 86 Yale L.J. 573 (1977). Thomas D. Morgan, while recognizing the limitations of Fried's use of the lawyer as friend metaphor, has recently suggested that the idea of lawyers and clients as friends has value in suggesting an appropriate relationship between lawyer and client. Thomas D. Morgan, Thinking About Lawyers as Counselors, 42 Fla. L. Rev. 439 (1990).


6 Fried, supra note 2.

7 Stephen L. Pepper, The Lawyer's Amoral Ethical Role: A Defense, A Problem, and Some
protections of the Bill of Rights. Critics of client loyalty are more likely to emphasize the lawyer's responsibility to justice and to employ the pejorative phrase "hired gun." 

In reflecting upon my own experiences practicing law and teaching ethics to law students, I find myself attracted to the arguments from both camps, yet not completely persuaded by either side. At the same time, simply splitting the difference between the two positions does not make sense. This Essay attempts to shed new light on this debate by approaching the question of the lawyer's loyalty to a client from a different angle. It suggests adding to the debate what can best be called "Niebuhrian" dimensions. In examining whether a good person can be a good lawyer, I draw upon the ethical thought of H. Richard Niebuhr and Reinhold Niebuhr—more particularly, the "ethic of responsibility" as explicated by H. Richard Niebuhr in his posthumous work *The Responsible Self*, and the concept of "realism" in the thought of Reinhold Niebuhr.

These Niebuhrian perspectives are grounded in particular views of human nature. H. Richard Niebuhr's ethic of responsibility asserts that human selfhood is fundamentally social; morality is primarily a matter of relationships among persons, not a matter of principles or purposes. Reinhold Niebuhr's realism assumes our moral fallibility and asserts the inevitability of conflict in human relationships, an inevitability that is grounded in human nature itself; our moral efforts are always, at best, compromised and full of paradox.

I conclude that adding these Niebuhrian dimensions to the debate can shed light on the morality of the duty of client loyalty.

10 The phrase "Niebuhrian dimension to the debates" is taken from REINHOLD NIEBUHR AND THE ISSUES OF OUR TIME 2 (Richard Harries ed., 1986).
12 The primary works of Reinhold Niebuhr relied upon in this article are 1 THE NATURE AND DESTINY OF MAN, A CHRISTIAN INTERPRETATION: HUMAN NATURE (1941) [hereinafter HUMAN NATURE]; 2 THE NATURE AND DESTINY OF MAN, A CHRISTIAN INTERPRETATION: HUMAN DESTINY (1943); and MORAL MAN AND IMMORAL SOCIETY (1932).
Moreover, these perspectives have something to contribute to both sides of the debate over the morality of client loyalty. Specifically, the ethic of responsibility suggests that the debate should focus less on relative abstractions, such as purposes and principles, and more on the context of relationships in which lawyers and clients make ethical decisions. In addition, the perspective of realism suggests that before we draw any conclusions about the "goodness" of the lawyer's loyalty to clients, we should truthfully examine what is going on in the lawyer-client relationship, with critical attention paid to the self-interest of clients and lawyers.\(^\text{13}\)

II. TELEOLOGY, DEONTOLOGY, AND LAWYERS

A. Teleology and Deontology

Two of the most cogent critics of the hired gun ethic are David Luban and William Simon. In a recent book,\(^\text{14}\) Luban (a professional philosopher and law professor) asserts that the lawyer's principal ethical concern should be justice. He is critical of the adversarial or hired gun ethic because it causes lawyers to lose sight of the goal of justice. According to Luban, the adversarial ethic is often simply an excuse to assist clients in wrongdoing. In place of the lawyer as zealous advocate, Luban envisions the "morally activist" lawyer who refuses to become an accomplice in client wrongdoing. The chief obstacle to this vision, for Luban, is the lawyer's "role morality," which instructs the lawyer to place the client's interests above the goal of justice.

Similarly, Simon argues that lawyers should have ethical discretion to refuse to assist clients in the pursuit of legally permissible courses of action. He proposes the following maxim: "The lawyer should take those actions that, considering the relevant circum-

\(^{13}\) In the debate over whether good lawyers can be good persons, moral philosophy has much to say to legal ethics. For most people, however, (including, perhaps, most lawyers) "goodness" is at least as much a religious concern as it is a philosophical question. Yet comparatively few academic writers (with the notable and prolific exception of Thomas Shaffer) have approached the "good lawyer/good person" question from the standpoint of religious ethics.

The danger of injecting religion into the discussion is that many readers will assume that the writer is proposing a religious resolution of the debate. In fact, the Niebuhrian perspectives I am suggesting raise more questions than they provide answers. I am convinced, however, that these perspectives shed light on the question of the goodness of professional conduct, even for those who do not share the religious faith of the Niebuhrs.

\(^{14}\) LUBAN, supra note 5.
stances of the particular case, seem most likely to promote jus-
tice.\textsuperscript{15} Simon argues that lawyers should refuse to take actions
on behalf of clients if the lawyer believes the actions are not likely
to promote justice, even if the client is permitted by law to pursue
the actions. He insists that lawyers should not be constrained by
categorical rules which inhibit the lawyer's ability to seek justice.

Both Luban's and Simon's arguments are teleological—they
are based on goals or purposes. At the risk of oversimplifying, the
argument goes as follows: The purpose of our legal system and
the practice of law in that system should be the attainment of
justice; the professional obligation of client loyalty frequently does
not serve that goal and sometimes prevents lawyers from pursuing
that goal; the obligation is therefore flawed and should be modi-
fied or abandoned.\textsuperscript{16}

The most persuasive defenders of the ethic of client loyalty,
however, do not make arguments based on consequences. Charles
Fried, Monroe Freedman, and Stephen Pepper start from the
principle of individual freedom. As a free moral agent, the client
has a right to the assistance of a lawyer in achieving lawful goals.
It is moral, therefore, to serve the client's interests without regard
to the consequences to other persons or to society as a whole.\textsuperscript{17}
Fried, in particular, makes explicit that his defense of the ethic of
client loyalty is not based on consequences, but instead is derived
from the principles of individual autonomy and human rights.\textsuperscript{18}

This difference has deep roots in the western philosophical
tradition. In that tradition, there have been two dominant ap-
proaches to morality: teleology and deontology. Teleology is de-
derived from the Greek "telos", meaning end or purpose. Teleologi-
cal ethical theories assert that the morality of actions must be

\textsuperscript{15} Simon, supra note 5, at 1090.
\textsuperscript{16} Other critics of the hired gun ethic also make teleological arguments. Marvin
Frankel claims that the overriding goal of litigation should be the discovery of the truth.
Accordingly, he is critical of zealous advocacy within the adversarial system because such
advocacy often thwarts the search for truth. See Marvin E. Frankel, Partisan Justice
(1978).
\textsuperscript{17} To be sure, many defenders of client loyalty make consequentialist arguments.
Lawyers commonly argue that zealous advocacy produces the most just results or is the
best means for discovering the truth. Nevertheless, I believe the best arguments in favor
of client loyalty are not consequentialist. I am influenced by Shaffer's argument that the
consequentialist arguments favoring the adversary ethic assume a just governmental order,
and hence tend toward idolatry of the state. See Thomas Shaffer, Faith and the Profes-
\textsuperscript{18} Charles Fried, Correspondence, 86 Yale L.J. 584 (1977).
judged in the light of goals, purposes, or consequences. Deontological theories, on the other hand, judge the rightness or wrongness of conduct by preexisting rules or principles; morality is not determined by the consequences of the conduct.

As previously noted, the critics of the ethic of client loyalty make teleological arguments. They assert that client loyalty does not always lead to the goal of justice. The defenders of client loyalty take a deontological approach: they start from the principle of individual autonomy, and the ethic of client loyalty follows, notwithstanding the fact that undesirable consequences may sometimes follow from adherence to that principle. Thus, because they do not have the same fundamental approach to ethical questions, the critics and the defenders of the morality of client loyalty often talk past each other.

B. H. Richard Niebuhr:
Metaphors and Morals

H. Richard Niebuhr offered an approach to ethics distinct from traditional teleology and deontology—an approach he called the "ethics of responsibility." Niebuhr was Professor of Christian Ethics at the Yale Divinity School from 1930 until his death in 1962.\(^\text{19}\) Niebuhr's approach to ethics is best seen in *The Responsible Self*. That work was published posthumously and was to serve as a prologue to a larger work in systematic ethics. That larger work was never written, but *The Responsible Self* serves as an excellent introduction to Niebuhr's approach to ethical questions.

In *The Responsible Self*, Niebuhr discusses the symbolic or metaphorical character of our thinking about ethics, including teleological and deontological approaches. *The Responsible Self* explores a new metaphor through which to think about morality, the metaphor of responsibility. Niebuhr described the perspective of responsibility as a way of examining ethical questions distinct from traditional teleology or deontology. Although we should not ex-

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pect a new metaphor to resolve difficult ethical issues, this metaphor suggests new and helpful ways of thinking about those issues.

According to Niebuhr, both teleological and deontological thinking about ethics are derived from metaphors. One's approach to ethical issues and the questions one considers most important depend upon the dominant metaphor in a person's thinking about ethics. In *The Responsible Self*, Niebuhr explained his reliance upon metaphors in moral analysis. Simply put, we think through metaphors far more than we generally admit to ourselves.\(^\text{20}\) In fact, Niebuhr asserted that it is impossible to reason without the use of metaphors.

What is the general idea in such interpretation of ourselves as *symbolic* more than as *rational* animals? It is, I believe, this: that we are far more image-making and image-using creatures than we usually think ourselves to be and, further, that our processes of perception and conception, of organizing and understanding the signs that come to us in our dialogue with the circumambient world, are guided and formed by images in our minds . . . .

... .

Man as language-user, man as thinker, man as interpreter of nature, man as artist, man as worshipper, seems to be always symbolic man, metaphor-using, image-making, and image-using man. What then about man as moral, man as deciding between goods, as evaluating man, as self-defining, self-creating man, as the judge of conduct in its rightness and wrongness? Is man in this activity also the symbolic animal? Since man as moral agent is present in all his activities it would seem likely that in his total decision-making and the administration of all his affairs he would be no less symbolic than he is in any one of them.\(^\text{21}\)

Thus, Niebuhr examined teleology and deontology as metaphors. Although these are not the only possible metaphors, they

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\(^{20}\) For excellent analyses of metaphors in legal thought, see the work of Milner Ball and Steven Winter, including MILNER S. BALL, LYING DOWN TOGETHER: LAW, METAPHOR,
AND THEOLOGY (1986); Steven L. Winter, *Bull Durham and the Uses of Theory*, 42 STAN. L.
REV. 699 (1990); and Steven L. Winter, *Transcendental Nonsense, Metaphoric Reasoning, and

\(^{21}\) THE RESPONSIBLE SELF, *supra* note 11, at 151-54. As products of their times, both
Niebuhrs referred to persons generically with masculine nouns and pronouns. Those
masculine references are retained in all quotations in this article. However, it may be
that the masculine terms were not truly generic; references for humanity can lead to
conceiving of human nature in masculine categories. *See infra* note 58.
are the two principal types of moral symbolism people in the Western philosophical tradition have relied upon in the past and still largely use today. More precisely, Niebuhr examined these two metaphors as synecdoches (the use of a part to explain the whole). People understand their moral existence by taking some part of their life as representative of the whole. "They have said the whole is like one of its parts; they have then analyzed the part and have interpreted the whole in light of that analysis."²²

For the teleologist, the dominant metaphor is "Man the maker." The teleologist emphasizes the human capacity to make or build things. The moral life is then judged in light of that activity. "What is man like in all his actions? The suggestion readily comes to him that he is like an artificer who constructs things according to an idea and for the sake of an end."²³ Thus, all moral action is purposive action; every action aims at some good and should be judged accordingly. Although teleologists differ widely over what are proper ends and the best means for reaching those ends, "the debates and decisions are carried on against the background of a common understanding of the nature of our personal existence. We are in all our working on selves—our own selves or our companions—technicians, artisans, craftsmen, artists."²⁴

For deontologists, the dominant metaphor is "Man the citizen." We live under the rule of law, and moral activity is more a matter of rules, duties, and principles than it is a matter of attaining some goal. Deontologists recognize that the analogy to craftsmanship is incomplete. When we make a thing, both the end and the means are relatively under our control. However, neither is completely at our disposal when we deal with ourselves as persons or as communities

[w]e come into being under the rules of family, neighborhood, and nation, subject to the regulation of our action by others. Against these rules we can and do rebel, yet find it necessary—morally necessary, that is—to consent to some laws and to give ourselves rules, or to administer our lives in accordance with some discipline.²⁵

Thus, for the deontologist, morality is necessarily conceived in terms of rules and obligations. Although deontologists disagree

²² Id. at 159.
²³ Id. at 48.
²⁴ Id. at 51.
²⁵ Id. at 53.
over which rules and principles should govern our conduct, they
agree that our conduct must be governed, and judged, by our
adherence to such rules.

In seeking to answer the moral question "what shall I do?,"
we typically ask certain preliminary questions. With different meta-
phors, different questions become important. For those who em-
ploy the "maker" metaphor, the first question is "what is my goal,
ideal, or purpose?" Under the "citizen" metaphor, the first ques-
tion is "what is the law, or what is my duty?"

Another way to view the difference between the two approach-
es is through the emphasis given to the terms "good" and "right." Teleology is concerned with the highest good, to which it subordi-
nates the right. Deontology is concerned with the right, to which
the good becomes secondary. A teleologist lawyer would be con-
cerned with being good or achieving good results. I suggest that it
is no coincidence that Luban is the editor of a book entitled The
Good Lawyer. A deontologist lawyer, on the other hand, would
consider "doing the right thing" as more important than being
good or producing a good result. Although Fried asked whether a
good lawyer could be a good person, he answered his question by
asserting, in essence, "yes, by doing the right thing." Also not
coincidentally, Fried is the author of a book entitled Right and
Wrong.

The two types of thinking about ethics discussed thus far are
not mutually exclusive; no one consistently thinks in terms of only
one of these metaphors. In fact, it is probably not possible to
think about morality in the Western tradition without using both
metaphors. Indeed, Luban has acknowledged some deontological
emphases in his thought; Freedman has criticized the excessive-
ly deontological approach of some of his critics (including former
Chief Justice Burger). And, as Niebuhr pointed out, both meta-
phors are synecdochic analogies—they necessarily express only a
part of the whole. However, most people seem to prefer one met-
aphor over the other.

Aristotle is the most important exponent of teleological think-
ing about ethics. In the first sentence of the Nicomachean Ethics he

27 CHARLES FRIED, RIGHT AND WRONG (1978).
28 David Luban, Freedom and Constraint in Legal Ethics: Some Midcourse Corrections to
29 MONROE H. FREEDMAN, LAWYERS' ETHICS IN AN ADVERSARY SYSTEM 46-47 (1975).
states: "[E]very action and choice seem to aim at some good; the
good, therefore, has been well defined as that at which all things
aim." A roster of teleologists would also include utilitarians such
as Bentham and Mill (although all teleologists are not utilitarian-
s).

Kant is the paradigmatic deontological thinker. Kant formulated
a fundamental moral command, the categorical imperative,
against which all individual actions are judged. Morality is a matter
of duty, which must be categorical rather than hypothetical. By
definition, the categorical imperative is binding on all rational
agents regardless of the consequences. In a famous example, Kant
stated that because lying is always wrong, it would be immoral to
lie to a potential murderer about the location of his victim, even
to save a life.

Not surprisingly, lawyers traditionally seem to prefer
deontological thinking about morality. Their professional vocabu-
lar'y speaks in terms of obligations, rights, and duties. Lawyers fre-
quently exhort other lawyers to do the "right thing" regardless of
the consequences. Indeed, many still quote the famous speech by
Lord Brougham in defense of Queen Caroline:

An advocate, by the sacred duty which he owes his client,
knows in the discharge of that office but one person in the
world, that client and none other. To save that client by all ex-
pedient means, to protect that client at all hazards and costs,
to all others, and among others to himself, is the highest and
most unquestioned of his duties; and he must not regard the
alarm, the suffering, the torment, the destruction which he
may bring upon any other. Nay, separating even the duties of a
patriot from those of an advocate, and casting them, if need
be, to the wind, he must go on reckless of the consequences, if
his fate it should unhappily be to involve his country in confu-
sion for his client's protection.

The teleological critique of legal ethics, however, has much
appeal for lay people because nonlawyers tend to see consequenc-
es as more important than process. Popular culture suggests that

30 ARISTOTLE, NICOMACHEAN ETHICS 3 (Martin Ostwald trans., 1962).
31 IMMANUEL KANT, FUNDAMENTAL PRINCIPLES OF THE METAPHYSIC OF MORALS 24-38
32 See SISSELLA BOK, LYING: MORAL CHOICE IN PUBLIC AND PRIVATE LIFE 41, 287
(1979).
33 Quoted in Deborah L. Rhode, An Adversarial Exchange on Adversarial Ethics: Text,
most people would rather see justice done than that all the proced- 
dural "technicalities" be observed.

III. H. RICHARD NIEBUHR'S
RESPONSIBILITY METAPHOR

H. Richard Niebuhr did not suggest that either the maker
metaphor or the citizen metaphor was closer to the truth than the
other. He emphasized that both metaphors can be helpful in
making complex ethical decisions. Yet he also insisted that they
could not provide answers to all our ethical dilemmas. We must
recognize that they are synecdochic analogies and thus express
something less than the whole truth.

[H]elpful as the fundamental images are which we employ in
understanding and directing ourselves they remain images and
hypotheses, not truthful copies of reality, and that something of
the real lies beyond the borders of the image; something more
and something different needs to be thought and done in our
quest for the truth about ourselves and in our quest for true
existence.34

In The Responsible Self, Niebuhr described "responsibility" as a
relatively new metaphor which he saw as entering our conscious-
ness alongside the older metaphors of teleology and deontology.
He did not propose the metaphor of responsibility as the key to
the truth or as the prescription for correct ethical thinking. Rath-
er, this metaphor is, like the other symbols, a synecdochic analogy.
Like the other metaphors, it seeks to understand our moral life
through an analysis of a part of our activity.

Niebuhr suggested the image of "answerer" as an alternative
to the images of maker and citizen. Under the metaphor of re-
sponsibility, we perceive all our actions as having the pattern of a
dialogue.

What is implicit in the idea of responsibility is the image of
man-the-answerer, man engaged in dialogue, man acting in
response to action upon him .... To be engaged in dialogue,
to answer questions addressed to us, to defend ourselves against
attacks, to reply to injunctions, to meet challenges—this is
common experience. And now we try to think of all our ac-
tions as having this character of being responses, answers, to

34 The Responsible Self, supra note 11, at 55-56.
Niebuhr's view of human selfhood naturally led him to the answerer metaphor. According to Niebuhr, the self is fundamentally social: "it is a being which not only knows itself in relation to other selves but exists as self only in that relation."\(^35\) In this, Niebuhr closely followed Martin Buber, who insisted that our very being centers in relationships with other people. As Buber put it, "All actual life is encounter."\(^37\) Responsibility assumes that relationships between people are more important than any ethical theory. We exist as selves only in relationships, and it is only in relationship with other people that we find meaning. The ethic of responsibility is grounded in that view of selfhood.

Niebuhr also pointed out that two situations in our practical life—social emergencies and personal suffering—have shown the inadequacy of the traditional metaphors and made the responsibility approach almost inevitable. For both individuals and societies, emergencies give evidence of the extent to which active, practical self-definition issues arise from response to challenge rather than from pursuit of an ideal or from adherence to some ultimate law. Even more so with personal suffering does the idea of responsibility suggest itself: "Because suffering is the exhibition of the presence in our existence of that which is not under our control, or of the intrusion into our self-legislating existence of an activity operating under another law than ours, it cannot be brought adequately within the spheres of teleological and deontological ethics ...."\(^38\) Moreover, it is in the response to suffering that people define themselves and take on character. "But it is not simply what has happened to them that has defined them; their responses to what has happened to them has been of even greater importance, and these responses have been shaped by their interpretations of what they suffered."\(^39\)

\(^{35}\) Id. at 56.

\(^{36}\) Id. at 71.

\(^{37}\) MARTIN BUBER, I AND THOU 62 (1970). Niebuhr acknowledged his debt to Buber on this point, but asserted that Coleridge and Feuerbach anticipated Buber. On the social nature of selfhood, Niebuhr was also influenced strongly by the social psychology of George Herbert Mead. THE RESPONSIBLE SELF, supra note 11, at 72.

\(^{38}\) THE RESPONSIBLE SELF, supra note 11, at 60.

\(^{39}\) Id. at 59. Interestingly, it seems that the situations of emergencies and suffering describe the most difficult, and most discussed, quandaries in legal ethics. To take only one example, consider the famous "buried bodies" case, People v. Belge, 372 N.Y.S.2d 798 (Onondaga County Ct. 1975), aff'd, 359 N.E.2d 377 (N.Y. 1976), discussed at some length by both FREEDMAN, supra note 29, at 1-8, and Luban, supra note 28, at 425-37.
For Niebuhr, the metaphor of responsibility is more than simply a recognition that our actions are responses to prior actions. Niebuhr described the idea of responsibility as possessing four elements. First, we recognize the responsive character of all action, including moral action. Our acts are never "out of the blue" or performed in lonely isolation; we always act in response to action upon us.

The second element is interpretation. For Niebuhr, our actions cannot be responsible if they consist of unthinking reactions. Responsibility implies a response in accordance with our interpretation of the actions we respond to. Thus, in responsibility, "we attempt to answer the question: "What shall I do?" by raising as the prior question: "What is going on?" or "What is being done to me?" rather than "What is my end?" or "What is my ultimate law?""  

The third element in the idea of responsibility—what Niebuhr referred to as accountability—follows from the analogy to dialogue. Our actions are never the end of anything; we act in expectation of a response to our actions, like a statement in dialogue, made in anticipation of a reply. Responsible action "looks forward as well as backward; it anticipates objections, confirmations, and corrections."  

Our action is always made in anticipation of responsive action by our partner in the dialogue.

Finally, responsibility implies the idea of community. Responsible action includes more than two people in a dialogue. Responsibility is not possible except as part of a continuing discourse or interaction in a community of shared understandings. Moreover, the encounter between two people always takes place in the presence of a third party, from which the two persons in dialogue are distinguished and to which they also respond. Niebuhr referred to this as the triadic nature of responsibility.

In summary, responsibility does not begin ethical reflection with an inquiry into goals or purposes, nor does it ask what are the first principles which govern our conduct. Rather, ethical inquiry begins by discerning what is going on. That is, recognizing that we must respond to some prior act, we must first determine what meaning we give to that action upon us. We then determine

40 The Responsible Self, supra note 11, at 63.
41 Id. at 64.
42 Id. at 65.
what responsive action would be most "fitting" in this continuing relationship and in this community.

The concept of fitting is crucial to the idea of responsibility. For Niebuhr the highest value is the fitting response, rather than the good or the right. "For the ethics of responsibility the fitting action, the one that fits into a total interaction as response and as anticipation of further response, is alone conducive to the good and alone is right."44

IV. REINHOLD NIEBUHR’S REALISM

Reinhold Niebuhr is best known as the proponent of "Christian realism" in ethical thought. He was always more political than his younger brother, in both his writings and activities. As Langdon Gilkey has observed, the major concern of Reinhold Niebuhr’s life was a passion for social justice; the major theme he puzzled over all his life was human nature and destiny, both individual and social, so as to understand better how the quest for justice might be carried on.46

In over twenty books and hundreds of articles, Reinhold Niebuhr wrote for over fifty years about a wide range of moral,

43 Niebuhr’s theory of value, like his view of selfhood, was thoroughly relational. See The Center of Value, in RADICAL MONOTHEISM AND WESTERN CULTURE, supra note 11, at 100-13 (1960). Niebuhr there attempts to distinguish his value theory from absolutist and objective theories on the one hand, and relativistic and subjectivistic theories on the other. He preferred the term "objective relatedness." However, Niebuhr also asserted:

I do not wish to maintain that there is value in the self’s relation to itself (or to its potential self) apart from its relation to others. The self’s growth in intelligence, kindness, integrity, etc. is doubtless good or these are goods, i.e., virtues; but their goodness is primarily their goodness for other selves; secondarily, they are good-for-the-self as social being dependent not only on approval but on service of others. It is highly questionable for me whether we can call the virtues good in the self apart from their goodness for other selves or for the community of selves. The theory of value I am seeking to present is through and through social; I know of no self-relatedness apart from other-relatedness or self-alienation apart from alienation from the other.

Id. at 105 n.l.

44 THE RESPONSIBLE SELF, supra note 11, at 61.

45 The standard biography of Niebuhr is RICHARD W. FOX, REINHOLD NIEBUHR: A BIOGRAPHY (1985). Other secondary works on Reinhold Niebuhr include JUNE BINGHAM, COURAGE TO CHANGE (1961); PAUL MERKLEY, REINHOLD NIEBUHR: A POLITICAL ACCOUNT (1975); REINHOLD NIEBUHR AND THE ISSUES OF OUR TIME, supra note 10; RONALD STONE, REINHOLD NIEBUHR: PROPHET TO POLITICIANS (1972); and THE LEGACY OF REINHOLD NIEBUHR (Nathan A. Scott, Jr. ed, 1974).

social, and political problems. Although his academic training was in theology and the major portion of his life was spent as a professor in a theological seminary, his thought focused on humanity rather than on God. Niebuhr revealed his central concern in the opening lines of the Gifford lectures, which he delivered at the University of Edinburgh in 1939: "Man has always been his most vexing problem. How shall he think of himself?"47 This concern with human nature and destiny was central to Niebuhr's ethical and political thought throughout his career.

After receiving a degree from Yale Divinity School, Niebuhr began his professional career as a pastor. In his "Intellectual Autobiography" he stated that the thirteen years he spent in Detroit determined his intellectual development more than any books he may have read.48 At that time Detroit was a rapidly expanding city, due largely to the growth of the automobile industry. From his experience in this urban parish, Niebuhr recognized the dehumanizing effect of the assembly line on automobile workers. According to Niebuhr, his experiences in Detroit revealed to him "the irrelevance of a mild moralistic idealism, which I had identified with the Christian faith, to the power realities of our modern technical society."49

Niebuhr was, however, still convinced that the Christian faith should have some application to the problems of social existence in the twentieth century. In 1928 he left Detroit and became Professor of Christian Social Ethics at Union Theological Seminary in New York City, where he remained until his retirement in 1960. Virtually all his writing from 1928 until his death in 1971 analyzed contemporary social and political problems from the standpoint of the Christian faith.

The central theme of Niebuhr's early career was his consistent criticism, from the left, of optimistic, idealistic liberalism. During the 1930s, Niebuhr was convinced that the entire capitalist world was nearing a point of total collapse; he had little patience with those liberals, both religious and secular, who clung to a utopian faith in the inevitability of progress and the perfectibility of humanity. With the threat of economic collapse at home and the rise of fascist dictators overseas, Niebuhr could not be content

49 Id. at 6.
with the naive optimism that he associated with liberalism. For a
time during the 1930s, Marxism furnished the ammunition for his
attacks on liberals. Although Niebuhr was never an uncritical
Marxist, during the 1930s he viewed the collectivism and
catastrophism of Marx as a more realistic approach to the world
crisis than a naive bourgeois idealism.\textsuperscript{50}

Niebuhr's first major work, \textit{Moral Man and Immoral Society},\textsuperscript{51}
was a frontal assault on those who believed that society could be
governed by either moral principles or rational persuasion.
Niebuhr argued that human nature was such that individuals were
always more protective of their own interests than the interests of
others. Therefore justice would never be possible if based strictly
on reason or morality. Moreover, the egoism of groups and collec-
tives was more pronounced than that of individuals, so that while
individuals were capable of considering interests other than their
own, groups by their very nature inevitably will seek their own
interests at the expense of others. He concluded that relations
between groups must always be political rather than ethical; that
is, they will be determined by the proportion of power which each
group possesses at least as much as by any rational and moral ap-
praisal of the comparative needs and claims of each group. The
predominant tone of \textit{Moral Man and Immoral Society} was polemical;
the polemics were directed at "liberals" who refused to recognize
that conflict and coercion were inevitable in humanity's social life.

While Niebuhr had become disillusioned with liberalism and
flirted for a time with Marxism, his theological perspective also
forced him to abandon liberal Christianity. But instead of moving
to the left as he had politically, he was undergoing a simultaneous
shift toward a more orthodox formulation of the Christian faith.
In 1939 he delivered the Gifford Lectures at the University of
Edinburgh, later published in two volumes as \textit{The Nature and Desti-
ny of Man}. The most noteworthy aspect of this work was Niebuhr's
revival of the concept of original sin. Sin did not entail an inborn
curse traceable to the literal fall of Adam and Eve, but referred
instead to Niebuhr's contention that evil is a persistent reality in
the human condition. The source of evil is not inadequate educa-
tion or social or economic arrangements, but is in human nature
itself. Persons are creatures of the natural world who have the
capacity to transcend in spirit the natural world. This dual condi-

\textsuperscript{50} See Fox, supra note 45, at 138-40.
\textsuperscript{51} Supra note 12.
tion gives rise to anxiety. In their anxiety, persons attempt to deny their contingent, creaturely status and rise above their finitude and limitations. In so doing, they falsely make themselves the center of existence, and subordinate other lives to their will. Thus, for Niebuhr evil results primarily from human pride or selfishness—that is, human beings have a tendency to seek their own interests before the interests of others.

The importance of this understanding of human nature to Niebuhr's thought cannot be overstated. His understanding of human pride and selfishness was fundamental to his political and ethical philosophy. This perspective on human nature led Niebuhr to insist that conflict, power, and coercion were inevitable in human social relations. A necessary part of Niebuhr's realism is the caution that political actors ignore this reality at their peril. At the same time, realism should also lead to a profound distrust of claims to moral superiority by any individual or group. Niebuhr's realism assumes a human disposition to hide self-interest behind a stated devotion to values transcending self-interest.

Because of his view of the capacities for evil in human nature, particularly in human collectives, Niebuhr contended that the Christian ethic of absolute love—which Niebuhr understood to be characterized by self-sacrifice for the needs of others—could not have immediate, practical value for governing society. While self-sacrifice might be a noble and worthy thing for an individual, Niebuhr maintained that there was a sharp distinction between the morality applicable to individuals and the morality of groups. Self-sacrifice could not be a norm of behavior for groups, because no

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52 Niebuhr's analysis of human anxiety was most indebted to Kierkegaard; it also hearkens back strongly to Augustine and Paul.

53 In Human Nature, supra note 12, at 185-86, Niebuhr asserts that pride is not the only form of sin. People deny their created nature in two different ways: denial of finiteness, which is pride, and denial of their freedom. Nevertheless, Niebuhr assumed that the primary and more dangerous form of sin is pride. Daphne Hampson has argued that Niebuhr's emphasis on sin as pride describes a peculiarly male temptation. Drawing upon recent feminist psychology, she suggests that women's basic problem is not self-centeredness, but rather a lack of a sense of self. She also concludes that "women's different view of the world and way of inter-relating may help to cure the human situation which Niebuhr depicts." Daphne Hampson, Reinhold Niebuhr on Sin: A Critique, in Reinhold Niebuhr and the Issues of Our Time, supra note 10, at 46.

54 Democratic leaders "must know the power of self-interest in human society without giving it moral justification. They must have this wisdom in order that they may beguile, deflect, harness, and restrain self-interest, individual and collective, for the sake of the community." REINHOLD NIEBUHR, THE CHILDREN OF LIGHT AND THE CHILDREN OF DARKNESS 41 (1944).
political leader had the right to surrender the rights and freedoms of anyone else. Niebuhr maintained that the norm for group behavior must be justice rather than love. Justice, unlike love, is not free from the corruptions of egoism, but instead attempts to use and deflect self-interest in order to maximize equality and freedom.

In summary, Reinhold Niebuhr’s realism insists that people have a universal tendency to seek their own interest at the expense of others, and that all human attempts to achieve justice are tainted by this undue self-regard of individuals. However, we are not hopelessly depraved and incapable of doing good or achieving some measure of justice. Indeed, we are called to a never-ending quest for justice. As noted by Richard W. Fox:

His prime intellectual contribution was to weld together the tragic sense of life and the quest for justice. His work is a constant challenge to those who would accentuate one and neglect the other. The tragic character of human existence placed firm limits on the quest for justice: human community could never be perfected, never attain the level of harmonious fellowship. But the quest for justice undermined any premature appeal to tragic limits, any self-serving celebration of the social status quo.55

Thus, Niebuhrian realism asserts that attempts to lead a moral life are inevitably compromised; although we are called upon to do good, we find it is impossible to act in the world without doing harm. Even when we sincerely wish to do right, we find that moral claims upon us are often contradictory or ambiguous. Nevertheless, moral ambiguity does not excuse us from making choices; we must choose, and we are morally responsible for our choices. To use a phrase Niebuhr employed to describe democracy, a Niebuhrian might say that ethical inquiry is a means of finding “proximate solutions for insoluble problems.”56

V. RESPONSIBILITY, REALISM, AND THE GOOD PERSON/GOOD LAWYER DEBATE

How, then, would we approach legal ethics and the lawyer’s duty to client with the aid of these Niebuhrian perspectives of responsibility and realism? The following sections will suggest ways

55 Fox, supra note 45, at 297.
56 Niebuhr, supra note 54, at 118.
in which these perspectives can contribute to both sides in the debate over the morality of the lawyer's professional role.

A. The "Fitting" Response and the Primacy of Relationships

If responsibility is our dominant metaphor, we would not think primarily in terms of goals and purposes, nor primarily of rights and duties. Under H. Richard Niebuhr's ethic of responsibility, ethical inquiry begins by asking "what is happening?" and then "what is the fitting response to what is happening?" Our primary ethical task is to discern the fitting response to actions upon us. Unlike the teleologist, we are not concerned primarily with achieving the good, and unlike the deontologist, we are not concerned primarily with doing the right. Rather, "the fitting action ... is alone conducive to the good and alone is right."\(^7\)

What does this perspective have to contribute to the debate? First, Niebuhr's ethic of responsibility assumes that relationships between persons are more important than purposes or principles.\(^8\) Second, as opposed to the relative abstractions of goals or duties, the concept of the fitting necessarily implies a greater focus on the context in which lawyers and clients make decisions.\(^9\) Responsibility emphasizes that the lawyer-client relationship is reciprocal. Both lawyer and client are moral agents, and their interaction has moral implications for the other.\(^60\) It is dangerous and misleading, therefore, to discuss a lawyer's amoral role. The ethic of responsibility affirms that we are always morally responsible for our actions; the client and the lawyer are always morally

\(^57\) THE RESPONSIBLE SELF, supra note 11, at 61.
\(^58\) This emphasis has much in common with feminist critique of law and the legal profession. See, e.g., Naomi R. Cahn, A Preliminary Feminist Critique of Legal Ethics, 4 GEO. J. LEGAL ETHICS 23 (1990); see also Luban, supra note 28, at 452 ("I do not regard duty as the primary concept of morality. Rather, I join with many contemporary feminist writers in insisting that the primary moral experience is that of responding to, or sympathizing with, the situation of particular other people."). See generally CAROL GILLIGAN, IN A DIFFERENT VOICE (1982).
\(^59\) David Wilkins has recently argued for greater contextuality in legal ethics. David B. Wilkins, Legal Realism for Lawyers, 104 HARV. L. REV. 469 (1990) (suggesting, in particular, more context-based ethical norms in tax practice). See also Cahn, supra note 58 (suggesting a context-based feminist alternative to traditional male models of legal ethics).
\(^60\) Shaffer suggests that lawyers should ask such questions as, "What am I up to in my client's life? How is my client changing because of me? How am I changing because of him—because of what I think he wants me to do?" THOMAS L. SHAFFER, AMERICAN LEGAL ETHICS xxiii (1985).
responsible to each other and with each other. Thus, lawyers should never claim that they are not accountable for their clients' actions; there cannot be an amoral professional role. On the contrary, the ethic of responsibility asserts that we are called to be moral within whatever role or context we find ourselves. I realize that those who embrace and defend an amoral professional role are not suggesting that lawyers have no moral responsibility. Nevertheless, the phrase "amoral role" is unfortunate; and to the extent it suggests that the practicing lawyer need not consider the demands of morality in making professional decisions, it is also dangerous.

At the same time, mutual responsibility between lawyer and client leaves no room for paternalism by the lawyer. If lawyer and client are mutually responsible as ethical agents, it will not do for the lawyer to make decisions on behalf of the client in the name of acting in the "client's best interests." The dangers of this form of paternalism may be minimized for lawyers who see themselves as mutually responsible with their clients.

In its focus on context, the ethic of responsibility has something to say to both sides in the debate over the morality of client loyalty. With their reliance on categorical rules which apply in all circumstances, the defenders often emphasize that client loyalty is a duty regardless of the consequences. Too often, however, the duty of client loyalty serves as a convenient excuse for assisting in client wrongdoing. A responsibility ethic would assert that zealous advocacy may be appropriate (fitting) in some contexts, but highly inappropriate in others. Freedman, in particular, takes a duty which may be appropriate in one context—the "suffering" client such as the criminal defendant—and applies it to all representation.  

The ethic of responsibility would also take issue with those defenders of client loyalty who claim autonomy to be an overriding principle. The ethic of responsibility asserts that no one is truly autonomous; we exist only in relationships with others. Even if we want autonomy for our clients or for ourselves, moral isolation is simply not possible. Lawyers and clients always make de-

61 I should add that I agree with Freedman that, morally speaking, the choice of client is a much more significant decision than the choice of tactics in representing a client. Freedman emphasizes that lawyers should be held morally accountable for their decisions to represent certain clients. The responsibility approach I am describing cannot agree with Fried and Pepper, who assert a moral obligation to represent anyone who can pay the lawyer's fee.

62 In describing the "triadic" structure of all relationships, Niebuhr emphasized that
cisions in the context of, and are responsible to, the wider community.

Luban and Simon have made similar critiques of the defenders of client loyalty. Simon’s proposed “discretionary” approach emphasizes that ethical decisions necessarily depend on context. Luban has strongly criticized the elevation of individual autonomy to an overriding principle. Nevertheless, a focus on context may also be instructive to those who are critical of the duty of client loyalty, and suggests some viability for role-differentiated behavior. A frequent argument of some critics of client loyalty is that lawyers often do things in their role as lawyers that “ordinary” people would not do. A common example is humiliating a truthful witness on cross-examination. The argument is that if it is wrong to humiliate a person outside the courtroom, then it is always wrong to engage in such activity in the courtroom. Or, since a “good” person would not deliberately withhold the truth from someone else, it is always wrong for a lawyer to do so in representing a client. This type of argument is profoundly acontextual. Responsibility ethics resists such generalization; it recognizes that conduct that is fitting in one context may not be fitting in another.

The idea of judging lawyers by standards of “ordinary morality” is appealing, but limited. It is appealing to the extent it recognizes that lawyers may not evade moral responsibility by refuge in their special role. It is limited, however, because “ordinary morality” is a concept with questionable meaning. Niebuhr’s ethic of responsibility recognizes the complexity of our moral world. Choice is rarely between good and evil; we must usually choose the two partners in the dialogue of interaction are responsible not just to each other, but to some third person or group of persons. In expounding upon Niebuhr’s triadic view of relationships, Professor Shaffer has written:

In this way our moral life, which is fundamentally a life in relationships, exists in a community and in a culture; and, in this way, our moral life opens onto a non-hierarchical stairway—a Jacob’s ladder—that begins by transcending the relationship and ends by transcending the culture. You can see more as you go up the Jacob’s ladder: from the people in the classroom, to the people in the school, to the people in the university, to the people in the country, to the people in the world, to creation itself.


63 “I deny... that individual autonomy is preferred over right or good conduct... You must remember that some things autonomously done are not morally right.” David Luban, The Lysistratian Prerogative: A Response to Stephen Pepper, 1986 AM. B. FOUND. RES. J. 637, 639.
between relative goods and relative evils. Moreover, moral choice for lawyers is complicated by the fact that lawyers act on behalf of someone else.64 “Ordinary morality” simply does not supply a ready answer to difficult questions of legal ethics.

B. Realistic Interpretation

If the first question in an ethic of responsibility is “what is happening?,” ethical action must begin with seeing and telling the truth about what is really going on in the lawyer-client relationship. Interpretation requires an honest and critical appraisal of lawyer and client motivations. At this point, Reinhold Niebuhr’s realism is instructive.65

A realistic approach to moral issues attempts to discern the self-interest at work in all the actors in the situation. Additionally, from the perspective of realism, any claim of moral “goodness” must be met with skepticism. In their interpretations of lawyer-client relations, both the defenders and the critics of the ethic of client loyalty are insufficiently realistic in the Niebuhrian sense, although in opposite ways. The critics are insufficiently sensitive to the ways lawyers’ self-interest affects their relations with their clients. The defenders of client loyalty, with their emphasis on client autonomy, tend to ignore the fact that clients are also selfish; sometimes clients employ lawyers to do bad things to other people.

As noted, the critics of client loyalty are insufficiently realistic in their analysis of lawyer’s motives. For their part, Luban and Simon are acutely aware of the possibility of client wrongdoing. Their prescription for the profession is to free the individual lawyer from a categorical duty of loyalty to clients. They assume that lawyers are more likely to do justice if their clients are not permitted to lead them astray. Simon admits that he “simply takes for granted that lawyers are substantially motivated to act ethically and that they have a capacity for reasonably good normative judgment.”66

64 Thus, the fundamental problem in the “seek justice” prescriptions of Luban and Simon is that they put too much distance between lawyer and client and rely too heavily on the lawyer’s values rather than the client’s. See Cahn, supra note 58, at 33.


66 Simon, supra note 5, at 1144.
A realistic interpretation of the lawyer’s self-interest, however, belies the implication that lawyers’ principal ethical problems are clients who wish to do bad things. We must recognize the temptation of lawyers to sell clients short in order to further the lawyer’s self-interest. Specifically, I have in mind, in Luban’s words, “the fact many lawyers are tardy, sloppy, inaccurate, and incompetent." In the preface to *Lawyers and Justice*, Luban recognized that these “competence” issues are of more chronic concern in legal ethics than lawyers’ commitment to justice. He did not discuss these issues in his book, however, because they are not “philosophical issues . . . . I simply do not have much to say about the fact that some lawyers are not very good at their trade, except that it is a shame.”

I agree that it is a shame. A realistic perspective on the lawyer’s self-interest, however, reveals that lawyer competence is a moral issue. Realistic interpretation recognizes that lawyer self-interest constantly pressures the lawyer to prefer his or her own interests over those of a client. Lawyer self-interest can taint relations with clients in many ways, such as, for example: “padding” timesheets for clients who are billed by the hour; forcing clients to settle a lawsuit on unfavorable terms because the lawyer is unprepared or afraid to go to trial, or the reverse, forcing a truly reluctant client to reject a settlement offer and go to trial for the lawyer’s own monetary or other selfish reasons; or perhaps most commonly, simply ignoring a client’s business and neglecting to keep a client informed of the status of her case.

A professional ethic that emphasizes client loyalty may serve as something of an antidote to lawyers taking advantage of clients in these ways.

On the other hand, defenders of client loyalty do not always have a realistic view of clients; realism should prompt lawyers to

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67 LUBAN, supra note 5, at xxv.
68 Id.
70 Ted Schneyer, *Some Sympathy for the Hired Gun*, 41 J. LEGAL EDUC. 11 (1991). The duty of client loyalty can also help to reinforce lawyers who represent those clients who are the least powerful. It is the lawyer for the victimized or unpopular client who is under the most pressure to be less zealous in her advocacy. The professional duty of zealous advocacy may help those lawyers whose self-interest might otherwise cause them to sell their relatively powerless clients short.
focus on the motives and actions of their clients. Monroe Freedman's emphasis on client autonomy, in particular, takes as the paradigmatic client the relatively helpless, suffering individual who is being victimized by the machinery of the state or by a large corporation.71

A realistic interpretation of clients reveals many clients who do not fit Freedman's paradigm. It is entirely possible to recognize the individual client as the "noblest work of God",72 while remaining realistic about why a particular client desires the services of a lawyer.73 Consider the following description of the reasons clients seek the services of a lawyer (contained in a response by Edward Dauer and Arthur Leff to Fried's seminal article on "the lawyer as friend"):

The client comes to the lawyer to be aided when he feels he is being treated, or wishes to treat someone else, not as a whole other person, but (at least in part) as a threat or a hindrance to the client's satisfaction in life. The client has fallen, or wishes to thrust someone else, into the impersonal hands of a just and angry bureaucracy. When one desires help in those processes whereby and wherein people are treated as means and not as ends, then one comes to lawyers, to us. Thus, if you feel the need for a trope to express what a lawyer largely is, perhaps this will do: A lawyer is a person who on behalf of some people treats other people the way bureaucracies treat all people—as nonpeople.74

Although perhaps exaggerated, the Dauer and Leff description of why clients seek the services of lawyers is "realistic" in the Niebuhrrian sense. This view of law practice assumes that clients typically seek the services of a lawyer because they are in a situation of conflict, and they want a lawyer to seek their interests at the expense of someone else; if they were relating harmoniously,
they would not need lawyers. At the very least, this perspective avoids romanticism of all clients as innocent victims.

To be sure, some clients are victims. Realism, however, prompts us to remember that clients can be victimizers too. Without a realistic interpretation of client actions and motivations, the charge by Luban, Simon and other critics that client loyalty leads to participation in client wrongs may often be accurate.

In addition, realistic interpretation includes a critical examination of professional rules. Some defenders of the ethic of client loyalty assert that compliance with the rules is alone sufficient to insure that the lawyer's conduct is moral. As many commentators have observed, however, many of the rules reflect lawyer self-interest; they serve primarily to protect lawyers. It is extremely dangerous for lawyers to assume that any conduct not prohibited by the rules of ethics is morally justifiable.

Finally, realism is a helpful perspective in the recent revival of "professionalism." One problem with the term is that it seems to mean almost anything, and therefore nothing. Nevertheless, one common theme in the calls for a revival of professionalism is a suggestion that lawyers should serve more than their narrow self-interest. Realism would certainly echo that call.

The calls for professionalism are not always clear, however, as to what obligations the lawyer has beyond self-interest. Lawyers are told that their primary duty is to zealously represent their clients while being "ever conscious of the broader duty to the judicial system." Obviously, those duties will sometimes come into conflict. Exhorting lawyers to serve clients, the court system, and the

75 See, e.g., Michael Davis, Professionalism Means Putting Your Profession First, 2 GEO. J. LEGAL ETHICS 341 (1988).
77 To choose only one shameful example, the ABA Model Rules of Professional Conduct prohibit disclosure of client confidences in almost all circumstances; they allow, but do not require, disclosure even to protect human life. Rule 1.6. However, the same rule allows a lawyer always to disclose a confidence in order to collect a fee from a client.
79 In Dondi Properties Corp. v. Commerce Sav. and Loan Ass'n., 121 F.R.D. 284, 287 (N.D. Tex. 1988), the United States District Court for the Northern District of Texas adopted standards of practice to be observed by attorneys appearing in civil actions.
society itself all at the same time will not make those inherent conflicts disappear. Realism would recognize the conflict, and would not expect a simple reconciliation of the conflict in concrete situations.

Part of the motivation behind the professionalism movement is to improve the image of the profession. Realism would suggest that the problem is more than a matter of public relations, of letting the public know what great work lawyers do; realism suggests we acknowledge that some criticisms of the profession are valid. The proper stance of the legal profession in its ethical reflection is self-criticism and repentance, not pride and boastfulness.

VI. CONCLUSION

In describing responsibility and realism, I used the term "perspectives" deliberately—they suggest ways of looking at the issues. They are not new ethical models offered to answer the difficult questions concerning the lawyer's loyalty to clients. Models which answer all the questions are a substitute for critical thought; there are neither simple nor universal answers to lawyers' ethical dilemmas, and it is misleading and dangerous to suggest otherwise.

The most important thrust of both perspectives is a call for lawyers to think more critically about ethics. The concept of the "fitting response" suggests that lawyers must think critically about ethics on a case-by-case basis. At the same time, realism cautions us not to trust wholly in our own resolution of ethical dilemmas.

Undoubtedly, complexity and paradox and the concept of the "fitting" may be unsettling to some people; some may see in the focus on context a dangerous tendency toward moral relativism. For both Niebuhrs, however, the greatest moral danger was in absolutizing the relative, rather than relativizing absolutes. Recognizing the contingent nature of all our moral precepts and strivings does not necessarily lead to moral cynicism; responsibility recognizes that there are better and worse resolutions of ethical

80 Behind some calls for professionalism is a nostalgic assumption that there was a time when lawyers were professional, and all we need to do is to remind lawyers of that time and return to it. For a devastating critique of that notion, see Monroe Freedman, A Brief 'Professional' History, LEGAL TIMES, December 17, 1990, at 22, 24.

81 Dialogue (and this time I mean the word literally) is crucial. The profession and the public would be better served with more discussion of ethical problems in law practice.
issues. On the other hand, certainty in moral decision-making usually leads to self-righteousness. Among lawyers, self-righteousness is at least as great a danger as outright moral cynicism.

Recognition of complexity and paradox in legal ethics can in fact help lawyers in their approach to ethical problems. By laying bare some of our rationalizations, platitudes, and oversimplifications, the perspectives of responsibility and realism can aid our reflection and decision-making. They can contribute to the effectiveness of our action by clarifying our understanding of it. In a favorite phrase of H. Richard Niebuhr, these perspectives can keep us from "missing the mark."82

Although these perspectives do not supply ready answers to ethical problems, taken together they do suggest that two attitudes are crucial in making difficult ethical choices. Responsibility with its focus on relationships suggests the importance of compassion and empathy for individuals; realism should steer us away from self-righteousness and toward humility. More compassion and humility would serve lawyers better than anything I can imagine. This view of "goodness," of course, is hardly novel. "He has told you, O mortal, what is good; and what does the Lord require of you but to do justice, and to love kindness, and to walk humbly with your God?"83

82 See James Gustafson, Introduction to THE RESPONSIBLE SELF, supra note 11, at 16.
83 Micah 6:8.