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MULTIDIMENSIONAL LAWYERING AND PROFESSIONAL RESPONSIBILITY

Margaret Chon†

I. IDENTITY AND MULTIPLICITY

The publication of the following three articles creates an opportunity to consider the multiple roles of the lawyer and what I will call multidimensional lawyering — lawyering that accounts for the ways in which these sometimes colliding, sometimes intersecting, sometimes diverging roles expand our vision of lawyers' ethics. One of the peculiarities of the field of law known variously as "professional responsibility," "the legal profession" or "professional ethics" is its excessive focus on the lawyer's role in relation to the client. Lawyers like me who teach professional responsibility tend to think about the lawyer-client relationship as the primary if not *the* organizing principle of this field. This client-focused approach to ethics is apparent, for example, in the casebooks, problem books and treatises in this area. After the obligatory opening chapters on the nature of the legal profession, the books invariably turn next to aspects of the lawyer-client relationship, which dominate the texts.¹ Only then are multiple role

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1. The interested reader can verify this statement easily by glancing over the table of contents of the following casebooks: STEVEN GILLERS, *REGULATION OF LAWYERS: PROBLEMS OF LAW AND ETHICS* (3d ed. 1992); MORTIMER D. SCHWARTZ ET. AL., *PROBLEMS IN LEGAL ETHICS* (3d ed. 1992); THOMAS D. MORGAN & RONALD D. ROTUNDA, *PROFESSIONAL RESPONSIBILITY: PROBLEMS AND MATERIALS* (5th ed. 1991); GEOFFREY C. HAZARD, JR. & SUSAN P. KONIAK, *THE LAW AND ETHICS OF LAWYERING* (1990); ANDREW L. KAUFMAN, *PROBLEMS IN PROFESSIONAL RESPONSIBILITY* (3d ed. 1989); and JOHN F. SUTTON & JOHN S. DZIENKOWSKI, *CASES AND MATERIALS ON THE PROFESSIONAL RESPONSIBILITY OF LAWYERS* (1989); ROBERT H. ARONSON ET. AL., *CASES AND MATERIALS ON PROFESSIONAL RESPONSIBILITY* (1985).

Even humanistic, as opposed to instrumentalist, approaches to this area are permeated by this client-centered perspective. See, e.g., Thomas L. Shaffer, *Legal Ethics and the Good Client*, 36 CATH. U. L. REV. 319 (1987) ("The distinctive feature of ethics in a profession is that it speaks to the unequal encounter of two moral persons. Legal ethics

topics such as the "three hardest questions" treated.²

Such consensus among diverse academics does not necessarily reflect a collective absence of imagination. Without clients, presumably lawyers would not exist. It is only through the exploration of the boundaries between ourselves and our clients (the "other") that we can begin to define our core selves. Thus the parameters of the lawyer-client relationship are of central importance to the question of our identities as lawyers.

Nonetheless, this singular focus has certain consequences. One of them is that we tend to undervalue or perhaps even ignore the other methods available to us of constructing ethical identities. Recognizing this shortcoming, some legal ethicists have endeavored to turn the lawyer's focus inward, to examine self-identity as a moral touchstone to lawyer-role.³ A prototypical exercise of this sort is to examine the motivations of Sir Thomas More, who is claimed to have possessed "an adamant sense of his own self"⁴ that transcended his social role as a lawyer. This analysis presumes that a self is somehow natural and good whereas a role is somehow artificial and potentially corrupting.⁵ But a self is as constructed, and is in that sense as artificial, as a role. The personae that we assume as lawyers are as inevitable as our other social masks (teacher masks, parent masks and so on); the masks we choose are as revealing as they are confining of self. A core (if contingent and partial) self is constantly performed through an agora of roles. This core self also expresses an ethical self because each performance embodies ethical dimensions, whether or not we ac-

. . . often becomes the study of what is good — not for me, but for this other person, over whom I have power. . . . Legal ethics is thinking about my client's morals, but I am the one who is thinking.").

2. See Monroe H. Freedman, *Professional Responsibility of the Criminal Defense Lawyer: The Three Hardest Questions*, 64 MICH. L. REV. 1469 (1966). One of the few areas of multiple-role lawyering that casebooks consistently address is the problem of the perjuring client as an example of an ethical clash between an attorney's simultaneous duties of candor toward the court and toward the client as her advocate.

3. See generally DAVID LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* (1988); ELIZABETH DVORKIN ET AL., *BECOMING A LAWYER: A HUMANISTIC PERSPECTIVE ON LEGAL EDUCATION AND PROFESSIONALISM* (1981).

4. ROBERT BOLT, *A MAN FOR ALL SEASONS* xi (1962) quoted in DVORKIN ET AL., *supra* note 3, at 15.

5. See, e.g., Thomas Shaffer, *Christian Theories of Professional Responsibility*, 48 S. CAL. L. REV. 721, 731 (1975) in DVORKIN, ET AL., *supra* note 3, at 5 ("If I close my eyes and imagine a lawyer, I expose myself to a role. If I close my eyes and see me, I expose myself to an identity. And if I close my eyes and see myself as a lawyer, I expose myself to the conflict between my role and my identity.").

knowledge much less claim responsibility for them.⁶

Role-playing — in the sense of us playing the roles rather than the roles playing us — is the process of expressing our identities, including our ethical identities. A corollary is that there cannot be a single lawyer role. Professional identity is discovered or made not only in response to our clients, but also through our reactions to (among other things) other attorneys, the legal profession in general, the justice system, and to the larger society in which we live — and through their reactions to us.⁷ The preamble to the Model Rules of Professional Conduct reminds us, moreover, of the inevitability of role friction:

[v]irtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system AND TO THE LAWYER'S OWN INTEREST IN REMAINING AN UPRIGHT PERSON WHILE EARNING A SATISFACTORY LIVING. . . . Within the framework of these Rules, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules.⁸

No less than the search for an authentic ethical professional self — a fed, housed and clothed self that tries to do the right thing — is at stake.⁹

6. At bottom, I doubt that my position is much different from Professor David Luban's assertion that there is a difference between a "role morality" and the "morality of persons *qua* persons." LUBAN, *supra* note 3, at 127. See generally *id.* at 104-27. Both Luban and I would not want lawyers to take refuge in their role as zealous advocate for their clients as a means to evade tough ethical decisions. Perhaps I resist his terminology because it allows the precise moral reduction that he criticizes: separating the person from the role allows that person more easily to evade moral responsibility for his or her actions by blaming those actions on the requirements of the role. I am positing a person who is morally inseparable from a role, so as to force the role itself to be more ethically responsive.

7. Professor Derrick A. Bell, Jr. has explored, for example, the different roles a lawyer plays in a class action lawsuit, which challenges the simple model of an attorney-client relationship. Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470 (1976).

8. MODEL RULES OF PROFESSIONAL CONDUCT pmb. ¶ 8 (1980) [hereinafter MODEL RULES] (emphasis added).

9. The preamble reminds me also of a description of Mikhail Bakhtin's philosophical explorations:

Emphasizing how both individuals and their historical situation were unique and could not be repeated ("What can be accomplished by me cannot be accomplished by anyone else, ever"), he argued that moral responsibility was threatened by all forms of "theoretism" — by which he meant . . . a kind of

What each of the following articles does is to posit the identity of the lawyer not just as client representative, but in the multiple roles of respondent to other people, entities and underlying societal values. Professor Vestal questions the keystone of the lawyer-client relationship — the duty of confidentiality — through an examination of an academic lawyer's role in the larger world to further human knowledge through academic discourse. In proposing "The Twelve Commandments of Professional Behavior," Professor Pertnoy challenges another core concept in the lawyer-client relationship — the duty of loyalty via zealous representation, taken to an extreme by "hardball" litigators — through attention to lawyers' duty to other lawyers. In addition to analyzing their ethical impact on attorney-client relationships, Professors Gaetke and Welling examine the effect of money laundering laws on the attorney's duty toward the court and the criminal justice system. Each article contributes to the formation of our selves qua lawyers by showing how we can and do respond to foils other than clients.

II. SECRETS AND KNOWLEDGE

Professor Vestal's article fits within the growing legal academic literature of narrative jurisprudence. Developed within the theoretical movements of law and literature, feminist legal theory and critical race theory, this rhetorical method reduces the gap between the public self and the private self by allowing the storyteller to relate particular and often personal circumstances to a larger theoretical framework.¹⁰ More often than not, the author intends to disrupt received legal doctrine, challenging the hidden assumptions of given theoretical constructs with actual incidents of lived experience. To use an analogy borrowed from the writer Toni Morrison, these narratives may shift our typical focus on what is floating inside a fishbowl

thinking that always understands events as instances of universal rules and principles. He insisted that, although rules can be helpful, we develop as moral beings by increasing our responsiveness to the irreducible particularities of each case.

Aileen Kelly, *Revealing Bakhtin*, N.Y. REV. OF BOOKS, Sept. 24, 1992, at 44, 46. Cf. THOMAS C. GREY, WHAT GOOD IS LEGAL PRAGMATISM?, in PRAGMATISM IN LAW & SOCIETY 9 (Michael Brint and William Weaver eds., 1991).

10. See, e.g., Pedagogy of Narrative: A Symposium, 40 J. Legal Educ. 1 & 2 (March/June 1990) (whole issue devoted to articles on narrative jurisprudence); Symposium, *Legal Storytelling*, 87 Mich. L. Rev. 2073 (1989) (devoting entire issue to storytelling).

to the parameters of the glass that encloses it.¹¹

Professor Vestal tells us how he unintentionally and somewhat unwillingly became embroiled in a dispute with a former client about the proper limits of his duty of confidentiality. In reaching his ultimate ethical position on this issue, he is forced to grapple with his current identity as an academic lawyer in relation to his former identity as a practicing lawyer. In this interplay of roles, he reaches insights about the lawyer's duty of confidentiality that are only marginally addressed in the standard professional responsibility texts.

He writes:

the protection of confidences and secrets is more a real concern for practitioners than for academics. Practitioners deal daily with substantial, real-world consequences of failed secrecy in ways that most academics do not. . . . [B]ecause practitioners deal with the real-world consequences of failed secrecy, for them there is little to be gained from carefully parsing the rules to allow the freest flow of information.¹²

Despite his sympathy for the concerns of practicing lawyers, however, he finds that the role of academic lawyers necessarily challenges these concerns. Forced to articulate his ethical position, he sets outer limits on the duty of confidentiality that are potentially much broader than the simple "public domain" exception recognized by courts, bar ethics committees and treatise writers. He would define these outer limits by reference to principles of academic freedom and the political speech essence of the First Amendment free speech guarantee, rather than by reference to the former client's self-serving and questionable need for absolute secrecy.¹³

While absolute confidentiality is not the only possible default setting,¹⁴ the First Amendment is itself an arbitrary delimiter of confi-

11. TONI MORRISON, *PLAYING IN THE DARK: WHITENESS AND THE LITERARY IMAGINATION* 17 (1992).

12. Allan W. Vestal, *Former Client Censorship of Academic Scholarship*, 43 SYRACUSE L. REV. 1247, 1261 (1992).

13. As Professor Vestal explains, the Model Code of Professional Responsibility (1980) [hereinafter Model Code] currently places ethical limits on lawyers' expression of unprivileged knowledge gained from client representation when the information is "embarrassing" or "detrimental," DR 4-101(A), or "disadvantageous," EC 4-5, to the client. Model Rule 1.6(a) is silent with respect to the scope of unprivileged information to be kept confidential; however, Rule 1.8(b) prohibits a lawyer from using information "to the disadvantage of the client," and Rule 1.9(c)(1) specifically lifts the duty of confidentiality with respect to information that "has become generally known."

14. As in the exception of disclosure of confidences to prevent imminent harm, the

dentiality. Echoing the implosion of the private/public distinction amplified by the rhetorical device of storytelling, constitutional law scholars question whether the state action requirement "is a logical stopping place"¹⁵ for invoking federal constitutional protections including those of the first amendment. Similarly, a growing number of intellectual property scholars claim that the state action requirement in a first amendment defense to infringement is obsolescent in the context of our late-twentieth century form of capitalism, which is characterized by the exponential private concentration of communication and information resources.¹⁶ Professor Vestal asks: "Experience is the crux of this issue: are the lawyer's experiences working for the client somehow the property of the client, or are they the property of the lawyer?"¹⁷ This is not a question, however, to which an answer can be buttressed solely by reference to ethical codes, or even traditional first amendment jurisprudence, alone. The issue of the correct legal limits to an individual's expression of her knowledge and experience is one that cuts across many doctrinal categories, and has caused anguish to potential defendants other than Professor Vestal. He shares, for example, the same dilemmas as the rapper Luther Campbell (a/k/a "Luke Skyywalker," a stage name that formed the basis of

general rule of confidentiality represents a number of different and competing concerns, which we may or may not want to honor. The Model Rules, for example, do not recognize a duty to disclose a client's intent to engage in criminal activity absent the lawyer's belief that there may be imminent harm — and even then the lawyer is not required to disclose that activity. Professor Ray Patterson has posited that this ethical formulation may be based on the absence of a legal duty of the client himself or herself to disclose intent to commit a crime — a justification that he criticizes as being too facile. L. Ray Patterson, *An Inquiry into the Nature of Legal Ethics: The Relevance and Role of the Client*, 1 GEO. J. LEGAL ETHICS 43, 48 (1987).

15. *Private Power and the Constitution*, MULTIPLE CULTURES AND THE LAW: DO WE HAVE A LEGAL CANON? (Ass'n of Am. L. Schs. Annual Meeting Program, San Francisco, Cal.), Jan. 5, 1993, at 31; see also Neil Gotanda, *A Critique of "Our Constitution is Color-Blind"*, 44 STAN. L. REV. 1, 7-16 (1991).

16. See, e.g., John Markoff, "Microsoft and 2 Cable Giants Close to an Alliance," *New York Times*, June 13, 1993, at 1, 31; Jon Wiener, "Murdered Ink," *The Nation*, May 31, 1993, at 743 (describing the Walt Disney Company's successful efforts to "kill" books); Rosemary Coombe, *Objects of Property and Subjects of Politics: Intellectual Property Laws and Democratic Dialogue*, 69 TEX. L. REV. 1853, 1867-69 (1991) (While Prof. Coombe's argument cannot be encapsulated into a parenthetical, and requires some familiarity with postmodernism and semiotic theory, at least one quotation may assist the reader: "If what is quintessentially human is the capacity to make meaning, challenge meaning, and transform meaning, then we strip ourselves of our humanity through overzealous application and continuous expansion of intellectual property protections." *Id.* at 1879.).

17. Vestal, *supra* note 12, at 1287.

a trademark infringement suit),¹⁸ the proponents and opponents of the Strategic Defense Initiative (whose use of the term "Star Wars" to describe this military project was also a basis for a trademark infringement suit),¹⁹ and fanzines that occasionally depict Luke Skywalker and Han Solo in a sexual relationship²⁰ — all of whom at different times and in different ways have earned the ire of Lucasfilm Ltd., the corporate entity that created the movie "Star Wars" and its characters. The full answer to Professor Vestal's question occupies a number of different legal niches, all of which cumulatively define the 'proper' sphere of individual intellectual freedom.²¹

The characters in former Czechoslovakian president Vaclav Havel's plays often repeat word-for-word sentences or phrases that other characters previously had uttered. This device, while off-putting at first, teaches the viewer that human social reality is constructed through language and other signs — specifically through the "constant, ceaseless creation and exchange of meaning"²² among individuals. That is, we all should be, and in fact we all are, information

18. *Lucasfilm Ltd. v. Campbell*, No. 90-1511 (S.D. Cal. filed Mar. 27, 1990). Like the majority of filed cases, this case was settled; therefore law professors like me have little to trace or torture. This raises the question of the incompleteness of the data or evidence lawyers use to support their arguments. While decided cases have precedential value (useful to a practicing lawyer), undecided cases might tell us more about economic and political power and its shaping of the law (useful to an academic lawyer).

The Supreme Court recently granted certiorari in a copyright infringement case involving *Campbell*; the case raises analogous issues of an artist's freedom of expression. See *Acuff-Rose Music, Inc. v. Campbell*, 754 F. Supp. 1150 (M.D. Tenn.), *appeal dismissed*, 929 F.2d 700 (6th Cir. 1991), *and rev'd*, 972 F.2d 1429 (6th Cir. 1992), *cert. granted in part*, 113 S. Ct. 1642 (1993).

19. *Lucasfilm Ltd. v. High Frontier*, 622 F. Supp. 931 (D.D.C. 1985).

20. Henry Jenkins III, *Star Trek Rerun, Reread, Rewritten: Fan Writing as Textual Poaching*, in *FILM, FEMINISM AND SCIENCE FICTION* 170, 177 (Constance Penley et al., eds. 1991). Fanzines are fan magazines for various pop-cultural works. Examples that Jenkins explores are written mostly by and for heterosexual middle-class female science fiction fans, and revolve around a particular television series or movie. See generally *id.*

21. In my own work in the intellectual property field, for example, I am contextualizing the patent and copyright clause of the Constitution within some of the assumptions and values of the Enlightenment as against postmodernity, to argue that promoting the free flow and exchange of knowledge should be a greater constitutional value than that of providing incentives to individual authors and inventors. See Margaret Chon, *Postmodern "Progress": Reconsidering the Copyright and Patent Power* (forthcoming in 43 *DEPAUL L. REV.* (1993)); see also Margaret Chon, *Disembodied Marks: Consumer Confusion over Source of Origin of Trademarks* (1992) (unpublished manuscript describing increased cultural use of trademarks, on file with the author).

22. Coombe, *supra* note 16, at 1877 n.140 (quoting MICHAEL HOLQUIST, *DIALOGISM: BAKHTIN AND HIS WORLD* 41 (1990) (paraphrasing Bakhtin)).

poachers.²³ All of us plagiarize; none of us is truly original much as we (especially academics) may aspire to that hubris.²⁴ Professor Vestal's former client objected to his poaching, but in fact the knowledge he gained through representing his client is information that "belongs" truly neither to the client nor to the lawyer. If anything, it belongs to a commons of information from which we all draw to create our shared culture.

Ironically, the narrower duty of confidentiality embodied in the attorney-client privilege is frequently justified on systemic grounds rather than by reference to the preferences of individual clients. The privilege is supposed to further the policy of encouraging full and frank disclosure between attorneys and clients.²⁵ Against this traditional justification for secrecy, Professor Vestal counterbalances our perhaps more essential systemic need for the meaning-making process of social construction. Despite the prominent place confidentiality occupies in the pantheon of legal ethical duties, this process should not be disrupted arbitrarily by clients' requests for secrecy.

III. INCIVILITY AND ITS DISCONTENTS

In the movie *Teenage Mutant Ninja Turtles III*, four samurai from sixteenth century feudal Japan are transported to New York City in the 1990s, and watch hockey on television. The Turtles' sidekick Casey Jones decides that they have been couch potatoes long enough, thus he organizes a hockey drill. He dons a goalie mask and awaits shots from the samurai standing at the other end of the room, sticks in hand; when he signals them to start playing, however, they begin to fight with each other much as they saw the NHL players fight on TV.

Civility codes are aspirational codes of behavior that proponents claim will allow us to stop fighting and start playing. Professor Pertnoy justifies these codes by a fundamental premise: lawyers owe a higher duty to "the legal profession than to money, success, or even

23. *Id.* at 1856 n.23. The term that Professor Coombe poached from Michel de Certeau, and that I poach partially, is "textual poaching." See also HENRY JENKINS, *TEXTUAL POACHERS: TELEVISION FANS & PARTICIPATORY CULTURE* (1993).

24. See generally Jessica Litman, *Copyright as Myth*, 53 U. PITT. L. REV. 235 (1991).

25. *Developments in the Law—Privileged Communications*, 98 HARV. L. REV. 1450, 1471-80 (1985). To this systemic justification is often added an individual-focused privacy rationale. *Id.* at 1480-83.

their clients."²⁶ But the lawyer freshly graduated from law school, who in the course of three years has been transformed into a debtor par excellence and who has studied from professional responsibility casebooks that stress the primacy of the attorney-client relationship, might wonder: from where does this higher duty arise? The Model Rules, the Model Code and the Canons are permeated with the adversarial ethic expressed by Lord Brougham:

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 expedient 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 duties²⁷

Can we reconcile Professor Pertnoy's perspective with that of Lord Brougham?

We generally understand civility to mean behavior that Miss Manners would encourage or at least condone. If that is all that civility is, then the call for greater civility in the legal profession could easily be relegated to the realm of the "Bar Association after-dinner speech — inspirational, boozily solemn, anything but real."²⁸ Civility, however, has a much more sumptuous meaning that ties our immediate problem of "Rambo," "hardball," "scorched earth," "take no prisoners," "S.O.B." style of litigation²⁹ to broader values underlying

26. Leonard Pertnoy, *Order in the Court*, 43 SYRACUSE L. REV. 1159, 1159 (1993).

27. He continues:

[A]nd 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 confusion for his client's protection.

2 Trial of Queen Caroline 8 (1921) (quoted in Deborah L. Rhode, *An Adversarial Exchange on Adversarial Ethics: Text, Subtext and Context*, 41 J. LEGAL EDUC. 29 (1991)). Professor Rhode analyzes the historical context of Lord Brougham's remark, which is usually but not necessarily accurately interpreted to support a "Rambo" ethic of adversarial litigation. *Id.* I was interested to find that Queen Caroline, for whom Lord Brougham was acting as counsel at the time he made this statement, had some parallel life experiences to the current Princess of Wales (who is one of my favorite pop icons), including the assistance of savvy legal advisors.

28. Russell G. Pearce, *Rediscovering the Republican Origins of the Legal Ethics Codes*, 7 GEO. J. LEGAL ETHICS 241, 277 (1992) (quoting Robert W. Gordon, *The Independence of Lawyers*, 68 B.U. L. REV. 1, 13 (1988)).

29. All of these tags derived from sports and the military have been used as synonyms for incivility. See generally SEVENTH JUDICIAL CIRCUIT, INTERIM REPORT OF

ing the lawyers' system of ethical self-governance. In fact, civility has so many shades of meaning that the editors of the Oxford English Dictionary find it necessary to divide the definition of civility into two parts: the first compiled of "senses[] connected with citizenship and civil polity" and the second compiled of "senses connected with civilization, culture."³⁰ Courtesy, politeness and decency are literally at the bottom of the list of possible denotations. At the top? Citizenship, a community of citizens, civil organization, government, social order, and civil righteousness.

Being a citizen within the polity of American lawyers in the 1990's is not exactly analogous to being a citizen of ancient Athens or Rome. Although it is true that our group identity necessarily influences our individual self identities, and vice versa,³¹ our "groupness" is in an accelerated state of flux whereas most republican visions of polity require some degree of stasis at least with respect to foundational values.³² When Judge Harry Edwards writes: "It goes without saying that an affiliation with a professional group gives meaning to one's life. Thus, in my view, it seems almost loathsome for a lawyer to embrace an ideology of indifference,"³³ I could not agree more. But to illustrate why group affiliation might be difficult, I propose the following hypothetical: what if the citizenry of ancient Athens suddenly included women and slaves? One classicist has argued that the women of Athens may have expressed a very different set of values than the men: one that did not celebrate the "male model canonized by society and embodied by Heracles and Theseus, brawny, aggressive strong-men."³⁴ I am not trying to make the claim that the entry of

THE COMM. ON CIVILITY, 143 F.R.D. 371, 391, 393 (1992) [hereinafter INTERIM REPORT]. Perhaps the feminist versions of these terms could include "FloJo" (for aggressive but not unduly mean), "Amazon" (for aggressive and mean) or "Thelma and Louise" (for aggressive, mean and out for revenge) litigation. *But see* MONROE H. FREEDMAN, *The False Metaphor of Warfare, in* UNDERSTANDING LAWYERS' ETHICS 17 (1990).

30. 2 OXFORD ENGLISH DICTIONARY 447 (1933).

31. "He who is without a polis . . . is either a poor sort of being, or a being higher than man: he is like the man of whom Homer wrote in denunciation: 'Clanless and lawless and heartless is he.'" ARISTOTLE, POLITICS 5 (Ernest Barker trans., 1961), *quoted in* Harry T. Edwards, *A Lawyer's Duty to Serve the Public Good*, 65 N.Y.U. L. REV. 1148, 1157 (1990).

32. Pearce, *supra* note 28, at 260.

33. Edwards, *supra* note 31, at 1157.

34. EVA C. KEULS, THE REIGN OF THE PHALLUS: SEXUAL POLITICS IN ANCIENT ATHENS 24 (1985). Professor Keuls bases her argument on vase paintings and other pictorial evidence; the women of Athens held a countercultural festival called Adonia, which celebrated Adonis (a distinctly non-macho mortal lover of the goddess Aphrodite),

women as well as racial and ethnic minorities into the profession either exacerbates or reduces incivility although some (including myself) suspect that the renewed emphasis on civility in its narrower sense is due in part to the distaste of established lawyers over the demographic changes in the profession.³⁵ I use this hypothetical only to posit that strong differences in values held by individual lawyers in the profession may prevent a quick consensus on civility in its broader sense from emerging. To take another example for which there is evidence other than vases, a cultural and generational gulf seems to separate me from many of my students although we are only separated in years by little over a decade. I identify with the "I can give you the telephone number of two colored lawyers, and maybe they can help you" story recounted by Judge Leon Higginbotham,³⁶ as well as similar stories of women and Jewish lawyers who graduated from law school in the nineteen fifties or earlier. The stories with which many of my students identify as they enter law school involve Arnie Becker.³⁷ In significant ways, our Venn circles of experience do not

in the same year the male citizens of Athens were embarking on a major military excursion to Sicily; *see also* Forrest McDonald, *Novus Ordo Seclorum: the Intellectual Origins of the Constitution* 70 (1985) ("The vital . . . principle of republics was *public virtue* Not coincidentally, *public*, like *virtue*, derives from Latin roots signifying manhood: 'the public' included only independent adult males.")

35. *See* Monroe H. Freedman, *A Brief Professional History*, *LEGAL TIMES*, Dec. 17, 1990, at 22. Professor Deborah Rhode has also linked the origin of the various ethical codes, and the selective enforcement of provisions such as character and fitness review, to the interest of the organized bar in keeping out "undesirables." *See* Deborah L. Rhode, *Moral Character as a Professional Credential*, 94 *YALE L.J.* 491 (1985). Interestingly, the Seventh Circuit Committee on Civility did not identify increasing diversity as a factor either militating for or against aggressive lawyering styles.

36. A. Leon Higginbotham Jr., *The Dream with its Back Against the Wall*, *YALE LAW REPORT* (Spring 1990) at 38 (discussing his encounter with a Yale representative in Philadelphia just before graduation from law school). I also identify with Judge Higginbotham's reaction to that comment:

I went down the elevator in the Girard Trust Building, and I cried. I mean it. I cried because I thought of my mother. I thought of all the dishes she had washed, all the floors she had scrubbed, all the pain she had suffered. And after seven years, I couldn't get a job.

Id.

37. Or maybe the irreverently inclined among them would look to Saturday Night Live's Unfrozen Caveman Lawyer. The references to *L.A. Law* by numerous legal academics both within and without lecture halls are less gestures towards being *au courant* than an implicit recognition that pop culture is what is definitively American about American culture, including even legal culture. Some argue that *L.A. Law* is a source of ethical insight. *See* Stephen Gillers, *Taking L.A. Law More Seriously*, 98 *YALE L.J.* 1607 (1989). Others even argue that "*L.A. Law's Empire*" presents a truer picture of law than

overlap; between their matriculation and graduation lies a huge, uncharted territory to be negotiated among us. Such a negotiation requires a good deal of good faith — a condition that seems increasingly quaint.³⁸

Although it is difficult to discern what the distinguishing features are or should be of the 'clan' to which we are all supposed to belong, one cannot fail to notice the tremendous economic flux within the legal profession in the past thirty years. The 82 judges and 1297 lawyers surveyed by the Seventh Circuit Committee on Civility identified, *inter alia*, the corporatization of law practice, the expanding size of the bar leading to increased economic competition, and client pressures as the primary reasons for increasing incivility.³⁹ Law practice increasingly resembles market-oriented commerce; the lawyers surveyed believed this to be the single largest cause of incivility.⁴⁰ The legal community is growing in size and is growing rapidly;⁴¹ the Seventh Circuit found younger lawyers and out-of-district lawyers more often inappropriately aggressive than older or within-district lawyers.⁴² The rapidly growing size of the bar and of student loan indebted-

that depicted in the standard legal academic pieces. Pierre Schlag, *Normativity and the Politics of Form*, 139 U. PA. REV. 801, 868-69 (April 1991).

38. The requirement of good faith, far from constraining instrumentalism, becomes just another occasion for it. More generally, any constraint on instrumentalism can itself be treated instrumentally; no Archimedean point can be found to budge the instrumentalist one millimeter. For no matter what the verbal formula is that expresses the constraint, the instrumentalist lawyer responds by treating it as a manipulable legal term rather than as a moral limit.

LUBAN, *supra* note 3, at 17. Luban is criticizing unfettered partisan lawyering with this statement.

39. INTERIM REPORT, *supra* note 29, at 391-95.

40. "The law profession is now a competitive business with enormous pressures on lawyers to meet large payrolls and carry a large overhead." *Id.* at 392 (quoting an anonymous survey participant). My colleague Robin Malloy suggests however that this comment is similar to IBM's recent lament that the computer industry is no longer civil, coinciding with its loss of market power. The relatively fluid, open-textured market characteristics rather than the closed guild characteristics of the legal profession might be what ultimately allowed in "outsiders" such as women and minorities, creating pressures on established players.

41. The number of licensed attorneys in the United States increased almost 75% in the decade between 1980 and 1990. INTERIM REPORT, *supra* note 29, at 382.

42. Judge Daniel H. Huyett III of the Eastern District of Pennsylvania has had standing orders on civility in his courtroom with respect to which the "Explanatory Note" on the front page states: "many younger attorneys, and those not frequently in this court, are not familiar with what is expected of them and this is designed to guide them." Daniel H. Huyett III, *Procedures Which Shall Govern in the Trial of Cases Before Judge Daniel H. Huyett, 3rd (Jury and Non-Jury)* (rev. ed. 1987). An older lawyer in my firm

edness coincides with a shrinking economic base, client loyalty and law firm size in many parts of the country.⁴³ Succinctly put: clients are less willing or able to pay lawyers, more of whom owe money from the starting line. The pressures on young lawyers to disregard Professor Pertnoy's premise are enormous. If anything, the ethical impetus created by these larger sociological and economic factors seems to be towards the private good (that of individual lawyers and clients) and away from the public good (that of the legal profession and society-at-large). The growing heterogeneity of the bar might make the task of creating civility progressively complex, but these other factors may actually discourage new forms of civility from even being attempted.

The emergence of civility codes and the growing discussion of professionalism, however debatable as a matter of remedy or prophylactic,⁴⁴ at least cause our glazed focus on the client to blink once or twice. If indeed our ethical outlook (for whatever reasons) is trained upon the micro concerns of lawyer and client to the utter exclusion of all else, we can acknowledge nonetheless that the norm of client loyalty is in fact an extremely convenient and over-simplified construct. In practice, we lawyers can and often do exercise an immense discretion with respect to our clients' wishes. The Model Code and the Model Rules give us the ethical authority to modulate our clients' immediate interests,⁴⁵ even as we purport to maximize them by reflex-

gave me an unsolicited copy of these orders. He also taught me that the first step in discovery is to call the lawyer on the other side and discuss the voluntary exchange of information without formal discovery requests much less Rule 11 motions.

43. INTERIM REPORT, *supra* note 29, at 382; *see also* Don DeBenedictis, *Growing Pains*, A.B.A. J., Mar. 1993, at 52.

44. The Seventh Circuit report itself concluded that the judiciary and the bar did not regard civility codes *per se* as a solution to the problem of incivility. Other recommendations that received wider consensus include: law school civility training; law firm training programs; and membership in Inns of Court or voluntary bar associations. INTERIM REPORT, *supra* note 29, at 411-16; *see also* Geoffrey C. Hazard Jr., *Civility Code May Lead to Less Civility*, NAT'L L.J. Feb. 26, 1990, at 13.

45. *See generally* MODEL RULES, Rule 1.2 and accompanying Model comment; Model Rule 2.1; MODEL CODE EC 7-8, 7-9. For example, Model Code EC 7-9 states: "when an action in the best interest of the client seems to the lawyer to be unjust, the lawyer may ask the client for permission to forgo such action."

As Professor Russell Pearce points out, that even as the "adversarial ethic allows [us] to disclaim to the public any moral responsibility for [our] actions[,] . . . retention of a republican vision in the codes permit[s us] to exercise broad discretion to refuse client instructions, whether that discretion is based on expertise, morality or self-interest." Pearce, *supra* note 28, at 278. *But see* Monroe H. Freedman, *The Lawyer's Virtue and the*

ively modelling ourselves after Sylvester Stallone. Extended discovery disputes and routine Rule 11 motions — actions disliked by virtually all the surveyed Seventh Circuit lawyers — ultimately serve few clients well, even the defendants with the deepest pockets.⁴⁶

Multidimensional lawyering causes us to view the concept of client loyalty as multifaceted — as a myth, as a smokescreen, as doublespeak, as an excuse for moral laxness as well as an aspiration. While we may mouth the slogan that our utmost duty is to *this* client *now*, one's choice really lies not between client *or* legal profession. Damage to the legal profession will hurt the client — if not this one, then the next.⁴⁷

Lord Brougham would reject Professor Pertnoy's initial premise that lawyers owe a higher duty to the legal profession than to their own clients. Nonetheless, lawyers' multidimensionality — the necessity of playing several roles simultaneously — shows that the concerns of the client are inextricable from the concerns of the legal profession much as one person's smoking affects all around her. Instead of a hierarchy of duties, therefore, we might insist on ethical behavior that takes into account the secondary smoke of the lawyer's unmitigated duty of loyalty to the client. The externalities associated with an exaggerated focus on the needs of the client — the nicotine habit — must somehow be valued. As Professor David Luban has stated, "the entire enterprise of self-regulation is built on the premise that, when it comes to the practice of law, lawyers have some special insight into the public good."⁴⁸

I happen to think the social flux giving rise to these discussions of professionalism is mostly good as well as inevitable; it can and will erase the bad aspects of status quo. Unlike Professor Pertnoy, I doubt

Client's Autonomy, in UNDERSTANDING LAWYERS' ETHICS, *supra* note 29, at 43 (articulating how the various ethical codes limit lawyer discretion).

46. Discovery was the primary context for incivility, according to 94% of the survey participants. INTERIM REPORT, *supra* note 29, at 380. Lawyers singled out depositions and Rule 11 motions, in addition to identifying discovery in general, as especially problematic. *Id.* But see Randall Samborn, *Reports: Little Discovery Abuse*, NAT'L L.J., May 31, 1993 at 3, 36 (lack of widespread discovery abuse indicate that no changes are needed to Fed. R. Civ. P. 26).

47. This is not unlike the tragedy of the commons, where no one individual has the incentive to maximize group interest by voluntarily limiting the number of cattle grazing on the commons. Garrett Hardin, *The Tragedy of the Commons*, 162 SCI. 1243 (1968); cf. Feeny et al., *The Tragedy of the Commons: Twenty-two Years Later*, 18 HUM. ECOLOGY 1 (1990).

48. LUBAN, *supra* note 3, at 2.

there was a time when the legal profession embodied greater civility.⁴⁹ But that is probably because I analogize myself more to an Attic woman or slave than to a citizen.

However, a prerequisite to civility in the larger sense is civility in the narrower sense. Whatever the reasons for the current vertigo in the legal profession, the exchange of meaning through language is the only civilized way out. It is, as well, the lawyer's primary tool. At the least, we should not blunt this tool through gratuitous incivilities.

IV. MY BOUNTIFUL LAUNDERETTE

Professors Gaetke and Welling examine the impact of various federal "money-laundering" statutes on the lawyer-client relationship; they conclude that these statutes either individually or collectively do not threaten criminal defense lawyers' ethical duties toward their clients. But rather than leaving it at that, they go on to make several claims. They conclude that the public's perception of lawyers might fall if lawyers too boldly asserted that these laws negatively impacted lawyering.⁵⁰ In this connection, they refer to the lawyer's role as "officer of the court," presumably a role that precludes lawyers from being compensated from proceeds of criminal activities.⁵¹ Finally, they examine what they term "practical" rather than "ethical" impacts of these laws, suggesting that the criminal justice system as a whole might be harmed by these laws.⁵²

A client-focused ethicist might ask whether these other analyses that are entailed onto the detailed examination of the attorney-client relationship are even relevant.⁵³ As I have claimed above, however, lawyers inevitably play roles other than that of advocate for the client.

49. See, e.g., CHARLES DICKENS, *BLEAK HOUSE* 49-55 (Norman Page ed., Penguin Books 1971) (1853) (describing the fabled interminable litigation of Jarndyce v. Jarndyce). A different and equally fascinating problem is the origin of current "bad press" about lawyers as well as why negative images of lawyers and the legal profession hold such a grip on our collective cultural imagination. See Marc Galanter, *Fibs and Fables in the Civil Justice Wars*, Speech at the Sixth Round Table on Law and Semiotics (Apr. 30, 1992).

50. Eugene R. Gaetke & Sarah N. Welling, *Money Laundering and Lawyers*, 43 *SYRACUSE L. REV.* 1165, 1223-24 (1992).

51. *Id.*

52. *Id.* at 1224-41.

53. See, e.g., MONROE H. FREEDMAN, *The Perjury Trilemma*, in *UNDERSTANDING LAWYERS' ETHICS*, *supra* note 29, at 109, 111. Professor Freedman's view that the lawyer-client relation is the paramount ethical concern is closely related to his view that the adversary system is the best system for adjudication of civil and criminal disputes. See *id.*

Moreover, multidimensional lawyering allows us to define and refine the rather amorphous attorney's role as officer of the court, by giving some substance to the attorney's duty not to engage in conduct prejudicial to the administration of justice. Furthermore, we may then detect a thread that ties together this specific role as officer of the court and a very different role as an ethical player within the justice system.

In an earlier article, Professor Gaetke had sifted out specific provisions in the Model Code and the Model Rules that arguably could be characterized as "officer of the court" ethical duties.⁵⁴ Among these, laundering money might fall under "conduct prejudicial to the administration of justice," which is proscribed under both the Model Code and the Model Rules.⁵⁵ What exactly is that proscribed conduct? The ethical considerations under Canon One of the Model Code and the comment to Model Rule 8.4(d) do not help us to define it. Professor Gaetke argues that this particular ethical duty is substantively empty because of already-existing criminal statutes as well as civil and criminal procedural rules that guide a lawyer's zone of discretionary activity vis-à-vis a court.⁵⁶ That is, the prohibition of conduct prejudicial to the administration of justice does not mean much more in an ethical sense than it does in a legal sense. I believe, however, that this duty is neither a nullity nor a tautology, but rather is given content precisely through ethical examination of laws such as the money laundering statutes examined here.

A much-discussed problem of professional responsibility is the lawyer's duty not to aid a client in the violation of the law.⁵⁷ Less explored is the lawyer's duty herself not to violate the law.⁵⁸ The lawyer's role as "officer of the court" is prescribed by a complex network of laws, even ones that are not necessarily intended to regulate lawyers' behavior *per se*. Once we recognize this, the relevant ethical

at 13-42. *But see* Harry I. Subin, *The Criminal Lawyer's "Different Mission": Reflections on the "Right" to Present a False Case*, 1 GEO. J. LEGAL ETHICS 125 (1987).

54. Eugene R. Gaetke, *Lawyers as Officers of the Court*, 42 VAND. L. REV. 39, 48-71 (1989).

55. MODEL CODE, DR 1-102(A)(5); MODEL RULES, Rule 8.4(d).

56. Gaetke, *supra* note 54, at 56-57.

57. MODEL RULES, Rule 1.2(d); MODEL CODE, DR 7-102(A)(7).

58. Professor Charles Wolfram notes that, other than in the withdrawal provisions, there is no general obligation, under either the Model Rules or the Code, that a lawyer obey the law. Several provisions require obedience to various laws or types of laws. The broadest of those are MR 8.4(b),(c) and (d) in the Model Rules and DR 1-102(A)(3), (4), (5) and (6) in the Code.

CHARLES WOLFRAM, MODERN LEGAL ETHICS § 9.5.4, at 552 n.88 (1986).

question then becomes whether, in any given instance, obeying those laws is consistent with the ethical considerations underlying the lawyer's duty to prevent prejudice to the administration of justice. Money laundering laws (which are applicable to lawyers and non-lawyers alike) can be analyzed in this fashion, as can Professor Gaetke's more commonplace example of procedural rules. If, for example, the Federal Rules of Civil Procedure are amended to streamline discovery,⁵⁹ then litigators must limit the number of depositions and interrogatories that they can serve on the opposing side absent the court's permission. A lawyer in complex litigation, faced with a crotchety judge who denies all motions for additional discovery requests, could very well argue that compliance with the rule is more prejudicial to the administration of justice than disobeying the rule. That is, obeying the rule may prevent a full and fair discovery of the facts from occurring, which would undermine our adversarial method of dispute resolution and be inconsistent with the notice pleading framework for the federal procedural system.⁶⁰

Similarly, the criminal defense lawyer could argue that obeying the money laundering laws is more prejudicial to the administration of justice than disobeying them. While a lawyer has a generalized obligation to obey all laws and rules of court, which to some extent is encoded as the duty not to engage in conduct prejudicial to the administration of justice, that latter duty may actually require disobeying the law or the rules. The ethical duty does not simply collapse into whatever the law requires, nor does it imply that the lawyer is an unthinking arm of the state.⁶¹

59. The Supreme Court has approved these controversial amendments to the federal rules, and has transmitted them to Congress for final approval. See Samborn, *supra* note 46 at 3. At the same time the advisory committee was exposing these proposed amendments to public notice and comment, the executive branch imposed the same types of requirements on government attorneys in all civil cases to which the federal government is a party. Exec. Order No. 12,778, 3 C.F.R. 359 (1992). President Clinton has not yet modified or rescinded this order. Carl Tobias, *The Clinton Administration and Civil Justice Reform*, 144 F.R.D. 437, 443-44 (1993).

60. Cf. *Hickman v. Taylor*, 329 U.S. 495 (1947) (defense attorney jailed for refusal to comply with discovery request, basing refusal on the then-amoebic work-product doctrine).

61. Professor Freedman is scornful of the "officer of the court" label, stating that "[t]he intended implication is that the lawyer serves principally as an agent of the state. The Supreme Court has recognized, however, that the lawyer's traditional function is to serve the lawful interests of individual client, even against the interests of the state." MONROE H. FREEDMAN, *Understanding the Rules of Lawyers' Ethics*, in UNDERSTANDING LAWYERS' ETHICS, *supra* note 29, at 1, 9.

The constraints that Congress has placed on criminal defense attorneys via money laundering laws redefines a border of permissible lawyering conduct. The law instructs the lawyer to refrain from certain conduct, for instance, from accepting fees over \$10,000 that she knows were derived from criminal activity. At the same time that these laws have an undeniable if perhaps ethically inconsequential effect on the lawyer-client relationship, they also exert influence on the lawyer's relationship to the institutions that make and enforce law. As Professors Gaetke and Welling recognize, money laundering laws pose ethical dilemmas even if they do not violate the Sixth Amendment right to counsel, and even if the attorney-client relationship is not significantly impacted by them, because they do impose limitations on a lawyer's actions towards a court or other law-making body — as do many laws.

The foregoing exegesis of a lawyer's role as officer of the court is related to Professor Gaetke and Welling's second non-client-oriented analysis: the impact of these laws on the criminal justice system. The Supreme Court may be inadequately visionary about the role of the Sixth Amendment in our delineation of an ethical adversarial system.⁶² Assuming nonetheless that these money laundering laws not only are consistent with the Sixth Amendment right to counsel, but also (as Professors Gaetke and Welling assert) do not unduly interfere with the attorney's other ethical obligations to the client, a client-centered ethicist might claim that they are not ethically problematic. The Sixth Amendment forms the cornerstone of adversarial ethics.⁶³ The argument might run that as long as the Sixth Amendment is not implicated, then there is no fundamental ethical threat to the adversary system.

The adversary system of justice is itself a considerable source of ethical tension.⁶⁴ One of the criticisms aimed at it is that it does not,

62. See Jay S. Silver, *Equality of Arms and the Adversarial Process: A New Constitutional Right*, 1990 WIS. L. REV. 1007, 1026-32. The Sixth Amendment to the Constitution provides, *inter alia*, that "[i]n all criminal prosecutions, the accused shall . . . have the assistance of counsel for his defence." U.S. CONST. amend. VI.

63. MONROE H. FREEDMAN, *The Adversary System*, in UNDERSTANDING LAWYERS' ETHICS, *supra* note 29, at 13, 13 ("An essential function of the adversary system, therefore, is to maintain a free society in which individual rights are central. In that sense the right to counsel is 'the most pervasive' of rights, because it affects the client's ability to assert all other rights.").

64. Cf. Rhode, *supra* note 27. Professor Deborah Rhode's article was based on a presentation at the AALS Law School Mini-Workshop on Teaching Law and Ethics.

in its current American form, adequately account for inequitable distribution of resources among parties to a lawsuit.⁶⁵ According to Professors Gaetke and Welling, the money laundering laws may cause lawyers to decline particular clients or even to discontinue the practice of criminal defense.⁶⁶ If this is so, then these laws may exacerbate the maldistribution of resources already all-too-apparent throughout most of the criminal justice system.⁶⁷ This 'practical' question is thus a disguised ethical question. To the extent that the adversarial system of criminal justice promotes the value of affirming individual rights and individual dignity,⁶⁸ that value is undercut, to say the least, by removing the means by which some defendants might finance their defense.

By using an ethical frame of reference that is system-focused rather than client-focused, the criminal defense lawyer is then faced with a dilemma. If the lawyer believes, based on the scattered empirical and anecdotal evidence that exists, that the criminal justice system is harmed by these money laundering laws, then the lawyer might feel compelled to disobey these laws so as not to engage in conduct prejudicial to the administration of justice. Such a system-centered approach to a legal ethical dilemma would be difficult for a judge or a bar ethics committee to digest. We can tolerate almost any ethical argument based on alleged interests of the client; much harder to discern and appreciate is an ethical argument based on the interests of the system.

She was initially scheduled to oppose Lord Brougham's position; however, she agreed to argue both sides of the proposition when Alan Dershowitz, who had prepared to support Lord Brougham's position, was forced to withdraw. *Id.* at 29. Professor Rhode's clever argument against herself displays in nutshell form the profession's schizophrenia about the adversary system.

65. Prof. Freedman calls this "The Problem of Socio-Economic Unfairness." FREEDMAN, *supra* note 63, at 41-42.

66. Gaetke & Welling, *supra* note 50, at 1233-34.

67. See generally Silver, *supra* note 62, at 1009 (arguing that the Rehnquist Court has shifted the balance between the defense and prosecution in favor of the state).

68. FREEDMAN, *supra* note 63, at 16-17 ("The singular strength of the adversary system is measured by a central fact that is usually deplored. The overwhelming majority of those accused in American courts are guilty. Why is this a strength? Because its opposite . . . is this: Without an adversary system, a considerable number of defendants are prosecuted, though palpably innocent." (quoting Jethro K. Lieberman, Book Review, 27 N.Y.L. SCH. L. REV. 695 (1981))).

CONCLUSION

One of the touted changes from the Model Code to the Model Rules is the explicit acknowledgement, if not the means of expression, of many more lawyer roles than simply the role of advocate on the client's behalf. At least as expressed in the Preamble to the Model Rules, the lawyer is an officer of the court, a citizen of society as well as of the legal profession, and an individual with certain ethical imperatives, in addition to being a client's representative within the legal system. This shift from the model of a knight in shining armor to the sensitive new age guy or gal is ridiculed by some, criticized as inadequate by others, and characterized as an incarnation à la Shirley MacLaine of republican values by yet others. But if we develop the apparent impulse of the American Bar Association through each of these diverse articles — the impulse toward multidimensional lawyering — we discover some new sources of ethical wisdom.

Interestingly, each of these articles echoes Professor Wasserstrom's compelling observations of a lawyer's amoral "role-differentiated"⁶⁹ behavior. Wasserstrom believes that the lawyer's focus on the well-being of the client to the exclusion of all other moral criteria "can succeed only if the enormous degree of trust and confidence in the [legal] institutions themselves is itself justified."⁷⁰ Professors Gaetke and Welling indirectly caution us that lawyers have an ethical obligation to determine whether legal institutions and law-making bodies promulgate rules that are worthy of the trust and confidence of the lawyer. Wasserstrom's second point is that "there are definite character traits that the professional such as the lawyer must take on if the system is to work. What is less clear is that they are admirable ones." Professor Pertnoy shows us that even lawyers do not admire the professional personality traits that they have voluntarily adopted. Another of Wasserstrom's critiques is that "even if . . . the lawyer's way of thinking and acting is ultimately deemed to be justifiable within the system on systemic instrumental grounds, it still remains the case that we do pay a social price for that way of thought and action." Professor Vestal demonstrates that if we invoke these sys-

69. Richard Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 HUM. RTS. 1, 3 (1975). Wasserstrom uses role as a foil to person, in much the same way Luban does. Thus, according to Wasserstrom, a lawyer's identity with his or her role eliminates critical thinking about ethics. *Id.*

70. *Id.* at 13.

temic grounds solely in relation to the client, we may miss other potentially broader and more socially useful ways to act as lawyers.

The following articles remind us, in short, that our legal personae are reinvented through reference to ethical claims on us in addition to those made by clients.

