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INTEGRATION AS INTEGRITY: POSTMODERNISM, PSYCHOLOGY, AND RELIGION ON THE ROLE OF MORAL COUNSELING IN THE ATTORNEY-CLIENT RELATIONSHIP

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I. INTRODUCTION

The "hired gun" has long been the standard metaphor to describe the role of lawyers in representing clients.[1] Many in the legal community protest this characterization, but surveys of ethical decisionmaking in legal practice confirm that many attorneys acknowledge they adjust or overlook their personal moral judgment when representing clients.[2]

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[1] A recent ABA study indicates that even this negative image of lawyers may be too kind. Specifically, a 2002 study issued by the ABA's Section of Litigation found that 69% of Americans believed attorneys were more interested in making money than in serving clients. Jenny B. Davis, *What I Like About My Lawyer*, A.B.A. J., Jan. 2003, at 32, 33.

[2] *See* Robert Granfield & Thomas Koenig, *"It's Hard to Be a Human Being and a Lawyer": Young Attorneys and the Confrontation with Ethical Ambiguity in Legal Practice*, 105 W. VA. L. REV. 495, 513 (2003); Robert L. Nelson, *Ideology, Practice, and Professional Autonomy: Social Values and Client Relationships in the Large Law Firm*, 37 STAN. L. REV. 503, 531-39 (1985) (discussing results of study); *see also* RAND JACK & DANA CROWLEY JACK, MORAL VISION AND PROFESSIONAL DECISIONS: THE CHANGING VALUES OF WOMEN AND MEN LAWYERS 104-15 (1989). This lack of moral integration likely contributes to the survey results finding that the public views lawyers as dishonest or untrustworthy. *See, e.g., Lawyers and the Legal Profession: A Columbia Law Survey, available at* http://www2.law.columbia.edu/news/surveys/survey_opinion_fact_sheet.shtml (last visited Feb. 26, 2004) (describing 2002 Columbia Law School survey finding that 39% of respondents labeled attorneys as "especially dishonest" or "somewhat dishonest"); *Summary of Findings: America is Ambivalent About Its Lawyers, available at* http://www.abanet.org/litigation/lawyers/public_summary.pdf (last visited Mar. 3, 2004).

Particularly telling are the results from the recent survey of young lawyers conducted by Robert Granfield and Thomas Koenig.[3] Their study revealed that most of the respondents resolved ethical dilemmas simply by retreating into their role as advocates in which they concentrated on the legal issues and ignored the social consequences of their lawyering.[4] Although one respondent admitted he personally disliked representing some of his clients, he said, "I just close my eyes and do it."[5] Many of the respondents remarked that they learned to define law "as a game" in which representing clients became like a "self-contained contest."[6] Other attorneys stated that, although they initially sympathized with the opposing side, the team mentality of working with other lawyers coupled with the zeal of representation caused them to identify with their clients.[7] Still other attorneys revealed that the organizational pressures of law firm life caused them to compromise their ethical standards.[8] Given these responses, it should be no surprise that the lawyers involved in the Enron debacle suspended their moral judgment in light of the significant personal benefits they derived from the representation.[9] Or should it be?

Much has been written suggesting how lawyers can move beyond this ethical suspension to a place where their personal ethical principles, beyond those found in professional responsibility standards, impact their client counseling.[10] Many scholars recommend that law school instruction in legal ethics should be improved.[11] They assert that legal ethics instruction often fails to teach students how they can integrate

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3 *See* Granfield & Koenig, *supra* note 2, at 504-19.

4 *Id.* at 514-15.

5 *Id.* at 514.

6 *Id.* at 515.

7 *See id.* at 517-18; *see also* Nelson, *supra* note 2, at 531-43 (finding similar results in which attorneys began to identify with their clients).

8 Granfield & Koenig, *supra* note 2, at 518.

9 In fact, Vinson & Elkins could come to admire Enron's "creative" accounting practices when Enron accounted for more than 7% of the firm's annual revenue and employed approximately twenty of the firm's former lawyers. *See* Mike France, *One Big Client, One Big Hassle*, BUS. WK. ONLINE, Jan. 28, 2002, *at* http://www.businessweek.com /print/magazine/content/02_04/b3767706.htm; John Schwartz, *Troubling Questions Ahead for Enron's Law Firm*, N.Y. TIMES, Mar. 12, 2002, at C1.

10 For recent discussions on the propriety of attorneys' counseling clients on moral matters, see Symposium, *Client Counseling and Moral Responsibility*, 30 PEPP. L. REV. 591 (2003).

11 *See, e.g.*, Granfield & Koenig, *supra* note 2, at 497-504 (discussing various views on how ethics instruction in law schools should be improved) (citing and quoting, *inter alia*, MARY ANN GLENDON, A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY 83 (1994)).

ethical principles into their day-to-day lawyering.[12] Other scholars conclude that lawyers need to be better trained in ethical counseling and suggest that law schools should improve their instruction in counseling skills.[13] Still other scholars opine that educational changes are not enough and that other changes are needed, such as changes in regulatory structures and reward systems subjecting lawyers to increased accountability.[14]

The Model Rules of Professional Conduct (Model Rules or Rule) promulgated by the American Bar Association (ABA) certainly allow lawyers to employ nonlegal "considerations" in their counseling of clients. Most notably, Model Rule 2.1 reads: "In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors, that [sic] may be relevant to the client's situation."[15] In fact, in its *Lawyers' Manual on Professional Conduct*, the ABA adds that "a lawyer's recommendations arguably *should* go beyond advising the client about that which is merely legally permissible and ought to incorporate moral and ethical considerations as well."[16] Other standards on lawyers'

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[12] *See, e.g.*, James R. Elkins, *Lawyer Ethics: A Pedagogical Mosaic*, 14 NOTRE DAME J.L. ETHICS & PUB. POL'Y 117, 196 (2000). To address this shortcoming, I require students in my Law and Professional Responsibility class to write a "personal philosophy of lawyering," in which they discuss how they anticipate integrating their personal moral principles into their practice of law. Nathan Crystal discusses this type of exercise in his Professional Responsibility casebook. *See* NATHAN M. CRYSTAL, PROFESSIONAL RESPONSIBILITY: PROBLEMS OF PRACTICE AND THE PROFESSION 6-8, 57-59 (2d ed. 2000).

[13] *See, e.g.*, THOMAS L. SHAFFER & ROBERT F. COCHRAN, LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY 54, 113 (1994).

[14] *See* Donald C. Langevoort, *Where Were the Lawyers? A Behavioral Inquiry into Lawyers' Responsibility for Clients' Fraud*, 46 VAND. L. REV. 75, 113 (1993); Deborah L. Rhode & Paul D. Paton, *Lawyers, Ethics, and Enron*, 8 STAN. J. LAW, BUS. & FIN. 9, 13 (2002).

[15] MODEL RULES OF PROF'L CONDUCT R. 2.1 (2003) [hereinafter MR 2.1]. This portion of MR 2.1 resembles Ethical Consideration (EC) 7-8 in the earlier Model Code of Professional Responsibility. The former provision, however, was somewhat stronger than MR 2.1 in providing that "*it is often desirable* for a lawyer to point out those factors which may lead to a decision that is morally just as well as legally permissible." MODEL CODE OF PROF'L RESPONSIBILITY EC 7-8 (1981) (emphasis added); *see also* Robert F. Cochran, Jr., *Introduction: Three Approaches to Moral Issues in Law Office Counseling*, 30 PEPP. L. REV. 592, 592-93 (2003) (comparing MR 2.1 and EC 7-8).

[16] ABA/BNA LAWYERS' MANUAL ON PROFESSIONAL CONDUCT § 31:701 (1998) [hereinafter LAWYERS' MANUAL] (emphasis added). In the Scope to the Model Rules, the ABA also underscores the importance of moral considerations in the practice of law: "The Rules do not . . . exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules." MODEL RULES OF PROF'L CONDUCT SCOPE (2003). In line with the ABA's statements, various commentators have also reasoned that lawyers *should* counsel clients on nonlegal and moral matters. *See, e.g.*, Serena Stier, *Legal Ethics: The Integrity Thesis*, 52 OHIO ST. L.J.

professional responsibility, including the Restatement of the Law Governing Lawyers, drafted by the American Law Institute, similarly allow lawyers to discuss with clients the nonlegal and moral aspects of a proposed course of conduct.[17]

Despite this express permission, many lawyers hesitate to provide their clients with moral counseling. Legal commentators have offered general responses for why attorneys avoid discussing moral and other nonlegal considerations with their clients, such as concerns about client autonomy,[18] lawyer competence,[19] and the inherent ambiguity of moral questions.[20] Although these concerns are "far from frivolous,"[21] the commentary on the other side indicates that they are less than satisfying.[22]

This article supplements the general responses offered by other commentators to explore more deeply why attorneys do or do not counsel their clients on moral considerations. To address this issue, this article first examines the changes in lawyers' roles in the last 200 years. The article then considers how postmodernism has impacted attorneys' views on the propriety of the moral counseling of clients. The article next discusses both recent psychological studies and established religious principles that underscore why attorneys should raise moral considerations with their clients. The article then discusses proposed responses to the apparent lack of moral counseling in the attorney-client context and considers how ethics instruction of lawyers and law students could encourage attorneys to engage in such moral counseling. The article concludes that in addition to the fact that such counseling may

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551, 566-67 (1991) (stating that lawyers should assist clients by providing them with "legal, moral, personal, and prudential" considerations for taking action).

[17] "In counseling a client, a lawyer may address nonlegal aspects of a proposed course of conduct, including moral, reputational, economic, social, political, and business aspects." RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 94(3) (2000).

[18] *See, e.g.*, Alan Donagan, *Justifying Legal Practice in the Adversary System*, *in* THE GOOD LAWYER: LAWYERS' ROLE & LAWYERS' ETHICS 123, 126-33 (David Luban ed., 1983) (examining the assertion that representing a client's interests despite moral reservations enhances individual autonomy); Deborah Rhode, *Ethical Perspectives on Legal Practice*, 37 STAN. L. REV. 589, 605-17 (1985).

[19] *See, e.g.*, Rhode, *supra* note 18, at 617-20 (discussing lawyers' tendency to avoid moral questions confronted in legal practice).

[20] *See, e.g.*, Donagan, *supra* note 18, at 130, 132 (discussing the inevitable differences among moral views); Rhode, *supra* note 18, at 620-23 (describing lawyers' "appeal to agnosticism" in determining what position best vindicates the public interest); *see also* Daniel Schwartz, *The "New" Legal Ethics and the Administrative Law Bar*, *in* THE GOOD LAWYER, *supra* note 18, at 236, 242-43 (describing the lack of moral consensus on issues involving the degree of appropriate regulation by administrative agencies).

[21] Peter Margulies, *"Who Are You to Tell Me That?": Attorney-Client Deliberation Regarding Nonlegal Issues and the Interests of Nonclients*, 68 N.C. L. REV. 213, 217 (1990).

[22] *See, e.g., id.*

advance client interests, moral counseling affirms lawyers' integrity by enabling them to integrate their personal convictions into their professional roles.

II. CHANGES IN LAWYERS' ROLES

To understand the quandary twenty-first century lawyers face when deciding whether to engage in moral counseling, one must first recognize the developments and changes in the practice of law over the last 200 years. M.H. Hoeflich analyzes how modern conceptions of zealous advocacy vary considerably from the limits to such advocacy that were accepted in the nineteenth century.[23] He observes that, in contrast to attorneys today, attorneys in that century did not hesitate in providing clients with nonlegal counseling.[24] For instance, a hundred years ago one of the great ethical questions in professional circles concerned how lawyers should counsel their clients about pleading the Statutes of Limitations. The lawyers posed the particular dilemma this way:

> Assume a client comes to you and tells you that he contracted a valid debt ten years ago. His creditor has now died and had, during his life, failed to collect the debt he owed. Your client's creditor's widow now finds herself in difficult financial circumstances which would be greatly improved if she could collect the debt. Should you, as a lawyer, counsel your client to plead the Statute of Limitations and, thereby, avoid paying what was otherwise a valid debt?[25]

Many lawyers and theorists of the day concluded that lawyers should not plead the Statute. They admitted that pleading the Statute was completely legal but argued that such action was immoral and that they would therefore not do it.[26] Despite this former view, Hoeflich contends that attorneys in this day would resolve the issue differently:

> Today it is hard to imagine a lawyer who would not counsel a client to plead a defense which was available to him. Indeed, to do otherwise would almost certainly be a violation of [Model] Rules 1.1, 1.3 and 1.4.

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[23] *See* M.H. Hoeflich, *Legal Ethics in the Nineteenth Century: The Other Tradition*, 47 U. KAN. L. REV. 793 (1999).

[24] M.H. Hoeflich, *The "Good Lawyer" & Rule 2.1*, 69 J. KAN. B. ASS'N 38, 40 (2000). *But see* Granfield & Koenig, *supra* note 2, at 499 n.15 (observing that evidence indicates the "golden age of ethical lawyering may be illusionary").

[25] Hoeflich, *supra* note 24, at 40.

[26] Hoeflich, *supra* note 23, at 817. Well into the twentieth century as well, some lawyers contended that lawyers should not engage in any action they believed was legally or morally wrong regardless of their client's wishes. *See, e.g.*, Clement F. Haynsworth, Jr., *Professionalism in Lawyering*, 27 S.C. L. REV. 627, 628 (1976) ("It is for the lawyer to decide what is morally and legally right, and, as a professional, he cannot give in to a client's attempt to persuade him to take some other stand."). Judge Haynsworth's sentiments rightly imply that the lawyer remains personally accountable for his actions in his lawyerly role. *See id.* at 628. If he justifies them solely because obeying his clients is "part of his job," he must defend how being employed in such a job serves the common good and otherwise comports with his personal moral code.

> It is difficult to imagine a contemporary lawyer who would, even in the hypothetical circumstances of a starving widow, counsel the client that pleading the Statute raised any moral issues at all.[27]

In light of Granfield and Koenig's recent study, Hoeflich is likely accurate in characterizing the sentiments of contemporary lawyers. Indeed, as noted, many in the legal community are unhappy with the overzealous behavior of modern-day lawyers.[28] Hoeflich opines that "market pressures" have driven lawyers from being independent moral actors toward being zealous client advocates.[29] Peter Margulies agrees that financial and prestige-oriented incentives often drive lawyers from considering moral or nonclient interests because the financial and larger public interests may be at odds. He adds, "In this respect, the public may be getting the lawyers it deserves. Society rarely judges an attorney to be successful when she protects the interests of society as a whole, unless she also happens to score a killing for her client."[30] Attorney self-interest may thus be leading to another example of the tragedy of the commons.

Greater financial pressure on attorneys, however, cannot necessarily drive them away from morality unless other pressures have convinced them that the way to get ahead is to cut moral corners. Although lawyers in the nineteenth century knew they could suspend their moral judgment, the norm in that century was that lawyers should "choose honor over financial success."[31] Some other factors therefore must be leading modern-day lawyers to divorce their personal morality from their professional roles.

III. RESPONSES TO THE LACK OF MORAL COUNSELING

In reaction to the apparent dearth of moral counseling in the attorney-client context, commentators have proposed various responses. Some have supported the current lack of nonlegal counseling because they believe encouraging lawyers to engage in such counseling will compromise client autonomy and strain the attorney-client

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[27] Hoeflich, *supra* note 24, at 40.

[28] *See, e.g.*, Rhode, *supra* note 18, at 628 ("Reported cases and surveys reveal a striking incidence of overly zealous representation ranging from garden variety discovery abuse to suppression of evidence and complicity in fraud or perjury.").

[29] Hoeflich, *supra* note 23, at 817.

[30] Margulies, *supra* note 21, at 218 n.18. Such "prestige-oriented" incentives include lawyers' self-interest in bolstering their reputation even when financial incentives are absent. *Id.* at 218. Margulies reasons that attorneys' reliance on these economic and psychic factors is heightened because they feel these effects immediately whereas any systematic effects on nonclients or the social fabric of society at large are less direct and are spread to society as a whole. *Id.* at 218-19.

[31] Hoeflich, *supra* note 23, at 817.

relationship.[32] Clients may become less willing to share certain confidences for fear of being judged by their attorneys; they may even forgo legal counsel altogether.[33]

Such criticism both overestimates client sensitivity and underestimates lawyers' ability to discuss nonlegal considerations appropriately. Clients come to lawyers to solve problems. Responding to these problems requires the lawyers to give candid advice; Rule 2.1 requires as much. Lawyers therefore are ethically obligated to be realistic with their clients even if such realism is not what clients want to hear.[34]

Including moral considerations in this candid advice will not disrupt client autonomy if it enhances the client's ability to make fully informed decisions.[35] Other disciplines increasingly are impacting the resolution of legal issues, and these additional nonlegal concerns augment the potential moral considerations attorneys should consider in advising their clients.[36] Many clients may also want to consider moral concerns in their decisionmaking process.[37] A lawyer who offers moral advice is no more compromising client autonomy than one who offers purely legal advice. In fact, a lawyer who thinks about such concerns but does not

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[32] *See, e.g.*, GEOFFREY C. HAZARD, JR., ETHICS IN THE PRACTICE OF LAW 147-48 (1978) (encouraging lawyers to avoid giving nonlegal advice because clients may react indignantly when they perceive their lawyer is judging them).

[33] *See id.*; *see also* Margulies, *supra* note 21, at 244-45. Margulies reasons, however, that clients will not forgo consulting lawyers altogether when they need individualized legal advice because lawyers are the "only game in town." *Id.* at 245.

[34] *See infra* notes 37-38 and accompanying text.

[35] *See, e.g.*, CHARLES W. WOLFRAM, MODERN LEGAL ETHICS § 4.3 (1986) (observing that the current ethics rules respect the lawyer's autonomy by allowing lawyers to advise on nonlegal matters and to decline or withdraw from representation if the lawyer fundamentally disagrees with a client's position); Stephen Ellmann, *Lawyers and Clients*, 34 UCLA L. Rev. 717, 718-19 (1987) (claiming that true autonomy involves not only the client's inclinations, but also an opportunity to make decisions after assessing all material information); David Luban, *Paternalism and the Legal Profession*, 1981 WIS. L. REV. 454, 461-66 (reasoning that true autonomy includes consideration of long-term values, not just short-term interests); William Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics*, 1978 WIS. L. REV. 29, 52-61 (concluding that, in the name of client autonomy, lawyers impute legalistic ends to clients that may vary from clients' own goals).

[36] *See, e.g.*, A.B.A. Ethics 2000 Comm'n (May 29, 1998) [testimony of Kimberlee K. Kovach].

> Much has changed within the practice of law and will continue to do so at a rapid rate. Lawyers are asked to do more, and be more, than warriors for their clients in court or court-annexed activities. Many are requested to provide general business advice; others counsel in transactional matters, and in some instances are expected to be general problem solvers.

Id.

[37] *See* Edward A. Dauer, *Role of the Lawyer: Attorneys Underestimate Clients Desire for Business Involvement, Survey Shows*, PREVENTIVE L. REP., Dec. 1988, at 19, 20; *see also* WOLFRAM, *supra* note 35, at 158.

discuss them may, perhaps even unconsciously, manipulate his client's actions more problematically than a lawyer who fosters an open dialogue.[38]

Discussing these considerations will not aggravate the sting clients may already feel from realistic legal advice as long as lawyers communicate such considerations appropriately. Lawyers are trained to explore the ramifications of a course of conduct and to do so dispassionately as an advocate, not as a personal actor.[39] They therefore should be able to raise moral considerations with their clients without imposition and heavy-handed judgmentalism.[40] Even if the rare lawyer is unable to raise such considerations sensitively, his conduct should not prevent other lawyers from addressing such concerns.[41]

IV. THE IMPACT OF CULTURAL POSTMODERNISM

Despite the ways in which clients may benefit from moral counseling, most lawyers still neglect to do it. Some attorneys may fail to do so simply because they are not adequately trained; accordingly, many commentators respond by advocating that lawyers must be better trained in counseling skills. They call upon law schools to equip students for the interpersonal aspects of law practice.[42] Others add that the lack of effective client counseling stems from fundamental issues, such as natural cognitive biases and structural constraints, which legal training in and of itself cannot solve.[43]

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[38] *Cf.* Margulies, *supra* note 21, at 248-49 (discussing how lawyers improperly manipulate client decisions by withholding material information from client).

[39] Such a fundamental skill in counseling is part of good judgment generally, "the same combination of sympathy and detachment that [any] person must possess in order to deliberate wisely about his own ends." Anthony T. Kronman, *Living in the Law*, 54 U. CHI. L. REV. 835, 866 (1987); *cf.* MODEL RULES OF PROF'L CONDUCT R. 1.2(b) (2002) ("A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.").

[40] MISSOURI BAR PRENTICE-HALL SURVEY: A MOTIVATIONAL STUDY OF PUBLIC ATTITUDES AND LAW OFFICE MANAGEMENT 66 (1963), *cited and discussed in* Marvin W. Mindes & Alan C. Acock, *Trickster, Hero, Helper: A Report on the Lawyer Image*, 1982 AM. B. FOUND. RES. J. 177, 215 (finding clients who are dissatisfied with "the treatment they received from their lawyer" commonly complain lawyers act in a superior or indifferent manner toward them). In light of the rise of "professionalism" programs in state bars across the country, such complaints may have subsided.

[41] This insensitive lawyer may be punished in any event as clients seek other attorneys who are more adept in communicating nonlegal considerations. The lawyer may also be subject to discipline for violations of other ethical standards. *See, e.g.*, MODEL RULES OF PROF'L CONDUCT R. 1.1, 1.4, 1.7 (2002).

[42] DEBORAH L. RHODE, IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION 198-99 (2000); *see also* SHAFFER & COCHRAN, *supra* note 13, at 49.

[43] *See* Deborah L. Rhode, *Ethics in Counseling*, 30 PEPP. L. REV. 602, 613-14 (2003). Such cognitive biases include: (1) forming stereotypes that lead to causal connections that are difficult to unravel, Margulies, *supra* note 21, at 232-33; (2) emphasizing short-term

Even more fundamental than these systematic and cognitive biases, however, are the broader cultural influences that have impacted lawyers' perspectives on moral counseling. First, to be an effective moral counselor, lawyers must be able to integrate their moral concerns into their legal counseling. Alasdair MacIntyre explains how attempts at integration in the present legal climate face social and philosophical obstacles.[44] He reasons, "The social obstacles derive from the way in which modernity partitions each human life into a variety of segments, each with its own norms and modes of behavior. So work is divided from leisure, private life from public, and corporate from the personal."[45] In this segmentation, lawyers often view morality as a private affair, divorcing it from their public, work life.[46]

MacIntyre contends the philosophical obstacles arise from two tendencies: (1) the tendency to analyze complex actions by dividing them into simple components; and (2) the tendency to separate the individual from his professional role.[47] The first tendency largely affects only attorneys who face complex legal matters and are able to parse the matter among several attorneys who handle only one aspect of the case.[48] The second tendency, however, is widespread and is characteristic of the practice of law generally, for most law schools and bar associations divorce the lawyer as person from the lawyer as professional.[49] The Granfield and Koenig study, in fact, highlights that lawyers often strategically employ "role differentiation" and "role morality" to solve moral dilemmas in the workplace.[50]

As noted, lawyers are often viewed as "hired guns." The Model Rules and other prevailing norms similarly affirm that a lawyer's professional role includes "act[ing] with commitment and dedication to

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gains at the expense of long-term ethical consequences, Rhode, *supra*, at 608-09; and (3) overstating the personal, as opposed to situational and structural, influences that lead to ethical lapses, *id.* at 614. Structural constraints include economic incentives that encourage attorneys to defer excessively to clients who provide them with much business. *Id.* at 611.

[44] ALASDAIR MACINTYRE, AFTER VIRTUE: A STUDY IN MORAL THEORY 204 (2d ed. 1984); *see also* Amelia J. Uelmen, *Can a Religious Person Be a Big Firm Litigator?*, 26 FORDHAM URB. L.J. 1069, 1072-76 (1999) (discussing the particular difficulties religious attorneys have in integrating their faith into litigation practices at large firms).

[45] MACINTYRE, *supra* note 44, at 204.

[46] *See* Uelmen, *supra* note 44, at 1071-72 (noting that although the first few months after the tragedies on September 11, 2001, witnessed resurgence in the public nature of religious discourse this initial increase has since seemingly waned).

[47] MACINTYRE, *supra* note 44, at 204.

[48] Uelmen, *supra* note 44, at 1073.

[49] Robert F. Cochran, Jr., *Professionalism in the Postmodern Age: Its Death, Attempts at Resuscitation, and Alternative Sources of Virtue*, 14 NOTRE DAME J.L. ETHICS & PUB. POL'Y 305, 315 (2000).

[50] Granfield & Koenig, *supra* note 2, at 514.

the interests of the client and with zeal in advocacy upon the client's behalf."[51] Deborah Rhode explains, "The assumption underpinning bar ethical codes is that the most effective way to discover truth and preserve rights is through an adversarial process in which lawyers have 'undivided fidelity to each client's interests as the client perceives them.'"[52]

Postmodern relativism supports this client-centered approach. This worldview was developed in literary criticism in the 1950s, and it permeated academia and various disciplines before gaining widespread cultural acceptance in the mid-1980s.[53] This worldview is complex and multifaceted,[54] but certain of its tenets directly influence the societal view of morality, which undeniably impacts lawyers' outlook on the propriety of moral counseling.

A. Lack of Moral Absolutes

First, postmodernism espouses that no moral absolutes exist and that religion and morality are merely personal, private matters.[55] This denial of moral absolutes has permeated American popular thought

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[51] MODEL RULES OF PROF'L CONDUCT R. 1.3 cmt. (2003); *see also* RESTATEMENT (THIRD) OF LAW GOVERNING LAWYERS § 16 (2000) ("A Lawyer's Duties to a Client—In General").

[52] Deborah L. Rhode, *The Professionalism Problem*, 39 WM. & MARY L. REV. 283, 312 (1998) (quoting ROSCOE POUND-AMERICAN TRIAL LAWYERS FOUNDATION, AMERICAN LAWYER'S CODE OF CONDUCT ch. II cmt. (1982), *reprinted in* STEVEN GILLERS & ROY D. SIMON, JR., REGULATION OF LAWYERS: STATUTES AND STANDARDS 323, 335 (1989)); *see also* JOSEPH ALLEGRETTI, THE LAWYER'S CALLING 65 (1996) (describing the "standard" vision of the lawyer's role as including being a "partisan who owes his undivided allegiance to his client and who does whatever it takes to achieve his client's goals").

[53] *See* Douglas Litowitz, *In Defense of Postmodernism*, 4 GREEN BAG 2D 39, 41 (2000).

[54] *See* Jennifer Wicke, *Postmodern Identity and the Legal Subject*, 62 U. COLO. L. REV. 455, 456 (1991) (observing that there are more than thirty-one "flavors" of postmodernism to be found). Key postmodern thinkers have included Michel Foucault, Jacques Derrida, Jacques Lean, Jean-Francois Lyotard, Richard Rorty, Gilles Deleuze, and Jean Baudrillard. Friedrich Nietzsche has also influenced postmodern thought. Litowitz, *supra* note 53, at 41. Discussing in detail these "flavors" of postmodern thought, which undeniably have grown in number since 1991, is beyond the scope of this article. For a solid summary of postmodern thought, see, for example, *id.*

[55] *See* Cochran, *supra* note 49, at 306-10. Although postmodernists deny the existence of absolute, transcendent truth, they are not necessarily nihilistic. For instance, many assert that truth can be evaluated within a particular "knowledge system" (i.e., community or group). *See* Peter C. Schanck, *Understanding Postmodern Thought and Its Implications for Statutory Interpretation*, 65 S. CAL. L. REV. 2505, 2517 (1992); *see also* Susan G. Kupfer, *Authentic Legal Practices*, 10 GEO. J. LEGAL ETHICS 33, 70 (1996) ("There is a postmodern view of the self which is shaped by history and culture yet capable of moving toward a 'reconstruction' or a 'rectification' of an understanding that is coherent to us.").

through the rise of the cultural changes in the postmodern age.[56] Such culture is characterized by the information-driven, global economy and the accompanying incessant advances in communication technology.[57] This global pluralism bombards individuals in their daily living with numerous cultures, choices, and ways of living. In turn, individuals have begun to question the absoluteness of the cultural norms of their particular community in the attorney-client context.[58]

In the postmodern culture of today, scholars recognize that society no longer agrees on the conception of what is the common good.[59] Law schools and state bars throughout the country have attempted to revitalize the legal community's concern for the common good by requiring lawyers and law students to undergo "professionalism" training.[60] As Robert Cochran explains, however, such appeals to professionalism are unlikely to inspire attorneys to pursue a common moral code above and beyond the minimal standards present in the rules of professional responsibility. Today's attorneys are an increasingly diverse group, many of whom are no longer attracted to the

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[56] GENE EDWARD VEITH, JR., POSTMODERN TIMES: A CHRISTIAN GUIDE TO CONTEMPORARY THOUGHT AND CULTURE 16-18 (1994) (discussing studies showing that a majority of Americans believe there are no absolute truths).

[57] Litowitz, *supra* note 53, at 41.

[58] *See id.* at 43.

[59] *See, e.g.*, MACINTYRE, *supra* note 44, at 232. This view contrasts sharply with the conception of morality that was common throughout the birth of the legal profession and into the twentieth century. The development of law as a "profession" meant that lawyers commonly professed belief in something. *See* BRUCE A. KIMBALL, TRUE "PROFESSIONAL IDEAL" IN AMERICA: A HISTORY 19 (2d ed. 1995); *see also* DENNIS M. CAMPBELL, DOCTORS, LAWYERS, MINISTERS: CHRISTIAN ETHICS IN PROFESSIONAL PRACTICE 19 (1982). Although this profession initially pointed toward a specific religious code, as late as the early twentieth century, legal ethics looked to generic tenets of Judeo-Christian ethics. *See* Cochran, *supra* note 49, at 307. During this period, Justice Cardozo reasoned that judges should not seek to impose their personal morality on communities, but rather have "a duty to conform to the accepted standards of the community, the mores of the times." BENJAMIN N. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 108 (1921), *quoted in* Bruce A. Green, *The Role of Personal Values in Professional Decisionmaking*, 11 GEO. J. LEGAL ETHICS 19, 33-34 (1997). Society today can no longer agree on these mores. *See, e.g.*, MARY ANN GLENDON, A NATION UNDER LAWYERS 79 (1994) ("[O]nce you get beyond such obvious no-nos as stealing clients' funds, consensus on what is right and wrong for lawyers is diminishing.").

[60] *See, e.g.*, James A. George, *The "Rambo" Problem: Is Mandatory CLE the Way Back to Atticus?*, 62 LA. L. REV. 467, 497-503 (2002). Although many disagree on what should be included in the content of such training, the training generally seeks to instill in lawyers "a set of public values of lawyering derived from the 'social function of lawyers and from the traditions and practices of the profession.'" CRYSTAL, *supra* note 12, at 22-23 (quoting W. Bradley Wendel, *Public Values and Professional Responsibility*, 75 NOTRE DAME L. REV. 1, 7 (1999)); *see also* Sean P. Ravenel, *The Contagion of Example: Attacking the Root of the Problem in Lawyer Professionalism*, FED. LAW., Nov.-Dec. 2002, at 31, 32-33 (offering a definition for "professionalism" and discussing the background of the professionalism movement in this country).

professionalism ideals of preceding generations whom they see as exclusive or elitist.[61] Lawyers, then, are left wondering "whose moral understanding may be raised?"[62] They have no benchmark for assessing whether they are contributing more or less to the common good.[63]

Religion has lost its influence to inform societal conceptions of morality because it no longer has a place in the public square. The Supreme Court's reasoning in *Lemon v. Kurtzman* in 1971 evidenced the rise of this private/public split between personal religion and public discourse: "The Constitution decrees that religion must be a private matter for the individual, the family, and institutions of private choice. . . ."[64] Although the *Lemon* Court was concerned about state interference with religion,[65] postmodern relativism has extended this sentiment to private action. "Cultural etiquette" provides that such moral discourse should be discouraged or people in power will, in a draconian manner, impose their personal moral and religious opinions on others.[66]

These twin effects of postmodern thought—the lack of absolute moral truth and the decrease of public discourse on the matter—undermine the legitimacy of attorneys' efforts to influence clients' moral outlook.[67] More problematically, these effects also damage attorneys' sense that it is proper even to raise moral concerns with clients. Some scholars add that the lack of agreement on what is "right" should cause lawyers to abandon any ideal of moral counselor.[68] Others add this lack of agreement frustrates the moral counselor role because attorneys are left wondering how many of the available moral understandings they

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[61] *See* Cochran, *supra* note 49, at 309-10. Moreover, it is questionable whether "professionalism," or more generally good character, may be learned at all through institutional training. *See* Stier, *supra* note 16, at 591 ("Good character cannot be created by professional training.").

[62] Green, *supra* note 59, at 42-43.

[63] *Id.*; *see also* PHILIP SELZNICK, THE MORAL COMMONWEALTH, SOCIAL THEORY AND THE PROMISE OF COMMUNITY 24-38 (1992) (considering philosophical and social theories which oppose the idea of the common good).

[64] Lemon v. Kurtzman, 403 U.S. 602, 625 (1971).

[65] *See* Uelmen, *supra* note 44, at 1086-88 (discussing how a proper historical understanding of the doctrine of the separation of church and state shows that the doctrine does not translate into a cultural norm separating religion from public life generally).

[66] *Id.* at 1084.

[67] *See* Kupfer, *supra* note 55, at 66 ("With the abandonment in postmodern times of foundational first principles grounded in truth or objectivity, the subject loses authority to convince others of his position.").

[68] *See, e.g.*, Robert A. Kagan & Robert Eli Rosen, *On the Social Significance of Large Law Firm Practice*, 37 STAN. L. REV. 399, 438 (1985) (addressing the idea that lawyers as independent counselors is "not a proper normative ideal, either because what is 'right' is too ambiguous, or because the lawyer has no expertise in or responsibility for business judgments").

should discuss with the client.[69] In sum, lawyers operating under this postmodern view refrain from discussing moral considerations with their clients because raising such concerns might seem intemperate or might imply the politically incorrect position that moral absolutes exist.

B. Fragmentation of the Individual

In addition to the above effects of postmodernism, the worldview significantly impacts society's view of the role of the individual in society and the individual's view of himself. Postmodernism denies the Western construct of free will, that each person is an autonomous individual capable of rational and free choice. Instead, the worldview advocates that individuals are completely formed by society and culture.[70] Postmodernists write that the individual self, or "subject," is therefore "decentered," "dispersed," or "fragmented," that the subject is not fixed but varies from context to context and is subject to widely varying and often competing social and cultural influences.[71] This variability, in turn, challenges the individual's sense of unity; and the individual's "integrative capacities" are strained in the effort to preserve wholeness, or integrity.[72]

This theoretical view of the self is realized in the contemporary culture of advanced industrial societies as described above.[73] First, the global economy has made the individual increasingly fungible. The recent dominance of a flexible service economy has given rise to the permanence of the temporary employee. The largest employers have become temporary employment agencies, like Manpower, Inc., and even changing tax regulations have struggled to locate the shifting line

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69 Green, *supra* note 59, at 43.

70 *See, e.g.*, Schanck, *supra* note 55, at 2515-16; Kupfer, *supra* note 55, at 66-67; John A. Powell, *The Multiple Self: Exploring Between and Beyond Modernity and Postmodernity*, 81 MINN. L. REV. 1481, 1483-85 (1997).

71 Schanck, *supra* note 55, at 2515-16. For instance, the same individual can be a man, a lawyer, a Methodist, a husband, a father, a Democrat, ad infinitum. *See id.*; *see also* Katherine P. Ewing, *The Illusion of Wholeness: Culture Self, and the Experience of Inconsistency*, 18 ETHOS 251, 251 (1990) (contending that individuals "project multiple, inconsistent self-representations that are context-dependent and may shift rapidly").

72 Ewing, *supra* note 71, at 270-71.

73 *See* Litowitz, *supra* note 53, at 43-44. Peter Schanck, however, contends that the general public has not adopted postmodern thought. *See* Schanck, *supra* note 55, at 2559-60. It may be accurate to opine that popular culture, even in 2004, has not espoused an extreme version of postmodern thought. This version would lead to a "nebulous state of uncertainty" in which individuals challenged basic assumptions about their physical surroundings in addition to their morality. *See id.* Poll evidence, however, supports the assertion that postmodern thought is realized among the general population in its denial of absolute moral truth. *See* VEITH, *supra* note 56, at 16-18.

between employees and independent contractors.[74] Scholars have opined that these economic changes have "uprooted institutions that once seemed natural and inevitable—marriage, the nuclear family, loyalty to a single company, setting down one's roots in one's neighborhood, and so on. This shift has occasioned a predictable destabilization of personal identity . . . ."[75]

Along with these effects from the global economy, the rise of mass communication has caused postmodern culture to slip from communication with content into communication in which images lose their meaning. Workplace change makes employees fungible as communication technology makes images fungible. As Richard Sherwin describes postmodern culture:

> It is a condition in which we may find millions of contemporary televiewers as they zap around the dial, prospecting for images, making shows out of chance associations—or as they let MTV do the surface image-surfing for them amid a profusion of quick-cuts, multiple montage, slow dissolves, animation, computer graphics, magnified close-ups, wild angles, and product sell mixed indiscernibly with world events, rock stars, politicians, starving children, catastrophes of war, Nike, Adidas, Coke, Pepsi, Porsche.
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> . . . [T]he massive influx and surplusage of images, has become the mass media's hallmark. . . . In this . . . reality, it grows increasingly difficult to tell what is real . . . .[76]

In their homes, people retreat to their world of television, internet, and video games in which simulation takes the place of the real.[77] The proliferation of the internet[78] in particular leads individuals into a world where their computer becomes their best friend, where their ability to communicate face-to-face becomes rusty, or where their ability to communicate to others (at least about real issues with a real identity) is lost entirely.[79] The individualism of the modern age, in which individuals

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[74] Litowitz, *supra* note 53, at 44. Litowitz contrasts this postmodern economy with the traditional industrial economy, which was based on fixed labor and capital. *Id.*

[75] *Id.* (adding "nobody can be certain of where they will work, what they will be doing, and how they will be living, and nobody is born into a fixed community with ironclad traditions that dictate a particular manner of life").

[76] Richard K. Sherwin, *The Narrative Construction of Legal Reality*, 18 VT. L. REV. 681, 705-06 (1994).

[77] Litowitz, *supra* note 53, at 44.

[78] For statistics on Americans' access to and usage of the internet, review the website of Nielsen//Netratings, "the global standard for Internet audience measurement and analysis." *See Nearly 40 Million Internet Users Connect Via Broadband, Growing 49 Percent, According to Nielsen//Netratings, available at* http://www.netratings.com/news.jsp (last visited Jan. 7, 2004). This website reported that as of May 2003, approximately 128 million Americans had internet access in their homes. *Id.*

[79] *Cf.* DAVID MCKENNA, LOVE YOUR WORK! 66 (1990) (noting how modern technological advances have "depersonalized" society). In an extreme example of how computers have infected individuals' relationships with each other, an engineering

rarely need to collaborate and work together,[80] has been extended by virtual communications into hyper-individualism, in which individuals rarely need others for communication at all.

This contingent and fragmented living in the postmodern age impacts lawyers as it does the larger society.[81] If society begins to see the individual as lacking a coherent core self, lawyers are likely to find it easier to see their lawyering roles as unrelated to their other roles in life—roles like parent, spouse, or friend.[82] This temptation would be especially strong when conflicts develop among the roles. Psychological theory and research has long supported the notion that individuals naturally avoid "cognitive dissonance" by ignoring, oversimplifying, or rethinking conflicting incoming information.[83] Postmodern fragmentation, coupled with this internal drive to avoid cognitive dissonance, could exacerbate this role separation. Lawyers facing role conflicts could simply divorce the personal from the professional. Unless they are trained to view their lawyer role with moral overtones, which is unlikely in today's legal culture, lawyers could cut morality from lawyering with the crisp click of postmodern scissors.

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professor at the University of Toronto continually wears a small computer strapped over one of his eyes in order to "explore [his] humanity." Brian Bergstein, *Cyborg Future: Professor Views His World Through a High-Tech Scope*, VIRGINIAN-PILOT, Jan. 12, 2004, at D1.

[80] *See* Cochran, *supra* note 15, at 600 (reasoning "we live in an individualistic age—we do not collaborate very well").

[81] Writing that we live in a "postmodern age" does not imply that society at large has adopted all of postmodern thought. As Peter Schanck correctly observes, academic thought does not necessarily translate into popular culture. Schanck, *supra* note 55, at 2560. Contrary to Schanck's assessment, however, enough of such thought has permeated popular culture that describing our current period as "postmodern" is appropriate. *See* Michael Donaldson, *Some Reservations About Law and Postmodernism*, 40 AM. J. JURISPRUDENCE 335, 336 (1995) (writing that postmodernism can be understood in three ways: (1) as a description of our period; (2) as a methodology; and (3) as a descriptive and analytic theory).

[82] Robert Cochran and Thomas Shaffer reason that lawyers should view their lawyer-client relationship as akin to a "friendship" in which the lawyer advises his client as if he were advising a friend. *See* SHAFFER & COCHRAN, *supra* note 13, at 40-54. In the postmodern era, such an approach might not empower many attorneys to integrate their moral convictions into their client counseling because those attorneys might not even raise moral issues with their friends. Even if a friend (or client) were to raise the issues, attorneys today might be extremely noncommittal and refrain from saying much of anything. Moreover, even if a lawyer were to liken his moral counseling role to a friendship model, any differences between the lawyer-client relationship and friendship might cause an attorney not to mirror completely the friendship model in his professional role. *Cf.* WOLFRAM, *supra* note 35, at 76-77 (analyzing the advantages and disadvantages of the "lawyer-as-friend" analogy).

[83] *See* BAKER ENCYCLOPEDIA OF PSYCHOLOGY AND COUNSELING 220 (David G. Benner & Peter C. Hill eds., 2d ed. 1999); *see also* Kupfer, *supra* note 55, at 70.

Moreover, in corroding individuals' communication skills, the proliferation of the internet may have decreased lawyers' inclination to engage their clients in collaborative dialogue. Society has become overloaded with information; and lawyers may be so accustomed to focused, directed communication, from website queries to e-mail messages, that the idea of ruminating over complex moral issues with their clients would seem foreign.

V. INTEGRATION AS INTEGRITY

A. The Need for Integration Across Roles

These dual effects of postmodernism on attorneys significantly weaken the attorney-client relationship. Much of the damage to the relationship harms clients because the clients, after all, may desire moral guidance.[84] This sharp role separation, however, also hurts attorneys. Lawyers' moral integration is lost:

> When professional action becomes detached from ordinary moral experience, lawyers' sensitivity can atrophy or narrow to fit the constricted universe dictated by role. The agnosticism that advocacy purportedly entails can readily become a defining feature of one's total personality. Such a perspective offers the illusion of freedom from responsibility, while in fact delimiting individuals' moral autonomy. At best, the result is likely to be a resigned submission. At worst, it can foster an enervating cynicism. Success is gauged by victories, not values, and professional idealism is dismissed as pompous rhetoric.[85]

Recapturing an appropriate sense of moral integration requires the individual lawyer to be true to who he is as a person. Indeed, central to integrity is personal integration.[86] Scholars have reasoned how

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[84] For instance, in the post-Enron environment, many corporate officers may demand that their legal counselors discuss with them the nonlegal ethical considerations relevant to major legal decisions. *See* Uelmen, *supra* note 44, at 1095 (reasoning how lawyers can often discover ways to attain both profit maximization and the advancement of the common good); Rhode, *supra* note 18, at 623 ("Particularly where clients' true 'interests' are not self-evident, one of lawyers' greatest potential contributions lies in persuading individuals to act in conformity with their most socially enlightened instincts.").

[85] Rhode, *supra* note 18, at 626; *see also* Cochran, *supra* note 49, at 312 (observing that one danger of the "moral schizophrenia" lawyers may adopt is that their professional values as attorneys may corrupt their nonprofessional ones).

[86] This reasoning that integrity requires integrated living relates to the modern ethical framework of "virtue ethics." That framework analyzes ethics by recognizing that "who we are" affects individuals' ethical decisions. Through such an emphasis, the framework "avoids the professional-personal disconnect endemic to traditional rules of 'professional conduct.'" Robert K. Vischer, *Catholic Social Thought and the Ethical Formation of Lawyers: A Call for Community*, 1 J. CATH. SOC. THOUGHT (forthcoming 2004) (discussing virtue ethics and its relationship to lawyering).

individuals with integrity operate with "personal consistency."[87] Such individuals must be consistent with their moral decisions and have an "essential constancy."[88] Similarly, integrity requires what Steven Covey calls "inside-out congruence."[89] This aspect means simply that individuals with integrity connect the discrete parts of their lives together.[90] Thus, integrity is not one virtue, but a "complex of virtues," which "work[] together to form a coherent character, an identifiable and trustworthy personality."[91] Robert Higginson adds that this view of integrity creates two implications: "first, integrity wages war on the blind spots and doublethink by which so much reprehensible behavior is justified; and, second, integrity tolerates no split between public and private behavior."[92]

Legal scholars and moral philosophers have debated whether this integrity of personality is possible in light of the nature of the lawyer's adversary role in representing clients.[93] Some scholars reason that lawyers' personal integrity is not compromised when their legal ethical obligations are contrary to and supersede the ethical obligations they adopt in their non-professional everyday lives.[94] These scholars generally contend that lawyering is simply a "role" one plays in life and that a person with integrity can perform actions in one role that would be morally objectionable if performed in another.[95] Others, in contrast, conclude that lawyers' "role-differentiation" makes it impossible to be "both a good person and a good lawyer."[96]

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[87] Richard Higginson, *Integrity and the Art of Compromise*, *in* FAITH IN LEADERSHIP: HOW LEADERS LIVE OUT THEIR FAITH IN THEIR WORK—AND WHY IT MATTERS 20-23 (Robert Banks & Kimberly Powell eds., 2000) (describing five layers of integrity, with one being "personal consistency" and another being the "integrated living" discussed *infra* in the text accompanying note 89).

[88] *Id.*; *see also* WARREN BENNIS & BURT NANUS, LEADERS: THE STRATEGIES FOR TAKING CHARGE 94 (2d ed. 1997).

[89] STEVEN COVEY, THE SEVEN HABITS OF HIGHLY EFFECTIVE PEOPLE: RESTORING THE CHARACTER ETHIC 298 (1989); *see also* Higginson, *supra* note 87, at 22.

[90] Higginson, *supra* note 87, at 22.

[91] ROBERT C. SOLOMON, ETHICS AND EXCELLENCE: COOPERATION AND INTEGRITY IN BUSINESS 168 (1992).

[92] Higginson, *supra* note 87, at 23.

[93] This article assumes and does not debate the position that lawyers' fiduciary relationship with their clients enables them to act in certain ways in their professional role that might be immoral if they did so in their nonprofessional role. Such debate goes to the heart of the lawyer's role and is beyond the scope of this article. *See* WOLFRAM, *supra* note 35, at 77 (discussing various justifications for the special duties entailed in the lawyer's role).

[94] *See, e.g.*, MONROE FREEDMAN, LAWYERS' ETHICS IN AN ADVERSARY SYSTEM 9-11 (1975) (stating that a lawyer's ethical duties to the client supersede personal beliefs).

[95] *See* Richard Wasserstrom, *Roles and Morality*, *in* THE GOOD LAWYER, *supra* note 18, at 25-26 (discussing role theory as a basis for moral action).

[96] Stier, *supra* note 16, at 553.

In her article *Legal Ethics: The Integrity Thesis*, Professor Serena Stier properly criticizes this latter view. She reasons that lawyers can still be good lawyers and good persons despite differing ethical parameters in the professional and nonprofessional roles:

> It is the circumstances of action, not the persons, that make the difference when persons who are attorneys perform legal functions. Under this analysis, persons when acting as lawyers have special duties to their clients which arise just because they are performing legal rather than other functions. Anyone, when acting as a lawyer, would have the same duties. In the circumstances of representation lawyers will consider a number of reasons to determine the actions they should take. The reasons to be considered will be different from the reasons to be considered for acting in a different context, for example, in the circumstance of being a parent.
>
> One's integrity as a person is not destroyed by distinguishing among the reasons for action in different circumstances.[97]

Indeed, an integrated person need not act the same despite the circumstances; situational influences can rightly impact behavior.

At some level, however, an integrated individual must be able to justify why those circumstantial changes justify his behavioral changes. An individual cannot simply be defined by the role, but instead must maintain a core self across roles. Therefore, in light of an attorney's personal responsibility for integration, the postmodern focus on individually-constructed morality cannot be logically applied to vindicate the client's interests and not the attorney's.[98] Although lawyers are fiduciary agents of their clients and are not principals,[99] lawyers are people too. Legal theorists have recognized that lawyers who distance their personal moral faculties from their professional roles suffer from a problematic form of self-deception.[100] Respect for the lawyers' personhood

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[97] *Id.* at 562-63.

[98] Related to this postmodern individualism is the consumerism that follows it, and that consumerism has also impacted contemporary lawyering. *See* Panel Discussion, *Does Religious Faith Interfere with a Lawyer's Work?*, 26 FORDHAM URB. L.J. 985, 990-91 (1999) Professor Stephen Carter remarked:

> When we think of the consumerism of our age, I think particularly about the pervasive ethic of our time, the ethic of "I ought to be able to get what I want and you ought not to be able to stop me." . . .
>
> . . . .
>
> Lawyers are in the client service business, and so many lawyers conceptualize the role as my goal is to help the client get what the client wants.

Id.

[99] *See* Geoffrey C. Hazard, Jr., *Equal Opportunity in the Practice of Law*, 27 SAN DIEGO L. REV. 127, 135-36 (1990).

[100] *See, e.g.*, Gerald Postema, *Moral Responsibility in Legal Ethics*, 55 N.Y.U. L. REV. 63, 78-79 (1980) (characterizing a lawyer's activities as often requiring "moral prostitution") ("[T]he lawyer who must detach professional judgment from his own moral

must include fostering their ability to share (albeit not impose) moral considerations with their clients.

B. Lessons from Psychological Research on Self-Concept Differentiation

Fortunately, research from psychologists adds needed insight to the theorizing from legal scholars about lawyers' need for role integration. Most notably, clinical psychologists have conducted studies supporting the thesis that integrated living is important to individuals' psychological well-being. These studies are relevant to approaches to lawyering because they underscore that lawyers who play markedly different personal and professional roles may encounter difficulty maintaining a stable, integrated self.

Personality theories in psychology generally teach that humans naturally move toward "integrated functioning and the reduction of conflict."[101] Numerous psychological studies have demonstrated humans' natural inclination to maintain this integrated self, and in 1980 Erwin Chemerinsky analyzed such studies published in the 1950s and 1960s to argue that lawyers who consistently advocate positions that conflict with their personal views often begin to adopt those conflicting positions.[102] Although his insights point to the harmful effects of lawyers' advocacy role generally, new studies on "self-concept differentiation" (SCD) indicate how sharp separation between lawyers' professional and personal identities can actually lead to emotional maladjustment.

In breakthrough studies in 1993, researcher Eileen Donahue and her colleagues studied the effect of SCD on psychological adjustment. These researchers defined SCD as "the degree to which an individual's self [as defined by the individual's personality traits] is variable or consistent across socially important roles."[103] They specifically analyzed

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judgment is deprived of the resources from which arguments regarding his client's legal rights and duties can be fashioned."); ALLEGRETTI, *supra* note 52, at 19, 68 (contending that lawyers who separate their personal morality from their professional role suffer from "a kind of moral schizophrenia," which ultimately causes the lawyers' professional amorality to "infect" their personal life).

[101] LAWRENCE A. PERVIN & OLIVER P. JOHN, PERSONALITY: THEORY AND RESEARCH 505 (7th ed. 1997).

[102] *See* Erwin Chemerinsky, *Protecting Lawyers from Their Profession: Redefining the Lawyer's Role*, 5 J. LEGAL PROF. 31, 32-34 (1980) (discussing research on "counter attitudinal advocacy," which posits that individuals who advocate positions in conflict with their prior views will "become more favorably disposed" to the advocated position (quoting G. MILLER & M. BURGOON, NEW TECHNIQUES OF PERSUASION 59 (1973)).

[103] Eileen M. Donahue et al., *The Divided Self: Concurrent and Longitudunal Effects of Psychological Adjustment and Social Roles on Self-Concept Differentiation*, 64 J. PERSONALITY & SOC. PSYCHOL. 834 (1993). The researchers provide the example of a woman who sees herself as "fun loving and easy going with her friends but as serious and responsible with her parents" having a higher SCD than a woman who sees herself as "fun loving and easy going with both her friends and parents." *Id.*

this variability across the predefined roles of student, friend, romantic partner, employee, and daughter or son.[104]

They recognized that previous scholars had tended to view SCD in either a positive or negative light. Some scholars opined that individuals with differentiated self-concepts in different roles were well-adapted. These scholars reasoned that such individuals possess "specialized identities" that "enable them to respond flexibly and adaptively to different role requirements, which should improve interpersonal relationships and functioning within roles."[105] In contrast, other psychologists interpreted SCD as signifying a "fragmentation" of an integrated, core self and, as such, indicating psychological maladjustment.[106]

Seeking to resolve this dilemma, Donahue and her colleagues conducted two of the first studies examining the relationship between SCD and psychological adjustment.[107] From their studies, they found "compelling" evidence that high SCD indicates psychological fragmentation and is strongly related to poor psychological adjustment. Specifically, they found that the individuals with high SCD were less intrapersonally and interpersonally adjusted.[108] On an intrapersonal level, such individuals in both studies were relatively more depressed, anxious, and neurotic and had lower levels of self-esteem and well-being. On an interpersonal level, such individuals in one study were less agreeable and conscientious, and in another study showed less socialization, self-control, and acceptance of conventional values.[109] In analyzing potential contextual factors affecting SCD, they found the number of roles an individual has does not correlate with SCD and self-concept but that transitions and changes within particular roles over time does correlate with SCD and self-concept.[110]

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[104] *Id.* They also asked the participants to rate themselves along a general role. *Id.* at 835-36.

[105] *Id.* at 835.

[106] *Id.* (citing, *inter alia*, J. Block, *Ego-Identity, Role Variability, and Adjustment*, 25 J. CONSULTING & CLINICAL PSYCHOL. 392, 392 (1961)).

[107] Their first study analyzed college-age students, both male and female, and their second study analyzed middle-age women in their early 50s. *Id.* at 836-37.

[108] Their longitudinal analysis in the second study indicated that high SCD is linked to a long-term pattern of intrapersonal and interpersonal problems. *Id.* at 840-41.

[109] *Id.* This last factor analyzed the extent to which the subjects agreed with socially-accepted norms. It included items such as "Favors conservative values in a variety of areas" and "Is moralistic." *Id.* at 840.

[110] *Id.* at 840-42. Analyzing the relationship of work life to other aspects of an individual's life, theologian David McKenna unwittingly supports Donahue's findings. MCKENNA, *supra* note 79, at 81. He contends that because "work is integral to human relationships with God, other persons, and physical nature," one cannot easily separate work life from other areas of life. *Id.*

Further research has refined these initial findings. Researchers have continued to conduct studies supporting Donahue's conclusion that high SCD is linked to emotional maladjustment.[111] They also have struggled with seemingly contradictory theories positing that some level of role differentiation is positively related to emotional adjustment and self-esteem. In fact, almost from the beginning of psychologists' study of the self, scholars have recognized that the healthy self has many different facets that vary based on one's social roles.[112]

This alternative perspective most recently has been grounded on the theories of Patricia W. Linville. Linville theorized that individuals' emotional health is benefited if they manifest different "self-aspects" in different roles while still maintaining an integrated, unified view of themselves across these roles. In seminal research in the 1980s, she found that individuals who maintain a greater distinction among self-aspects are better able to handle role-specific stressors and prevent those stressors from damaging their overall self-esteem. Such individuals associate those stressors with specific self-aspects in distinct roles, but

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[111] *See, e.g.*, Jennifer D. Campbell et al., *The Structure of the Self-Concept and Its Relation to Psychological Adjustment*, 71 J. PERSONALITY 115, 115 (2003) (finding SCD to be "moderately" correlated to measures of adjustment in four separate studies); Manfred Diehl et al., *Self-Concept Differentiation Across the Adult Life Span*, 16 PSYCHOL. & AGING 643 (2001) (in study of adults from twenty to eighty-eight years old, finding a high level of SCD to be related to lower positive and higher negative psychological well-being for both young and old adults); Jennifer Goorgian La Guardia, *Interpersonal Compartmentalization: An Examination of Self-Concept Variation, Need Satisfaction, and Psychological Vitality*, 62 DISSERTATION ABSTRACTS INT'L: SEC. B: SCI. & ENG'G 3838, 3838 (2002) (finding in a study of undergraduates that varied presentations of the self were linked to general decrements in well-being); Kennon M. Sheldon et al., *Trait Self and True Self: Cross-Role Variation in the Big-Five Personality Traits and Its Relations with Psychological Authenticity and Subjective Well-Being*, 73 J. PERSONALITY & SOC. PSYCHOL. 1380, 1384-90 (1997) (finding SCD to be an "independent predictor" of both psychological and physical well-being in two studies of college students); *see also* John R.Z. Abela & Marie-Helene Veronneau-McArdle, *The Relationship Between Self-Complexity and Depressive Symptoms in Third and Seventh Grade Children: A Short-Term Longitudinal Study*, J. ABNORMAL CHILD PSYCHOL., Apr. 2002, at 155, 155-66 (discussing additional supporting studies); Catherine J. Lutz & Scott R. Ross, *Elaboration Versus Fragmentation: Distinguishing Between Self-Complexity and Self-Concept Differentiation*, 22 J. SOC. & CLINICAL PSYCHOL. 537, 538 (2003) (citing studies); *cf.* Monica Bigler et al., *The Divided Self Revisited: Effects of Self-Concept Clarity and Self-Concept Differentiation on Psychological Adjustment*, 20 J. SOC. & CLINICAL PSYCHOL. 396, 408, 411-14 (2001) (finding in studies of undergraduates and psychiatric hospital patients high SCD to be related negatively to psychological adjustment, but finding another concept, self-concept clarity, to be more strongly related); Suzanne Gottschalk, *Self-Concept Differentiation: Its Link to Linguistic Ability, General Intelligence, and Well-Being*, 55 DISSERTATION ABSTRACTS INT'L: SEC. B: SCI. & ENG'G 5094, 5094-95 (1995) (finding in a study of nine-year olds a "tentative trend" that the relationship between SCD and well-being may be "curvilinear" such that SCD is linked to "positive well-being" to a point after which increases in SCD are linked to "decreased well-being").

[112] *See* Lutz & Ross, *supra* note 111, at 537-38 (citing theorists as early as William James in 1890).

the varied self-aspects serve as "buffers" against the stressors because those stressors do not "spillover" to other self-aspects.[113] According to Linville, individuals with multiple, differentiated self-aspects have a high level of "self-complexity."[114]

Subsequent researchers have refined Linville's theories and have studied the relationship between SCD and self-complexity.[115] As late as the fall of 2003, research has confirmed that SCD and self-complexity are distinct constructs. In the research, conducted by Professors Catherine Lutz and Scott Ross, SCD was positively associated with depression, loneliness, and dissociation, and negatively associated with self-esteem. Self-complexity, however, showed the opposite pattern of results.[116] Such findings have underscored the important distinction between a complex self-concept and an uncertain or fragmented one.[117] The recent research nevertheless indicates that more work needs to be done in elucidating the differences between SCD and self-complexity. After reviewing all the evidence, Lutz and Ross opine that individuals who show a lack of integration in the way they view themselves across rigid, predefined roles are likely to face difficulties in psychological adjustment. They reason that individuals need some level of integration of self across their roles in life and should have a flexible view of those roles depending, not on some predefined categories, but on what is important to them in life.[118]

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[113] Patricia W. Linville, *Self-Complexity as a Cognitive Buffer Against Stress-Related Illness and Depression*, 52 J. PERSONALITY & SOC. PSYCHOL. 663 (1987) (finding that self-complexity decreased the impact of a stressful event, like an exam, on depression and physical health); *see also* Abela & Veronneau-McArdle, *supra* note 111, at 155-66 (discussing Linville's theories). As applied to the lawyer role, a lawyer with healthy self-complexity would not, for instance, let stressful events involved in representing clients affect his emotional outlook on his role with his family.

[114] Linville specifically defined "self-complexity" as "having more self-aspects and maintaining greater distinction among self-aspects." Linville, *supra* note 113, at 664; *see also* Patricia W. Linville, *Self-Complexity and Affective Extremity: Don't Put All Your Eggs in One Cognitive Basket*, 3 SOC. COGNITION 94, 94-95 (1985).

[115] *See* Abela & Veronneau-McArdle, *supra* note 111 (discussing how subsequent research differentiated between negative and positive SCD); Jennifer D. Campbell et al., *Cognitive and Emotional Reactions to Daily Events: The Effects of Self-Esteem and Self-Complexity*, 59 J. PERSONALITY 473, 473-74 (1991); Lutz & Ross, *supra* note 111.

[116] *See* Lutz & Ross, *supra* note 111, at 537.

[117] *See id.* at 538.

[118] *Id.* at 555. In addition to these studies relating SCD and self-complexity, recent research has investigated the role of another related construct, "self-concept clarity" (SCC), to psychological adjustment. SCC is defined as "the extent to which the contents of an individual's self-concept (e.g., perceived personal attributes) are clearly and confidently defined, internally consistent, and temporarily stable." Jennifer D. Campbell et al., *Self-Concept Clarity: Measurement, Personality Correlates, and Cultural Boundaries*, 70 J. PERSONALITY & SOC. PSYCHOL. 141, 141 (1996). Research has found high SCC to be associated with high self-esteem, high conscientiousness, high agreeableness, high

This research provides invaluable insights into how attorneys should integrate their lawyering role into their larger sense of self. Lawyers, like those in Granfield and Koenig's study,[119] who see their attorney role as a rather rigid construct and who act in that role in ways that do not match their sense of self in their other life roles (like parent or spouse), are evidencing a fragmented self. Such an unintegrated life is, in the words of the psychologists, "likely to result in difficulties in psychological adjustment."[120] Lawyers must see their role as attorneys as an extension of who they are at home, at church, and in life. The research on self-complexity indicates that lawyers need not view themselves simplistically and should recognize that different aspects of themselves may be more important in different roles. They therefore might rightly recognize their advocacy role in representing clients requires them to accentuate a personality trait they might not convey in their other roles. Nevertheless, their personal, moral beliefs, which are important to the core self, must be integrated into their role as lawyers. As Charles Wolfram writes, "Acting against one's moral beliefs leads to a loss of integrity, to a sense of being at war with oneself."[121]

C. The Role of Religion

In addition to these psychological principles, integrity as integration flows directly from biblical precepts. First, integration of faith and practice is important because religious teachings inform our understanding of legal maxims. For instance, in the Judeo-Christian tradition, the Bible provides both descriptive and normative insights on law and justice; and, contrary to postmodern relativistic thought, individuals can apply hermeneutical tools to the Bible to reach historically and theologically accurate conclusions about the nature of justice.[122]

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extraversion, and low neuroticism. *Id.* at 152; *see also* Bigler et al., *supra* note 111, at 408-11 (finding SCC to be related positively to similar measurements of psychological adjustment). Although these results do not directly address the issue of whether attorneys should integrate their professional and personal roles, they do highlight the importance of attorneys' seeking to clarify their view of themselves in those respective roles. In other words, independent of whether those roles are integrated, the research shows that attorneys benefit from having a well-defined and confident view of who they are in those roles. *See* Bigler et al., *supra* note 111, at 411-12 (finding SCD and SCC to be related but distinct concepts).

[119] *See supra* notes 2-11 and accompanying text.

[120] *See* Lutz & Ross, *supra* note 111, at 538.

[121] WOLFRAM, *supra* note 35, at 76.

[122] Jeffrey Brauch & Robert Woods, *Faith, Learning and Justice in Alan Dershowitz's* The Genesis of Justice*: Toward a Proper Understanding of the Relationship Between the Bible and Modern Justice*, 36 VAL. U. L. REV. 1, 46, 70 (2001).

On another level, religion plays a special role because it provides many attorneys with a firm foundation that enables them to integrate moral thinking into their lawyering.[123] Religious conviction can ignite passion for a moral position relevant to a client's case in a way that bar associations' clamors for professionalism could never do.[124] Furthermore, in light of the ethical void left in the wake of postmodernism, religion can provide needed content to inform lawyers' understanding of right and wrong. General, common morality no longer provides lawyers the moral framework they need for guidance.[125] In this vein, several commentators coming from a religious perspective have asserted that lawyers' religious and moral views should affect the content of their advice.[126]

Some commentators have discussed the role of religion in client counseling by alluding to caricatures of religious lawyers who seek to impose extremely unusual beliefs on their clients.[127] These caricatures serve as red herrings, diverting the discussion from the fundamental question of whether attorneys should integrate their personal moral concerns into client counseling.[128] These discussions also imply that lawyers should be allowed to integrate their religious views into their

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[123] *See, e.g.*, Uelmen, *supra* note 44, at 1107-09 (reasoning that a religious basis for a moral decision may enable an attorney to be more resolute in that decision than if the attorney had no such basis).

[124] *See* Cochran, *supra* note 49, at 316-18 (arguing that religion and other traditions can inspire lawyers' ethical behavior more successfully than the "professionalism" movement can).

[125] *See id.* at 319 ("Many lawyers do not have moral traditions to which they look for guidance.").

[126] *See, e.g.*, ALLEGRETTI, *supra* note 52, at 21 ("The goal of the Christian lawyer should be to integrate his religious values and his everyday commitments, so that his work can serve as an instrument of loving service to God and to neighbor."); Joseph G. Allegretti, *Neither Curse Nor Idol: Towards a Spirituality of Work for Lawyers*, 27 TEX. TECH L. REV. 963, 969 (1996) ("We are . . . confident as well that God can use us as instruments of grace and love. Sometimes lawyers serve clients by the advice they give . . . . Sometimes by prophetically raising issues or concerns that their clients would just as soon ignore."); Teresa Stanton Collett, *To Be a Professing Woman*, 27 TEX. TECH L. REV. 1051, 1052 (1996) (For instance, "[t]he son considering a will contest is provided both an accurate assessment of the legal issues present in the facts and a caution that such actions destroy family solidarity."); Vischer, *supra* note 86 (reasoning that lawyers' role differentiation should be replaced by "moral dialogue in which both the lawyer and client treat each other as agents capable of meaningful thought and reflection").

[127] *See* Uelmen, *supra* note 44, at 1088-89 (discussing how the examples from Bruce Green's article "portray a caricature of religious lawyers as immature and insensitive").

[128] *See* T. EDWARD DAMER, ATTACKING FAULTY REASONING: A PRACTICAL GUIDE TO FALLACY-FREE ARGUMENTS 183 (4th ed. 2001) (defining the red herring as a fallacy that "consists in attempting to hide the weakness of a position by drawing attention away from the real issue to a side issue"). Arguing by such caricatures also may constitute the fallacy of unrepresentative data. *See id.* at 133 (defining such a fallacy as one where an individual "draw[s] a conclusion based on data from an unrepresentative or biased sample").

client counseling if and only if those views lead to moral considerations that are commonly held.[129] As noted, however, such appeals to common opinion are suspect as postmodern relativism chips away at what can be considered to be "commonly held." Religious attorneys might be left with no moral principles from which to draw. Moreover, marginalizing religious concerns overlooks the immense contribution religion has made to public discourse in this country.[130] The religious aspects of moral counseling thus cannot be overlooked.

1. Calling and Vocation

In addition to these general concerns about the role of religion in lawyering, Christian teaching on the concepts of "calling" and "vocation" informs the discourse on the integration of faith and work.[131] The biblical concept of "calling" is particularly relevant to the responsibilities of Christians in their work life. Calling generally involves living a life in which everything the believer does—at work, at home, anywhere—should be devoted to serving God.[132] Although early Christian thinkers used the term "calling" to refer only to those who entered church ministry (broadly defined to include monasteries), the Christian reformers expanded the concept beyond church offices and specific acts to general occupations and their accompanying activities in the world.[133] This concept of "calling" specifically relates to the concept of "vocation." Theologians have used "vocation" to convey the principle that the whole of Christians' lives, including their occupations, finds meaning through the calling of God to be in relationship with Him.[134]

The Bible supports this extension of the concepts of "calling" and "vocation," for it describes several instances in which God "called," "chose," or "anointed" individuals for actions that did not involve

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[129] Uelmen, *supra* note 44, at 1089-90.

[130] *See, e.g.*, MARTIN E. MARTY, PILGRIMS IN THEIR OWN LAND: 500 YEARS OF RELIGION IN AMERICA 154-56 (2d ed. 1984).

[131] For an extensive discussion of how the concept of calling relates to lawyering generally, see ALLEGRETTI, *supra* note 52.

[132] *See* OS GUINNESS, THE CALL: FINDING AND FULFILLING THE CENTRAL PURPOSE OF YOUR LIFE 4 (1998) (defining "calling" as "the truth that God calls us to himself so decisively that everything we are, everything we do, and everything we have is invested with a special devotion and dynamism lived out as a response to his summons and service").

[133] LELAND RYKEN, WORK AND LEISURE IN CHRISTIAN PERSPECTIVE 139 (1987).

[134] *See* R. PAUL STEVENS, THE OTHER SIX DAYS: VOCATION, WORK, AND MINISTRY IN BIBLICAL PERSPECTIVE 71-104 (1999) (providing an extensive discussion of the meaning of the concept "vocation"); MCKENNA, *supra* note 79, at 63-75. Stevens notes that the Latin roots of "the word 'vocation,' *vocatio* and *voco*, mean to be called or have a calling." STEVENS, *supra*.

traditional religious ministry.[135] Aside from these specific instances, the Bible supports the notion that God may call individuals to certain secular vocations. Specifically, in 1 Corinthians 7, the apostle Paul writes to the early Christians in Corinth: "[E]ach one should retain the place in life that the Lord assigned to him and to which God has called him. This is the rule I lay down in all the churches."[136] Biblical scholars interpreting this passage have observed how Paul's use of the word "calling" here was revolutionary to the Greek world of his day because it underscored that God called individuals to their work in the world just as He called them to the Christian life.[137]

In addition to these passages that refer to God's calling individuals to non-religious occupations, the Bible supports Christians' integration of faith and work through the many examples of individuals, including the apostle Paul, who remained in non-religious occupations in the midst of their religious ministry.[138] In fact, when early converts asked John the Baptist what they should do in regard to their occupations, he responded that they should remain in them as long as they could do so uprightly:

> Tax collectors also came to be baptized. "Teacher," they asked, "what should we do?"
>
> "Don't collect any more than you are required to," he told them.
>
> Then some soldiers asked him, "And what should we do?"

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[135] *See Exodus* 1-2 (recounting when God called Moses to lead the people of Israel out of Egypt); *Exodus* 31:1-6; 35:30-35 (describing how God "chose" Bezalel and "appointed" Ohalib, both artists who worked on the tabernacle); 1 *Samuel* 15:17 (stating that God "anointed" Saul to be king over Israel); *Psalm* 78:70-71 (describing when God "chose" David to be the king of Israel); *see also* RYKEN, *supra* note 133, at 140-41 (discussing the above verses).

[136] 1 *Corinthians* 7:17. Although Paul uses the term "calling" in a different sense, he repeats in verse 20 his emphasis on Christians' not abandoning their situation in life once they become Christians: "Each one should remain in the situation which he was in when God called him." *Id.* at 7:20.

[137] RYKEN, *supra* note 133, at 142 (citing W.R. FORRESTER, CHRISTIAN VOCATION 35 (1953)). Although some commentators contend that the "calling" in which Christians are to remain is the Christian life, the context makes it clear that the "calling" is a believer's situation in life generally. In the context, Paul instructs that it is not necessary for Christian converts to change their marital status, their status with respect to circumcision, or their status as a slave. *See id.* at 141-42; WILLIAM BARCLAY, THE LETTERS TO THE CORINTHIANS 64-66 (1975); *see also* 2 JOHN CALVIN, INSTITUTES OF CHRISTIAN RELIGION 633-34 (Henry Beveridge trans., 1972) (agreeing with this interpretation); NEW BIBLE COMMENTARY: 21ST CENTURY EDITION 1172-73 (D.A. Carson et al. eds., 1994); James A. Davis, *1-2 Corinthians*, *in* EVANGELICAL COMMENTARY ON THE BIBLE 958, 971 (Walter A. Elwell ed., 1989). For a detailed listing of Pauline references regarding "work," see MCKENNA, *supra* note 79, at 144-45.

[138] RYKEN, *supra* note 133, at 141 (citing the example of Paul who remained a tentmaker, Abraham who remained a rancher, and the disciples who remained fishermen); *see also* MCKENNA, *supra* note 79, at 139 (discussing how Christ underscored the spiritual significance of work by working as a carpenter).

> He replied, "Don't extort money and don't accuse people falsely—be content with your pay."[139]

John the Baptist's response demonstrates the Christian's duty to integrate his personal moral commitment into his vocational life.

Thus, for the Christian, integrating faith and work flows directly from the notions of "calling" and "vocation." As one scholar writes, "If God calls us to work, then to do the work is to obey God."[140] Integration of faith and work, moreover, is consonant with the broad biblical doctrines of the providence of God that directs the Christian's life, the Lordship of Christ and sovereignty of God over every aspect of his life, humanity's obligation of stewardship over what God has given humanity, and work as something God delegated to humanity at creation.[141] In the end, the integration of faith and work becomes more than simply being a moral person at work. The work itself takes on "spiritual significance"; work becomes a means for glorifying God.[142] As the American Puritan John Cotton wrote: "We live by faith in our vocations. . . . A man therefore . . . doth his work sincerely as in God's presence, and as one that hath an heavenly businesse [sic] in hand, and therefore comfortably as knowing God approves of his way and work."[143]

2. Work as Relational

Religious principles highlighting the importance of integrating faith and work do not, by themselves, point to the importance of moral counseling in the attorney-client relationship. Based on these principles alone, one might argue that an attorney could remain a faithful adherent to his faith and still refrain from raising any moral issues with his clients.

Such a narrow approach, however, overlooks the relational needs of human nature. First, and even apart from the relevance of religious teachings, the above discussion recounts how secular theorists recognize that lawyers who distance their personal morality from their

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139 *Luke* 3:12-14.

140 RYKEN, *supra* note 133, at 144.

141 WADE H. BOGGS, JR., ALL YE WHO LABOR 41-45 (1961); *see also* MCKENNA, *supra* note 79, at 44-45 (discussing how the Creation account in Genesis emphasizes that work is a gift from God and is essential to a person's spiritual development).

142 *See* RYKEN, *supra* note 133, at 145, 148; *see also* MCKENNA, *supra* note 79, at 47-48 (reasoning that Christ's redemption has restored spiritual significance to ordinary work and that the Christian's work should "enrich the body of Christ").

143 John Cotton, *Christian Calling*, *in* 1 PERRY MILLER & THOMAS H. JOHNSON, THE PURITANS 322 (1963). The references to Protestant figures and theologians in notes 126-37 dispute Robert Vischer's reasoning that "role-differentiation is, at its core, a very Protestant idea." Vischer, *supra* note 86. In fact, contrary to Vischer, classic Protestantism has tended to distort the notion of calling by emphasizing the sacred nature of work and deemphasizing mankind's primary calling to God. *See* GUINNESS, *supra* note 132, at 39-43 (discussing what he calls the "Protestant distortion" of calling).

professional roles can experience moral atrophy in which their moral faculties lose sensitivity.[144] An attorney might seek to keep these faculties sharp by internally meditating on moral concerns, but such an internal dialogue cannot be as enriching as real dialogue with another. An attorney therefore could engage in such a dialogue with another lawyer, perhaps the firm's ethics counsel. This lawyer-to-lawyer discourse is important because it promotes the solidarity of the legal community and invigorates lawyers' moral faculties.[145]

Such dialogue, however, cannot substitute for moral conversations with clients. Although some moral issues may not directly impact the lawyer's representation of his clients, many do, and two attorneys talking hypothetically about how the client may react to a particular situation can never be as satisfying as putting it to the client directly. In refraining from at least raising moral concerns with the client, an attorney leaves the attorney-client relationship devoid of any moral discourse that might enrich both lawyer and client.[146] Moreover, attorneys who refrain from raising such concerns might wrongfully assume the client's position on the underlying moral issues and thus infringe on the client's right to make the most fully informed decision possible.[147] Even more problematically, they might seek to dismiss the relevance of moral concerns to the representation, yet still be unconsciously guided by their personal values. As Robert Vischer writes, "The fact that a lawyer's values are left unstated does not mean they are left out of the representation—they may simply be driven underground,

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[144] *See* Rhode, *supra* note 18, at 626.

[145] *See, e.g.*, MONROE H. FREEDMAN & ABBE SMITH, UNDERSTANDING LAWYERS' ETHICS 375-96 (2d ed. 2002) (reproducing an actual on-line discussion of lawyers' professional obligations and noting how the exchange illustrates "how lawyers can refine and change their thinking" on ethical issues as they debate conflicting positions).

[146] In encouraging lawyers to discuss moral issues with their clients, Thomas Shaffer recommends that lawyers see a client as "the noblest work of God." Thomas L. Shaffer, *The Virtue of Friendship in Legal Counseling*, 30 PEPP. L. REV. 626, 628 (2003) (contrasting the client with the state, which he calls perhaps "the noblest work of humankind") (referencing Chisholm v. Georgia, 2 U.S. (2 Dall.) 419, 462-63 (1793)); *see also* ALLEGRETTI, *supra* note 52, at 52 (describing how lawyers who raise moral concerns with their clients can serve as "prophets," who are "calling . . . clients back to their better selves"); Allegretti, *supra* note 126, at 965.

> When lawyers approach their work [as a calling], they begin to see their clients in a different light. A client is not a mere commodity, but a human being. . . . The concept of calling invites a relationship in which lawyers and clients come to know each other as children of God who share a common spiritual destiny.

Id.; *cf.* CRYSTAL, *supra* note 12, at 2-4 (discussing how lawyers are fiduciaries to their clients and how lawyers' duty of competence to their clients goes beyond legal knowledge and skills to include character).

[147] FREEDMAN & SMITH, *supra* note 145, at 60-62.

inaccessible to the client, unexamined by the lawyer, and untested by a community of peers."[148]

Christian teachings underscore the importance of moral discourse. For instance, in interpreting the Genesis account of Creation, Pope John Paul II has recognized how Adam's need for Eve demonstrates that the human person alone is "incomplete." He reasons that, in order to flourish, individuals need to participate with others in some form of action that involves solidarity.[149] Numerous other theologians similarly emphasize how humans are relational by nature.[150] Many reason that humans' relational needs for God and for others reflect how humans are made in the image of God, who, in turn, demonstrates His social nature in the relationship among the three persons of the Trinity: Father, Son, and Holy Spirit.[151]

These principles relate to work because theologians have reasoned how work itself may be such an action that involves solidarity and addresses the relational needs of individuals.[152] They stress how all three persons of the Trinity participated in the creative process, each one

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[148] Vischer, *supra* note 86; *see also* Joseph Allegretti, *The Role of a Lawyer's Morals and Religion When Counseling Clients in Bioethics*, 30 FORDHAM URB. L.J. 9, 26 (2002) ("A lawyer's conscious or unconscious moral and religious misgivings do not disappear merely because the lawyer decides to keep them to herself.").

[149] John Coughlin, Address at the Law Professors' Christian Fellowship Conference (Jan. 4, 2004); *see also Gaudium et spes* (Pastoral Constitution on the Church in the Modern World) ¶12 (Dec. 7, 1965) ("For by his innermost nature man is a social being, and unless he relates himself to others he can neither live nor develop his potential."); Vischer, *supra* note 86 (discussing how the Catholic notion of solidarity relates to moral lawyering). Christ's greatest commandment also signifies the importance of relationships to mankind. *See Mark* 12:30-31. By emphasizing the importance of loving God and loving neighbor, Christ recognizes how human integrity stems from a right attitude in relation to God and others. *See* MCKENNA, *supra* note 79, at 78. Moreover, Christ's analogy of the church to a physical body demonstrates the importance of how individuals need each other to maximize the goals of the church. *See* 1 *Corinthians* 12:12-30. Although the analogy in the passage specifically applies to the varied types of giftedness in the Christian community, the teaching relates generally to how individuals learn from each other as they seek collectively to resolve ethical dilemmas.

[150] *See, e.g.*, MILLARD J. ERICKSON, CHRISTIAN THEOLOGY 532-33 (2d ed. 1998) ("Humans are most fully human when they are active in these relationships [with God and other people]."); *see also* Allegretti, *supra* note 148, at 27 (discussing various theorists who view humans as relational).

[151] *See, e.g.*, ERICKSON, supra note 150, at 532-33; WAYNE GRUDEM, SYSTEMATIC THEOLOGY: AN INTRODUCTION TO BIBLICAL DOCTRINE 454-55 (1994) ("God did not create human beings to be isolated persons, but, in making us in his image, he made us in such a way that we can attain interpersonal unity of various sorts in all forms of human society."); RICK WARREN, THE PURPOSE-DRIVEN LIFE: WHAT ON EARTH AM I HERE FOR? 117 (2002) ("Because God is love, he treasures relationships. His very nature is relational, and he identifies himself in family terms: Father, Son, and Spirit. The Trinity is God's relationship to himself. It's the perfect pattern for relational harmony, and we should study its implications.").

[152] *See* MCKENNA, *supra* note 79, at 78-79 (asserting that work is "relational").

performing the tasks that best expressed His unique role in the Trinity.[153] Scholars contend that, because humans are relational and God ordained work at creation, God intended work relationships to be integral to human nature and human spirituality.[154] Scholars have considered how Christian lawyers can benefit from engaging in moral dialogue with other lawyers, particularly those in their faith community.[155] As noted, however, when the moral concerns involve client issues, lawyers should raise the concerns with their clients. In so doing, lawyers not only foster client autonomy,[156] they also enable themselves and their clients to satisfy the innate human need of relating to and learning from others.[157]

VI. INTEGRATION AND MORAL COUNSELING

A. Addressing Critics' Concerns

Psychology and religion point to the benefits of attorneys' moral discourse with their clients. Skeptics may question the validity of the psychological research or the veracity of the religious teachings. Broader principles, however, also support the role of moral counseling in the attorney-client context. Aristotle opined that the "chief end" of

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[153] *Id.* at 78-79, 89-90.

[154] *Id.* at 78-79.

[155] Robert Vischer aptly observes that Christian lawyers who seek to discuss moral issues with their clients will benefit if they are "part of a wider moral conversation" with other lawyers. Vischer, *supra* note 86.

> The determination of what it means to be a "good" Christian lawyer . . . must be rooted in the community of faith just as the determination of what it means to be a "good" Christian must be so rooted. In this regard, a Christian lawyer's professional ethics are not some offshoot or extrapolation from the communal life of the faithful—they are part and parcel of that communal life.

Id.; *see also* THOMAS L. SHAFFER, AMERICAN LAWYERS AND THEIR COMMUNITIES: ETHICS IN THE LEGAL PROFESSION 199 (1981) (reasoning that, when "faithful" lawyers face ethical dilemmas, they consult their religious communities and make their ethical decisions from the vantage point of being within that community).

[156] *See* FREEDMAN & SMITH, *supra* note 145, at 60-62.

[157] *See* THOMAS L. SHAFFER, ON BEING A CHRISTIAN AND A LAWYER 32 (1981) ("It is not possible . . . to determine one's moral answers outside the human relation which provokes moral questions . . . ."). Christians discussing the propriety of moral counseling might also consider the Great Commission in the New Testament, in which Jesus Christ directs Christians to "go and make disciples of all nations, baptizing them in the name of the father and of the Son and of the Holy Spirit, *and teaching them to obey everything I have commanded you.*" *Matthew* 28:19-20a (New International Version) (emphasis added). Contrary to the concerns from postmodernists and others, this Christian commandment does not direct Christians to impose Christ's teachings on others. Christian lawyers, however, might logically interpret the commandment to require that they at least raise certain moral considerations when they counsel their clients.

individuals is to attain the common good of the citizens of the state.[158] From this perspective, modern legal commentators reason that to be true to their personhood, lawyers must focus on the common good, the good of others.[159] Such a focus would lead attorneys to counsel their clients about moral considerations, including nonlegal concerns. An attorney could not be a single-minded advocate, concerned only about following his client's demands, and also serve the common good unless that attorney believed that zealous advocacy in and of itself advances the common good. Some advocates of the "client-centered" approach to lawyering have asserted that devoted representation alone serves the common good.[160] Critics, however, have correctly responded that advancing client "[a]utonomy does not have intrinsic value; its importance derives from the values it fosters," such as personal creativity, initiative, and responsibility.[161]

Accepting the view that the common good means more than pure client representation does not lead the legal community to a shared vision of the common good. At the same time, postmodernism's destruction of much of common morality must not crush the pursuit of moral goals.[162] Legislating morality and promoting individual investigation of moral issues are independent issues that should not be conflated.[163] Indeed, if the pursuit of the common good—a moral goal—is part of personhood, part of integrity, then that pursuit should shape how individuals view all the tasks they undertake. The pursuit of moral goals should not be discarded at the law office door.

One could argue that attorneys can pursue moral goals without ever discussing a moral issue with their clients. For instance, they could accept representation of causes in which they believed; they could surround themselves with like-minded clients. This reaction, however,

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[158] ARISTOTLE, POLITICS 137 (Benjamin Jowett trans., 1943). For a discussion of the meaning of the "common good," see JACQUES MARITAIN, SCHOLASTICISM AND POLITICS 56 (Mortimer J. Adler ed., 1940).

[159] *See* Uelmen, *supra* note 44, at 1076-79.

[160] *See, e.g.*, Rhode, *supra* note 18, at 605 (quoting ROSCOE POUND-AMERICAN TRIAL LAWYERS FOUNDATION, THE AMERICAN TRIAL LAWYER'S CODE OF CONDUCT cmt., at 202 (1981) ("In a society such as ours, which places the highest value on the dignity and autonomy of the individual, lawyers serve the public interest by undivided fidelity to each client's interests as the client perceives them.")).

[161] RHODE, *supra* note 42, at 57-59; *see also* Luban, *supra* note 35, at 639.

[162] Notice that postmodern relativism has destroyed "much" of common morality, not all of it. It is untenable to argue that society cannot agree even upon a basic code of right and wrong. *See* WOLFRAM, *supra* note 35, at 72 (noting the limits of the individual relativist theory of morality). What postmodern society cannot do, however, is agree upon a complicated decisionmaking framework that would guide attorneys in most ethical dilemmas.

[163] *Id.* at 70 ("[I]t is a mistake to conclude that because a social order cannot legislate or form a consensus upon moral issues, it is not meaningful for the individual members of that social order to consider the morality of law or of personal choice.").

goes against one of the fundamental rationales behind legal representation: that everyone has an interest in ensuring the legal system is applied justly. Popular and unpopular clients both deserve equal justice under the law.[164] A preferable action therefore is for attorneys to be free to accept the representation of causes with which they personally disagree while affording them the ability to integrate their moral convictions into that representation. Such integration does not mean imposition; it means being the same person inside the office as outside. Attorneys need not temper their advocacy, but they should feel morally complete in their role as advocates.[165]

Furthermore, lawyers who view their lawyer role solely as one of advocacy, or being a "hired gun," do not recognize the varied nature of the lawyer's role.[166] Lawyers should see themselves as counselors as well as advocates, as the entire Section 2 of the Model Rules (entitled "Counselor") illustrates. Engaging in moral dialogue with clients reflects the complexities of many moral dilemmas themselves.[167] Legal academics should not be the only ones engaging in moral dialogues; practicing lawyers enrich their views of the lawyerly role by engaging in such conversations with their clients, and they also bring to the light additional considerations that "one head" alone might not discern.

One could also argue that attorneys should integrate nonlegal considerations into their counseling only when such considerations are significant and likely to affect substantially the outcome of the legal matter. Although it is important for attorneys to pick their moral

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[164] *See, e.g.*, Michael E. Tigar, *Setting the Record Straight on the Defense of John Demjanjuk*, LEGAL TIMES, Sept. 6, 1993, at 22 (arguing clients have the right to be represented regardless of how "popular" they are).

[165] *Cf.* FREEDMAN & SMITH, *supra* note 145, at 59 (contending that, although lawyers should have the freedom to select their clients based on any standard, they cannot temper their zeal in representing a client once they have accepted that representation).

[166] Wolfram astutely observes that, even when lawyers couch their advocacy view in amoral terms (e.g., a lawyer's job is simply to advance the client's legal rights), their statements are normative because they imply that another view of the lawyer's role would be incorrect in some important sense. WOLFRAM, *supra* note 35, at 68.

[167] *See id.* at 71.

> Too much of the popular and professional discourse about morality is . . . a kind of self-congratulatory, one-dimensional moralizing. Missing is much sensitivity for the intractability of moral dilemma: moments of crisis when, viewed honestly, the paths of right and wrong conduct do not clearly stretch out from one's feet.

Id. In addition, attorneys who rigidly see their role only as advocates fail to appropriate the level of self-complexity that the psychological research highlights is important to well-being. The construct of self-complexity emphasizes that individuals should have flexibility in their roles based on what is important to them, not based on some predefined measure.

battles,[168] lawyers who rarely employ their consciences in making professional decisions will find their consciences muted and rusty. Lawyers, and persons generally, cannot expect their moral consciences, which otherwise lie dormant, to spring into action when an important professional decision arises.[169] Lawyers need to exercise their consciences as they would other skills and traits so that they can be prepared to address moral dilemmas when they arise.

One could finally argue that the postmodern pluralistic nature of modern ethical norms should prevent lawyers even from raising moral concerns with clients. This concern keeps lawyers from assuming their clients share their moral outlook, but it does not erase the importance of moral reasoning. An acceptable solution appears to encourage lawyers to discuss moral considerations with their clients and then invite the clients to reflect on whether they view those considerations as important.[170] Integrity requires attorneys to raise moral issues when they see them; they must be true to their moral concerns because they must ultimately justify their personal participation in pursuing immoral client ends.

Moreover, merely raising moral or other nonlegal concerns with clients does not impinge upon client autonomy because the decision of whether to act upon those concerns remains with the client.[171] Although some scholars have argued that lawyers are typically in a position of power over their clients, they point to no statistical evidence to support this claim.[172] In fact, clients today seem increasingly less likely to see their lawyers as occupying a power position that would cause them to accept blindly their lawyer's advice.

First, while lawyers historically represented an elite class often with more education than their clients,[173] today's clients are increasingly

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[168] Note that Model Rule 1.2 leaves some decisions squarely within the client's discretion, and lawyers would be violating that rule if they failed to abide by their client's decisions in those areas. *See* MODEL RULES OF PROF'L CONDUCT R. 1.2 (2003).

[169] *See* Uelmen, *supra* note 44, at 1109.

[170] Green, *supra* note 59, at 43; *see also* FREEDMAN & SMITH, *supra* note 145, at 70 ("[T]he attorney acts both professionally and morally in assisting clients to maximize their autonomy, that is, by counseling clients candidly and fully regarding the clients' legal rights and moral responsibilities as the lawyer perceives them, and by assisting clients to carry out their lawful decisions.").

[171] *Cf.* Stier, *supra* note 16, at 565 ("Lawyers are morally responsible for their own acts, including their decision whether or not to represent particular clients and help them achieve their objectives. They are not responsible for their clients' acts.").

[172] *See* Jack L. Sammons, *Rank Strangers to Me: Shaffer and Cochran's Friendship Model of Moral Counseling in the Law Office*, 18 U. ARK. LITTLE ROCK L. REV. 1, 38-42 (1995).

[173] *See* Cochran, *supra* note 49, at 307 (observing that, as the legal profession evolved in the United States in the nineteenth century, lawyers became, in de Tocqueville's phrase, "the American aristocracy").

educated and sophisticated, and are therefore less likely to accept a lawyer's advice without question. Some lawyers today actually function like employees of their large, powerful clients.[174] Second, in light of the prevalence of postmodern relativism, which questions authority generally, clients today seemingly would be unlikely to accept their lawyers' counseling fully. Such acceptance appears even less likely if the counseling involves moral issues, on which postmodernism denies absolute answers.[175] Third, as certain scholars have discussed, lawyers who raise moral issues with their clients can take simple steps to reduce the risk that their clients will feel dominated by their lawyers.[176] In sum, any hypothetical concerns about impinging client autonomy cannot thwart the real impact on lawyer autonomy that develops when the lawyer is restricted from raising real, albeit nonlegal, concerns before the client.

B. Whether to Require Moral Counseling

From the conclusion that moral counseling is a good idea, the question arises whether professional standards should require such counseling. As discussed, although the Model Rules expressly permit moral counseling, commentary on the Rules suggests that lawyers should raise moral considerations in certain circumstances. Furthermore, a close reading of some Rules, such as Model Rule 1.1 (Competence), implies that lawyers *may be required* to discuss moral considerations with their clients in certain circumstances.[177]

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[174] *See* Cochran, *supra* note 15, at 600 (adding that "[i]f the lawyer is in-house counsel she *is* an employee of the corporate client").

[175] This position assumes, of course, that lawyers are not surreptitiously using their roles as confidante and legal advocate to advance the lawyer's own interest. *See* Stier, *supra* note 16, at 566. Merely raising moral concerns with the client, however, will not rise to that level of control. Moreover, lawyers may even be able to make normative nonlegal claims in a way that does not violate their client's autonomy. For instance, Joseph Raz proposes the idea of detached normative statements in which the counselor speaks from the point of view of another without endorsing or following that point of view. *See id.* at 567 (discussing Joseph Raz's idea and providing the example of a Christian saying to his Orthodox Jewish friend who is unknowingly about to eat a pork-filled dumpling, "You ought not to eat that."). Stier reasons that the Christian in this example is not endorsing the Kosher laws but is asserting a normative statement based on the perspective of the Orthodox Jew. *Id.*

[176] *See* Allegretti, *supra* note 148, at 20-21 (noting that lawyers can protect clients by "creat[ing] an atmosphere that empowers the client and conveys a sense of respect and moral equality," by adjusting the "intensity" with which they counsel the client, and by informing the client of their approach to counseling at the beginning of the representation) (citing ROBERT F. COCHRAN, JR. ET AL., THE COUNSELOR-AT-LAW: A COLLABORATIVE APPROACH TO CLIENT INTERVIEWING AND COUNSELING 183-84 (1999)).

[177] *See* MODEL RULES OF PROF'L CONDUCT R. 1.1 (2003) ("A lawyer shall provide competent representation to a client. Competent representation requires the legal

Most scholars addressing moral counseling, however, have not argued that professional standards should require it. Of the many scholars who encourage lawyers to consider moral and nonlegal interests in their counseling, most ultimately leave to lawyers' discretion the difficult task of how to integrate these interests in their counseling.[178]

In an interesting article, Peter Margulies goes beyond this interpretation to propose new ethics rules that would explicitly require attorneys to raise nonlegal concerns with their clients. He asserts that only rules can adequately address the reasons why lawyers do not naturally consider moral and nonlegal interests in their client counseling. He reasons:

> Formulating sound rules promotes predictability and ease of application. Designing rules that highlight less salient causal connections can compensate for flaws in human inference. Rules also can oblige lawyers and clients to pay heed to harms to the public interest that otherwise would be ignored in the rush toward short-term gains. The knowledge that all parties are subject to such rules would enhance trust among adversaries and highlight the virtues of cooperation. Lawyers could witness the realization of rhetoric touting law as a noble profession.[179]

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knowledge, *skill, thoroughness and preparation* reasonably necessary for the representation." (emphasis added)).

[178] For a recent overview of the three primary schools of thought on client counseling, see Symposium, *Client Counseling and Moral Responsibility*, *supra* note 10. Although none of the three schools of thought advocates requiring integrative counseling, two offer guidance on how attorneys should counsel clients on nonlegal considerations. Deborah Rhode, David Luban, and William Simon are the main proponents of the "directive" school. Rhode, *supra* note 43, at 602-03. This school encompasses lawyers who are "willing to assert control of moral issues that arise during representation." *Id.* It requires "lawyers to accept personal responsibility for the moral consequences of their professional actions." RHODE, *supra* note 42, at 66-67; *see also* DAVID LUBAN, LAWYERS AND JUSTICE 32-43 (1988); David Luban, *The Lysistratian Prerogative: A Response to Stephen Pepper*, 1986 AM. B. FOUND. RES. J. 637, 640-43; William H. Simon, *Ethical Discretion in Lawyering*, 101 HARV. L. REV. 1083, 1090-1119 (1988). Thomas Shaffer and Robert Cochran primarily advance the second school of thought, the "collaborative" model. *See* Rhode, *supra* note 43, at 603-05 & nn.41-56. This model encourages lawyers to raise moral concerns with their clients but adds that lawyers should refrain from imposing their morals on clients and should "partner" with the clients as "friends" in empowering them to resolve the ethical questions. SHAFFER & COCHRAN, *supra* note 13, at 113. The third school, the "client-centered" school, does not favor integrative counseling; it is associated with traditional notions of zealous advocacy and views the client's own values as preeminent in lawyer-client counseling. Rhode, *supra* note 43, at 2-4; *see also* ROBERT M. BASTRESS & JOSEPH D. HARBAUGH, INTERVIEWING, COUNSELING, AND NEGOTIATING: SKILLS FOR EFFECTIVE REPRESENTATION (1990); DAVID A. BINDER ET AL., LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH (1991); DAVID A. BINDER & SUSAN C. PRICE, LEGAL INTERVIEWING AND COUNSELING: A CLIENT CENTERED APPROACH (1977); Robert M. Bastress, *Client-Centered Counseling and Moral Accountability for Lawyers*, 10 J. LEGAL PROF. 97 (1985).

[179] Margulies, *supra* note 21, at 220.

His proposed rules specifically require lawyers to advise their clients to modify their position when certain nonlegal factors apply; the rules also enable lawyers to withdraw if the client disregards the advice as long as withdrawal does not "immediately and irrevocably prejudice the client's interests."[180] His proposed rules include moral, psychological, and policy factors. The moral factors provide: "(a) The action or decision will harm others; (b) The action or decision involves lying or misleading; (c) The action or decision violates the norm of equality of all persons; [and] (d) The action or decision is one that the client would not wish for anyone in society."[181] Margulies defends his selection of these factors by contending they represent moral norms that society widely accepts.[182]

Despite his noble effort, Margulies's approach suffers from various problems. First, his factors create difficulties not because they fail to capture widely-held norms, but because requiring lawyers to discuss these general norms with their clients is simply impracticable. In learning to think like a lawyer, lawyers are trained to consider various alternative approaches to particular legal problems; Margulies's factors are too vague to provide lawyers with any guidance that could be regulated. If rules are to require lawyers to discuss principles with their clients, most lawyers should, at a minimum, agree whether those principles apply. For instance, several Model Rules allow attorneys to proceed with certain actions only after they obtain the "informed

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[180] *Id.* at 221-22. He adds, "This kind of prejudice could involve, for example, the pendency of a trial or a procedural deadline, such as the need to answer a complaint, with a preclusive effect." *Id.* at 222 n.29.

[181] The other factors provide:

2. Psychology:
   a. The action or decision may engender guilt or regret.
   b. The client should seek the services of a mental health professional.
3. Policy:
   a. Unintended consequences
      i. Chilling effect: The action or decision may diminish the availability of goods, services, or information, or may create incentives to impinge on socially important or fundamental interests or relationships.
      ii. Public burden: The action or decision will harm others in a way that ultimately will require a remedy from society at large.
   b. The action or decision will result in a net cost to society if all individuals behave in a like manner. See 1.d. (individuals should act as they would have others act).

Id. at 221.

[182] *Id.* at 223. Indeed, these factors resemble the Kantian formulation of the categorical imperative, *see id.*, and the biblical formulation of the greatest commandment. *See Matthew* 22:37-40.

consent" of their clients.[183] Although the Rules only roughly define "informed consent,"[184] attorneys generally agree on what constitutes such consent; such agreement is based on accepted principles regarding the advantages and disadvantages of certain actions.[185] In contrast, although nearly all lawyers would agree with Margulies's factor that they should not harm others, they undoubtedly would disagree on what constitutes unacceptable "harm." More specifically, some may engage in a utilitarian analysis that justifies certain harm.

Margulies attempts to address this deficiency by encouraging lawyers to consider "objective" (as opposed to "subjective") standards of morality and harm.[186] He also asserts that, although there may be no "right answers" to certain thorny moral questions, there are "right questions" the attorney should ask his client.[187] As noted, however, sharp disagreement would exist over the objective approaches and the "right questions" that must be asked. For instance, an attorney who is so wedded to a utilitarian approach that he does not see another party as "harmed" should not be disciplined for this moral view even if it leads him not to discuss related moral considerations with his client. Moreover, if a proposed solution to this dilemma were to require lawyers to discuss such issues with their clients when there is a "possibility" of harm, such interpretation would result in a de facto requirement that the lawyer discuss such moral considerations in all cases.

This inherent disagreement over the interpretation of nonlegal and moral considerations, however, does not lead to abandoning all solutions that require attorneys to take some action to foster moral integration in their client counseling. First, as Margulies contends, relying solely on attorneys' altruism and dignity will not lead to change because of the

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[183] This current requirement effectively silences any concern that Margulies's proposed rules could not be enforced because they intrude into the attorney-client dialogue. Courts already inquire into what the attorney disclosed to clients regarding, for instance, whether they consented to waive a potential conflict of interest. *See, e.g.*, Zador Corp. v. Kwan, 37 Cal. Rptr. 2d 754, 758-65 (Cal. Ct. App. 1995) (quoting well-drafted consent form with extensive discussion of implications of simultaneous representation in litigation). Inquiring into whether the attorney raised specific moral concerns with the client seems no more intrusive as long as those concerns are objectively quantified. Of course, objectively quantifying such concerns is the problem.

[184] MODEL RULES OF PROF'L CONDUCT R. 1.0(e) (2003) (specifically defining the term as "the agreement to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct").

[185] For instance, law school textbooks on professional responsibility outline implications, advantages, and risks of courses of conduct that require informed client consent. *See, e.g.*, CRYSTAL, *supra* note 12, at 323-26 (discussing the implications of simultaneously representing coparties in litigation).

[186] Margulies, *supra* note 21, at 226-27.

[187] *Id.* at 226 n.47.

market pressures impacting most legal practice.[188] Second, requiring attorneys to engage in moral dialogue may force them to reflect on issues they may not otherwise consider; it does not categorically undercut the development of their moral thought.[189] Third, the imposition of standards would focus the debate in an amorphous area like moral counseling in the attorney-client relationship.[190] For these reasons, scholars should continue to examine the propriety of enacting professional standards that direct attorneys to consider or raise moral issues with their clients.

C. The Role of Ethics Instruction

Despite these possible benefits of increased regulation, the problems with requiring moral counseling may be insurmountable in the postmodern era. In light of the pressing need for moral integration in the legal profession, the debate thus comes full circle in asking how the lack of moral counseling can be resolved now. The resolution appears to hinge on a renewed, fresh emphasis on educating attorneys and law students about the importance of integrating their personal morality and their professional role. In educational settings, instructors can require attorneys and would-be attorneys to consider this moral integration by having them analyze the specific example of moral counseling in the attorney-client context.

Several scholars have highlighted the limits of ethics instruction and have questioned whether increased training alone will inspire new moral energy.[191] These critiques rightly recognize that increased educational emphasis on the professional standards will not lead to moral integration in the practice of law.[192] The standards themselves often absolve lawyers for actions nonlawyers would normally consider "morally indefensible."[193]

Ethics instruction must go deeper, beyond the standards of professional responsibility. First, such instruction must expose the power of cultural influences on attorneys' ethical decisionmaking. Granfield and Koenig's study illustrates how the context of the practice

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[188] *See id.* at 250 & n.132; *cf.* John Leubsdorf, *Three Models of Professional Reform*, 67 CORNELL L. REV. 1021 (1982) (discussing alternative approaches to implementing professional change).

[189] Although requiring moral action "can" impede one's ability to internalize a moral code, *see* Cochran, *supra* note 49, at 314, requiring moral reflection is much less likely to do so.

[190] *See* Margulies, *supra* note 21, at 250.

[191] *See* Cochran, *supra* note 49, at 316-18 (arguing that religion, and other traditions, can inspire lawyers' ethical behavior more successfully than the "professionalism" movement can).

[192] Granfield & Koenig, *supra* note 2, at 503-04.

[193] *Id.* at 503.

of law shapes this decisionmaking.[194] As noted, the strength of this influence signifies how postmodernism has affected attorneys' self-fragmentation and role morality.[195] Thus, instruction in legal ethics must consider these broader cultural influences and educate attorneys and law students to recognize when social forces are affecting their behavior and shaping their worldview.[196]

Second, ethics instruction must obtain new importance at the law school level.[197] Granfield and Koenig's study documents how practicing attorneys can become so imbedded in a legal culture that they lose an objective perspective on values and morality.[198] Scholars reason that some lawyers are so "overwhelmed and out of control" that they "would need the benefit of institutional reform if they are to mend their ways."[199] Instruction at the law school level can therefore help law students determine their core values before they are amidst the pressures of the practice of law and "in the presence of too many lawyers who have rationalized whatever behavior is expedient in a given circumstance."[200]

Helping students establish their core values requires content-based ethical teaching that looks to more than just the professional standards.[201] Religious-based legal instruction thus obtains increased significance because such instruction looks to something other than the majority opinion to determine what values the legal profession should or

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[194] *Id.* at 506.

[195] *See supra* text accompanying notes 77-79.

[196] Although Granfield & Koenig do not discuss the importance of broader cultural influences, like postmodernism, on attorneys' ethical decisionmaking, they do advocate that ethics instruction should adopt a "contextual" approach. For them, such an approach considers the "social context of the legal practice" by addressing how environmental pressures like commercialism affect lawyering. Granfield & Koenig, *supra* note 2, at 520-22; *see also* Bruce A. Green, *Less Is More: Teaching Legal Ethics in Context*, 39 WM. & MARY L. REV. 357, 392 (1998) (arguing for a "contextual approach" to ethics instruction that leads students "through a deep exploration of the core issues of legal ethics in the context of only a few areas of law practice, rather than . . . on a tour of all the issues of professional responsibility as they arise across the full spectrum").

[197] Granfield & Koenig, *supra* note 2, at 508 (recounting how the respondents in their study almost all believed that their ethics instruction in law school "had done little to prepare them for the issues they confront as practicing attorneys").

[198] *Id.* at 514 (observing that most of their respondents "strategically use role differentiation and role morality to resolve their ethical dilemmas").

[199] Joshua P. Davis, *Teaching Values—The Center for Applied Legal Ethics*, 36 U.S.F. L. REV. 593, 596 (2002) (discussing Paul R. Tremblay, *Shared Norms, Bad Lawyers, and the Virtues of Casuistry*, 36 U.S.F. L. REV 659 (2002)). *See generally* Symposium, *Teaching Values in Law School*, 36 U.S.F. L. REV 591 (2002).

[200] Davis, *supra* note 199, at 599.

[201] *Cf.* Granfield & Koenig, *supra* note 2, at 504 ("If . . . the ethical code is a mask to disguise the self-interested activities of legal professionals, then calls for increased professionalism and ethics instruction may not improve behavior.").

should not hold.[202] In the wake of postmodern relativism's incision into the content of common morality, religious legal instruction can provide students with a source of meaning that will guide them as they make ethical decisions in practice.[203]

Religious or not, all ethical training must tackle tough moral issues head-on and must require attorneys and students to debate these issues with the understanding of how cultural influences subtly shape their worldview. This training will hopefully plant important seeds that grow as the attorneys develop. Law professors and those teaching professionalism courses must also do their part; they must inspire those who sit in their classes with the view that the fundamental questions of right and wrong are ultimately more important than the legal issues that overlay them. These instructors must further be willing both to model a way of life that prioritizes these fundamental questions and to mentor others through the stresses of the life of a lawyer.[204]

VII. CONCLUSION

This article argues that attorneys should embrace moral counseling in the attorney-client context. Both psychological and religious teachings expose the deleterious effects of postmodern culture and underscore how integrity of person requires integrated living. By discussing moral issues with their clients, attorneys will bring integrity to their practice. They will work to achieve personal wholeness in their professional lives and overcome the self-fragmentation common in postmodern culture. Ethics instruction must advance this integrity of practice; proper training must enable the legal community to understand the impact of culture on the profession and to know the benefit of integrated living. This integration

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[202] *See* Randy Lee, *Are Religiously Affiliated Law Schools Obsolete in America? The View of an Outsider Looking in*, 74 ST. JOHN'S L. REV. 655, 662-63 (2000) ("It has been argued that American legal society has lost the meaning of the religious concepts that make justice possible: concepts like forgiveness, redemption, love as sharing . . . , and even community. Religiously affiliated law schools are uniquely situated to teach their students to reinvigorate law with these concepts."). For general discussions on the import of religiously-affiliated law schools, see *Symposium on Religiously Affiliated Law Schools*, 78 MARQ. L. REV. 247 (1995), and *Symposium on Religiously Affiliated Law Schools* 11 REGENT U. L. REV. 1 (1998-99).

[203] At Regent University School of Law, for instance, we discuss how the Bible and other Christian teachings relate to all the doctrinal subjects and lawyering skills taught in the law school curriculum. I therefore require all Christian students completing their philosophy of lawyering papers, discussed *supra* note 12, to cite biblical passages to support their discussion of how they intend to integrate their faith and practice.

[204] The importance of mentoring in teaching legal ethics was recently the subject of a panel at the 2004 Annual Meeting of the Association of American Law Schools (AALS). *See* Can Actions Teach Louder Than Words: The Role of Mentoring and Modeling in Teaching Professional Ethics, Co-Sponsored Program of Sections on New Law Professors and Professional Responsibility at the 2004 AALS Annual Meeting (Jan. 5, 2004).

is critical, for as attorneys engage clients with the moral ramifications of the legal representation, they will tackle the claimed moral crisis in the legal profession, one client at a time.