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ON BUTLERS, ARCHITECTS, AND LAWYERS:
THE PROFESSIONALISM OF THE REMAINS
OF THE DAY AND THE FOUNTAINHEAD

Susan Daicoff*

INTRODUCTION

I don’t want to be a “butler.” I see myself as a lawyer. If being a
professional, if being a true lawyer, if professionalism in my revered profession
means being a butler, then I don’t want it. I’d rather be an architect. I’ll tell you
what I mean.

After Kazuo Ishiguro’s popular novel, The Remains of the Day,1 was
published and subsequently made into a movie, several legal scholars jumped on
the “butler” bandwagon. They proposed using the story as a salve for the
professionalism malaise infecting the legal profession,2 drawing an analogy
between lawyers’ professionalism and the professionalism of the fictional character
of the butler, Stevens, in the story. Stevens’s model of professionalism was held up
as an ideal to which lawyers should aspire and a small wave of articles emerged
examining this approach to lawyering and professional responsibility.3 The novel
and movie have even been assigned material for law students in professional
responsibility courses.4

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(Clinical Psychology), University of Central Florida, 1992; LL.M., New York University, 1985.
Gratitude is due to my partner, Robert Neal Baskin, Jr., and Professor David Mayer of Capital
University Law School for providing inspiration for the ideas herein. It is dedicated to the late co-
founder of therapeutic jurisprudence, Professor Bruce J. Winick.
1 KAZUO ISHIGURO, THE REMAINS OF THE DAY (1989). It was awarded the 1989 Booker Prize
and made into a movie with Anthony Hopkins cast in the lead role as Stevens.
2 Susan Daicoff, Asking Leopards to Change Their Spots: Should Lawyers Change? A Critique
of Solutions to Problems with Professionalism by Reference to Empirically-Derived Attorney
Personality Attributes, 11 GEO. J. LEGAL ETHICS 547, 549 (1998) [hereinafter Daicoff, Leopards]
(exploring the “malaise” infecting the legal profession and describing it as a “tripartite crisis”).
3 W. Bradley Wendel, Lawyers and Butlers: The ‘Remains’ of Amoral Ethics, 9 GEO. J. LEGAL
to draw an analogy between the professional role of a butler and that of a lawyer and arguing for
“loyalty intelligently bestowed” as opposed to blindly or amorally bestowed). Compare David Luban,
Symposium: W.M. Keck Foundation Forum on the Teaching of Legal Ethics: Stevens’s Professionalism
and Ours, 38 WM. & MARY L. REV. 297 (1996) (using butlers’ professionalism to argue against the
amoral role, without necessarily resolving the problem or proposing an alternative) and Rob Atkinson,
How the Butler Was Made To Do It: The Perverted Professionalism of The Remains of the Day, 105
YALE L.J. 177 (1995) (exploring and critiquing the professionalism of Stevens, the butler, as well as
another character in the novel) [hereinafter Atkinson/Yale].
assigning Ishiguro’s novel, along with other fictional works, in a law school professional responsibility

17 J. L. BUS. & ETHICS 23 (2011)
However, some lawyers do not want to be butlers. They reject the idea that they must function as Stevens’ did to fulfill their roles as members of this revered profession, and they spurn the butler’s professionalism as a model to be emulated by lawyers. Rather, these lawyers seek a different model for their professional conduct.

Arguably, Stevens’s professionalism is not appropriate for all lawyers and, indeed, many lawyers may prefer a contrasting model of professionalism. This is not a novel idea; many commentators decry or critique the “butler’s professionalism.” But, an alternate fiction-based illustration of this model is proposed—that presented by the architect, Howard Roark, in Ayn Rand’s famous novel, The Fountainhead. For some lawyers, given the choice between butler and architect, the architect wins. Rather than pit these two models against each other adversarially, however, a pluralist view of professionalism is endorsed, as others have previously suggested. The legal profession has, in recent decades, held up the butler model as almost a monolithic ideal. At the very least, the architect’s model for professionalism should be considered alongside the butler’s model, in this venerable profession.

I. STEVENS VS. ROARK

What does it mean to be a butler or an architect? The two fictional main characters of the butler, Stevens, in The Remains of the Day, and of the architect, Roark, in The Fountainhead, illustrate the following diverse approaches to professionalism.

A. The Butler’s Professionalism

Stevens is a professional butler. He prides himself on his fine service to his master, his impeccable manners, and his overarching value of loyalty towards his master. In a pre-World War II era, however, Stevens finds himself serving a master whose political views and affiliations become increasingly aligned with the Nazis. Stevens becomes aware of this and must decide whether to continue serving
this particular master, despite his master’s questionable liaisons. He decides to take a firm stance that his job is to carry out his role as the butler for his master, without regard to whether he personally agrees with his master’s values, morals, opinions, or goals. Stevens takes pride in doing his job well and does not concern himself with the ends to which his efforts are put. When his employer turns out to be a Nazi sympathizer and Stevens becomes aware that his employer’s attitudes and opinions might be a cause for his concern, he insists that it is not his place, as a professional, to question them. He finds satisfaction, pride, and esteem in expertly carrying out his duties for his employer and does not find it necessary to question the morality of his employer. In a portion of the story where Stevens is being pressured by his employer to state his position on various political and military points, Stevens repeatedly refuses to do so, saying:

Let us establish this quite clearly: a butler’s duty is to provide good service. It is not to meddle in the great affairs of the nation . . . [T]hose of us who wish to make our mark must realize that we best do so by concentrating on what is within our realm; that is to say, by devoting our attention to providing the best possible service to those great gentlemen in whose hands the destiny of civilization truly lies . . . . [He goes on to suggest that to do otherwise reminds him of “misguided idealism.”] . . . I refer to that strand of opinion in the profession which suggested that any butler with serious aspirations should make it his business to be forever reappraising his employer – scrutinizing the latter’s motives, [analyzing] the implications of his views. Only in this way, so the argument ran, could one be sure one’s skills were being employed to a desirable end. Although one sympathizes to some extent with the idealism contained in such an argument, there can be little doubt that it is the result . . . of misguided thinking. One need only look at the butlers who attempted to put such an approach into practice, and one will see that their careers – and in some cases they were highly promising careers – came to nothing as a direct consequence. I personally knew at least two professionals . . . who went from one employer to the next, forever dissatisfied, never settling anywhere . . . . For it is . . . simply not possible to adopt such a critical attitude towards an employer and at the same time provide good service . . . . [A] butler who is forever attempting to formulate his own ‘strong opinions’ on his employer’s affairs is bound to lack one quality essential in all good professionals: . . . loyalty . . . . I would be among the last to advocate bestowing one’s loyalty carelessly . . . . However, if a butler is to be of any worth to anything or anybody in life, there must surely come a time when he ceases his searching; a time when he must say to himself: “This employer embodies all that I find noble and admirable. I will hereafter devote myself to serving him.” This is loyalty intelligently bestowed . . . . How can one possibly be held to blame in any sense because, say, the passage of time has shown that [my employer’s] efforts were misguided, even foolish? . . . [I]t was he . . . alone who weighed up evidence and judged it best to proceed in the way he did, while I simply confined myself, quite properly, to affairs within my own professional realm . . . . I carried out my duties to the best of my abilities, indeed to a
standard which many may consider “first rate”. It is hardly my fault if his lordship’s life and work have turned out today to look, at best, a sad waste – and quite illogical that I should feel any regret or shame on my own account. Stevens characterizes assessing the morality or value of his employer’s views or actions as “misguided idealism” and the result of “misguided thinking.” He tells us that the butler who does so runs the risk of being “forever dissatisfied.” He then carefully circumscribes the role of the butler when he twice suggests confining one’s thoughts and actions to what is in one’s professional “realm.” He tells us that attempting to formulate “strong opinions” about one’s employer’s actions and views might lead to: (1) dissatisfaction; (2) a sort of itinerant wandering from employer to employer; and (3) what forms his strongest criticism—the inability to be loyal, a quality he admires. He finishes by reiterating how he feels no blame or guilt as a result of serving an employer who turns out to be “misguided” and “foolish” and whose life and work are, “at best, a sad waste,” because his ability to carry out his narrowly circumscribed job was good, even “first rate.” He can therefore take great pride in his work and his life efforts, despite serving an employer whose views, affiliations, and actions he might otherwise criticize or condemn.

Bradley Wendel has suggested that we, as lawyers, take a page from Stevens’ book. Lawyers do, after all, represent and serve a wide variety of clients, whose views, affiliations, and actions the lawyers might well criticize or question. It is suggested that the lawyer’s professionalism should resemble Stevens’ professionalism. It is said that we should take pride in performing well our jobs as advocates, counselors, and representatives, regardless of our client’s values, morals, opinions, or goals. The view is that our job is not to question the client’s ends, but to perform our role for the client as well as we can and find our satisfaction in having done that job well. The common rationale goes, “It is not my job to decide whether my client is right or wrong. It is my job to represent his or her or its interests in the most favorable and persuasive manner possible.”

For example, many criminal lawyers, particularly those in government practice as public defenders, will say that they take pride in providing their clients, albeit guilty perhaps, with the best legal representation possible. They find inherent satisfaction in upholding their clients’ legal and constitutional rights, such as the rights to due process of law, to counsel, to a speedy trial, to confront witnesses, and to the presumption of innocence, among others. These lawyers focus not on the possible outcome of their work, that an individual guilty of a crime may go free, but on their “job.”

Some transactional and corporate lawyers also take this approach, moreover, in the spirit of American businessman J.P. Morgan’s famous quote: “Well, I don’t know as I want a lawyer to tell me what I cannot do. I hire him to

10 ISHIKURO, supra note 1, at 199–201.
11 Wendel, supra note 3, at 162–63.
12 Wendel, supra note 3.
13 Model Code of Prof’l Conduct (2002) (preamble states that a lawyer represents his or her client with zeal).
tell how to do what I want to do.” Rob Atkinson attributes a similar sentiment to Elihu Root, contemporary of Brandeis and founder of Cravath, Swaine & Moore’s predecessor firm [who said]: “The client never wants to be told he can’t do what he wants to do; he wants to be told how to do it, and it is the lawyer’s business to tell him how.”

They do not question for what ultimate purpose their legal work will be used, as long as it is legal. For example, the real estate attorney may labor long and hard to create condominium documents, deeds, title transfer documents, and the like for a developer client who is overdeveloping marshland in Florida and harming the environment, or razing minority neighborhoods in order to create an upscale business center. The client’s actions may be lawful but not necessarily in agreement with the lawyer’s personal morals and values. The lawyer taking this approach sets aside his or her own personal moral judgments about the client and the client’s actions and diligently provides the requisite legal services to that client.

1. Ethical Rules Relevant to Stevens

The American Bar Association’s Model Rules of Professional Conduct bless this approach. For example, Model Rule 1.2(b) clarifies that a lawyer’s representation of a client “does not constitute an endorsement of the client’s political, economic, social or moral views or activities.” Comment 5 thereto goes on to say that legal representation is also not “approval” of those views or activities, thus, a lawyer can represent clients whose political, economic, social, or moral views and activities he or she does not condone. In fact, Comment 5 states that “[l]egal representation should not be denied to people . . . whose cause is controversial or the subject of popular disapproval,” thus placing an affirmative obligation on lawyers to take on such clients and causes.

Sometimes this approach is justified by reference to zealous advocacy: “It is my job to be a zealous advocate for my clients, represent my clients vigorously, and obtain for them the best possible outcome (or, what they seek), not question their goals.” Canon 7 of the pre-1983 Model Code of Professional Ethics, which

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14 J.P. Morgan, *J.P. Morgan Quotes*, BRAINY QUOTE, (last visited Sept. 18, 2009), http://www.brainyquote.com/quotes/authors/j/j_p_morgan.html (Morgan lived from 1837-1913; he was also credited with the following: “A man generally has two reasons for doing a thing. One that sounds good, and a real one.”).

15 Atkinson/Yale, supra note 3, at 199 n.116 (1995) citing ROBERT T. SWAINE, THE CRAVATH FIRM 667 (1946). Atkinson also stated, “Mr. Root could, however, play the other side of the street. . . . About half of the practice of a decent lawyer is telling would be clients that they are damned fools and should stop.” *Id.*

16 At the edges of legality one finds the murky questions of morality; at some point the client’s moves and goals may slip over the line of both legality and morality, but it is before that line that is most relevant, here.

17 MODEL RULES OF PROF’L CONDUCT R. 1.2(b) (2002).

18 MODEL RULES OF PROF’L CONDUCT R. 1.2(b) cmt. 5 (2002).

19 The lawyer who cannot put aside his or her own personal interests, in these situations, would likely have to decline or withdraw from representation of the client due to a conflict of interest. MODEL RULES OF PROF’L CONDUCT R. 1.7(a)(2) (2007) (“A concurrent conflict of interest exists if: . . . (2) there is a significant risk that the representation of one or more clients will be materially limited by . . . a personal interest of the lawyer.”).

20 MODEL RULES OF PROF’L CONDUCT R. 1.2(b) cmt. 5 (2002).
imposed a duty of zealous advocacy on attorneys,\textsuperscript{21} is likely to be the foundation and justification for this view. This mandate has been softened somewhat, however, in Model Rule 1.3 of the current ethics code, which requires lawyers only to “act with reasonable diligence” in representing clients.\textsuperscript{22} Yet the vestige of old Canon 7, remains in Comment 1 to Model Rule 1.3, as it requires lawyers to act with “commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf.”\textsuperscript{23}

\textbf{B. The Architect’s Professionalism}

In Ayn Rand’s classic novel, \textit{The Fountainhead},\textsuperscript{24} the main character is Howard Roark, an iconoclastic architect whose world view and dedication to excellence are unshakable. At the end of the book, Roark is put on trial for having bombed and destroyed a building he had drawn the plans for, because the builders had significantly changed his original design and built what to him was a travesty. He was horrified at what had been built based on his drawings, designs, and plans and he viewed it as a perversion of his excellent work. He was incredibly dedicated to creativity and to the integrity of his design and, therefore, of himself. At this point in the story, Roark has to explain to the jury why he did what he did. He must defend himself and, perhaps predictably, has chosen to proceed \textit{pro se} rather than be represented by a lawyer.

The following is a quote from Roark’s closing argument to the jury:

\begin{quote}
In all proper relationships there is no sacrifice of anyone to anyone. \textit{An architect needs clients, but he does not subordinate his work to their wishes}. They need him, but they do not order a house just to give him a commission. \textit{Men exchange their work by \textit{free}, mutual consent to mutual advantage when their personal interests agree and they both desire the exchange}. \textit{If they do not desire it, they are not forced to deal with each other}. \textit{They seek further. This is the only possible form of relationship between equals}. \textit{Anything else is a relation of slave to master, or victim to executioner}.

\textit{No work is ever done collectively, by a majority decision}. \textit{Every creative job is achieved under the guidance of a single individual thought}. An architect requires a great many men to erect his building. But he does not ask them to vote on his design. They work together \textit{by free agreement}.
\end{quote}

\begin{footnotesize}
\begin{enumerate}
\item \textsc{Model Code of Prof’l Responsibility} Canon 7 (1983), in \textsc{Ronald D. Rotunda & John S. Dzienkowski, Professional Responsibility: A Student’s Guide} 125 (2009-2010).
\item \textsc{Model Rules of Prof’l Conduct} R. 1.3 (2002). Barbara Glesner Fines notes this softening as well, in her article, \textit{Ethical Issues In Collaborative Lawyering}, \textsc{21 J. Am. Acad. Matrim. Law} 141, 150 (2008), when she examined: \textit{[A] view that ethical rules require something beyond competent and diligent representation}. However, in the Model Rules of Professional Conduct, as adopted by the majority of states, \textit{“zealousness” has been relegated to a comment to the requirement of diligence}. While that comment notes that \textit{“A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf,”} the comment takes care to qualify that statement . . . \textit{[To say that not every advantage must be pursued]}, \textit{id., citing Model Rules of Prof’l Conduct} R. 1.3 cmt. 1 (2002).
\item \textsc{Model Rules of Prof’l Conduct} R. 1.3 cmt. 1 (2002).
\item RAND, \textit{supra} note 6.
\end{enumerate}
\end{footnotesize}
and each is free in his proper function. An architect uses steel, glass, concrete, produced by others. But the materials remain just so much steel, glass and concrete until he touches them. What he does with them is his individual product and his individual property. This is the only pattern for proper co-operation among men.

The first right on earth is the right of the ego. Man’s first duty is to himself. His moral law is never to place his prime goal within the persons of others. His moral obligation is to do what he wishes, provided his wish does not depend primarily upon other men. This includes the whole sphere of his creative faculty, his thinking, his work. But it does not include the sphere of the gangster, the altruist and the dictator.

A man thinks and works alone. A man cannot rob, exploit or rule - alone. Robbery, exploitation and ruling presuppose victims. They imply dependence. They are the province of the second-hander.

Roark characterizes a relationship between a professional and his client as one involving “dependence,” slavery, or even the ultimate exercise of power - execution - when the personal interests of the client and the professional do not agree, or when the professional’s work is subordinated to the client’s wishes. He suggests that when both parties come together freely by “mutual consent” for “mutual advantage,” “when their personal interests agree” and they “both desire” the legal representation, then the professional/client relationship is “proper.”

Of course, architects are not lawyers; their work is quite different. A lawyer is, to some extent, hired to be a stand-in, a representative or proxy for the client. One could argue that the lawyer’s and client’s interests always converge in that the lawyer wants to receive remuneration for providing legal services and the client wants those legal services performed for whatever purpose the client seeks, thus any further analysis is unnecessary. However, I believe that Roark’s approach may yield a somewhat different analysis, at least for some lawyers and for some clients.

Roark takes us a bit further; recall that he is on trial for bombing a building built from a perversion (in his view) of his designs and work. He suggests that a lawyer might ask for what purpose his or her work will ultimately be put by the client. He suggests that the lawyer might ask if the client’s ends, albeit lawful, conflict with or violate the lawyer’s personal morals and values. For example, the real estate attorney, above, might question the value of the developer client’s projects. The corporate lawyer might ask, for example, whether the lawyer’s excellent legal research ultimately will be used by the corporation to wrest well-deserved funds out of the corporation’s shareholders’ or employees’ hands. The transactional lawyer might ask whether the lawyer’s legal drafting will be used to create a document that will assist an elderly homeowner in signing away the title to her house in exchange for a loan carrying a lawful, but egregious, above-market interest rate. Like Roark, the lawyer might well find himself or herself wishing he or she could “bomb” the documents or legal research into oblivion.

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25 RAND, supra note 6 [first and second emphasis added.] Roark later says: “The love of a man for the integrity of his work and his right to preserve it are now considered a vague intangible and an unessential.” Id. at 685.
1. Ethical Rules Relevant to Roark

The Model Rules also bless this approach. First, Model Rule 1.7(a)(2) anticipates these situations and provides that the lawyer must decline or withdraw from representation if his or her personal interests conflict with those of the client so significantly that there is a “significant risk” that his or her representation of the client will be “materially limited” as a result. Comment 10 thereto states that the lawyer’s own personal interests should not be allowed “to have an adverse effect on representation of the client”; if they would, then the lawyer must not represent the client. In the situations above, the lawyer whose personal views regarding marshland, minority neighborhood preservation, or elder issues, respectively, might be so strong that the lawyer would be unable to represent the described client as vigorously and diligently and with as much zeal in advocacy as he or she does his or her other clients (with whom he or she does agree).

Second, Model Rule 2.1 blesses the lawyer’s role as advisor on non-legal issues, saying that the lawyer “shall exercise independent professional judgment” and “[shall] render candid advice.” It allows the lawyer permissively to counsel with the client about “moral, economic, social, and political factors” and ethical considerations relevant to his or her situation. Thus, the lawyer may counsel with the client about the morality and ethics of his or her proposed ends, in an attempt to persuade the client to choose less distasteful goals, withdrawing from representation if no agreement between them is reached.

One can easily imagine a sole practitioner (or senior partner in a firm) making a carefully weighed decision about whether to accept a client for legal representation once the lawyer realizes that the client’s ends are divergent from the lawyer’s own personal values. For example, the lawyer might be an avid environmentalist on the weekends, participating fully in the local Sierra Club, backpacking and hiking through the woods, or picking up trash on the roadways. He or she might carefully consider whether to accept the real estate developer client whose proposed project seeks to overdevelop Floridian marshlands for profit and deprive birds and fish of their natural habitat. The lawyer would first ask if he or she could represent that client as vigorously as his or her other clients and, if not, must decline. If the lawyer could put aside his or her personal environmentalist views, then the lawyer might balance his or her needs for clients and income against his or her distaste for the client’s proposed ends and might decide to accept the client. Alternatively, the lawyer might have a dialogue with the client about the morality and ethics of the proposed project, maybe ultimately agreeing to take on the client only if the client agrees to include a dedicated nature preserve in the real estate project.

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26 MODEL RULES OF PROF'L CONDUCT R. 1.7(a) (2007).
27 MODEL RULES OF PROF'L CONDUCT R. 1.7(a)(2) cmt. 10 (2002).
30 MODEL RULES OF PROF'L CONDUCT R. 2.1 cmt. 2 (2002) (“Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. . . . Moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.”).
It is the associate attorney in a law firm that can have the most difficulty with this situation. This individual is not likely to have sufficient access to the client to have the above-described dialogue nor is this individual likely to have sufficient autonomy to be able to easily decline or withdraw from representation. Instead, he or she would have to approach his or her supervising attorney with the dilemma and ask to be excused from representing the client. This is not likely to be a popular or practical move in a law firm.

II. VARIOUS APPROACHES TO PROFESSIONALISM

The differences between the professionalism of the butler, Stevens, in The Remains of the Day and that of the architect, Howard Roark, in The Fountainhead, and the foregoing illustrations, demonstrate a debate among experts in the legal professionalism and professional responsibility fields. The question at the center of the controversy asks how lawyers can or should approach their representation of clients, specifically, whether they should (1) act as “amoral professionals,” as instruments of their clients’ will, carrying out their clients’ wishes without questioning or examining the morality or desirability of those particular wishes; or (2) act as “moral lawyers,” as independent moral agents, bringing their own personal moral values into the lawyer-client representation and counseling. Rob Atkinson has written a brilliant and often cited article exploring this precise debate.

31 E.g., Atkinson, supra note 7, identifies three approaches to the professional role of the attorney. See generally Fred C. Zacharias, Reconciling Professionalism and Client Interests, 36 WM. & MARY L. REV. 1303, 1326 (1995) (arguing that ethics codes are silent or ambiguous in various ethical dilemmas, and that lawyers’ natural incentives lead them to choose “partisanship,” or blindly zealous advocacy, over “objectivity,” or an approach that includes the lawyers’ personal values and considers what is best for all involved in the situation, not simply what is best for the client, and arguing that the amoral role “avoids the need to confront what might be difficult moral choices for lawyers and their clients”). The analogy made is to a car mechanic, who does not question the use to which the repaired car will be put, but simply fixes the problem. Stephen L. Pepper, The Lawyer’s Amoral Role: A Defense, A Problem, and Some Possibilities, 11 AM. B. FOUND. RES. J. 613, 624 (1986) (providing philosophical support for the amoral professional role, based on the values of autonomy, diversity, and equal access to justice). Andrew Kaufman then points out that normally the technician does not know the intended use of the car, unlike the lawyer. If the mechanic knew, for example, that the car owner intended to leave his wife and take their jointly-owned car with him at a time when the wife is expecting a child and needs the car to get to the hospital, then the mechanic would then have a moral problem. He argues that it is the lawyer’s knowledge that creates the moral dilemma and the inability to simply say that one is a value-neutral “technician.” Andrew Kaufman, A Commentary on Pepper’s “The Lawyer’s Amoral Ethical Role,” 11 AM. B. FOUND. RES. J. 651, 652 (1986). See also Bruce A. Green, The Role of Personal Values in Professional Decisionmaking, 11 GEO. J. LEGAL ETHICS 19 (Fall, 1997) (suggesting that lawyers’ personal values often must be excluded in professional decisionmaking and, therefore, lawyers are not always able to be accountable to their consciences in all aspects of their professional lives). Cf. David Luban, The Lysistratian Prerogative: A Response to Stephen Pepper, 1986 AM. B. FOUND. RES. J. 637, 639 (1986) (disagreeing with Stephen Pepper’s defense of the amoral role) and Robert M. Bastress, Client Centered Counseling and Moral Accountability For Lawyers, 10 J. LEGAL PROF. 97 (1985) (arguing that lawyers need to become more client-centered in the Rogerian sense as well as morally accountable in their representation of clients and arguing for lawyering which requires the lawyer to discuss his or her personal morals and beliefs with the client and to refuse to take actions which are inconsistent with these morals and beliefs—“moral accountability”). See also Daniel R. Coquillette, Professionalism: The Deep Theory, 72 N.C.L. REV. 1271, 1273 (1994) (soundly rejecting the amoral professional role); Heidi Li Feldman, Codes and Virtues: Can Good Lawyers Be Good Ethical Deliberators? 69 S. CAL. L. REV. 885, 886–87 (1996) (describing the dichotomy between the amoral role and moral accountability as the difference between “the technocratic lawyer” and “honorable legal analysis”); and Deborah L. Rhode, Institutionalizing Ethics, 44 CASE W. RES. L. REV. 665, 667 (1994) (describing “neutral partisanship”).
using Ishiguro’s novel and characters, Stevens and Miss Kenton, as illustrations.\textsuperscript{32}

\textbf{A. The Amoral Professional Role}

At the one extreme, lawyers might represent clients blindly and unquestioningly, pursuing their clients’ ends zealously and to the fullest extent allowable by law, regardless of the lawyers’ personal feelings about the morality, desirability, beneficence, or utility of those ends. In this model, it is simply irrelevant whether the lawyer’s personal feelings, morals, values, or beliefs conflict with the particular goals of the client. This approach has been called the amoral professional role,\textsuperscript{33} instrumentalism,\textsuperscript{34} utilitarianism,\textsuperscript{35} the technocratic lawyer,\textsuperscript{36} neutral partisanship,\textsuperscript{37} and the confusingly named client-centered approach\textsuperscript{38} or client-orientation approach.\textsuperscript{39} In this approach, the lawyer functions as a technician who carries out the goals and ends of legal representation dictated by the client. The only constraints on the lawyer’s behavior are the client’s wishes, substantive law, and the code of legal ethics. The lawyer’s own personal morals do not form a constraint on her behavior nor do they constrain the client’s decisions and behavior. The amoral role allows lawyers to ignore their own personal values and morals which conflict with the client’s wishes and instead engage in any ethical behavior as long as it achieves the client’s stated goals. It is often justified by reference to a lawyer’s duty to be a “zealous advocate” for his or her clients.\textsuperscript{40} Both Richard Matasar and Stephen Pepper have argued that the dissonance between one’s own personal values and one’s work on behalf of clients may cause discomfort or even psychic pain for the attorney.\textsuperscript{41} Thus, taking on the amoral role

\textsuperscript{32} Atkinson/Yale, supra note 3.
\textsuperscript{33} Zacharias, supra note 31, at 1326.
\textsuperscript{34} Coquillette, supra note 31, at 1273.
\textsuperscript{35} Feldman, supra note 31, at 887.
\textsuperscript{36} Id. at 886–87 (describing the dichotomy between the amoral role and moral accountability as the difference between “the technocratic lawyer” and “honorable legal analysis”).
\textsuperscript{38} It is confusingly named because it is not the same as the client-centered approach espoused by Robert M. Bastress and associated with the psychologist Carl M. Rogers, which Bastress describes as putting “the attorney in the role of an open, accepting helper and leaves both priority-setting and decision-making to the client.” Bastress, supra note 31, at 98–99.
\textsuperscript{39} Zacharias, supra note 31, at 1314–16.
\textsuperscript{40} Pepper, supra note 31, at 613. The concept is here referred to as the amoral role or amoral professional role. Id. at 624. Cf. Kaufman, supra note 31, at 652 and Luban, supra note 31, at 639, 667, citing MODEL CODE OF PROF’L RESPONSIBILITY EC 7-1 (1980).
\textsuperscript{41} Ethical here means any behavior which complies with the relevant codes of professional responsibility for lawyers. 
\textsuperscript{42} MODEL RULES OF PROF’L CONDUCT R. 1.3 cmt. 1 (2002).
\textsuperscript{43} Richard Matasar says this conflict results in unavoidable “pain,” Richard A. Matasar, The Pain of Moral Lawyering, 75 IOWA L. REV. 975, 986 (1990) (actually he promises “gut-wrenching, sleepless nights”). Stephen L. Pepper, one of the main advocates for the amoral professional role, admits that the lawyer adopting this role will not be “comfortable.” Pepper, supra note 31, at 635. More recently, Blake D. Morant, Lessons From Thomas More’s Dilemma of Conscience: Reconciling the Clash Between A Lawyer’s Beliefs and Professional Expectations, 78 ST. JOHN’S L. REV. 965, 969, 969 n.13, & 993–1009 (2004), explores at length the “cognitive dissonance” caused by this conflict and provides a number of concrete examples of such conflicts and how a lawyer might resolve them.
may assist attorneys in carrying out the functions of their work, without undue angst or pain.

Pepper provides a vivid analogy that beautifully illustrates the concept. The analogy is to a car mechanic, who does not question the use to which the repaired car will be put, but simply fixes the problem. Andrew Kaufman points out, though, that normally the technician does not know the intended use of the car, unlike the lawyer. If the mechanic knew, for example, that the car owner intended to leave his wife and take their jointly-owned car with him at a time when the wife is expecting a child and needs the car to get to the hospital, then the mechanic would have a moral problem. He argues that it is the lawyer’s knowledge that creates the moral dilemma and the inability to simply say that one is a value-neutral “technician.”

For example, it would be ludicrous to imagine the car mechanic saying to the client, “You mean, you are going to take this car as soon as I fix it, drive across the country and abandon your wife, taking the family car with you at a time when your wife is nine months pregnant and needs the car to get to the hospital? Well, in that case I refuse to repair your vehicle!” It is an extreme but memorable example of the amoral professional role.

B. Moral Lawyering

At the other end of the spectrum is an approach often called objectivity, honorable legal analysis, moral lawyering, or Atkinson’s Type III “true believer.” This approach advocates that lawyers can and should consider their own personal beliefs, values, morals, standards, and feelings in their representation of clients. In this model, lawyers can and should consider whether the client’s goals and ends are inconsistent with their own personal values. If so, then perhaps the lawyer might discuss with the client the moral advisability of his or her proposed course of action. In extreme cases, where the lawyer’s values are irreconcilably divergent from the client’s goals, then the lawyer would refuse or withdraw from representation of the client in the particular matter. For example, suppose a corporate lawyer is also an environmentalist in his or her personal and political beliefs; he or she might refuse to represent corporations whose

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44 Pepper, supra note 31, at 624 (providing philosophical support for the amoral professional role, based on the values of autonomy, diversity, and equal access to justice).
45 Kaufman, supra note 31, at 652.
46 Id.
48 Zacharias, supra note 31, at 1306–09.
49 Feldman, supra note 31, at 887.
50 See generally Matasar, supra note 43. Here it will be referred to as moral lawyering, in contrast to the “amoral” role. Note, also, that moral lawyering may be easily confused with lawyering with an “ethic of care,” described infra in Section II. D, but the two concepts are not necessarily the same.
51 See infra Section II. D.
52 See infra Section II. D.
53 See infra Section II. D.
55 MODEL RULES OF PROF’L CONDUCT R. 1.16(b)(4) (2002).
environmental policies he or she did not agree with, even though the matter requiring legal representation does not involve environmental concerns (such as a corporate merger or employment dispute). Another example might be a general practice lawyer who does not approve of divorce for personal or religious reasons; he or she might refuse to represent a client seeking a divorce though the lawyer is competent to handle the matter.

Moral lawyering usually contemplates several courses of action for the lawyer. First, in initial interviews with a new client, the moral lawyer will likely discuss with the client those non-legal concerns with the client raised by the client's request for legal services. The lawyer and client will enter into an open, usually collaborative, discussion of the non-legal advantages and disadvantages of the client's request. They will evaluate whether the proposed action would be moral, right, just, fair, ethical, therapeutic, beneficial to the client and to others, psychologically satisfying or optimal, or harmony-building, among other potential concerns. If the client and lawyer engage in this discussion and mutually agree on a course of action for the lawyer to take as the client's representative, then the handling of the case goes forward. If, however, the client and lawyer disagree over the proper course of action, then the lawyer has several options. He or she may continue the representation having voiced his or her objections or concerns, continue the representation but refuse to take certain actions on behalf of the client, or withdraw entirely from representation and refer the client to another lawyer.

Certainly, this approach ultimately can reduce lawyers' income, as lawyers often will refuse particular causes, clients, or courses of action. However, advocates of this approach argue for its benefits; for example, Fred Zacharias asserts that it will "reduce immoral actions by attorneys, minimize public perception of attorneys as amoral or immoral, and eliminate lawyers' conflicts between their advocate roles and their own values and morals, which would result in happier lawyers."

The philosophy behind moral lawyering is usually traced to the Aristotelian concept that one's character flows from one's actions, even if those actions are taken in a professional capacity on behalf of someone else. In other words, this is

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50 In fact, even the main advocate of the amoral role, Stephen Pepper, admits that "moral dialogue" with the client is a way to resolve the inevitable conflicts between the client's goals and the lawyer's morality, Pepper, supra note 31, at 630-32, and that "conscientious objection" may have to be exercised (albeit rarely) by the lawyer when the conflicts remain unresolved. Id. at 632-33.

51 See generally Zacharias, supra note 31; Bastress, supra note 31; cf. Green, supra note 31 (suggesting that lawyers' personal values often must be excluded in professional decisionmaking and, therefore, lawyers are not always able to be accountable to their consciences in all aspects of their professional lives).

52 Carrie Menkel-Meadow, Is Altruism Possible in Lawyering?, 8 GA. ST. U. L. REV. 385, 414 n.100 (1992) (arguing that lawyers should become more altruistic and also noting that once a client is accepted, zealous advocacy is required by the Model Rules).

53 Zacharias, supra note 31, at 1323-24, 1349.

54 Daicoff, Leopards, supra note 2, at 575 (citing Bastress, supra note 31, at 118-19) (happier lawyers would result from eliminating the conflict between one's work and one's beliefs—this is consistent with the Aristotelian concept that one's self-esteem depends on how estimable one's actions are in one's own opinion).

55 See Coquillette, supra note 31, at 1272 ("As Aristotle observed: The man, then, must be a perfect fool who is unaware that people's characters take their bias from the steady direction of their activities. If a man, well aware of what he is doing, behaves in such a way that he is bound to become unjust, we can only say that he is voluntarily unjust . . . . You cannot be a bad person and a good
the idea that, “I am what I do,” or “All that I do, reflects on me.” Therefore, this lawyer believes that a lawyer’s actions on behalf of a client affect the lawyer’s character, thus an amoral professional stance may not be possible or desirable.

C. Lawyering with an Ethic of Care

A related concept is the idea of lawyering with an ethic of care.62 This approach to lawyering developed from the ideas of Professor Carol Gilligan, who developed a moral decision-making model in response to the deficiencies she perceived in Professor Lawrence Kohlberg’s six-stage theory of moral decision-making, which she found gender biased and unreflective of the morality of women, in general.63 Gilligan argued that Kohlberg’s scheme did not adequately measure women’s decision-making and indeed often scored it as less developed than men’s.64 She asserts that the “ethic of care” is an approach to decision-making that “values interpersonal harmony, maintaining relationships, people’s feelings and needs, and preventing harm.”65 Gilligan presents the care ethic as one end of a continuum; the other end is called the “rights orientation.”66 I have previously explained the difference between the two:

In an ethic of care, conflicts are resolved by asking what best maintains relationships, what each person needs, and how not to hurt oneself or another. In contrast, a rights orientation focuses on rights, rules, standards, individuality, independence, personal beliefs, and freedom from other’s interference. Dilemmas are resolved by impartially viewing competing claims, determining which values or rights are most important to uphold, and assessing the relative weight of the positive and negative consequences of a decision.67

Perhaps not surprisingly, empirical research on law students in 1991 found that the ethic of care tended to disappear during the first year of law school, while the rights orientation either increased or became more ingrained.68 Most of the shift

62 CAROL GILLIGAN ET AL., CONTRIBUTIONS OF WOMEN’S SEX BIAS IN MORAL DEVELOPMENT THEORY AND RESEARCH, FINAL REPORT TO NATIONAL INSTITUTE OF EDUCATION, (cited in LAWRENCE KOHLBERG, THE PSYCHOLOGY OF MORAL DEVELOPMENT: ESSAYS ON MORAL DEVELOPMENT (VOLUME II) 344 (1984)).
63 Id.
64 Id.
66 Lawrence J. Landwehr, Lawyers as Social Progressives or Reactionaries: The Law and Order Cognitive Orientation of Lawyers, 7 L. & PSYCHOL. REV. 39, 40 n.2 (1982) (Stage 4 values fixed rules, authority, and the maintenance of social order; the rights orientation also emphasizes rights, rules, standards, fairness, and justice, along with other concepts).
67 Daicoff, supra note 65, at 1400 (footnotes omitted).
was attributable to female law students shifting from an ethic of care to a rights orientation. Many male law students, who more often espoused the rights orientation at the outset, became more firmly planted in that preference. This research suggests that legal education tends to “silence the ethic of care.”

Despite this finding that law school deemphasizes the care ethic and other data suggesting that the ethic of care may be underrepresented in the legal profession, Professors David Wexler and Carrie Menkel-Meadow have argued that lawyering with an ethic of care is an appropriate and desirable alternative to the amoral professional role. They believe that certain lawyer-client relationships and certain forms of lawyering may be enhanced by a care-oriented approach, particularly where the relational, emotional, and psychological needs and concerns of the parties are paramount. This approach to lawyering is particularly relevant for lawyers practicing “therapeutic jurisprudence.”

D. Atkinson’s “Wise Counselor”

Atkinson’s Type II lawyer is the wise counselor, or the lawyer who brings a consideration of public and moral values into the representation of clients, via open dialogue with the client, but ultimately is guided by the client’s decisions as to the ends of representation. His Type II is probably close to Yale University Law School Dean Anthony Kronman’s ideal of the sage lawyer exercising “practical wisdom” and the concept of lawyer as Aristotelian “friend.”

69 Id. at 229 (“The Sentence Completion Test data revealed that the caring responses decreased overall after the first year of law school, but that the changes in the women and men were significantly different. Women’s caring responses decreased significantly, but the men’s responses exhibited no significant shift. At the end of the first year of law school, there was no significant difference in the care orientations of women and men”).

70 Id. at 229–30 (pointing out that students who displayed a rights orientation at the beginning of the first year of law school generally had an even stronger rights orientation by the end of the first year).

71 Daicoff, supra note 65, at 1399 n.390 (citing Janoff, supra note 68) (finding that law students who entered law school with an ethic of care tended to lose that ethic of care, and shift to a rights orientation, by the end of the first year of law school).


74 Id.

75 Therapeutic jurisprudence refers to law as a healing profession, or the use of social science to study how law, legal processes, and legal actors can optimize their effects on the psychological functioning of the individuals involved in a legal matter, without trumping legal rights. This discipline is now represented by over 1,000 law review articles, many court programs, and several books. See, e.g., DENNIS P. STOLLE, DAVID B. WEXLER, & BRUCE J. WINECK, EDs., PRACTICING THERAPEUTIC JURISPRUDENCE 112–20 (2000).


77 ANTHONY KRONMAN, THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION
friend is not the kind of friend who tells you what you want to hear, but the kind of true friend, who tells you when you are off course, off the mark, about to do something foolish, or when you are not at your best.

The Type II lawyer embodies the very spirit of the scheme established by the current ABA Model Rules 2.1, 1.2, and 1.3. Model Rule 2.1 explicitly blesses the attorney’s role as a candid counselor and permits the lawyer to refer to extralegal concerns such as moral, economic, social and political factors, and cost and effects on other people in rendering advice. The Official Comments to Model Rule 2.1 encourage lawyers to render advice to the client even if the advice will be “unpalatable to the client,” encourage lawyers to refer to relevant moral and ethical considerations in giving advice, since they “impinge upon most legal questions and may decisively influence how the law will be applied,” and state that lawyers may initiate advice, unasked, to the client. Model Rule 1.2 then reminds the lawyer, however, that the ultimate decision regarding the substance and objectives of the legal representation belongs to the client, while decisions about means and processes used, particularly regarding “technical, legal and tactical matters,” belong to the lawyer. The Type II lawyer is naturally likely to be sensitive to these extralegal factors, bring them to the client’s attention, initiate a discussion with the client about the effect of these factors on the client’s ultimate decision, and then ultimately abide by the client’s decision about the goals and ends of the legal representation. The ethical rule framework thus allows the Type II lawyer to integrate his or her personal morals, values, and beliefs into his or her representation of clients (or, at the least, not ignore or trample on them) while simultaneously upholding the ideals of zealous advocacy and client autonomy.

E. Professional Role, Zealous Advocacy, and the Ethics Code

Interestingly, my experience with presenting these ends of the spectrum to law students usually results in a response like, “But professor, we are required by the ethics code to be zealous advocates. Anything other than zealous advocacy will subject us to malpractice liability or disciplinary action. As lawyers, we will not be

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(1995)


77 Id.


82 MODEL RULES OF PROF’L CONDUCT R. 2.1 cmt. 2 (2002), in ROTUNDA & DZIENKOWSKI, supra note 81, at 593.

83 MODEL CODE OF PROF’L CONDUCT R. 2.1 cmt. 5 (2002) (“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 may be relevant to the client’s situation.” (emphasis added)).

84 MODEL RULES OF PROF’L CONDUCT R. 1.2 cmt. 2 (2002), in ROTUNDA & DZIENKOWSKI, supra note 81, at 81.

allowed to question the morality of our client’s goals or wishes, since our job is solely to be zealous advocates and represent the client to the nth degree. To do anything else would be malpractice.” This is a myth that some law schools implicitly engender in law students, who then carry this mythical perception into practice and unquestioningly adopt an amoral professional role. Adopting it is not objectionable; it is the students’ perception that there is no other lawful alternative available to them that is problematic.

This pervasive myth is not entirely consistent with some portions of the model legal ethics rules promulgated by the American Bar Association. The current American Bar Association’s Model Rules of Professional Behavior (“Model Rules”) reference “zeal in advocacy” only in one place, in one comment to one Model Rule. Model Rule 1.1 imposes a duty of diligence and promptness in representing a client, but this does not mean that every advantage must be pursued in furtherance of the client’s cause. Comment 1 to Model Rule 1.3 refers to “zeal in advocacy” but then states that not every advantage must be pursued; the lawyer has discretion in this area. But the ultimate decision as to the overall goal of legal representation belongs to the client, according to Model Rule 1.2.

While the ultimate decision is the client’s, the lawyer is explicitly permitted and even encouraged to counsel with the client about extralegal factors bearing on the legal representation, in the lawyer’s role as counselor of the client, in order to assist the client’s decision-making. Model Rule 2.1 states: “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 may be relevant to the client’s situation.”

Thus, Model Rule 2.1 thereby seems to encourage a diverse approach to professionalism. It appears to explicitly bless moral lawyering and discourage a monolithic adherence to a neutral partisan approach, when that lawyer acts only as a “zealous advocate.”

One explanation for the primacy of zealous advocacy in the culture of the legal profession, however, is the fact that zealous advocacy was the main topic of one of the original 1908 Canons of Professional Ethics. Canon 7 of this earlier Model Code stated that “a lawyer should represent a client zealously within the bounds of the law.” Like current Model Rule 2.1, Ethical Consideration 7-8 of this earlier Model Code also explicitly encouraged lawyers to engage in a moral analysis of the client’s proposed actions, so even early on, an approach like moral

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87 MODEL RULES OF PROF‘L CONDUCT R. 1.3 (2002).
lawyering was contemplated.93

The era of “zealous advocacy” as one of the thirteen Canons, or fundamental values of the legal profession, appears to have passed; this emphasis is no longer reflected in the legal ethics code, as it was in the pre-1983 ABA Model Code. Yet the modern culture of the legal profession maintains the myth of “zealous advocacy” as a mandate, perhaps because many of the senior partners in today’s private firms (and tenured law professors in today’s law schools) learned legal ethics during this era. In my experience, this myth pervades even into law school, among students who have not yet entered the practice of law, yet the formal ethics codes explicitly envision a more diverse approach to the lawyer’s professional role.

The next section will briefly explore the advantages and disadvantages of the amoral professional role as compared to moral lawyering, for lawyers, clients, and society. For ease of discussion, the term “amoral professional role” will here encompass instrumentalism,94 utilitarianism,95 the technocratic lawyer,96 neutral partisanship,97 the client-centered approach98 or client-orientation approach,99

93 Its advice is couched in a bit stronger language than the current Model Rule (emphasis and underlining added):

EC 7-8 INFORMING CLIENT OF RELEVANT CONSIDERATIONS; WITHDRAWAL FROM EMPLOYMENT

A lawyer should exert his best efforts to insure that decisions of his client are made only after the client has been informed of relevant considerations. A lawyer ought to initiate this decision-making process if the client does not do so. Advice of a lawyer to his client need not be confined to purely legal considerations. A lawyer should advise his client of the possible effect of each legal alternative. A lawyer should bring to bear upon this decision-making process the fullness of his experience as well as his objective viewpoint. In assisting his client to reach a proper decision, 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. He may emphasize the possibility of harsh consequences that might result from assertion of legally permissible positions. In the final analysis, however, the lawyer should always remember that the decision whether to forego legally available objectives or methods because of non-legal factors is ultimately for the client and not for himself. In the event that the client in a non-adjudicatory matter insists upon a course of conduct that is contrary to the judgment and advice of the lawyer but not prohibited by Disciplinary Rules, the lawyer may withdraw from the employment.

In the old Model Code, an Ethical Consideration was only aspirational and was not mandatory. (All but about ten states have gradually abandoned the Model Code in favor of the Model Rules, which contain no such blessing of moral lawyering.) The current Model Rules explicitly remind the lawyer that the ultimate decision is the client’s and not the lawyer’s and allow the lawyer to withdraw from representation only in non-adjudicatory matters, where the lawyer’s judgment and the client’s conflict. However, Professor Michael Distelhorst, who has documented the history of legal ethics codes and rules since 1830, asserts that legal ethics has consistently swung between two poles – from a formulation of aspirations and ideals of ethics and professionalism, to an emphasis on minimum rules to which lawyers must conform or be sanctioned. Most jurisdictions have adopted the Model Rules, which embody the latter approach (the minimal standards), but Professor Distelhorst suggests that the American Bar Association’s “Ethics 2000” efforts were evidence that the pendulum may be moving back towards a more aspirational or ideal approach. The Model Code reflected both: the Ethical Considerations set out the ideals to which lawyers should aspire and the Disciplinary Rules set out the minimum rules to which lawyers must conform. Therefore, to dismiss this EC as merely aspirational or a current minority view simply ignores both the bulk of the history of legal ethics and its probable future direction. Personal communication with Professor Michael Distelhorst, Capital University Law School, March, 2007.

94 Coquillette, supra note 31, at 1273.
95 Feldman, supra note 31, at 908.
96 Id. at 886-87 (describing the dichotomy between the amoral role and moral accountability as the difference between “the technocratic lawyer” and “honorable legal analysis”).
97 Rhode, supra note 31, at 667 (“neutral partisanship”).
zealous advocacy, and Atkinson’s Type I. The term “moral lawyering” will here include lawyering with an ethic of care, objectivity, honorable legal analysis, and Atkinson’s Type III. Although there are differences in the definition and application of some of these conceptions of the lawyer’s professional role, and grouping them together may blur significant distinctions between them, they are here grouped together for ease of discussion.

III. CRITIQUE OF APPROACHES TO PROFESSIONALISM

Certainly, all of the foregoing approaches may be allowable under the Model Rules. The remaining questions involve: (1) whether and how these ideals should be presented in law school; and (2) to which ideal should new lawyers, who are perhaps malleable in terms of professional ethics, seek to conform. This section will summarize the advantages and disadvantages of two of these approaches to professionalism.

A. Amoral Lawyering

Professor Fred Zacharias has provided an illuminating explanation of the history and evolution of the amoral professional role. Apparently, in the early years of the United States as a country, lawyers openly acknowledged the tension between an amoral professional stance and infusing one’s own personal morals and beliefs into the representation of clients. For example, Abraham Lincoln is said to have turned away a client’s lawsuit to enforce a $600 debt against a financially strapped widow with six children because he did not believe the lawsuit was the right course of action for the man. In describing this vignette, I have imagined Lincoln saying something like this to his client:

You are legally owed this debt, there is no question about it. But, you are a young, strong, able-bodied man. I can think of several better ways for you...
to earn $600 than by squeezing it out of this poor woman and her children. Go away and don’t bother me anymore.”

Lincoln’s personal values about the morality of a young, capable man suing a poverty-stricken single mother infused his “counsel” and “advice” to his potential client in this case.

After this era, American lawyers went from representing the common man to more often representing the rich, upper class elite. As this change took place, the profession in response began to “rely on professional self-regulation and to espouse professional values such as serving the poor at no cost, making legal services widely available, and zealously protecting clients’ interests.” By the early 1950s, the values of professionalism as a calling, pro bono obligations, and zealous advocacy were firmly established.

Then, during the civil rights movements of the 1960s, it became even more important for lawyers to act amorally when representing clients. Monroe Freedman is usually credited with explaining the importance of the amoral professional role of lawyers to the social and legal changes wrought during this era. He viewed a client-centered professional orientation, where the lawyer advocates for the client’s position regardless of whether the lawyer personally agrees or disagrees with the client’s views, as “a constitutional guarantee and as an essential element in upholding the dignity of individuals.” At this time, the legal profession was dominated by middle and upper class white Anglo-Saxon males; diversity of gender, ethnic origin, and socioeconomic status was very limited. Without the willingness of lawyers, many of whom belonged to the elite, to represent unpopular or radical causes and clients, important social and legal reforms could not have occurred. Lawyers were heroes, amoral lawyering was valued, and value-laden approaches to lawyering appeared paternalistic, rigid, and stifling of clients’ rights.

In the 1970s, the public became disenchanted by corruption of governmental figures and the United States’ involvement in the unpopular Vietnam War. Perhaps in response, a sense of “me first” and desire for lucre characterized what are sometimes referred to as the “go go 1980s” (referring to the quick fortunes made in real estate, securities investments, and even illegal drugs during this decade). This is where the amoral professional role began to unravel for the legal

109 Id. at 229. This is not a direct quote; rather, it is how the author imagines President Lincoln might have presented it to his client.
110 See M. P. Baumgartner, Law and the Middle Class: Evidence from a Suburban Town, 9 LAW & HUM. BEHAV. 3, 4 (1985) (“[U]pper-middle-class people predominate in the ranks of those who mobilize the law. Working class and welfare-class people are believed more likely to handle their affairs without recourse to legal agencies”).
111 Daicoff, Leopards, supra note 2, at 564, (citing Zacharias, supra note 31, at 1316).
113 Zacharias, supra note 31, at 1319–21.
114 Id.
115 Cummings, supra note 112, at 14–15 (noting that the NAACP was able to upend segregation).
116 Id. (noting public interest lawyers “often engage in aggressive tactics”). See also Zacharias, supra note 31, at 1318 (noting that attorneys were regarded as heroes and defended clients even knowing that they were guilty).
117 James P. Schratz, I Told You to Fire Nicholas Farber - A Psychological and Sociological
profession. Unscrupulous, immoral, and even illegally-behaving clients engaged lawyers who did not question the clients’ goals or objectives, but simply saw the lawyers’ role as to accomplish their clients’ ends. The ethos of the legal profession at this time reflected J. P. Morgan’s utilitarian sentiment quoted above. As some of these immoral clients were exposed by the media, however, the lawyers associated with them began to be viewed as similarly immoral or evil, not simply amoral. By the middle of the 1980s, calls for more “professionalism” and “values” in the legal profession were rampant. Amoral lawyers representing immoral clients can result, and has resulted, in lawyers unwittingly or recklessly engaging in illegal or immoral actions. The profession may have suffered from “guilt by association” as a result.

1. Advantages of Amoral Lawyering

The advantages of amoral lawyering are that it upholds impartiality of lawyers, equal access to justice, individual autonomy and independence, and diversity of thought and belief. It serves as a check on paternalistic actions by lawyers and it ensures that lawyers will not serve as gate-keepers to deny access to the courts to unpopular clients or causes. It has been particularly important during times when society has needed reform and change. It is also particularly important if lawyers continue to be a demographically elite, rich, and highly educated group, whose values may not reflect those of the society as a whole. For example, in small communities the local lawyers might function in a discriminatory fashion, thus denying fair representation to all members of the community. Finally, it relieves lawyers of the often-difficult task of living with (or resolving) conflicts between their personal values and their clients’ desired goals.

2. Disadvantages of Amoral Lawyering

The disadvantages are equally clear. Amoral lawyers representing immoral clients can lead to immoral or even illegal actions facilitated by lawyers, thus contributing to the erosion of public opinion of lawyers and the legal system. Examples are abundant: the government securities scandals of the 1980s, the
Enron and Worldcom cases of the 1990s, the O.J. Simpson criminal trial’s verdict (in some commentators’ eyes), and even the million-dollar verdict obtained for the scalding cup of McDonald’s coffee.

Further, amoral lawyering does not encourage the lawyer to render candid advice to his or her client, bringing all the lawyer’s experience and legal and non-legal wisdom to bear on the client’s matter, despite the ethics code’s permission to do so. The client thus may not reap the benefit of the lawyer’s full capabilities as a counselor and advisor.

Lawyers who cannot divorce their values from their representation of clients are likely to experience great anguish if they attempt to adopt an amoral professional role. They can feel “inauthentic” at best and deeply immoral or distressed at worst.

B. Moral Lawyering

1. Advantages of Moral Lawyering

As stated above, moral lawyering allows the lawyer to bring the fullness of his or her life experiences, values, and beliefs to the representation of clients. It arguably results in clients receiving better advice and counsel from their lawyers. It may foster collaboration and moral dialogue between lawyers and clients, regarding the goals of the representation. It may relieve lawyers of the psychic angst of taking actions in which they do not believe, thus arguably contributing to their wellbeing and integrity.

2. Disadvantages of Moral Lawyering

One criticism of moral lawyering is that it may deny clients equal access to legal representation and, thus, justice. But, attorneys do not have the right to deny legal representation to clients on grounds that violate the right to equal protection of the law.

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124 Nancy Rapoport & Bala G. Dharan, Enron: Corporate Fiascos and Their Implications (2004).
127 Morant, supra note 43, at 993–1007, identifies three ways for lawyers to resolve difficult conflicts between a lawyer’s personal beliefs and a client’s legal but unpalatable wishes: “belief modification, cognitive addition, or compromise . . . [to] relieve [the] . . . tension.” Id. at 1001. He then explains that the process of choosing between these options requires “awareness” and a process of weighing the importance of beliefs and the probable consequences of various actions, ultimately concluding that this is an “essentially personal exercise.” Id. at 1007, 1009.
128 Pepper, supra note 31.
129 See Model Rules of Prof’l Conduct R. 6.2 (2002) (noting that there are only three situations in which an attorney can reject an appointment: “representing the client is likely to result in violation of . . . law; . . . an unreasonable financial burden on the lawyer; or” the client is seeking a cause repugnant to the attorney’s views).
in a fine of $5,000 imposed on an attorney who refused to represent a male client. The attorney’s argument that she chose to devote her professional life solely to eliminating gender bias in the legal system, and therefore would only represent female clients, was unsuccessful. Under moral lawyering, it is conceivable that lawyers could refuse to represent a variety of clients and causes, as long as the reasons for the refusals were in themselves not objectionable (e.g., racist, sexist, or illegally discriminatory).

It is also true that, in earlier times when access to law school and the bar was de facto limited to white male majority members, moral lawyering could have conceivably denied equal access to legal representation to clients and causes to which the majority was not sympathetic. In today’s world, however, there is a great diversity of gender, race, national and ethnic origin, and religious and political views represented in law school and in the bar. Today, there is more likely to be an attorney within every subgroup in the American population. Each philosophical, political, or other minority group today can have a member who is an attorney who will accept members of the group as clients. Therefore, theoretically, no one client or cause should go unrepresented, even if all lawyers adopted moral lawyering.

Further, not all lawyers will adopt moral lawyering. There will always be lawyers who are more comfortable philosophically and professionally with the amoral role. Some lawyers will decide that their moral, ethical, or value-based objections to a particular client, cause, or professional action outweigh the personal and professional benefits of representing that particular client or taking that particular action. Some may opt to proceed with the representation despite their personal feelings, if their desire to represent the client or earn the legal fees associated with the representation exceeds their personal discomfort. Thus, no client or cause should go unrepresented in today’s society.

The next section will explore the relationship of certain empirical research on the personality and wellbeing of lawyers to the professionalism roles described above. It will discuss the various traits of lawyers that might lead them to choose differing approaches to lawyering.

IV. RELEVANT EMPIRICAL RESEARCH

A. Intrinsic Values

How important are a lawyer’s personal values? The zealous advocate might argue that they are entirely irrelevant, perhaps only a nuisance to be quickly put aside, when representing one’s clients in the course of one’s work. However, some disturbing empirical research on law student distress reveals that intrinsic values (i.e., what one finds intrinsically important and satisfying) are important to maintaining one’s wellbeing and psychological health. During law school, to the

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131 Supra note 13.
132 Atkinson, supra note 7 (for example, his Type 1 lawyer might take this approach).
133 Lawrence S. Krieger, Institutional Denial About the Dark Side of Law School, and Fresh
extent that law students lost their intrinsic values and began to focus instead on external rewards, they developed distress and a lowered sense of wellbeing. Extrinsic rewards in law school are things such as grades, class rank, awards, and honors; later in life they become money, plum jobs, judicial clerkships, houses, boats, cars, and status. In contrast, intrinsic rewards are things that one finds intrinsically satisfying or that one would do for little or no compensation. The researchers concluded that maintaining one’s focus on one’s intrinsic values was critical to maintaining emotional and psychological wellbeing and avoiding distress.

To apply this finding to law practice, for example, if one is the kind of person who values community, connectedness, and relationships with other people, then representing a client in a case in which the lawyer’s position does violence to those values, and where the lawyer’s principal rewards are monetary, may indeed lead to distress and a lowered sense of wellbeing for the lawyer. If the lawyer’s intrinsic values are representing a client well within the bounds of the law and achieving the client’s goals, then his or her intrinsic and extrinsic rewards would converge and the lawyer should feel satisfied and fulfilled. In contrast, the first lawyer described above would experience dissonance: a conflict of his or her intrinsic values with his or her extrinsic rewards in the case. Krieger’s research would suggest that this might cause angst for the lawyer. Functioning as a “butler,” and serving the client, without regard to one’s own morals and values, therefore, may cause angst when one’s work is actually in conflict with one’s intrinsic values. Maintaining one’s intrinsic values, on the other hand, might lead to enhanced wellbeing.

An individualized form of moral lawyering, or “architecting,” may allow the lawyer the greatest opportunity to optimize his or her ability to make the practice of law intrinsically satisfying, which in turn maximizes the lawyer’s ability to optimize his or her psychological wellbeing. One expects that the lawyer’s personal values will reflect that of society, so that lawyers following their heart will result in actions that align with general societal norms, but, in this approach, aligning one’s actions with general social norms is not the focus. Instead, the focus is on the individual, unique, distinctive, and personal values of the attorney. This may free attorneys from some pressure to conform to others’ view of what is appropriate professional action and allow attorneys to determine for themselves what action to take, as long as they are acting within the bounds of the legal ethics code. Baker and Floyd, for example, provide several good examples of lawyers who have found ways to practice law that they find very fulfilling.

Imagine a general practice attorney who has spent years in psychotherapy to overcome the effects of a nasty divorce. She has come to believe, with perhaps a spiritual basis, that “everything happens for a reason” and that, in any intimate

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134 Id. at 125–26.
135 Id. at 122–29.
136 Thomas E. Baker & Timothy W. Floyd, A Symposium Précis, 27 TEX. TECH L. REV. 911 (1996) (reporting the results of interviews with forty-four lawyers who have integrated their faith with their law practice).
relationship, “no one party is to blame, all fault is fifty-fifty.” While she does not exclusively practice family law, some of her clients come to her seeking a divorce. She explains her views in the initial client conference and warns her clients that another attorney might take a more fault-driven, one-sided approach to their divorces. Some clients engage her services despite her disclaimers and her attempt to give the clients enough information to render informed consent. This attorney ought to be entitled to practice law in this way. She and her clients ought to feel free to discuss, disagree about, argue about, or agree on these matters, before and during the course of the legal representation. If one of her intrinsic values is to view all people with tolerance, forgiveness, and evenhandedness, without blame, and help others to have this view, then this approach to her clients and cases fits with her intrinsic values and she may find her practice fulfilling.

Imagine another attorney who has been in recovery from alcoholism for ten years. He was suspended from law practice by the disciplinary committee of his state bar for several years, but is now in good standing. He now serves as a mentor to other recovering attorneys, chairs the lawyers’ assistance committee of his local bar association, and is generally a person to whom others turn for help with alcoholism among his peers. He derives great satisfaction from helping others overcome their difficulties with alcoholism. This attorney has a general practice, some of which consists of representing clients charged with driving under the influence of alcohol (commonly known as a “DUI”). He explains to these clients, before taking their case, that he operates under the assumption that anyone with two DUI charges within a five-year period of time is likely to have an alcohol problem and he routinely requires them to agree to enter into and stay in recovery from alcoholism before he will take them on as clients and during the representation. About fifty percent of his potential clients decline to do so and he refers them to other attorneys. Those who engage his services understand that a condition of his representation of them is that, if they are found by a mental health professional to have an alcohol problem, they must be “in recovery” and must attempt to be abstinent from alcohol during the pendency of their criminal litigation. His explanation is that he has worked too hard on himself and on others suffering from the “disease of alcoholism” and is not willing to expend his legal efforts on behalf of individuals who have been diagnosed with alcoholism and yet prefer not to recover from the condition. In addition, one of his intrinsic satisfactions may be to help others arrest alcoholism, so that practicing in this way fulfills his intrinsic values as well.

Perhaps no one would disagree with these two idiosyncratic attorneys’ choices about how to approach undertaking to represent clients, but there is little explicit support in the professionalism literature for an individualized, “personal morality” approach to the professional role. Yet it is just this sort of permission to follow one’s personal, individualized values that is necessary to first, assist lawyers in identifying what their intrinsic values are; and second, encourage lawyers to incorporate those intrinsic values into their work as the ultimate ends of their work, rather than finding intrinsic satisfactions haphazardly, as an unintentional byproduct of one’s work. Krieger’s findings demonstrate that elevating the importance of intrinsic values is the key to preserving lawyer wellbeing. Ignoring intrinsic

Krieger, supra note 133, at 121–22 (looking at the studies that were summarized by Kennon
values and pursuing extrinsic values are behaviors that are empirically linked to lawyer distress (such as depression, alcoholism, and hostility).\textsuperscript{138} In turn, lawyer distress may be associated with disciplinary actions, client neglect, and perhaps even some forms of incivility.\textsuperscript{139}

B. Lawyer Personality

Secondly, the lawyer personality research suggests that one reason for the controversy in the commentary about the proper role of the lawyer is the growing diversity of personality traits and values among lawyers.\textsuperscript{140} It is true that the majority of lawyers appear to embody a set of traits, preferences, and decision-making styles that are entirely consistent with neutral partisanship, perhaps thus explaining the ascendency of this approach in the profession.\textsuperscript{141} Specifically, the great prevalence (about seventy-eight percent) of lawyers prefers “thinking” as a decision-making preference on the Myers-Briggs Type Indicator, a counseling and personality instrument designed to group people into categories based on their preferences.\textsuperscript{142} The leading researcher on the Myers-Briggs types of lawyers, psychologist Dr. Lawrence Richard, has stated that Thinking and Feeling are both:

rational, valid decision-making methods. Both involve thought, and neither process is related to emotions . . .

Those who prefer to make decisions on the basis of Thinking prefer to come to closure in a logical, orderly manner. They can readily discern inaccuracies and are often critical. They can easily hurt others’ feelings without knowing it. They are excellent problem-solvers. They review the cause and effect of potential actions before deciding. Thinkers are often accused of being cold and somewhat calculating because their decisions do not reflect their own personal values. They focus on discovering truth, and they seek justice.

Those who prefer to make decisions on the basis of Feeling apply their
own personal values to make choices. They seek harmony and, therefore, are sensitive to the effect of their decisions on others. They need, and are adept at giving, praise. They are interested in the person behind the idea or the job. They seek to do what is right for themselves and other people and are interested in mercy.  

Thinking is perfectly suited for the amoral professional role, or Stevens' approach. However, a substantial minority of attorneys, particularly female attorneys, espouse preferences (such as “Feeling”) that are more consistent with moral lawyering, rebellious lawyering, lawyering with an ethic of care, or some other non-morally neutral approach, like Roark. These lawyers are not likely to be comfortable setting their personal values aside during the workday, while they are representing clients, but are much more likely to demand that their work reflects those personal values. It is the Aristotelian ideal that one’s actions determine one’s character and that one’s actions reflect on who one is, as a person.  

The empirical research regarding intrinsic values and decision-making preferences indicates that a diversity of values and traits is likely to be present among lawyers. While the amoral professional role may be consonant with the decision-making preferences of the majority of lawyers, there are still many lawyers whose preferences are at odds with this role. Therefore, it is imperative that lawyers be educated, beginning in law school, that there are alternatives to the prevailing myth of blind, zealous advocacy. Professionalism should be presented in its diversity, not in its homogeneity. Each individual should be encouraged to find an approach to lawyering that fits well for that individual.  

C. Professional Role Diversity in Legal Education  

Somehow law school inculcates the myth that zealous advocacy is the only way to practice law — perhaps through the grueling experience of being ridiculed, even subtly, in the first year of law school, for bringing up a non-legal concern in class. The law student who asserts that the case she briefed for class is not “fair,” does not take into account the psychological or emotional states of the parties, or is simply “wrong” for emotional or value-driven reasons (not for strictly legal, analytical reasons), and is likely to be laughed at or ignored, first by her professor and then eventually by her peers, who quickly catch on to the law school climate. It is probably through this emphasis in law school, whether subtle or blatant, that this myth is fostered and thereby a monolithic standard for the lawyer’s role is instituted.  

Contrasting the idealism of Stevens and Roark could provide legal educators with a way to develop new lawyers’ professional ethics to maturity. The butler and the architect could be seen as pre-sanctioned molds for new lawyers to  

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143 Bell & Richard, supra note 142, at 152 (emphasis added). Richard also notes that the Thinking/Feeling scale is the most significant personality trait for predicting lawyer satisfaction, stating: “Those with a preference for Feeling are swimming against the tide.” Id. at 153.  

144 Peters, supra note 140, at 177 n.29 (finding that nine out of eleven students were female).  

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follow, based on their own individual morality. What I long for in the legal profession is a celebration of the “melting pot” of values, beliefs, and approaches to lawyering that we have or could have, rather than a debate over the “proper” model for the professional role of the attorney. I also long for explicit permission to be granted, as early as during law school, to those atypical individuals in the profession who seek an approach to practicing law that might not fit the neutral partisanship norm. Roark’s approach might therefore exist alongside Stevens’ as well as several other approaches, and we could discuss the advantages and disadvantages of all, in the spirit of peaceful coexistence. In the end, however, the choice would be ultimately personal to each individual lawyer, thus elevating one’s intrinsic values to the forefront and hopefully thereby enhancing the wellbeing of the profession as a whole. With less emphasis on neutral partisanship as a monolithic ideal, lawyers representing clients like ESM and Enron might feel freer to dissent from actions their clients propose that are questionable. At the very least, those lawyers who do have “strong opinions” of their client’s ends would be able to bring their work and their intrinsic values into alignment, thus perhaps reducing lawyer distress.

V. ON BEING AN “ARCHITECT”

Let us glance quickly at these two characters, Stevens and Roark. Neither is real. Both represent approaches, ends of a continuum, caricatures, or extremes. Both work for or with others, be they masters or clients. Just for fun, let us examine the endings of the stories. Stevens never gets the woman he loves and misses his father’s dying moments, instead choosing to remain at work. In return for all this personal deprivation and self-abnegation, he receives the satisfaction of knowing he performed his job to the utmost. In contrast, Roark escapes jail, gets the woman he loves, plus the opportunity to design the building of his dreams with unlimited funds, keeps his integrity and honor, never sells out to anyone or anything, and garners recognition and the respect of others. Stevens gets a life severely circumscribed by duty and allegiance; Roark gets it all.

Now, clearly, these are simply two fictional characters in two stories. But, if we have to choose to be a lawyer as butler, or a lawyer as architect, some lawyers would rather be architects. It is true that lawyers with a Myers-Briggs preference for Thinking as a decision-making style may prefer and gravitate towards the amoral professional role. Being like the butler, Stevens, in Ishiguro’s novel may form a good fit with the lawyer’s natural approach to decision-making and to moral

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147 ESM was a government-securities investment firm in the 1980s that fraudulently took investors’ funds and never invested them in the promised securities; its ultimate exposure and collapse led to the death by suicide of one of its lawyers, Steven Arky, the former senior named partner of a large Miami law firm, who apparently was not unaware of its activities. The firm thereafter reorganized. See John G. Edwards, Rescue Plan Preceded ESM Fall, Sun Sentinel (Nov. 11, 1986), article at http://articles.sun-sentinel.com/1986-11-11/business/8603990577_1_esm-government-securities-ewton-steve-arky (last visited Jan. 4, 2011).

148 Enron’s questionable activities, public exposure, and ultimate collapse has been the subject of much discussion in the legal profession and in legal ethics. See, e.g., NANCY B. RAPOPORT & BALA G. DHARAN, ENRON: CORPORATE FIASCOS AND THEIR IMPLICATIONS (2004).
and ethical dilemmas. However, lawyers with a Myers-Briggs decision-making style of Feeling may need to be “architects” in the Roarkian sense, when representing clients. They will likely morally wither on the vine if forced to be a “butler.”

Interestingly, Nivala argued that lawyers’ work resembles that of architects, when he drew from Frank Lloyd Wright’s work to explore the “art” of the law. He said:

A lawyer’s operations, the practical application of law’s principles or processes, should, like architecture, reflect the lawyer’s (or the architect’s) intellectual acuity, technical proficiency, and focused creativity. The lawyer as architect brings more to the client’s problems than doctrinal knowledge and forensic ability; the lawyer as architect also brings a capacity for invention and ingenuity. The lawyer as architect designs, and guides to completion, original, proportionate solutions for individual real-world problems, solutions which respect the law’s traditions while building upon them.¹⁴⁹

Creative individuals may need to be able to stand back from their work, like an architect, and say, “I did that. I made that wonderful thing possible. Look at it shine.” Roark’s need in this was so great that he would rather destroy the very thing he fathered than allow his efforts to be perverted into a building or a purpose he did not believe in or admire. The corporate lawyer who successfully establishes a new business venture for some clients or who accomplishes a corporate acquisition can stand back from his work and say, “I brought that company into being. I made it shine.” Creativity lives for production of a result worth admiring.

For example, personal injury attorney Rick Halpert of Michigan, who was featured in the American Bar Association Journal,¹⁵¹ is an example of a creative lawyer. Through their legal representation, he and his law firm restored confidence, vibrancy, and joy to an ex-police officer’s life, who was devastated by a gunshot wound leaving him paralyzed.¹⁵² Halpert and his colleagues certainly must experience the feeling of, “I made this wonderful thing happen. Watch my clients shine.”

Finally, some would prefer to be true to themselves rather than carry out another’s wishes when those wishes are diametrically opposed to their own personal values, beliefs, standards, and morals. If they cannot practice law this way, then the options are: (1) to go on practicing as butlers, blotting out from consciousness the daily clash between their personal values and their actions, desperately shoring up disintegrating psychic retaining walls to stop the erosion of their own personal integrity; or (2) to choose to work in the legal equivalent of a stone quarry, as did Howard Roark when he couldn’t get a job as an architect that did not involve selling out. Roark was unwilling to “sell out” and conform to his

¹⁵⁰ Id. at 99–100 (citations omitted).
¹⁵² Id.
client’s demands, the demands of the marketplace, and the pressures of society. He was so unwilling to do this that he chose to work for years in a stone quarry in order to maintain complete integrity. Working in the quarry was a demeaning job for him and placed him far below his level of education, training, and intelligence, socio-economically speaking. Yet, to Roark, it was preferable to compromising his personal values, morals, and ideals in a position as a professional architect. Perhaps Roark unquestioningly “knew himself” and the precise limits of what his integrity demanded of him.

Aristotle’s ethics suggest that one’s self esteem derives from one’s actions, even if those actions are taken on behalf of another. Self esteem comes from doing things that one feels are worthy of esteem. For Feelers, creative lawyers, and perhaps other nontraditional lawyers, representing clients and causes in which they do not believe or doing work they cannot admire might be detrimental to self, work, health, and happiness. Much of the inordinate lawyer distress exhibited by the legal profession may be due to this very phenomenon. It might be ameliorated by a greater acceptance of a Roarkian approach to professionalism within our profession.

Many of my third-year law students react to Roark’s professionalism with disbelief. They are convinced that they cannot, ethically, be anything other than a Type I “butler,” because of the ethically-imposed duty of “zealous advocacy.” Despite the legal ethics rules that explicitly bless a form of law practice that allows for Type III “architects” (or at least Type II lawyers), the legal profession and law schools often implicitly expect only “butler” behavior from lawyers. Feeling-preferenced lawyers need to be encouraged, starting in law school, that they can adopt an approach to lawyering that fits with their natural ethical and moral decision-making preferences, rather than feeling that they must change to conform to the homogeneous standard of the Thinking-oriented, amoral, or neutral zealous advocate. The fact that law school has been found to “beat the ethic of care out of law students” is alarming evidence that the ethic of law school may be too homogeneous and may not make room for “psychological diversity.” We have, as a society, striven mightily to accomplish racial, ethnic, gender, and religious diversity, but we may have ignored the need for diversity in psychological preferences, traits, and characteristics, at least in the law. The current state of our legal profession suggests that we have not yet become aware of the need to foster and encourage psychological diversity in our law schools, our law firms, and our

\[153\] Graham, supra note 145, at 12–14, 49. See also Thomas Moore, The Care of the Soul: A Guide for Cultivating Depth and Sacredness in Everyday Life 185–88 (1994) (engaging in activities that conflict with one’s own interests and values is damaging to one’s soul).

\[154\] See also Moore, supra note 153, at 185–88.

\[155\] Here I am referring to a lawyer whose approach to legal representation is like Roark’s architect, with the addition of Atkinson’s Type II lawyer. A “Type II architect” lawyer might proceed with the representation of the client with whose cause or objective the lawyer does not agree, but only after the lawyer has clearly stated his or her objections to the client and engaged in an open dialogue with the client about the advisability of the client’s goals. For an at length discussion of such an open dialogue, see Atkinson/Yale, supra note 5, at 184.

\[156\] Daicoff, supra note 65, at 1399 n.390 (citing Janoff, supra note 68, at 230) (finding that law students’ moral decision-making styles shifted from using an ethic of care to a more rights-and-justice-oriented perspective, as early as the first year of law school).

I look forward to teaching my students all of these various approaches to lawyering and helping them discover for themselves which approach works for them. Some may be capable of and motivated towards being butlers. Society needs butlers. I have so argued. But others will know that they need not reject their own inner Roarkian dispositions and turn themselves inside out to become butlers, if they are constitutionally disposed to be architects. They will learn that there is another way to lawyer which is just as honorable as the butler’s way. The architect’s professionalism gives us an idealistic, inspiring vision of a way to practice the “moral lawyering” Robert Bastress writes about and perhaps even the “ethic of care” Carrie Menkel-Meadow recommends.

One note of caution should be sounded, however. All types of lawyers can fail or falter. While the “hired gun” type lawyer can fall by failing to assess the morality or ethics of his or her clients, such as in an Enron-like situation, and become inadvertently involved with clearly immoral or even illegal activities and clients, the Roarkian attorney has an Achilles heel as well. Atkinson brilliantly points out that the “true believer” type lawyer can actually display arrogance and a lack of humility if he or she becomes rigidly idealistic and judges cases and clients too harshly or too frequently. These individuals may wish to continually reassess the balancing act between taking clients and refusing clients or actions on the basis of their morals, in order to avoid falling into inappropriate arrogance or judgmentalism.

Maybe, like my generation of lawyers, many lawyers will reject these options as too mushy, too touchy feely, too interpersonal, too idealistic, or altruistic. Being an architect might subject the attorney to the derision and scorn of other lawyers, if not to the outright loss of clients, income, and professional status. However, a growing number of lawyers are already aggressively practicing law in this way and are successfully doing so. And, Roark’s professionalism is far from mushy or soft. His approach, particularly as portrayed in the movie by Gary Cooper, is one of absolute certainty, honesty, integrity, and honor. He is clear, unemotional, rational, and impassive. He is dominant and a high achiever, two things which psychological studies demonstrate that lawyers want and need.

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158 Daicoff, Leopards, supra note 2.
159 Bastress, supra note 31.
160 Menkel-Meadow, supra note 73.
161 Atkinson, supra note 7, at 311, 330.
163 See, e.g., Martin J. Bohn, Psychological Needs of Engineering, Pre-Law, Pre-Medical, and Undecided College Freshmen, 12(5) J. C. STUDENT PERSONNEL 359-61 (1971) (documenting prelaw students’ need to be seen as dominant and socially ascendant); Leonard H. Chusmir, Law and Jurisprudence Occupations: A Look at Motivational Need Patterns, 89 COM. L. J. 231, 231-35 (1984) (documenting lawyers’ needs for achievement, over power over others or affiliation with others); and Jane W. Coplin & John E. Williams, Women Law Students’ Description of Self and the Ideal Lawyer, 2(4) PSYCHOL. WOMENS Q. 323-33 (1978) (documenting female lawyers’ perception that the ideal lawyer would be dominant and commanding).
And he is unconflicted. Unlike a full one-fifth of our esteemed profession, he does not suffer from depression, anxiety, or substance abuse. As a lawyer, Roark would not allow himself to be drawn into a situation in which external stresses would cause depression, anxiety, or the need to medicate discomfort via use of mood-altering substances, because he does not tolerate a compromise of his personal integrity. Not all lawyer distress is likely to be caused by external, environmental stressors, but to the extent that it is caused by stressors such as daily moral compromise, Roark’s approach may be ameliorative.

CONCLUSION

In conclusion, adopting a Roarkian, “architect’s” professionalism in the law seems warranted, appropriate, and desperately needed by some portion of today’s lawyers. These may be the lawyers who, unlike most lawyers, prefer a Feeling style of decision-making, an ethic of care, or some other set of beliefs and values that require the lawyer to follow his or her own personal values in making choices and seek to do what is right for the lawyer, the client, and other people. Empirical evidence hints that some of these individuals may be dissatisfied with, and distressed within, our profession. To the extent that this distress results from a dissonance between the lawyer’s values and his or her professional role, the architect’s professionalism provides one possible solution to the distress.

One might hope that more Feeling-oriented individuals would become lawyers. Then again, until the “architect’s professionalism” or some version of it becomes more widely accepted in the profession, it is possible that greater numbers of such individuals will not be attracted to nor will they remain in the practice of law.

The consequences of overreliance on the amoral role have been disastrous; what we are doing in the legal profession is no longer working for lawyers or society in general. Roark’s time in the legal profession has arrived. Let us assign Ishiguro’s and Rand’s works as simultaneous reading, work towards the psychological diversification of the legal profession, and thereby preserve a place in the profession for all law students and future attorneys, regardless of their decision-making preferences.

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166 BELL & RICHARD, supra note 142, at 153.

167 It should be noted that most of the commentators on this topic have endorsed something other than solely the amoral professional role. See supra notes 3-5, 7, 28, 34. Deborah Rhode, for example, does discuss assigning other readings other than Ishiguro’s novel in professional responsibility courses. Rhode, supra note 4. However, for some reason, many law students and practicing lawyers appear to speak of the amoral professional role as the ideal approach.