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Speak No Evil, Seek No Evil, Do No Evil: Client Selection and Cooperation with Evil

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SPEAK NO EVIL, SEEK NO EVIL, DO NO EVIL:
CLIENT SELECTION AND COOPERATION WITH EVIL.*

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** INTRODUCTION

MAY a Roman Catholic lawyer agree to represent the local Planned Parenthood affiliate in its challenge to state statutes restricting abortion?¹ May a Jewish lawyer defend a corporation’s general policy which forbids employees to wear any head covering?² May an evangelical Protestant lawyer agree to sue a landlord for illegal discrimination when the landlord refuses to rent to an unmarried couple because the landlord believes that unmarried cohabitation is immoral?³ Are the lawyer’s religious beliefs relevant in deciding whether to accept these cases? If so, how? Is their relevance the same or different from the relevance of other serious moral commitments held by believers and non-believers alike?

This article attempts to answer these questions in the context of the client-selection process by religious believers engaged in the private practice of law.⁴ I maintain that religious beliefs can rightly be determinative in the religious lawyer’s selection of clients. No religious believer should accept cases requiring the lawyer to advocate evil acts,

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* All citations to the Bible refer to the New American Bible.
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1. Cf. Schneider v. Colegio de Abogados de Puerto Rico, 917 F.2d 620, 636-38 (1st Cir. 1990) (authorizing increased legal fees based on statements that local attorneys were reluctant to accept representation of individuals seeking to challenge restrictions on abortion).
2. Cf. Goldman v. Weinberger, 475 U.S. 503, 509-10 (1986) (holding that a military dress requirement prohibiting the wearing of a yarmulke was constitutional).
3. Compare Swanner v. Anchorage Equal Rights Comm’n, 874 P.2d 274, 278 (Alaska 1994) (holding that the refusal of a Christian landlord to rent to an unmarried couple violated a state law prohibiting discrimination on the basis of marital status), with State v. French, 460 N.W.2d 2, 8-10 (Minn. 1990) (holding that the refusal of a Christian landlord to rent to an unmarried couple did not violate a state law prohibiting discrimination on the basis of marital status and that application of an anti-discrimination statute would violate a landlord’s free exercise of religion).
4. This article is limited to the decisions of individual lawyers. The moral claim of other lawyers with whom the lawyer is associated will be dealt with in a separate article.
or the total disregard of religious obligations, or the irrelevance of religious beliefs.\(^5\)

This article is written from the Christian perspective, more specifically, Roman Catholic.\(^6\) Part I describes what has been denominated as the standard conception of lawyering. This conception is grouped in the political philosophy of the Enlightenment, which celebrates autonomy, rationality, and neutrality by the state. Part II explains how the Christian understanding of autonomy and rationality differs from that offered by contemporary apologists for the standard conception and challenges the legitimacy of claims of neutrality by the state. Part III contrasts the Christian duty to avoid cooperation with evil with the standard conception’s defense of the amorality of lawyering, a direct corollary to the purported neutrality of the state. The principle of double effect and the obligation to avoid giving scandal are explained as limitations upon the Christian lawyer’s ability to accept clients. Part III then provides specific examples of the application of these principles to the client-selection process.

I. THE SECULARIST “STANDARD CONCEPTION” OF THE LAWYER’S ROLE

Under contemporary professional rules, acceptance of representation means the lawyer enters into a relationship with the client for the express purpose of achieving the client’s objectives.\(^7\) Clients may be assisted in obtaining any lawful objective, but assisting a client in

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5. Perhaps the same can be said of adamant atheists, yet the variety of philosophical systems that purport to give meaning to “good” and “evil” and the pragmatic reasons for respect of others’ religious beliefs are sufficiently different from the rationale of the believing lawyer, that I am not confident there is sufficient common ground from which to persuade atheists to observe these duties.

6. I am a practicing member of the Roman Catholic Church, which I joined as an adult. Throughout my childhood, adolescence, and most of my early adulthood, I was an active member of the United Methodist Church. Originally I had hoped to encompass many religious traditions in my analysis of these issues, but the more I explored the issues, the more I discovered mastery and application of relevant Roman Catholic doctrines presented sufficient challenge. It remains my sincere hope, however, that the questions raised in this article will be addressed by authors writing from other religious perspectives.

7. Model Rule 1.2(a) provides in pertinent part:

A lawyer shall abide by a client’s decisions concerning the objectives of representation, subject to paragraphs (c) [limitations consented to by the client], (d) [prohibition of assisting in criminal or fraudulent conduct], and (e) [duty to consult with client when client seeks prohibited objectives], and shall consult with the client as to the means by which they are to be pursued.

Model Rules of Professional Conduct Rule 1.2(a) (1989) [hereinafter Model Rules]. Comments to the rule recognize that many objectives of representation are the product of cooperative decisionmaking between client and lawyer: “Both lawyer and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer’s professional obligations.” \textit{Id.}
achieving a criminal or fraudulent objective is forbidden. Attorneys must reject proposed representation if a prohibited objective is known at the outset.

According to the Model Rules of Professional Conduct, representation of a client "does not constitute an endorsement of the client's political, economic, social or moral views or activities." This language, first adopted with the passage of the Model Rules in 1983, is often cited as supporting the proposition that lawyers are not morally accountable for the actions of their clients. This contemporary understanding of lawyering has been justified by reference to ideals of client autonomy or the equality of citizens.

Autonomy is considered the primary characteristic of the client in the standard conception of lawyering. This is because the person evidences his or her unique identity as a moral actor through choosing and ascribing value. The standard conception of lawyering is grounded in a jurisprudence that understands the essence of law as coercion. Law primarily is understood as setting limits on the ability of the person to choose freely among all possible options. Accord-

8. Model Rules, supra note 7, Model Rule 1.2(d): A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

9. Model Rules, supra note 7, Rule 1.16(a). Attorneys also must withdraw from ongoing representation when the client persists in seeking an illegal or fraudulent objective. Id.

10. Model Rules, supra note 7, Rule 1.2(b).

11. One of the best descriptions of the "standard conception" of the lawyer's role is provided by Murray L. Schwartz in The Professionalism and Accountability of Lawyers, 66 Cal. L. Rev. 669, 673 (1978). Devotion to partisanship and nonaccountability, the two ideals identified by Professor Schwartz, was dubbed the "standard conception" by Gerald J. Postema in Moral Responsibility in Professional Ethics, 55 N.Y.U. L. Rev. 63, 73 (1980). Some scholars have argued that there is no standard conception of a lawyer's role or that the standard conception does not guide lawyers' decision-making in the day-to-day practice of law. See Ted Schnier, Moral Philosophy's Standard Misconception of Legal Ethics, 1984 Wis. L. Rev. 1529, 1532-37.

12. Charles Fried, The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation, 85 Yale L.J. 1060, 1068-69 (1976) ("We must attain and maintain in our morality a concept of personality such that it makes sense to posit choosing, valuing entities—free, moral beings.").

13. This understanding of the coercive nature of law is fully described and defended in Hans Kelsen, General Theory of Law and State (1946).

14. Monroe H. Freedman, Understanding Lawyers' Ethics 47-50 (1990) (hereinafter Freedman, Ethics) (disagreeing with Fried's friendship model set forth in Lawyer as Friend but agreeing with Fried's essential point that "human autonomy is a fundamental moral concept that must determine, in substantial part, the answers that we give to some of the most difficult issues regarding the lawyer's role"). In the civil context, Freedman suggests that all legal counseling is done in anticipation of future litigation: "[A]ny lawyer who counsels a client, negotiates on a client's behalf, or drafts a legal document for a client must do so with an actual or potential adversary in mind." Id. at 66.
ing to the standard conception, people seeking to resist the coercion inherent in the law are morally entitled to the assistance of a person skilled in the language and procedures of the legal system. Therefore, the lawyer acts morally in protecting the client's freedom from the coercive demands of the law, regardless of how the client ultimately uses that freedom.\textsuperscript{15}

This explanation of the lawyer's role, however, fails to address the constitutive aspect of contemporary law. Law creates, as well as limits, individual choice. The law governing testamentary disposition of property exemplifies the choice-enhancing aspect of the law. No person could exercise any authority over the disposition of his property after death but for the Statute of Wills, or its modern successor. The role of the lawyer in such cases is not to resist the coercive aspect of the law, but to advise and guide the client in the use of this newly created freedom.

This second role of the lawyer gives rise to an alternative argument for the lawyer's nonaccountability. This argument characterizes amorality as a necessary condition to insure all citizens equal access to the benefits of the law.\textsuperscript{16} Professor Stephen Pepper has suggested that holding lawyers morally accountable for their assistance in the actions of their clients would cause lawyers to act as moral filters when clients attempt to learn or use the law. This would result in some clients having access to all of the law's benefits, while others would receive only partial benefits or protection in accordance with the scruples of the lawyer. This stratification of the benefits of citizenship is contrary to the equality of persons. Therefore, Pepper argues, moral nonaccountability of lawyers is necessary to assure full and equal access to the law.\textsuperscript{17}

\textsuperscript{15} Freedman states his position as follows:

Accordingly, the attorney acts both professionally and morally in assisting clients to maximize their autonomy, that is, by counseling clients candidly and fully regarding the clients' legal rights and moral responsibilities as the lawyer perceives them, and by assisting clients to carry out their lawful decisions. Further, the attorney acts unprofessionally and immorally by depriving clients of their autonomy, that is, by denying them information regarding their legal rights, by otherwise preempting their moral decisions, or by depriving them of the ability to carry out their lawful decisions.

Freedman, Ethics, \textit{supra} note 14, at 57. It is important to note that Professor Freedman believes that lawyers make a moral decision in choosing to represent a client or cause and that they have a duty of public justification for their choice. Monroe H. Freedman, \textit{The Lawyer's Moral Obligation of Justification}, 74 Tex. L. Rev. 111, 111-12 (1995) [hereinafter Freedman, \textit{The Lawyer's Moral Obligation}].


\textsuperscript{17} \textit{Id.}; cf. Schneyer, \textit{supra} note 11, at 1541 ("Without a professional ethic based on Neutrality and Partisanship [i.e., the standard conception], moralistic lawyers could conceivably nullify legal rights by refusing to accept certain clients or to take certain perfectly legal steps for others.").
Both the autonomy and equality-based arguments for amoral lawyering are grounded in a secularist understanding of the person and his or her relationship to the community and the state. This secularist understanding manifests one form of political liberalism.\(^{18}\) Clients are viewed as "free and independent selves unclaimed by moral ties antecedent to choice."\(^{19}\) Acts which have value are those acts which are chosen by the client, and value accrues to those acts by virtue of being chosen, rather than any inherent moral quality to the act.\(^{20}\) A conception of lawyering built upon this understanding of the person necessarily venerates the lawyer's role in facilitating the client's choice, rather than the object or purpose of that choice.

This is consistent with political liberalism's commitment to neutrality among competing conceptions of the good life.\(^{21}\) If no particular conception of the good life is to be favored by the state, then the individual ultimately reigns supreme in defining the goals and purposes of his or her life. This sovereignty is due in large part to the confidence of Enlightenment philosophers that reason would guide the individual to choices simultaneously benefiting both the individual and the larger community. "Enlightened self-interest" ultimately would promote the common good, without use of the coercive power of the state. In cases where the nature of the common good was contested and had to be defined in order to pursue a particular path of common effort, public dialogue and the rational process of argument and disputation would lead to a recognizable "solution."\(^{22}\) Thus autonomy, neutrality, and rationality are the foundational premises upon which the standard conception of the lawyer's role is built.

II. TRUE (AND FALSE) MEANINGS OF AUTONOMY, NEUTRALITY, AND RATIONALITY

For the Roman Catholic Christian, the "standard conception" of lawyering and its underlying version of political liberalism are built

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\(^{18}\) A full discussion of the variants of political liberalism is outside the scope of this article. John Richard Neuhaus, The Liberalism of John Paul II in First Things 16 (1997) provides a brief, but accessible, treatment of this topic. The limitations of this understanding of human nature in crafting effective rules of law are explored by Mary Ann Glendon in Rights Talk: The Impoverishment of Political Discourse (1991).


\(^{20}\) The plurality opinion in Planned Parenthood v. Casey, 505 U.S. 833 (1992), relies on this understanding of the human person: "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State." Id. at 851.


\(^{22}\) Id. at 499-502.
upon distortions of autonomy, neutrality, and rationality. Autonomy is valuable, but its value does not lie in the "freedom to make any choice." It lies in the freedom to make good choices; to fully appropriate into one's being the value of goodness and to participate in the creation of future possibilities of goodness. "The more one does what is good, the freer one becomes. There is no true freedom except in the service of what is good and just. The choice to disobey and do evil is an abuse of freedom and leads to 'the slavery of sin.'" To the Christian, the ultimate value of autonomy is that it allows the human person to know and love God, rather than merely fear and obey Him. Since the intended destiny of each individual is recognition as a child of God, autonomy, defined as the freedom to do good, must be preserved in anticipation that this freedom ultimately will result in a loving response to God's call.

The "neutrality" that supports the standard conception of lawyering is equally foreign to the Christian understanding of the world. The believing lawyer cannot assent to the sort of agnostic skepticism or moral relativism that masquerades as neutrality among competing visions of the good in the current conception of political liberalism. Christians know that good and evil exist. These realities are not some human construct, existing only because of our belief. Good and evil

23. "Only in freedom can man direct himself toward goodness. Our contemporaries make much of this freedom and pursue it eagerly; and rightly to be sure. Often however they foster it perversely as a license for doing whatever pleases them, even if it is evil." Second Vatican Council, Pastoral Constitution on the Church in the Modern World (Gaudium et Spes) para. 17 (1965).

24. Catechism of the Catholic Church, § 1733 (1994); see also Galatians 5:13 ("My brothers, remember that you have been called to live in freedom—but not a freedom that gives free reign to the flesh. Out of love, place yourselves at one another's service.").

25. All who are led by the Spirit of God are sons of God. You did not receive a spirit of slavery leading you back into fear, but a spirit of adoption through which we cry out, "Abba!" [that is, "Father"]. The Spirit himself gives witness with our spirit that we are children of God. But if we are children, we are heirs as well: heirs of God, heirs with Christ, if only we suffer with him so as to be glorified with him. Romans 8:14-17; see also Galatians 4:1-7 (stating that followers of God's law are His sons and heirs); John 1:12-13 (same).

26. "For its part, authentic freedom is an exceptional sign of the divine image within man. For God has willed that man remain 'under the control of his own decisions,' so that he can seek his Creator spontaneously, and come freely to utter and blissful perfection through loyalty to Him." Second Vatican Council, supra note 23, para. 17.


28. Compare the radical subjectivity exemplified by the writings of Richard Rorty: "Insofar as pragmatists make a distinction between knowledge and opinion, it is simply the distinction between topics on which such agreement is relatively easy to get and topics on which agreement is relatively hard to get." Richard Rorty, Objectivity, Relativism, and Truth: Philosophical Papers 23 (1991).

Pope John Paul II rejects the view that knowledge of good and evil are mere human constructs. Writing about the dangers of such radical skepticism, he states:
reflect our embrace or rejection of God and the fullness of life. In coming to know God through Jesus Christ, the Holy Spirit, the Scriptures, and the traditions of the faith, the Christian comes to know good from evil.

This knowledge, combined with a right understanding of autonomy, does not answer the question of the state's role in encouraging people to seek the good. It is often assumed that belief in man's capacity to know good from evil necessarily results in a belief that the state must require goodness of its citizens, but this is not so.

It is widely held that the inner logic of such an affirmation [of a substantive concept of the human good derived from our understanding of God and his plan for humanity] tends inexorably toward policy authoritarianism, and thus that such an affirmation necessarily constitutes some kind of incipient fascism. Yet, although widely asserted, the truth of this claim is by no means self-evident. From the premise that we can know the human good it does not automatically follow that it is the right—much less the duty—of government to compel all to embrace it. If some substantive conceptions of the good life may foster an authoritarian politics, others may foster a commitment to government that is sharply limited in its scope and responsible to those it governs.

The Christian conception of the lawyer's commitment to freedom from governmental coercion grows from an awareness of the proper limits of government, and the role lawyers play in maintaining those limits. This stands in stark contrast to both the autonomy and equality

The individual conscience is accorded the status of a supreme tribunal of moral judgment which hands down categorical and infallible decisions about good and evil. To the affirmation that one has a duty to follow one's conscience is unduly added the affirmation that one's moral judgment is true merely by the fact that it has its origin in the conscience. But in this way the inescapable claims of truth disappear, yielding their place to a criterion of sincerity, authenticity and "being at peace with oneself," so much so that some have come to adopt a radically subjectivistic conception of moral judgment.


29. Jesus makes this clear in his response to the rich young man who seeks his counsel: "Why do you call me good? No one is good, but God alone." Matthew 19:19; cf. Germain Grisez & Russel Shaw, Fulfillment in Christ: A Summary of Christian Moral Principles 49-51 (1991) (defining good and bad as follows: "The Christian tradition has developed a better account of the bad. Badness is real, not illusory. It is a real absence in things of what ought to be .... To be good is for something to be fully, to be all it should be—no lacks, no privations."); id. at 80 (defining the morally good: "In voluntarily acting for human goods and avoiding what is opposed to them, one ought to choose and otherwise will those and only those possibilities whose willing is compatible with a will toward integral human fulfillment.").

30. "Revelation teaches that 'the power to decide what is good and what is evil does not belong to man, but to God alone.'" Pope John Paul II, The Splendor of Truth, supra note 28, para. 35.

versions of the standard conception of lawyering, which affirm as a moral right the individual's right to do evil when not forbidden in the positive law.  

Finally, the rationality that is foundational to the political liberalism supporting the standard conception of lawyering is incomplete. Rationality limited only to the material world denies the human ability to perceive, describe, and participate in (no matter how imperfectly or partially) a reality that transcends the physical world. The Christian rejects this stunted form of rationality. In its place is offered a definition of rationality grounded in the human experience of the natural order which has its origin, presence, and destination in the transcendent.

33. Pope John Paul II describes this outlook in The Splendor of Truth: Today too, the situation of the world of the senses within space and time, physio-chemical constants, bodily processes, psychological impulses and forms of social conditioning seem to many people the only really decisive factors of human reality. In this context even moral facts, despite their specificity, are frequently treated as if they were statistically verifiable data, patterns of behavior which can be subject to observation or explained exclusively in categories of psychosocial processes. As a result, some ethicists, professionally engaged in the study of human realities and behavior, can be tempted to take as the standard for their discipline and even for its operative norms the results of a statistical study of concrete human behavior patterns and the opinions about morality encountered in the majority of people.

34. Pope John Paul II, Crossing the Threshold of Hope 51-59 (1994) (“With such a way of thinking [the existence of God is irrelevant to human reasoning about human experience], the rationalism of the Enlightenment strikes at the heart of Christian soteriology, that is, theological reflection on salvation [soteria in Greek] and of redemption.”).
35. Second Vatican Council, supra note 23, para. 36:
For by the very circumstance of their having been created, all things are endowed with their own stability, truth, goodness, proper laws and order. Man must respect these as he isolates them by the appropriate methods of the individual sciences or arts. Therefore if methodical investigation within every branch of learning is carried out in a genuinely scientific manner and in accord with moral norms, it never truly conflicts with faith, for earthly matters and the concerns of faith derive from the same God. Indeed whoever labors to penetrate the secrets of reality with a humble and steady mind, even though he is unaware of the fact, is nevertheless being led by the hand of God, who holds all things in existence, and gives them their identity. Consequently, we cannot but deplore certain habits of mind, which are sometimes found too among Christians which do not sufficiently attend to the rightful independence of science and which, from the arguments and controversies they spark, lead many minds to conclude that faith and science are mutually opposed.

But if the expression, the independence of temporal affairs, is taken to mean that created things do not depend on God, and that man can use them without any reference to their Creator, anyone who acknowledges God will see how false such a meaning is. For without the Creator the creature would disappear. For their part, however, all believers of whatever religion always
The standard conception and the Christian conception of lawyering share commitments to autonomy and rationality. Both hold that human freedom is necessary to the good life, and both acknowledge the role of human reason in the identification of what constitutes the good life. Only on the value of neutrality do the standard and Christian conceptions of lawyering necessarily conflict. This conflict may exist because the standard conception of lawyering is premised upon the law as a formative cause of the relationships between citizens while the Christian conception of lawyering asserts that the primary formative cause of relationships between people is their relationship with and through God.

A. Primary Relationships with and Through God

For the Christian, the primary relationship in every person's life is the relationship between God and the person. Through this relationship we come to recognize all people as our neighbors, having some moral claim upon us, independent of the positive law or the requirements of citizenship. This ordering of relationships, and the nature of the claims arising from them, are described in Scripture:

When the Pharisees heard that he had silenced the Sadducees, they assembled in a body, and one of them [a scholar of the law] tested him by asking, "Teacher, which commandment in the law is the greatest?" Jesus said to him, "You shall love the Lord, your God, with your whole heart, with your whole soul, and with all your mind. This is the first and greatest commandment. The second is like it:

hear His revealing voice in the discourse of creatures. When God is forgotten, however, the creature itself grows unintelligible.


The question [of the meaning of the universe] refers to transcendence of being; it affirms what is beyond, over, and above being. In asking it, we leave the level of logical and strictly verifiable thinking and climb to the level of mystery. Such a step is one which logically we must not take; it transcends the boundaries of legitimate logic. Yet in spite of all warnings insisting and proving that the question is meaningless, man will never cease to raise it. The question affirms its own validity. Science cannot silence him, the power of logic cannot permanently suppress it. Indeed, in giving up the anxiety for meaning, man would cease to be human; logical positivism's gain would be humanity's loss.

*Id.*


We are separated from one another by an unbridgeable gulf of otherness and strangeness which resists all our attempts to overcome it by means of natural association or emotional or spiritual union. There is no way from one person to another. However loving and sympathetic we try to be, however sound our psychology, however frank and open our behavior, we cannot penetrate the incognito of the other man, for there are no direct relationships, not even between soul and soul. Christ stands between us, and we only get into touch with our neighbours through him.

*Id.* at 98.
You shall love your neighbor as yourself. On these two commandments the whole law is based, and the prophets as well.\textsuperscript{37}

The first and primary relationship between God and the person defines both the object and the circumstances of the believer's life.\textsuperscript{38}

In living the relationship of believer and God, all actions are good insofar as they are directed toward or consistent with the person's loving relationship with God.\textsuperscript{39} Whether an action is "directed toward or consistent with" a loving relationship with God is determined by the actor's intention, his or her circumstances, and the object of the act.\textsuperscript{40}

Intention is the voluntary ordering of the human will, or the purpose of the actor. Circumstances are conditions surrounding and experienced by the acting person at the time of deliberation and action. The actor's circumstances include the foreseeable consequences of the act, defined as the anticipated changes in the state of affairs, both internal and external to the acting person, resulting from the act. The object of an act is the "proximate end of a deliberate decision which determines the act of willing on the part of the acting person."\textsuperscript{41} Since the intention and object of the actor are within his or her control, these elements largely define the morality of any particular act. Circumstances can lessen or increase personal culpability for evil acts, or personal merit for good acts, but circumstances alone cannot alter the intrinsic morality of any voluntary deed.\textsuperscript{42} Similarly, foreseeable consequences are morally relevant when choosing between competing goods, or determining whether to engage in a morally neutral act,\textsuperscript{43} but they cannot convert an intrinsically evil act to a morally permissible one. All

\textsuperscript{37} Matthew 22:34-40; see also Mark 12:28-34:
One of the scribes, came up, and when he heard them arguing, he realized how skillfully Jesus answered them. He decided to ask him, "Which is the first of all the commandments?" Jesus replied, "This is the first: 'Hear, O Israel! The Lord our God is Lord alone! Therefore, you shall love the Lord your God with all your heart, with all your soul, with all your mind, and with all your strength.' This is the second: 'You shall love your neighbor as yourself.' There is no other commandment greater than these."

\textsuperscript{38} "In fact, the individual's relation to God is the constitutive element of the very 'being' and 'existence' of an individual: it is in God that we 'live, move and have our being' (quoting Acts 17:28)." John Paul II, The Lay Members of Christ's Faithful People, para. 39 (1988).

\textsuperscript{39} "Acting is morally good when the choices of freedom are in conformity with man's true good and thus express the voluntary ordering of the person towards his ultimate end: God himself, the supreme good in whom man finds his full and perfect happiness." John Paul II, The Splendor of Truth, supra note 28, para. 72.

\textsuperscript{40} "The rational ordering of the human act to the good in its truth and the voluntary pursuit of that good, known by reason, constitute morality." Id.; see also Thomas J. Bole, III, The Theoretical Tenability of the Doctrine of Double Effect, 16 J. Med. & Phil. 467, 467-68 (1991) (explaining the doctrine of double effect which may result in good and bad side effects despite good moral intentions).

\textsuperscript{41} Pope John Paul II, The Splendor of Truth, supra note 28, para. 78.

\textsuperscript{42} "If acts are intrinsically evil, a good intention or particular circumstances can diminish their evil, but they cannot remove it." Id. para. 81.

\textsuperscript{43} Id. para. 77.
circumstances, including consequences, of a particular act cannot be identified with certainty, either before or after acting; thus this element cannot form the primary basis for moral judgment.\footnote{Id.}

The primary determinates of whether an act is morally good or evil are the actor’s intentions and the object of the act. Good intentions are necessary for the individual to enjoy the formative benefits from a right ordering of the will, but good intentions will not convert an intrinsically evil object into a morally neutral or good act. The classic example of this principle is that of judicial murder, where a judge knowingly orders the execution of an innocent person in order to save the lives of others who would die in the rioting that would ensue if the accused were released.\footnote{Various philosophical responses to this example are described in Albert R. Dilanni, S.M., \textit{The Direct/Indirect Distinction in Morals}, 41 The Thomist 350 (1977).} The intention of the judge is good—to save several lives—but the object of his will (the proximate end of his decision) is to kill an innocent man. The evil inherent in this object is not extinguished nor outweighed by the judge’s right intent.

Similarly, an evil intention precludes an act from being morally good because the evil intention diminishes the actor’s relationship with God and the ability to discern good from evil. The daughter who cares for her elderly parents only for the purpose of obtaining access to their bank accounts to siphon off funds for her own use does not engage in a morally good act, even though the object of her act, caring for elderly parents, is good. From this it can be concluded that the actor’s intention and object are the primary elements to be evaluated when determining the moral quality of an act.

Application of these principles to the practice of law requires lawyers to evaluate their intentions and objects prior to accepting any proposed representation. There is rarely any moral impediment to accepting cases where the prospective client, with good intentions, seeks a good object such as the widow seeking distribution of her portion of the family property, the housing developer expanding his business to provide more affordable housing, the doctor seeking to defend her practices against false claims of neglect or incompetence. All of these intentions and objects are consistent with a loving response to God. Representation of these clients poses no problem in the believing lawyer embracing the intentions and objects of the client’s proposed action.\footnote{While the lawyer may embrace the good intention and object of the prospective client, other prudential considerations may require that the lawyer decline representation. \textit{See infra} notes 57-114 & accompanying text.}

The difficult questions for Christian lawyers arise when they are asked to assist a client in achieving an evil object, satisfy an evil intention through attaining a proper object, or attain a proper object, the evil consequences of which outweigh the good achieved by the act.
Christian lawyers can seek no sanctuary in the moral relativist's justification of such representation—that good and evil are entirely dependent upon the particular features of each situation. Christians know better. Actions that destroy or diminish the person's relationship with God and neighbor are evil, always and everywhere.\(^47\) Through divine revelation in the Word of God, certain actions are known to be intrinsically destructive of the relationship with God or neighbor.\(^48\) These actions are forbidden by the negative precepts contained in the Ten Commandments: You shall have no other gods besides me;\(^49\) You shall not kill;\(^50\) You shall not commit adultery;\(^51\) You shall not steal;\(^52\) You shall not bear false witness against your neighbor;\(^53\) You shall not covet anything that belongs to your neighbor.\(^54\) Christian lawyers may never make these prohibited acts the objects of their will,\(^55\) even as means to good objects.\(^56\)

\(^{47}\) The Catechism of the Catholic Church states:

Sin is an offense against God: "Against you, you alone, have I sinned, and done that which is evil in your sight." Sin sets itself against God's love for us and turns our hearts away from it. Like the first sin, it is disobedience, a revolt against God through the will to become "like gods," knowing and determining good and evil. Sin is thus "love of oneself even to contempt of God." In this proud self-exaltation, sin is diametrically opposed to the obedience of Jesus, which achieves our salvation.

Catechism of the Catholic Church, § 1850 (1994), (quoting Psalms 51:4; Genesis 3:5; St. Augustine, The City of God 14, 28; and citing Philippians 2:6-9).

\(^{48}\) See id. § 1849 (quoting St. Augustine, Contra Faustum 22:PL 41,436):

Sin is an offense against reason, truth, and right conscience; it is failure in genuine love for God and neighbor caused by a perverse attachment to certain goods. It wounds the nature of man and injures human solidarity. It has been defined as "an utterance, a deed, or a desire contrary to the eternal law."

\(^{49}\) Exodus 20:3.

\(^{50}\) Id. at 20:13.

\(^{51}\) Id. at 20:14.

\(^{52}\) Id. at 20:15.

\(^{53}\) Id. at 20:16.

\(^{54}\) Id. at 20:17.

\(^{55}\) Reflecting on the Ten Commandments, Pope John Paul II writes:

The "negative precepts" of the natural law are universally valid. They oblige each and every individual, always and in every circumstance. It is a matter of prohibitions which forbid a given action "semper et pro semper," without exception, because the choice of this kind of behavior is in no case compatible with the goodness of the will of the acting person, with his vocation to life with God and to communion with his neighbor. It is prohibited—to everyone and in every case—to violate these precepts. They oblige everyone, regardless of the cost, never to offend in anyone, beginning with oneself, the personal dignity common to all.


\(^{56}\) "In truth if it is sometimes permissible to tolerate a lesser moral evil in order to avoid a greater evil or to promote a greater good, it is not permissible, not even for the gravest reasons, to do evil that good may follow therefrom." Pope Paul VI, On Human Life (Humanae Vitae) (1968), para. 14; cf. Romans 3:8 ("Or why may we not do evil that good may come of it?"). In other words, it is forbidden to intend directly something which of its very nature contradicts the moral order, and which must therefore be judged unworthy of man, even though the intention is to protect or promote
But does a lawyer who agrees to represent someone having a morally unacceptable objective or end in view necessarily share the client's evil intention? No. Christians understand that this is a fallen world, where good and evil often flow from a single act. Christian lawyers need a way to distinguish the occasions when representation necessarily means embracing the evil intentions and objects of the clients, from times when the lawyer's intentions and objects in the representation may properly be characterized as separate and distinct from those of the client. Such a theory must be grounded in recognition that every voluntary act has a moral quality. It must account for the intentions and objects of both the client and the lawyer, and it must encompass the concrete circumstances surrounding the decisions of the client and lawyer. The secularist standard conception of the lawyer's role fails to assist lawyers in making these judgments.

III. LAWYER AUTONOMY AND SINFUL COOPERATION IN THE EVIL OF OTHERS

The neutrality of lawyers promoted by the standard conception of the lawyer's role rests upon the bedrock of political liberalism's commitment to neutrality among competing visions of the individual and common good. Supporters for the idea of lawyer neutrality claim that lawyers are not morally accountable for the causes or clients they choose to represent because the morality of the role outweighs the immoral activities the role sometimes facilitates. This view finds

the welfare of an individual, of a family or of society in general. Contrast this with the proportionalist approach advocated by Professor Rhode in Deborah L. Rhode, Ethical Perspectives on Legal Practice, 37 Stan. L. Rev. 589, 645 (1985):

To argue for individual assumption of responsibility, however, only begins analysis. The more difficult issue, which remains a highly contextual determination, is what that responsibility entails. Relevant factors include not only the magnitude and likelihood of potential harm and the attorney's capacity to affect it, but also the personal and social costs that corrective action would impose. Among those costs, the possible loss of client or collegial trust is entitled to weight. In some instances, an individual's dependency, or a lawyer's limited leverage and access to information, may make suspension of judgment the only practicable course.


The lawyer acts morally because he helps to preserve and express the autonomy of his client vis-à-vis the legal system. It is not just that the lawyer helps his client accomplish a particular lawful purpose. Pornography may be legal, but it hardly follows that I perform a morally worthy function if I lend money or artistic talent to help the pornographer flourish in the exercise of this right. What is special about legal counsel is that whatever else may stop the pornographer's enterprise, he should not be stopped because he mistakenly believes there is a legal impediment. There is no wrong if a venture fails for lack of talent or lack of money—no one's rights have been violated.
some support within current professional norms. Model Rule 1.2(b)
provides that “[a] lawyer’s representation of a client, including repre-
sentation by appointment, does not constitute an endorsement of
the client’s political, economic, social or moral views or activities.”
This rule represents a repudiation of the idea that by agreeing to repre-
sentation a lawyer necessarily joins in the intention and object of the
client. It leaves open the possibility that the lawyer and client are
working simultaneously toward a particular change in the state of af-
fairs surrounding the client with differing intentions and differing
objects.

Strict devotion to neutrality and its version of role morality would
result in stringent regulation of client acceptance. The stance most
consistent with political liberalism’s neutrality would be promulgation
of professional regulations requiring acceptance of almost all prospec-
tive clients, regardless of the lawyer’s desire to accept the representa-
tion. Such regulations might resemble those governing the English
barristers. “This [cab rank] rule requires a barrister to accept any case

But rights are violated if, through ignorance or misinformation about the
law, an individual refrains from pursuing a wholly lawful purpose. There-
fore, to assist others in understanding and realizing their legal rights is al-
ways morally worthy.

Id.

58. Model Rules, supra note 7, Rule 1.2(b).
59. This distinction is particularly important in discussions concerning the role of
criminal defense lawyers, who often represent particular clients, with the intention
and object of limiting the state’s power to punish citizens absent proof that the citizen
has engaged in wrongdoing. Rarely is this the intention and object of the criminal
defendant. Most defendants, justly or unjustly, intend to avoid punishment, and their
object is to obtain dismissal of, or acquittal from, the charges made by the state.
Often the incongruence of the lawyer’s and client’s intentions and objects is of no
significance in the day-to-day decisionmaking of the case. For example, the consider-
ations governing the decision whether the defendant should testify are largely the
same, whether seeking acquittal for the sake of avoiding punishment or for the sake
of enforcing limitations on the state’s ability to coerce statements from the accused.
For an interesting discussion of how the differing intentions and objects of lawyer and
client might provide the basis for more refined professional regulations, see Fred C.
60. Under such regulations, American lawyers could give exactly the defense de-
scribed by Professor Murray L. Schwartz:

I represent him because the system demands that I do so. Moreover, I must
cross-examine and try to impeach truthful witnesses, make arguments with
which I personally disagree, decline to introduce probative, adverse evidence
against my client, and attempt to present matter in ways I think personally
are inaccurate, because the system demands that. You may not hold me
substantively, professionally, or morally accountable for that behavior. In-
deed, were I not to behave in this way, I would truly be subject to criticism
on all three grounds of accountability.

Murray L. Schwartz, The Professionalism and Accountability of Lawyers, 66 Cal. L.
Rev. 669, 673-74 (1978) (citation omitted). Professor Schwartz recognizes that this
defense is subject to attack on the bases that law cannot convert an immoral act to a
moral act by mere fiat, or that the system which is offered to justify the role is itself
not morally justified. Id. at 674. My objection is the first. The second is well articu-
lated by David Luban, Lawyers and Justice: An Ethical Study (1988).
that is offered, regardless of what the barrister might privately think of the client, the case, or the social desirability of the client's winning the case.\textsuperscript{61}

Yet American lawyers are not required to accept every client. Except in cases of court appointment\textsuperscript{62} or where representation would result in violation of the law,\textsuperscript{63} lawyers are free to accept or decline prospective representation for almost any reason. "A lawyer is under no obligation to act as adviser or advocate for every person who may wish to become his client...."\textsuperscript{64} While not recognizing absolute discretion in the selection of clients, professional norms permit substantial latitude in the selection or rejection of clients.\textsuperscript{65}

Several justifications have been offered for the American rule, the most persuasive being that the system must respect the autonomy of lawyers as well as clients. Professor Charles Fried has defended both the general grant of discretion and the particular exceptions contained in current professional rules:

Just as the principle of liberty leaves one morally free to choose a profession according to inclination, so within the profession it leaves one free to organize his life according to inclination. The lawyer's liberty—moral liberty—to take up or decline what clients he will is an aspect of the moral liberty of self to enter into personal relations freely.

\textsuperscript{61} Barristers sometimes claim that this rule is a crucial pillar of British justice, ensuring that unpopular causes or clients need never go without representation. Actually, the rule is hedged about with important qualifications. The rule does not require you, as a barrister, to accept a case for which an insufficient fee is proposed, nor a case that you are not competent by experience or specialization to conduct, nor a case that conflicts by way of scheduling with other cases on your calendar. Despite the provisos, the rule does reflect at least an aspiration to serve all comers disinterestedly. And in fact, few barristers in England are identified closely with clients of one ideology or one type of claim rather than another.


\textsuperscript{62} Compare Model Rules, supra note 7, Rule 6.2 with Model Code of Professional Responsibility EC 2-29 (1997) [hereinafter Model Code].

\textsuperscript{63} Model Rules, supra note 7, Rule 1.16(a)(1); Model Code, supra note 62, DR 2-110(c).

\textsuperscript{64} Model Code, supra note 62, EC 2-26. Cf. Model Rules, supra note 7, Rule 6.2 cmt. 1 ("A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant."); see also Restatement of the Law Governing Lawyers, § 26 introductory note (Am. Law Inst. Tent. Draft No. 5, 1992) and The American Lawyer's Code of Conduct cmt. to ch. III (The Roscoe Pound—Am. Trial Lawyers Found. Rev. Draft, 1982) ("Except when ordered by a court to represent a client, a lawyer has complete discretion whether to accept a particular client.").

\textsuperscript{65} For a more extensive summary of the professional regulations on this issue, see Charles W. Wolfram, \textit{A Lawyer's Duty to Represent Clients, Repugnant and Otherwise}, in The Good Lawyer 214, 216-18 (David Luban, ed. 1983).
I would not carry this idea through to the bitter end. It has always been accepted, for instance, that a court may appoint an available lawyer to represent a criminal defendant who cannot otherwise find counsel. Indeed, I would be happy to acknowledge the existence of some moral duty to represent any client whose needs fit one’s particular capacities and who cannot otherwise find counsel. This is not a large qualification to the general liberty I proclaim. The obligation is, and must remain, exceptional; it cannot become a kind of general conscription of the particular lawyer involved. And the obligation cannot compromise duties to existing clients.\footnote{66}{Charles Fried, The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation, 85 Yale L.J. 1060, 1078-79 (1976). Others have grounded the lawyer’s discretion in the obligation to screen out nonmeritorious claims and defenses: “The need for lawyer autonomy in the creation of the attorney-client relationship is premised on the lawyers’ gatekeeping function—his or her ability to screen out meritless, unjust, or immoral claims by prospective clients, thus aiding the effective administration of justice.” Robert T. Begg, Revoking the Lawyers’ License to Discriminate in New York: The Demise of a Traditional Professional Perogative, 7 Geo. J. Legal Ethics 275, 300 (1993) (arguing for limitations on the discretion of lawyers to reject clients on the basis of race, national origin, gender, and sexual orientation).}

Another stalwart defender of client and lawyer autonomy, Professor Monroe Freedman, recognizes the moral consequences of such discretion:

I also believe that the lawyer’s autonomy must be respected. Except in the unusual circumstances of a court appointment, the lawyer is unconstrained by ethical rules in her choice of areas of practice, causes, and clients. . . . I do not consider the lawyer’s decision to represent a client or cause to be morally neutral. Rather a lawyer’s choice of client or cause is a moral decision that should be weighed as such by the lawyer and that the lawyer should be prepared to justify to others.\footnote{67}{Monroe H. Freedman, Ethical Ends and Ethical Means, 41 J. Legal Educ. 55, 56 (1991) (citations omitted). Professor Freedman expands upon this idea in Monroe H. Freedman, The Lawyer’s Moral Obligation of Justification, 74 Tex. L. Rev. 111 (1995). His claim that lawyers’ must justify their decisions has been challenged. See Michael E. Tigar, Defending, 74 Tex. L. Rev. 101 (1995).}

For the Christian lawyer, this duty of justification extends first to God, then to humans. Where the intention or object of the client is evil, the lawyer must carefully consider the morality of accepting the representation.

Some guidance in this consideration is provided by the Roman Catholic doctrine of “cooperation” with evil. The Catechism of the Catholic Church describes the doctrine of cooperation in the following terms:

Sin is a personal act. Moreover, we have a responsibility for the sins committed by others when we cooperate in them: by participating directly and voluntarily in them; by ordering, advising, praising, or
an obligation to do so; by protecting evil-doers.\textsuperscript{68}

It is important to note that each of these categories of cooperation involves either active participation in the wrongdoing or failure to act when there is an obligation to do so.

\section*{A. Formal Cooperation}

What constitutes active participation in wrongdoing in particular concrete circumstances has been the subject of debate among moral theologians for centuries. Through their debate the distinction of formal versus material cooperation has evolved. Formal cooperation occurs when the cooperator shares the sinful intention of another and assists in achieving the evil object.\textsuperscript{69}

He can do this either by wanting the evil act performed and doing something to help bring it about or by making an unambiguous contribution to the performance of the act, that is, by contributing help that of its nature has no other purpose than to make the sin possible or to facilitate its commission.\textsuperscript{70}

Formal cooperation with sin is always sinful.

A lawyer who knowingly drafted a deed of gift transferring property as an inducement for the unmarried donee to engage in sexual relations with the unmarried donor would be guilty of formal cooperation with the sin of fornication.\textsuperscript{71} Under most circumstances, drafting a deed of gift is morally permissible. However, because the lawyer knew of the client’s intention, and because the act of drafting the gift could have no other purpose than to make the sin possible or to facilitate its commission, such cooperation with the client’s intention would be sinful, regardless of whether the lawyer actually willed the creation of an illicit sexual relationship.

\textsuperscript{68} Catechism of the Catholic Church, \textit{supra} note 24, § 1868.

\textsuperscript{69} “That [cooperation] is formal which concurs in the bad will of the other, and it cannot be without sin; that [cooperation] is material which concurs only in the bad action of the other, apart from the cooperator’s intention.” Germain Grisez, \textit{Difficult Moral Questions} 873 (quoting St. Alphonsus Liquori, \textit{Theologia moralis}) (1997).

\textsuperscript{70} F.E. Kleug, \textit{Sin, Cooperation, in} 13 New Catholic Encyclopedia 246 (1967).

\textsuperscript{71} \textit{Cf.} Fleming v. Morrison, 72 N.E. 499, 499 (Mass. 1904) (holding a will invalid for lack of testamentary intent where the evidence showed that at the time the will was executed the decedent “did not, in fact, intend it to be his last will and testament, but intended to have Mary Fleming think that he had made a will in her favor to induce her to let him sleep with her”). Assuming the court correctly discerned the testator’s intentions, the lawyer was morally culpable for participating in the testator’s lie, as well as the subsequent act of fornication that was induced by the lie. In my hypothetical, I leave for others the question of whether the lawyer would be a party to a conspiracy to commit prostitution, or criminal fornication in those states which prohibit such conduct.
B. Material Cooperation

Material cooperation with wrongdoing is permissible if the object and intentions of the cooperator are not evil, and there is sufficiently grave reason for the cooperator's actions, independent of the fact that those actions may contribute to the sin of another.

Cooperation is material [as opposed to formal] when it avoids participation in the evil intention of the sinner. The material cooperator does not want the sinful action to take place, and there is ambiguity about what he actually does. His assistance may in fact contribute to the sin, but it is not of its nature or in the circumstances exclusively ordained to the commission of the sin.72

An example of material cooperation by a lawyer would be drafting employment agreements between migrant farm workers and farmers that provide for worker housing on the condition that the farmers have the right to exclude anyone from the premises. Assume at the time the lawyer drafts the agreement, the state law permits the farmers, as owners, to exclude others from their property, independent of any contractual provision. The lawyer knows that the farmers intend to exclude individuals they have identified as "troublemakers." The farmers define troublemakers to include not only individuals who encourage the workers to engage in illegal conduct such as the use or sale of drugs, but also representatives of local health and legal services providers.73 They want to include the contractual provision to provide some documentation of their legal right to exclude anyone. The lawyer counsels the clients against using the provision unjustly to exclude people attempting to provide necessary services to the workers, but drafts the agreement as directed.74

73. For similar efforts to exclude drug dealers by public officials, see Herring v. Chicago Housing Authority, 1993 WL 489767 (N.D. Ill. 1993), and McKenna v. Peekskill Housing Authority, 497 F. Supp. 1217 (S.D.N.Y. 1980).
74. These facts are based upon State v. Shack, 277 A.2d 369 (N.J. 1971), which held that the owner of a farm may not use trespass statutes to exclude providers of legal and medical services from property occupied by migrant farm workers. Id. at 374. As to the sinfulness of the owner's conduct, see Second Vatican Council, supra note 23, para. 27:

Furthermore, whatever is opposed to life itself, such as any type of murder, genocide, abortion, euthanasia or willful self-destruction, whatever violates the integrity of the human person, such as mutilation, torments inflicted on body or mind, attempts to coerce the will itself; whatever insults human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution, the selling of women and children; as well as disgraceful working conditions, where men are treated as mere tools for profit, rather than as free and responsible persons; all these things and others of their like are infamies indeed. They poison human society, but they do more harm to those who practice them than those who suffer from the injury. Moreover, they are a supreme dishonor to the Creator.

Id. at 27.
The lawyer's actions are not formal cooperation because she did not join in the farmers' sinful intention and the contract provision is aimed at both good and evil objects. Through this provision, the farmers bind themselves to provide housing to the migrant workers. This is a good object, as evidenced by the treatment of shelter in Scripture.\(^{75}\)

The provision of shelter and employment is conditioned, in part, upon the acknowledgment of the farmers' legal right to exclude anyone from the premises. The lawyer reasonably believes that the farmers intend to use this power both justly to protect the workers from drug dealers, and unjustly to exclude those who would provide worthwhile, and in some cases necessary, services. Yet this immoral use of the contract provision is not the intention of the lawyer, nor is the provision the primary source of the farmers' legal right to exclude service providers. It is clear that the lawyer has not formally cooperated with the farmers' evil intention.

Whether the lawyer's actions constitute material cooperation is more ambiguous. By her actions, the attorney has evidenced her disagreement with any unjust or sinful intention to oppress the workers through the use of the contract provision. The drafting of the employment agreement is not, in and of itself, sinful. Her culpability for any sinful use of the contract terms then will turn upon whether she had sufficiently grave reason to draft provisions that may contribute to the sin of the farmers in their intended denial of important services to the workers.\(^{76}\) Such reasons might include the farmers' legitimate desire to obtain the workers' acknowledgment of their authority to exclude those who threaten the workers' well-being, the existence of a reasonable chance of influencing the farmers to abandon the proposed evil act, the ability to mitigate the harm to third parties for the sinful act, and other human goods to be achieved by the lawyer's actions, independent of the clients' intent and object. Drafting the agreement for the farmers and the migrant farm workers may promote several human goods including the availability of employment and housing to those often deprived of both. Ideally, in drafting the particular provision concerning the farmers' right to exclude others from the property, the lawyer should persuade the farmers to accept a provision that merely acknowledges the farmers' existing legal right, rather than a provision creating a contractual claim that their right to exclude all

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75. "A scribe approached him and said, 'Teacher, wherever you go I will come after you.' Jesus answered him, 'The foxes have lairs, the birds in the sky have nests, but the Son of Man has nowhere to lay his head.' Matthew 8:19-20. The Old Testament illustrates the value of this good by its protection in the law, see Deuteronomy 10:11, forbidding a creditor to enter the debtor's house to obtain payment, and the loss of a place to live was understood as one of the greatest losses that could occur, e.g., Lamentations 2:2 and 5:2). Pontifical Commission Iustitia et Pax, What Have You Done to Your Homeless Brother? The Church and the Housing Problem (1987), discusses the Christian duty to work toward universal availability of housing.

76. See Kleug, supra note 70, at 245-46.
others is grounded in the voluntary agreement of the workers.\textsuperscript{77} This point should be discussed with the clients, and the lawyer should accept their decision and draft the provision according to their instructions. Even if the lawyer is directed to draft the provision to provide a contractual claim in addition to the existing legal right, the intentions and the object of the lawyer in representing the farmers in this matter are good, and the circumstances do not suggest that the evil contained in the clients' multiple objects and mixed intentions is sufficient to preclude representation.\textsuperscript{78}

\textbf{C. Doctrine of Double Effect}

The example of drafting the migrant workers' contract and the weighing of the lawyer's good intentions and object with the clients' mixed intentions and objects reflects the sort of prudential judgment Christian lawyers must exercise. This weighing of intentions and objects is governed by the doctrine of double effect, which recognizes limited moral responsibility for evil consequences that are not intended, but are foreseen, by the actor.

Theologians commonly teach that four conditions must be verified in order that a person may legitimately perform such an act. (1) The act itself must be morally good or at least indifferent. (2) The agent may not positively will the bad effect but may merely permit it. If he could attain the good effect without the bad effect, he should do so. The bad effect is sometimes said to be indirectly voluntary. (3) The good effect must flow from the action at least as immediately (in the order of causality, though not necessarily in the order of time) as the bad effect. In other words, the good effect must be produced directly by the action, not by the bad effect. Otherwise, the agent would be using a bad means to a good end, which is never allowed. (4) The good effect must be sufficiently desirable to compensate for the allowing of the bad effect.\textsuperscript{79}

The principle of double effect guides the Catholic lawyer through the moral assessment of a particular act that is not intentionally evil nor aimed at achieving an intrinsically evil object. As noted above, it is always forbidden to formally cooperate with evil, whether acting on evil intentions or seeking evil objects, but there are instances when it is morally permissible to act, with right intentions and objects, fore-

\textsuperscript{77} I am grateful to Professor Monroe Freedman for suggesting this point to me.

\textsuperscript{78} Additional examples of the application of the cooperation with evil doctrine to lawyering decisions are contained in Robert J. Muise, Note, Professional Responsibility for Catholic Lawyers: The Judgment of Conscience, 71 Notre Dame L. Rev. 771, 786-87 (1996).

\textsuperscript{79} 4 New Catholic Encyclopedia, Double Effect, Principle of, at 1021 (1967). An extensive discussion of this principle by both supporters and detractors can be found in Forum, Double Effect: Theoretical Function and Bioethical Implications, 16 J. Med. & Phil. 5 (1991).
seeing that the actions will permit another to satisfy an evil intention or attain an evil object.

In considering whether to accept representation, the lawyer must identify the actions that representation would require, and determine that the acts required of the lawyer are good, or at least morally neutral. Representation that requires the lawyer to advocate the performance of evil acts, or the total disregard of religious obligations, or the irrelevance of religious beliefs, results in evil acts by the lawyer, and thus such representation cannot be accepted by the Catholic lawyer. Examples of such prohibited representation include arguing for a court order permitting a minor to consent to the performance of an abortion or the imposition of the death penalty when other effective means of protecting the public are available.

In addition to avoiding evil acts as a part of the proposed representation, the lawyer must not intend or will the evil consequences that unavoidably flow from the contemplated representation. Returning to the earlier example of the lawyer drafting the migrant worker employment agreements, the lawyer is aware that the farmers intend to use the provision limiting access to company housing in order to exclude healthcare workers and legal services providers, yet that is not the lawyer's intended use of the contract or provision. The contract binds the farmers to provide housing, and the provision describing their authority to exclude others from the housing may merely restate the law, creating no new rights in the employers/landlords. Even if the provision excluding others creates a contractual right in the farmers on the basis that the workers have voluntarily relinquished any right to object to the farmers' conduct, the lawyer's discussions with her clients evidence her disagreement with using the power to exclude

80. The Tennessee Bar Association has taken the position that a pro-life Catholic lawyer has a professional obligation to accept court appointed representation of a minor seeking an abortion. This opinion has been sharply criticized on several grounds. See Teresa Stanton Collett, Professional versus Moral Duty: Accepting Appointments in Unjust Civil Cases, 52 Wake Forest L. Rev. 635 (1997) (arguing that the position of the Tennessee Bar Association departs from the traditional American understanding of the voluntary nature of the client-attorney relationship and asserting that recognizing lawyers' moral independence is crucial to maintaining the integrity of the profession of law); Howard Lesnick, The Religious Lawyer in a Pluralist Society, 66 Fordham L. Rev. 1469 (criticizing the Tennessee opinion as contrary to the ideal of a religiously pluralistic society); Ernest F. Lidge, III, The Lawyer's Moral Autonomy and Formal Opinion 140, 33 Tenn. B.J. 12, Jan/Feb. 1997, at 13-14 (arguing that lawyers should be allowed to consider their religious beliefs when taking cases so as not to violate their ethical duty to represent their client zealously).

81. Muise, supra note 78, at 771, provides additional comment on this example; see also George Kannar, Federalizing Death, 44 Buff. L. Rev. 325, 331-37 (1996) (describing the federal legislation exempting prolife prosecutors from representing the government in cases where the death penalty is sought). On the issue of Catholic judges imposing the death penalty, see John H. Garvey and Amy V. Coney, Catholic Judges in Capital Cases, 81 Marquette L. Rev. 303 (1998) and the critique contained in Robert Tittle, Death's Casuistry 81 Marquette L. Rev. ___ (forthcoming).
visitors from employee housing to deprive workers of contact with health and legal services providers. It is clear that in drafting the contract, she does not will these particular consequences.

The third element of the principle of double effect requires that the good object of the lawyer motivating the acceptance of representation must not be achieved through the evil effects of the client’s act. An example of representation precluded by this element would be the sort of “political crisis lawyering” advocated by some, where the lawyer seeks strict enforcement of unjust laws in order to encourage public outrage and pressure for legislative change. The lawyer seeking to reform landlord/tenant law to include a “repair and deduct” remedy for breach of the warranty of habitability might be tempted to encourage landlords to evict unemployed tenants who fail to make rent payments because the tenants used the money to make necessary repairs. The good effect of legislative reform of unjust laws cannot justify the lawyer’s actively cooperating in the landlord’s unjust, but legal, eviction of the unemployed tenant.

The final element of the principle requires the lawyer to balance the good to be obtained by accepting the representation against the evil to be avoided by refusing. Although considering the foreseeable consequences of the act, this element differs from secular consequentialist analysis. The principle of double effect excludes willing an evil object, or seeking to benefit from evil consequences. By ruling such intentions and objects off-limits, the principle reduces the temptation to disobey God in the hope of attaining temporal good. The object of these limitations is succinctly summarized in the scripture, “What profit would a man show if he were to gain the whole world and destroy himself in the process?” The principle of double effect does not allow believers to gamble in this way in deluded hope of both gaining the world while retaining their souls.

One might suggest that the fourth element of the principle of double effect simplifies the lawyer’s moral analysis, since many lawyers might overstate the foreseeable evil consequences of rejecting the representation. They would argue, “If I refuse this case, the prospective client will merely seek out another attorney who will not even try to limit the evil, so it is better that I take the case and engage in damage control to the greatest extent possible.” Such reasoning is unacceptable under both the standard conception of lawyering and under the duty of Christian lawyers to avoid evil. It subverts the principle of client autonomy justifying such representation under the secularist

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standard conception because the lawyer's intent is not to achieve the objective of the client, but to change the objective of the client and, failing to effect such changes, to minimize the success of the client in achieving his or her objectives. This is wrong because it betrays the trust of the client.

The argument of "if I don't, somebody else will" is also unavailing under the Christian conception of lawyering. This argument substitutes unknown (and unknowable) actions of others for the difficult moral analysis of reasonably foreseeable effects of accepting the representation. Such reasoning unrealistically minimizes the inherent danger to the lawyer's spiritual well-being from representation of those with evil intent or objects and maximizes the potential good to be achieved through the lawyer's influence on the client. While it is permissible to consider both the possible consequence that the Christian lawyer will influence the client to abandon the evil intention or objects, and the possibility that another lawyer will not seek to exert such moral persuasion, the analysis of double effect does not begin or end there. The error inherent in the statement "if I don't, somebody else will" is that it is offered as both the beginning and ending of moral analysis.

The principle of double effect permits moral analysis of actions that foreseeably will result in both good and evil effects. It maintains the believer's commitment to the existence of objective good and the avoidance of direct participation in evil while recognizing that pure good is largely unattainable in this life. Unlike the consequentialist, the believer's judgment cannot be governed exclusively by calculation of net good or evil to be achieved according to human understanding of foreseeable consequences. For Christians, the fallibility of such calculations is conclusively proven by the fact that redemption came through death on the cross, an instrument of Roman torture and oppression. Reduced to its most colloquial expression, "Who woulda thunk it?" Only those who had faith in the promises of the Living God.

The believing Catholic must adhere to the law of God, with confidence that the law represents the true "greatest good" for each individual, and thus for all. The principle of double effect is consistent with this obligation through its insistence that evil can be neither the intent nor the object of the actor.

D. Avoiding Scandal

Even when Catholic lawyers have properly analyzed the intentions and objects of the prospective representation and determined that the representation is permissible, the Christian duty to avoid giving scandal may preclude acceptance of representation.

Scandal has two meanings in theological discourse. The first meaning is the meaning of Christ when He asked His disciples whether they
were scandalized by his teaching on the Eucharist.\textsuperscript{86} To hear Christ proclaim that salvation came through the eating of his flesh and the drinking of His blood truly must have tested the devotion of His followers.\textsuperscript{87} Yet the scandal they undoubtedly felt—a sense of outrage or shock—is not the type of scandal that Christians must avoid giving. Christ was bound to proclaim the truth, regardless of the ability or willingness of His listeners to understand. Similarly, Christians are not excused from their obligations to obey God to avoid shocking or outraging others by the acts that are commanded by God.\textsuperscript{88}

David Hoffman articulated a similar principle for American lawyers over one hundred and fifty years ago.

What is wrong, is not the less so from being common. and though few dare to be singular, even in a right cause, I am resolved to make my own, and not the conscience of others, my sole guide. What is morally wrong, cannot be professionally right, however it may be sanctioned by time or custom. It is better to be right with a few, or even none, than wrong, though with a multitude. If, therefore, there be among my brethren, any traditional moral errors of practice, they shall be studiously avoided by me, though in so doing, I unhappily come in collision with what is (erroneously I think) too often denominated by the policy of the profession. Such cases, fortunately, occur but seldom—but when they do, I shall trust to that moral firmness of purpose which shrinks from no consequences, and which can be intimidated by no authority however ancient or respectable.\textsuperscript{89}

In the context of client selection, contemporary professional regulations contain a parallel admonition. The Model Code of Professional Responsibility provides that “[r]egardless of his personal feelings, a lawyer should not decline representation because a client or a cause is unpopular or community reaction is adverse.” Commentary in the Model Rules of Professional Conduct expands only slightly on the Code’s statement: “Legal representation should not be denied to people who are unable to afford legal services, or whose cause is contro-

\begin{thebibliography}{99}
\bibitem{86} John 6:62.
\bibitem{87} John 6:22-71.
\bibitem{89} It should be added that the fulfillment of positive precepts, whether divine or human, if necessary for salvation, may never be omitted in order to avoid scandal. Much less would it be permissible to do something essentially evil, such as lying, stealing, or blaspheming, for the purpose of preventing the sin of another. There may even be circumstances in which one is bound to continue on a good course of action even though, through ignorance, the weak are scandalized; for it would not be right, for the sake of avoiding scandal, to inflict serious harm or loss on oneself or the community.

\textit{Id.}
\bibitem{89} David Hoffman, \textit{Resolutions in Regard to Professional Deportment}, reproduced in A Course of Legal Study 33 (1836).
\bibitem{90} Model Code, \textit{supra} note 62, EC 2-27.
\end{thebibliography}
versial or the subject of popular disapproval." Certainly as followers of Christ, who several times described his mission as ministering to the outcast or lost, it would be wrong to reject a prospective client because of public shock or outrage at the defense of the innocent or weak.

The duty of Christians to avoid giving scandal involves a different type of scandal. Christ talked of this second type of scandal when exhorting the disciples to avoid drawing others into sin. "It is impossible but that offenses [against God] will come; but woe unto him through whom they come. It would be better for him that a millstone were hanged about his neck, and he cast into the sea, than that he should offend one of these little ones." The duty to avoid giving scandal requires Christians abstain from acts that encourage others to sin.

For this reason, Christian lawyers must consider, not whether the prospective representation is unpopular, but whether the lawyer's advocacy on behalf of the client would lead others into sin. This determination often involves consideration of perception and prominence of the proposed representation, as well as the degree of public

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91. Model Rules, supra note 7, Rule 1.2, cmt. 3.
93. I do not underestimate the very real harm that an attorney can suffer due to public outrage or shock. David Golderger, Clients Everyone Hates, Litig., Spring 1995, at 10; see alsoTigar, supra note 67, at 103 (discussing the tragedy of the 1995 Oklahoma City bombing); Monroe H. Freedman, The Lawyer's Moral Obligation of Justification, 74 Tex. L. Rev. 111, 112 (1995) (discussing lawyers' defending of unpopular clients); cf. Sacher v. U.S., 343 U.S. 1, 19 (1952) (J. Black, dissenting) ("[I]t is difficult to escape the impression that the trial judge's inferences against the lawyers were colored, however unconsciously, by his natural abhorrence for the unpatriotic and treasonable designs attributed to their Communist leader clients."); Guam Soc'y of Obstetricians and Gynecologists v. Ada, 100 F.3d 691, 699 (9th Cir. 1996) ("There is no doubt in my mind that this case was deemed extremely undesirable in the community and that local counsel faced unusual and trying personal and professional pressures during the pendency of this lawsuit.").
94. Luke 17:1-2. The Catholic Study Bible translates this passage:

He said to his disciples, 'Things that cause sin will inevitably occur, but woe to the person through whom they occur. It would be better for him if a millstone were put around his neck and he be thrown into the sea than for him to cause one of these little ones to sin.'

Luke 17:1-2; see also Matthew 18:6 ("On the other hand, it would be better for anyone who leads astray one of these little ones who believe in me, to be drowned in the depths of the sea."); 1 Corinthians 8:12 ("When you sin against your brothers and wound their weak consciences, you are sinning against Christ.").
95. Catechism of the Catholic Church, supra note 24, § 2284-87:

Scandal is an attitude or behavior which leads another to do evil. The person who gives scandal becomes his neighbor's tempter. He damages virtue and integrity, he may even draw his brother into spiritual death. Scandal is a grave offense if by deed or omission another is deliberately led into a grave offense.

Scandal takes on a particular gravity by reason of the authority of those who cause it or the weakness of those who are scandalized.

Id.
identification of the lawyer with the prospective client and with the Christian community.

This concern for the effect of the representation on others is not foreign to the secular dialogue concerning a lawyer's duties. David Wilkins has asserted similar secular objections to the decision by Anthony Griffin, a black lawyer, who agreed to represent the Ku Klux Klan ("KKK" or "Klan") in resisting the Texas attorney general's efforts to obtain an organizational membership list.\(^9\) He analyzes Griffin's representation of the Klan from the perspective of group identity, and argues that the burden of public justification is heavier for a black lawyer representing the Klan than for a white lawyer. This is because: 1) a black lawyer's presence at counsel table improves the Klan's chances of successfully resisting the State's order to disclose its membership lists; 2) acceptance of representation suggests that "even the Klan's most bitter enemies believe that its arguments merit careful consideration"; 3) his presence suggests that the Klan is "merely a 'fringe' organization whose 'speech' causes no real harm"; and 4) other blacks will feel a special sense of harm when the Klan is represented by a black lawyer.\(^9\)

Wilkins asserts that these consequences should be part of Griffin's moral deliberation:

Although [Griffin's] racial identity does not define him, his moral, economic, and spiritual connection to the black community does have an important moral claim on his decisions, at least when those decisions are likely to have predictable consequences for other blacks. He has an obligation to weigh these race-based considerations against both legitimate professional duties (acquired by virtue of his status as a lawyer) and his unique commitments as an autonomous member of society.\(^9\)

Wilkins' concern for the increased likelihood of success is more properly considered in the principle of double effect. His concern for the special sense of harm felt by other members of the black community is comparable to the first type of scandal discussed above and should not morally bar the lawyer from accepting representation with a good intent and object.\(^9\) His second and third concerns, however, raise the specter of judicial legitimization of an association committed

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\(^9\) Wilkins, *supra* note 96, at 1042.

\(^9\) Id. at 1043.

\(^9\) Wilkins characterizes this harm as "the psychic injury to blacks in Vidor of seeing a black lawyer standing up for their persecutors." Id. at 1056.
to racial segregation. Such legitimization threatens the goals of racial equality and harmony throughout contemporary American society.

These concerns properly would be considered by a Catholic lawyer asked to represent the Klan, regardless of the lawyer's race. The Catechism of the Catholic Church teaches that "they are guilty of scandal who establish laws or social structures leading to the decline of morals and the corruption of religious practice, or to 'social conditions that, intentionally or not, make Christian conduct and obedience to the Commandments difficult and practically impossible.'" The Knights of the Ku Klux Klan publicly affirm a belief in white racial pride, American nationalism, and Christianity. As an association, it is

100. Catechism of the Catholic Church, supra note 24, at § 2286.

- Things the liberal media told you that just aren't true.
  
  The Klan hates black people.
  
  This is a lie and the liberal media knows it. We believe everyone has a right to be proud of their race, which means White people have a right to be proud also. Therefore we believe that anti-White policies should be discarded and that people should be hired, promoted, and given scholarships according to their ability and not because we feel sorry for them or because they have the "politically correct" color of skin.

  The Klan is against Catholics.
  
  That is another liberal media lie. We believe that all Christians, regardless of their religious preference, need to work in harmony for the future of our children and Western Christian Civilization.

  If you join the Klan, you will have to break the law and commit crimes against black people.
  
  The liberal media says this even though it is not true because they want you to be afraid of joining the Klan and going to jail. They know that if White people ever join together we will be able to stop the destruction of our race and nation. This lie is told to keep the good, decent, and honorable Christian people from ever joining our movement. Klan members take a pledge not to commit crimes.

  What the Klan really is.
  
  The Klan is a gathering of White Christian men and women who are joined together because of the common bond they share by blood and faith. Each person is an individual and we do not attempt to do your thinking for you.

  The Klan is the oldest, largest, and most professional Whites Rights group in the world. Our membership draws from all walks of life. We are committed to upholding and defending Western Christian civilization.

  The Klan Political Agenda
  
  America First!
  
  The very first responsibility of our government is to protect the welfare (jobs, health, future) of AMERICANS—not those in Mexico, Vietnam, Somalia, Haiti, or some other Third World country. It is time to take America back.

  Drug Testing for Welfare Recipients.
  
  Not everyone who is on welfare is taking drugs. We are aware of that, but there are many, especially in housing projects in large urban areas, who are taking drugs. If they have enough money for drugs, they don't need your
dedicated to continuing racial division and de facto segregation.\textsuperscript{102} Both goals are contrary to the teachings of Scripture and the Church.\textsuperscript{103}

money. If a welfare recipient is a drug user, their welfare check, food stamps, public housing, and etc. should be cut.

\textit{Protect America's Birthright.}

If the Klan were in political power, laws would be enacted that would prevent American industry and property from being sold to foreigners. America should be owned by Americans—not Japanese, Arabs or Jews.

\textit{Do away with Affirmative Action Programs.}

People in America should be hired, promoted or given scholarships based on ability, not because they have the right color of skin or because we feel sorry for them or because we are trying to appease some kind of self-inflicted guilt.

\textit{Protect American Jobs.}

Americans are losing jobs to foreign nations because our industry is moving to Mexico to obtain cheap labor, which is often only 60 or 70 cents an hour. American industry is also enticed to move to Mexico in order to save millions because of non-existing environmental laws. The criminals in Washington have passed NAFTA and are now selling us out with GATT.

\textit{Close our Border.}

The flood of illegal aliens coming across our borders needs to be stopped. If we can put 43,000 soldiers in South Korea to protect their borders, 500,000 soldiers in Saudi Arabia to protect their borders, why cannot we put troops on our borders to protect our country from the invasion of illegal aliens? We must protect the future of our children, not the future of the children of Mexico.

\textit{Outlaw homosexuality and interracial marriages.}

Until 20 or so year ago, nearly all states had 'sodomy' and miscegenation laws and statutes that were strictly enforced. Since that time they have been repealed or are ignored, the results are obvious with the plague of AIDS now ravaging our land. Both of these abominations against God and nature must be stopped if America is ever to return to the great Christian nation it once was.

102. Helen Thompson, \textit{Freedom Fighter: Galveston Lawyer Anthony Griffin is Committed to Protecting the First Amendment Even if it Means Defending the Ku Klux Klan}, in Cochran & Collett, \textit{supra} note 96, at 41 ("'We aren't supremacists,' he [Michael Barns, the Titan of the Realm of Texas, Knights of the KKK] says, drawing a fine distinction, 'We are segregationists.'").

103. "There does not exist among you Jew or Greek, slave or free man, male or female. All are one in Christ Jesus." \textit{Galatians} 3:28. "There is no Greek or Jew here, circumcised or uncircumcised, foreigner, Scythian, slave, or free man. Rather, Christ is everything in all of you." \textit{Colossians} 3:11. "Every form of social or cultural discrimination in fundamental personal rights on the grounds of sex, race, color, social conditions, language, or religion must be curbed and eradicated as incompatible with God's design." Second Vatican Council, \textit{supra} note 23, para. 29, \textit{quoted with approval in} Catechism of the Catholic Church, \textit{supra} note 24, \textit{§} 1935; cf. \textit{James} 2:1-13 (admonition against the sin of partiality); Pope Paul VI, On the Development of the Peoples (\textit{Populorum Progressio}) para. 63 (1967) ("It [racism] is still an obstacle to collaboration among disadvantaged nations and a cause of division and hatred within countries whenever individuals and families see the inviolable rights of the human person held in scorn, as they themselves are unjustly subjected to a regime of discrimination because of their race or their colour."); National Conference of Catholic Bishops, Brothers and Sisters to Us (Nov. 14, 1979) (discussing the sin of racism).
By defending the Klan's associational rights, the Catholic lawyer necessarily would seek a judicial pronouncement that individuals have the right to associate to further the immoral goal of promoting racism. Such representation and the resulting pronouncement (if the lawyer is successful) threaten to mislead Christians in their search for the truth concerning relationships with members of other racial groups. Since scandalizing the faithful would not be the intent or object of the lawyer in accepting or rejecting the representation, it is not determinative of the morality of the representation. Because it is a foreseeable effect of accepting representation, however, it is a relevant consideration in analyzing whether the representation is permissible under the principle of double effect.

As a part of the analysis under the principle of double effect, the lawyer is obligated to determine whether the representation could be accepted and conducted in such a manner to obtain the good of protecting associational rights without risking the scandalous effect of leading others into the sin of racism. It is possible to minimize the scandalizing effects of such representation in two ways, both of which are problematic under the standard conception of lawyering. The first, and most obvious, way is to decline the representation. This resolution is incompatible with the standard conception's ideal of equal access to the law, and the underlying premise of neutrality by the state inherent in political liberalism.

The second way to minimize the scandalous effect of an otherwise good or morally neutral act is to explain the act so that observers understand and will not be drawn into the sin. This was the route followed by Anthony Griffin in his representation of the Klan. He distanced himself regularly and vehemently from the organizing principles of his client. Yet, as Wilkins acknowledges, Griffin's actions raise complex issues of professional morality.

Is such public distancing of oneself from the client consistent with professional norms, reasonable client expectations, and/or the best interest of the client? Professional norms provide contradictory indications on whether lawyers may pursue representation with differing intentions and objects. The Code of Professional Responsibility exhorts lawyers to zealously represent the interests of their clients. The Model Rules of Professional Conduct permit consensual limits on the objectives lawyers seek by agreements between client and law-

104. "With few exceptions, Griffin has done everything in his power to prevent others from misstating or misusing his position." Wilkins, supra note 96, at 1057.
105. Id. at 1053-56.
106. ABA Code of Professional Responsibility Canon 7 (1997) ("A lawyer should represent a client zealously within the bounds of the law.").
Fiduciary duties bind lawyers to serve their clients with undivided loyalty.107

Separate professional questions surround the conduct engaged in by lawyers seeking to distance themselves from their clients. Public statements regarding any legal matter threaten client confidentiality and attorney-work product privileges.108 Discussion of matters currently in litigation raise questions about the effect of those statements upon the triers of fact. Disassociating oneself from the clients or their cause may adversely affect the ability of the clients to achieve their objectives.109 In light of these dangers, it is not surprising that the professional codes fail to provide clear guidance on whether lawyers may publicly distance themselves from their clients.

Applying the most positive description to the conduct of lawyers publicly distancing themselves from the intentions and objects of their clients, it is nothing more than public affirmation of the moral reality that not all cooperative activity results from a shared intention.110 Public affirmation of the lawyer's differing intentions and objects preserves the distinctive individuality of both lawyer and client, allowing each to give a public accounting of his or her moral reasoning. This, in turn, permits others to engage in the sort of fraternal affirmation or correction inherent in living in a moral community. Wilkins's article is an example of exactly this. His affirmation of Anthony Griffin's integrity in resolving the complex question of whether a black lawyer should represent the Ku Klux Klan, while arguing that Griffin failed to give proper weight to each aspect of the representation, is the sort of affirmation and correction that may be offered in moral dialogue.111

A more critical description of the conduct of lawyers publicly chastising or disavowing the constitutive purpose of the client would suggest that lawyers are using their representation of clients as means to the lawyers' ends, while publicly expressing indifference, or even hostility, to the continuing well-being of the client. Such a vision is consistent with secular consequentialist moral reasoning where the determinative question is "What conduct achieves the greatest good?" but evidences a total disregard for the fact that the lawyer seeks to obtain the "greatest good" at the client's expense. It is a radical departure from the standard conception's ideal of partisanship which is

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107. Model Rules, supra note 7, Rule 1.2.
109. Model Rules supra note 7, Rules 1.6 and 1.9 set out the limitations of confidentiality.
110. Wilkins, supra note 96, at 1036-40; see also State v. Holland, 921 P.2d 430, 432 (Utah 1996) (describing defense counsel's use of client's testimony to illustrate the impropriety of executing another client who was less "worthy" of the death penalty).
111. See notes 72-78 & accompanying text.
112. Wilkins, supra note 96, at 1040-43.
most persuasively defended on the basis that zealous advocacy promotes the good of human dignity or autonomy.\textsuperscript{113}

Elsewhere I have argued that there has been too little attention given to the distinction between these human goods and that defenders of the standard conception have mistakenly assumed that autonomy is a synonym for human dignity.\textsuperscript{114} I will not rehearse those arguments here. Instead I want to explore whether human associations can assert a moral claim for the same respect due human beings.

E. Distinguishing Human Persons From Human Associations

The Ku Klux Klan is a voluntary association of human persons. Voluntary human associations are formed in response to the social nature of human persons and their need to serve and be served.\textsuperscript{115} Unlike people, whose individual intrinsic worth must be acknowledged by all Christians,\textsuperscript{116} particular human associations enjoy no inherent value beyond the purpose and activities of the association. Such associations can be affiliations of people seeking to cooperatively engage in acts of justice and charity toward others, and thus contribute to the flourishing of the human person and community. Associations can also be formed by people for the primary purpose of jointly pursuing intrinsically evil objectives, thus denigrating the human person and community. It is the duty of Christians to support and participate in associations of the first kind while condemning and opposing the purpose and activities of the second.

When individuals seek to act in accordance with their best understanding of the good, the lawyer serves God and neighbor by limiting governmental coercion of action contrary to conscience. Application of this principle to human associations is more difficult. The moral strength of an association’s claim for cooperation by others is directly proportional to the legitimacy of the association’s purposes and objects. When the purpose of the association is evil, but the object sought is permissible, the Christian lawyer should evaluate the proposed cooperation to determine if it is morally permissible. If the act is permissible, the person may join the association’s effort to achieve the object but should not join in its evil purpose. Arguably, Anthony Griffin’s representation of the Klan falls into this category. Another example of such cooperation would be a lawyer assisting a medical device company in paying just compensation to settle a product liabil-

\begin{footnotes}
\item[113] Freedman, Ethics, \textit{supra} note 14, at 65-86.
\item[115] This aspect of human nature is evidenced in the oldest creation story and continues to be a theme throughout Scripture: “The Lord God said: ‘It is not good for the man to be alone. I will make a suitable partner for him.’” \textit{Genesis} 2:18.
\item[116] “God created man in his image; in the divine image he created him; male and female he created them.” \textit{Genesis} 1:27; see also \textit{Catechism of the Catholic Church}, \textit{supra} note 24, at §§ 355-57.
\end{footnotes}
ity claim where the primary intent of the corporation in settling is not to deal justly with the injured consumer, but to avoid publicity and the attendant claims by other injured users of the product. So long as the lawyer does not join in this unjust intent, the lawyer has not formally cooperated with the wrongdoing of the client.

When the object of the association is evil, regardless of the intent of the association, the lawyer and the community should not assist the association in achieving its object. For example, a medical facility seeking to expand its service to include abortion has no moral claim for assistance, even in those instances where the intention of the association is to protect women against the dangers of self-induced abortions or to promote the ability of women to time the birth of their children.117

Associations formed for evil purposes pursuing evil objects have no moral claim to the lawyer’s services, and should not be assisted. Asserting a claim by the Klan that de jure segregation should be permissible in localities where a majority of the electorate vote for it is an example of such prohibited representation.

Proper moral analysis of any proposed representation depends, in part, upon the ability of the lawyer to discern the prospective client’s intentions and objects. Rarely is this so simple as the client announcing, “I am the Prince of Darkness, and I would like for you to represent me in the purchasing of human souls” or “I have been sent to you by God, and I would like for you to represent me in my attempts to transmit His grace to the following people.” If such an announcement were made by a prospective client, few lawyers would accept the statements as true on their face, and most lawyers would be extremely uneasy about accepting the statements even after an appropriate showing of supernatural powers.

On the rare occasions that clients clearly articulate predominantly evil or good intentions, lawyers often perceive a conflict between their professional obligations and their moral duties. No lawyer is obligated to help a criminal defendant obtain revenge for past wrongs by implicating an innocent man in a murder, yet at least one lawyer believed that professional regulations rendered him powerless to refuse.118 Similarly, no lawyer is prohibited from assisting clients in


118. Professor William Hodes describes the case of Henry Drake who was convicted of first degree murder on the perjurious testimony of “Pop” Campbell. Pop Campbell’s lawyer knew his client was lying during his testimony, but erroneously believed that the duty of confidentiality precluded any action adverse to the client. W. William Hodes, What Ought to Be Done—What Can Be Done—When the Wrong Per-
resisting unjust laws through legal means, yet the professional rules governing assistance in acts of civil disobedience are far from clear.\textsuperscript{119}

The mixed intentions and multiple objects of prospective clients, be they individuals or associations, require careful consideration by the lawyer in deciding whether to accept the representation. The following example illustrates this point:

An orthodox Roman Catholic lawyer is asked to represent the manufacturer of baby formula seeking authorization from the government of a Third World nation to market powdered baby formula to new mothers in that country. Most communities in the country rely upon natural water supplies (rivers, lakes and wells), which have not been treated to insure purity. The number one cause of infant death is dehydration due to diarrhea.\textsuperscript{120}
Assume that the corporate mission statement states that the primary purpose of this commercial association is to provide food goods to consumers in exchange for a fair price, resulting in a reasonable profit for the owners of the business. Food goods meet authentic human needs. Their production is a good thing. The terms of the exchange between the company and consumer are defined as a "fair price" which meets the requirements of justice. "Reasonable profits" as a consequence or goal of an economic enterprise also are just. Unlike the Ku Klux Klan, the object of the association itself is morally permissible, containing no statement of evil purposes.

This hypothetical, then, presents the problem of the legitimate association of persons having a legitimate intention (providing food goods in exchange for a reasonable price) to pursue a permissible object (the marketing of its products) in circumstances that render the proposed action evil. As a general rule, the marketing of baby formula is not morally problematic. In this case, however, the prospective client seeks to market powdered baby formula to new mothers in a country where a majority of the population relies upon untreated water supplies. In the proposed market area, the number one cause of infant death is dehydration due to diarrhea. This last fact, in combination with the lack of access to sanitary water supplies, suggests that mothers should be strongly encouraged to breast feed their children. Under these circumstances the marketing of baby formula risks creation of artificial needs or desires that would pose a significant risk to the health of the infants. The primary reason the criteria. In other cases, the formula was mixed with too much water by mothers who assumed that more water meant more formula and, consequently, less money spent on baby food. Due to the high level of illiteracy in developing countries, the women could not read the instruction labels on the product. If they could, they would have realized that by diluting the formula they were starving their children.


121. Pope John Paul II, The Hundreth Year (Centesimus Annus) para. 35 (1991) [hereinafter, Pope John Paul II, The Hundreth Year]:

The church acknowledges the legitimate role of profit as an indication that a business is functioning well. . . . But profitability is not the only indicator of a firm's condition. It is possible for the financial accounts to be in order, and yet for the people—who make up the firm's most valuable asset—to be humiliated and their dignity offended. [This is] morally inadmissible [and] will eventually have negative repercussions on the firm's economic efficiency. . . . [T]he purpose of a business firm is [to be] a community of persons . . . endeavoring to satisfy their basic needs . . . at the service of the whole of society.

Id.


123. This problem is of sufficient magnitude that the World Health Organization and UNICEF developed the International Code of Marketing of Breast Milk Substitutes.
pany seeks access to this foreign market is to increase its sales and profits. This is not an adequate reason to encourage mothers to risk their children's health through the use of breast milk substitutes.\textsuperscript{124} Absent additional facts that would either make the risk to these children's health moral or eliminate the risk, people directing the actions of the company would sin by marketing their product in this country.

By accepting representation in this matter, the lawyer also would sin since advocating access to the market has no purpose other than to advance the sinful conduct of the client. This formal cooperation should not be given by the Christian lawyer.

F. Representation of Individuals

Much of this analysis changes when considering the representation of individuals. The human person shares in the image of God.\textsuperscript{125} This is the source of the person's innate dignity and the duty of all to respect that dignity. Moral analysis of individual representation must begin with respect for the dignity of the individual. Yet not all human actions are worthy of respect. Acts that damage the person's relationship with God are inconsistent with the true good of the person. Such acts are not due respect by, nor assistance from, others.

The following hypotheticals illustrate the distinction between respecting the person and his or her acts:

1. An orthodox Roman Catholic lawyer is asked to defend the executive director of the local Planned Parenthood clinic against criminal charges for violating federal tax laws regarding the use of funds from nonprofit entities to promote a political candidate. Conviction carries a penalty of ten to fifteen years in prison.

2. The same lawyer is asked to defend an abortionist against personal injury claims based upon his intentional lies to women in telling them that they were pregnant to induce them to purchase his abortion services.\textsuperscript{126}

The requests for representation by these individuals invoke consideration of the Christian requirement to love God and neighbor. Both cases require defense of past actions, rather than cooperation in the creation or continuation of opportunities for future wrongdoing. To create or continue opportunities encouraging others to sin is to commit the sin of scandal and is not a permissible intention or object. In

\textsuperscript{124} "Of itself, an economic system does not possess criteria for correctly distinguishing new and higher forms of satisfying human needs from artificial new needs which hinder the formation of a mature personality." Pope John Paul II, The Hundredth Year, \textit{supra} note 121, at para. 36.

\textsuperscript{125} "God created man in his image; in the divine image he created him; male and female he created them." \textit{Genesis} 1:27; see also Catechism of the Catholic Church, \textit{supra} note 24, at §§ 355-57.

\textsuperscript{126} This hypothetical is adapted from the facts in \textit{Holtzman v. Samuel}, 495 N.Y.S.2d 583 (Sup. Ct. Kings Cty. 1985).
contrast, Catholic lawyers are often permitted, and sometimes morally required, to defend clients who have engaged in past sinful acts.

G. Criminal Prosecutions

In considering the representation of the executive director of the local affiliate of Planned Parenthood, the Catholic lawyer must respect the human dignity of the prospective client. The director, as a human person, has intrinsic value and cannot be understood to be primarily or predominantly evil and therefore valueless in the way that an association or action can. Respect for the person requires the lawyer to consider the intentions of the director and the object of the representation. If the intentions of the director are to truthfully vindicate herself from false claims that she violated the positive law and the object of representation is justice, the Catholic lawyer may embrace both the intentions and object of the prospective client.

If the director’s intentions are to avoid punishment for unjust actions she knew to violate the law yet willingly took, the lawyer must consider what actions would be required to achieve the object of the client—dismissal of the charges or acquittal. Acquittal from criminal charges is not an intrinsically evil object, even where the defendant engaged in the criminal conduct charged. There is no perfect congruence between the positive law and the morality of human conduct. Illegal and even criminal conduct may be objectively good and

128. Professor David Luban describes the life and death of a lawyer who engaged in illegal acts to protect innocent human life:

Moltke worked as a lawyer in the international law section of the German foreign office, spending his wartime career in a never-ending interdepartmental battle to prevent depredations against prisoners of war, Jews, and other victims of Nazism.

To read Moltke’s letters to his wife is to witness one of the century’s great consciences. It is also to examine the logbook of a familiar lawyer’s life: an endless round of meetings, reports, travel, negotiations, bureaucratic maneuvering, arguments about technicalities and regulations, long days and late nights, all related in a rather matter of fact tone. . . . In the end, Moltke was tried for his anti-Nazi efforts before the infamous Judge Roland Freisler, perhaps the most horrible and fanatical of Nazi jurists. He was convicted of treason and executed in January, 1945.

Moltke’s final letters, in which he describes his trial and his emotions as he awaited execution (remarkably, he felt mostly a kind of exaltation) are astonishing documents. At one point, he writes from the death cell:

In one of his tirades Freisler said to me: “Only in one respect are we and Christianity alike: we demand the whole man!” I don’t know if the others sitting there took it all in, for it was a sort of dialogue—a spiritual one between F. and myself, for I could not utter many words—in which we two got to know each other through and through. Of the whole gang Freisler was the only one who recognized me, and of the whole gang he is the only one who knows why he has to kill me . . . . We talked, as it were, in a vacuum. He made not a single joke at my expense, as he had done with Delp and Eugen. No, this was grim earnest: “From whom do you take your orders? From the Beyond or from Adolf Hitler?” “Who commands your loyalty and your faith?” All rhetorical questions, of course.—Anyhow, Freisler is the
legal, or even legally compelled, conduct may be objectively evil. The Christian must assess each action first on the basis of its conformity with God's law, and, second, on the act's conformity with the positive law.

In this case, the prospective client may have intentionally violated the tax laws. In most cases, people are morally required to comply with the tax law, a duty that arises from our mutual responsibility for society and our obligation to submit to legitimate authority. The brief statement of the hypothetical does not reveal any reason to excuse performance of this duty. Absent unusual circumstances, intentional violation of the tax law would be morally culpable.

This moral culpability does not necessarily translate into an obligation to willingly suffer the criminal sanction contained in the positive law absent conformity with the requirements of that law. The director, as a member of the political community, has the moral right to claim the protections the state has promised through its requirements embodied in the statutes defining the crime and the sanction to be imposed. By necessity, the positive law is comprised of generalizations. Many laws approximate the claims of justice in a majority of circumstances. Yet application of these generalizations in particular circumstances can be unjust. Recognizing this, legislators and judges have created or recognized several procedural mechanisms to avoid

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first National Socialist who has grasped who I am .... Strangely enough, for Moltke the trial was a kind of dream come true. It was the moment of truth in which all technicalities, and indeed all factual charges, were swept away and the true and ultimate significance of both Nazism and his own life stood revealed. Everyone, including Freisler, conceded that he had performed no criminal acts, and thus he was convicted only for respecting God more than the legal system (i.e., Adolf Hitler).


130. "You pay taxes for the same reason, magistrates being God's ministers who devote themselves to his service with unremitting care. Pay each one his due: taxes to whom taxes are due; toll to whom toll is due; respect and honor to everyone who deserves them." Romans 13:5-7; Matthew 22:17-21 illustrates the same point:

"Give us your opinion, then, in this case, is it lawful to pay tax to the emperor?" Jesus recognized their bad faith and said to them. "Why are you trying to trip me up, you hypocrites? Show me the coin used for the tax." When they handed him a small Roman coin, he asked them, "Whose head is this, and whose inscription?" "Caesar's," they replied. At that he said to them, "Then give to Caesar what is Caesar's, but give to God what is God's." *Id.*; see also Catechism of the Catholic Church, *supra* note 24, § 2240 ("Submission to authority and co-responsibility for the common good make it morally obligatory to pay taxes.").
the unjust application of a generally just law. These mechanisms include prosecutorial discretion, plea bargaining, and jury nullification. All of these procedures are permissible means to be pursued by the Christian lawyer for the benefit of the client.

Similarly, all just members of a state desire that the state’s power to punish be used only where justice requires. To this end, certain procedural protections and substantive limitations are created through legislative enactment or judicial interpretation. To ignore these protections and surreptitiously defy these limitations is to contribute to the corruption of the state, an act which itself is wrong. The Christian lawyer’s defense of a person charged with a crime promotes the good of the client and the state by requiring the prosecution to comply with the letter and the spirit of the law.

It might be argued that morally culpable defendants are called to confess guilt and accept punishment. This is not true in all circumstances. To confess guilt and accept the sanction imposed by state authorities may be a legitimate act of repentance and expiation for sin, but it is not the exclusive path to redemption. In the Christian understanding of the natural order, evasion of man’s punishment does not equate with evasion of justice. The Lord is both the just judge and the merciful father. The sinner chooses the relationship, and that choice cannot be coerced.

Nowhere are these principles better illustrated than by Christ’s response to those who would stone the woman caught in adultery. The scribes and the Pharisees brought the woman before Jesus, and asked his judgment in light of the Mosaic law that required adulterers be stoned. After repeated requests for his judgment, Jesus replied,

131. See Catechism of the Catholic Church, supra note 24, § 2266.
132. Cf. Pope John Paul II, The Gospel of Life, para. 9 (1994) (emphasis added): Not even a murderer loses his personal dignity, and God himself pledges to guarantee this. And it is precisely here that the paradoxical mystery of the merciful justice of God is shown forth. As Saint Ambrose writes: “Once the crime is admitted at the very inception of this sinful act of parricide, then the divine law of God’s mercy should be immediately extended. If punishment is forthwith inflicted on the accused, then men in the exercise of justice would in no way observe patience and moderation, but would straightaway condemn the defendant to punishment. . . . God drove Cain out of his presence and sent him into exile far away from his native land, so that he passed from a life of human kindness to one which was more akin to the rude existence of a wild beast. God, who preferred the correction rather than the death of a sinner, did not desire that a homicide be punished by the exaction of another act of homicide.”
134. John 8:3-11.
135. John 8:3-5. Leviticus 20:10 provides: “If a man commits adultery with his neighbor’s wife, both the adulterer and the adulteress shall be put to death.” Deuteronomy 22:23-24 states: “Within the city a man comes upon a maiden who is betrothed, and has relations with her, you shall bring them both out to the gate of the city and there stone them to death.”
"Let the one among you who is without sin be the first to throw a stone at her." Jesus did not dispute the woman was guilty of the sin of adultery, nor did he challenge the justice of the Mosaic law. He did not argue procedural irregularities, which clearly existed, since Scripture required that both the man and the woman be stoned, and the accusers had failed to bring the man forward for judgment and punishment. Rather, Jesus required the accusers and potential judges to examine their fitness to execute so harsh a judgment. They turned away, leaving only the woman and Jesus, and Jesus sent her away saying, "Go and sin no more."

Christ's example teaches us that Christian lawyers can defend clients accused of committing crimes. Justice requires that the innocent have advocates, and human fallibility requires that those we believe to be guilty be heard in their own defense. The means used to defend these clients must be moral, however, since it is never permissible to do evil so that good may come of it. The intentional destruction of the reputation of the truthful witness, presentation of the perjurious client's testimony—these means are forbidden for Christian lawyers.

While there is no religious duty to decline all representation of those accused of crimes, and, in fact, there may be instances when Christians are obligated to accept such representation, the representation of the executive director of Planned Parenthood raises concerns beyond cooperation with evil. The Catholic lawyer may be required to decline representation in this particular case in order to avoid scandal. The prospective client is accused of using funds to promote a political candidate. While unstated in the hypothetical, it would be reasonable to assume her support of the candidate was due, at least in part, to the director's perception that the candidate was sympathetic to the goals of Planned Parenthood, an association of persons dedicated to promoting artificial contraception and abortion. The intentions and objects of Planned Parenthood as described in its mission

137. John 8:11.
139. These examples are drawn from Professor Freedman's discussion of the duties of the criminal defense lawyer. Monroe Freedman, Understanding Lawyers' Ethics, supra note 14, at 109-42, 116-72. My critique of Professor Freedman's position can be found at Collett, supra note 138, at 455.
140. Planned Parenthood Federation of America's policy and mission statement states:

All individuals worldwide have the right to nondiscriminatory, confidential access to the full range of voluntary reproductive health care services that are proven safe and effective. These services:

(1) should include contraception, sterilization, abortion, fertility enhancement, and prevention and treatment of sexually transmitted diseases;
statement are contrary to a true understanding of human sexuality\textsuperscript{141} and the protection of human life.\textsuperscript{142} The Church teaching on these subjects is clear.\textsuperscript{143} The Catholic lawyer representing the executive director against criminal charges related to illegal campaign contributions may be misunderstood to be advocating the legitimacy of Planned Parenthood's mission and its attempts to further a distorted

(2) should be offered through efficient, effective, and innovative programs that preserve individual rights and privacy; and should enable individuals to have children when and if they are ready physically, emotionally, and financially.

Consistent with its mission, the Planned Parenthood network of family planning clinics is the single largest provider of abortions in the United States, and a major provider of artificial contraception. According to the 1995-96 Annual Report of Planned Parenthood Federation of America, abortion services were provided to 139,899 women through Planned Parenthood affiliates, with an additional 56,892 women referred to other abortion providers. "The core of Planned Parenthood reproductive health services is providing contraception and the health care counseling and services that accompany it. Nearly 1.9 million women and more than 30,000 men received services at a Planned Parenthood health care facility in 1995." 1995-96 Annual Report of Planned Parenthood Federation of America. All affiliates of Planned Parenthood must share the mission of the national organization; therefore, it is proper to impute the mission of Planned Parenthood Federation of America to the clinic operated by the director seeking representation.

141. See Pope John Paul II, On the Family (\textit{Familiaris Consortio}), para. 36 (1981): Faced with a culture that largely reduces human sexuality to the level of something commonplace, since it interprets and lives it in a reductive and impoverished way by linking it solely with the body and with selfish pleasure, the educational service of parents must aim firmly at a training in the area of sex that is truly and fully personal: for sexuality is an enrichment of the whole person—body, emotions and soul—and it manifests its inmost meaning in leading the person to the gift of self in love.

\textit{Id.} para. 37; see also Sacred Congregation for Catholic Education, \textit{Educational Guidance in Human Love: Outlines for Sex Education} (1983); Karol Wojtyla (Pope John Paul II), \textit{Love and Responsibility} (H.T. Willetts trans. 1981) (looking at sexuality in the context of 'love' and 'responsibility').

142. "Today this proclamation is especially pressing because of the extraordinary increase and gravity of threats to the life of individuals and peoples, especially where life is weak and defenseless. In addition to the ancient scourges of poverty, hunger, endemic diseases, violence and war, new threats are emerging on an alarmingly vast scale." Pope John Paul II, \textit{The Gospel of Life}, \textit{supra} note 132, para. 3.

143. "Since the first century the Church has affirmed the moral evil of every procured abortion. This teaching has not changed and remains unchangeable." \textit{Catechism of the Catholic Church}, \textit{supra} note 24, § 2271; see also Pope John Paul II, \textit{The Gospel of Life}, \textit{supra} note 132, para. 13; Sacred Congregation for the Doctrine of the Faith, Declaration of Procured Abortion (1974). "In contrast [to natural family planning], 'every action which, whether in anticipation of the conjugal act, or in its accomplishment, or in the development of its natural consequences, proposes, whether as an end or as a means, to render procreation impossible' is intrinsically evil."

\textit{Catechism of the Catholic Church, supra} note 24, § 2370; see also Pope Paul VI, \textit{On Human Life, supra} note 56, para. 14; Smith, \textit{supra} note 117, at 141. "Certainly, from the moral point of view contraception and abortion are \textit{specifically different} evils: the former contradicts the full truth of the sexual act as the proper expression of conjugal love, while the latter destroys the life of a human being; the former is opposed to the virtue of chastity in marriage, the latter is opposed to the virtue of justice and directly violates the divine commandment, 'You shall not kill.'" Pope John Paul II, \textit{The Gospel of Life, supra} note 132, para. 13.
understanding of human sexuality through political means. This risk of others misunderstanding the lawyer’s actions must be considered in the context of the lawyer’s duty to avoid scandalizing others.

The teachings of St. Paul provide a biblical analogy to a Catholic lawyer agreeing to defend the executive director of Planned Parenthood. The early Christians were faced with the question of whether to eat food that had been sacrificed to idols. There was, and is, no spiritual significance attached to the physical process of eating the food. “Now food will not bring us closer to God. We are no worse off if we do not eat, nor are we better off if we do.”¹⁴⁴ But the act of eating the food sacrificed to idols might lead other Christians, who erroneously believe such food to have spiritual significance, into the sin of acting contrary to their understanding of God’s will.¹⁴⁵ This sinful intention to disregard God’s will would convert an innocent act into a sinful one. To avoid this danger to others, Paul counsels Christians to abstain from eating the meat, not because the act of eating is sinful, but because of the potential that eating such food would lead other believers astray.¹⁴⁶

Similarly, where the Catholic lawyer’s representation of a particular defendant is likely to lead others into false beliefs about taking the lives of unborn children, or the nature of human sexuality, prudence dictates that the Catholic lawyer decline such representation. Other lawyers who are not professing Catholics do not risk creating the false impression that either they reject the teaching of the Church or that the Church teachings are wrong.

H. Civil Litigation

The second hypothetical poses a different problem for the Christian lawyer. Civil lawsuits resolve disputes concerning the duties that members of society owe each other. In the hypothetical case, the plaintiffs are seeking compensation for the defendant’s alleged fraud in falsely reporting they were pregnant in order to induce them to purchase abortions. Regardless of whether the allegations concerning the false reporting of pregnancy tests are true, the prospective client is engaged in the business of providing abortions. This business involves the taking of human life without justification. This is an enterprise that the Christian lawyer cannot further.¹⁴⁷

The allegations suggest that the issues to be litigated may not involve the performance of abortions, however. If the plaintiffs were

¹⁴⁴. I Corinthians 8:8.
¹⁴⁵. I Corinthians 8:10-11.
¹⁴⁶. Id.; see also Romans 14:13-23.
¹⁴⁷. "In the case of an intrinsically unjust law, such as a law permitting abortion or euthanasia, it is therefore never licit to obey it or to 'take part in a propaganda campaign in favor of such a law, or vote for it.'” Pope John Paul II, The Gospel of Life, supra note 132, para. 73.
not pregnant, as they allege, the surgical procedure did not result in the taking of human life. If the prospective client knew the plaintiffs were not pregnant at the time the procedures were performed, he has lied to them and encouraged them to engage in an objectively evil act—but he has not aborted their unborn children. Under these circumstances, can the lawyer defend the prospective client?

If the abortionist disputes the women's claims on the basis that they were pregnant, and he terminated their pregnancies in accordance with their agreement, the Catholic lawyer cannot accept the representation. To do so would implicitly affirm the legal right of the women and abortionists to agree to end the lives of unborn children. By accepting representation, the lawyer would accept the duty to argue that the abortions were "proper," "lawful," or "successful." Yet the teachings of the Church are clear that the state's recognition of a "right" to abortion is unjust and contrary to natural law and Scripture. In this case the Catholic lawyer's role in defending the prospective client requires more cooperation with evil than can be justified.

If the prospective client admits the wrongs but opposes the women's claim for compensation, the lawyer must reject the representation on the basis that the client seeks an unjust object—denial of reparation for the wrong done.

Only if the abortionist admits these wrongs and proposes to settle the cases by providing full compensation to the women may it be permissible for the Catholic lawyer to accept the representation. Yet even this representation is troublesome because of its potential to mislead the prospective client, opposing parties, and other observers as to the true nature of abortion. The potential to scandalize others by acceptance of this representation, even when the abortionist seeks to do justice, is probably sufficient reason to decline the representation. As a prudential judgment, however, there is room for disagreement among faithful Catholics.

**Conclusion**

Religious lawyers may never seek evil objects in their pursuit of clients' objectives. Similarly, they may never engage in representation with evil intentions, though their objects be morally permissible. In

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149. Catechism of the Catholic Church, supra note 24, § 2487, provides:
    Every offense committed against justice and truth entails the duty of reparation, even if its author has been forgiven. When it is impossible publicly to make reparation for a wrong, it must be made secretly. If someone who has suffered harm cannot be directly compensated, he must be given moral satisfaction in the name of charity.
150. "There may be reason to fear, however, that willingness to carry out such actions will not only cause scandal and weaken the necessary opposition to attacks on life, but will gradually lead to further capitulation to a mentality of permissiveness." Pope John Paul II, The Gospel of Life, supra note 132, para. 74.
short, both the intentions and the objects of the lawyer’s actions must be consistent with the believer’s relationship with God. In cases where the lawyer’s intentions and objects are permissible, but the client seeks legal representation for sinful, but legal, purposes, the lawyer must carefully consider whether his or her actions have sufficient purpose other than to facilitate the sinful intention or object. If there is not sufficient purpose, the lawyer should refuse the representation since it would require the lawyer to impermissibly cooperate materially with the sin of the client. In cases where the representation would require actions that contribute to the sinful intentions or objects of the client, but have other purposes as well, the lawyer should accept representation only where there is sufficiently grave moral reason to do so.

The moral analysis presented in this paper seems both complex and simple. Analytical tools such as the principles of cooperation with evil, double effect, and the duty to avoid scandal provide some guidance to the Catholic lawyer trying to live an integrated life. Ultimately, however, these principles and their attendant questions boil down to the question that is currently in vogue among Christian youth—WWJD—What would Jesus do? Prayer, reflection, and fraternal dialogue provide avenues for God’s grace to guide us as we seek to answer that question in our day-to-day decisions.
Notes & Observations