SHOOTING ELEPHANTS, SERVING CLIENTS: AN ESSAY ON GEORGE ORWELL AND THE LAWYER-CLIENT RELATIONSHIP

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“I perceived in this moment that when the white man turns tyrant it is his own freedom that he destroys. . . . He wears a mask, and his face grows to fit it.”

“The recognition of complicity is the beginning of innocence.”

In Moulmein, Lower Burma, while serving as sub-divisional police officer, George Orwell shot an elephant. Years later he wrote a celebrated essay on the incident. The shooting raises two questions for lawyers. The first, Why did Orwell shoot the elephant? The second, Why should we care?

I. WHY ORWELL SHOT THE ELEPHANT

Orwell begins his essay by describing the intense hatred of the Burmese for their European masters. “In Moulmein, in Lower Burma, I was hated by large numbers of people—the only time in my life that I have been important enough for this to happen to me.” Europeans

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3. Orwell’s real name was Eric Blair, and he was known by that name while in Burma. He did not take the pseudonym George Orwell until several years after returning from Burma. For a discussion of the reasons for the name change, see Peter Stansky & William Abrahams, Orwell: The Transformation 3-5 (1979) [hereinafter Stansky & Abrahams].

4. Orwell served in Moulmein in 1926 and wrote Shooting an Elephant in 1936. The circumstances surrounding the writing of the essay are described in Stansky & Abrahams, supra note 3, at 146-48. The essay has been called “one of the masterpieces of the genre in this century.” Peter Stansky & William Abrahams, The Unknown Orwell 200 (1972). J.R. Hammond claims that in Shooting an Elephant and other essays, Orwell “made a lasting contribution to English literature and moreover enlarged the horizons of the English essay in a significant and dynamic way.” J.R. Hammond, The Essays of George Orwell, in Critical Essays on George Orwell 228 (Bernard Oldsey & Joseph Browne, eds., 1986).

5. Orwell, supra note 1, at 235.
were spit at, jeered at, and insulted. "As a police officer I was an obvi-
ous target and was baited whenever it seemed safe to do so."6

The petty humiliations were especially "perplexing and upsetting" to Orwell because he secretly agreed with the Burmese that British
rule was a terrible evil.7 In his job as a police officer he saw "the dirty
work of the Empire at close quarters."8 He knew first hand about the
imprisonments, the floggings, the injustices.9

Thus, his unspoken sympathies were all on the side of the Bur-
mese, and against the British. He hated his work and found himself
overwhelmed by an intolerable sense of guilt. He already had decided
to leave his post, but he was young and confused, and uncertain how
to proceed.10

Yet, he hated not only his job, but those who hated him for doing
his job. Orwell stated that "[a]ll I knew was that I was stuck between
my hatred of the empire I served and my rage against the evil-spirited
little beasts who tried to make my job impossible."11 One part of him
condemned the Empire as morally bankrupt, while another part
"thought that the greatest joy in the world would be to drive a bayonet
into a Buddhist priest's guts."12 His sympathy for the cause of the
Burmese existed side by side with a deep and savage anger at their
mistreatment of him.

6. Orwell was only twenty-three when he arrived in Moulmein, where he served
as the chief police officer in the town, with nearly three hundred men under his author-
ity. MICHAEL SHELDEN, ORWELL, THE AUTHORIZED BIOGRAPHY, 104-06 (1991) [hereinaf-
ther SHELDEN]. Altogether, Orwell spent nearly five years as a colonial police officer in
Burma, from late 1922 until the summer of 1927. He spent about eight months in Moul-
mein in 1926 before being posted elsewhere. Orwell's years in Burma are discussed in
SHELDEN, supra at 79-112; BERNARD CRICK, GEORGE ORWELL: A LIFE 76-103 (1980)
[hereinafter CRICK]; and STANSKY & ABRAHAMS, supra note 3, at 147-211. See Aung,
George Orwell and Burma, in THE WORLD OF GEORGE ORWELL 19-30 (Miriam Gross ed.,
1971).

Professor Norval Morris has recounted Orwell's days in Burma in a series of short
stories purportedly written by Orwell himself. The stories explore questions of criminal
law and jurisprudence. They are collected in NORVAL MORRIS, THE BROTHEL BOY AND

7. ORWELL, supra note 1, at 235.

8. Id.

9. As his biographer puts it, Orwell was "haunted by all the misery he had seen—
the frightened looks in the eyes of men who had been condemned to suffer execution, the
ugly scars on the backs of men who had been flogged in prison, the pathetic cries of
women whose husbands had been taken away from their homes in handcuffs." SHELD-
EN, supra note 6, at 106.

10. According to his biographer, Orwell decided to leave his job because of its perni-
cious effects upon his character. "The system was threatening to turn him into a brute—
or so it seemed to him—and his own growing awareness of this corrosive influence was
his strongest reason for deserting the Empire." Id.

11. ORWELL, supra note 1, at 236.

12. Id.
One day an incident took place that revealed to Orwell the "real nature of imperialism—the real motives for which despotic governments act."\textsuperscript{13} It happened that a tame elephant ran amok, destroying property and animals, and eventually killing a man. Orwell was called upon to subdue the animal. Armed with a rifle, he tracked down the elephant, only to find it grazing peacefully, looking "no more dangerous than a cow."\textsuperscript{14}

Orwell had no intention of killing the elephant. Already its madness had worn off. It was only necessary to keep an eye on the animal until its handler came and caught him. Orwell "decided that I would watch him for a little while to make sure that he did not turn savage again, and then go home."\textsuperscript{15}

And so it might have ended, if Orwell had been alone. But as he started out on his search for the elephant, the inhabitants of the area "flocked out of their houses and followed me. They had seen the rifle and were all shouting excitedly that I was going to shoot the elephant."\textsuperscript{16}

As he stood before the elephant, Orwell glanced back at the crowd that had followed him. It had grown to several thousand, and Orwell looked out at a throng of "faces all happy and excited over this bit of fun, all certain that the elephant was going to be shot."\textsuperscript{17}

At that moment, Orwell realized that he had no choice but to kill the elephant, for that was what the people expected of him, and he felt powerless to defy those expectations. He could not run the risk of exposing the Empire he represented to the ridicule of its subjects:

And suddenly I realized that I should have to shoot the elephant after all. The people expected it of me and I had got to do it; I could feel their two thousand wills pressing me forward, irresistibly. And it was at this moment, as I stood there with the rifle in my hands, that I first grasped the hollowness, the futility of the white man's dominion in the East. Here was I, the white man with his gun, standing in front of the unarmed native crowd—seemingly the leading actor of the piece; but in reality I was only an absurd puppet pushed to and fro by the will of those yellow faces behind. I perceived in this moment that when the white man turns tyrant it his own freedom that he destroys. He becomes a sort of hollow, posing dummy, the conventionalized figure of a sahib. For it is the condition of his rule that he shall spend his life in trying to impress the 'natives,' and so in every crisis he has got...
to do what the 'natives' expect of him. He wears a mask, and his face grows to fit it.18

Orwell had to shoot the elephant. He felt that “[a] sahib has got to act like a sahib; he has got to appear resolute, to know his own mind and to do definite things.”19 If he did not carry through with the shooting, then the crowd would feel cheated and might laugh at him. That could not be tolerated, for “my whole life, every white man's life in the East, was one long struggle not to be laughed at.”20 His authority and British rule depended upon a display of might and competence. As long as the Burmese acquiesced in Britain's pretensions, the Empire could stand proud; but if the Burmese withdrew their tacit support—if they laughed at Orwell!—the hollowness at the center of the Empire would stand revealed.

So, Orwell had to kill the elephant. He was a poor shot, and he knew there was a risk that he would be killed by the animal. However, his thoughts were not on his own safety, but on the crowd watching him. If he had been alone, he would have been scared, but now his only concern was to kill the elephant cleanly, and give the crowd no cause for laughter.

When he shot the elephant, Orwell heard the “devilish roar of glee that went up from the crowd.”21 The animal did not die easily. Even after Orwell had shot him several times, and the animal had crashed to the ground, he would not die. His breath came in “long rattling gasps.”22 Blood poured from him. Orwell fired shot after shot, trying to put the poor animal out of his misery, but the death agony continued. Orwell recalled that “[t]he tortured gasps continued as steadily as the ticking of a clock.”23

Eventually, Orwell could take it no longer. He left the animal to the crowd, who waited patiently for its death, and then stripped the meat from the carcass.

Later, there were discussions among the Europeans about whether Orwell had done the right thing. Some thought it was right to kill the elephant; others thought it was foolish to shoot a valuable animal for killing a mere “coolie.” Orwell stated that “afterwards I was very glad that the coolie had been killed; it put me legally in the right and gave me a sufficient pretext for shooting the elephant.”24
Why had he killed the elephant? Orwell's own answer was simple: "I often wondered whether any of the others grasped that I had done it solely to avoid looking like a fool." 25

The incident taught Orwell the dirty truth that those who hold power over others may in their own way be just as enslaved as those they purport to rule. As Orwell's biographer puts it: "It is easy enough to see how imperialism enslaves its subjects, but the great lesson that Orwell learned in Burma is that the system also has endless ways of enslaving its masters." 26

II. WHY LAWYERS SHOULD CARE

My claim is that Orwell's essay can help illuminate the relationship between lawyers and clients. It can help us to see more clearly and truthfully what is really going on when lawyers encounter clients. 27 It can do so in at least two ways. First, Orwell's essay can help us better understand the resentment that lawyers frequently feel towards their clients. Second, it can enlighten us about the roles that lawyers and clients play, and the ways these roles can be an obstacle to forging a relationship of mutual trust and dialogue. I will address each in turn.

A. RESENTMENT

"[T]he greatest joy in the world would be to drive a bayonet into a Buddhist priest's guts." 28

Orwell arrived in Burma at a time when tensions were on the rise between the local people and their British rulers. 29 Although there

25. Id.
26. SHELDEN, supra note 6, at 106.
27. My approach owes much to the work of law professor Thomas Shaffer. Among his many writings, I have found the following books especially helpful: THOMAS L. SHAFFER & MARY M. SHAFFER, AMERICAN LAWYERS AND THEIR COMMUNITIES (1991); THOMAS L. SHAFFER, FAITH AND THE PROFESSIONS (1987); THOMAS L. SHAFFER, AMERICAN LEGAL ETHICS (1985); THOMAS L. SHAFFER, ON BEING A CHRISTIAN AND A LAWYER (1981).


I have also benefited from the work of theologian Stanley Hauerwas on the role of narrative in Christian ethics. See, e.g., STANLEY HAUERWAS, THE PEACEABLE KINGDOM (1983); STANLEY HAUERWAS, A COMMUNITY OF CHARACTER (1981); STANLEY HAUERWAS, TRUTHFULNESS AND TRAGEDY (1977).

28. ORWELL, supra note 1, at 236.
29. Conditions in Burma during the time Orwell served there are examined in STANSKY & ABRAHAMS, THE UNKNOWN ORWELL, supra note 4, at 170-75; CRICK, supra note 6, at 80-82. There seems to be agreement that relations between the Burmese and their rulers grew worse throughout the 1920s.
was little risk of violence, a “general atmosphere of hostility” confronted the British stationed there.\(^{30}\)

Orwell was forced to endure the insults and hatred of the Burmese. His response was to return the hostility. He found himself resenting the very people that he was duty-bound to protect as a colonial police officer. The animosity he encountered is one simple and obvious explanation for Orwell’s anger towards the Burmese.

But there is another, more complex, reason for Orwell’s anger. It was his own ambivalence about his job and self that fueled his resentment of the Burmese.

Orwell had “already made up my mind that imperialism was an evil thing. . . . Theoretically—and secretly, of course—I was all for the Burmese and all against their oppressors, the British.”\(^{31}\) But although Orwell hated the Empire, he continued to serve as an instrument of its rule. He continued to participate in the very evils he silently opposed. From the vantage point of the Burmese, Orwell was just another imperialist.

As a result, Orwell was plagued by gnawing pangs of self-doubt and self-loathing over the role he played. He felt himself a cog in a terrible machine. The prisoners and the floggings and the injustices “oppressed me with an intolerable sense of guilt.”\(^{32}\) He hated what he was doing and hated himself for doing it.

The problem was that Orwell had no way to confront openly these feelings of guilt and self-hatred. As he admitted, he “could get nothing into perspective. I was young and ill-educated and I had to think out my problems in the utter silence that is imposed on every Englishman in the East.”\(^{33}\)

Lacking the resources to cope with his self-doubts, Orwell projected his negative feelings about himself onto the Burmese. Projection can be defined as “the mechanism whereby painful or objectionable feelings or ideas are perceived as if they originated from persons or things in the environment and thus are not seen as belonging to the self.”\(^{34}\) Thomas Shaffer and James Elkins explain the phenomenon as follows: “One way to live with ourselves, and those aspects of self that we find unacceptable, is to see in others what we

\(^{30}\) CRICK, supra note 6, at 81. Orwell later would document the tense conditions in Burma. GEORGE ORWELL, BURMESE DAYS (1934). The novel contains a damning indictment of colonialism. See GROSS, IMPERIAL ATTITUDES, IN THE WORLD OF GEORGE ORWELL, supra note 6, at 32-38.

\(^{31}\) ORWELL, supra note 1, at 236.

\(^{32}\) Id.

\(^{33}\) Id.

\(^{34}\) ANDREW S. WATSON, PSYCHIATRY FOR LAWYERS 161 (Rev. ed. 1978) [hereinafter WATSON].
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cannot see in ourselves. Unable to tolerate the possibility of our own weakness, vulnerability, fear, we see those things in others.”

An understanding of projection can help explain the wildly conflicting emotions that beset Orwell. The anger he felt at himself for serving the Empire, and the guilt he felt for not actively supporting the Burmese, were turned outward: He came to hate not only his job and himself for doing it, but the Burmese people whose cause he secretly supported. At the same time that he thought of the British Empire as an “unbreakable tyranny,” he could not help but feel “that the greatest joy in the world would be to drive a bayonet into a Buddhist priest’s guts.”

My purpose in introducing psychoanalytical theory is not to present a crudely reductionist portrait of Orwell, but to make the point that his resentment towards the Burmese can plausibly be explained in part as a projection of certain negative feelings he held for himself as the agent of (in his mind) an evil imperialist Empire.

How is this relevant to lawyers? We are not imperial officers; we serve no Raj; and our clients are not our subjects, but our employers.

Despite such obvious differences, I suggest that Orwell’s experience with the Burmese can help to explain the resentment that attorneys often feel towards their clients. Few writers on legal ethics or lawyer-client relationships explore this issue, although anyone who has spent any time around lawyers knows that they often harbor strongly negative feelings about their clients. This animosity may be expressed in crude jokes about clients, sarcastic comments about client dress or appearance, frustration at client “stupidity,” wistful com-

35. THOMAS L. SHAFFER & JAMES ELKINS, LEGAL INTERVIEWING AND COUNSELING 106-07 (2d ed. 1987) [hereinafter SHAFFER & ELKINS]. Orwell’s resentment towards the Burmese can also be explained as a form of displacement. In displacement, feelings toward one person or object are displaced onto another. WATSON, supra note 34, at 172.

36. In fairness to Orwell, he was not so psychologically naive as to place all of the blame for his inner turmoil upon the Burmese. He did feel hatred of the Empire and guilt over what he was doing. It is Orwell’s resentment of the Burmese—particularly the intensity of his feelings—that can be explained by the psychology of projection. I suspect that it was Orwell’s capacity for self-awareness that saved him from the worst excesses of the imperialist mentality.

37. ORWELL, supra note 1, at 236. Stansky and Abrahams rightly caution that Orwell’s reference to the Buddhist priest should be understood as “exaggeration for effect.” STANSKY & ABRAHAMS, THE UNKNOWN ORWELL, supra note 4, at 201. Nevertheless, the use of such extreme language underscores my point that Orwell felt intense anger towards the Burmese, anger altogether disproportionate to the petty harassments he was forced to endure.

ments about how enjoyable it would be to practice law if only there were no clients, a reluctance to return client phone calls, a tendency to postpone or neglect the work of “difficult” clients, an unwillingness to treat some clients as autonomous adults, and so on.

What lies at the root of this resentment and anger? Some of it, no doubt, is a response to the unreasoning demands of clients, who are often unfamiliar with the legal system and the kind of work that lawyers do. Some of it springs from the inevitable tensions and uncertainties that accompany any relationship in which one person serves as the agent of another. Some of it results from the inherent conflict of interest that underlies all lawyer-client relationships in which money is involved. Some of it may be a response to a gradual shift in the balance of power between lawyers and clients—away from the paternalistic model of the past, where the lawyer was unquestionably in charge, to a more participatory model where lawyers and clients share decisionmaking authority.

Furthermore, some degree of projection can be expected in a lawyer’s dealings with her clients. Indeed, the natural human tendency toward projection is intensified in the lawyer-client relation because lawyers often deal with their clients in a face-to-face, long-term, and intensely personal relationship. Such an intimate personal relationship can generate the psychological phenomenon known as transference, which is the projection onto another of irrational feelings that derive from the projecting party’s dealings with important persons in his or her life. Transference is not limited to clients. Thus a lawyer’s hostility toward a client or fear of a client or sexual attraction

39. In commenting upon an earlier draft of this essay, Thomas Shaffer reminded me that socio-economic differences may play a role in explaining why lawyers feel hostility towards some clients and not others.
41. Douglas Rosenthal contrasts two models of the lawyer-client relationship. In the traditional model, the client is passive and follows the lawyer’s instructions without question, while in the participatory model, the lawyer and client are engaged in a mutual decisionmaking process. DOUGLAS E. ROSENTHAL, LAWYER AND CLIENT: WHO’S IN CHARGE? (1974) [hereinafter Rosenthal]. While Rosenthal and many other scholars endorse the participatory model, it is not known how many lawyers actually adopt such an approach in their dealings with clients.
42. SHAFFER & ELKINS, supra note 35, at 105-17; ROBERT M. BASTRESS & JOSEPH D. HARBAUGH, INTERVIEWING, COUNSELING, AND NEGOTIATING 190-93, 296-97 (1990) [hereinafter BASTRESS & HARBAUGH].
toward a client might stem from the lawyer's past dealings with her family members or other influential persons. The lawyer may be "re-living an emotional relationship from the past," and forcing the client to "stand in for an important person in the [lawyer's] life." 44

Under such circumstances, a lawyer may unconsciously frustrate or sabotage her relationship with her client. Robert Bastress and Joseph Harbaugh provide a fictional example. 45 Attorney Frank Adams represented Sherm Clayton, a prominent local businessman. Clayton was handsome, athletic, and self-confident; in contrast, Adams was "slightly built, nasal, and rather dull . . . more of a plodder than a dynamo." 46 Adams grew increasingly reticent and hostile toward his client, for no apparent reason. The real reason, unknown to the parties, lay in the attorney's past life. Adams subconsciously associated Clayton with his older brother, who always had been more successful in school, athletics, and social relations. "So when Clayton's appearance and success sprung a subconscious association in Frank's mind with his brother, Frank also transferred his fraternal resentment to Clayton, which eventually destroyed the attorney-client relationship." 47

Similarly, a lawyer with legitimate grievances against a client may exaggerate them out of proportion because of her unconscious projections. A client is late paying a fee or makes excuses to avoid paying. A client places unreasonable demands upon a lawyer. A client insists on calling daily just to "check up" on the progress of a case. A client is sullen and grudging in disclosing information that the lawyer needs. Instead of feeling mild annoyance, the attorney may feel extreme hostility, even hatred, of the client. Perhaps for a moment the attorney even feels that "the greatest joy in the world would be to drive a bayonet into the guts" of the troublesome client. Such anger at a client—particularly such unreasoning, extreme anger—is a signal that something is going on deep in the lawyer's own personality.

All of this is true, and yet . . . There can be something more to this resentment, a moral dimension, that is easily overlooked, but which Orwell alerts us to in his essay. As we have seen, Orwell's hostility towards the Burmese masked deep self-doubts about the moral-

43. When the projection occurs in the client, it is called transference. When it occurs in the helper, it is usually referred to as countertransference. Shafer & Elkins, supra note 35, at 107. There are differences in the way transference and countertransference are viewed in the Freudian and Jungian schools of psychoanalysis. Id. at 105-17. See Thomas L. Shafer, Death, Property, and Lawyers 219-70 (1970) (comparing the way transference is viewed in the work of Freud, Jung, and Carl Rogers).
44. Shafer & Elkins, supra note 35, at 99.
45. Bastress & Harbaugh, supra note 42, at 296.
46. Id.
47. Id.
ity of his actions. The same can be true of the hostility that lawyers feel towards their clients.

Sometimes lawyers do not like what they are doing for a client. They are troubled by the character of their client or by the ends they are seeking for the client. They feel uncomfortable about helping a corporation evade environmental regulations or a landlord evict a peniless family or a “guilty” criminal defendant avoid punishment.

Sometimes lawyers do not like the means they feel compelled to use to accomplish their client’s ends. They experience a moral queaziness at using discovery or delay to frustrate an opponent, or cross-examining a truthful witness to make him or her look like a liar, or preparing a witness to testify in a way that will be truthful but misleading.

When these moral doubts arise, the lawyer may have the legal authority to withdraw from the case.48 Assuming however that the lawyer will not violate a professional rule of conduct or other law, she will probably continue with the representation. Most lawyers will not withdraw from a case simply because they have some moral doubts about the matter or the client.49 And as long as the attorney remains in the case, she is expected to do all that she can to achieve the client’s objectives. As Professor Murray Schwartz puts it: “When acting as an advocate, a lawyer must, within the established constraints upon professional behavior, maximize the likelihood that the client will pre-

48. The codes of professional conduct distinguish cases of mandatory withdrawal from permissive withdrawal. Under the Model Code of Professional Responsibility, a lawyer must withdraw when she knows or it is obvious that her client is acting merely to haras another person; she knows or it is obvious that her employment will violate a Disciplinary Rule; her mental or physical condition makes it unreasonably difficult to carry out her employment; or she is discharged by her client. Model Code of Professional Responsibility DR 2-110(B) (1983). The Model Rules of Professional Conduct are similar. Model Rules of Professional Conduct Rule 1.16(A) (1992). The codes further delineate the circumstances under which an attorney may withdraw, but need not. Model Code of Professional Responsibility DR 2-110(C) (1983); Model Rules of Professional Conduct Rule 1.16(b) (1992). These rules are broad enough to permit an attorney to withdraw in most cases in which the attorney does not want to continue with the representation, assuming that the attorney obtains court approval if necessary. For example, the Model Rules permit withdrawal whenever the “client insists on pursuing a cause that the lawyer considers repugnant or imprudent,” and whenever there is “good cause for withdrawal.” Model Rules of Professional Conduct Rule 1.16(b)(4) and (6) (1992).

49. Of course, in many cases a lawyer experiencing moral doubts is in no position to make the decision to withdraw. Consider, for example, a young associate in a large law firm who is assigned to a case by a senior partner. The ethical responsibilities of supervisory and subordinate attorneys are ignored in the Model Code, but are treated in the Model Rules Rules 5.1 and 5.2. Or consider a lawyer employed in a corporate legal department, where withdrawal may not be a real possibility. Lawyers in large bureaucratic structures face particular pressures to put organizational loyalty before personal morality. Deborah L. Rhode, Ethical Perspectives on Legal Practice, 37 Stan. L. Rev. 589, 631-38 (1985).
vail. For many lawyers, the bottom line is simple and straightforward: When you’re in, you’re in—all the way in.

When a lawyer continues to represent a client under such circumstances, she may attempt to put her moral doubts behind her and get on with the business of zealously representing her client. This strategy allows the lawyer to bypass the messy business of openly confronting her client with her moral misgivings. It lets the lawyer avoid the unpleasantness of entering into a moral dialogue with her client in which each of the parties will be challenged by the other.

In short, by bracketing her moral doubts, a lawyer can concentrate on winning her case and can ignore the troubling questions of whether the case should be won and whether it should be won in a certain way. This is a psychologically attractive approach. It makes the attorney’s moral world “a simpler, less complicated, and less ambiguous world” than it would be if moral issues were confronted openly. Indeed, if a lawyer ignores or represses her mor-

50. Schwartz calls this the principle of professionalism. Murray L. Schwartz, The Professionalism and Accountability of Lawyers, 66 CAL. L. REV. 669, 673 (1978). He argues that the standard vision of the advocate’s role consists of this principle and what he calls the principle of accountability: “[A] lawyer is neither legally, professionally, nor morally accountable for the means used or the ends achieved.” Id.

51. No one makes this point with more vigor and persuasiveness than Monroe Freedman. See MONROE H. FREEDMAN, UNDERSTANDING LAWYERS’ ETHICS (1990) [hereinafter FREEDMAN]. Lawyer zealousness on behalf of clients is subject, of course, to limits that are contained in the codes of professional conduct and in other law. For example, lawyers are not to file a lawsuit “merely” to harass; they are not to lie; they are not to use perjured testimony; they are not to create false evidence. MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 7-102 (1983). The Model Rules are similar. MODEL RULES OF PROFESSIONAL CONDUCT Rules 3.1, 3.3, 3.4 (1992).


To be sure, on occasion, a lawyer may find it uncomfortable to represent an extremely unpopular client. On occasion, too, a lawyer may feel ill at ease invoking a rule of law or practice which he or she thinks to be an unfair or undesirable one. Nonetheless, for most lawyers, most of the time, pursuing the interests of one’s clients is an attractive and satisfying way to live in part just because the moral world is a simpler, less complicated, and less ambiguous world than the moral world of ordinary life. There is, I think, something quite seductive about being able to turn aside so many ostensibly difficult moral dilemmas and decisions with the reply: but that is not my concern; my job as a lawyer is not to judge the rights and wrongs of the client or the cause; it is to defend as best I can my client’s interests.
al doubts, over time it is likely that those doubts will lessen or dis-
appear.53

Lawyers who adopt such a tack come to see themselves not as
moral agents, but as “amoral technicians.”54 Like the proverbial hired
gun, they envision themselves as the zealous partisan of their client,
detached from personal moral judgments. “Like the hired gun, the
lawyer passes no judgment on the client’s goals but strives to effectu-
ate them.”55 This is one option—perhaps the most common—for deal-
ing with the moral discomfort that lawyers often experience.

There is another possibility. The attorney may not succeed in
bracketing or jettisoning her moral scruples. Instead, she may con-
tinue with the representation, yet at the same time be plagued by a
nagging sense of guilt or anxiety about her work. There may be an
undercurrent of disquiet that barely rises to the level of consciousness,
yet which affects her approach to her job and colors her relationship
with her client.

Like Orwell, the lawyer may not like what she is doing and may
not like herself very much for doing it. She may feel a stifling sense of
being trapped in her role with no way out. Yet rather than face these
doubts openly, the lawyer’s moral paralysis may be transmuted into
anger at others, and so she may find herself experiencing the same
sort of unreasoning hostility towards her clients that Orwell felt to-
towards the Burmese people he was sent to serve. Resentment of a
client can plausibly be explained, at least in part, as the lawyer’s un-
conscious projection of guilt and self-loathing, stemming from her
moral discomfort with the client or the case.

Furthermore, I suspect that this projected resentment lies at the
root of much of the paternalism and manipulation that so often infect
lawyers in their dealings with clients.56 We do not inevitably manipu-
late and dominate those we resent, but unconscious resentment cer-
tainly makes it easier to treat a client “more like an object than a
human being, more like a child than an adult.”57

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53. Psychological theory suggests that lawyers who argue positions at odds with
their personal values will find over time those values changing to become more consis-
tent with their public behavior. Erwin Chemerinsky, Protecting Lawyers From Their
Profession: Redefining the Lawyer’s Role, 5 J. LEGAL PROF. 31 (1980).

54. Wasserstrom, 5 HUM. RTS. Q. at 5-6.

55. Joseph Allegretti, Have Briefcase Will Travel: An Essay on the Lawyer as

56. See, e.g., Wasserstrom, 5 HUM. RTS. Q. at 54; David Luban, Paternalism and
the Legal Profession, 1981 Wis. L. Rev. 454. I discuss the problem of lawyer domination
more extensively in Part IIB, “Roles,” infra.

57. Wasserstrom, HUM. RTS. Q. at 19.
If I am right, then what should be the response of lawyers who find themselves experiencing unreasoning anger and resentment at their clients?

Projections are, by definition, unconscious. Like bad dreams, they disappear in the light of day. Thus the first step in reducing the power that projections hold over us is to recognize their existence. This apparently happened with Orwell, at least eventually, for in his essay, written a decade after the shooting, he acknowledges that his resentment of the Burmese was fueled by a certain self-loathing. Unfortunately, at the time of the shooting, Orwell was still inclined to blame the Burmese for much of the guilt and self-hatred he was experiencing.

If lawyers are to escape the hold of unreasonable projections, then they must first acknowledge that these projections underlie much of their hostility towards clients:

The mere acknowledgment of the possibility of such unconscious reactions permits the participants to look more objectively at their relationships and to question causes. The capacity to accept the possibility that one's feelings about another may be due to unconscious and unrealistic coloring rather than to the other's real traits is a major step towards understanding. Without awareness of transference phenomena, people are over- or under-convinced by their own emotional responses, and have no opportunity to work out any understanding of them.

58. ORWELL, supra note 1. The evidence for this is scattered throughout the essay. Orwell notes how "perplexing" it was to be hated by the Burmese when he himself opposed British rule; he mentions that he hated his job and suffered from an "intolerable sense of guilt"; he describes the mental anguish he suffered as one part of him hated the Empire and another part wanted to "drive a bayonet into a British priest's guts"; he concedes that his role as representative of the Empire forced him to act in ways contrary to his own moral values. Looking back from the vantage point of a decade, Orwell seems to have come to the recognition that his hatred of the Burmese was not due so much to the insults and harassments directed at him, but was largely a result of the internal conflicts that beset him as an agent of the British Empire.

59. But not all. See supra note 36 and accompanying text.

60. WATSON, supra note 34, at 7. Bastress and Harbaugh suggest that the attorney ask herself several questions to probe the possibility of transference in her relationship with a client:

1. How do I feel about the client?
2. Do I anticipate seeing the client?
3. Do I overidentify with, or feel sorry for, the client?
4. Do I feel any resentment or jealousy toward the client?
5. Do I get extreme pleasure out of seeing the client?
6. Do I feel bored with the client?
7. Am I fearful of the client?
8. Do I want to protect, reject, or punish the client?
9. Am I impressed by the client?
This requires that attorneys break free of the hired gun model, which seduces them into bracketing moral concerns and concentrating solely on achieving the ends of their clients by all legally available means.\(^6\) Instead, they must come to see themselves as moral agents involved in a relationship with clients in which morals matter, both the morals of the client and the morals of the lawyer.\(^2\)

Above all, this means that lawyers must be honest with their clients.\(^3\) They must be willing to explore their feelings of anger and resentment. Rather than choosing the safe and comfortable route of ignoring or repressing their moral doubts, they must be willing to express these moral qualms openly to their clients. If a lawyer believes that her client’s objectives are immoral or can be obtained only by morally questionable means, she should not shirk from raising her concerns. Lawyers must feel free to say to a client, “Yes, you can do that, but do you really want to?”\(^4\)

As part of this openness and honesty, lawyers also must be willing to listen to their clients and be prepared to reexamine their own views after exploring the matter fully. What may seem a morally dubious undertaking may look much different after the lawyer listens carefully and respectfully to a client tell her story. I am arguing for the freedom of lawyers to bring their moral doubts into the open, but I acknowl-

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Bastress & Harbaugh, *supra* note 42, at 297 (indicating that the questions are adapted from L. Wolberg, 2 *The Technique of Psychotherapy* 799-800 (4th ed. 1988)).

\(^{61}\) See Allegretti, 24 *Creighton L. Rev.* at 763.

\(^{62}\) Thomas Shaffer has been the most articulate and vigorous proponent of the type of relationship I envision, in which moral issues are addressed openly. This has been a theme of almost all of his writing on legal ethics. For an introduction to his thought, see the works cited at note 27. A particularly sensitive and well-balanced treatment of the moral dimensions of the lawyer-client relationship appears in Jack L. Sammons, *Lawyer Professionalism* (1988) [hereinafter Sammons].

\(^{63}\) Shaffer & Elkins, *supra* note 35, at 103.

\(^{64}\) The codes of professional responsibility permit, although they do not require, the type of open-ended moral dialogue that I propose. The Model Code states:

> Advice of a lawyer to his client need not be confined to purely legal considerations. . . . A lawyer should bring to bear upon this decision-making process the fullness of his experience as well as his objective viewpoint. In assisting his client to reach a proper decision, it is often desirable for a lawyer to point out those factors which may lead to a decision that is morally just as well as legally permissible.


The Model Rules are similar: “In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation.” *Model Rules of Professional Conduct* Rule 2.1 (1992). The Comment to Rule 2.1 goes on to say: “It is proper for a lawyer to refer to relevant moral and ethical considerations when giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.” *Model Rules of Professional Conduct* Comment Rule 2.1 (1992).
edge that these doubts may well be dispelled by a frank and sensitive discussion with the client. "[T]he assumption of moral discourse is that each of the discoursers is open to change." Lawyers and clients are not autonomous and isolated agents: For better or for worse, they are in it together, each influencing the other.

When lawyers fail to confront their unconscious projections, the projections fester, contaminating their relations with their clients. The moral doubts that they repress do not disappear but reemerge in the guise of resentment and hostility towards clients. This is the important insight that Orwell offers to lawyers.

It is never easy to confront our projections. When it comes to lawyers in their dealings with clients, however, there is an additional difficulty. The problem stems from the differing roles that lawyers and clients are expected to play in the relationship, for these roles often stand in the way of greater honesty and self-disclosure, and obscure the delicate and complex way in which lawyers and clients influence each other. It is to this issue that I now turn.

B. Roles

"A sahib has got to act like a sahib. . . ." Orwell's essay can be read as an exploration and critique of the ways in which certain roles can blind persons to the moral consequences of their actions. Orwell's personal moral values condemned the needless shooting of the elephant. Left to his own devices, he would have stood watch over the elephant until its handler came and recaptured it. But the role he was playing—colonial policeman, symbol of the British Empire—made certain choices unthinkable and others unavoidable. Viewed in this way, Orwell's essay is especially

66. Of course, even after a full discussion with a client, a lawyer may feel that she cannot continue in the representation because of her moral scruples. At this point she may have no choice but to withdraw. See supra note 48 and accompanying text. But, even so, something has been accomplished:

First, the dialogue has taken place, and that means that the lawyer has left his island and asked the client to leave his island. As a matter of behavior, isolation has been left behind. Second, the actors have influenced each other; the matter may be in the hands of God, but it is there in a way it would not be if either lawyer or client had retained his isolation.

67. ORWELL, supra note 1, at 239.
68. Gary Bellow and Bea Moulton have also found Orwell's essay relevant to the discussion of lawyers' roles. In their book they include an excerpt from Orwell's essay and then go on to say:

This story has often come to mind in those moments in practice when we find ourselves thinking: "a lawyer has got to act like a lawyer." Perhaps we too "wear a mask" which our faces grow to fit. There is much we lose as well as gain in "doing our job" in the world.
relevant for lawyers, who often act for clients in ways that conflict with their own moral values.

Indeed, the standard complaint about lawyers is that they are too disposed to substitute role morality for ordinary morality.\textsuperscript{69} They do things that ordinary morality condemns, yet defend their actions on the grounds that their role as a zealous advocate justifies or even demands such actions.

As Richard Wasserstrom puts it:

Conventional wisdom has it that where the attorney-client relationship exists, the point of view of the attorney is properly different—and appreciably so—from that which would be appropriate in the absence of the attorney-client relationship. For where the attorney-client relationship exists, it is often appropriate and many times even obligatory for the attorney to do things that, all other things being equal, an ordinary person need not, and should not do. What is characteristic of this role of a lawyer is the lawyer's required indifference to a wide variety of ends and consequences that in other contexts would be of undeniable moral significance. Once a lawyer represents a client, the lawyer has a duty to make his or her expertise fully available in the realization of the end sought by the client, irrespective, for the most part, of the moral worth to which the end will be put or the character of the client who seeks to utilize it. Provided that the end sought is not illegal, the lawyer is, in essence, an amoral technician whose peculiar skills and knowledge in respect to the law are available to those with whom the relationship of client is established.\textsuperscript{70}

For those who accept this way of thinking, it is morally appropriate to cross-examine a truthful witness to make the witness appear to be lying.\textsuperscript{71} True, ordinary non-lawyer morality would condemn this misrepresentation. But in the context of a judicial proceeding, in

\textsuperscript{69} It was Richard Wasserstrom who first called attention to the "role-differentiated behavior" of lawyers. Lawyers occupy certain roles which have the effect of altering their moral universe so that they believe it permissible to engage in conduct that non-lawyers would consider immoral. This gives rise to the tension between role morality and personal or ordinary morality. Wasserstrom, 5 HUM. RTS. Q. at 9. David Luban is perhaps the most thoughtful critic of role-differentiated behavior. Luban, supra note 50. Other important critiques include A. Goldman, The Moral Foundations of Professional Ethics (1980); Postema, 55 N.Y.U. L. REV. at 63; Deborah L. Rhode, Ethical Perspectives on Legal Practice, 37 STAN. L. REV. 589 (1985). For an effort to move beyond the role morality v. ordinary morality debate, see William H. Simon, Ethical Discretion in Lawyering, 101 HARV. L. REV. 1083 (1988).

\textsuperscript{70} Wasserstrom, 5 HUM. RTS. Q., at 5-6.

\textsuperscript{71} See Freedman, supra note 51, at 161-71.
which both sides are represented by attorneys, and in which a neutral and impartial decisionmaker will evaluate the evidence and render judgment, it is morally proper to act zealously on behalf of a client, as long as no laws or professional rules are violated.

The role-differentiated behavior of lawyers has come under increasing attack in recent years, with many scholars arguing that lawyers should not see themselves as "amoral technicians," but should take moral responsibility for the means they employ and the ends they achieve:

[L]awyers should not be able to hide behind the mask of the hired gun, the detached partisan, the amoral technician. Instead, like other persons, they must assume the burdens of the moral life, and take responsibility for their actions. We would all be better off if lawyers came to see themselves as subject to the demands of ordinary morality.

Orwell's essay can be read usefully as a study of the dangers of role-differentiated behavior. Rather than taking personal moral responsibility for his actions, which would have meant resisting the unreasoning clamor of the crowd, Orwell retreated into his role and did what he felt he had to do as a representative of the British Empire. His moral doubts gave way to the duties of his role.

I want to suggest, however, that there is much more to Orwell's essay than simply a critique of role-differentiated behavior. Its true significance for the debate over lawyers' roles lies elsewhere. In a way that few others have done, Orwell brings to light the conspiracy of


73. Allegretti, 24 Creighton L. Rev. at 777. Timothy Floyd correctly observes, however, that the:

[I]dea of judging lawyers by standards of 'ordinary morality' is appealing, but limited. It is appealing to the extent that it recognizes that lawyers may not evade moral responsibility by refuge in their special role. It is limited, however, because 'ordinary morality' is a concept with questionable meaning. . . . Choice is rarely between good and evil; we must usually choose between relative goods and relative evils. Moreover, moral choice is complicated by the fact that lawyers act on behalf of someone else. 'Ordinary morality' simply does not supply a ready answer to difficult questions of legal ethics.


Professor Jack Sammons goes further and argues that it is false and misleading to try to distinguish personal or ordinary morality from role morality. Personal morality cannot be separated from our roles. "[T]he morality involved in lawyering is no more and no less personal than any other morality. It remains the morality of the 'ordinary person.'" Jack L. Sammons, Jr., Professing: Some Thoughts On Professionalism and Classroom Teaching, 3 Geo. J. LEGAL ETHICS 609, 615 n.15 (1990). Perhaps the time has come to discard the language of role morality and ordinary morality, and focus instead on the moral responsibilities of the person who is, among other things, a lawyer.
silence that binds lawyers and clients, impeding the prospects for moral dialogue and growth between the parties.\textsuperscript{74}

We find this conspiracy of silence at work in the relationship between Orwell and the Burmese. Orwell describes a relationship of unequal power. As a colonial policeman, a representative of the British Empire, Orwell held a position of power over the Burmese. Yet, as he perceptively suggests, in relationships of unequal power a subtle dance takes place in which the parties take their cues from and jointly shape the actions of each other. In Orwell's essay, all of the participants find themselves moving along certain appointed pathways. A "magnetic field"\textsuperscript{75} grabs ruler and subject alike.

Thus in Orwell's essay there is an inevitability about the shooting. As his biographers put it:

By the time [Orwell] arrives, the elephant has subsided in his fury and in due course is discovered standing in a field, calmly eating grass, apparently no longer a danger to anyone. It is now that the tyranny of the Institution— with its power to impose "roles"—begins to function. A kind of ritual ceremony is set in motion, which continues until the elephant has been killed and its carcass stripped. One feels that nothing can alter it: their roles have taken over the lives of the people who play them. The Burmese, virtually all the inhabitants of the quarter, will behave as the Institution expects them to behave; so, in his fashion, will [Orwell].\textsuperscript{76}

All of the participants in the "ritual ceremony"\textsuperscript{77} perform according to the roles they are playing. The Burmese demand a killing; Orwell shoots the elephant. No one ever questions openly whether the

\textsuperscript{74} Warren Lehman also has commented upon the conspiracy of silence that binds lawyers and clients:

Doubtless many clients, thinking they know what they want—or wishing to appear to know—encourage the lawyer to believe he is consulted solely for a technical expertise, for a knowledge of how to do legal things, for his ability to interpret legal words, or for the objective way he looks at legal and practical outcomes. It is as if the lawyer were being invited to join the client in a conspiracy of silence; the point of the conspiracy is that in silence neither shall question the assumption that the means can be truly separated from the end and that the end is the client's sole problem and solely his. Such an idea of the lawyer's job seems to relieve him of the ethical responsibility that might be his were he to assume a duty to comment on the wisdom or virtue of what his client is about.


\textsuperscript{75} Stansky & Abraham's, The Unknown Orwell, supra note 4, at 201-02.

\textsuperscript{76} Id. at 202.

\textsuperscript{77} Id.
elephant should be shot. There is no dialogue, no give-and-take, between the parties. Everyone acts "as the Institution expects."79

Lawyers and clients, too, have their assigned roles to play. According to the traditional paradigm of lawyer-client relationships, clients are expected to be docile and passive. They are to trust their lawyers to act in their best interests. They are not to ask too many questions. On most matters they are expected to defer to the judgments of their lawyers.80

In contrast, lawyers are expected to be aggressive, decisive, and competent. As one commentator notes, "The traditional idea is that both parties are best served by the professional's assuming broad control over solutions to the problems brought by the client."81 Despite the conventional wisdom that decisions about "ends" are for clients and "means" for lawyers,82 there remains the persistent complaint that lawyers paternalistically dominate the relationship.83

The reasons for this lawyer dominance are not hard to imagine.84 Clients are often vulnerable, troubled persons. They lack understand-

78. Perhaps Orwell's doubts were unfounded. Perhaps the crowd was correct. If there had been a full and frank dialogue between the parties, Orwell might have been persuaded that it was morally proper to shoot the elephant. See supra notes 60-66 and accompanying text. But Orwell "had to think out my problems in the utter silence that is imposed on every Englishman in the East." ORWELL, supra note 1, at 236.
79. STANSKY & ABRAHAMS, The Unknown Orwell, supra note 4, at 202.
80. See Rosenthal, supra note 41. A similar phenomenon has long been recognized in medical circles. The patient, for example, is expected to be passive and trusting of the physician. The classic account of this "sick role" is T. Parsons, The Social System 428-79 (1951).
81. ROSENTHAL, supra note 41, at 7.
83. See, e.g., Wasserstrom, 5 HUM. RTS. Q. at 5; Simon, 1978 WIS. L. REV.; LUBAN, supra note 50. For a good overview of the problems of paternalism see D. RHODE & DAVID LUBAN, LEGAL ETHICS 600-45 (1991) [hereinafter RHODE & LUBAN].
84. See, e.g., Simon, 1978 WIS. L. REV. at 52-61; Wasserstrom, 5 HUM. RTS. Q. at 15-24. Christopher Mooney has provided a useful summary of the "inequality that is intrinsic to all professionalism": By definition, the lawyer possesses an expertise not easily obtainable outside the profession. Along with this expertise goes a special language by which lawyers communicate with other lawyers but not with clients. Since communica-
ing of the language or the nuances of the law. They are strangers in the strange land of the courts. They have little choice but to trust in the competence of their lawyer. At the same time, lawyers have been acculturated to see themselves as “members of an elite . . . different from and somewhat better” than those they are paid to serve.85

The result is that:

[I]t is inevitable in the course of a professional relationship that the ‘helper’ will feel strong or subtle pressure to take command of the situation and wield power over the client. . . . In the relationship of lawyer and client, the lawyer is pushed from many directions, internal (psychological) and external (social, political, and cultural) to take charge and be in control.86

Yet such dominance is purchased at a price. In Orwell’s case, for example, his power to control events was limited by the expectations of those he governed. Certain decisions that were theoretically within his prerogative—for example, the decision to let the elephant live—were actually not his to make at all, for his freedom to act was circumscribed by the obligations of his role. And so he could write later of “the hollowness, the futility” of British rule in the East.87

Likewise, the power of lawyers over their clients is more limited and fragile than it first appears. Like Orwell, the lawyer may find herself “forced” to act in ways counter to her best judgment because of her perceptions of what her client wants.88 Like Orwell, she may feel herself pushed “to and fro” by the will of her clients. What Orwell said of imperialists and subjects is no less true of lawyers and clients: “For it is the condition of his rule that he spend his life in trying to impress
the 'natives,' and so in every case he has got to do what the 'natives' expect of him.89

In effect, the lawyer says to her client, "I am the expert. I know what to do. Trust me. I am in charge." The client accedes, but in an unwritten deal insists that the lawyer fulfill her grossly exaggerated claims. As a consequence, the lawyer cannot let her expertise be questioned. She cannot admit that she has made a mistake. She cannot risk revealing her ignorance, imperfections, and weaknesses. She cannot permit her client to glimpse "the hollowness, the futility" at the heart of her rule, or else the whole fragile structure of her dominance would crumble.

This helps to explain the shell game that is often played out between lawyers and clients, whereby a lawyer tells her clients just enough about what is going on to convince them that something is going on, proposes only those options she herself would choose, politely asks for authority to do what she has already done, uses arcane legal language to comfort and to mystify, or generates much sound and fury and paperwork to assure her bewildered clients that everything that could be done on their behalf is being done. These and other strategies are meant to project an image of lawyer competence, and to make second-guessing by clients impossible. Orwell's words are apt: "I often wondered whether any of the others grasped that I had done it solely to avoid looking like a fool."90

This conspiracy of silence extends to moral issues as well. Orwell was convinced that his unstable position of dominance over his subjects could only be maintained by ignoring his moral doubts and shooting the elephant. So too the attorney feels that it would be a fatal sign of "weakness" to raise moral doubts about a client's ends or the means needed to achieve those ends. As Orwell wrote, "[a] sahib has got to act like a sahib; he has got to appear resolute, to know his own mind, and to do definite things."91

Because the client takes her cues from the lawyer, the lawyer's reluctance to discuss moral questions and explore moral doubts speaks loudly about the irrelevance of morals and moral discourse to the legal process.92 Thus, neither party in the symbiotic relationship

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89. Orwell, supra note 1, at 239.
90. Id. at 242.
91. Id. at 239.
92. Jack Sammons has noted that "not raising morality shapes the client's morality. You cannot avoid the moral issue. It is like politics in that regard. Not to be political is one way of being political. Not to raise morality is one way of making a moral statement." Sammons, supra note 62, at 28-29.
assumes responsibility for raising moral issues. The lawyer sees herself as an "amoral technician" whose job is to maximize the client's objectives within the constraints of the law. At the same time, the lawyer remains aloof and detached both from her own moral values and from her client as well. The client is ultimately in charge, yet as a practical matter defers to the decisions of the lawyer, decisions often based upon a cramped and inaccurate perception of the client's values. It is as if the parties have agreed that certain messy matters are better left unmentioned. As a result, the moral doubts of lawyer and client are left to fester, and to engender unconscious hostility.

Such a vision of the lawyer-client relationship encourages the illusion that the parties are locked in rigid roles, separate and isolated, with nothing to contribute to the moral universe of the other. It sees the relationship as a zero sum game: Someone must win and someone lose, someone must be on top and someone on the bottom.

No doubt there is an inequality inherent in the lawyer-client relationship. The real problem however is not so much the existence of inequality, as it is the conspiracy of silence that excludes certain matters from discussion. Again, Orwell's essay is instructive. Orwell thought that he had no choice but to kill the elephant. He did not even consider another possibility: He could have talked to the Burmese. He could have confronted their expectations of him. He could have developed a real relationship of mutuality and dialogue. Or at least he could have tried.

Likewise, lawyers are free to refuse to join with their clients in a conspiracy of silence. They can speak openly about their fears and resentments. They can discuss their moral doubts. They can admit that they are just as troubled and fallible as the next person. They can move beyond roles and resentments to forge a new relationship of mutual respect and dialogue in which both sides participate as moral actors and both sides seek to find the best in each other.

As a consequence, neither side takes responsibility for exploring the steps that could be taken to minimize harm to others or to preserve valued relationships. For an examination of the role "relationships" should play in legal ethics, see Joseph Allegretti, Rights, Roles, Relationships: The Wisdom of Solomon and the Ethics of Lawyers, 25 CREIGHTON L. REV. 1199 (1992). Wasserstrom, 5 HUM. RTS. Q. at 5-6. Allegretti, 24 CREIGHTON L. REV. at 752-54. See supra note 88. See supra notes 80-86. See supra note 78. See supra notes 98. See supra note 78.

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interdependence can take the place of moral isolation.100 As theologian Karl Barth put it, "He who takes the risk of counseling must be prepared to be counseled in turn by his brother if there is need of it."101

Lawyers may fear that discussing their moral doubts will compromise the adequacy of the representation they provide. They may believe that as a hired gun they cannot question the need to shoot. Yet, in the long run, a lawyer cannot adequately represent a client if she is cut off from her own moral values and concerns.102 "Moral arguments have their rightful place in law, but someone who has been trained to ignore moral values can hardly be expected to have the resources at hand to make moral arguments on behalf of clients."103 When lawyers join with their clients in a conspiracy of silence, they necessarily diminish the quality of their representation.104

Orwell claimed that the masks we wear come to dominate us. The tyrant "wears a mask, and his face grows to fit it."105 Lawyers wear a mask, too, a "legal persona," which shapes how they think and talk and act.106 Like any mask, the legal persona narrows the scope of vision. The lawyer comes to believe that she is an "amoral technician,"107 that her feelings are off-limits, that she has a job to do and should do it, that moral doubts must be repressed or ignored, that "a sahib has got to act like a sahib." As Robert Bastress puts it, "[t]he professional mask chills the lawyer-client relationship. The lawyer acts out a role and cordons himself off from his and the client's feelings."108

The risk of wearing a mask is that the I, the self behind the mask, will be lost.109 In the end, there can be only one cure for the lawyer

100. THOMAS L. SHAFFER, ON BEING A CHRISTIAN AND A LAWYER 22. See supra notes 61-66 and accompanying text.
103. Allegretti, 24 CREIGHTON L. Rev. at 775.
104. There is some evidence that client outcomes are better when lawyer and client work together than when the client simply delegates authority to the lawyer. See ROSENTHAL, supra note 41.
105. Orwell, supra note 1, at 239.
106. For a discussion of the legal persona, see SHAFER & ELKINS, supra note 35 (especially Chapter Three, "The Lawyer Personal and the Feelings It Disguises"). The persona is "the way a lawyer is being when he or she is being a lawyer." Id. at 52. It is the mask through which the lawyer sees the world. Id. at 54. The word is derived from the actor's mask in classical theatre. Id. at 52. See also James R. Elkins, The Legal Persona: An Essay on the Professional Mask, 64 Va. L. Rev. 735 (1978).
109. The persona "forms character; it imposes a morality, and we come to talk of the lawyer persona as having a life of its own." Shaffer & Elkins, supra note 35, at 53.
whose face has grown to fit the legal mask—she must find the courage and the trust to take off the mask and meet the other face to face.

When a lawyer is dominated by her persona, she does not ask, "What should I do?," only "What would a lawyer do?" THOMAS L. SHAFFER, ON BEING A CHRISTIAN AND A LAWYER 6.

110. The other can be an avenue to the Other. See MARTIN BUBER, I AND THOU (2d ed. 1958). A religiously-inclined lawyer might say that my client was sent to me by God. THOMAS L. SHAFFER, ON BEING A CHRISTIAN AND A LAWYER 37.