

Legal Ethics:
Professional Ethics and Personal Integrity

University of Auckland, Auckland, New Zealand
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Abstracts

(in alphabetical order by family name)

Plenary Session

William Simon

Columbia Law School

Personal Virtue and Social Role in Lawyering

Much discussion frames issues of legal ethics as questions of role morality -- questions that arise from the gulf between ordinary morality and the lawyer's professional morality. This framework courts two dangers. One is a tendency to treat personal virtue as asocial and inherently threatened by social demands. The other danger is the assumption that some of the more controversial positions of the bar's dominant doctrines and ideologies are entailed by the basic contours of the lawyer role. In response to the first tendency, I will appeal to the concept of "meaningful work" in romantic social thought to suggest that social role is as much a pre-requisite for as a threat to virtue. In response to the second, I will suggest that many of the positions that are often seen to create a gulf between ordinary morality and the lawyer role are highly contested and contestable within the professional culture. An implication of the argument is that the underlying theoretical issues in legal ethics are issues of jurisprudence more than role morality. They turn on questions internal to the legal system, such as the relation of law and morals, the significance of formality, and the identity of organizations.

BARON, Paula

Victoria University of Wellington, New Zealand

The Ethics of the Limit

For many years, there has been an ongoing debate as to the ‘proper’ role of lawyers and hence the appropriate ethical standards that lawyers should adhere to. Broadly speaking, argument in this debate can be placed on a continuum from a ‘client-centred’ approach to a ‘lawyer-centred’ approach. Although the debate has been around for some time, it has been heightened by the growing diversity of the legal profession, in terms of membership, business organisation and specialisation. At the same time, the importance of the debate has increased as many commentators express concern about a decline in ethical standards and what some perceive to be a concomitant decline in lawyers’ health and well-being as a result of the increased commercialisation of legal practice.

This paper seeks to contribute to the debate from the theoretical perspective of psychoanalytic jurisprudence. It will suggest that the ‘proper’ role of the lawyer is to exercise what Lacan called the ‘paternal function’, that is, to declare and uphold the limits of desire. It will be argued that this idea not only provides a rather different basis to prevailing orthodoxies for determining right conduct, but can go some way to explaining the cultural ambivalence toward lawyers, the difficulties traditionally faced by women in the legal profession and the distress that studies continue to suggest that lawyers often experience in their personal lives.

CAMPBELL, Tom

CAPPE, Melbourne, ANU, Charles Sturt, Australia

The Ethics of Interpretation

In this paper I explain the theory of normative legal positivism and its implications for legal reasoning. This is then used to present the choice between practical theories of legal interpretation as involving ethical questions for judiciaries and indeed for all legal practitioners. The question of how an ethics of legal interpretation can be formulated and enforced is discussed.

COOPER, Gregg
Washington and Lee University

TBA

CRAVENS, Sarah M. R.
University of Akron

Balancing Personal and Professional Integrity in Judicial Decision-making

Most of the focus in this conference is likely to be on the lawyer's perspective, but this paper will look instead at the perspective of the judge. Where the lawyer's role is typically characterized by an ideal of partiality (for the client), the judge's role is typically characterized by an ideal of impartiality. This difference between the roles of lawyer and judge gives rise to important distinctions between the challenges to be dealt with in each role in the balancing of professional ethics and personal integrity, so the two roles must be separated from one another in order to assess how to achieve the proper balance within each role.

This paper suggests that certain aspects of the current U.S. approach to judicial ethics are poorly constructed to further the value of impartiality. Therefore it takes a critical look at what we are really after when we talk about judicial impartiality, particularly insofar as it involves the practical balance between the judge's personal integrity and professional obligations. The job the common law judge must do is really a very difficult one, and one that deserves a more honest approach to explaining what drives the underlying ideal of impartiality at the core of the judicial role and how best to construct rules and practices of judging to achieve that ideal.

The paper begins with the proposition that a good (impartial) judge is one who exhibits excellence at separating personal moral beliefs from decisions about what the law requires in a given case. Of course, this definition of judicial excellence quickly runs into a difficulty. The judge is supposed to decide cases according to what the law requires, but the law may at times be insufficiently determined, so that recourse to something extra-legal may ultimately be required. Therefore, it is all the more important to assess the implications of the basic proposition of this type of excellence in impartiality, to ascertain what rules and practices would encourage virtue and discourage vice in the pursuit of this excellence.

Using a handful of hypothetical factual scenarios, the paper takes three areas of concern for judging as examples to illustrate how this excellence in impartiality, in separating personal beliefs from decisions about what the law requires, could be better supported in the rules and practices of judging, reaching what might at first seem to be rather counter-intuitive

conclusions. First, it looks at the area of recusals, concluding that they should be much more limited, particularly with regard to appearance-based standards. Second, it steps back a bit to look at questions of selection, concluding that there should be no popular election of judges. Third, it steps back yet further to a broader consideration of limitations on judicial speech, concluding that current restrictions on speech should be loosened considerably. While the paper uses U.S. law as the basis for these specific critiques, the basic arguments about the judicial role should be relevant to any judicial system in which impartiality is a matter of concern.

DARE, Tim

University of Auckland, New Zealand

Professional Ethics and Personal Integrity

Some of the most compelling criticisms of the ‘standard conception of the lawyer’s role’ argue that it threatens the personal integrity of lawyers. One critic writes, for instance, that as understood by the standard conception, “the confidentiality rules ... deny lawyers the possibility of exercising their own judgment and acting consistently with their own moral commitments to decide when disclosure is warranted”, and so “force the lawyer to give preference to the interests of clients, even when doing so conflicts with the lawyer’s most strongly held moral commitments, short circuiting the process of deliberative judgment by dictating the outcome, whatever the lawyer might conclude on the basis of his own moral sense to be the right course of action. In this way a lawyer’s own moral character and moral judgment become irrelevant, not just in the larger scheme, but to her own actions.” Following such rules, she continues, “... trains lawyers to suppress the exercise of their own moral judgment and the accompanying traits of moral integrity Those who adhere mechanically, without reserving to themselves the obligation of assessing in each case the moral appropriateness of the rule’s dictates, can expect to see ... the traits that comprise integrity to atrophy with disuse.”

I think this is based on a misunderstanding of what is required. Developing a response to similar, and I think similarly mistaken, arguments about the moral significance of autonomy, I argue that one can be autonomous, and maintain moral integrity, while recognising the authority of rules, even when one does not endorse their requirements on a case by case basis. I go on to offer a response to some related concerns about the corrosive effects of ‘professional detachment’.

DEL MAR, Maksymilian

Queensland Law Society Macrossans Lawyers

The Moral Commonwealth of Lawyers: the Philosophical Foundations of the Ethics Project at the Queensland Law Society

This paper argues for the development of a sociologically thick and empirically sophisticated account of the interaction between moral development and the environment of legal practice as the foundation for institutionally-based reform of the regulation and education of legal professional ethics. It begins by discussing the central methodological issue involved, namely, the relationship between methodology and ontology in any policy making exercise. It discusses a number of resources for the above proposed foundation, focusing principally on the work of John Dewey, but including also: the psychological realism movement in moral philosophy, writings on the relationship between cognitive science and ethics, institutional design theory, and communitarian ethics. Finally, the paper illustrates how the above philosophical direction is being actualised in specific reforms currently being implemented by the Queensland Law Society.

EVANS, Adrian

Monash University, Australia

Towards A Compliance-Based Approach to Foundering Legal Professionalism: Practitioner Reactions to the Concept of Testing for Ethical Consciousness

Recent major Australian examples of unethical conduct by large-firm lawyers have not led to regulatory censure. When regulators lack the resources or independence to take on the large firms, it may be that a preventative approach is called for. This paper will draw on empirical research into the attitudes of experienced Victorian legal practitioners in relation to the concept, the conditions and the limitations of ethical testing of lawyers. While no one mechanism for improving legal professionalism is certain to guarantee results, the possibility emerges from this study that a narrow but effective approach to ethics testing would be acceptable to the profession.

HALLER, Linda

University of Melbourne, Australia

The Battle to Extend the Protective Nature of Professional Discipline

This paper reports on the interesting tension between the courts and the legislature as to the proper reach of professional discipline, and reminds us that true law reform only occurs once legislative change is embraced by those charged with its enforcement. The paper suggests that, as all

judges were once lawyers themselves and brought a particular view of discipline with them to the bench, this area of law reform may be more problematic than others.

The paper looks at legislative changes in Queensland, Australia, enacted between 1927 and 2004. These were intended to broaden the jurisdiction of professional discipline beyond its common law emphasis on ‘disgraceful and dishonourable’ conduct. However, this is not necessarily how the legislation has been interpreted by the Supreme Court of Queensland, the disciplinary tribunals or those who prosecute discipline applications. The evidence suggests that, at least until 2001, it was ‘business as usual’. Particularly interesting –given that all Queensland Supreme Court judges were once barristers and none were solicitors – are apparent differences in the treatment of solicitors and barristers by the court.

HARVEY, Matt

Monash University, Australia

Counsellor?

“Counsel” is one of the names for a lawyer, yet lawyers are also said to take instructions from clients. It is a complex relationship. What does a lawyer do apart from advising the client about the law? It is a social interaction. Inevitably, values will be conveyed along with legal advice. The author is presently researching what happens in lawyer-client interaction and will give an initial report on his findings. The second question is theoretical: what, if anything, *should* a lawyer convey to their client other than legal advice? This has been the subject of considerable debate and will continue to be. It is a central question for legal ethics. It will be suggested that lawyers should attempt to counsel clients on ethical as well as legal matters. The implications for legal education will also be explored.

Ho, Hock Lai

National University of Singapore

What does Legal Professional Privilege Protect?

Legal professional privilege is a multi-dimensional concept. It consists principally of a duty (of the lawyer not to disclose certain communication with his client), a power (of the client to stop the lawyer from making such disclosure) and a right (of the client not to disclose the same communication). This paper attempts to elucidate the point of the privilege by approaching it from the angle of the first-mentioned aspect, the lawyer’s duty of non-disclosure. The privilege was initially based on respect for the lawyer’s ‘honour as a gentleman’ not to betray the trust invested in him by his client. This line of justification was conceptually independent of the client’s interests and rights. It was soon

overtaken by a different analysis. This analysis looks at the privilege from the client's point of view. The privilege, it is now said, serves the purpose of promoting candour in legal consultation and this in turn serves the purpose of protecting the client's interests or rights. While this remains the conventional view, it has been heavily and rightly criticized by academic commentators. I will suggest that a better argument is available as a normative justification for the privilege. *What the privilege, at its core, protects is the integrity of legal representation itself.* Legal representation conceptually, or in its focal sense, involves the lawyer speaking (or acting) *for* the client in the legal process. There is a loss of integrity when, as part of that very process, the lawyer is allowed or forced by the law to speak (or act) *against* his client. The explanatory potential and limits of this theory will be examined, as will its implications, especially in connection with the recent debate on the proper scope and strength of the privilege.

MESCHER, Barbara

University of Sydney

Law: A Profession in Crisis

There is a crisis of integrity as the legal profession fails to adequately fulfil its professional obligations. The primary professional obligation is the social contract between lawyers and the community where lawyers are required to serve the interests of justice. Many lawyers realise they are instead serving other interests. Also due to selective access to the law, only part of the community is being served. A second duty is that lawyers need to serve their profession. Professional codes and relevant statutes endeavour to pre-empt unprofessional conduct. However, other factors intervene. Most lawyers are employees. Many of the firms are structured as businesses where profit is the dominant consideration. The third professional obligation and the fiduciary duty of lawyers refer to serving the clients. These duties are being reinterpreted. The law firms' interests often mirror the clients in that both pursue profit. This is sometimes contrary to the interests of the profession and the community. This paper argues that there is an urgent need to bring ethics into legal practice as a public matter not one related to the lawyers' personal life. Ethical principles are broader than legal principles and the crisis in the legal profession could be alleviated if lawyers were more reflective upon ethical theories such as: Aristotle's virtue ethics, Kant's rules, Bentham's utilitarianism and Rawls theory of justice. The teaching of ethics within law degrees and in continuing legal education would assist.

MIZE, Selene

University of Otago, New Zealand

What's Loyalty Got to Do, Got to Do with It? What's Loyalty, but a Second-Hand Emotion?

Loyalty toward the client, once considered an important part of the lawyer's role, is increasingly marginalised. Justice Henry, writing for the majority of the Court of Appeal in *Russell McVeagh McKenzie Bartleet & Co v Tower Corp*, was unwilling to agree that such a duty even existed ([1998] 3 NZLR 641, 647). Is protection of confidential information the sole interest preventing concurrent representation of opposing parties? Would a sufficiently secure Chinese wall mean that different lawyers at the same firm should be allowed concurrently to represent opposing sides in bitter adversarial disputes? Does "unbundling" justify a single lawyer giving limited advice to both sides in such a dispute, if they each give prior informed consent? Should restrictions on concurrent representation of clients with opposing interests be limited to the same matter? This paper will attempt to shed some light on these controversies, and consider the parameters of a modern duty of loyalty. In doing this, it will canvas briefly philosophical and instrumental justifications for lawyers' duties to clients, consider the relevance of modern "megafirms", and analyse NZ's Rules of Professional Conduct.

OAKLEY, Justin and Dean Cocking

Monash and CAPPE

Criminal defence lawyers, the rule of public reason, and post-retirement shame.

In response to concerns that various conventional role requirements of criminal defence lawyers appear to be at odds with broad-based morality, some philosophers have suggested that a better appreciation of the significance of such roles enables lawyers to reconcile such role requirements with broad-based moral standards, and so helps preserve a lawyer's personal integrity. In this paper we argue that such strategies, while instructive, can also promote a misplaced confidence in the conventional role demands of criminal defence lawyers, and so can undermine rather than preserve a lawyer's personal integrity in certain cases. Focusing on the distinction between institutional and personal wrongs, we draw on the phenomenon of post-retirement shame to demonstrate how lawyers who act on certain broadly defensible role demands can nonetheless be acting wrongly in particular cases. We also indicate the advantages of a virtue ethics approach to this issue, and make some comments about the notion of professional detachment in this context.

PARKER, Christine

University of Melbourne, Australia

Business Ethics for Legal Ethics Students: An Agenda for Teaching

The paper sets out an agenda for what we might teach law students about business ethics as a topic in the (quasi-)compulsory undergraduate legal ethics course. I argue that standard conceptions of lawyers' ethics do not match up to lawyers' role as constituents of business organizations' activities and decision-making. The adversarial advocate conception of legal ethics assumes client autonomy and lawyer non-responsibility. A popular alternative in the legal ethics literature - the lawyer as wise counsellor - says that ethical lawyers should maintain their independence in order to offer ethical advice that might influence business organization clients. I argue that in practice lawyers, whether internal or external, themselves help constitute the businesses' decisions, and their advice and activities are also in turn constituted by the organizational framework in which they work. We should therefore think about business lawyers' professional and ethical responsibilities as members of the business, not as professional advisors separate to it. This means teaching potential business lawyers business ethics, not just legal ethics. The paper sets out what this might mean.

PREBBLE, Zoë and PREBBLE, John

New Zealand Law Commission & Victoria University of Wellington

Why the Legal Difference between Tax Avoidance and Tax Evasion is Insufficient to Ground a Moral Distinction

Tax evasion and tax avoidance involve conduct that is factually similar but legally distinct. Both activities aim to reduce or to minimise tax liability, but avoidance is legal whereas evasion is illegal. This paper responds to a line of judicial authority that stands for the general proposition that there is a moral entitlement to avoid taxes. The proposition has some intuitive and popular appeal but this paper will demonstrate that it is not supported by sound reasoning, but rather predicated on at least four deeply flawed assumptions. These will be set out and critiqued in the course of this paper.

The first assumption is that taxpayers have a moral entitlement to their pre-tax incomes such that taxation is an unjustified governmental incursion on individuals' private property rights. This paper will consider an argument advanced by Liam Murphy and Thomas Nagel that there is no such prima facie moral entitlement to pre-tax income and, indeed, that such a moral entitlement is logically incoherent.

The second assumption is that tax avoidance and evasion are not seriously harmful and therefore are not immoral. This paper will examine the types of harms that result from both evasion and avoidance. Such harms are real, even if they are often diffuse or without readily

identifiable individual victims; it is a mistake to assume that avoidance and evasion are moral on the ground that they do no harm.

The third key assumption is that tax evasion is *malum prohibitum* rather than *malum in se*. According to this assumption, evasion derives its immorality solely from its illegality. Since the one quality which differentiates avoidance from evasion is its legality, then tax avoidance must be moral. This paper will demonstrate that despite the traditional conception of *mala prohibita* and *mala in se* as mutually exclusive and exhaustive categories, there is logical space for other hybrid types of legal wrongs between the two extremes.

The fourth assumption is that morality exists wholly independently of the law. This assumption will be addressed with particular reference to Tony Honoré's views. According to Honoré, moral principles are often too general to dictate what course of behaviour is required in any particular situation. For morality to be complete and meaningful in practice it needs some additional definition from a source outside of itself. In a complex, modern society, this external source is generally legal. According to Honoré's account, tax evasion is morally wrong not only because it is illegal but also because, within our legal and societal context, our broad moral obligation to contribute to the collective has taken the specific shape of a duty to pay our taxes; in a deep sense then, tax evasion is wrong. Since tax avoidance is so factually similar to tax evasion, and since evasion is immoral in a deep sense, then avoidance is also immoral; it is not rendered moral by a distinction from evasion that is strictly, and only, legal.

ROBERTSON Michael and TRANTER Kieran

Griffith Law School, Australia

Learning and teaching about the ethical dimension in lawyering: a curriculum approach that emphasises discretion and choice in the lawyer's role

Conventional thinking about the Australian lawyer's ethical role holds that a body of rules called "lawyers' professional responsibility" circumscribes the practice of law. Understood in this way, legal practice is largely a matter of following the rules, which include those commonly referred to as "lawyers' ethics". The good lawyer, therefore, is one who understands and applies the professional responsibility rules and, by implication, a good legal education teaches these rules. Despite considerable academic criticism of this conception of the lawyer's ethical role, this approach to "legal ethics" appears still to permeate much Australian legal education. An alternative view of lawyering, evident in part in empirical accounts of lawyers' work, acknowledges the importance and impact of the rules of professional responsibility in lawyers' work, yet maintains that the lawyer's role inevitably involves elements of discretion and choice – in spite of, or because of, the rules of

professional responsibility. If this is an accurate portrayal of contemporary lawyering, it suggests that the nature of the legal ethics project in legal education needs to be different from the prevailing approach. In this paper we argue that a curriculum-wide focus on lawyers' decision-making in discretionary areas (concerning whom to represent and about how best to represent clients' interests) is likely to lead to a far richer understanding both of the lawyer's role and what it might mean to be a good lawyer than is presently the case in Australian legal education.

SETHU, Martin
Malaysia

The Malaysian Profession - Some Ethical Issues

The legal profession in Malaysia, based on the fused profession in some of the British Commonwealth nations, shares the many common traits as in that family of nations. This paper covers some of the principal areas of legal ethics in acquiring entry and those encountered in actual legal practice, especially on the standards of conduct and duties owed by legal practitioners. The relevant statutory provisions, rules and the decisions of the Courts are discussed and, where appropriate reflects on the common heritage of, and the problems faced by, the profession. It concludes with the need to re-look at the current culture of professional ethics

SIMON, William (Plenary Session)
Columbia Law School, United States

Personal Virtue and Social Role in Lawyering

Much discussion frames issues of legal ethics as questions of role morality -- questions that arise from the gulf between ordinary morality and the lawyer's professional morality. This framework courts two dangers. One is a tendency to treat personal virtue as asocial and inherently threatened by social demands. The other danger is the assumption that some of the more controversial positions of the bar's dominant doctrines and ideologies are entailed by the basic contours of the lawyer role. In response to the first tendency, I will appeal to the concept of "meaningful work" in romantic social thought to suggest that social role is as much a pre-requisite for as a threat to virtue. In response to the second, I will suggest that many of the positions that are often seen to create a gulf between ordinary morality and the lawyer role are highly contested and contestable within the professional culture. An implication of the argument is that the underlying theoretical issues in legal ethics are issues of jurisprudence more than role morality. They turn on questions internal to the legal system, such as the relation of law and morals, the significance of formality, and the identity of organizations.

SMALL, Michael W.
Curtin Business School, Australia

Early developments in moral wisdom in management, administration and business

The purpose of this article was to demonstrate mainly to business students that ethical and moral issues in management, administration and business have been around for a very long time. Justice, impartiality in the administration of justice and the nature of a just society have long been subjects for discussion by lawyers and philosophers. Now it is the turn of the business ethicists. The article may also prompt or suggest topics for further research in the history of management ethics and the disciplines which are covered in this conference. While the article covers a wide range of history of management topics, there are passing references to legal topics (see pp. 11, 12, 15, 16, 17) which may promote further research in this area. The article also includes references to aspects of professional ethics and personal integrity. Issues in moral philosophy are more obvious.

The achievements of ten persons were chosen for this study *viz.* Boethius, Pope Gregory I, The Venerable Bede, Alcuin of York and Charlemagne, Alfred the Great, Edgar the Peacemaker King, Cardinal Stephen Langton, Friar Roger Bacon and Sir Thomas More. The time span of the study ranges from 480 to 1535. The persons chosen were not the most well known names in the field of management ethics and moral philosophy. Some of them such as Charlemagne, King Alfred and Sir Thomas More might be familiar. In some cases, the linkages between them, such as that between Alfred and Boethius, are clear. Alfred, King of Wessex (871-899) was also responsible for translating the works of Boethius into Old English or Anglo-Saxon. Others linkages will be less obvious.

SWANTON, Christine
University of Auckland

Can Virtue Ethics Provide a Legal Ethics?

This paper defends virtue ethics against objections that virtue ethics cannot provide a framework for legal ethics. The objections can be seen to have the form of a dilemma: either virtue ethics violates conditions of adequacy (such as those proposed by Dare) for a legal ethics, or if it meets objections that it cannot provide a framework for legal ethics, it is no longer recognizable as a virtue ethics.

This paper first answers the “Dare objections” by elaborating a distinction between prototype and (role) differentiated virtue, illustrating the distinction with the virtue of integrity. Second, it addresses the second horn of the dilemma by considering the nature of virtue ethics.

TRANTER Kieran and ROBERTSON Michael
Griffith Law School, Brisbane, AUSTRALIA

Learning and teaching about the ethical dimension in lawyering: a curriculum approach that emphasises discretion and choice in the lawyer's role

Conventional thinking about the Australian lawyer's ethical role holds that a body of rules called "lawyers' professional responsibility" circumscribes the practice of law. Understood in this way, legal practice is largely a matter of following the rules, which include those commonly referred to as "lawyers' ethics". The good lawyer, therefore, is one who understands and applies the professional responsibility rules and, by implication, a good legal education teaches these rules. Despite considerable academic criticism of this conception of the lawyer's ethical role, this approach to "legal ethics" appears still to permeate much Australian legal education. An alternative view of lawyering, evident in part in empirical accounts of lawyers' work, acknowledges the importance and impact of the rules of professional responsibility in lawyers' work, yet maintains that the lawyer's role inevitably involves elements of discretion and choice – in spite of, or because of, the rules of professional responsibility. If this is an accurate portrayal of contemporary lawyering, it suggests that the nature of the legal ethics project in legal education needs to be different from the prevailing approach. In this paper we argue that a curriculum-wide focus on lawyers' decision-making in discretionary areas (concerning whom to represent and about how best to represent clients' interests) is likely to lead to a far richer understanding both of the lawyer's role and what it might mean to be a good lawyer than is presently the case in Australian legal education

TUDOR, Steven
La Trobe University, Australia

Why Should There be Lawyers?

This paper makes the teleological assumption that the answers to most questions about legal ethics depend ultimately on why lawyers should exist in the first place. As a first step toward a broader account of legal ethics, the paper surveys the main types of positive answer to the question "Why should there be lawyers?" It looks at seven discernable positive answers to this question, each basing lawyer's *raison d'être* in a distinct value outlook: *laissez-faire*; rule of law; traditionalist-professionalism; direct amelioration of people's problems; libertarian compensation; democratic de-alienation; and critical progressivism.

WEBB, Duncan
University of Canterbury, New Zealand

Why I am a Hired Gun and a Paternalist

Much of the legal ethics scholarship which concerns the proper model of lawyer behaviour can be seen as either advocating client autonomy as of paramount importance, or giving the lawyer an active role in shaping the decisions of the client. These can colloquially be categorised as hired gun models (advocating lawyer neutrality and client autonomy) and paternalistic models (advocating value based intervention at the expense of client autonomy). Every articulation of the numerous variants of these approaches is troubling in a significant respect.

I am both an ethics scholar (of sorts) and a practitioner (again of sorts) and as such am concerned to ensure that any model of lawyering proposed is genuinely workable. This paper is an exploration of the possibility that there is in fact something to be gained from both sides of the debate in this regard and that in an attenuated sense a lawyer can both give client autonomy (properly understood) a central place in the practice of law, and accept that there will be situations where the lawyer must take actions which have a significant value component and profoundly affect the rights of the client.

A central empirical claim underlying my approach is that many clients are not able to understand the legal context of their situation adequately to ensure that the decisions they may in respect of the law will in fact assist in achieving the ends which they intend. Compounding this impediment to autonomy is the fact that it is inevitable that lawyers will frame information and advice in a way which is tilted in favour of a particular approach. This paper suggests that a robust model of lawyering should face up to the impossibility of perfect client comprehension, and the reality of lawyer bias and provide an approach based on principles which both respect client autonomy and recognise the active role that the lawyer has to play shaping client decisions.

WEBB, Julian

University of Warwick

Being Responsible: Personal Integrity In A Levinasian Ethics Of Responsibility.

Levinas's reflections on ethics and the nature of justice are being taken increasingly seriously by Critical and postmodern legal theory. However his work has, so far, been relatively little addressed by legal ethics as such, despite its offering of a strongly pluralist alternative to the ethical positions marked out by utilitarianism, virtue ethics and American pragmatism. This paper, then, is envisaged as a corrective to that tendency and a continuation of my project to explore ways in which Levinasian thought can contribute to the development of an "authentic legal ethic of responsibility". It involves an argument in four phases. In

the first I explore briefly some of the present difficulties we encounter in both moral philosophy and professional legal ethics in constructing a meaningful notion of integrity; in the second I outline the nature of Levinasian ethics, its radical conception of the pre-ontological ethical relation and the means by which it seeks to avoid the collapse into ‘totalising’ discourses of justice. In the third section I consider how Levinas’s thought can be brought fruitfully to bear on the question of personal integrity, particularly through the inextricable link that Levinas posits between identity and moral responsibility, and in the final section I discuss some implications of this for legal ethics education.

WENDEL, Bradley
Cornell Law School

Integrity and Normativity in Professional Ethics

When we reflect on reasons for action, we deliberate from a perspective or standpoint. Ethical reasoning is generally held to proceed from the objective or impartial point of view — that is, without regard for the idiosyncracies of the agent’s psychology or interests. But the insistence on reasoning from that standpoint can make it difficult to account for why objective values ought to matter to any given person. The impartial, objective perspective tends to be a naturalistic one, in which all that appears are natural facts, such as people being influenced by certain motivations or acting for what they take to be reasons. (This is the perspective of law and economics scholars, the most doctrinaire of whom assume that ethical reasoning is either vacuous or mysticism.) Ethical reasoning is thus said to confront the logical impossibility of deriving an “ought” from an “is.”

In response, some ethical theorists have emphasized that the reasons upon which agents act are reasons *for them*, not reasons in some abstract sense. As Thomas Nagel puts it, if we abstract away from the perspective of the agent, we have to abandon the idea of acting for reasons. Building on this line of argument, Christine Korsgaard gives an account of the normative force of ethics that makes use of the concept of reflective endorsement from the point of view of an agent’s practical identity. Practical identity is “a description under which you value yourself . . . under which you find your life to be worth living and your actions to be worth undertaking.” In keeping with the theme of this conference, we might call this a notion of integrity. Its significance for ethics is that the value of integrity provides a reason for action that is internal to the process of moral reasoning, thus bridging the is/ought gap.

In this presentation, I would like to consider the objective (or agent-neutral) constraints that must be added to a notion of integrity in order to prevent a slide into a kind of ethical relativism. To put it another way, are there things that one *ought* to value, so that one’s practical identity is aimed at becoming a certain kind of person? In the context of

professional ethics, I will consider the role of professional identity in ethical deliberation. An agent's conception of herself as a lawyer may be an important aspect of her practical identity, but it may be in tension with other commitments that she has as a person, outside her professional role. Finally, I will consider the possibility that conflicts between personal and professional aspects of practical identity may give rise to the "moral remainders" famously described by Bernard Williams.

WILCOX, Dannie A.

Capella University, United States

An Effective and Ethical Leadership Paradigm: From Executive Intelligence to Personal Integrity and Beyond

With threats like corporate scandals and global competition, how is corporate leadership changing to meet the new challenges? The present paper answers this question and examines how the essence of leadership is adapting to today's demands of higher leadership competency and morality standards. Published literature, including articles and books, were reviewed to obtain insights into modern trends in ethical business leadership practice. Traditional leadership topics such as, bad leadership, competency-based leadership, trait theory, situational leadership, and leadership style are reviewed. The call for higher levels of competence and personal integrity seems to be an increasingly common thread among these leadership topics. Furthermore, the essence of leadership seems to be evolving beyond these values of competence and personal integrity. Identifying exactly how the essence of leadership is evolving beyond traditional thinking is the goal of this paper. To this end, additional topics examined include executive intelligence, emotional intelligence, and integrity of character. Taken together, the emphasis on these topics in the latest leadership literature represents a paradigm shift from established views of leadership to a viewpoint where the leader's continuing integration of intellectual, emotional, and character development, in both personal and professional life, is the key to the new essence of leadership. In this paper's climax, this new leadership paradigm, emphasizing not only talent, but character integrity, is further explored and developed to help provide some measure of enlightenment to today's leaders struggling to improve their leadership abilities for the practical benefit of themselves and their businesses.