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HENRY KNOX AND THE MORAL THEOLOGY OF LAW FIRMS

THOMAS L. SHAFFER*

"Only that belongs to me essentially which I ethically (i.e., as a person) accept as my task. If I refuse to accept it, then what belongs to me is that I have refused it."

—Soren Kierkegaard¹

One of the reasons we modern American lawyers find the "golden age" of our 19th century forebears attractive is that it was morally unambiguous.² It seems to have been an age of giants who were consistent. The "republican" lawyers who wrote our first statements on legal ethics were moral theologians as well as leaders—and they found no difficulty in being both. David Hoffman,³ who attracted as much applause from the conservative Calvinists at Princeton Theological Seminary as he attracted from the bench and bar,⁴ drew no distinction between the morals he practiced at home and the morals he practiced in his law office, in court, and among his Whig political colleagues. The morals he learned from his parents and from the Bible were the morals he urged on his students, his fellow lawyers, and his clients.⁵ George Sharswood, more keenly aware than Hoffman of the irony of the enterprise, nonetheless directed lawyers to the Sermon on the Mount.⁶ Thomas

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¹ II EITHER/OR 265 (W. Lowrie trans. 1959), quoted in H. FINGARETTE, *SELF-DECEPTION* 109 (1969) [hereinafter cited as H. FINGARETTE].

² The phrase "golden age" is Prof. Willard Hurst's. See W. HURST, *LAW AND SOCIAL PROCESS IN UNITED STATES HISTORY* (1960); W. HURST, *THE GROWTH OF AMERICAN LAW: THE LAW MAKERS* (1950) [hereinafter cited as W. HURST, *GROWTH*]. See also L. FRIEDMAN, *THE HISTORY OF AMERICAN LAW* (1973) [hereinafter cited as L. FRIEDMAN].

³ Hoffman is the father of American legal ethics. See Hoffman, *Professional Deportment*, in *A COURSE OF LEGAL STUDY* 324-334 (1817); Hoffman, *Professional Deportment*, in *11 A COURSE OF LEGAL STUDY* 720-775 (2d ed. 1836). The latter edition includes his *Resolutions in Regard to Professional Deportment* at 752-775.

⁴ Compare Book Review, IX *THE BIBLICAL REPERTORY AND PRINCETON REVIEW* 509 (1837) with J. Story, Book Review, *North American Review*, Nov. 1817, p. 76.

⁵ M. Bloomfield, *David Hoffman and the Shaping of a Republican Legal Culture*, 38 MD. L. REV. 673 (1979) [hereinafter cited as M. Bloomfield]; T. Shaffer, *A Report to Cartaphila on the Ethics of Negotiation Among Lawyers in the United States*, _____ LITIGATION _____ (1980); T. Shaffer, *David Hoffman on the Bible as a Law Book*, CHRISTIAN LEGAL SOCIETY QUARTERLY _____ 1980.

⁶ G. Sharswood, *An Essay on Professional Ethics* (1854), in 32 *REPORTS OF THE AMERICAN BAR ASSOCIATION* 1, 114 (1907); see G. Dickson, *George Sharswood*, VI *GREAT AMERICAN LAWYERS* 123 (W.D. Lewis ed. 1909).

Goode Jones, speaking to a later generation of lawyers, one which had come too readily to the comfort of the adversary ethic, insisted—and insisted even as a matter of law—that the lawyer's conscience must learn to respond for what the lawyer and client do together.⁷

The profession's troubled conscience after 1870 parallels the development in America of collective law practice. The dominant descriptive fact in the way American lawyers organized their practices after 1870 is the law firm; the dominant ethical fact is the adversary ethic, the explicit claim that lawyers are to be excused for what their clients have done, do, and propose to do.⁸ Lawyers have come to practice law in groups, to appear before their communities as collectivities, to become institutions, and to think of themselves as sub-cultural brotherhoods.⁹ Perhaps they have done this for moral reasons as well as for social and economic reasons. It is possible that the law firm and the adversary ethic have something to do with one another.¹⁰

Moral reasons appropriated from the past are fair game for historian and law teacher, but they are the special province of the novelist of manners and, in this vocational instance, of the novelist of manners who also

⁷ *Report of the Committee on Code of Professional Ethics*, 31 REPORTS OF THE AMERICAN BAR ASSOCIATION 676 (1907), annotates Judge Jones's Alabama Code of Ethics, 118 Ala. xxiii (1899); he was also on the committee which drafted the 1908 A.B.A. *Canons*. Biographical sources on Judge Jones include 10 NATIONAL CYCLOPAEDIA OF AMERICAN BIOGRAPHY 437-439; J.B. GORDON, REMINISCENCES OF THE CIVIL WAR 112-113 (1913); Birmingham News, April 29, 1914, p. 1, col. 1 (obituary); see W. Armstrong, *A Century of Legal Ethics*, 64 A.B.A.J. 1063 (1978).

⁸ H. Jones, *Lawyers and Justice: The Uneasy Ethics of Partisanship*, 23 VILL. L. REV. 957 (1978); M. Schwartz, *The Professionalism and Accountability of Lawyers*, 66 CAL. L. REV. 669 (1978) [hereinafter cited as M. Schwartz]; *Professional Responsibility: Report of the Joint Conference*, 44 A.B.A.J. 1159 (1958).

⁹ I assert these as facts. See W. EARLE & C. PARLIN, SHEARMAN AND STERLING 1873-1973 (1973); E. SMIGEL, WALL STREET LAWYER (1964) [hereinafter cited as E. SMIGEL]; R. SWAINE, THE CRAVATH FIRM AND ITS PREDECESSORS, 1819-1947 (1946); M. Howe, Book Review, 60 HARV. L. REV. 838 (1947) [hereinafter cited as M. Howe]. Many lawyers who practice in law firms are not as conscious as one might expect them to be of their functioning in, and appearing outside as, collectivities. R. Hennessey, R. Landis, & T. Shaffer, *Looking at Your Law Firm as an Organization*, 17 LAW OFFICE ECONOMICS AND MANAGEMENT 160 (1976) [hereinafter cited as *Organization*]; M. Gahan & T. Shaffer, *What Lawyers Think of Their Organization: A Report on an LOEM Survey*, 18 LAW OFFICE ECONOMICS AND MANAGEMENT 183 (1978).

¹⁰ Neither the fact of collective practice nor the psychological difficulties it presents to lawyers fully describes the *morals* of acting collectively; perhaps novelists can do that best, although moralists stab at it. Martin Buber, for instance, noticed that "the collective aims at holding in check the inclination to personal life. It is as though those who are bound together in groups should in the main be concerned only with the work of the group and should turn to the personal partners, who are tolerated by the group, only in secondary meetings." M. BUBER, THE KNOWLEDGE OF MAN 73 (M. Friedman & R. Smith trans. 1965) [hereinafter cited as M. BUBER]. Buber's word "partners" includes clients I think. See also I. B. HARING, THE LAW OF CHRIST 35-41 (1963).

understands lawyers and law firms—for example, Louis Auchincloss, New York lawyer and literary successor to Henry James.¹¹ Auchincloss might not claim law-firm morals as his special province, but I do—or at least I would like to use his work to study morals—because his novels are able to move modern lawyers' morals back to where they come from, to a context and a story. In this case, the story is the novelist's way of describing how lawyers in law firms came to accept or to refuse the moral burdens they (and we) identify as heroic stuff—heroic both as to our forebears in the “golden age”¹² and as to lawyers in the modern heroic myths of criminal-defense practice,¹³ small-town leadership,¹⁴ and vertical mobility.¹⁵

The first half of Auchincloss's novel, *The Great World and Timothy Colt*, is the story of a law firm and of its senior partner, Henry Knox, who was as much a moral theologian as Hoffman and Sharswood were. Mr. Knox was his firm's conventional leader and its spiritual guide, a Yankee Puritan who understood the attempt of the “grand” New York law partnerships of the 1890s to reclaim for themselves, if not for the profession, their lost moral leadership over business.¹⁶ Mr. Knox understood the admiration his predecessors in the 1890s had for the priestly detachment and public responsibility which were common professional aspiration before 1850. He understood as well how the “grand” lawyers of the mature New York law firms tried after 1890 to reclaim detachment and moral independence for lawyers who advised, protected, and represented business corporations.¹⁷

¹¹ J. Tuttleton, *Louis Stanton Auchincloss*, *DICTIONARY OF LITERARY BIOGRAPHY* 7 (1978) [hereinafter cited as J. Tuttleton]; R. McCauley, *Let Me Tell You About the Rich*, 27 *KENYON REV.* 645 (1965) [hereinafter cited as R. McCauley]; O. Prescott, *Books of the Times*, *New York Times*, Oct. 22, 1956, p. 27 [hereinafter cited as O. Prescott].

¹² This is one of several attempts of mine to illustrate how the use of hero stories in legal ethics turns on an understanding and study of character. See T. SHAFFER, *ON BEING A CHRISTIAN AND A LAWYER* ch. 4-7, 10-12, 14, 16, 18-20 (1981) (discussing Trollope's lawyers, Dr. Martin Luther King, Jr., Judge James Edwin Horton, Thomas More, and Franz Jagerstatter, among others) [hereinafter cited as T. SHAFFER, *CHRISTIAN*]. The method is derived from the theological ethics of Stanley Hauerwas. S. HAUERWAS, *VISION AND VIRTUE* (1974); *CHARACTER AND THE CHRISTIAN LIFE* (1975); and *TRUTHFULNESS AND TRAGEDY* (1977) [hereinafter cited as S. HAUERWAS, *VISION, CHARACTER, or TRUTHFULNESS*]; see J. MCCLENDON, *BIOGRAPHY AS THEOLOGY* (1974) (Christians) [hereinafter cited as J. MCCLENDON]; A. VORSPAN, *GIANTS OF JUSTICE* (1960) (Jews).

¹³ *E.g.*, G. HIGGINS, *KENNEDY FOR THE DEFENSE* (1979).

¹⁴ *E.g.*, H. LEE, *TO KILL A MOCKINGBIRD* (1960); T. Shaffer, *The Moral Theology of Atticus Finch*, _____ U. PITT. L. REV. _____ (1981) [hereinafter cited as T. Shaffer, *Finch*].

¹⁵ *E.g.*, A. TRAIN, *THE AUTOBIOGRAPHY OF EPHRAIM TUTT* (1943).

¹⁶ M. Howe, note 9 *supra*.

¹⁷ M. Schudson, *Public, Private, and Professional Lives: The Correspondence of David Dudley Field and Samuel Bowles*, 21 *AM. J. LEGAL HIST.* 191 (1977) [hereinafter cited as M. Schudson].

In terms less of understanding than of courage, Mr. Knox is interesting ethically because he made a moral claim, in and for his law firm, and then took responsibility for the claim. It is important to notice that his claim to moral leadership in the firm was both a moral claim and a moral claim which proved to be politically successful. The distinction between moral argument and closed politics is important in terms of moral responsibility: Mr. Knox obtained control of the firm with a moral claim, but political success is often fatal to moral claims. Mr. Knox, as a consequence of his successful politics in the firm, had to decide how serious he was about the claim on which he built his success—whether it bound him after it had succeeded as a tactic for taking control of the firm. In Kierkegaard's phrase, he had to decide whether to accept the task he had set for himself, and to realize that the task was a matter not only of leadership but also of who he was and of what belonged to him, as Kierkegaard put it, *essentially*.¹⁸ Mr. Knox understood that the response to his own moral claim could easily have been a hypocrite's response; law firms, and all other institutions, nourish moral leaders who turn out not to be moral leaders at all; their claims for the profession and for their firms are insincere. Mr. Knox also understood that he could have chosen to be a resident preacher to the firm without determining at the same time to make his moral leadership count. Law firms, and all other institutions, nourish moral leaders who preach and are ignored—and who tend, if they are honest, to withdrawal, to despair, to hypocrisy, or to all three.

Mr. Knox did not choose withdrawal, hypocrisy or despair. He chose the consequences of the moral claim he made for his firm, and he chose to enforce his moral claim through control of the firm and through his influence on the young lawyers who were recruited into the firm. His story comes out being the story of a hero—and by that I do not mean to describe Mr. Knox's character so much as to say that we find the heroes we need, and that the profession needs law-firm heroes. Mr. Knox's courage and his story are worthy of analysis, not because he needs to be a hero—or because Louis Auchincloss needs to have written the story of a hero—but because we lawyers in America in 1981 need such a hero.

Law-firm leaders such as Henry Knox risk a great deal in accepting their tasks; and their firms risk a great deal in sustaining them as, in essence, people who accept their tasks. The phenomenon is important; Auchincloss's description of it is an important story because it is in some measure the story of modern American lawyers, most of whom work in law firms. All law firms past the age of five probably have in them a Henry Knox, or have had one, or at least have had the chance to have one. In many firms the influence of such a person survives as a force for moral growth or moral advertence long after the leader's mortal coil goes into

¹⁸ This was the way Bolt understood Thomas More's story. See R. BOLT, *A MAN FOR ALL SEASONS* (1962) (preface) [hereinafter cited as R. BOLT]; T. SHAFFER, *CHRISTIAN*, *supra* note 12, ch. 18-19.

the ground or his name to the right side of the letterhead. The best of the Henry Knoxes are capable of being heroes, not because—or not only because—they practice law well, but because they make the unlikely claim that the highest moral aspirations of the profession can become the constitution of a group of persons,¹⁹ and this against the evidence that institutions corrupt the people who work in them. Some Henry Knoxes lead their colleagues toward proof of the claim of institutional leadership. And some of them are, as Henry Knox was, willing both to make and to accept such a claim for the institution but are finally unable to avoid being ironical about the claim. They stumble and they doubt, as real heroes do, but they hope that law firms can be forces for righteousness in the community and places where lawyers learn to become better people.²⁰

I. Hale and Sheffield

Henry Knox's law firm was originally called Hale and Sheffield. It had grown to prominence in the era of "robber barons." It had hidden its sins under the blanket of law-firm efficiency and *laissez faire* competition. Its members, with other New York lawyers in the 1870s and 1880s, claimed a cautious objectivity and detachment from the purposes of its business clients—a detachment expressed in bar associations and codes of ethics.²¹ In the 1890s, these New York law firms examined, became nostalgic about, and edited for proclamation the old moral claims of the American lawyers of the "golden age." They became, in a vague adjective commonly used in such enterprises, "grand." But, in the generation after President McKinley's assassination, Hale and Sheffield lost its leaders; it absorbed the disillusionment consequent on shabby American imperialism, European power politics, Edwardian decadence, world war, prohibition, epidemic, financial disaster, and political demagoguery. It threatened to become inefficient, socially irresponsible, and sloppy; the grandness of the 1890s was a shopworn symbol.

¹⁹ M. Howe, *supra* note 9, at 842. I generalize Mr. Knox's moral claims for his firm as (a) public responsibility and (b) care for clients, but the idealism of the 1890s which Mr. Knox sought to revive was, perhaps, not substantive in this way so much as it was an assertion of moral leadership by lawyers over the business enterprises they served. The difference between this and the idealism of lawyer leadership *circa* 1800-1830 is that there was more substantive consensus in the earlier period. The distinction between Mr. Knox's assertion of moral leadership and his uncertain use of the leadership once he had it suggests this difference.

²⁰ There is a distinction here between the law firm and the profession; it is a different thing to focus moral concern in the law-firm group than it is to focus moral concern in the profession, even the locally organized profession. Mr. Knox's story suggests that one has to have an organic group in which to respond, and in which to seek for response, in the manner described, say, by Martin Buber. See M. BUBER, note 10 *supra*. See also S. HAUERWAS, *VISION*, note 12 *supra*; H. R. NIEBUHR, *THE RESPONSIBLE SELF* 84-89 (1963). For Mr. Knox, then, the law firm was a moral opportunity not otherwise available.

²¹ M. Schudson, note 17 *supra*.

Henry Knox, then a young partner, claimed leadership at this time in the firm's history. His candidacy was based on a moral argument. The firm, he claimed, had to return to the grand style of the 1890s; its grandness was more than a symbol. What grandness meant was *public responsibility* and *care for clients*. Mr. Knox pointed to the sole active survivor of that era in the firm's history, "old Mr. Sheffield," as the center of this moral revival. He intimated that the firm could, in becoming efficient and in returning to the ideals of old Mr. Sheffield, return as well to the ethics of moral leadership, to public responsibility and care for clients. Mr. Knox's political effort was successful; his enemies in the firm were defeated. The issue, then, was whether he was to accept the moral leadership his political claim had implied. He need not have accepted moral leadership. Hypocrisy and cynicism were available. Few of those who make moral claims for leadership are willing to accept the consequences of their moral claims after their politics prove successful. Mr. Knox accepted the consequences, although, as every hero will, he stumbled, regretted, wept, suffered, and often failed.

II. A Brief Biography of Henry Knox

Henry Knox died in 1954, at the age of 58, after 35 years of practice at the New York Bar. He was managing partner of the New York City law firm of Sheffield, Knox, Stevens & Dale, a respected lawyer who specialized in corporate matters, and a prominent churchman, active in the Council of Churches and in seminary education. He was chairman of the board of directors of Trinity Seminary; he once took a leave of absence from his law firm, for a year, to raise funds for the seminary. His widow and four daughters survived him. He was the only lawyer in his family; a son-in-law, Larry Duane, was an associate in Mr. Knox's firm.

Mr. Knox's paternal grandfather was a New England clergyman; his father, also a clergyman, was headmaster and founder of Milford Academy, in New Hampshire. Mr. Knox might have said that the enduring Christian faith of his family was the most important thing in his personal life. He spent all of his professional life in the law firm, still called Hale and Sheffield when Mr. Knox became a member of it. "A good man," according to Mr. Sheffield, who interviewed Mr. Knox in 1921 and who survived him. "Very good on detail. Not a man for clients, though." Mr. Knox was a tall, handsome man "whose rugged features, shaggy grey hair and huge cerebral brow utterly dominated" his home. His daughters "might have squealed at his sarcasms, but they were almost compulsively anxious to confide in him. He was their god, and like all gods could be feared but not fooled." He was one of many well-educated, successful lawyers of his generation who regretted the fact that younger lawyers lacked liberal and moral learning and that this lack weakened their ability to be good lawyers. "Not a word of Whitehead. Not a paragraph of Morris Cohen. Not a backward glance at Roman law,"

he once said to a law student from Columbia. "With Brandeis as your idol, you burrow into facts. . . . Like Holmes, I hate them! How can you *think*, man, if you're obsessed with facts?"

Despite his occasional disillusionment with legal education, Mr. Knox was an enviable and envied tutor of young lawyers—a model for them, a hero to some of them, and a source of what his pupils in the practice regarded as moral wisdom. "It didn't matter to me that society was disintegrating," one of them said, "so long as *I* was not on the side of the disintegrators. So long as *I* was constructive." His associates took from him a sense that professional work in Mr. Knox's law firm was a moral project: "[He] taught me that we were the men who greased the wheels of finance and business. That our contribution to the general welfare was direct and creative. That it was our glory to have worked out the relationship between government and industry. . . . We were the architects of society!" Mr. Knox might have forgiven an engineering metaphor from a pupil, but he preferred artistic and philosophical metaphors for himself. A friend of the family compared him to the late headmaster in this way:

Henry Knox had drunk deep of the cold, bright insistent spring of his clerical father's idealism. He had never been able to tolerate that the lares and penates of his adult years should be more gilded than those of his youth. In contraposition to his parent he had set up the ideal, incarnate in Mr. Sheffield, of the philosopher-advocate whose duty was to handle the little cases equally with the big, the wise counselor who would turn with the same tolerance and sympathy from an issue of tens of millions to a mother who distrusted a prospective son-in-law.

This was the professional aspiration to care for clients. It and the "architects of society" aspiration were the moral claims Mr. Knox made for the law firm and taught the young lawyers who came to the law firm.

Other lawyers regarded him as exacting and "tough" (meaning thorough and imperious, but not dishonest), and most of his clients prospered, often because of his efforts and never in spite of his efforts. Mr. Knox regretted, his friends said, that his success in corporate practice reduced his availability to personal clients. Like most leaders who come to regret the loneliness and ambiguity of the bridge, "he was trapped in his own success; even in . . . those clear high moments when the drudgery was over and the pieces fell suddenly together, he would wonder if he should not have taken over the New Hampshire school that his father had founded, or been a professor or minister, even a missionary."

Mr. Knox's friends may have exaggerated his nostalgia for his ministerial heritage. He was proud of his law practice and of those who worked with him in it. Even when he did not manage to lead his colleagues to care for their clients, and even when he was not able to lead

them to care for their country, he did lead them to care for him, and he did lead some of them to care for one another. The pictures in his office were pictures of lawyers who were or had been in the firm. The portraits on the hallway walls of Sheffield, Knox, Stevens, & Dale were photographs of deceased partners. They were plain, black-and-white photographs, in contrast to the euphemistic oil portraits of the firm's businessmen-clients, "removed from the dusty actuality of commerce by the dignification of the painter's process." He hoped to admire his partners, especially his dead partners, warts and all.

The young lawyers who worked with him commanded his office—entered without announcement or formality, used the telephone there, and even continued working there when Mr. Knox was talking to clients. He both created and preserved in his firm an ethos of form and style, as the elegance of Wall Street practice in the 1890s shaded elsewhere toward the uncluttered competence of the 1950s.²²

A visitor had the impression of wandering through the bright, clean avenues of an ordered city. . . . The whole great hushed interior, with its hum of muted typewriters, its discreet scurrying of office boys and the distant, silvery bong of the endlessly repeated autocall, summoning the absent to their telephones, gave an impression of efficiency but not, as in some firms, of an efficiency that was ruthless, or even harsh . . . if things were neat and ordered, they were still not over regimented. . . . Oh, we can be grand, if it's grandness you want, the long corridors seemed carelessly to echo, but who are *you* to want it?

Mr. Knox, as is true of any of us, was better known from his relationships than from descriptions of him written as if he stood alone. He was a man of intense relationships; he was not impersonal. In interpersonal terms, as in institutional terms, he was a man who could have been defined ethically by what he chose to accept. The tears at his funeral included those of his partners, his pupils, wife and daughters, sisters in law, and other relatives. The pews in the church were filled with judges, bar-asso-

²² L. FRIEDMAN, *supra* note 2, at 550. The early 19th century and possibly "republican" (Jeffersonian) idea was that law, as a calling, was a way to improve morally—in contrast to the practice of "law as negation," which was used, among other missions, to justify slavery before the Civil War and business venality after it. This contrast is the heart of Mr. Knox's law-firm style. He sought to save the moral temper of business practice in the 1890s, which had been a "republican" revival; its main moral force was not so much in the community as between lawyers and business clients, and among other groups of lawyers. See note 9 *supra*. See also M. BLOOMFIELD, *AMERICAN LAWYERS IN A CHANGING SOCIETY* 136-190 (1976); P. MILLER, *THE LIFE OF THE MIND IN AMERICA* (1965) [hereinafter cited as P. MILLER]; M. Bloomfield, note 5 *supra*. Moral reform as the *formation* of young lawyers thus came in law firms more than in larger professional groups. It is as if the law-firm heroes of that era could not claim a moral purpose for the profession itself as well as they could claim one for smaller professional fraternities. See J. Barzun, *The Professions Under Siege*, Harpers, Oct. 1978, p. 61; note 20 *supra*.

ciation officials, and powerful agents of government and industry. Any of the relationships suggested by this crowd of mourners could tell us about Mr. Knox. Three of them tell us as well about the moral theology he claimed for his law firm, a moral theology which was, perhaps, finally unsuccessful. The relationships I look at here are Mr. Knox and his pupil Timothy Colt; Mr. Knox and his partner Sheridan Dale; and Mr. Knox and Ann Colt.

III. Mr. Knox and Timothy Colt

Timothy Colt arranged in the late 1930s, through familiar interview processes, to be a law clerk in Knox, Sheffield, Stevens & Dale after his second year of law school at Columbia. He was a good law student—on the law review—and, as a remnant in an old New York family, he had adequate social credentials. His great-grandfather, also named Timothy Colt, had been rector of Trinity Church; his father, Philemon, was an amiable playboy who lived on trust income and spent weeks at a time in hospitals, in recess from alcoholism. On one of these medical excursions he met Timothy's mother, Genevieve, a nurse. Philemon died when Timothy was young, leaving little money, a wife who thought work was beneath her new social status, and few relatives who cared about his widow and child. Timothy worked his way through school and at times supported his mother. They lived in rooms in an old hotel in New York City.

Because his education and his mother required more money than Sheffield, Knox, Stevens & Dale paid law students, Timothy did not accept a summer clerk's position at the firm. Instead, Mr. Knox hired him, at higher wages, first as a tutor for the four Knox daughters and later as a colleague in the preparation of a set of suggestions for reforming the Securities and Exchange Commission. In this project, mutual convenience—Mr. Knox's need for Timothy's help and the fact that Timothy loved to work—led to a mutual devotion which lasted until Mr. Knox's death. The relationship is ethically interesting because it helps to explain how Mr. Knox was able to implement, for a while, the moral claim he made when he took control of the firm. More specifically, it shows how work in law firms is a way lawyers have for caring for one another and raises the question whether their caring for one another is related to their caring, or failing to care, for their clients and their community.

Mr. Knox and Colt were, in any event, devoted to one another. Their devotion was, first and most clearly, a mutual devotion to work. Whatever regard Mr. Knox had for Colt—and he had a great deal—it grew in the soil of Mr. Knox's need to have someone work for him constantly, even while Mr. Knox himself sat by his swimming pool. And whatever regard Colt had for the older lawyer—and he, too, had a great deal—it grew in the same soil, nourished by the fact that Colt found work familiar and comforting. "All his youth he [had] worked, at night, during summers, in laundries

and restaurants, in banks and garages. . . . Only in the spare neatness of his own small room, under the green lamp with his new law books, was there rest from the pressure of his imagined overseer, as in childhood at the same desk he had sought the solace of the solved equation, the translated stanza." Because he worked hard and worked well, he overcame the awe of being colleague to a formidable Wall Street lawyer: "Knox would get testy with him, but even this was a compliment. It was the testiness one meted out to an equal."

When Colt finished law school and World War II military service, the law firm hired him, again to work under Mr. Knox, again in an intense interpersonal relationship supported by this largely unexamined commitment to work. It was as if each of them believed not that work could bring about goodness, but that work *was* goodness, that work was enough for the good life. Colt frustrated his wife, Ann, because he would not schedule and insist on summer vacations. When Ann pointed out that his peers in the firm took vacations, and that Colt worked more than the work itself required of him, Colt said, "I may work harder than they do, but that's my way of getting things done. And done right, damn it!" Mr. Knox, out of a sincere personal concern for Colt's welfare, often insisted that Colt take his vacation, but the insistence was usually followed by the imposition of new duties on Colt, duties which Colt was certain to interpret as requiring that he forego the vacation.

"What makes a good lawyer is hard, digging work," Colt said, as if he were reciting a lesson from his mentor, but a lesson he knew to be true before he met his mentor (the lesson explaining his choice of mentors, as it explained Mr. Knox's choice of assistants). Ann did not understand that the commitment to work was an adequate ideal. "I sometimes think I really could take it all better if there was a purpose in it," she said. "Even a worldly purpose. But that's what's so funny. Timmy's not even ambitious." Colt did not work to get ahead. He did not work to develop his considerable talents as a thinker and planner. He said, instead, that work led him to reality. "It's not a question of brilliance. It's a question of clear thinking. I can't bear people who think sloppily." When he reflected on his work, he thought that working well in the law was "the approach to the essence of thing without disarrangement." But that was only a metaphysical way to say that work was all there was. Colt did not claim that work led to truth or to understanding. He was not so interested in intellectual results for himself or material results for clients or profits for the firm as he was in work itself as an aesthetic and sufficient value.

There is a paradox in the relationship between the two lawyers. Mr. Knox "believed" in work, and imposed work on Colt, in the sense that he worked and admired work, perhaps out of habit and inherited disposition, but he did not intellectualize or philosophize about work. He did not *proclaim* that work was a sufficient value; he only *acted* as if it were. Colt, although more intellectually consistent, was sick. His compulsion to

work was unhealthy. Mr. Knox no doubt sensed the sickness, and he expressly rejected Colt's curious ontology. In this, though, Mr. Knox was less consistent than Colt was, if not less honest. He profited from Colt's compulsion. Even if he was always, in spirit and often in fact, Colt's colleague in work, Mr. Knox worked fewer hours, and he took all of his vacations. Colt did not ask where work led, but Mr. Knox did: "What do *you* want out of life, Tim? Do you want a small expensive house in an exclusive suburb that it will kill you to commute from? And private boarding schools to make your boys grow up with the ideal that their boys will have to go, too?" No, Colt did not want these things. He did not work for wealth or for status; in fact, one of the weaknesses in his marriage was that Ann supposed for a while that their life together was a matter of "getting ahead"—or should have been—while Colt found work adequate to engage his fancy; he didn't suppose at all:

"I don't know," Colt answered. "I don't think much about it."

"You're like me," Mr. Knox said. "And what have I got, after all. . . .?" Mr. Knox at first supposed, wrongly, that Colt's intensity was aimed at quality—at self satisfaction, maybe, at good service for clients, at doing well in the *laissez faire*, law-firm ethos which is to business practice what the adversary ethic is to litigation: "Do you ever stop to think how much there is in first-class legal work that isn't any better than second? That extra touch, that smoother language . . . that clever tax angle. . . . And what I should try to understand is that even if you believe the things that I believe, they're irrelevant to you. . . ." He then supposed, wrongly, that Colt's uncritical interest in work could be attributed to his youth: "Even if you knew now that when you were my age the game wouldn't be worth the candle, you wouldn't care. . . . So there we are. I with my disillusionment and you with the reassurance that yours is still twenty years away."

Mr. Knox had come to suspect, in the wisdom of his fifties, that work was not an adequate ethic; perhaps he never thought that it was; perhaps Colt's view of work was more his own than his mentor's. In any case, Mr. Knox had worked in his own youth to build a "grand" law firm. He worked, then, *for* something. But he was wrong in seeing youth as the difference between Colt and himself. When Colt became cynical—as he did in this story—it was not because of age but because he lost his mentor. Even when cynical, though, Colt continued to work as hard as he ever did. Work is how Colt hid from his demon.²³

²³ The novel, as its title suggests, is mostly about Timothy Colt. Auchincloss set out in it to portray Colt as "suicidal" in nature:

A naive, idealistic, and industrious young man, he is faced with a crisis when, utterly exhausted, he at last turns on the client who has been hounding him. The senior partner, his hero, forces Timothy to apologize. Childishly bitter, Timothy then flings himself into the arms of an opposing clique in the firm. But his resentment turns to self-hate when the senior partner suddenly dies. Timothy is not

Work is the way these two lawyers were able to care for one another and is relevant in asking how they dealt with the moral claims of care for clients and public responsibility. It is important to notice that Mr. Knox did not see himself as a slave-driver. He did not understand himself to be exploiting Colt's demon, even if he was. He seemed instead to understand Colt's obsession in terms of two metaphors. Sometimes the metaphor was love, although Mr. Knox, masculine and Puritan about his relationships with men, did not call it love, and only occasionally let himself see it as paternal. At other times the metaphor was art: Colt was a poet; he suggested images of Beethoven going deaf at the piano; of the mad, obsessed Van Gogh without one ear; of Thomas Wolfe laboring through the night with his pencil and his reams of manuscript. The advantage of either metaphor was that it hid from view Mr. Knox's exploitation of Colt's demon. A loving father is not the moral equivalent of a slave-driver; neither is a patron of art. In both cases the metaphor also served the moral claims Mr. Knox made for the law firm. The young lawyer is an heir apparent learning to care for clients, learning to accept his responsibility to the community. Or the young lawyer is a genius who is defined by his work and whose work, because it is creative, is like the

grimly determined to punish himself by becoming all the things that seem to go with his tarnished soul . . . to turn himself into a crook.

L. AUCHINCLOSS, *A WRITER'S CAPITAL* 117-118 (1974) [hereinafter cited as L. AUCHINCLOSS]; see J. Tuttleton, note 11 *supra*.

Reviewers generally took the story to be about the corruption of young lawyers in Wall Street law firms, but Auchincloss denied that that was his purpose: "I had never seen anyone faced with such a problem in Sullivan and Cromwell. I liked everything about the firm, including its hierarchical structure, which struck me as a necessity to assure fairness, continuity, and efficiency in an organization so large. It seemed to me a sort of benevolent navy, where promotion went only by merit and where useless bureaucrats would not be tolerated." L. AUCHINCLOSS, *supra*.

The reflective critical literature is also mostly about Colt. *E.g.*, D. Holloway, *Trials of a Trustee*, (London) News Chronicle, Jan. 17, 1957, p. 6; C.B. Jones, *Novels Outnumbering Nonfiction This Fall*, (Washington) Sunday Star, Oct. 21, 1956, p. E-7; O. Prescott, note 11 *supra* ("so stubborn, foolish and self-centered that his affairs become just a little tiresome"); P. Shaffer, *Disrespect in Fiction*, 157 TRUTH 69 (1957) ("the trusty old American theme of 'selling out'"); P. Quennel, *Timothy Colt's Energy Will Leave You Limp*, Daily Mail, Jan. 17, 1957, p. 6; M. Willy, *New Novels*, Birmingham Post, Jan. 22, 1957, p. 3. Some commentators have treated the novel as a description of the way law firms function as social institutions. *E.g.*, J. Brooks, *Ideals on Trial*, New York Times Book Review, Oct. 21, 1956, p. 4; S. Tilles, Los Angeles Evening Herald-Express, Dec. 31, 1956, p. B-2; R. McCauley, note 11 *supra*. There are even reports of New York law firms using the novel as a stimulus for Socratic discussion for finding out whether recent law-school graduates understand the realities of the "great world" in which Colt failed. *News and Trends of the Week*, 170 PUBLISHERS' WEEKLY 2561 (1956); see J. BRYER, LOUIS AUCHINCLOSS AND CRITICS: A BIBLIOGRAPHICAL RECORD (1977).

Auchincloss has written other stories about law firms which are probably more adequate to understanding them as social institutions. *E.g.*, L. AUCHINCLOSS, *POWERS OF ATTORNEY* (1963); L. AUCHINCLOSS, *THE PARTNERS* (1974).

building Albert Speer designed for the Third Reich; art is beyond ethical analysis.²⁴

Love as the Metaphor for Work—The Knox-Colt relationship shows how work and love come in organizations to depend on one another. It also shows how, in such intense careers as the practice of law in law firms, work and love contribute to an institutional ethos which looks like brotherhood from the inside (thus one often hears institutions talk about themselves as if they are families) and, like the Pittsburgh Pirates, exudes a "grand" style when seen from the outside. In interpersonal terms, as in the Knox-Colt relationship, the metaphor affords a person as self-censuring and conscientious as Mr. Knox was a way to demand and receive, extol and reward, laborious devotion from other and younger people.

But for love, perhaps, Mr. Knox would have been ashamed of the effects he had in Colt's life. Colt's marriage suffered; when his wife, Ann, had to explain their temporary estrangement to the Colts' children, she told the children that their father was working, and they did not ask again why he was not with them. When Mr. Knox saw that Colt was alienated from others in the law firm, and that Colt's progress to partnership was imperiled because of poor human relations, he told himself that "he had allowed Timmy to grow up in the vacuum of imperial favor, to develop his talent in competition only with the most talented," that Knox himself sinned only in depending too much on his beloved protegee; "he had wanted to lean like an aging emperor on that youthful shoulder. And Timmy had suffered. He had developed the unworldliness of the perfectionist." Because Colt was an heir apparent, there was justice even in the inequality of their hours and their rewards; the loving status which Colt enjoyed made up for the fact that Colt worked through the weekend for a salary and that Mr. Knox shared Colt's fees as he sat by his swimming pool. (Colt did not have time to sit by the pool, but Mr. and Mrs. Knox invited Ann and the Colts' children to their country home for weekends. Some of the novel's best conversation is between Ann and Mr. Knox as they sit by the pool on Sunday morning, while Colt is in town working.) Because Colt was loved as a son, it was still possible for Colt and Mr. Knox to be colleagues, still possible to say, as in Robert Frost's poem, "we work together when we work alone."

Mr. Knox deceived himself in this matter of Colt's work—and therefore in his relationship with Colt—either because he supposed, or let Colt suppose, that work was goodness itself, or because he let Colt's love for him blind him to the fact that his driving of Colt was an ignoble use of Colt's demon. Colt suffered from recurrent, pathological self hatred; as his own career unfolded, this quirk in his character almost cost him an offer of partnership in Knox, Sheffield, Stevens & Dale; almost wrecked

²⁴ S. Hauerwas and D. Burrell, *Self Deception and Autobiography: Reflections on Speer's Inside the Third Reich*, in S. HAUERWAS, TRUTHFULNESS, *supra* note 12, at 82-100 [hereinafter cited as S. Hauerwas and D. Burrell].

his marriage; and finally drove him to a series of public actions which destroyed his law practice—actions which, significantly, occurred after Mr. Knox's death, when Colt had lost the protecting arm of his mentor.²⁵ As long as Mr. Knox lived, Colt's demon was held at bay, tempered by the relationship between the older lawyer and the younger one. "You know we've all lost something, Timmy," Mrs. Knox said to him after the funeral. "I wonder if we won't be harder people without Harry."

The importance of this is ethical. That is, it is a matter of clear thinking; ethics is the science of thinking clearly about morals. Mr. Knox was not a hypocrite. He did love Colt—meaning that he sought Colt's welfare even before he sought his own. The ethical question is whether love—love seen as work or work in brotherhood seen as love—was an adequate morality in their relationship and in its effect on the two moral claims Mr. Knox made for the law firm—public responsibility and care for clients. For the intellectual, ethical question it is necessary to concede that Mr. Knox *sincerely* saw himself as not exploiting Colt. As Mr. Knox saw it, Colt was working toward a goal—membership in the firm—worthy of a loving colleague's causing him pain. For example, in the story, Colt is more interested in work than he is in the politics of gaining partnership. Because he loved Colt, Mr. Knox was willing to risk his control of the firm—and even his spiritual leadership of it—in order to rescue Colt from the politically destructive effect, inside the firm, of Colt's compulsion. In one instance of this, Mr. Knox risked his relationship with his partner, Sheridan Dale, in an attempt to protect Colt's future after Colt offended Dale. In another instance, after Colt worked himself almost to death in a complex merger, then lashed out pathologically and publicly at his client, Mr. Knox risked even Colt's love for him to coerce Colt into apologies to the client. This last coercion permanently disrupted their relationship.²⁶ The point of the story, in these instances, is that Mr. Knox was the father who sacrificed his son's love for the son's benefit. Mr. Knox died during this rift. His terminal illness was aggravated by his dismay at seeing Colt angry with him.

Love and work sustained one another in the relationship between these two lawyers. Each lawyer expressed his love for the other with work. Each was able to give work more moral importance than it deserved because they loved one another. If love is not the best characterization for their relationship, work is; but, finally, it does not matter which word is used, because neither is adequate ethically. Work is not enough for a moral life, but neither, as I hope to show, is love; Mr. Knox's stern

²⁵ See note 23 *supra*. It might be possible to generalize this point about ignoble use, to say that what in Colt was a demon is more commonly among associates in law firms a matter of driving, destructive competition. See T. RUBIN, RECONCILIATION (1980); J. OSBORN, THE ASSOCIATES (1979); T. SHAFFER AND R. REDMOUNT, LAWYERS, LAW STUDENTS, AND PEOPLE ch. 9 (1977).

²⁶ *Id.*

ancestors would have said that both love and work are idols.²⁷ It might be useful to discuss work in the other way in which it was treated in the law firm—as art—and then to look more carefully at the deeper significance it had for Mr. Knox and Colt—that is to look again at work and love.

Art as Metaphor for Work—Mr. Knox and members of his law-firm team were fond of describing Colt's work with artistic metaphors. Sometimes they described only the remarkable concentration he gave to work—a skill he had learned as a boy, hiding from his demon in his lonely room in the hotel—but that was hyperbolic: One could as well use the word artist for a steeplejack who is, for good reason, not easily distracted. Sometimes the metaphor meant that Colt seemed—but, again, by dint of concentration—to do the impossible. In either case the metaphor misled Colt; it fed his tendency to suppose that craftsmanship was enough; it led him to ignore reality, to forget that business clients have purposes toward which they pay Knoxes and Colts and pay them well, and that the term “first rate” doesn't mean anything if the “second rate” legal document fulfills its purpose or if the client's purposes are corrupt. Clients have “none of the false piety of the old robber barons,” Mr. Knox said, in a moment of doubt about the metaphor, “no interest in art treasures.” The world does not put stock prospectuses in museums.²⁸

²⁷ S. HAUERWAS, *VISION*, *supra* note 12, at 111-126; text accompanying notes 34 & 35 *infra*. Perry Miller's historical argument for the point was that the vague benevolence of the later Christian revival in America destroyed its moral message. P. MILLER, *supra* note 22, at 53, 78-84, and that the clergy led the way to error as, perhaps, at least in a metaphorical way, the Henry Knoxes of law firms do in the ethos with which lawyers work together; the late revival's mushy notion of community resembles the law firm's mushy notion of brotherhood. See G. Pepper, Book Review, *Cross Currents*, Winter 1975, p. 493. The theological meaning of this point centers in American theories of God as immanent. W. R. Garrett, *Politicized Clergy: A Sociological Interpretation of the "New Breed,"* 12 J. FOR THE SCIENTIFIC STUDY OF RELIGION 383 (1973).

²⁸ The metaphor misleads, in “teleological” analysis, because legal work is *not* art; that was Mr. Knox's point about the robber barons, although he could not quite see that it applied to himself or to Colt. The metaphor misleads “consequentially” because it leads to irresponsibility in office practice, as the adversary ethic leads to irresponsibility in trial practice. *E.g.*, Fortas, *Thurman Arnold and the Theatre of the Law*, 79 YALE L. J. 988 (1970). “Lawyers are agents, not principals, and they should neither criticize nor tolerate criticism based upon the character of the client they represent or the cause that they prosecute or defend. They cannot and should not accept responsibility for the client's practices.” *Id.* at 1002. One comes to see his fortune in terms of success in the work itself, without regard to what the work is—as in the phrase “rendezvous with destiny,” used in the Cravath law firm to describe the associate's fate in partnership decisions. Auchincloss says of his own youthful contemplation of such a rendezvous: “[H]ere I was, secretly praying that I would not be a partner, because I had a blurred idea that the dedication of the members of the firm was too sacred a thing to be sullied with any outside interest.” L. AUCHINCLOSS, *supra* note 23, at 119. “Outside interest” here may include even moral evaluation of the enterprise, of the art and craftsmanship of it. Stanley Hauerwas and I have argued that this realization explains Thomas More's resignation as Lord Chancellor, as that is portrayed in Robert Bolt's play *A Man for All Seasons*. R. BOLT, note 18 *supra*; T. SHAFFER, CHRISTIAN, *supra* note 12, ch. 19.

When Colt understood that art was an inaccurate metaphor for his work, he was left with no way to appreciate it. One of his colleagues, another of Mr. Knox's pupils, told Ann that Colt's work was a poem. Ann, who knew better, said, "I love to hear that. . . I really do. But what does it mean to *me* if it doesn't mean more to him. If *he* got a thrill out of it—ah, well, then everything would be worth it." The truth—which the artistic metaphor hid from Mr. Knox and therefore from Colt—was that law-office work, which cannot be art, *can* be human service and moral leadership.²⁹ Colt was not a sculptor; he was a steward. Mr. Knox was disillusioned with his own work—and, if he had thought clearly about the metaphor, even with Colt's work—because he let the invalid metaphor hide from him the deteriorated regard he and Colt had for clients.

When Colt had his first chance to work by himself for an important client, the client came defensively to Colt's office and said, "By the time you and I are through with this deal . . . you're going to feel that you and I are twins." Colt "nodded and turned his attention to the bulging briefcase. . . . It was that, he hoped . . . which he would try to make his twin." He chose as brother a pile of paper and turned a person aside. Colt as artist was humble only before the task. "The client was entitled to the job done and the job done well. Beyond that they met as equals. If George [the client] wanted a friend, George would have to be more friendly; if he wanted an admirer, he would have to be admirable." Mr. Knox, because he too was fascinated by work as art, did not see the opportunity to rescue Colt from Colt's betrayal of the law-firm ideal of care for clients. When Colt failed to meet Mr. Knox's standard on lawyer-client relations, Mr. Knox said it was because Colt did not *deceive* George: "What you feel about George . . . is a matter of no consequence. . . . What's a good deal more important is what he thinks of you. Have you let him feel that you dislike him . . . ? You have no business being snotty to clients . . . ! Or at least you have no business letting them *see* it when you do . . . !"

When work was called art it seemed to have a value in itself and thereby gave Colt's demon and Mr. Knox's law-firm priesthood a common ground.³⁰ The metaphor hid from reason the possibility that professional work itself—craftsmanship—can never demand enough of a whole, integrated person because the human need served by the work is too small a part of the person who has the need.³¹ In their business-law

²⁹ T. SHAFFER, CHRISTIAN, *supra* note 12, ch. 3, 7-8.

³⁰ This is perhaps a specialized professional instance of Aleksandr Solzhenitsyn's point about legalism and integrity: "Life organized legalistically has . . . shown its inability to defend itself against the corrosion of evil." *A World Split Apart*, National Review, July 7, 1978, p. 838.

³¹ S. HAUERWAS, TRUTHFULNESS, *supra* note 12, at 184-202 (on medicine as a tragic profession—tragic in this sense). The very partialness of the professional relation is its danger;

practice it was tempting for Mr. Knox and Colt to suppose, in Colt's case, and sometimes to act as if, in Mr. Knox's case, there were no persons involved at all. The client was an enterprise;³² "industry," and public interest involved, was an abstraction.³³ The appearance of a curious, demanding human client was an intrusion and an impertinence. The metaphor of art focused only on the task and hid both the psychological challenge of the human client and the possibility that a law firm can be at the service of persons—that even a lawyer, as lawyer, can, in traditional Jewish and Christian moral terms, serve his client as much as he serves his hero or his protege, and more than he serves his art.

Love as Inadequate Metaphor—It might seem better to try to show that the relationship between Colt and Mr. Knox was a loving relationship rather than artist's patronage, but it does not matter ethically because love is not enough either. It is of course harder to argue that love is an inadequate ethic than it is to argue that art is an inadequate ethic. There are now few, even among lawyers, who believe in work as much as Colt or Mr. Knox did, who really suppose that legal work is art. But there are many workers, lawyers, preachers, and scholars in ethics who say that love is enough. One way to argue against love (or to argue that the love these two had for one another was inadequate) would be to look at its consequences in this case: Colt, and even Mr. Knox, were contemptuous of their clients. Within the firm, love for Mr. Knox led Colt to the twisted sort of loyalty which says that one must hate those whom his mentor hates. Colt's love for Mr. Knox, along with the invalid artistic metaphor, led Colt to avoid dealing with his demonic obsession with work and Mr. Knox to deceive himself away from realizing that he was employing Colt's demon as much as he was employing Colt. When Mr. Knox was dead, Colt was unable to account for himself as a lawyer: "He went out of his way to exaggerate the sorry light in which each aspect of his new existence might have appeared to the sorrowing eyes of his late

"one cannot do evil with his whole soul, one can do good only with the whole soul." M. BUBER, *GOOD AND EVIL: TWO INTERPRETATIONS* 130 (1961); see note 28 *supra*. The only way to live with the art metaphor in office practice, as with the adversary ethic in trial practice, is to be consciously irresponsible, to claim a circumstantial dispensation from responsibility. M. Schwartz, note 8 *supra*; R. Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 *HUMAN RIGHTS* 1 (1975).

³² Enterprises as clients involve what Paul Tillich called "the ambiguity of self and thing." If one comes to see the work of lawyers for enterprises as not involving persons, "something . . . happens to man . . . as it happens to the objects which he transforms. He himself becomes a thing among things. His own self loses itself in objects with which he cannot communicate. His self becomes a thing by virtue of producing and directing mere things." III *SYSTEMATIC THEOLOGY* 73-74 (1963). This, I think, is the way to describe the moral difficulty in a law practice such as Mr. Knox had. I do not agree with Professor Hurst that the difficulty was the fact that such legal work was done in private. W. HURST, *GROWTH*, *supra* note 2, at 346-75; see *Organization*, note 10 *supra*.

³³ T. SHAFFER, *CHRISTIAN*, *supra* note 12, ch. 1.

chief. In his determination to face the facts, he lowered the blind on other prospects."³⁴

Another way to argue that love is not an adequate ethic—and, in this case, that love is not enough to lead to realization on the claims of care for clients and public responsibility—is to notice that love is not a *norm* at all:

[T]he reason that the ethics of love appears reasonable . . . [is] because we continue to presuppose moral forms of life that are inconsistent with or at least not justified by our elevation of love as the supreme moral principle of value. [W]e must be willing, if we are to live morally in this life, to let others suffer for our principles. Appeals to love cannot . . . remove this aspect of our existence. . . . When love, forgiveness, and kindness become ends in themselves it simply indicates people who no longer believe in anything. Being unwilling to make others and ourselves suffer for our principles is but to admit that nothing in this life is worth ourselves or others making a sacrifice for. What becomes crucial once this is admitted is not that we suffer, but that we suffer for the truth. That is, that the principles we hold are not arbitrary, but are prerequisites for any attempt to live a morally worthy life.³⁵

Caring for clients means caring for them as moral persons, not merely as consumers of expert, even artistic services. It means seeing clients and the community as beneficiaries of the moral claims moral leaders in law firms make for their law firms. It seems to have meant in this case that hard work and brotherhood were not ways to realize the promise of such moral claims. When Colt, after Mr. Knox's death, sets out on the erroneous course which ruins his career, it is because he does not care enough for his client to want his client to do the right thing.³⁶

Because work is not an adequate ethic, and because love without truth is accursed love, an ethical consideration of the Knox-Colt relationship leads back to the fact that Mr. Knox was a spiritual force in the law firm, and to the claim he made that the law firm could be a morally positive force for the community. It leads to the task Knox undertook in his own youth, to rebuild the law firm in the old American lawyer tradi-

³⁴ The possibility that the moral life is not about art, or about love, so much as it is about truth and suffering, may be what Auchincloss means when he says that Colt "lowered the blind on other prospects."

³⁵ S. HAUERWAS, *VISION*, *supra* note 27, at 121-124. James Gustafson considers consequences such as these in comparison with New Testament teachings about love as the essence of Christian (and Jewish) moral life (*e.g.*, the letters of St. Peter). He suggests that love is not a norm but is rather what the faithful *do*. J. GUSTAFSON, *CHRIST AND THE MORAL LIFE* 214-225, 247 ff. (1968).

³⁶ The case involves the client's taking a trust distribution, with Colt's approval, which is unfair to other beneficiaries of the trust.

tion of service to clients and public responsibility. Work for its own sake, or work as art, or work as love, hid from Mr. Knox the possibility that "first rate" legal craftsmanship may only be a way to despise clients, and that "those clear high moments when the drudgery was over and the pieces fell suddenly together" may only be moments when a business enterprise, like a hungry monster, receives from lawyers its next and most obvious feeding, without regard to whether feeding is a good thing for a lawyer who tends the monster, for the people in the business enterprise, or for the community.³⁷

IV. Mr. Knox and Sheridan Dale

Sheridan Dale was Mr. Knox's surviving partner and his successor as controlling influence in the firm. Mr. Knox disliked Dale because Dale, after "long dark years of a poor Brooklyn childhood," did not accept the Knox view of what a lawyer should aspire to be. Part of Mr. Knox's dislike for Dale was social snobbery. Dale began in the firm as a clerk working his way through Fordham; "he could not expect to be a partner or to be on the same social level as the other clerks [who studied at Columbia or Harvard] or even be asked to the Christmas parties." But Dale captured Mr. Sheffield's interest, notably because Mr. Sheffield thought Dale would be effective at advising the wealthy on personal legal matters; "affluent ladies from east of Central Park, distrustful of anyone from their own world as for that very reason too soft, would eagerly embrace, in their business affairs, a champion from the great murky outside city." That prediction proved accurate; Dale was effective in the trusts and estates practice—so much so that he was able later to secure his social position and his partnership by marrying a wealthy client.

Another reason Mr. Knox disliked Dale was that he thought Dale was a hypocrite—"he wasn't, in the New Englander's complicated moral categories, quite straight." As it turned out Dale was in fact dishonest,

³⁷ I am not here criticizing an unbeliever; as my colleague Frederick L. Kirgis, Jr., pointed out, I must account for the fact that Henry Knox came to these inadequate ethical categories despite convictions and a tradition which Kirgis and I regard as adequate. I explain this, finally, as self-deception. I do not think Mr. Knox made an intellectual, theological mistake. I think he understood the theology of the matter—that, as Martin Luther said, "God appears in the world wearing masks." R. Baepler, *Religious Challenges to Legalism*, Newsletter, Law and Religion Section, Ass'n of American Law Schools, June 1908. God comes to us in other people (e.g., clients)—in the poor, the hungry, and the naked, and in arrogant, devious businessmen such as George Emlen. Mr. Knox's failure in this regard was not a failure of understanding or of concept. Mr. Knox had come *sincerely* to suppose that work for business organizations and for the law firm—the very enterprise of his practicing law—was activity of such a high order that the person of the client was incidental to it. I suspect that this deception is buttressed by the tendency of Christians and Jews to talk in terms of human *service*; perhaps the more accurate biblical category is *servanthood*. One can *serve* an institution or an abstraction, perhaps, but a servant is servant to somebody.

but Dale's ability to deceive others, and consciously to overlook the dishonesty of clients, only became clear after Mr. Knox's death. In any case, Mr. Knox saw Dale's incipient, self-conscious dishonesty as part of his upstart social status.

The most significant tension between the two partners was the product of political rivalry, a rivalry that antedated Mr. Knox's success in gaining control of the firm. The original disagreement over what the law firm should become, over which "phoenix might rise from the ashes of Hale and Sheffield," persisted into Colt's generation. Both Dale and Mr. Knox had realized when they were young partners that Mr. Sheffield would be an ineffective leader and that the firm was failing—"the desire to fight a case sliding into the desire to settle it . . . reverence for routine. The habit of overbilling for unique and imaginative services degenerating into the habit of overbilling." Mr. Knox, who won the argument, and whose control prevailed until his death, aimed for the excellence in craftsmanship which later captivated Colt, for the appearance of old-fashioned public leadership, and for the continuing influence of the *Social Register* in deciding whom to admit to partnership.³³ Dale's instinct was for efficiency rather than craftsmanship and for giving clients what they seemed to want—"a sudden rumble of words that were no less efficacious for being commonplace . . . solutions of some sort . . . and clients like solutions . . . to get things done crudely was better than not getting them done at all." Mr. Knox continued to succeed, as long as he lived, because his vision appealed to the older lawyers in the firm and has paternal care enlisted the younger lawyers. Mr. Knox overcame for a time what he saw as "a slick urban chicanery, hardened by the cynicism of Old World religions." Dale's strengths then were patience, discipline over his grudges, and, more than the simple triumph of time, the fact that the other partners in the firm were willing in the late 1940s to begin to think of their firm more as a business than as a collection of monks who gathered to pray to the god of work.

It is important to understand that the difference between Dale and Mr. Knox was not primarily a matter of honesty, although Mr. Knox's white, Anglo-Saxon, New England Puritan rectitude is more attractive than Dale's urban, faintly ethnic "greasiness" (Auchincloss's word). The more basic difference between them was in their alternative, inadequate ways of sustaining interest in the practice of law as a worthwhile

³³ This is familiar sociological territory with regard to large, business oriented law firms. J. CARLIN, *LAWYERS' ETHICS—A SURVEY OF THE NEW CITY BAR* (1966); E. SMIGEL, note 9 *supra*. It is familiar, too, in Louis Auchincloss' social world. J. Tuttleton, note 11 *supra*. One of the ironies of life in American communities is that group exclusion of this sort has co-existed with a social ethic, including a law-firm ethic, which emphasizes the community, which even says, as Thomas Jefferson did, that America is God's new Israel. See J. Baker, *Political Nativism: The Maryland Know-Nothings as a Case Study*, in A. LAND, L. CARR, & E. PAPERFUSE, *LAW, SOCIETY, AND POLITICS IN EARLY MARYLAND* 318-332 (1966).

thing to do. Mr. Knox's view was anachronistic; Dale's was venal; but, of the two, Dale's was less deluded, because it could have come more easily to the reality of serving clients—if only because Dale was willing to give clients what they wanted.³⁹

Mr. Sheffield understood the difference when he said that Mr. Knox was "not a man for clients" and that Dale was. Mr. Knox, who did not comprehend the difference, nonetheless celebrated it in the "ideal of the philosopher advocate," the formidable lawyer "who could be feared but not fooled." Dale was willing to have relationships with clients, where Mr. Knox, although he would sincerely have protested to the contrary, was not.⁴⁰ Mr. Knox preferred fraternal values; he sought the creation of a covenant among lawyers in his firm. In fact, but not in theory—not even in belief—he turned away from service to clients.⁴¹ He ended in the curious moral posture of assuming what his clients wanted, without really asking them what they wanted. He did not seek moral growth for them as he sought moral growth for his pupils; and he thus came to assume that what his clients wanted was the most narrow, most selfish advantage.⁴² Dale was more willing than Mr. Knox to tolerate a world in which

³⁹ This is not to argue, one way or the other, whether Dale's phoenix was better. The present category of ethical analysis is self deception. Dale may have been *morally* worse but he was in this sense *ethically* better because he was not as muddled as Mr. Knox was: "A man whose only support is his conscience can never understand that a bad conscience may be healthier and stronger than a conscience which is deceived." D. BONHOEFFER, *ETHICS* 5 (E. Bethge ed. 1955). This is also to claim that conscience is an intellectual function. On the one hand (Mr. Knox), "The man of duty will end by having to fulfil his obligation even to the devil," and "the vilest contempt for mankind goes about its sinister business with the holiest of protestations of devotion to the human cause." *Id.* at 11. On the other (Dale), "for one reason or another one is afraid to give a clear 'no' for an answer, and one ends by acquiescing in everything." *Id.* at 12.

⁴⁰ M. BUBER, *I AND THOU* 65 (W. Kaufmann trans. 1972) ("[T]he It-humanity that some imagine, postulate, and advertise has nothing in common with the bodily humanity to which a human being can truly say You. . . . [W]retched are those who instead of that address [others] with a concept or a slogan as if that were their name"). To some extent this is an occupational hazard of business-law practice; legal work for business tends to lead lawyers even deeper into the ethics of economic man than business leads business people. See I. Kristol, *Business Ethics and Economic Man*, *The Wall Street Journal*, Mar. 20, 1979. Here, again, I have to face the fact that Mr. Knox's settled theology should have led him to what Buber called "bodily humanity" with regard to his clients, but that it did not. See note 36 *supra*. "It is dangerous to press upon a man the duty of getting beyond earthly love when his real difficulty lies in getting so far." C.S. LEWIS, *THE FOUR LOVES* 165 (1960).

⁴¹ W. MAY, *NOTES ON THE ETHICS OF DOCTORS AND LAWYERS* (1977), plausibly argues that professionals forge covenants among themselves but live by codes with respect to their clients. See T. SHAFFER, *CHRISTIAN*, *supra* note 12, ch. 7.

⁴² W. Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics*, 1978 WIS. L. REV. 29, 56-57 ("[I]n practice, lawyers often do not even go through the motion of presenting critical questions to the client as occasions for choice. They decide the questions unilaterally in terms of the imputed ends of selfishness"). Blum, *Perspective on the Bar*, 53 CAL. ST. B. J. 98 (1978), suggests that this occurs because lawyers have too much faith in the law; Simon would say that the displaced faith is in what he calls "procedure," in

this was true, but he was less willing than Mr. Knox to suppose it without asking.

However, neither Mr. Knox's view nor Dale's provided a way to make the practice interesting and worthwhile. Mr. Knox's father and grandfather might have said that his view needed reform away from the idolatry of work and toward the ethics, say, of Jews and Christians—of, say, Jesus (or Martin Buber). Mr. Knox and his pupils had the moral energy, and he had the point of view to do the reforming; their problem was that they hid from themselves their need for a way to combine moral energy and point of view. They weren't thinking clearly.⁴³ Dale's "greasy," ethnic teachers at Fordham might have said that Dale's view needed a connection to the profession's heritage of public responsibility (corrupted though that had been by snobbery) or to a theory about people as more than paying customers, or to both. The alternatives to the conscious, reasoned, ethical establishment of these connections were self deception (Mr. Knox), or corruption (Dale), or a kind of schizophrenic existence in which a lawyer could learn—as Colt never learned—to try to leave his connected-up human spirit at home.

The example in the story of the third alternative is the amiable, effective senior associate, Austin Cochran—"small, sober, rather owlsh young man of predetermined good spirits who managed to retain his cynicism about clients despite his own constantly increasing investment of time and skill in the unraveling of their affairs. Austin and his wife . . . had a joint hobby of raising money for a settlement house when they were not raising children [and] seemed peculiarly adjusted to every vicissitude of modern life." The difference between Cochran and Mr. Knox was that Cochran made no moral claims at all for his life as a lawyer.

V. Mr. Knox and Ann Colt

Auchincloss's account of the relationship between Ann Colt and Mr. Knox is a picture of lawyers' wives in the 1950s—"law office widows," in

what a moral theologian might call "secondary principles," in what is often called professional objectivity. It comes down finally to a preference for *technique*. See M. SCHUDSON, *DISCOVERING THE NEWS: A SOCIAL HISTORY OF AMERICAN NEWSPAPERS* (1978); and M. Schudson, note 17 *supra*.

⁴³ The theory here is that there is at least an analytical difference between asking "What is going on?" (and, in theological ethics, "What is God doing in the world?") and deciding what is the right thing to do—and that the prior question, which is a matter of awareness, is the special concern of ethics as distinguished from morals. J. Gustafson, *Introduction*, in H.R. NIEBUHR, *THE RESPONSIBLE SELF* (1963). Kierkegaard's insistence that seeing clearly and moral choice are separate operations is important to the theory, to Fingarette's account of self deception, and to my explanation of Henry Knox. H. FINGARETTE, *supra* note 1, at 105-110. Finally, though, the separation is an analytical device only; our description of a "situation" is the product of the moral notions we bring to describing it. S. HAUSERWAS, *VISION and CHARACTER*, note 12 *supra*; J. MCCLENDON, note 12 *supra*.

the cocktail-party phrase. Auchincloss turned to such a wife when he wanted to find out the truth. Because Ann Colt was a person who wanted to know the truth, who wanted to be able to hear it, Ann often went for advice to *Mrs. Knox*, as if the two women could describe to one another the truth behind the rituals of their husbands' lives. On one such occasion, Ann asked, "When Mr. Knox left the firm to raise money for the divinity school, did you object?"

"Heavens, no . . . ! But that was a great project I wouldn't have objected if he'd left permanently for *that*."

"But," Ann said, "how can you tell what is and what's not a great project?" She wanted to know just then whether it was possible that moral integrity should keep Timothy from apologizing to his offended client, George Emlen. "Of course, you can read integrity into anything," *Mrs. Knox* said. On the facts of the Colt-Emlen tiff, *Mrs. Knox* seemed to be right; but the deeper question they were talking about—how Mr. Knox was able to continue as spiritual guide to an enterprise which he in some way knew was not "a great project"—lingered for Ann.

On other occasions, Ann uncovered more about Mr. Knox's side of the disagreement with Dale over the direction of the law firm than any of the lawyers uncovered. Mr. Knox told Ann he was not an admirer of lawyers, then retreated into banter about his father, the headmaster, who thought all lawyers were immoral. Ann pulled him back. "You don't believe a word of it . . . ! You know you believe the law is a great profession . . . ! You've created a world that believes it. . . . Could you have done that if you hadn't believed it yourself?" Knox was driven, then, to wonder whether the myth he used in rebuilding the law firm—"the tradition of old Mr. Sheffield"—was fabricated. If it was a fabricated myth, he was responsible for it; he had created both the myth and a world which believed the myth.

"Imagine, Ann . . . a large unwieldy firm with a reputation based on long deceased partners, mighty men. Imagine Sheffield, a lone survivor from that age of titans, yet not himself a true titan. But with all the bearings of one . . . smooth, silky white hair streaked with yellow. The long, lean, unwrinkled cheeks. The thin, flawlessly garbed frame. Imagine, too, a younger man, called to take over the firm, bewildered, passionately in need of a unifying symbol. Wasn't he made to order?" The truth, he said, was that Mr. Sheffield had been a minor figure in the old law firm; his fame rested on his longevity; Mr. Knox used the impression of an aging titan who had never been a titan in the same way he used the callow devotion and demonic energy Timothy Colt brought to him. "My work had largely been done for me." The statement applies as well to Mr. Sheffield as it does to Timothy Colt.

Ann pressed Mr. Knox: "The reason you wanted the legend . . . wasn't for the firm. It was for yourself." And Mr. Knox admitted, to her and to himself, that she was right; but he was shocked at himself: "I've never even told my wife." And then he retreated again into the account

he gave of himself to himself, into the "policy" of not being "explicitly conscious" of the truth that his moral theology was failing, and even that he had become an apologist for lawyers like Dale and an exploiter of lawyers like Colt:⁴⁴ "When you're my age, and I'm dead . . . I want you to remember that I, too, was a product as well as a cause. Of the whole bloody system."

Mr. Knox's self deception would have disappeared if he had looked at it for more than a moment.⁴⁵ Ann was the moral contrast; her character shows what an "explicitly conscious" Knox (or Colt) might have been like. That is what the story of their relationship tells about Mr. Knox and about legal ethics. Ann wanted to see what was going on—to see it, actively—and she had the ethical skill, the habitual training to be able to say what was going on—or, more importantly, to be able to think about it. She had become an anchor in her husband's life largely because she was willing to be conscious of what was going on. "The particular charm of Ann was that from the beginning she took him for what he was. . . . She was *good*, he felt, whatever the word meant, remarkably, even pathetically good." True, she was willing to take for granted a world in which "men liked their work, women their homes and . . . getting ahead was fun," but when it came to her notice that there might be corrosion in her world, she was willing to see the corrosion, to know it and to think about it. And Mr. Knox was not. She was willing to spell out her own role and, consequently, the roles of others in her life. She was healthy where her husband was self destructive. She was advertent where Austin Cochran was indifferent. (That is, she was not content to put her life into two parcels labelled "personal" and "impersonal.") And, especially, she had courage; in that courage is the moral contrast between her and Mr. Knox and the reason she was able to provoke him into his startling instant of recognition. "What the self-deceiver specifically lacks is not concern or integrity but some combination of courage and a way of seeing how to approach his dilemma without disaster to himself."⁴⁶ Ann had the skill; Mr. Knox did not.

VI. The Nobility of Deception

The historical facts about Henry Knox are that he had applied to be the conscience and the prophet (in an Old Testament sense) of Sheffield,

⁴⁴ Such a moment of stumbling is the only way for an outsider to know whether Mr. Knox was a self deceiver or a hypocrite. Fingarette instances Moliere's *Le Misanthrope* as a mysterious case and the climactic scene in O'Neill's *The Iceman Cometh* as an illustration of this stumbling, incoherent, quickly withdrawn look at the truth. H. FINGARETTE, *supra* note 1, at 54-65.

⁴⁵ *Id.* at 37-38, 42, 45, 64, 121. The concept is central to Fingarette's account of self deception as a phenomenon in which a person sincerely believes his lies to himself. It is possible for a person, especially a noble person, to be conscious of a fact but not *explicitly* conscious of it.

⁴⁶ *Id.* at 143.

Knox, Stevens & Dale; that his fabricated "tradition of old Mr. Sheffield" was a more effective thing for the organization—and a nobler thing, too—than the urbane politics of Sheridan Dale; and that he had accepted the moral consequences of his political success. He seriously sought a law firm in which clients were cared for and the community improved. The ethical fact is that his moral leadership became self deception; he came to act as if work is goodness, and as if public responsibility can be served by an aristocracy which excuses lawyers who do for an impersonal business enterprise only what its economic interest seems at the moment to demand. Although he took his moral leadership seriously, his law firm became functionally hypocritical and destructive. This point becomes a point about the ethics of law firms if the two facts—the noble myth and the self deception—go together.⁴⁷

Self deception is the moral disease of noble persons, of heroes, and especially of lawyer-heroes. Timothy Colt was not self deceived because he was not sound enough to be self deceived; he had retained his infantile "capacity to pursue specific engagements independently, as autonomous projects without integration into the complex unity of [his] personal self."⁴⁸ It would not have occurred to him that he was a person who defined himself by what he refused to accept. Sheridan Dale was not self deceived because he was not noble. "The person who cares deeply is . . . the one most tempted to disavow an engagement [that is, to deceive himself about it] because of the burdens he not only foresees, but of his own free will would accept should he avow the engagement."⁴⁹ Ann Colt (and, perhaps, Mrs. Knox) was not self deceived, because she worked actively to retain her ethical health; this is not necessarily to say, as Timothy Colt did, that she was *good*. It is only to say that she kept her ethical tools clean and sharp. "The distinction is that between the person's acknowledging his engagements *as* his, and his accepting responsibility for those engagements."⁵⁰ Ann was healthy in this respect, even though she may have later made evil choices.

Mr. Knox, who said, "I, too, was a product . . . of the . . . system," was not as well ethically as he thought; he chose badly because he did not let himself see enough to choose well. "The self deceiver is one whose life-situation is such that, on the basis of his tacit assesment of his situation, he finds there is an overriding [say, noble] reason for adopting a policy of not spelling-out some engagement of his in the world. As with any reasonably well developed skill, so in this case, too, the action suits

⁴⁷ S. Hauerwas and D. Burrell, note 24 *supra*, is a relevant application of Fingarette's theory to the life of Albert Speer—the "story" he told himself about being an architect, rather than Hitler's lackey—and the beginnings of an application of Fingarette's theory to social (and therefore to professional) ethics.

⁴⁸ H. FINGARETTE, *supra* note 1, at 87-88.

⁴⁹ *Id.* at 148.

⁵⁰ *Id.* at 104; note 30 *supra*.

the tacit assessment: he does not, thereafter, spell-out the matter in question; and, by virtue of this policy, he is further obliged not to spell-out the assessment or the policy."⁵¹ But Mr. Knox was not a liar, as, perhaps, Dale was; except in a sudden moment with Ann, "he does not, cannot express the matter explicitly at all. . . . He tells us nothing but what he tells himself.

"He does not stop at refusing to spell-out what is so. He is forced to fabricate stories in order to keep his explicit account of things and the way things really are in some kind of harmony such as will make his account of things plausible. However, he does not spell-out that he is doing this . . . the fabrications he tells us he also tells himself."⁵²

This tends to happen to the noble person who claims noble aspirations. The issue of ethics in law firms, and the relation between a law firm's ethics and its heroes, becomes clearer when the spiritual guide is plausible as a hero and a promulgator (or a creator) of heroic myths. It does not come up in the case, say, of Goebbels, or of an anonymous public-relations officer, but in the case of someone who obviously has character. Harper Lee's small-town southern lawyer, Atticus Finch, is an example;⁵³ he was a hero and he deceived himself. The myth he honored (not, in his case, fabricated) was the myth of the gentleman-ruler, a myth which led him to confront evil (racism, as Mr. Knox's myth led him to love Timohy Colt and to try to save Colt from destroying himself), but it was also a myth which led him to excuse the evil of patronage (as Mr. Knox excused the evil of venality). The difference, which may make Atticus Finch a more consistent hero than Mr. Knox, is probably culture; lawyer Finch was sustained by his culture more than lawyer Knox was by his.⁵⁴

One reason Mr. Knox succeeded in his fabricated myth and in deceiving himself about work and about public responsibility was that he was glib. His talks with Colt were only apparently candid in their identification of "the real world out there," a world he, more than most people, could have influenced; at least he had more power than he thought he had. His banter with Ann about the immorality of lawyers was like talk we heard from politicians during the Viet Nam War ("Oh, well all war is immoral"). But, both in his paternalism and in his mock cynicism, Mr.

⁵¹ H. FINGARETTE, *supra* note 1, at 62.

⁵² *Id.*

⁵³ T. Shaffer, *Finch*, note 14 *supra*.

⁵⁴ Auchincloss's nostalgia for "old New York"—the New York of, say, Edith Wharton, whom he admires, explains part of this; it is a culture which is hardly there any longer, and, to the extent it is there, lacks the capacity to sustain. J. Tuttleton, note 11 *supra*. Finch's culture was more potent and sustaining. C. BROOKS, *THE HIDDEN GOD* (1963); T. Shaffer, *Finch*, note 14 *supra*. There is a clear theoretical and empirical connection between moral action and sustaining community. D. SHRIVER & K. OSTROM, *IS THERE HOPE FOR THE CITY?* (1977); W. C. Roof, *Traditional Religion in Contemporary Society: A Theory of Local-Cosmopolitan Plausibility*, 41 AM. SOC. REV. 195 (1976).

Knox was (and lawyers are) articulate. "In the inner world man uses cleverness in a ruinous way, in order to keep himself from coming to a decision. In countless ways cleverness can be so misused . . . to seek to evade."⁵⁵ There was, in Mr. Knox's conversation, "a certain artificiality, a certain glib irrelevance. . . . The observer sees [such] conversation as 'shallow'—but in a way sincere, not pure pretence."⁵⁶ This was convincing talk, this cleverness; it deceived *all* of the lawyers in the story—even Dale, who felt under moral judgment because of it—and especially Mr. Knox himself. Those who were not deceived were the crude, intrusive client, George Emlen, and the "pathetically good" housewife, Ann Colt.

In an analogous way American lawyers took on the deception of the adversary ethic when the American moral consensus disintegrated after 1866. The Bar came to idealize adversariness as noble—which, sometimes, as the heart of the advocate's moral commission, it obviously is. But the noble advocate's moral commission is open to the peculiar deception that the government (courts) can provide goodness.⁵⁷ That deception runs so deep in the American adversary ethic that the moral excuses of advocacy are invoked where the government (courts) is not even involved. The example in this story is business planning in the law practice of Henry Knox, who in his mock-cynical guise said to Ann Colt: "Your client wants to do something grasping and selfish. But quite within the law. As a lawyer you're not his conscience, are you? You advise him that he can do it. So he does it and tells his victim: 'My lawyer made me!' You're satisfied and so is he." Not only did Mr. Knox exploit this inapplicable dispensation from responsibility; he and his powerful colleagues at the American Bar saw to it that the adversary ethic was made a matter of professional regulation. The ethics of the adversary in this way became the ethics of the legal counselor—as a matter both of morals and of professional regulation.⁵⁸ In the sanctuary of the law firm, where no courts intruded, Mr. Knox then began to train his pupils to regard hard work and brotherhood as trial lawyers regard evidence and argument. Adversariness and work in firms became ends in themselves; one did not need to ask what was going on.⁵⁹

⁵⁵ H. FINGARETTE, *supra* note 1, at 105-106 (quoting Kierkegaard).

⁵⁶ *Id.* at 98.

⁵⁷ T. SHAFFER, CHRISTIAN, *supra* note 12, ch. 13.

⁵⁸ See note 8 *supra*. The charge that the resultant professional regulation is elitist is due in part to the fact that the Henry Knoxes of the profession drafted it. P. Schuchman, *Ethics and Legal Ethics: The Propriety of the Canons as a Group Moral Code*, 37 GEO. WASH. L. REV. 244 (1968).

⁵⁹ Adversariness is the need to have an enemy, a need which is, theoretically and empirically, inconsistent with counseling. H. R. NIEBUHR, RADICAL MONOTHEISM AND WESTERN CULTURE 24-37 (1960). See also K. BARTH, THE WORD OF GOD AND THE WORD OF MAN 19 (D. Horton trans. 1978) ("[W]ere it really possible for the state to make men out of wild animals, would the state find it necessary by a thousand arts to make wild animals out of men?"). It thus became necessary, in the organic group of the law firm if not in the profession, to have

Such ethics are muddled; they are to be criticized on familiar lawyers' ground—as failures in clear thinking. They lead lawyers to positions of moral isolation from their clients; they hide from young lawyers the ambiguities of law practice and lead old lawyers to cynicism. They lead business lawyers to focus on abstract enterprises rather than on people in enterprises, not because the demands of the abstract enterprise are more pressing, or even because service to the abstract enterprise is more profitable, but because their moral point of departure—adversariness and hard work—is inhuman. In the face of such inhumanity, Henry Knox claimed a nostalgic tradition of stewardship and public responsibility but he did not revive the point of view which had sustained stewardship and public responsibility among his personal and professional ancestors. He did not revive the morals of servanthood, which is a reason for serving clients as well as a way to serve them, nor did he revive a reason for moral leadership in the community. This is ironic in his case (as compared, say, with Dale's) because Mr. Knox had a reason. He *held* a reason; he was convinced of it. He didn't need to leave the law firm and repair to his father's study at Milford Academy so much as he needed to find a way to bring his father's study to Wall Street.

Henry Knox's phoenix which rose from the ashes of the old firm was a better phoenix than Dale's but that, again, goes to show how self-deception got involved in the law firm's theology. Dale's policy would probably not have been self-deceptive but it would likely have repelled young lawyers such as Colt and Cochran. Self deception is the disease of the noble organization as much as it is the disease of the noble person. Mr. Knox's phoenix, which attracted impressionable, well-intentioned young lawyers, was an earnest acceptance of the task of moral leadership. Dale's phoenix was only a matter of administration, of management. Mr. Knox's phoenix was also, more than Dale's, like the myths of the profession in the "golden age of American lawyers" before 1850.⁶⁰ It rested on the attractions of industrious personal advancement (an idea which had always been appealing to Americans), daring adventure, a "republican" sense of public responsibility, and the hope that one would be brave when danger came. What Mr. Knox's claim for his law firm lacked was the deeper point of view which in fact sustained lawyers in the golden age, a way of looking at power in the world. Mr. Knox's clerical forebears understood that power in the world is always contingent and usually pretentious and they therefore sought to serve a power which was dependable and genuine. This view accounted for Milford Academy, for Yankee Puritan missionaries, and for Mr. Knox's sabbatical on behalf of the divinity school. The ethical failure which is evident in Mr. Knox's

an analogue; I am suggesting that the analogue was comprehended by the metaphors of art and love—"first class legal service" and law-firm fraternalism.

⁶⁰ Note 2 *supra*.

personal self deception and in the fabricated myth he dispensed to his pupils is not that he had lost his point of view, but that his point of view was separated from his professional life.⁶¹

⁶¹ I am grateful for research assistance from my son Brian Shaffer, and for critical assistance from Herbert Fingarette, Stanley Hauerwas, Frederic L. Kirgis, Jr., Craig Eldon Pinkus, Robert E. Rodes, Jr., Nancy Shaffer, Larry D. Soderquist, Samuel Stumpf, Jr., and Joseph P. Tomain. The research and writing of this and other projects of mine on legal ethics were sustained, in 1979-1980, by a generous grant from the Lilly Endowment.

