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A LESSON FROM TROLLOPE FOR COUNSELORS AT LAW

THOMAS L. SHAFFER*

This article is about the process by which a person makes up his mind. In literature, the making up of a character's mind is a stage on which an author lets you know about his people and about his time.¹ An example is Huckleberry Finn deciding whether to report Jim, his companion and a runaway slave. I propose to consider another example of a literary character making up his mind—the story of Septimus Harding and the sinecure, in *The Warden*,² a quaint Victorian ecclesiastical tale by Anthony Trollope.

Lawyers spend hours helping their clients make up their minds. The process of aiding clients with decision-making is the deepest process in which lawyers are involved. I think it is the lawyer's most difficult task. My theory is that a Victorian novelist can teach lawyers something about making up one's mind, and something about being of help to those who have minds to be made up. That lesson would be a lesson in legal counseling.³ My object here is to present Septimus Harding and his creator as teachers of lawyers.

The theme of *The Warden*, Trollope's first successful novel, and the first novel in his Barchester series, was ecclesiastical politics in the Church of England in the nineteenth century. But Trollope was always more interested in his people than he was in his themes. The best aspect of the novel is the Warden himself, Reverend Septimus Harding, precentor of Barchester Cathedral and warden of Hiram's Hospital, a home for elderly, poor men. I am interested in one aspect of the story: the way in which Septimus sought and obtained advice on a personal problem which was moral and legal and which could not have been one without being the other. I am interested in this story for what can be learned from it by a counselor, and

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¹ The study of the process by which a good person makes up his mind is one of the most interesting challenges in literature. See generally C. SNOW, *THE MASTERS* (U.S. ed. 1960); C. SNOW, *THE AFFAIR* (U.S. ed. 1960). *THE MASTERS* and *THE AFFAIR* are compared in Shaffer, *Snow's Justice*, 4 CAL. WEST. L. REV. 76 (1968).

² *The Warden*, Anthony Trollope's fourth novel, was one of the few of his forty-seven novels which was not serialized in a monthly magazine. For that reason, *The Warden* is atypically short, containing about 200 pages in a modern format. *The Warden* is available in several editions, at least one of which (Modern Library, 1950) combines it with the next novel in the ecclesiastical series, *Barchester Towers* (1857). References to *The Warden* herein are to chapters rather than pages since the 1855 edition is unavailable to most readers.

³ "Counseling" is an ambiguous term. It can mean the broad professional activity in which a lawyer talks to his clients or the narrower activity in which the lawyer attempts to help the client make up his mind. As used here, the term has the latter meaning. See T. SHAFFER, *LEGAL INTERVIEWING AND COUNSELING*, 144-233 (1976) [hereinafter cited as T. SHAFFER]. See generally D. BINDER & S. PRICE, *LEGAL INTERVIEWING AND COUNSELING* 147-55 (1977); A. WATSON, *THE LAWYER IN THE INTERVIEWING AND COUNSELING PROCESS*, ch. 5 (1976) [hereinafter cited as A. WATSON].

especially by a legal counselor.

The dramatic tension of the story is in Septimus' conscience, which parallels a social struggle going on in the Anglican Church in 1855 and which also is depicted in a lawsuit over the Hiram Hospital endowment. The social struggle had a narrow as well as a general focus. Its narrow focus was ecclesiastical misappropriation of money settled on the poor. Its general focus was a movement to reform the established church.⁴

Hiram's Hospital was endowed in 1434. The endowment supported twelve men with food, lodging, and a small cash allowance. The remaining income was for the warden's personal use. The income increased over the centuries, and was compounded. By Harding's time, the position of warden was lucrative. The position and the income were given to Septimus, no doubt, because his elder daughter had married the Bishop's son.

Septimus' son-in-law, Archdeacon Grantly, saw himself as a guardian of the prerogatives of the church. The Bishop agreed with his son, the Archdeacon, probably out of habit. Septimus agreed too, at first, but as he thought about it and faced his conscience, he decided that the prerogatives of the church were indefensible as to Hiram's Hospital, or at least as to himself as warden. While Septimus struggled, a lawsuit filed by a local physician, John Bold, and defended by the Attorney General, went to issue and was settled. Meanwhile, the social struggle grew toward major reform, and clergymen such as Harding were portrayed as rapacious in magazines, novels and London newspapers, by Charles Dickens and Thomas Carlyle among others.⁵

My concern is with the three counselors from whom Septimus Harding sought guidance. Early in the story he visited his old friend the Bishop. Later he visited his lawyer, Sir Abraham Haphazard, the Attorney General.⁶ Finally, Septimus visited his son-in-law, Archdeacon Grantly. The

⁴ A discussion of the movement to reform the Anglican Church is contained in Mizener, *The Church of England*, reprinted in A. TROLLOPE, *THE LAST CHRONICLE OF BARSET* 683-89, app. B (Riverside ed. 1964). Professor Mizener believes that Trollope was skeptical about proposals for church reform, although he was aware of the need for reform. Moreover, Mizener considers *The Warden* as perhaps the best expression of Trollope's complex feelings. See *id.* at 686.

⁵ See C. SNOW, *TROLLOPE* 76 (1975) [hereinafter cited as C. SNOW]. In *The Warden*, Dr. Anticant represents Carlyle and Mr. Sentiment represents Dickens. See *THE WARDEN* at chs. 14 & 15.

⁶ The name of the Attorney General, Sir Abraham Haphazard, is an example of an attempt at humor by Trollope which annoys modern readers. Snow says Trollope was funny:

. . . when he wasn't trying. When he really was trying, he could be dreadfully facetious. He never seems to have known how unfunny he could be. His attempts at jocular attacks on Carlyle . . . and Dickens . . . make one squirm to this day. As also does his life-long habit of giving facetious surnames to minor characters—Dr. Fillgrave, Sir Omicron Pie—whom he then portrays with complete psychological realism. This trick of nomenclature seems to have given simple delight to other nineteenth-century novelists. Dickens did a lot, presumably decided it wasn't that entrancing, controlled himself and then again succumbed. Dostoevsky sometimes did it. But Trollope, the most scrupulously realistic of them all, was the worst offender.

C. SNOW, *supra* note 5, at 76.

first of these counselors was mainly friendly, the second mainly acquisitive, and the third mainly paternal.

I. THE FRIENDLY BISHOP

(Trollope speaking)⁷

Was John Hiram's will fairly carried out? That was the true question: and if not, was it not his [Steptimus'] especial duty to see that this was done,—his especial duty, whatever injury it might do to his order—however ill such duty might be received by his patron and his friends? At the idea of his friends, his mind turned unhappily to his son-in-law. He knew well how strongly he would be supported by Dr. Grantly, if he could bring himself to put his case into the archdeacon's hands and to allow him to fight the battle; but he knew also that he would find no sympathy there for his doubts, no friendly feeling, no inward comfort. Dr. Grantly would be ready enough to take up his cudgel against all comers on behalf of the church militant, but he would do so on the distasteful ground of the church's infallibility. Such a contest would give no comfort to Mr. Harding's doubts. He was not so anxious to prove himself right, as to be so.

I have said before that Dr. Grantly was the working man of the diocese, and that his father the bishop was somewhat inclined to an idle life. So it was; but the bishop, though he had never been an active man, was one whose qualities had rendered him dear to all who knew him. He was the very opposite to his son; he was a bland and a kind old man, opposed by every feeling to authoritative demonstrations and episcopal ostentation. It was perhaps well for him, in his situation, that his son had early in life been able to do that which he could not well do when he was younger, and which he could not have done at all now that he was over seventy. The bishop knew how to entertain the clergy of his diocese, to talk easy small-talk with the rectors' wives, and put curates at their ease; but it required the strong hand of the archdeacon to deal with such as were refractory either in their doctrines or their lives.

The bishop and Mr. Harding loved each other warmly. They had grown old together and had together spent many, many years in clerical pursuits and clerical conversation. When one of them was a bishop and the other only a minor canon they were even then much together; but since their children had married, and Mr. Harding had become warden and precentor, they were all in all to each other. I will not say that they managed the diocese between them, but they spent much time in discussing the man who did, and in forming little plans to mitigate his wrath against church delinquents, and soften his aspirations for church dominion.

Mr. Harding determined to open his mind, and confess his doubts to his old friend; and to him he went on the morning after John Bold's un-courteous visit.

⁷ THE WARDEN at ch. 3.

Up to this period no rumour of these cruel proceedings against the hospital had reached the bishop's ears. He had doubtless heard that men existed who questioned his right to present to a sincecure of 800 shillings a year, as he had heard from time to time of some special immorality or disgraceful disturbance in the usually decent and quiet city of Barchester; but all he did, and all he was called on to do, on such occasions, was to shake his head, and to beg his son, the great dictator, to see that no harm happened to the church.

It was a long story that Mr. Harding had to tell before he made the bishop comprehend his own view of the case; but we need not follow him through the tale. At first the bishop counselled but one step, recommended but one remedy, had but one medicine in his whole pharamacopoeia strong enough to touch so grave a disorder—he prescribed the archdeacon. 'Refer him to the archdeacon,' he repeated, as Mr. Harding spoke to Bold and his visit. 'The archdeacon will set you quite right about that,' he kindly said, when his friend spoke with hesitation of the justness of his cause. 'No man has got up all that so well as the archdeacon;' but the dose, though large, failed to quiet the patient; indeed it almost produced nausea.

'But, bishop,' said he, 'did you ever read John Hiram's will?'

The bishop thought probably he had, thirty-five years ago, when first instituted to his see, but could not state positively; however, he very well knew that he had the absolute right to present to the wardenship, and that the income of the warden had been regularly settled.

'But, bishop, the question is, who has the power to settle it? If, as this young man says, the will provides that the proceeds of the property are to be divided into shares, who has the power to alter these provisions?' The bishop had an indistinct idea that they altered themselves by the lapse of years; that a kind of ecclesiastical statute of limitation barred the rights of the twelve bedesmen to any increase of income arising from the increased value of property. He said something about tradition; more of the many learned men who by their practice had confirmed the present arrangement; then went at some length into the propriety of maintaining the due difference in rank and income between a beneficed clergyman and certain poor old men who were dependent on charity; and concluded his argument by another reference to the archdeacon.

The precentor sat thoughtfully gazing at the fire, and listening to the good-natured reasoning of his friend. What the bishop said had a sort of comfort in it, but it was not a sustaining comfort. It made Mr. Harding feel that many others—indeed, all others of his own order—would think him right; but it failed to prove to him that he truly was so.

'Bishop,' said he, at last, after both had sat silent for a while, 'I should deceive you and myself too, if I did not tell you that I am very unhappy about this. Suppose that I cannot bring myself to agree with Dr. Grantly!—that I find, after inquiry, that the young man is right, and that I am wrong—what then?'

The two old men were sitting near each other—so near that the bishop was able to lay his hand upon the other's knee, and he did so with a gentle

pressure. Mr. Harding well knew what that pressure meant. The bishop had no further argument to adduce; he could not fight for the cause as his son would do; he could not prove all the precentor's doubts to be groundless; but he could sympathise with his friend, and he did so; and Mr. Harding felt that he had received that for which he came.

* * *

The first thing that seems interesting about this interview is that the client did not know what he wanted. Septimus said he came for advice, but what he wanted was "comfort for his doubts." The second interesting thing is that the client sought familiarity more than skill from his counselor. The third is that, in engaging Septimus' moral and legal difficulty, the Bishop's success was not related to his use of principles.

Comfort. Septimus had not talked about the case with the Archdeacon.⁸ He knew that if he had talked to the Archdeacon, he could have expected defense, advocacy, vigor, energy, and lots of backbone. He had decided not to talk to the Archdeacon because he could not expect comfort for his doubts from the Archdeacon, and it was comfort for his doubts that he needed.

Even so, Septimus asked the Bishop for advice, and got it in detail, in terms of applicable principles, the importance of stability and tradition, and many vain attempts to delegate the case to the advocate, the Archdeacon. This use of principle and delegation is familiar territory to those who study legal counselors. One of the earliest and best known of the cases on legal counseling, called by Professor Harrop Freeman "The Rabbi and the Horsewhip Lawyer," is such a case.⁹ The lawyer there, like the Bishop of Barchester, invoked principles and referred his client to other experts. In both cases the counselor's tactics of persuasion failed. The difference is that the Bishop changed tactics and ended up giving his client what the client came for; the lawyer did not change tactics and the case ended in disaster for everyone concerned.

Clients who come to counselors often have difficult choices to make. They often are predisposed against their own material or emotional benefit. Cases in lawyers' offices often cannot be resolved well and at the same time come out for the best. Sometimes there is no happy solution for the client. Divorces are usually cases without happy solutions and wills often are. Litigation usually comes out less well than the lawyer at first hopes.

Sometimes there is a solution for the client that will provide comfort, security and even wealth, and sometimes the client is trying to find his way to denial of these benefits. Septimus' case was of the latter sort and, in that respect, resembled the practice of law in law offices. Both of these species of difficult counseling cases are predisposed to tragic choice. The

⁸ See *THE WARDEN* at ch. 5 ("Dr. Grantly Visits the Hospital").

⁹ See H. FREEMAN, *LEGAL INTERVIEWING AND COUNSELING* 80-88 (1963) [hereinafter cited as H. FREEMAN].

tragic choice is, as Professor Stanley Hauerwas puts it,¹⁰ the triumph of *meaning over power*; it is a case of conscience. Lawyers have many such cases, and often, I think, provide poor service in them. In any event, counseling designed to help the client who is not interested so much in proving himself right as in being right is difficult for one who is trained to be an advocate, and ally, and defender—trained, in other words, to be what the Archdeacon was to Septimus Harding, and, therefore, unable to provide comfort for his client's doubts.¹¹ The following is an example of how counselors, in cases of tragic choice, can make matters worse for the client.

The theme for the 1978 American Bar Association's client-counseling competition involved men and women living together without benefit of matrimony. In the case used in the final round, a young woman was pregnant and was determined, as our abortion-era argot has it, "to keep her baby." The young man who lived with her came to see a lawyer about what he should do. He began his interview by indicating (perhaps no more than hinting) that he wanted to be fair to his companion and to accept his responsibilities toward the child. None of the student teams—not one—seemed to hear that murmur of conscience in their client. None perceived the tragic choice, the possibility of the triumph of meaning over power. The judges of the final round, all distinguished lawyers, hardly mentioned the point. Instead, the young man's "lawyers," the best that American law schools produced last year to be counselors at law, *and their judges*, talked about this client's influencing his companion toward abortion, about litigating the issue of paternity (which the client did not raise), and about minimizing his financial responsibilities to his companion and his child. It seemed to me as if conscience had no place in a law office, not even when the client put it there. These lawyers had, as the Archdeacon had, a "strong hand . . . to deal with such as were refractory," but they gave this man no comfort in his doubts.¹²

Familiarity. Joseph Simons and Jeanne Reidy have suggested that a client who seeks counseling chooses his counselor because of an interpersonal attraction between them:¹³

Counseling has a human beginning. Someone has been attracted

¹⁰ See S. HAUERWAS, *TRUTHFULNESS AND TRAGEDY* ch. 14 (1977) [hereinafter cited as S. HAUERWAS], *review forthcoming* at 23 *AM. J. JURIS.* (1978).

¹¹ Professor Louis M. Brown invented the case of Carl Tonio as a problem for contracts students. I have found it to be a good case of tragic choice. T. SHAFFER, *supra* note 3, at 208-33; see L. BROWN & E. DAUER, *PLANNING BY LAWYERS* ch. 3 (1978).

¹² The final round of the 1978 A.B.A.'s client-counseling competition was held in New York City on April 1, 1978. I am a member of the committee which administers the national competition. To some extent, my disappointment on this score was shared by other members of the committee, although I do not speak for them. Since my school's team did not survive to the final round, I have no axe to grind other than, possibly, to vindicate some findings and opinions about legal education advanced in T. SHAFFER & R. REDMOUNT, *LAWYERS, LAW STUDENTS, AND PEOPLE* (1977) [hereinafter cited as SHAFFER & REDMOUNT].

¹³ J. SIMONS & J. REIDY, *THE HUMAN ART OF COUNSELING* (1971) [hereinafter cited as J. SIMONS & J. REIDY].

to you as a person. He has sensed in you the possibility of understanding and assistance. He has a strong hope that you will not repulse him if he approaches you for help. He has discovered your humanity and has already felt related to you. And so, sometimes long before he asks your help, you and the client have begun the relationship whose development is central to counseling.¹⁴

This is what had happened between Septimus and the Bishop. They were already old and good friends. Septimus sought to use their relationship for advice. The key ingredient in this counseling relationship was familiarity rather than skill, knowledge, or authority, as it is to all of us when we turn to our friends for advice.

This sort of counseling raises two issues familiar to lawyers. First, can a friend be a counselor? And, second, can a counselor be a friend? Obviously, a friend can be a counselor. In fact, counseling by friends is the most common of all types of counseling. One who studies counseling has to narrow the issue for analysis. Since we cannot restrict our law practices to clients who are also friends, the analytical issue is what can a professional counselor learn from his own, and others', counseling of friends. One lesson is the advantage of familiarity, illustrated by a level of communication which was so *settled*, between Septimus and the Bishop, that the most eloquent thing the Bishop did was *not* to talk. The Bishop laid his hand on Septimus' knee "and Mr. Harding felt that he had received that for which he came." Sometimes the best rule for a counselor is: Don't just do something; stand there.¹⁵

Another lesson is the advantage of what Carl Rogers calls "unconditional positive regard"—a feeling in the client that the counselor will not reject him, regardless of what the client decides.¹⁶ It is probably essential to counseling in hard-choice cases that the client not feel judged, but rather that he feel free to make his choices and free to be an adult. We spend much of our lives before and after we leave our parents' houses being told that we are either bad or stupid. Many of our choices turn out

¹⁴ *Id.* at 17.

¹⁵ A number of legal counseling situations turn on familiarity. The old-fashioned institution of the family lawyer is one example.

There is no form of belief stronger than that which the ordinary English gentlemen has in the discretion and honesty of his own family lawyer. What his lawyer tells him to do, he does. What his lawyer tells him to sign, he signs. He buys and sells in obedience to the same direction, and feels perfectly comfortable in the possession of a guide who is responsible and all but divine.

A. TROLLOPE, *THE EUSTACE DIAMONDS* 129 (1873) (Penguin ed. 1969) [hereinafter cited as *THE EUSTACE DIAMONDS*]. "In-house" corporate counsel is another example. See J. DONNELL, *THE CORPORATE COUNSEL* (1970), reviewed at 46 *IND. L. J.* 562 (1971). Probate counseling may be a third example. See C. PARKES, *BEREAVEMENT* (1972); T. SHAFER, *THE PLANNING AND DRAFTING OF WILLS AND TRUSTS* ch. 2 (2d ed. 1978); M. SUSSMAN, J. CATES, & D. SMITH, *THE FAMILY AND INHERITANCE* (1970), reviewed at 18 *U.C.L.A. L. REV.* 844 (1971).

¹⁶ C. ROGERS, *CLIENT-CENTERED THERAPY* 355-58 (1951) [hereinafter cited as *C. ROGERS-THERAPY*]; C. ROGERS, *ON BECOMING A PERSON* 358 (1961) [hereinafter cited as *C. ROGERS-PERSON*].

badly, and give us evidence, if we need it, that what we are told is true. We really are bad or stupid or both, and therefore helpless.¹⁷ Thus if clients feel that they are being judged by their counselors, they cannot make choices at all—they can only do what they are told. Friends are able to provide that freedom, and counselors can learn about this benefit from their experience and observation of friends as counselors.

A third lesson is the advantage of *congruence* in the counselor. Congruence, another Rogerian term,¹⁸ means that the counselor is aware of his own feelings and, therefore, is free to perceive and consider his reaction to what the client is talking about. In psychoanalytical terms, the counselor is on guard against “projecting” his own feelings on to his client. The Bishop seemed congruent. He seemed to have sorted out the differences between his relatively calm attitude about church prerogative and the Archdeacon’s militancy, his love for his old friend and his authority over him, and his concern for both Septimus’ security and Septimus’ conscience. The value of congruence is central in psychological counseling. Psychiatrists undergo extensive analysis in order to begin to achieve it. Pastors seek counselors or confessors of their own in order, among other reasons, to keep their moral problems separate from their clients’ moral problems. Legal counselors have no traditional or settled method for achieving congruence; perhaps they should.¹⁹

The other question raised by counselors who are friends is whether it is possible for a counselor to be a friend. It seems to me that it is not, *in principle*, possible for a counselor to be a friend:²⁰

The aspects of counseling which turn on . . . professionalism and interpersonal contact suggest that more than friendship is involved. The “more than” factor might be expressed as a commitment in the counselor to give priority to the best interests of his client.

Simons and Reidy suggest another approach:²¹

”Counselor” seems one role, “friend” another. How can you effectively be both? Will not “friend” ruin “counselor”? Perhaps the most helpful way to meet this fear is to question the seemingly great difference between friend and counselor. Perhaps if a counselor is not a friend, he is not a counselor. Perhaps the best way of counseling is to be friends with the client and to respond to him then spontaneously, as friend to friend. But the fears of such an approach are indeed large.

¹⁷ See E. PORTER, AN INTRODUCTION TO THERAPEUTIC COUNSELING ch. 3 (1950).

¹⁸ See C. ROGERS-THERAPY, *supra* note 6, at 513-15.

¹⁹ T. SHAFFER, *supra* note 3, at 326-30; A. WATSON, *supra* note 3 (Dr. Watson discusses this point under “counter transference,” throughout his book).

²⁰ T. SHAFFER, *supra* note 3, at 8.

²¹ J. SIMONS & J. REIDY, *supra* note 13, at 92.

It may be sufficient for reflection on Septimus and the Bishop to notice that friends can be counselors, and often are and that counselors can learn from observing how friends counsel one another.

Principles. The Bishop urged principles and reasoned corollaries on Septimus; these had "a sort of comfort," but the comfort did not last. Septimus *concluded* from "the good-natured reasoning of his friend" that he could be assured of the approval of his order, the clergy, if he followed the Bishop's corollaries. Septimus *felt*, however, that the decision indicated by the Bishop's corollaries would be wrong. Logic and reason were not helpful to him.

We lawyers have known for a long time that legal reasoning is not really reasoning but rationalization.²² We have been clever, in this respect, about appellate judges. We have learned that policy in courts, legislatures, and administrative agencies is the product of insight, conscience, passion, history, and economics. The scene with the Bishop and Septimus illustrates, and Professor Hauerwas' scholarship explores, that reasoning in hard moral choices is similar.²³ One's moral life is more the product of the sort of person he is, and aspires to be, than of logic in a crises. We use logic to explain our moral choices, more than we use logic to make moral choices, just as logic is used to explain legal choices rather than to make legal choices.²⁴ A friend, because he knows who I am, has insight into my moral choices and to some extent is able to predict as well as understand my moral choices. This knowledge and insight can be an asset in his being my counselor. Friendship was an asset in the Bishop's being Septimus' counselor, too, but only because, and only so long as, the Bishop was willing to allow Septimus freedom in making his choice.²⁵

* * *

To continue with the story:

Septimus leaves the Bishop and unburdens himself to his adult, unmarried daughter Eleanor. Septimus, and the ill-gotten revenues from Hiram's Hospital, are Eleanor's only support. Septimus' concern for Eleanor's welfare is the largest part of what makes his choice tragic. Eleanor is sympathetic, of course, since women were submissive in Trollope's nineteenth century England. But Eleanor complicates the plot by

²² See Dewey, *Logical Method and Law*, 10 CORNELL L. Q. 17 (1924); D. Reisman, *Some Observations on Law and Psychology*, 19 U. CHI. L. REV. 30 (1951).

²³ See S. HAUERWAS, *supra* note 10. See also S. HAUERWAS, *VISION AND VIRTUE: ESSAYS IN CHRISTIAN ETHICAL REFLECTION* (1974); S. HAUERWAS, *CHARACTER AND THE CHRISTIAN LIFE: A STUDY IN THEOLOGICAL ETHICS* (1975).

²⁴ Address by T. Shaffer, *Moral Moments in Law School*, in IV SOCIAL RESPONSIBILITY: JOURNALISM, LAW, MEDICINE (L. Hodges ed. 1978).

²⁵ H. FREEMAN, "The Rabbi and the Horsewhip Lawyer," *supra* note 9, is a classic example of denied freedom in a counseling case involving moral choice. One often notices, in the early stages of moral heroism, a situation in which the hero seeks moral advice and is fatuously lectured to—as the Archdeacon lectures Septimus. See G. ZAHN, *IN SOLITARY WITNESS: THE LIFE AND DEATH OF FRANZ JAGGERSTATTER* (1965); Hauerwas & Shaffer, *Thomas More's Hopeful Life*, 54 NOTRE DAME LAW. (1978) (forthcoming).

disclosing that she is in love with and pledged to John Bold, the physician who is persecuting Septimus. Septimus has no difficulty blessing the engagement. In fact, the circumstance gives Trollope a chance to illustrate the magnanimity of the Warden, despite the lawsuit. The lawsuit is complicated, however, by the fact that the plaintiff has become timid because he loves the defendant's daughter, and the defendant has become timid because he decides the plaintiff is right.²⁶

What happens is that both plaintiff and defendant give up. Bold eventually orders his attorneys to drop the case,²⁷ and Septimus, who does not know what Bold has done, decides that he will probably resign as warden, as soon as he seeks his lawyer's advice.²⁸ Two factors are involved in Septimus' choice. The first factor is the formal, written opinion of Sir Abraham Haphazard, the Attorney General and Septimus' lawyer, on the merits of Bold's case. Sir Abraham has written that the Bold suit will fail because of what lawyers call a defect in parties. He suggests that Septimus is not the appropriate defendant, since he merely receives the revenues destined for charity; he does not have the power to dispose of them. Bold should have sued the Bishop.²⁹ The Archdeacon is delighted with this legal ammunition, but is nervous about the confidentiality of the written opinion, since, if Bold and his lawyers find out about it, they will cure the defect and save their lawsuit. Septimus is disgusted by it.

The other factor is publicity. The London press, citing the Warden's case as one of many, is full of lamentation over the abuses of the church. A respected essayist (Trollope was thinking of Carlyle) publishes a piece on the low estate of philanthropy; a novelist (Trollope was thinking of Dickens) writes a novel about Hiram's Hospital.³⁰ Septimus cannot endure the public ridicule. Both of these factors bear on Septimus' decision to resign; both push his decision in the same direction as conscience is pushing it.³¹ He goes to London, to his formidable lawyer,³² inclined to resolve the problem by resigning.

²⁶ THE WARDEN at chs. 11 & 12.

²⁷ *Id.* at chs. 14-15.

²⁸ *Id.* at ch. 13.

²⁹ *Id.* at chs. 8 & 9.

³⁰ *Id.* at chs. 14 & 15; see notes 5 & 6 *supra*.

³¹ Septimus' decision involves an inextricable tangle of factors—his conscience over the moral issue Bold raises, his aversion to publicity, his horror at public ridicule, and his own habitual docility—docility which causes him, at the end of chapter 9, to decide to follow the advice of the Archdeacon and the Bishop "to do as those would have him, who he still believed were most fit and most able to counsel him aright." THE WARDEN at ch. 9. From a literary point of view, "his natural suspiciousness and scepticism made him doubt whether even honest men made their choices as they liked to think they did." C. SNOW, *supra* note 5, at 111. Snow refers to this as "situation ethics," but I think Trollope's insight was more psychological than ethical. In any case, the phenomenon Trollope deals with in Septimus' moral choice is not what one means when one refers to Professor Joseph Fletcher's theories about ethical choice. SEE S. HAUERWAS, *supra* note 10, at ch. 11.

³² Trollope has fun with Sir Abraham, as he demonstrates that Sir Abraham was prestigious and formidable:

II. THE ACQUISITIVE BARRISTER

(Trollope speaking³³)

Mr. Harding was shown into a comfortable inner sitting room, looking more like a gentleman's book-room than a lawyer's chambers, and there waited for Sir Abraham. Nor was he kept waiting long; in ten or fifteen minutes he heard a clatter of voices speaking quickly in the passage, and then the attorney-general entered.

'Very sorry to keep you waiting, Mr. Warden,' said Sir Abraham, shaking hands with him; 'and sorry, too, to name so disagreeable an hour; but your notice was short, and as you said to-day, I named the very earliest hour that was not disposed of.'

Mr. Harding assured him that he was aware that it was he that should apologise.

Sir Abraham was a tall thin man, with hair prematurely grey, but bearing no other sign of age; he had a slight stoop, in his neck rather than his back, acquired by his constant habit of leaning forward as he addressed his various audiences. He might be fifty years old, and would have looked young for his age, had not constant work hardened his features, and given him the appearance of a machine with a mind. His face was full of intellect, but devoid of natural expression. You would say he was a man to *use*, and then have done with; a man to be sought for on great emergencies, but ill adapted for ordinary services; a man whom you would ask to defend your property, but to whom you would be sorry to confide your love. He was bright as a diamond, and as cutting, and also as unimpressionable. He knew every one whom to know was an honour, but he was without a friend; he wanted none, however, and knew not the meaning of the word in other than its parliamentary sense. A friend! Had he not always been sufficient to himself, and now, at fifty, was it likely that he should trust another? He was married, indeed, and had children, but what time had he for the soft idleness of conjugal felicity? His working days or term times were occupied from his time of rising to the late hour at which he went to rest, and even his vacations were more full of labour than the busiest

Sir Abraham Haphazard was deeply engaged in preparing a bill for the mortification of papists, to be called the 'Covent Custody Bill,' the purport of which was to enable any Protestant clergyman over fifty years of age to search any nun whom he suspected of being in possession of treasonable papers or jesuitical symbols; and as there were to be a hundred and thirty-seven clauses in the bill, each clause containing a separate thorn for the side of the papist, and as it was known the bill would be fought inch by inch, by fifty maddened Irishmen, the due construction and adequate dovetailing of it did consume much of Sir Abraham's time. The bill had all its desired effect. Of course it never passed into law; but it so completely divided the ranks of the Irish members, who had bound themselves together to force on the ministry a bill for compelling all men to drink Irish whiskey, and all women to wear Irish poplins, that for the remainder of the session the Great Poplin and Whiskey League was utterly harmless.

THE WARDEN at ch. 7.

³³ *Id.* at ch. 17.

days of other men. He never quarrelled with his wife, but he never talked to her—he never had time to *talk*, he was so taken up with *speaking*. She, poor lady, was not unhappy; she had all that money could give her, she would probably live to be a peeress, and she really thought Sir Abraham the best of husbands.

Sir Abraham was a man of wit, and sparkled among the brightest at the dinner-tables of political grandees; indeed, he always sparkled; whether in society, in the House of Commons, or the courts of law, coruscations flew from him; glittering sparkles, as from hot steel, but no heat; no cold heart was ever cheered by warmth from him, no unhappy soul ever dropped a portion of its burden at his door.

With him *success* alone was praiseworthy, and he knew none so successful as himself. No one had thrust him forward; no powerful friends had pushed him along on his road to power. No; he was attorney-general, and would, in all human probability, be lord chancellor by sheer dint of his own industry and his own talent. Who else in all the world rose so high with so little help? A premier, indeed! Who had ever been premier without mighty friends? An archbishop! Yes, the son or grandson of a great noble, or else, probably his tutor. But he, Sir Abraham, had had no mighty lord at his back; his father had been a country apothecary, his mother a farmer's daughter. Why should he respect any but himself? And so he glitters alone through the world, the brightest among the bright; and when his glitter is done, and he is gathered to his fathers, no eye will be dim with a tear, no heart will mourn for its lost friend.

'And so, Mr. Warden,' said Sir Abraham, 'all our trouble about this lawsuit is at an end.'

Mr. Harding said he hoped so, but he didn't at all understand what Sir Abraham meant. Sir Abraham, with all his sharpness, could not have looked into his heart and read his intentions.

'All over. You need trouble yourself no further about it; of course they must pay the costs, and the absolute expense to you and Dr. Grantly will be trifling;—that is, compared with what it might have been if it had been continued.'

'I fear I don't quite understand you, Sir Abraham.'

'Don't you know that their attorneys have noticed us that they have withdrawn the suit?'

Mr. Harding explained to the lawyer that he knew nothing of this, although he had heard in a round-about way that such an intention had been talked of; and he also at length succeeded in making Sir Abraham understand that even this did not satisfy him. The attorney-general stood up, put his hands into his breeches' pockets, and raised his eye-brows, as Mr. Harding proceeded to detail the grievance from which he now wished to rid himself.

'I know I have no right to trouble you personally with this matter, but as it is of most vital importance to me, as all my happiness is concerned in it, I thought I might venture to seek your advice.'

Sir Abraham bowed, and declared his clients were entitled to the best

advice he could give them; particularly a client so respectable in every way as the Warden of Barchester Hospital.

'A spoken word, Sir Abraham, is often of more value than volumes of written advice. The truth is, I am ill-satisfied with this matter as it stands at present. I do see—I cannot help seeing, that the affairs of the hospital are not arranged according to the will of the founder.'

'None of such institutions are, Mr. Harding, nor can they be; the altered circumstances in which we live do not admit of it.'

'Quite true—that is quite true; but I can't see that those altered circumstances give me a right to eight hundred a year. I don't know whether I ever read John Hiram's will, but were I to read it now I could not understand it. What I want you, Sir Abraham, to tell me, is this—am I, as warden, legally and distinctly entitled to the proceeds of the property, after the due maintenance of the twelve bedesmen?'

Sir Abraham declared that he couldn't exactly say in so many words that Mr. Harding was legally entitled, to, &c., &c., &c., and ended in expressing a strong opinion that it would be madness to raise any further question on the matter, as the suit was to be—nay, was, abandoned.

Mr. Harding, seated in his chair, began to play a slow tune on an imaginary violoncello.

'Nay, my dear sir,' continued the attorney-general, 'there is no further ground for any question; I don't see that you have the power of raising it.'

'I can resign,' said Mr. Harding, slowly playing away with his right hand, as though the bow were beneath the chair in which he was sitting.

'What! Throw it up altogether?' said the attorney-general gazing with utter astonishment at his client.

'Did you see those articles in the *Jupiter*?' said Mr. Harding, piteously, appealing to the sympathy of the lawyer.

Sir Abraham said he had seen them. This poor little clergyman, cowed into such an act of extreme weakness by a newspaper article, was to Sir Abraham so contemptible an object, that he hardly knew how to talk to him as to a rational being.

'Hadn't you better wait,' said he 'till Dr. Grantly is in town with you? Wouldn't it be better to postpone any serious step till you can consult him?'

Mr. Harding declared vehemently that he could not wait, and Sir Abraham began seriously to doubt his sanity.

'Of course,' said the latter, 'if you have private means sufficient for your wants, and if this . . .'

'I haven't a sixpence, Sir Abraham,' said the warden.

'God bless me! Why, Mr. Harding, how do you mean to live?'

Mr. Harding proceeded to explain to the man of law that he meant to keep his precentorship,—that was eighty pounds a year; and, also, that he meant to fall back upon his own little living of Crabtree, which was another eighty pounds. That, to be sure, the duties of the two were hardly compatible; but perhaps he might effect an exchange. And then, recollecting that the attorney-general would hardly care to hear how the service of a cathe-

dral church is divided among the minor canons, stopped short in his explanations.

Sir Abraham listened in pitying wonder. 'I really think, Mr. Harding, you had better wait for the archdeacon. This is a most serious step: one for which, in my opinion, there is not the slightest necessity; and, as you have done me the honour of asking my advice, I must implore you to do nothing without the approval of your friends. A man is never the best judge of his own position.'

'A man is the best judge of what he feels himself. I'd sooner beg my bread till my death, than read such another article as those two that have appeared, and feel, as I do, that the writer has truth on his side.'

'Have you not a daughter, Mr. Harding,—an unmarried daughter?'

'I have,' said he, now standing also, but still playing away on his fiddle with his hand behind his back. 'I have, Sir Abraham; and she and I are completely agreed on this subject.'

'Pray excuse me, Mr. Harding, if what I say seems impertinent; but surely it is you that should be prudent on her behalf. She is young, and does not know the meaning of living on an income of a hundred and fifty pounds a year. On her account give up this idea. Believe me, it is sheer Quixotism.'

The warden walked away to the window, and then back to his chair; and then, irresolute what to say, took another turn to the window. The attorney-general was really extremely patient, but he was beginning to think that the interview had been long enough.

'But if this income be not justly mine, what if she and I have both to beg?' said the warden at last, sharply, and in a voice so different from that he had hitherto used, that Sir Abraham was startled. 'If so, it would be better to beg.'

'My dear sir, nobody now questions its justness.'

'Yes, Sir Abraham, one does question it—the most important of all witnesses against me—I question it myself. My God knows whether or not I love my daughter; but I would sooner that she and I should both beg, than that she should live in comfort on money which is truly the property of the poor. It may seem strange to you, Sir Abraham, it is strange to myself, that I should have been ten years in that happy home, and not have thought of these things, till they were so roughly dinned into my ears. I cannot boast of my conscience, when it required the violence of a public newspaper to awaken it; but, now that it is awake, I must obey it. When I came here I did not know that the suit was withdrawn by Mr. Bold, and my object was to beg you to abandon my defence. As there is no action, there can be no defence. But it is, at any rate, as well that you should know that from tomorrow I shall cease to be the warden of the hospital. My friends and I differ on this subject, Sir Abraham, and that adds much to my sorrow. But it cannot be helped.' And, as he finished what he had to say, he played up such a tune as never before had graced the chambers of any attorney-general. He was standing up, gallantly fronting Sir Abraham, and his right arm passed with bold and rapid sweeps before him, as though he were

embracing some huge instrument, which allowed him to stand thus erect; and with the fingers of his left hand he stopped, with preternatural velocity, a multitude of strings, which ranged from the top of his collar to the bottom of the lappet of his coat. Sir Abraham listened and looked in wonder. As he had never before seen Mr. Harding, the meaning of these wild gesticulations was lost upon him; but he perceived that the gentleman who had a few minutes since been so subdued as to be unable to speak without hesitation, was now impassioned,—nay, almost violent.

‘You’ll sleep on this Mr. Harding, and to-morrow . . .’

‘I have done more than sleep upon it,’ said the warden; ‘I have laid awake upon it, and that night after night. I found I could not sleep upon it. Now I hope to do so.’

The attorney-general had no answer to make to this; so he expressed a quiet hope that whatever settlement was finally made would be satisfactory; and Mr. Harding withdrew, thanking the great man for his kind attention.

* * *

Sir Abraham is a poor counselor; he is a caricature in contrast to the friendly empathy of the Bishop. But *The Warden* is no pot-boiler; it is a serious novel, one in which even the creation of a stereotype serves serious purposes. There are three ways to learn from the stereotype of Sir Abraham. First, one can ask how Sir Abraham’s type of lawyer comes about. Second, one can speculate on the price a lawyer pays for the success Sir Abraham enjoyed. And, third, one can ask what an alternative counseling style might be like.

The acquisitive type. There is a remarkable resemblance between the lawyer Trollope describes in this chapter and the “acquisitive” legal counselor described in Dr. Robert Redmount’s study of (modern) attorney personalities:³⁴

It is practically “legal instinct” to address most matters in terms of some kind of possession or benefit, and to aspire to some advantage in and over situations. In the principal aspects of a legal practice, the attorney struggles to advance or preserve property rights, to multiply or sustain economic benefits, or to facilitate economic and political power . . . [I]t may be said that the attorney “comes naturally” by these dispositions. His personal history may be full of a need for possession of various kinds. He may demand sustenance, jealously guard material possessions, seek to dominate, resist efforts to subjugate him, curry status, and the like. These are some of the characteristics of an individual’s growth process. . . . The attorney’s coping attitudes, such as they are,

³⁴ Redmount, *Attorney Personalities and Some Psychological Aspects of Legal Consultation*, 109 U. PA. L. REV. 972, 975 (1961) [hereinafter cited as Redmount]. See also SHAFFER & REDMOUNT, *supra* note 12.

tend also to be reinforced by his professional context, and it is perhaps no mere circumstance that the particular individual is united with the profession of law.

Law attracts and sustains people like Sir Abraham, and legal education gives them the skills for Sir Abraham's kind of law practice. The ambiguity of calling him "acquisitive," as compared with the description of the Bishop as "friendly," and the Archdeacon's as "paternal," is no accident. There is a connection between Sir Abraham's seeking wealth and advancement for himself and his seeking the same benefits for his clients. My purpose is not to condemn a prevalent disposition in lawyers as much as it is to notice it, and to notice as well that it is useful to bring this acquisitive disposition into the legal counselor's awareness—so he can choose how acquisitive to be. As Dr. Redmount puts it:³⁵

The attorney, as it thus appears, ought not be a mere catalyst for his client's views, opinions, preferences. Consciously or unconsciously, he asserts through his personality social and legal policy that is at least in some part a reflection of his own values and dispositions. If he is sufficiently conscious of the major trends and influences operating within him, his choice is at least by direction. He may be able to choose the degree to which he will bear personal influence on a given situation. If he lacks consciousness of the biases in his personality and does not detect their operation, he introduces unnecessary rigidity in dealing with his client's problems. What appears as rational disposition of a matter may be but camouflage for fixed attitudes that offer no alternatives to clients and limit the range of possibility in achieving desirable solutions to clients' problems.

The Sir Abrahams of the profession should undertake this self-examination in the interest of their own happiness. Since life is limited, an attorney should not be "a machine with a mind . . . full of intellect but devoid of natural expression . . . a man to use and then have done with."³⁶

The price. Sir Abraham pays for his success. To compare him, again, with the Bishop of Barchester, Trollope surmises that Sir Abraham will be

³⁵ Redmount, *supra* note 34, at 985.

³⁶ Goodfield, *Do Lawyers Have Problems Being People?*, THE BARRISTER 13 (Winter 1978). John D. MacDonald wrote a mystery novel, *The Last One Left*, in which this loss of personal identity by a lawyer is the principal psychological plot. See T. SHAFER, *supra* note 3, at 194-96. C.P. Snow provides a scene similar to that between Sir Abraham and Septimus, in an entirely modern setting. See C. SNOW, THE MALCONTENTS 206-14 (1972). Of course, clients often find this sort of lawyer convenient. See note 15 *supra*. In DOCTOR THORNE (Everyman ed. 1957), Trollope poked fun at the resultant lawyer image. Augusta Gresham writes to ask advice from her friend Amelia DeCourcy, on whether she should marry Mortimer Gazebee, who is Augusta's father's attorney. (Amelia counseled against the marriage, then later herself married Mr. Gazebee.) In writing for advice, Augusta says "if he were not an attorney, he is, I think the sort of man I should like. He is very nice in every way, and if you were not told, I don't think you'd know he was an attorney." *Id.* at 401.

gathered to his fathers without a single mourner; but, when the Bishop dies, in the next volume of the series, *Barchester Towers*, Trollope evokes a touching scene that is, in the opinion of some students of Trollope, the most powerful in his work.³⁷ Sir Abraham has surrendered care and regard from others. The Bishop, almost to a fault, has garnered care and affection. Sir Abraham can help his clients in nothing but affairs of property; he has surrendered any feelings: "No cold heart was ever cheered . . . no unhappy soul ever dropped . . . a burden at his door." Most of all, Sir Abraham has destroyed a moral dimension in himself; he has accepted a way to behave—a *story*, if you like—which is inadequate. He has deceived himself into supposing that "trudging on time to a tidy fortune," as Auden put it, is a sufficient goal for a human being. He has deluded himself and, one supposes, many of his clients, into believing that corruption in such things as charitable trusts is inevitable and that the highest moral guidance one can aspire to is what powerful people think.

Philosophically, Sir Abraham believes that power is the way to truth, and maybe even to goodness. It is a small task to modify Trollope's paragraphs on Sir Abraham into Francis Bacon's defense for taking bribes from litigants in his court.³⁸ (Bacon became lord chancellor, by diligence similar to Sir Abraham's, and Trollope is convinced that Sir Abraham, too, will end up on the woolsack.) It is not difficult to compare the self-deception of Sir Abraham with the attitude Albert Speer tricked himself into, as he became Hitler's architect, contributed to the Holocaust, and laid the ground work for bitterness and self-reproach in his old age.³⁹ The price Sir Abraham is paying has social and moral dimensions. His attitude is the spawning pond⁴⁰ for public depredations of lawyers.

An alternative counseling style. Sir Abraham's goals with his client are selfish and personal, even though he may think of them as unselfish and professional. He acts as he does because of his own needs, and he seeks for his client the same limited, inadequate, acquisitive success that he seeks for himself. Because Sir Abraham's goals are personal and selfish, he is unable to extend to his client the freedom necessary for genuine choice in the client's moral and legal dilemma. He will not be of any help to Septimus, and he could do Septimus great harm. Such legal counselors typically

³⁷ C. SNOW, *supra* note 5, at 80-81.

³⁸ See C. BOWEN, FRANCIS BACON: THE TEMPER OF A MAN (1963), reviewed at 73 YALE L.J. 537 (1964).

³⁹ S. HAUERWAS, *supra* note 10, at ch. 5 (with David Burrell). In ORLEY FARM (Knopf ed. 1950), Trollope's Augustus Staveley says:

A man, as I take it, must through life allow himself to be governed by the united wisdom of others around him. He cannot take upon himself to judge as to every step by his own lights. If he does, he will be dead before he has made up his mind as to the preliminaries.

Id. at 169. I have attempted to develop a theme about the social consequences of taking such advice, in *Justice in Everyday Life*, 22 RES GESTAE 394 (1978).

⁴⁰ It is interesting that the self-deception here is legal as well as moral. Note how Sir Abraham has to stonewall when Septimus asks him for legal advice on whether he is entitled to the income from the trust. THE WARDEN at ch. 17.

expect the client to be docile: "in such a situation there is characteristically little room for any extended communication between attorney and client about perceptions and strategy. The client, unless his attitude is exceptionally strong, stands aside."⁴¹ If the client does not stand aside, his alternatives are the classic psychological defenses—fight or flight.⁴² If he fights, the client faces formidable odds; he is in his adversary's arena, at the mercy of his adversary's sophistication and argot, aware of his adversary's skill and success. The only way he can fight is to insist on the area he alone knows, and that is the area of his own self.⁴³ Septimus chose to fight, he stood his ground, and insisted on following his conscience. In transactional-analysis terms, he crossed the communication between parent (Sir Abraham) and child (Septimus); he refused to be docile. He demanded that the communication become adult-to-adult and, when he did, Sir Abraham spoke a few words of conventional civility and showed Septimus the door. The alternative would have been flight—Septimus making for the door without saying his piece, or his passive endurance of what Sir Abraham had to say, followed by Septimus' exit and Sir Abraham's wondering what had happened.

Trollope says that Sir Abraham was unable to look into Septimus' heart. Had Sir Abraham been a different sort of counselor, he might have been able to see into his client's heart. The interview with the Bishop may illustrate what that would have been like. The skills involved are those generalized as listening and empathy. One can learn to listen; it is a skill, as well as a character trait. One also can learn something about listening with empathy. In fact, there is experimental evidence which suggests that insight, seeing into another's heart as Trollope put it, requires empathy.⁴⁴ Carl Rogers describes empathy:⁴⁵

If I say that I "accept" you, but know nothing of you, this is a shallow acceptance indeed, and you realize that it may change if I actually come to know you. But if I understand you empathically, see you and what you are feeling and doing from your point of view, enter your private world and see it as it appears to you—and still accept you—then this is safety indeed. In this climate you can

⁴¹ Redmount, *supra* note 34, at 984.

⁴² See A. WATSON, *supra* note 3, at 56 & 150.

⁴³ See J. DAVIS, *THE INTERVIEW AS ARENA* (1971); T. SHAFFER, *supra* note 3, at 31-34.

⁴⁴ See Dymond, *A Preliminary Investigation of the Relation of Insight and Empathy*, 12 J. OF CONSULT. PSYCH. 228 (1948).

⁴⁵ C. ROGERS-PERSON, *supra* note 16, at 358. Trollope's women give insight into this counselor quality. For instance, in *The Eustace Diamonds*, *supra* note 15, Trollope describes Lucy Morris:

Of listeners she was the very best, for she would always be saying a word to two, just to help you—the best word that could be spoken, and then again she would be hanging on your lips. There are listeners who show by their mode of listening that they listen as a duty—not because they are interested. Lucy Morris was not such a one. She would take up your subject, whatever it was, and make it her own.

Id. at 62-63.

permit your real self to emerge, and to express itself in varied and novel formings as it relates to the world.

Sir Abraham was not likely to engage in empathy; he would have said that he dare not even allow his own self to emerge.

* * *

Immediately after his visit, to Sir Abraham, Septimus returns to his lodgings in an old hotel for clergymen in London. He finds that the Archdeacon and his wife (Septimus' daughter) have followed him to London:

III. THE PATERNAL ARCHDEACON

(Trollope Speaking⁴)

'Dr. Grantly is here, sir,' greeted his ears before the door was well open, 'and Mrs. Grantly. They have a sitting-room above, and are waiting up for you.'

There was something in the tone of the man's voice which seemed to indicate that even he looked upon the warden as a runaway school-boy, just recaptured by his guardian, and that he pitied the culprit, though he could not but be horrified at the crime.

The warden endeavoured to appear unconcerned, as he said, 'Oh, indeed! I'll go upstairs at once;' but he failed signally. There was, perhaps, a ray of comfort in the presence of his married daughter; that is to say, of comparative comfort, seeing that his son-in-law was there: but how much would he have preferred that they should both have been safe at Plumstead Episcopi! However, upstairs he went, the waiter slowly preceding him; and on the door being opened the archdeacon was discovered standing in the middle of the room, erect, indeed, as usual, but oh! how sorrowful! and on the dingy sofa behind him reclined his patient wife.

'Papa, I thought you were never coming back,' said the lady 'it's twelve o'clock.'

'Yes, my dear,' said the warden, 'The attorney-general named ten for my meeting. To be sure ten is late, but what could I do, you know? Great men will have their own way.'

And he gave his daughter a kiss, and shook hands with the doctor, and again tried to look unconcerned.

'And you have absolutely been with the attorney-general?' asked the archdeacon.

Mr. Harding signified that he had.

'Good heavens, how unfortunate!' And the archdeacon raised his huge hands in the manner in which his friends are so accustomed to see him express disapprobation and astonishment. 'What will Sir Abraham think of it? Did you not know that it is not customary for clients to go direct to their counsel?'

⁴ THE WARDEN at ch. 18.

'Isn't it?' asked the warden, innocently. 'Well, at any rate I've done it now. Sir Abraham didn't seem to think it so very strange.'

The archdeacon gave a sigh that would have moved a man-of-war.

'But, papa, what did you say to Sir Abraham?' asked the lady.

'I asked him, my dear, to explain John Hiram's will to me. He couldn't explain it in the only way which would have satisfied me, and so I resigned the wardenship.'

'Resigned it!' said the archdeacon, in a solemn voice, sad and low, but yet sufficiently audible, a sort of whisper that Macready would have envied, and the galleries have applauded with a couple of rounds. 'Resigned it! Good heavens!' And the dignitary of the church sank back horrified into the horse-hair armchair.

'At least I told Sir Abraham that I would resign; and of course I must now do so.'

'Not at all,' said the archdeacon, catching a ray of hope. 'Nothing that you say in such a way to your own counsel can be in any way binding on you; of course you were there to ask his advice. I'm sure Sir Abraham did not advise any such step.'

Mr. Harding could not say that he had.

'I am sure he disadvised you from it,' continued the reverend cross-examiner.

Mr. Harding could not deny this.

'I'm sure Sir Abraham must have advised you to consult your friends.'

To this proposition also Mr. Harding was obliged to assent.

'Then your threat of resignation amounts to nothing, and we are just where we were before.'

Mr. Harding was not standing on the rug, moving uneasily from one foot to the other. He made no distinct answer to the archdeacon's last proposition, for his mind was chiefly engaged on thinking how he could escape to bed. That his resignation was a thing finally fixed on, a fact all but completed, was not in his mind a matter of any doubt; he knew his own weakness; he knew how prone he was to be led; but he was not weak enough to give away now, to go back from the position to which his conscience had driven him, after having purposely come to London to declare his determination: he did not in the least doubt his resolution, but he greatly doubted his power of defending it against his son-in-law.

'You must be very tired, Susan,' and he: 'wouldn't you like to go to bed?'

But Susan didn't want to go till her husband went—she had an idea that her papa might be bullied if she were away: she wasn't tired at all, or at least she said so.

The archdeacon was pacing the room, expressing, by certain noddles of his head, his opinion of the utter fatuity of his father-in-law.

'Why,' at last he said,—and angels might have blushed at the rebuke expressed in his tone and emphasis,—'Why did you go off from Barchester so suddenly? Why did you take such a step without giving us notice, after what had passed at the palace?'

The warden hung his head, and made no reply: he could not condescend to say that he had not intended to give his son-in-law the slip; and as he had not the courage to avow it, he said nothing.

'Papa has been too much for you,' said the lady.

The archdeacon took another turn, and again ejaculated, 'Good heavens!' this time in a very low whisper, but still audible.

'I think I'll go to bed,' said the warden, taking up a side candle.

'At any rate, you'll promise me to take no further step without consultation,' said the archdeacon. Mr. Harding made no answer, but slowly proceeded to light his candle. 'Of course,' continued the other, 'such a declaration as that you made to Sir Abraham means nothing. Come, warden, promise me this. The whole affair, you see, is already settled, and that with very little trouble or expense. Bold has been compelled to abandon his action, and all you have to do is to remain quiet at the hospital.' Mr. Harding still made no reply but looked meekly into his son-in-law's face. The archdeacon thought he knew his father-in-law, but he was mistaken; he thought that he had already talked over a vacillating man to resign his promise. 'Come' said he 'promise Susan to give up this idea of resigning the wardenship.'

The warden looked at his daughter, thinking probably at the moment that if Eleanor were contented with him, he need not so much regard his other child, and said, 'I am sure Susan will not ask me to break my word, or to do what I know to be wrong.'

'Papa,' said she, 'it would be madness in you to throw up your preferment. What are you to live on?'

'God, that feeds the young ravens, will take care of me also,' said Mr. Harding, with a smile, as though afraid of giving offence by making his reference to scripture too solemn.

'Pish!' said the archdeacon, turning away rapidly: 'if the ravens persisted in refusing the food prepared for them, they wouldn't be fed.' A clergyman generally dislikes to be met in argument by any scriptural quotation; he feels as affronted as a doctor does, when recommended by an old woman to take some favourite dose, or as a lawyer when an unprofessional man attempts to put him down by a quibble.

'I shall have the living of Crabtree,' modestly suggested the warden.

'Eighty pounds a year!' sneered the archdeacon.

'And the precentorship,' said the father-in-law.

'It goes with the wardenship,' said the son-in-law. Mr. Harding was prepared to argue this point, and began to do so, but Dr. Grantly stopped him. 'My dear warden,' said he, 'this is all nonsense. Eighty pounds or a hundred and sixty makes very little difference. You can't live on it,—you can't ruin Eleanor's prospects for ever. In point of fact, you can't resign; the bishop wouldn't accept it; the whole thing is settled. What I now want to do is to prevent any inconvenient tittle-tattle,—any more newspaper article.'

'That's what I want, too,' said the warden.

'And to prevent that,' continued the other, 'we mustn't let any talk of resignation get abroad.'

'But I shall resign,' said the warden, very, very meekly.

'Good heavens! Susan, my dear, what can I say to him?'

'But, papa,' said Mrs. Grantly, getting up, and putting her arm through that of her father, 'what is Eleanor to do if you throw away your income?'

A hot tear stood in each of the warden's eyes as he looked round upon his married daughter. Why should one sister who was so rich predict poverty for another? Some such idea as this was on his mind, but he gave no utterance to it. Then he thought of the pelican feeding its young with blood from its own breast, but he gave no utterance to that either; and then of Eleanor waiting for him at home, waiting to congratulate him on the end of all his trouble.

'Think of Eleanor, papa' said Mrs. Grantly.

'I do think of her,' said her father.

'And you will not do this rash thing?' The lady was really moved beyond her usual calm composure.

'It can never be rash to do right,' said he. 'I shall certainly resign this wardenship.'

'Then, Mr. Harding, there is nothing before you but ruin,' said the archdeacon, now moved beyond all endurance. 'Ruin both for you and Eleanor. How do you mean to pay the monstrous expenses of this action?'

Mrs. Grantly suggested that, as the action was abandoned, the cost would not be heavy.

'Indeed they will, my dear,' continued he. 'One cannot have the attorney-general up at twelve o'clock at night for nothing—but of course your father has not thought of this.'

'I will sell my furniture,' said the warden.

'Furniture!' ejaculated the other, with a most powerful sneer.

'Come, archdeacon,' said the lady, 'we needn't mind that at present. You know you never expected papa to pay the costs.'

'Such absurdity is enough to provoke Job,' said the archdeacon marching quickly up and down the room. 'Your father is like a child. Eight hundred pounds a year!—eight hundred and eighty with the house—with nothing to do. The very place for him. And to throw that up because some scoundrel writes an article in a newspaper! Well—I have done my duty. If he chooses to ruin his child I cannot help it;' and he stood still at the fire-place and looked at himself in a dingy mirror which stood on the chimney-piece.

There was a pause for about a minute, and then the warden, finding that nothing else was coming, lighted his candle, and quietly said, 'Good-night.'

'Goodnight, papa,' said the lady.

And so, the warden retired; but, as he closed the door behind him, he heard the well-known ejaculation,—slower, lower, more solemn, more ponderous than ever—'Good heavens!'

* * *

The Archdeacon is acting as a determined parent, even to his father-in-law.⁴⁷ The Warden is, Dr. Grantly says, "like a child." The Warden is addressed with such paternal overtures as, "Did you not know . . .?" and, "Why did you . . .?"⁴⁸ He is questioned with accusations by "the reverend cross-examiner," who doubts that the Warden is able to defend his position.

All of us have had parents. By the time we are old enough to read articles in law reviews we have had many more than two: teachers (including law professors), uncles, aunts, doctors, and clerks in all sorts of offices, stores, and parking lots. Everyone is familiar with the paternal counseling style. It may be useful to look at two theoretical explanations of paternal counseling, and then examine the consequences which bear, not on the client, but on the counselor.

Theories. Psychoanalysis explains the paternal style by two concepts, *transference* and *projection*. This theory holds that we become so accustomed to our parents, particularly in the critical early years of life, that we supplant our parents for ourselves. We *project* parental attitudes onto those we deal with, particularly those in authority and those whom we approach in emotional dependence, such as doctors, lawyers, teachers, and pastors. We *transfer* a whole relationship onto perfect strangers.⁴⁹ Modern psychoanalytic theory holds that these transferences and projections occur frequently, that they are a part of everyday life, that almost every professional relationship is affected by them, and that they are impossible to avoid.⁵⁰

Trollope was ahead of modern psychoanalytic theory, particularly with respect to lawyers. In *The Eustace Diamonds*, Mr. Camperdown, the attorney, and Mr. Dove, the barrister, meet to discuss the problems of their client: "The outside world to them was a world of pretty, laughing, ignorant children; and lawyers were the parents, guardians, pastors and masters by whom the children should be protected from the evils incident to their childishness."⁵¹

One descendant of psychoanalytic theory, transactional analysis, has been built on diagrams which explain "games" and "scripts" for psychic relationships, especially paternal psychic relationships.⁵² For example: The

⁴⁷ Freudian psychoanalysts discovered fairly early that a paternal relationship is possible in which the older of two persons assumes the child's position. See E. JONES, PAPERS ON PSYCHO-ANALYSIS (Beacon ed. 1961); T. SHAFFER, DEATH, PROPERTY, AND LAWYERS 239-41 (1970) [hereinafter cited as DEATH, PROPERTY AND LAWYERS].

⁴⁸ Questions, in this form particularly, help establish paternal counseling relationships. T. SHAFFER, *supra* note 3, at 119-25.

Incidentally, "parental" would be a less sexist word here than "paternal" is, but I use "paternal" part of the time because it carries more connotative and, therefore, psychological freight.

⁴⁹ See DEATH, PROPERTY AND LAWYERS, *supra* note 47, at 219-70. See also A. WATSON, PSYCHIATRY FOR LAWYERS (1968).

⁵⁰ See DEATH, PROPERTY AND LAWYERS, *supra* note 47, at 241-42.

⁵¹ THE EUSTACE DIAMONDS, *supra* note 15, at 294.

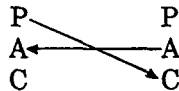
⁵² See E. BERNE, TRANSACTIONAL ANALYSIS IN PSYCHOTHERAPY (1961); E. BERNE, GAMES

Archdeacon says, "Did you now know that it is not customary for clients to go directly to their counsel?"⁵³ The Warden answered, "Well, at any rate I've done it now." The communication appears adult, but its deeper (ulterior) meaning is paternal. The Archdeacon is speaking as he would to a child. (We lawyers usually do that when we start to ask a lot of questions, particularly questions which begin with "Did you not know?" or, "Why?") The Warden cooperates by saying, "Oh, well, I did it." Transactional analysis would diagram such a "game" at both apparent and ulterior levels:



"Did you not know that . . . ?" "Oh, well, I've done it."
 ("You have done something bad." "I know.")

One can block this game. Septimus did block it in the last part of the interview, as he did in the last moments of his interview with Sir Abraham Haphazard. He blocked the game by insisting on adult-to-adult communication without an ulterior (game playing) level. Septimus' method is called "crossing the transaction." A crossed transaction has to be resolved, either in termination of the interview (which is what occurred in both cases with regard to Septimus) or in the counselor's agreement to conduct the interview on an adult level:



"Why did you go off from Barchester so suddenly?"
 ([Silence, then:] "I think I'll go to bed.")

My impression is that paternal lawyer-client interviews rarely get crossed. The client usually agrees to continue in the child's role, to do what he is told, and to let the lawyer dominate the professional relationship.⁵⁴

PEOPLE PLAY (1967). See generally T. HARRIS, *I'M OKAY, YOU'RE OKAY* (1969); M. JAMES & D. JONGEWORD, *BORN TO WIN* (1971).

⁵³ The legal profession in England is separated into law-office lawyers (attorneys) who did not usually appear in court, and trial lawyers (barristers). "Counsel", is a term used to designate barristers, who do not counsel. Trollope wrote frequently of both branches of the professions. Client contact is customarily confined to the attorney's practice, although clients do talk to barristers outside court when the attorney was present.

⁵⁴ See D. ROSENTHAL, *LAWYER AND CLIENT: WHO'S IN CHARGE* (1974) [hereinafter cited as D. ROSENTHAL]. I have attempted to apply transactional analysis, in this fashion, to the "estate planning" practice, see Shaffer, *Estate Planning Games*, 47 *NOTRE DAME LAW* 865 (1972), and to urban social problems. See Shaffer, *The Law and Order Game*, *TRANSACTIONAL ANALYSIS BULL.* 41 (April 1970).

What is the consequence of continuing in the paternal counseling relationship? To the client, the consequence may be the loss of material and social advantages, but that is relatively subtle.⁵⁵ More significantly, the consequence to the client of a paternal counseling relationship is the loss of an opportunity to grow up.

The consequences of the paternal counseling to the counselor are ignorance and burden. In this interview with Septimus, Dr. Grantly thought he knew his father-in-law, but, in fact, he did not. He even did not know what the issue was; consequently, he did not know of his father-in-law's strength of character, or of his eloquence, or of the mature manner in which the Warden had thought about the consequences of his resignation and had talked about them with Eleanor. From a novel reader's perspective, Dr. Grantly appears shallow, judgmental, and, in a word ignorant. This appearance so bothered Trollope, who had the scenes right but thought he had short-changed the character of the Archdeacon, that he apologized, at the end of the novel, and corrected his deficiency in subsequent novels in the series, particularly in *The Last Chronicle of Barset*.⁵⁶

The Archdeacon's lamentable ignorance occurs because the Archdeacon, as counselor, operates on assumptions about people; he categorizes them instead of learning about them. People are not an adventure to him; they are merely the occasions of burden. ("Well," the Archdeacon says at last, "I have done my duty.") Applying this attitude to the legal profession, the counselor operates without understanding his client and consequently feels that any argument will do. He seems to have no respect for the intelligence or ability of his client. He even seems to have no respect for his own ability to persuade. He behaves as an impatient parent would. He gives fatuous excuses to his child and finally explodes in frustration when no excuse satisfies the child. The Archdeacon would have discovered, if he had listened to Septimus, that the only effective argument in his discussion with Septimus was a *moral* argument. But to use a moral argument with any effect at all, one has to communicate to his client that he is willing to listen to the client's moral argument, and that means he is open to changing his mind. That, I suppose, was more peril than the Archdeacon was willing to subject himself to. He chose a diminished attitude toward

⁵⁵ See D. ROSENTHAL, *supra* note 54; T. SHAFER, *supra* note 3, at 248-52.

⁵⁶ See note 4 *supra*. In *The Last Chronicle*, and in *The Duke's Children* (1880), Trollope traced the process by which a strong, good person changes his mind. To make literature out of that process, in the case of *The Last Chronicle* (where the strong, good person was the Archdeacon), it was necessary to give his character considerably more nobility than he appears to have given characters in *The Warden*. The Archdeacon is also prominent in *Barchester Towers*. The apology about the Archdeacon in *The Warden* concludes:

On the whole, the Archdeacon of Barchester is a man doing more good than harm,—a man to be furthered and supported, though perhaps also be controlled; and it is a matter of regret to use that the course of our narrative has required that we should see more of his weakness than his strength.

THE WARDEN at ch. 20. Trollope feels more public responsibility on the point than I do. But I should say that I know almost hopelessly paternal legal counselors who are good trial lawyers, devoted citizens, friends of the poor, and who are, in their way, kind to their spouses.

the personal possibilities in both himself and his client.

The other consequence to the paternal counselor is burden. To be a parent is to take responsibility for results, for consequences to the child when the child follows orders. C.G. Jung was eloquent on this point:⁵⁷

So, if a patient projects the saviour complex into you . . . you have to give back to him nothing less than a saviour. . . . When the patient assumes that his analyst is the fulfilment of his dreams, that he is not an ordinary doctor but a spiritual hero and a sort of saviour, of course the analyst will say, "What nonsense! This is just morbid. It is a hysterical exaggeration." Yet—it tickles him; it is just too nice. And moreover, he has the same archetypes in himself. So he begins to feel, "If there are saviours, well, perhaps it is just possible that I am one," and he will fall for it, at first hesitantly, and then it will become more and more plain to him that he really is a sort of extraordinary individual. Slowly he becomes fascinated and exclusive.

The problem is that he has also become a guarantor, and that, too, is a diminished way to live. Maybe we have come to appreciate that parental guarantors are diminished people. Largely as a result of the women's movement, we now realize that the life of a person who does nothing but take care of children is limited.

* * *

Trollope gives legal counselors important lessons, but he does not round the story off with a moral. Great poets never do that. If a lawyer avoids paternal and acquisitive approaches to his clients, if he opens himself to them and lets them become interesting and responsible people, if he considers the issue of whether to be a friend to his clients, and finds a solution which is comfortable for him—if he does all of this, he still will not have an agenda for the law office that is as complete as an essay on trial tactics might provide for his work in the courtroom. He may discover that he must unlearn many of his lawyer attitudes. He has to chip away his professional crust, and begin working less with the *lawyer* he is and more with the *person* he is.⁵⁸ Anthony Trollope would be pleased at that result.

⁵⁷ C. JUNG, *ANALYTICAL PSYCHOLOGY: ITS THEORY AND PRACTICE* 171 (1968).

⁵⁸ Almost every Trollope novel has a legal sub-plot, and some, for example, *The Eustace Diamonds*, *Orley Farm*, and *Phineas Redux*—have legal plots. Trollope's lawyer characters are usually minor, though memorable, but at least one of them, Felix Graham in *Orley Farm*, is a major figure, who is treated more as the person he is than the lawyer he is.

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1977 - 1978 SECURITIES LAW DEVELOPMENTS

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