

The state of the Union under a failed Constitution

July 15, 1997

*The abandonment of ethics by the American legal profession through the adoption of the 'Lawyer's Amoral Ethical Role'. The resulting material decline in the Nation's moral standards. (Part 1 of 4)*¹

Previous Federalists have outlined the corruption of the legal profession, the instruments of its tyranny and the general methods used by the profession to advance and maintain its tyrannical control over the Nation. Let us now turn our attention to the first obstacle faced by the legal profession in acquiring and maintaining its unconstitutional control of government. That obstacle is the profession's ethics. All professions have ethical rules. Let us see why.

The importance of ethics.

Ethics is defined as: *The basic principles of right action.* These basic principles can be defined as honesty, virtue, righteousness, honor and fair dealing. All good people aspire to achieve such standards for their own conduct. All people hope to find those principles present in the conduct of those with whom they interact. Professional groups recognize that ethical principles cannot be legislated by the State. So they adopt a set of ethical rules and then publicly assert enforcement upon their members.² For the most part, excluding the glaring example of the legal profession, the assertions may be viewed as valid and a public good.

The abandonment of ethics by the legal profession.

No-one can conquer militarily with an army of conscientious objectors or tyrannize a nation with an army of conscientious, ethical lawyers. ***Therefore to overcome the 'ethical obstacle' and as a result of 'absolute corruption corrupting absolutely', there evolved within the American legal profession an abandonment of all ethical standards.*** There then came a time when the profession had to 'justify' to itself and the world this new 'role'. To do so it decided to sponsor a competition calling for scholarly papers to address this problem.

Accordingly in 1985 a competition was organized by the Association of American Law Schools. The winner was Professor Stephen L. Pepper whose essay was entitled: ***The Lawyer's Amoral Ethical Role.***³ The first sentence of which essay reads: ***This essay presents a moral justification***⁴ ***for the current generally accepted amoral ethical role of the lawyer.***⁵

This 'prize winning essay' acknowledges the so called *amoral* role as the standard 'ethical role' for the practice of law in America. The result of this official acknowledgment is that lawyers are instructed to set aside any moral values or formal code of professionally approved ethics when advising their

clients. Since that is the opposite of what ethics is about, logic dictates that only deceit and/or self deceit can explain the retention of the word ethical in the definition of this new 'role'. Let us now examine the meaning of *A Lawyer's Amoral Ethical Role* in terms of (1) its application in practice and (2) its true moral status.

(1) The practical application of the Lawyer's Amoral Ethical Role.⁶

The legal profession tells us that, when applied in practice, the phrase means the 'suspension' by the lawyer of any moral or ethical standards, when advising his client. To that end we are told that: (1) The Law as written, or as potentially subject to challenge, must be viewed only in terms of its practical consequences and not as a desirable societal end; and (2) The Law should be viewed as subject to the widest and most advantageous possible interpretation for the client and *not in the best interests of society as a whole*.

For example negligence law must be viewed not as a question of what is right or wrong but merely as: a non consensual *taking from the injured party on the part of the tort-feasor, subject ... to the cost of damages.*⁷ Thus an industrial concern assessing and planning conduct which poses risk of personal injury or death to third parties will be guided by a lawyer following this view away from perceiving the imposition of unreasonable risk as a 'wrong' and toward perceiving it as a potential cost.⁸ ***That means that a lawyer following this new 'amoral role' will guide his client to action that could kill! The only concern being the dollar cost of the victims' death to the client!***

(2) The legal profession's moral 'justification' for the 'amoral ethical' role.

The legal profession tells us that the **desirable social goal** of providing 'equal access' to the law for all is a moral good. That 'moral good' **mandates access to the law uninhibited by moral obstacles** which may not reflect the particular moral view of the client. That is what the 'amoral ethical' role accomplishes. The profession's 'justification' for this position as 'morally right' is asserted by invoking *values of individual autonomy, equality and diversity*. It says the lawyer remains a 'moral man' temporarily suspending his own sense of morality in the interests of his clients! Most readers will recognize that these arguments are false and pure sophistry. A detailed rebuttal will be made in Federalist 105. For the time being let us examine the real meaning of the word amoral in the context in question.

The real meaning of Amoral in the phrase: A Lawyer's Amoral Ethical Role⁹

A full understanding of the meaning of the word 'amoral' and the implications of 'amoral' decisions on the decision maker (the actor) requires a step by step analysis.

Step 1. Distinction between decisions with and without moral implications.

In the field of human behavior we distinguish between acts which carry moral

implications and consequences, and acts which do not.¹⁰ Decisions with moral implications are called moral decisions. Decisions without moral implications are called non-moral and sometimes amoral decisions.

Step 2. Distinction between clear and unclear moral decisions.

Acts which carry moral implications involve moral issues which are sometimes clear and sometimes not. When the moral implications are clear the decision is either a moral or an immoral one. When the moral implications are unclear or contradictory a decision is sometimes made to ignore the moral issue. A conscious decision to ignore a *debatable moral issue* is sometimes called 'amoral', non-moral or non-judgmental.¹¹

Step 3. Effect of the decision making process on the decision maker.

In general it can be said that the nature of the act defines the actor. Thus in general moral acts define the actor as moral and immoral acts define the actor as immoral. Thus if a decision involves clear moral issues and/or consequences the decision maker must make either a moral or an immoral decision. That decision defines the actor.

Step 4. Responsibility and accountability of the decision maker (the actor).

Most human beings in civilized societies are required by law and expected by Society to take *responsibility* for their actions. That responsibility leads to *legal and moral accountability* for actions taken.

Step 5. The 'amoral' actor. The moral imbecile and the wild animal.

Some human beings are incapable of being legally or morally responsible for their actions. They suffer from *amoralia*,¹² *a psychiatric disorder, also known as 'moral imbecility'*. They have psychopathic personalities. Human beings suffering from this disorder are said to make 'amoral' decisions. Wild animals who kill prey for food are regarded by men as incapable of knowing the difference between right and wrong. That condition is defined as 'amoral' also. Therefore we can see that 'amorality' is an appropriate term for moral imbeciles, non judgmental approaches to *generally recognized* debatable or conflicting moral views, and wild animals. Otherwise on actions that have clear moral issues and/or consequences moral men have only two choices. ***They can either act morally or immorally. Neither theology, psychiatry, philosophy or civilized societies recognize any other choice.***

The concept of characterizing a conscious choice to set aside one's morality in order to make a decision with immoral consequences and to call that an 'amoral' decision is a logical absurdity. Where moral issues are clear, an amoral decision can only be the result of an involuntary disorder of the mind, but never a conscious choice. Therefore the attempt to characterize an immoral decision as amoral is an attempt to employ sophistical false arguments to avoid responsibility and accountability for immoral actions.

Is a coerced immoral decision amoral?

Is an immoral decision made under duress or life threatening circumstances and thus coerced, *amoral*? The Nazi War crimes trials gave us that answer. An immoral decision remains immoral even if coerced under life threatening circumstances. The claim by Nazi defendants that they lacked responsibility for immoral, criminal acts was thrown out of court at the Nazi War Crimes trials in Nuremberg. They tried to separate their ‘immoral’ army actions from what they claimed was a ‘moral’ private life by arguing that they were coerced and thus acting ‘amorally’.¹³ The Court rejected their argument as a defense. ***Coerced evil is still evil.***¹⁴ Nor does evil have to be all encompassing of an actor’s decision making process for him to qualify as evil. Even Hitler is said to have loved his dog, little children and art.

The ‘Amoral Ethical Lawyer’: Moral or immoral?

There is no conflict between this writer and the profession as to what lawyers are instructed to do. We agree that in counseling their clients lawyers are instructed to act as if they are either indifferent to morals or lack morals completely. *The only issue is whether that behavior means that they in fact have no morals.* The evidence strongly supports that conclusion. Even the profession admits the possibility exists that lawyers may be doing evil. Professor Peppers states: *If one cannot rely on the client or an alternative social institution to provide that (moral) guide to suggest a moral restraint on that which is legally available, then what the lawyer does may be evil: Lawyers in the aggregate may consistently guide clients away from moral conduct and restraint.*¹⁵

It is undisputed that American society has suffered a major decline in moral standards over the last 30 years. The evidence supports the conclusion that the legal profession bears the greatest responsibility for this state of affairs. However whether one agrees or not with this conclusion it is reasonable to assert that neither the client nor any other institution can be relied on to provide the moral restraint Professor Pepper’s hopes exists. That means that what the lawyers are doing ***is*** in fact, not just ***may be*** evil. In which case this writer’s conclusion that the profession as a whole is immoral not amoral is confirmed even by Dr. Pepper’s own analysis.

Does ‘part time immorality’ exist?

People are not good who decide they will be good and moral ‘outside office hours’ but that during office hours they will ‘suspend’ their morality, *regardless of the reason.* Anyone who acts in a consistently immoral manner is immoral. Anyone who is not a mental defective and who claims to be acting *amorally not immorally* when he commits what would otherwise be immoral acts is either deceiving himself or trying to deceive others.¹⁶

Willful 'amorality' absent real moral conflict is therefore logically immorality.

So the concept of an 'amoral ethical role' like the concepts of a 'loving genocide' or a 'virtuous murder' is nonsense and without meaning. Where there is genocide there cannot be love. Where there is murder virtue cannot lie. Where there is amorality there are no ethics. For amorality is indifference to ethics.

The Nation expects all professions to adhere to ethical standards and perhaps lawyers more so than all others. It is now clear that the legal profession has officially abandoned all ethical standards, at least in the providing of advice. It has embraced the role of facilitating evil. We will examine its attempt at justifying this action in Federalist 105.

PUBLIUS II
(Ronald Bibace)

About the author: *This writer is a constitutional scholar who wrote Federalists 86 through 99, in defense of the Constitution. He is like Madison, a non lawyer and like Hamilton an immigrant and naturalized American.*

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1. This paper and the next three Federalists #105-107 should be read as a single unit.
 2. Indeed professional groups are able to obtain State recognition and a degree of monopoly power by arguing that their Professional Association is better equipped to enforce ethical standards than the State could. That was one of the 'arguments' used by the legal profession when it sought total self regulation through the creation of monopolistic so called United State Bars.
 3. This writer has had more experience than most with the deplorable prevailing ethics of the legal profession. Nevertheless the profession's formal attempt at a moral justification of the so called 'amoral ethical role' sent a chill of fear coursing through his veins. The words of the great Canadian poet Robert Service from the ballad *The Shooting of Dan McGrew* came to mind: *Then on a sudden the music changed, so soft that you scarce could hear/ But you felt that your life had been looted clean of all that it once held dear;/ That someone had stolen the woman you loved; that her love was a devil's lie; That your guts were gone, and the best for you was to crawl away and die.* Published by Dodd, Mead, Inc.
 4. There is not now nor can there ever be any *moral justification* for 'consciously *amoral*' behavior, for such behavior is inherently immoral.
 5. See *The Ethics of Lawyers*, page 613, edited by David Luban, New York University Press by Stephen L. Pepper, College of Law, University of Denver.
 6. This prize winning essay by Professor Pepper is the main source for the profession's position as defined in this paper and the next.
 7. Calabresi, Torts - The Law of the Mixed Society, in B. Schwartz, ed., *American Law: The Third Century* 103, (1976) as quoted in Professor Pepper's Article on page 69/625.
 8. See footnote 5, page 69/625.
 9. In analyzing the real meaning of the phrase *A Lawyer's Ethical Rule* we must examine the operative word: *Amoral*. The complete listing of the Random House Dictionary of the English Language 2nd Ed. Unabridged (1987) definition of Amoral is: *1. Not involving questions of right or wrong; without moral quality; neither moral nor immoral; 2. Having no moral standards, restraints or principles; unaware or indifferent to questions of right and wrong; a completely amoral person.*

10. Not all acts have moral implications. One may eat dinner or not eat dinner as one chooses. Such an act has no moral implications. But refusing to feed one's hungry child, without good reason, is an act that does have moral implications.
11. Historians and others sometimes prefer to avoid the moral dilemma of 'choosing between conflicting moral views'. They do so by writing in a non judgmental or 'amoral' manner.
12. *Amoralia: Moral imbecility, psychopathic personality*, see Psychiatric Dictionary by Robert J. Campbell, (1996-7 7th ed.) ISBN 0-19-510259-2
13. Though they did not use the precise language in their defense, the essence of their argument invoked the issue of 'amorality' vs immorality.
14. Although it could conceivably be used as an argument for mitigating punishment.
15. Professor Pepper's article page 71/627.
16. Self deception arising from extreme cognitive dissonance has permeated and perhaps even dominated the legal profession for decades. Persons most likely to suffer from self deception are the legal profession's leaders, including the staff and leaders of the Nation's Law Schools. It is therefore not surprising to observe Aristotelean false arguments originating from these sources.