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THE GENTLEMAN IN PROFESSIONAL ETHICS*

THOMAS L. SHAFFER**

"This is awful. Miss Manners sees great progress in the fact that many occupations are now open to ladies and gentlemen, not just the traditional ones of exploiting serfs and marrying money, but is dismayed that they have forgotten how to act like ladies and gentlemen."

—Judith Martin¹

"Only when he has linked these parts together in well-tempered harmony and has made himself one man instead of many, will he be ready to go about whatever he may have to do. . . ."

—Plato, *The Republic*²

On December 7, 1983, the forty-second anniversary of the Japanese attack on Pearl Harbor, Dr. Mark Craig, of St. Eligius's Hospital in Boston, declined an illicit proposal put to him by his colleague, Dr. Kathy Martin. He did so with evidence of effort — referring, for example, to the younger doctor as "that whacko from pathology" — but he acted decisively, and Dr. Martin returned to her laboratory in the morgue. Dr. Craig acted with personal and professional clarity; his moral argument to Dr. Martin was based on professionalism. But he also reported the proposal to Mrs. Craig, who visited Dr. Martin's laboratory and persuaded Dr. Martin that promiscuous freedom with younger doctors was better for her than life with Dr. Craig would have been.

Dr. Martin's laboratory has often seen the failure of virtue in lesser physicians than Dr. Craig. (It is apparently the case that medical training helps a person overcome difficulties a lay person might expect to have in a love nest shared by cadavers and formaldehyde.) But I mean here to notice something more general than occasional instances of virtue in Boston. The significance of this story is that it is important to Dr. Craig to be a gentleman. Dr. Craig practices medi-

* Part of this essay was given as the Willis G. Cunningham Memorial Lecture in Law and Medicine at Queen's University, February 9, 1984; part of it was given as the Charles N. Burch Lecture at Vanderbilt University, April 5, 1984.

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1 "Miss Manners," *The Washington Post*, Jan. 29, 1984, at K-1, col. 6, K-5, col. 1; see note 54 *infra*.

2 As translated by Edmund Pincoffs, "Quandary Ethics," in Stanley Hauerwas and Alasdair MacIntyre (eds.), *Revisions* 92 (1983).

cine, and Mrs. Craig lives a traditional, married-woman's life, with competence, clarity, compassion, and prosperity. Their behavior is in steady contrast to the behavior of the resident physicians at St. Eligius and their partners. The residents are also competent and compassionate, but they tend to casual sex in the basement, to the abuse of controlled drugs, and to unseemly rebellion against the establishment. They swear; they break the furniture when they are angry; Dr. Craig says that what they do "smacks of the unethical." What he means is that these young doctors should be gentlemen, and if they cannot be gentlemen they should get out of his profession.

Dr. Craig's position teems with moral difficulties, of course. He is often arrogant and always opinionated. His professional relations with his juniors show the residue of exploitation of the serfs. His inherited racism and sexism bend only to demonstrations of professional competence: He respects black people and women when they are good physicians. As the episode with Dr. Martin demonstrates, the women in his life are often temptresses. His view of medicine as a profession is patriarchal: Medicine, to him, is appropriately dominated by older, white males. The remarkable fact is that those who design, write, and prepare a popular, commercial television program fix at its moral centre three old-fashioned gentlemen, the most arresting of whom is Dr. Craig. That fact says something about them, and something about those of us who watch the program. It says that modern professional ethics, may not, after all, rest on codes and canons and Kant.

The residents at St. Eligius regard Dr. Craig as a model physician — in his medicine, in his use of power, and in his personal life. They are not old-fashioned enough to say that he is a gentleman, but it is possible to claim that he is a model because he is a gentleman.³ His presence is an ethical argument; the ethical argument is that the morals of the gentleman are appropriate to professional ethics. Dr. Craig is in this respect the medical analogue of Lawrence Preston,

³ The word has not disappeared from contemporary ethical usage, even among writers that are understood to be modern and unromantic: Tom Shales, "William Powell: The Actor as Gentleman," *The Washington Post*, Mar. 6, 1984, p. C-1, col. 1, spoke of the late Mr. Powell as having dignity, grace, and panache; Mr. Shales used the adjectives nice, charming, elegant, understated, civilized, nostalgic without being sentimental, witty, agile, classy, and dashing. He said Mr. Powell was not given to airs or illusions. Many of these words suggest manners and style, but others — and the point of the essay — have to do with moral excellence. Newspaper writers spoke of the late political reporter, Carroll Kilpatrick, as gentle, friendly, loyal, fair, balanced, tough-minded, modest, reliable, unruffled, quiet, attentive, deeply and personally respectful, and good. They said he was a Southern gentleman and — as these words indicate — mingled descriptions of professional competence with descriptions of admirable morals. Obituary by

lawyer-gentleman of the 1960s television series "The Defenders," and of Atticus Finch, lawyer-hero of the civil-rights-era novel and movie *To Kill a Mockingbird*. When I write here of gentlemen, please remember to think of Dr. Craig and Mrs. Craig, of Lawrence Preston, and of Atticus Finch.

Television would make my empirical point well enough, but in a university I suppose I should also mention evidence that comes with footnotes:

Item: Shirley Letwin's recent (1982) and careful study of gentlemen in the novels of Anthony Trollope argues that the ethics of the English gentleman transcend sex, wealth, and class, and the narrower confines of English culture. Hers is an argument for the return of the gentleman to ethics. Her claim is that the morals of the gentleman are interesting, that those of us who teach ethics in the university would profit intellectually from taking the gentleman more seriously. "The mark of a gentleman," Letwin says, with reference to professional life, "is . . . an ability to work conscientiously without losing himself."⁴ Letwin's choice of the prototypical Trollopien gentleman is Madame Max Goessler, later Mrs. Phineas Finn, of the Palliser novels.

Item: Grant Tinder's recent (1976) study of the virtue of tolerance is an account of the way gentlemen learn. He argues as a political scientist; his claim is that learning, self-awareness, and civility in communal life turn on a sound perception of human personality, rather than on the "marketplace of ideas" that lawyers and political thinkers in the United States have fashioned from the first amendment to our constitution and from the philosophies of John Locke and John Stuart Mill. Tinder wants to resituate tolerance as the virtue that makes communities possible, communities in which a person can find out who he is with truthfulness and with responsibility. Tinder finds the notion of virtue more interesting than the prevailing civics of autonomy and objectivity. He argues that Kantian theories of the

Douglas B. Faver, *The Washington Post*, Mar. 25, 1984, p. B-7, col. 3; Editorial, *id.*, p. C-6, col. 1. Richard L. Coe's eulogy of the late drama critic Brooks Atkinson, "Atkinson: The Critic as Gentleman in the Audience," *The Washington Post*, Jan. 22, 1984, p. K-3, col. 1, said Mr. Atkinson "described succinctly and swiftly what had happened the night before"; that is, what made him a gentleman was that he was truthful. A similar standard is apparently at work, in a negative way, in Laurel Leff's criticism of Georgia lawyers: "Lawyers themselves provide their own best evidence for the decline of 'gentlemanly' behavior." *Savvy*, Feb. 1984, p. 56. The intended irony is in the fact that the adjective is put in quotation marks. We know what the word means and we are being told that when Miss Leff uses it she doesn't mean what it means.

⁴ Shirley Robin Letwin, *The Gentleman in Trollope: Individuality and Moral Conduct* (1982), at 122.

isolated but fungible individual, and Kant's distinction between questions of value and questions of fact, are useless and dishonest. Tinder, in other words, puts social morality and perception into a *cultural* context; he argues that people are not interchangeable and that political theories that claim objectivity tend to be corrupting of what we are and what we are able to become. His is "a search for being in the space between persons," a search in which each of us is "bound by his institutions and beliefs, but not bound absolutely." He says that "one must divest oneself of both indifference and fury" if he wants to live with other people.⁵ Tinder describes Dr. Craig's world; it is a world where being able to see is a moral process, a process that depends on listening and learning: Dr. Craig often does not do the right thing at first; his moral excellence is in his ability to perceive the situation differently as he goes along. For example, he welcomed a television crew because publicity appealed to his ego, but he later expelled them from the hospital when he saw that the producer valued his film more than he valued the suffering patients at St. Eligius.

Item: Alasdair MacIntyre published in 1982 his influential book *After Virtue*, which is half an attack on the fragmented morality that philosophy has described for us since Immanuel Kant announced his fact-value distinction and his categorical imperative, and half a brief for Aristotle's ethics. MacIntyre would restore to professional ethics the study of the virtues.⁶ The virtues are the moral qualities of the gentleman. Aristotle found them in the Athenian man of practical wisdom.⁷ Sir John A. Macdonald's generation of North Americans⁸ found them in Lord Baden-Powell: A Scout, you may recall, is trustworthy, loyal, helpful, friendly, courteous, kind, obedient, cheerful, thrifty, brave, clean, and reverent. Those are virtues; the Scout Law is a morality of virtues. The Scout, like Aristotle's man of practical wisdom, is a gentleman.

Item: A formidable school of moral theology has been developing since the 1930s, among Protestants, Jews, and Roman Catholics, which argues that character is the fundamental category for defining the Jewish and Christian way of life. Character was the unspoken claim in Joseph Fletcher's popular *Situation Ethics* (1966); it has more recently been the spoken claim in the religious ethics of Stanley

5 Grant Tinder, *Tolerance: Toward a New Civility* (1976).

6 Alasdair MacIntyre, *After Virtue* (1982).

7 Aristotle, *Nicomachean Ethics* Bk. 6, ch. 5(c), pp. 152-154 (Martin Ostwald trans. 1962).

8 Donald Creighton, *John A. Macdonald: The Young Politician* (1952).

Hauerwas,⁹ James McClendon,¹⁰ and Michael Goldberg.¹¹ Character has come to medical ethics in the work of Hauerwas,¹² Larry Churchill,¹³ James Childress,¹⁴ and William May,¹⁵ and to legal ethics in the work of those who find Lawrence Preston and Atticus Finch more interesting than the deliberations of the American Bar Association or the Law Society of Upper Canada.¹⁶ Character as a focus for ethics turns on personal *qualities* or *dispositions*, on what the medieval writers translated as *good habits*, on what some of the modern students of character would call *skills*. All of these are words for virtues. Character turns on virtues more than on rules and principles.¹⁷

In recent years . . . many have challenged the decision-point model of morality. 'Character ethics' emphasizes that the foundation of our decision lies in the peculiar virtues and habits that each of us brings to a moral problem. Character ethicists think the decision-point model of morality is reductionist, because it ignores how difficult it is to discern the nature of relevant facts in the first place. . . .

For those who speak of an ethics of vision or character, the main problem of the moral life is not so much the rational calculation of the rightness or wrongness of actions as it is the self-deception and egocentrism that can arise from insecurity to block honest self-awareness and to distort our vision of others and the world about us. This concern leads character ethicists to emphasize a set of problems which the decisional account of ethics tends to ignore. This group of thinkers tries to inculcate respect for certain attitudes and virtues. They are not really concerned about prescribing norms for action; the terrain they are concerned about lies in the realm of life-stance, truthfulness and responsibility. . . .

- 9 Stanley Hauerwas, *Vision and Virtue: Essays in Christian Ethical Reflection* (1974); *Character and the Christian Life: A Study in Theological Ethics* (1975); *A Community of Character: Toward A Constructive Christian Social Ethic* (1981); *The Peaceable Kingdom* (1983).
- 10 James McClendon, *Biography as Theology* (1974).
- 11 Michael Goldberg, *Theology and Narrative: A Critical Introduction* (1982).
- 12 Note 9 *supra*, especially *Vision and Virtue; Truthfulness and Tragedy* (1977).
- 13 See discussion of his medical ethics in my *On Being a Christian and a Lawyer* (1981), at 130-132.
- 14 James F. Childress, *Who Should Decide? Paternalism in Health Care* (1982); "Metaphors and Models of Medical Relationships," VIII *Social Responsibility: Journalism, Law, Medicine* 47 (L. Hodges, ed., 1982).
- 15 *Notes on the Ethics of Doctors and Lawyers* (1977).
- 16 *Id.* I proposed a theoretical model, based on Hauerwas and McClendon, in "Christian Lawyer Stories and American Legal Ethics," 33 *Mercer Law Review* 877 (1982). H. Richard Niebuhr, *The Responsible Self: An Essay in Christian Moral Philosophy* (1963), is seminal for the school of religious ethics described in notes 9-16; see my discussion of Niebuhr in "Moral Implications and Effects of Legal Education, or: Brother Justinian Goes to Law School," (1984), 34 *Journal of Legal Education* 190, at 201.
- 17 William French, "Auden's Moral Comedy: A Late-Winter Reading," (1982), 99 *The Christian Century* 207-208.

Because the standard model of morality focuses on the moment of decision, it sometimes makes the moral dimension of our lives sound far more exciting and dramatic than it really is. It paints a picture of tragic vigils, of Byronic heroes overcoming moral ambiguity. Somewhere along the way the simple things . . . get dropped out of this moral philosophy.

When we speak of the simple things, of character in professional ethics, we speak of courage, temperance, friendship, civility, and prudence; we speak of justice, too, but not as it is often spoken of in the legal profession. We speak of justice as Tinker speaks of tolerance: Justice is not something people get from lawyers or from the government, it is something people learn how to give to one another. Dr. Craig understands and practices justice in this way — as a virtue. He made a little speech as he completed his first heart-transplant operation in November 1983: He spoke in the operating room, and spoke not of his skill, nor of the hospital's technology, nor of the patient's prognosis, but of the generosity of the young woman who donated her heart for transplant. He praised her for her practice of the virtue of justice. He then withdrew, alone and satisfied with himself, to a private office, and refused to talk to the press. The lesson he wanted to teach about justice was a lesson for his professional colleagues, not for reporters. Dr. Craig wants to be a professional gentleman; he joins the literary critic, the political scientist, the philosopher, and the theologians. With them, he invites us to consider the ethics of the gentleman in the operating room and in the courtroom.

* * *

I am not endorsing Dr. Craig's moral position, but I am proposing that we take it seriously. This will involve a description of what his ethic implies for the professions, and then some tests of its adequacy: (1) Will the gentleman's ethic survive delusions of class and professionalism? (2) Will it provide the skills we need for dealing with power and, particularly in the professions, with the power of institutions? (3) Does it take into account the tragic nature of the moral life? (4) Does it give adequate consideration to the moral significance of suffering?

A DESCRIPTION OF THE GENTLEMAN'S ETHIC

The primary way we know gentlemen is that we just do. General Robert E. Lee was a gentleman. Chief Justice Bora Laskin was a gentleman. Prime Minister Lester Pearson was a gentleman. Trollope's Dr. Thorne was a gentleman. So was Plantagenet Palliser, the young Duke of Omnium, although his uncle, the old duke, was not. Mrs. Eleanor Roosevelt was a gentleman. So were Senator Henry Jackson and Chief Justice Earl Warren, and, of course, Madame Max Goessler.

This photo-album method of describing the gentleman is accurate. But it succeeds only because we know before we start what a gentleman is. I once asked my students in legal ethics how a gentleman knows what is the right thing to do; the answer Dr. Craig or Atticus Finch would have liked best was that a gentleman knows that what he will do is the right thing to do. That is true; thus, Jem Finch, Atticus Finch's 12-year-old son, has entered upon a rite of passage when he says to his little sister, "Atticus is a gentleman. And so am I." Jem's point is both a matter of knowing who the gentleman is, and of knowing that he can safely choose to be influenced by gentlemen.¹⁸ Jem displays something Samuel Butler wrote: "We are not won by arguments that we can analyse but by tone and temper, by the manner which is the man himself."¹⁹

There are alternatives to picture-album definitions: One of them is to describe the gentleman teleologically. Alasdair MacIntyre explains this alternative, and appropriates the metaethics of Plato and Aristotle, when he says:²⁰

If a human life is understood as a progress through harms and dangers, moral and physical, which someone may encounter and overcome in better and worse ways and with a greater or lesser measure of success, the virtues will find their place as those qualities the possession and exercise of which generally tend to success in this enterprise and the vices as qualities which likewise tend to failure.

Teleological analysis depends on an understanding of where one's life is headed. MacIntyre implies that the end or telos of the enterprise might be said to be the good life itself. Dick Francis quotes a British horseman who said, "When I look back on my life on the Turf, I am astonished at how many men I have known that you could bet your life on their doing the right thing."²¹ He didn't mention their devotion to racing; what was important to him was their effort to be good. If you look at the deepest and best of the lawyers, nurses, doctors, teachers, and scientists C.P. Snow wrote about, you will find them saying that the hardest job, and the job they most want to do well, is to become good people. Many of them sacrifice professional success in that journey toward goodness, and many choose poorly because their vices keep them from seeing the road ahead.

18 It is a cultural point: "Of course, appeals can be made to particular individuals as paradigms of the moral life . . . but moral geniuses are never sufficient to sustain our best moral convictions. For sustenance, we need a community to direct attention toward, and sustain the insights of, those who have become more nearly good." Stanley Hauerwas, "On Keeping Theological Ethics Theological," *supra* note 2, at 16, 35.

19 Quoted in Forbes, Dec. 5, 1983, p. 304.

20 *Supra* note 6, at 135.

21 Heywood Hale Broun's review of *Banker*, *Washington Post Book World*, Mar. 27, 1983, p. 1, col. 3.

A third way to describe the gentleman's life is to catalogue the qualities we admire in gentlemen. That is what Letwin does in her brief for the gentlemen in Trollope's novels. This is not really a third way so much as a specification of the first way. When we enumerate the qualities of a gentleman, we start with the understanding that some people are gentlemen and some are not, and we then try to notice the characteristics of those we identify as gentlemen. This was Aristotle's procedure.

For one thing, Letwin says, the gentleman is *civil*.²² John Henry Newman said that the gentleman hates to inflict pain.²³ Scout Finch said her father was so civil that he could make a trial for rape as dry as a sermon.²⁴ Trollope's Dr. Thorne was discharged as physician for the children of Squire Gresham and his wife Lady Arabella because he was not a fashionable doctor; but he was called in again when two children died at the hands of Thorne's fashionable rival, Dr. Fillgrave. Lady Arabella asked Dr. Thorne to come back and "humbled herself, or would have done so, had the doctor permitted her. But he, with his eyes full of tears, stopped the utterance of her apology, took her two hands in his, pressed them warmly, and assured her that his joy in returning would be great, for the love he bore to all that belonged to Greshamsbury."²⁵ General Robert E. Lee said that a gentleman cannot help being humbled himself when he has to humble others: He can forgive; he can forget; he can let the past be but the past.²⁶ General Lee left an important legacy to the post-bellum South in the United States when he welcomed Union officers and their families back to the Virginia mountain resorts, and when he let it be known that he would not tolerate criticism of his late enemy, General Ulysses S. Grant.²⁷

The gentleman is *self-possessed*. Letwin says, for example, that his sexual morals are the result of his keeping his *thoughts* straight,²⁸ and Dr. Craig would agree. If you are a fancier of Trollope's stories, you may think here of Trollope's ladies, and, maybe, of John Gray, Alice Vavasour's lover, sometime fiancé, and finally husband, in *Can You Forgive Her?* John is passionately in love with Alice, but he never loses his composure. He is not very exciting, either; I suppose that's why Alice needs to be forgiven. John Gray is unlike Dr. Craig and

22 *Supra* note 4, ch. 6.

23 *The Idea of a University* (1852) 179-180 (Oxford ed. 1976).

24 *Supra* note 18.

25 *Doctor Thorne* (Dent ed. 1908), at 33.

26 IV D. Freeman. *Robert E. Lee* (1935), at 499.

27 Charles Bracelen Flood, *Lee: The Last Years* (1981), at 160-167, 188.

28 *Supra* note 4, at 155.

Madame Max Goessler in that respect. I am without parallel information about General Lee and Atticus Finch.

The gentleman is *steady in social and political leadership*. In Letwin's phrase, he dreams of something better and fears something worse.²⁹ Leadership — and every form of power — is to him a matter not of merit but of circumstance. This is not quite *noblesse oblige*, which regards power as appropriate and seeks to justify having it. The gentleman's notion is more that power, whether appropriate or not, is a circumstance — a fact — and that the moral way to cope with the fact of power is to regard it as a *form* of service. This is not the same as saying that power obliges the powerful to serve.³⁰

The center of the gentleman's social morality is a *response* to what happens — not a reaction, but a response. He is able to respond; he believes, as Letwin says it, that "a human being leads himself to do everything he does."³¹ The fact that the gentleman tends to excess in his responsibility is a pervasive difficulty in his ethic; he is sometimes so determined to provide protection to the weak that he protects the weak who are not weak. That excess, to which I will return more carefully when I discuss my fourth test, provides a clue to understanding how the old South in the United States could have been both a place of gentlemen and a place of shameful racism. It helps us understand how the Victorian English gentleman was deceived into supporting notions such as the white man's burden. It provides as well a clue to the professional gentleman's arrogance and paternalism.

29 *Id.*, 214-215.

30 Karl Barth, *Ethics* (1928-1929), at 169 (G. Bromiley trans. 1981): "The command which assigns me my calling gives me no assurance that things will go well with me in it, that I have a right to do better than others. . . . Just because the command of God can . . . put me in a privileged place, the question is always acute whether I am in fact privileged . . . or whether . . . [if I am] one who violates respect for the life of others, whether my legitimately occupied and defended place of privilege . . . is an insolent usurpation. If within the civil order . . . I occupy a position in which . . . I stand in the sun . . . I cannot excuse myself . . . that in virtue of my calling I have claim that this should be so." From a theological point of view, service is the consequence of the discovery that one has power. *Id.* 420, 421-440; Karl Barth, *Church Dogmatics*, III/4 (T. and T. Clark ed. 1961), pp. 470-564; see my essay, "The Legal Ethics of Servanthood," VIII *Social Responsibility: Journalism, Law, Medicine* 34 (L. Hodges, ed., 1982). This view of power has implications for the way power is exercised — a matter, perhaps, of making a virtue of diffidence. See note 36 *infra*. Henry Mitchell, "The Fulbright Vantage," *The Washington Post*, May 6, 1984, p. C-1, col. 1, at p. C-9, col. 1 (of former Senator J. William Fulbright): "[H]is voice has made it impossible for him to mesmerize millions or to draw to himself the crowd that seeks frantically for some new savior. He is, in fact, a gentleman."

31 *Supra* note 4, at 59.

The gentleman is, despite such devastating examples to the contrary, *discriminating*. "When faced with transgressors," Letwin says, "he will consider whether he is faced with an eccentric, a ruffian, or a villain."³² He may, accordingly, smile, get his horse whip, or call the police. Much of Madame Goessler's success as a gentleman was the exercise of a remarkable and intelligent imagination in this respect — that and a meticulous respect for personality. She shows in her story what Tinder describes as the virtue of tolerance. Atticus Finch described this quality of discrimination more humbly when he said you have to get inside the other fellow's skin: We are not all alike. Lewis Thomas's father, an old-fashioned family doctor, showed how this works when he parked his car around the corner from the house of his Christian-Scientist patient.³³

The gentleman is also *diffident*. He is firm in his morals but not without doubt about them. Letwin says he has "the capacity to take a firm stand while recognizing that the rightness of doing so is questionable."³⁴ She alludes to Kant's famous example of the murderer who pursues his victim and asks the bystander which way the victim went. The bystander, if he is a gentleman, "will lie to a murderer in order to save his friend, [but] his honesty will keep him from pretending . . . he has not lied."³⁵ This is also a matter, as Tinder put it, not of compromise but of *waiting for the other*: I am, when I act with gentlemanly diffidence, *aware* of things I cannot *know*. One of these things is who I am; another is who the other person is. I may be able to perceive that the other person is like me, though, and although he sees me as an object, and I see him as an object, it is possible for each of us, in freedom, to learn to see the other as a subject. What I will have, then, is the consciousness which Tinder calls awareness, even though I will not have objective knowledge. My awareness, even though I will not have objective knowledge. My awareness is not abstract; it is not determined: From it comes what Martin Buber called the heavenly bread of self-being, because awareness of the other, and the gentleman's awareness of himself, are reciprocal: One is possible because of the other. *Diffidence*, a stuffy word that seems to describe nothing more than self-effacement, is the gentleman's way to self-realization in his community.³⁶

32 *Id.* at 69.

33 Lewis Thomas, *The Youngest Science* 12 (Bantam ed. 1983). Thomas says that the essential skill for family medicine was and is "the gift of affection"; *id.* at 56-57.

34 *Supra* note 4 at 71; Lewis Thomas, *supra* note 33 at 54, observes that the word "medicine" and the word "modest" have the same root.

35 *Supra* note 4 at 72.

36 Iris Murdoch prefers the word humility. *Supra* note 17; Iris Murdoch, "On 'God' and 'Good'" (1969), in Hauerwas and MacIntyre, *supra* note 2 at 68.

Test No. 1: Will the Gentleman's Ethic Survive the Delusions of Class and of Professionalism?

The 19th century gentleman in North America gave us slavery, Manifest Destiny, the theft of half of Mexico, the subjugation of women, the exploitation of immigrant children, Pinkerton detectives, yellow-dog contracts, and the implacable genocide of American Indians. You could make a case — Dr. Craig and Shirley Letwin to the contrary notwithstanding — that the gentleman's ethic is not worth taking seriously. If the gentleman has left the professions, the best thing for us would be to bar the door lest he get back in. When I proposed this as a lecture topic, a kind Canadian advisor wrote to me:

There are those . . . who see appeals to gentlemen's ethics as anachronistic and unsuited to contemporary Canadian conditions in the professions. They may see appeals to preserve such a system as attempts to perpetuate an unethical system. Does the continuance of a system of gentlemen's ethics imply and even require the continuance of a socially and economically privileged class. . . ?

The gentlemen's ethic is either inherently useless or it has been corrupted. Gentlemen have at best deceived themselves, often and thoroughly. At best, the gentleman enjoys a satisfaction he does not deserve, as the gentlemen of 16th century England did: When the Duke of Norfolk was trying to get Robert Bolt's Sir Thomas More to agree to the Oath of Succession, he told More that the nobility of England had all taken the oath; More said that the nobility of England would have snored through the Sermon on the Mount.³⁷

One response to this melancholy heritage is empirical: The gentleman is the most vivid and enduring figure in professional ethics. Not: Should be. But: *Is*. The gentleman is everywhere. He shines, for example, through the earliest statements of moral standards for lawyers in the United States.³⁸ He lurks in later, more pragmatic, more influential statements on legal ethics.³⁹ His ethic is implicit in all of the legal-ethics codes, from Judge Thomas Goode Jones's 1887 Alabama Code, through all of the *Canons* and *Codes* and *Rules* of the American Bar Association, to the *Code of Professional Conduct*.

The gentleman is the lawyer's and physician's ethical heritage and tradition. We cannot get away from him. He looks down on us from the walls of courthouses, hospitals, and schools. His is the statue in the village square; his name is over the main doors of our university buildings; his is the enduring image in our hero stories, from Sinclair

37 Robert Bolt, *A Man for All Seasons* (1962) at 71.

38 Notably David Hoffman's "Resolutions on Professional Deportment," in *A Course of Legal Study* (2nd ed. 1836).

39 Notably George Sharswood's "Essay on Professional Ethics" of 1854, (1907), 32 *Reports of the American Bar Association*; and Thomas Goode Jones's 1887 *Alabama Code*, (1899), 118 *Alabama Reports* xxiii.

Lewis's *Arrowsmith* to "St. Elsewhere," from forgotten novels about antebellum lawyers to "The Defenders" and "Perry Mason." We cannot abolish the gentleman's ethic from the professions. We could more easily abolish our grandparents. We cannot even choose against it. As William Faulkner's lawyer, Gavin Stevens, said, "The past is not dead; it is not even past."⁴⁰

Another response, and a way to come to terms with the first response, is to admit that the noblest of moralities is neglected — that is the meaning of Thomas More's point about the nobility of England sleeping through the Sermon on the Mount: In the curious dynamics of self-deception, the nobler the morality the more likely it is that it will be corrupted.⁴¹ Still, there is a difference between a corrupt morality and a corrupted morality. There is a difference between the racism of Hitler and the racism of Rudyard Kipling. It may be that the gentleman's morality, a thing as old as Aristotle's *Nicomachean Ethics*, can be described carefully enough that its persistence in our professions will be admirable.

An issue, then, will be whether it can survive our tendency to lord it over one another. This is a stern test. No less a lover of gentlemen than John Henry Newman voted against the gentleman on this issue. Newman's antagonist Charles Kingsley spoke of the honest British gentry, and said they⁴²

Do the work that's nearest
Though it's dull at whiles
Helping, when we meet them,
Lame dogs over stiles.

Newman admired that modest righteousness. He said he admired all of the noble qualities of the gentleman, but he concluded that those noble qualities were too fragile to be an adequate morality; they were not adequate to the terrors of life. The gentleman's virtues, Newman said,⁴³

are no guarantee for sanctity or even for conscientiousness; they may attach to the man of the world, the profligate, the heartless. Quarry the granite rock with razors, or moor the vessel with a thread of silk; then may you hope with such keen and delicate instruments to contend against those giants, the passion and the pride of man.

I think we have to figure out whether Newman was right: Can the gentleman's ethic survive the passion and the pride of man?

40 *Requiem for a Nun* (Random House ed. 1951), at 92.

41 Herbert Fingarette, *Self Deception* (1969); Hauerwas, *supra* note 192 (*Truthfulness*), at 82.

42 Philip Mason, *The English Gentleman: The Rise and Fall of An Ideal* (1982), at 185.

43 Quoted *id.*, at 187.

Newman's question is, today, mostly a question about *professional* pride and passion, rather than the dangers of class. None of those arguing recently for the ethics of virtue make an argument for an elite class. Worrying over *that* issue would beat a dead horse. Silas Lapham was right when he said, in 1884: "Gentlemaning as a profession has got to play out in a generation or two."⁴⁴ It did play out. That isn't to say we don't *have* classes; it is to say that the moral defense of classes is no longer interesting in ethics. We modern romantics might thus declare our independence from Trollope and from what Benjamin Disraeli called the muscular Christians of Victorian Britain.⁴⁵

The way we certify our superiority now is not through class but through profession. Lionel Trilling noticed this of C.P. Snow's description of "the new men," scientists who work for the government — "men who, by their talents, have risen from . . . the lower classes." In their new professional world, "differences of social origin are modified by the attitudes of the scientific group. Thus, all the physicists, no matter what their social origin, are at one in their alienation from the engineers, whom they regard as of a lower social order."⁴⁶ This sorting out is familiar to all of us who observe the hierarchies within and among modern professions. It is even clearer in its distinction between professionals and their clients, where professionalism means superiority, disengagement (which we call objectivity), and the social processes in which we divide people up and hand the parts over to experts: "We must . . . see," Jung said, "whether we cannot learn something from the medical philosophers of a remote past when body and soul had not yet been torn asunder and handed over to separate faculties."⁴⁷ Lewis Thomas, reflecting on his father's generation of family doctors, says that the essence of medicine then was a "uniquely subtle, personal relationship" between doctor and patient that "has roots that go back to the beginnings of medicine's history . . . it takes," he says, "the best of doctors, the best of friends."⁴⁸

The moral danger here is idolatry — seeing one's job where one ought to see God. Howells's Boston businessman Silas Lapham was accused of this; his wife Persis said, "You have made paint your god, and you couldn't bear to let anybody else share in its blessings."⁴⁹ Silas had the good sense to be worried about that. If such an idolatry

44 William Dean Howells, *The Rise of Silas Lapham* (1885), Signet ed. 1963, at 34.

45 Discussed *supra* note 42, ch. 11 and ch. 14.

46 Lionel Trilling, "The Novel Alive or Dead," in *A Gathering of Fugitives* (1957), at 125, 129-131.

47 *Psychological Reflections* 74 (J. Jacobi, ed., 1953) (Harper Torchbooks ed. 1961); *supra* note 15.

48 *Supra* note 33, at 60.

49 *Supra* note 44, at 45.

seems ridiculous to lawyers, we ought to reflect on what we have done with the adversary ethic, in which we so worship a bureaucratic system that it can be — and is — seriously argued that the system has the power to license us to lie, to cheat, and to abuse other people. Professionalism in this way takes the place formerly filled by class, wealth, and breeding; occupation becomes a god; and success in the occupation becomes a moral compass. This is the meaning I find in the fact that reports about the Bar in Ontario say that young lawyers lose their sense of worth when there are too many of them and their professional income declines.⁵⁰ (It seems that the professional god is best worshipped from the front pews.) But that kind of jobism cannot be blamed on the gentleman. It came about because of the *rejection* of the gentleman's ethic. The gentleman tests occupation against selfhood, not selfhood against occupation. A gentleman can be a professional, as he can be a tradesman; the ethical question is not his job, but whether he is disposed "to reduce all of life to the calculation of profits and losses. . . .",⁵¹ whether his fascination with the arcana of his calling leads him to forget how a gentleman behaves.

The adversary ethic implies a loss of self.⁵² So does professional detachment in medicine: "The personality of the patient demands the personality of the doctor," Jung said.⁵³ The source of the professional idol in the last century has not been the gentleman's ethic but neglect of the gentleman's ethic. We developed a preference for what Letwin calls the self-divided man; but we did it over the objection of gentlemen. Professional gentlemen in the 19th century did look to the professions as moral teachers, but they did so because the professional ethic was a gentleman's ethic; as long as the gentleman was there, in the professional ethic, and behind it, and beyond it, the idol was kept out. There are, I think, four ways in which this can still be so, in which the gentleman's ethic can survive the delusions of elitism and can keep the professional idol out. These are tradition, craftsmanship, liberal education, and doing something about patriarchy.

(a) *Tradition*. Ancestry and ownership, being what Aunt Alexandra (in *To Kill a Mockingbird*) called a person of background, have been important in the gentleman's ethic. But they have not been

50 Conference report, "Are There Too Many Lawyers?" (1983), 6 *Canada-United States Law Journal* 98, and Roger D. Yachetti, "The Views of the Practicing Bar," *id.*, at 103. I have thought that the American Bar Association's treatment of the advertising issue was similarly idolatrous. "Moral Theology in Legal Ethics" (1982), 12 *Capital University Law Review* 179, at 182.

51 *Supra* note 4, at 118.

52 John T. Noonan, Jr., "Other People's Morals: The Lawyer's Conscience" (1981), 48 *Tennessee Law Review* 227.

53 *Supra* note 47, at 77.

essential. Dr. Thorne had ancestry but not ownership; Phineas Finn, the son of an Irish doctor, had neither. Both wanted to be gentlemen. Lizzie Eustace, who had both ancestry and ownership, was not a gentleman; Lord Chiltern, who had both, was. What kept Lizzie from being a gentleman was not origin but behavior. (I confess to using the word “gentleman” selectively, as Trollope did, because I am talking about ethics, not social science; I am using the word as it is used to discuss character, not position. In the same way we talk about “the good life” — sometimes as indicating character, and sometimes as meaning prosperity or status.)⁵⁴

Tradition is the moral meaning in the gentleman’s concern for *breeding*. He does not regard himself as either an autonomous moral agent or as a self-made person. He represents the values of his culture; he preserves and honors the values of his culture. When he stands against his community, his moral argument is the moral argument of Jesus against the Pharisees, or of Isaiah against the temple priesthood: He accuses the community of dishonoring its moral inheritance. That was the position of Atticus Finch,⁵⁵ of Judge Horton in the *Scottsboro Cases*,⁵⁶ and of Faulkner’s lawyer Gavin Stevens, against the racism of the 1930s in the South. It is the argument of many in Israel against the current excesses of the political and military leadership there.⁵⁷ The gentleman recalls the community to its heritage; he insists that those in institutions look at what they’re doing and not behave as if events were too big or too complicated for them. Tradition is the moral meaning of a person’s life in his community: “Experience is not what happens to a man,” Letwin says; “it is what he does with what happens to him.”⁵⁸ And, first, perhaps, how he understands what happens to him.

54 A new (1984) book on etiquette, called *Don't, or Directions for Avoiding Improprieties in Conduct and Common Errors of Speech*, by “Censor” (Oliver Bell Bunce), says: “Don’t misuse the words *lady* and *gentleman*. Don’t say ‘A nice lady.’ If you must use the word *nice*, say ‘A nice woman.’ Don’t say ‘A pleasant gentleman,’ says ‘An agreeable person.’ Say ‘What kind of a man is he?’ not ‘What kind of gentleman is he?’ Say ‘She is a good woman’ not ‘a good lady.’ The indiscriminate use of *lady* and *gentleman* indicates a want of culture. These terms should never be used when sex pure and simple is meant.” Quoted in Mary Ellin Arch’s review, *Roanoke Times and World News*, April 15, 1984, p. F-4.

55 See my “The Moral Theology of Atticus Finch” (1981), 42 *University of Pittsburgh Law Review* 171.

56 *Supra* note 13, ch. 14.

57 Martin Buber warned before 1918 that Zionism might lead to making an idol of the Jewish state: “Not the men who would let us serve the true God in an alien land are the assimilationists, but you who would readily approve any idol-worship if only the idols bear Jewish names!” *On Judaism* (1967), at 135.

58 *Supra* note 4, at 59; see my “The Legal Ethics of the Two Kingdoms” (1983), 17 *Valparaiso University Law Review* 1, at 27-39.

One of Dr. Craig's more subtle arguments is that these are times that need the professional gentleman's esteem for tradition. I am impressed with how sensible for modern lawyers are David Hoffman's 1836 "Resolutions for Professional Deportment." I am impressed by medicine's recent discovery of something Dr. Thorne or Lewis Thomas's father took for granted — the undissected patient. As Jung said, "Every illness is . . . an unsuccessful attempt at healing."⁵⁹ This is not being old-fashioned. I hope it is a clear-headed consideration of what we have been — because that is what we *are*. Letwin says, "Conventional judgments may be defied, but anyone who has the wisdom and strength to do so will also recognize their value."⁶⁰ Tinder speaks of this sense of moral culture as "the very continuance of historical life."⁶¹

(b) *Craftsmanship*. Alasdair MacIntyre fashions from Aristotelian ethics a professional moral tradition he calls the practice. The notion turns on a distinction between two kinds of benefits we gain from the pursuit of our callings, one external (*e.g.*, money, and the good regard of our neighbors), the other internal. Internal benefits relate to the joy of doing what we do, of sharing that joy with our colleagues, and of subjecting what we do to the standards of performance we inherit, preserve, and pass on in a profession.⁶² An example is what in business is called a trade secret: We doctors and lawyers do not have trade secrets. If one of us discovers something, or thinks he has discovered something, he turns it over to the profession — for use, for evaluation, and for improvement. If one of us fails to do that, he is considered unprofessional. We say to him — in our professional arrogance — that he might as well be in *trade*. Such professional traditions are what I mean by craftsmanship. When our activity in locating, testing, and promulgating our knowledge is done with honesty and civility, the practice is a way to the good life; it is a theatre for virtue; it honors our professional ancestors and admits that we are indebted to them; it might even reach beyond professional fashion and fad and give each of us a way to learn who he is.

If we keep our metaphors straight, the practice is also a way to avoid the delusions of professionalism. Craftsmanship, for example, if not *art*; when we call it art, we withdraw it from the honesty and civility of evaluation and use by our colleagues; we begin to think that what we do is too special for them. Craftsmanship is not merely

59 *Supra* note 47, at 82.

60 *Supra* note 4, at 133.

61 *Supra* note 5, at 50.

62 *Supra* note 6, at 175-183. William Dean Howells's novel *A Modern Instance* (1882) illustrates MacIntyre's insight in its description of the fraternity of journalists in Boston.

work, either. Work, understood in the diminished way we have come to describe the Protestant work ethic, is too weak a metaphor. We excise the mystery from what we do when we come to think of it only as work, and of our doing it as only a job.⁶³ We lose the original meaning of the work ethic — John Calvin's image of the world as a theatre for the glory of God.⁶⁴ And a diminished view of what we do leads us to the delusion that we are not responsible for what our institutions do.

(c) *Liberal Education.* John Henry Newman valued liberal education but did not exalt it.⁶⁵ C.S. Lewis probably captured Newman's mood when he said that liberal culture is not Jerusalem but may be on the road to Jerusalem.⁶⁶ Lewis Thomas claims that the doctor who values learning is or should be a professional ideal in medicine.⁶⁷ My present point is that liberal learning helps save us from idolatry: We are solemn in our work, but, as Karl Barth said, we are only children playing before God.⁶⁸

Liberal learning should help us remember that the benefits we bring to others are less important than we think; it is defensible, then, to provide in the community a professional function which does *not* serve "the whole man." But we can get away with that only when, in the community, we take responsibility for the whole man. It is defensible for me to defend my client against a drunk-driving charge if I am also alert to the fact that his alcoholism will not be cured in traffic court, and if I am concerned for — responsible for — his being more than either a drunk or a client of mine. When Dr. Craig's heart-transplant patient died, he grieved for *her* — not for his or the hospital's want of skill, but for Eve, his patient, who was dead. He shed a tear for his friend. He spoke to a young colleague about his three decades as a doctor: "I know now how people die," he said. "But I still don't know why." Liberal learning helps us to see the community, and the mystery of the human person, with diffidence but also with responsibility. It helps us to begin to remember that we are not defenseless against evil, and that our professionalism is not enough for moral life.

63 My "Henry Knox and the Moral Theology of Law Firms" (1981) 38 *Washington and Lee Law Review* 347, develops this argument both as to art and as to work, in reference to Louis Auchincloss's novel *The Great World and Timothy Colt*.

64 "Institutes of the Christian Religion," Bk. I, ch. v; in 20 *Library of Christian Classics* 56-58 (John T. McNeill and Ford Lewis Battles, eds., 1960).

65 *Supra* note 23; *supra* note 42.

66 Particularly in his essay "Christianity and Culture," discussed in my *On Being a Christian and a Lawyer*, ch. 15 (1981).

67 "How to Fix the Pre-Medical Curriculum," in *The Medusa and the Snail* (1979), at 137-141.

68 *Supra* note 30, at 223.

(d) *Doing Something About Patriarchy*.⁶⁹ "Gentleman" is a masculine word.⁷⁰ The English culture that produced and esteemed the gentleman appears to have wanted the word and the ethic to be masculine — and not only masculine but patriarchal as well: England wanted an ethic centered in the lives and values of older, white men. If the words we use to describe this ethic now are as patriarchal as ethical words were in, say, General Lee's day, the description will be unpopular. In fact, if I persist in using such words, I will probably learn that it is impossible to sustain the affectionate analysis of the gentleman's ethic that I am attempting here.

One modern and relatively less sexist way to describe the gentleman's ethic would be to claim that it is, underneath and most deeply, a feminine ethic. One might build such a claim on the analytical psychology of Carl C. Jung, a psychology in which the unconscious of a man, what Jung called the *anima*,⁷¹ is feminine. One would expect, then, to find feminine meaning in a masculine ethic. It is important to attempt some such analysis, not primarily because it is important to defend the gentleman's ethic but because the gentleman's ethic is what we have in the professions, and it is virtually all that we have: It is the only coherent professional ethic available that has any power to persuade. The issue here is not nostalgia, but truthfulness.

There is a possibility, too, that understanding the gentleman's ethic to include the feminine would give us a way to deal with other dissonances it presents — its racism, for example; or its paternalism, which is a prejudice against the young.⁷² Over all of this, and including all of it, describing the feminine in the gentleman's ethic would be a way to overcome the idolatry of professionalism; that is a profound

69 The professions of law and medicine in North America are and have been dominated by older white men. The sources of our professional ethics teach that this is morally appropriate; *supra* notes 38 and 39. "Patriarchy" suggests that professional inheritance; I mean also to suggest deeper, religious roots, particularly in Hebraic scripture: Rosemary Radford Ruether, *New Woman, New Earth* (1975); Rebecca Oxford-Carpenter, "Gender and Trinity" (1984), 41 *Theology Today* 7 (1984), and scholarship cited there.

70 Several friends have suggested to me that the Yiddish word "mensch" comes closer than "gentleman" to the moral qualities I attempt here to describe. A letter from Hyman Bookbinder, eulogizing his friend Clarence Mitchell, shows what this word might do, were it of general currency in our culture: "Literally it means 'person.' But it means much more; it means a person with a heart, with compassion, with sensitivity, with tolerance, with humility. Clarence Mitchell, even when fighting relentlessly for specific goals, never abandoned civility and tolerance and respect. In every respect, he was a giant of a *mensch*." *The Washington Post*, Mar. 25, 1984, p. C-6, col. 3.

71 *Analytical Psychology* 99 (1968); "The Psychology of the Transference," 16 *Collected Works* (2nd ed. 1966).

72 If one pursues the sources I indicated in note 69 *supra*, in feminist theology,

possibility, I think, but it does not need arcane illustration: Such old-fashioned women as Blondie Bumstead and Dottie Dripple show us how it works.

An approach that is more direct and more ordinary than depth psychology is to look carefully at the stories of gentlemen that Letwin and McClendon and Hauerwas and I⁷³ use to describe the ethics of character: *These are all stories about virtuous women*. Letwin notices this in her work on Trollope, but, I think, she fails to understand its implications. She correctly identifies Trollope's stories as stories about virtuous women; she develops the arguments that Madame Max was the prototypical gentleman and Lizzie Eustace the prototypical cad. But she does not talk about the fact that neither was a man. Letwin comes out saying, as one of my students did, "Ladies are gentlemen, too"; the point is a conventional one about sexual equality. But I claim that there is more to these stories than that.

Letwin's territory is the six parliamentary novels. The cast of women in those stories ranges from bright, often irreverent unmarried women (Alice Vavasour, Violet Effingham) to wily widows (Madame Max, Lizzie Eustace) to pitiable victims of arranged marriages among the wealthy (Lady Glencora Palliser, Lucy Morris). The feminist theme in these stories is that these able women are disabled by their society. Most of them are informed about and interested in politics, for example, but their action in politics has to be indirect and is always unsure, because everything a woman does in public life has to be approved by men. Unmarried women have to be calculating in their plans for marriage, because a married woman loses control of her life, her property, and even her ideals. (Lady Laura Standish, later Kennedy, is a study in how that happens, as Alice Vavasour and Madame Max are studies in how and why intelligent women are wary.) And women cannot afford to be calculating if they have no money; Lucy Morris, for example, has all of the moral qualities of the impecunious and ambitious men in these stories — Phineas Finn or Lucy's lover, Frank Greystock — but Lucy's choice is to marry or to be a governess.

Trollope uses this social context to show how women in a gentleman's culture were virtuous; their way of being virtuous was different, in large part because their disabilities were unique. Their achievement of virtue was an achievement built on disability, rather

"woman becomes the symbol of the unknown possibility of a humanity beyond and outside the entire system of such a world . . . for the eschatological humanity of the new covenant: that 'new thing' which God has created on earth, 'the female overcomes the warrior.'" Reuther 58, quoting Jeremiah 31:32.

73 *Supra* notes 4, 9, 10, 12, 16, 55, and 63.

than on the wealth, power, status, and security of being among the ruling class in an imperial nation. The point of the stories, then, has to do not only with the fact that these women were virtuous, but with the fact that they were virtuous against conventional odds. The fact that these women were *outside* power, and in that sense were *not* gentlemen, is what Letwin's device ignores. If she had not ignored that fact she would have been able to ask how these virtuous women were outside, and how these outsiders were virtuous. And we might then understand something about how the feminine in the stories of gentlemen is a way to avoid the idolatry of professionalism and the delusions of race and class that corrupted 19th century (male) gentlemen. This agenda has much more to it than sexual equality. Here's a story:

The gentleman-lawyer took on cultural identity in the United States during the two generations after the American Revolution, the period Willard Hurst called the golden era of American lawyers. This was the infancy of the North American university law school as a place to train lawyers. Women were barred from university law schools. Most lawyers still, and despite the infancy of university law schools, prepared for the profession by reading the law in law offices; women were not barred from that sort of education, which was not seriously regulated by anybody, but they were barred either from bar examinations or, if admitted to and successful in examinations, from admission to the bar. There was litigation in several of the United States to force admission of women to the bar, as a matter of common-law or constitutional right. The usual result was that women were denied admission, often with quaint, condescending, maddening judicial opinions that talked about law practice as vulgar and women as delicate. The Supreme Court of the United States held that admission to the bar was a matter for the states; there was no federal constitutional right to due process of law or equal protection of the laws with regard to admission to the legal profession.

One such case involved a woman from Chicago named Myra Bradwell (1831-1894). She belonged to the generation just after Abraham Lincoln's generation of male frontier lawyers. She and her husband migrated to Chicago from Vermont; they raised a family in Chicago and her husband James became a prominent lawyer, a judge, and a member of the Illinois legislature. When her children were no longer in diapers, Mrs. Bradwell read law and took and passed the Illinois bar examination. She was denied admission to the bar, though, because she was a woman; her appeal to the Supreme Court of the United States was unsuccessful.⁷⁴ She was finally admitted to the

⁷⁴ *Bradwell v. The State* (1872), 83 U.S. 130 (S.C.U.S.).

Illinois Bar in 1890, four years before her death, but she never practiced law.

Mrs. Bradwell turned to professional activities that did not require her to be licensed and, among other things, founded and operated the *Chicago Legal News*, the first legal newspaper in the West; this became for her a successful and prosperous business. She took on a number of campaigns of legal reform and civic improvement in Illinois. A paragraph in a 1976 book about American women suggests that she spent her life more productively than if she had been practicing law.⁷⁵

In part, perhaps, because as a woman she was an outsider, Myra was able to perceive many ways in which the operation of the courts could be improved, and . . . an impressive number of her suggestions were enacted into law. She campaigned for clean courthouses . . . suggested that real estate deeds be indexed . . . encouraged bar associations to codify professional standards . . . called for simplified pleadings, better treatment of witnesses in trials, pensioning and retirement of superannuated judges, and a law school education for all lawyers.

The argument made about Myra Bradwell in the bicentennial essay was that she was a *prophetic* figure. She was prophetic — that is, able to perceive the truth about conditions in the profession and able to speak out about them — because she had been denied access to the professional idol (and therefore it was not a professional idol for her).⁷⁶ There is implied in such an assessment the familiar view that prophetic witness is more likely to exist in the absence of power, status, and class than in the possession of these, the usual badges of professionalism. Mrs. Bradwell's case involved women; Dr. Martin Luther King's involved black people in the United States; the Talmud says, "Ever since the destruction of the Temple the power of prophecy has been given to children."⁷⁷ The eternal types are the priestly professional, who courts power, and the prophet at the gates, who courts truth.⁷⁸ Mrs. Bradwell's work was more valuable for her country *because* she was outside, and she was outside only because she was a woman.

But a prophet, while outside his culture, is also, always and undeniably, within and a part of his culture. That was true of Trollope's heroines, married and unmarried, as it was true of the Hebrew prophets and of the black preachers of the civil rights revolution in the United States (King, Jackson, Young, Abernathy, Sullivan, and all the rest).

75 Business and Professional Women's Foundation, *Enterprising Women* (1976).

76 *Supra* note 66, ch. 10, discusses the Hebraic notion of prophet.

77 Elie Wiesel, *The Gates of the Forest* 32 (Frances Franaye trans. 1982).

78 *Supra* note 57.

The claim that Myra Bradwell was a prophet is a claim that goes beyond conventional sexual equality (although, I think, it is not inconsistent with conventional sexual equality). Prophets are a profession's truth tellers; they call the profession away from idolatry. If a profession endures morally — as law and medicine have — it is saved by its prophets and it develops ways to treasure the presence of prophets. Thus medical ethics is taught in medical schools by non-medical professionals (often teachers whose primary professional training has been for the ministry). Legal ethics is pondered and taught by academics who do not practice law. Ethics in education, and particularly in public education, is relatively open to public and parental and even prophetic scrutiny.

Finally, though, there has to be a way for such prophetic ethics to come inside. Physicians and practicing lawyers have to speak about the ethics they have from their outsider prophets. Or the outsiders have to come inside even as they remain in some ways outsiders. As Larry Churchill, writing about medicine, put it, ethics becomes accountable when it develops within the professional person "the capacity for self-restriction and self-criticism." If it remains outside, and only there, "all questions raised . . . seem to be an attack and . . . the healer's mantle [becomes] an aegis from the variety of values held by his patients. It makes the physician an adversary of his patient instead of an advocate."⁷⁹ Myra Bradwell, outside the legal profession, was valuable to lawyers and to the community she shared with lawyers. Her granddaughter, as a lawyer, will not necessarily lose the heritage she has from her grandmother; and she can add to it the perspective and the power that comes from being inside. She might come to terms with professional idolatry in ways that go beyond sexual equality.⁸⁰

Test No. 2: Will the Gentleman's Ethic Provide the Skills We Need for Dealing with Power and, Particularly in the Professions, with the Power of Institutions?

The gentleman responds to coercion and the abuse of power with integrity and with an appeal to the substantive values of his culture. His character in such an encounter is, as Letwin puts it, "all of a piece"; he acts, as Atticus Finch put it, the same way in town and at home. He is, in Socrates's phrase, "one man instead of many." If, in his integrity, he must respond with moral disapproval of others, the

⁷⁹ *Supra* note 13.

⁸⁰ *Supra* note 72. Lewis Thomas's mother was a nurse, his father a small-town physician. Frequently patients would come in to consult the doctor, complete that business, and wait until he left the office, so that they could consult the nurse. *Supra* note 33, at 24.

moral values he then describes are values he shares with those he disapproves of. And even then his action is carried out with tolerance, with habits of thought and of discourse that cause him to regard the other person as a subject, not an object, as one who is to be waited for as well as spoken to. Such qualities of reflection and discourse are important to understanding how gentlemen cope with power, but they are not, I think, an adequate test as this ethic comes up against the aggregated power and wealth of institutions. They don't come to terms with the passion and the pride of man.

We live, in W.H. Auden's phrase, on a moral planet tamed by terror. It is *the world* in the biblical sense, a place where significant movement occurs not as the result of truth but as the result of fear; its values are the values of the stronger. The situation of the gentleman in such a world results not from *its* evil and *his* virtue, but from the fact that he is himself one of the stronger. He is himself an agent of fear. Our institutions are in the hands of gentlemen. They are among those who are corrupted by power. If the gentleman's ethic is of any use on this point it will be because it is an ethic for accomplices.

The claim for the gentleman's ethic here will say that gentlemen may be self-deceived but that their ethic does not evade complicity in a systematic way: The gentleman tames with terror, too, but he does not claim that events are beyond accountability. He is able to respond. He keeps the issue of complicity alive. When the gentleman's ethic has been adequate on this question of power, when it has been distinctive among the ethics of those who rule, it has persisted in telling the truth about complicity.

This claim is especially significant for legal ethics because lawyers, as they worship the professional idol, have developed informal and formal ways to evade the issue of complicity. The occasion for informal evasion is the fact that the government claims to seek truth and justice through contention; its agent is the champion, who is useful to the government because he seeks to win. This implies the notion that law is what the government says it is; law is the argument that wins. It is a short step, or no step at all, from such a political system to an ethic that seeks to vindicate the dominance of one person over another. In this way the gentleman-lawyer becomes an accomplice — informally.

For about a century the legal profession has also taken the formal position that lawyers are not responsible for what their clients do. This is a consequence of locating law and resolving disputes through contention; the consequence is that, in providing the contention the government seeks, a lawyer need not answer for what he does to other people. Lord Brougham described this consequence, and then defended it as an ethic, in *Queen Caroline's Case*: "An advocate," he

said, "knows but one person . . . and that person is his client. To save that client by all means and expedients, and at all hazards and costs to other persons . . . is his first and only duty; and in performing this duty he must not regard the alarm, the torments, the destruction he may bring upon others . . . he must go on, reckless of consequences, though it should be his unhappy lot to involve his country in confusion."⁸¹

Brougham demanded a licence to be immoral. He justified his demand with the argument that the state requires lawyers to serve in an immoral manner a function imposed on them by the fact that the government pursues truth and justice through contention. His was a somebody-has-to-do-it argument.⁸² Trollope compared Brougham's ethic with the ethics of an Irish assassin.⁸³ The modern, organized legal profession adopted it, and adapted to it, in the era of the robber barons,⁸⁴ but we have never had a justification for it that would persuade a child. And we have not accounted for our rejection of the social ethic that prevailed in the old, unorganized profession: The older social ethic turned on the lawyer's personal responsibility for justice in government. Even less have we accounted for the abolition of the notion that each lawyer is responsible for what he does; none is entitled to regard himself as a victim of circumstances nor the government's need for contention as an occasion for being irresponsible.

An interesting and subtle example here is the recent (1983) decision of the Virginia State Bar to repeal the disciplinary rule that requires a lawyer to reveal controlling legal authority to the court — even and especially legal authority that weighs against his client's position.⁸⁵ The rule is the vestige of an older and broader principle against arguing for a legal result that would be contrary to the common good. As David Hoffman put it, in 1836: "Should the principle . . . be wholly at variance with sound law, it would be dishonour-

81 Discussed in my "Lord Brougham the Devious Advocate," *Res Gestae*, Oct. 1983, p. 27.

82 *Supra* note 9 (*Peaceable Kingdom*) 167, quoting John Howard Yoder, *The Politics of Jesus* 243-244 (1972): "[W]hat Jesus renounced is not first of all violence, but rather the compulsiveness of purpose that leads me to violate the dignity of others." Somebody-has-to-do-it arguments are often most truthfully met by asking whether somebody *does* have to do it. I take Dean Monroe Freedman — note 108 *infra* — to argue from Kantian notions of autonomy, rather than from a somebody-has-to-do-it premise.

83 *Orley Farm* (1862), at 359 (Oxford Press ed. 1935).

84 Michael Schudson, "Public, Private, and Professional Lives: The Correspondence of David Dudley Field and Samuel Bowles," (1977), 21 *American Journal of Legal History* 191.

85 *Virginia State Bar Professional Handbook* 53-54, (1984); E.C. 7-20, replacing what is D.R. 7-106(B) in the A.B.A. *Model Code of Professional Responsibility* (1981).

able folly in me to endeavor to incorporate it into the jurisprudence of the country."⁸⁶ Roger Brooke Taney, when he was attorney general of Maryland, argued for a states-rights interpretation of the commerce clause; when he was a judge he decided the issue the other way. He then felt it necessary to explain that the difference was due to the fact that he had changed his mind on what the rule ought to be; he did not suppose it acceptable to argue one way when he was an advocate and to decide the other way when he was a judge.⁸⁷

The rule the Virginia State Bar repealed was more modest; it requires only that the advocate disclose authority when the judge is in danger of erring through ignorance. In that modest form, it is a rule of discipline in the rest of the United States. The Virginia State Bar, arguing that Virginia lawyers disobey the rule, took it out of the Virginia rules of discipline and put it in the ethical admonitions. That was, I think, a capitulation to the adversary ethic. It is an instance of what I mean by the systematic evasion of the issue of complicity. The reason given was that professional moral standards are decadent; Hoffman had a gentleman's answer for that reason: "What is wrong," he said, "is not the less so from being common."⁸⁸

Some gentlemen-lawyers have, of course, defended the adversary ethic, soberly when their prosperity depended on it, and righteously when they saw themselves as protecting the weak (including the weak who are not even weak). But the issue of complicity persists; the issue of what to do about complicity persists. The evasions don't work. Stories of white gentleman-lawyers in the racially segregated South are useful here. I think of lawyers such as Atticus Finch; James Edwin Horton, so-called "good judge" of the *Scottsboro Cases*; the federal judges Jack Bass called "unlikely heroes";⁸⁹ and of Charles Morgan, who has said that he practices law against order.⁹⁰ The moral appeal these lawyers make is to the values of Southern culture. (That was also the moral appeal of Dr. Martin Luther King, Jr.⁹¹) Their method is integrity. The challenge that they put to themselves is that they must account for their complicity in the continuation of slavery.

Faulkner's *Intruder in the Dusk* (1948) is a deep, complex mystery story about this challenge. Gavin Stevens, Faulkner's gentleman-lawyer, represents Lucas Beauchamp, a black man accused of

86 *Supra* note 38, Res. XIV.

87 Bernard C. Steiner, *Life of Roger Brooke Taney* (1922), 267-273.

88 *Supra* note 38, Res. XXIII.

89 Jack Bass, *Unlikely Heroes* (1981).

90 F. Powledge, "Something for a Lawyer to Do," *The New Yorker*, Oct. 25, 1969, p. 63.

91 *Supra* note 10, ch. III.

murdering a white man. Lucas insists that he did not do the deed. Gavin does not believe him, and does not listen to him. Gavin is wrong even under Lord Brougham's standards: He fails at what lawyers pretentiously call "the administration of justice." Of more importance to his view of himself, he fails to be a gentleman; he does not practice the virtues of justice, civility, and tolerance; he does not wait for the other. Gavin fails in both ways because he is in complicity with his racist community. What marks Gavin as a gentleman nonetheless is that complicity remains a moral issue for him. The story Faulkner tells is the story of what Gavin does about his complicity — what he thinks he is able to do, which is to give Lucas a way to tell the truth; and what he regrets not being able to do, which is to give his community a way to tell the truth.⁹²

Gavin is able to retain the issue of complicity because he is able to hear his moral critics. He listens to, and is shown his error by, two people: One is a boy, Chick, his nephew. The other is a brave old woman, Miss Habersham, who makes Faulkner's argument that the culture of the South values the justice and the courage needed to overcome racism. Southern-gentleman stories frequently demonstrate moral substance and bravery in this way, through old women. (Another example is Atticus Finch's neighbor, Mrs. Dubose, who teaches the Finch children what courage is. Southern gentleman-hero stories are, as Trollope's stories are, in substantial part, stories about virtuous women.)

The critical part of the moral substance, for present purposes, is what the gentleman learns to do when he notices his complicity in abuses of power. He learns how to *repent*; he learns how to repent because his culture knows and teaches him how to repent. In Faulkner's last story, *The Reivers* (1962), the grandfather's advice to the boy, at the end of the story, is that a gentleman cries, but he always washes his face. "A gentleman accepts the responsibility of his actions and bears the burden of their consequences," the grandfather says, "even when he did not himself instigate them but only acquiesced to them, didn't say No though he knew he should."

92 An ordinary moral opportunity for lawyers — to provide their communities a way to tell the truth. Cf. Alasdair MacIntyre, "Contemporary Moral Culture," *C.C.I.C.A. Annual*, 1982, p. 26. This in turn is one of the ways the culture survives the fact that it is — to use an old-fashioned word — sinful: "When a society abandons its ideals, just because most people can't live up to them, behavior gets very ugly indeed." Judith Martin, "Miss Manners," *The Washington Post*, Jan. 1, 1984, p. G-1, col. 1, G-6, col. 6. It is important to underline the claim — my claim — that the gentleman's ethic is rooted in his culture; I do not claim any other foundation for it; I do not see the gentleman as appealing to a categorical imperative.

The gentleman learns how to tell the truth at last — and, more important for a lawyer, how to get out of his client's way, so that his client can tell the truth.⁹³ Repentance means all of this and it also means, for a gentleman-lawyer, that he learns how to show his community that it too has to repent. "The shame will still be there of course," Gavin says, "but then the whole chronicle of man's immorality is in his struggle toward the stars in the stepping-stones of his expiations."

Intruder in the Dust is also an ironic story about *becoming* a gentleman. Gavin has to learn, one stepping-stone at a time, how a gentleman comes to terms with his complicity; he also, and at the same time, has to teach his nephew how to be a gentleman, and to show his nephew how to be relatively less in complicity than Gavin has been. Gavin *has* to do this even when his nephew needs a lesson on complicity less than Gavin himself does. The irony is that Gavin has to learn from Chick, his student, how it could have been that Chick believed Lucas when Gavin did not: "When did you really begin to believe him? . . . I want to know, you see. Maybe I'm not too old to learn either." The answer is that Chick never *disbelieved* Lucas; he was not old enough, yet, to be in complicity. That answer deepens and underlines Gavin's awareness of complicity; it makes repentance more urgent, because, unless repentance comes quickly and clearly, Chick will either become a gentleman as much in complicity as Gavin is, or he will run away from his community, and it is only in his community that he can find out who he is. The gentleman values his community that much: It is where he learns who he is.

Gavin sees that he has to learn to tell the truth in the community, and, even more, to step aside so that his client can tell the truth in the community. The community doesn't listen; Gavin is unable to teach his community to tell the truth; *it* is persistently able to be indifferent, especially to what it already knows and values. Gavin, the gentleman, is not able to be indifferent:⁹⁴ He can be ignorant; he can be self-deceived; but he cannot be irresponsible. He will not be able to do as much about racism as Chick will be able to do; Gavin finds that some of the marks of his complicity are indelible. But Gavin is finally able to deny the social engines that protect cultural deception; and he does this by affirming his community's values.

This is not at first a matter of prophetic witness; it is at first a matter of repentance. It is a way of coming to understand how the community's manner, its customs, its delusions, protect it in its evil,

93 Stephen Wexler, "Practicing Law for Poor People" (1970), 79 *Yale Law Journal* 1049.

94 I see the same theme in *To Kill a Mockingbird*; *supra* note 55.

and have protected him in his evil. The intellectual maturity that Gavin shows to Chick is that learning, in repentance, is a matter of looking at the community from a point of view provided by describing the values the community believes but hides from. The teaching method requires that Chick understand where the values come from, and that means Chick must repent, too, for his early and callow contempt for his community, for his failure to be compassionate, and for not understanding how painful the lesson will be for those who are willing to learn it; but mostly Gavin has to tell Chick that Chick may be able to do what Gavin has not done and will not do:⁹⁵

[T]hey were his own and he wanted no more save to stand with them unalterable and impregnable: one shame if shame must be, one expiation since expiation must surely be but above all one unalterable durable impregnable one: one people one heart one land: so that suddenly he said,
 "Look—" and stopped but as always no more was needed.
 "Yes?" his uncle said, then when he said no more: "Ah, I see. It's not that they were right but that you were wrong."
 "I was worse," he said. "I was righteous."
 "It's all right to be righteous," his uncle said. "Maybe you were right and they were wrong. Just dont stop."
 "Dont stop what?" he said.
 "Even bragging and boasting is all right too," his uncle said. "Just dont stop."
 "Dont stop what?" he said again. But he knew what now; he said:
 "Aint it about time you stopped being a Tenderfoot scout too?"
 "This is not Tenderfoot," his uncle said. "This is the third degree. What do you call it?—"
 "Eagle scout," he said. "Tenderfoot is, Dont accept. Eagle scout is, Dont stop. You see? No, that's wrong. Dont bother to see. Dont even bother not to forget it. Just dont stop."

The lesson is the one Chick begins with: His ability to act, like his uncle's ability to understand why he did not act, are the products of one unalterable durable impregnable community. Chick is learning not to accept; that's integrity. And not to stop; that's courage. Both Gavin and Chick are able to learn because they are able to repent — because complicity remains an issue for them.

The gentleman's ethic copes with institutional power by keeping alive the issue of complicity. Because of that, the gentlemen-lawyers in these Southern stories are able to spell out what the culture believes, and to compare what it believes with what it is doing. Chick is learning this from Gavin. Gavin, in repentance, is learning from Chick. It is important to say again that the moral demand — this tardy learning of what Gavin knew all along — is the moral demand of the community. It is the community that provides the moral substance and the community that demands that the offices of repentance be filled by gentlemen and by lawyers. (There is a question here

95 *Intruder in the Dust* 209-210 (Mod. Lib. ed. 1948).

of whether the gentleman will be able to countenance the harm that will result to the community if the gentleman is effective in his office of repentance. That is a question I take up in the fourth test of the gentleman's ethic.)

There is another way to put this: The dichotomies of moral life, the biblical (and Augustinian and Lutheran) distinction between the world and the kingdom of God, are not ontological; the dichotomies are in each of us. There is not here, in this corner, the righteous; and there, in that corner, the practitioners of coercion. The community is not a limit on the self; it is *inside* the self. That is why the gentleman values tradition and constancy and why he has to learn how to repent for his complicity. And that is why the gentleman's insistence on integrity is important in professional ethics.⁹⁶

If you narrow this issue from the community context to the more intimate context of professional person and client, the test is whether the professional person looks upon the other, the client, as a threat or as a gift. As the occasion for learning, as one to wait for, or as a bundle of movements and words.⁹⁷ As a subject or as an aggregation of interests. Whether our professional lives, for clients, are an occasion for performance or a way to tell the truth. The gentleman-lawyer has finally understood, I think, and often in repentance, that his client is a gift: Gavin Stevens comes to that understanding at the end of the story, when Lucas comes to the law office to forgive Gavin for complicity with slavery. Gavin's ethic was able to carry him that far — to the place of forgiveness — because it would not allow him to hide from his complicity. "The recognition of complicity," Robert Penn Warren said, "is the beginning of innocence."⁹⁸

The question, then, is one of returning this ethic to the institution — to ask whether Gavin's ethic shows him what to do about his professional institutions. Can institutions be told the truth? The answer to that question involves tragedy and suffering.

Test No. 3: Does the Gentleman's Ethic Take Into Account the Tragic Nature of the Moral Life?

A Bible story: Saul, king of Israel, was ordered by God to make war on the Amalekites and to put them all to death. Saul made war as ordered, and killed as ordered, with one exception: He spared Agag, king of the Amalekites. God was displeased; He took the kingdom away from

96 Stanley Hauerwas, "Constancy and Forgiveness: The Novel as a School for Virtue" (1984), *Notre Dame English Journal*, 23.

97 *Supra* note 4 at 84: "Bott saw people as bundles of movements and words from which it was his duty to extract proof of whatever he wanted to believe about them."

98 *Brother to Dragons* (1953), at 215.

Saul.⁹⁹ "Saul was wrong in sparing King Agag . . ." Elie Weisel says. "The Talmud spells it out: whoever shows mercy for the merciless will end up by becoming merciless toward men committed to mercy. . . . Saul was wrong, but we love him for it, and so does our tradition. We love him because he did not kill, because he dared transgress the command and let the Amalekite king live. Saul fell victim to his own humanism and thus became a tragic hero. . . . King Saul did not put King Agag to death. He could have — and perhaps he should have — but he did not."¹⁰⁰ So deep is the Jewish respect for life that Jews love Saul for defying God Himself in order to spare a life.

Saul's was a tragic choice. The question for the gentleman is whether his ethic equips him to deal in an admirable way, as King Saul did, with the tragic nature of the moral life. The stories in which the gentleman's culture — and therefore the gentleman himself — finds its values are prototypically stories of tragic choice. The story of Saul and Agag is an example from religious tradition. The story of Antigone, or the story, in the *Crito*, of Socrates's staying to be killed in Athens, when he could have escaped, are examples from the philosophical tradition. Atticus Finch's complicity in falsehood to protect Boo Radley, and Chick Mallison's return to share in the moral agony of Jefferson, Mississippi, are Southern-gentleman stories from which the gentleman-lawyer learns, when he is young, that gentlemen don't accept evil, don't stop resisting evil, and don't leave home because of evil.

These are stories in which theories of what is right and what is wrong are not dispositive; they show that our morals lie deeper than theories of right and wrong. The moral direction these stories show is not arbitrary, though; tragedy is not a casual choice at a fork in the road or the flipping of a coin. It is a direction we can understand when we know the whole story: At the end of the story we say that lying to protect Boo Radley is the sort of thing Atticus would do. We might not have been able to predict the decision, but when we know it in the context of his life and of the culture we share with him, we can see that it fits. One way to analyze that fact a bit would be to notice that the moral directions taken by Saul, Antigone, Socrates, Atticus, and Chick Mallison were both personal and cultural. These directions were consequent on — to use an old-fashioned word — the moral *formation* of the actor. It is important, I think, to see that this information goes on throughout life and that it is a matter primarily of learning; learning and change are displayed in these stories: in the youth of Chick and Antigone, in the mature lives of Saul and Atticus,

⁹⁹ I Samuel 15.

¹⁰⁰ *A Jew Today* (1978), at 175.

and at the end of the life of Socrates. Our study of the way the gentleman changes as he learns is the study, not of propositions, but of history.¹⁹¹ "When self and nature are . . . in right relation we perceive the truth of our existence. But because truth is unattainable without a corresponding transformation of self, 'ethics,' as the investigation of that transformation, does not follow after . . . prior systematic presentation . . . but is *at the beginning* of . . . reflection." That is, the truth of our existence and the study of what we should do are a single inquiry. The process is both personal and cultural:

The gentleman passes through and takes moral direction from tragedy in the same way he deals with abuses of power — with integrity, and rooted in his culture. This means, of course, that he is rarely dead sure that he's right. His not being sure is not a failing, but is a strength; it comes about because he is virtuous in a world in which the interesting moral questions are like Saul's and Antigone's. Atticus Finch's protection of Boo Radley is personal in this way, as is Sir Thomas More's refusal to take the Oath of Succession when the nobility and hierarchy of England have capitulated to the King. Both gentlemen honor their culture and, in the direction they take, display the moral formation they have from their culture. More finally says that this apparent eccentricity is a consequence of his integrity; his culture (even the law) taught him to act as he does. He also says that the integrity of his society depends on individual moral integrity, that the statesman who betrays conscience leads his country to chaos; his direction is political and professional as well as personal, but it was historically, and is in Robert Bolt's understanding, a direction rooted in More's "adamantine" sense of who he is.¹⁰² And that sense is both personal and cultural.

Stories of gentlemen are personal, as well as cultural, because they are stories of learning how to be good.¹⁰³ This is clear in the Southern-gentleman stories in which a mature gentleman passes through (Atticus) and learns from tragedy (Gavin) as he teaches the novice gentleman both how to behave and how to learn (Chick Mallison and Scout and Jem Finch), and as he discovers himself how to behave and how to learn. Learning how to be good is also the center of narratives where the tragedies and crises are intimate and even minor and the gentleman is apparently fixed in his habits and attitudes: Plantagenet Palliser is Duke of Omnium and an aging widower when he passes through the family crises that brought Trollope to say Plana-

101 *Supra* note 9 (*Peaceful Kingdom*), at 16. "Ethics," Hauerwas says, "is not primarily about rules and principles, rather it is about how the self must be transformed to see the world truthfully." *Id.*, at 33.

102 *Supra* note 37; *supra* note 66, ch. 18-19.

103 *Supra* note 101, at xx, xxiii, 15.

tagenet was the perfect gentleman, and Letwin to choose him as second only to Madame Max.¹⁰⁴ One such crisis is his learning to apologize to Madame Max for a private injustice to her; the other is learning to change his mind about his daughter's suitor. These are stories of how good people grow and learn and change; C.P. Snow's plots almost always turned on such processes. These stories say that the gentleman's moral life is a life of learning — and very often of learning how moral life is tragic and what a gentleman does about tragedy. They refute in the clearest way the trite falsehood that a 22-year-old in a university law school is too old to learn morals. Gavin and the Duke would say the law student's problem is that he is not old enough.

The way the gentleman learns is from and with history (his story); he puts events together and makes sense — a story — out of them. Gavin Stevens does that with the events of his and his town's life with Lucas Beauchamp. Plantagenet Palliser does it when he fits his troubles with Madame Max and with his daughter Mary into his own and his late wife's youth together. I try to fashion a history "sufficient to give me a sense of self, one which looks not only to my past but points to the future, thereby giving my life a telos and a direction. . . . My act is not something I cause, as though it were external to me, but is mine because I am able to 'fit' it into my ongoing story."¹⁰⁵

But this history is not only personal; it is also the story of the gentleman's culture. "No one can become virtuous by doing what virtuous people do. We can only become virtuous by doing what virtuous people do in the manner that they do it [in] . . . by learning from others how that is done . . . by becom[ing] part of a community that practices virtues. . . ."¹⁰⁶ The Jews do not love life because of Saul; they love Saul because he shows them how much Jews love life. When the gentleman passes through tragedy, and tragically refuses to take an indicated moral direction — as Antigone and Saul do — he *honors the direction he refuses to take*: Antigone shows no contempt for Creon, and Saul certainly does not show contempt for God. The meaning of the stories is that Greeks revere their dead and Jews love life; but the meaning of the story of the Greeks is that they honor the gods, and the story of the Jews is the story of a love affair with God. Those values, in our seminal moral cultures, are not dissipated — in fact they are enhanced — by the stories of Antigone and of Saul. The Jew or Christian who is also an English-speaking gentleman and a

104 *The Duke's Children* (1880).

105 Note 101 *supra* 36, 42; this notion of the fitting is derived from H. Richard Niebuhr, *supra* note 16; I attempted to apply it to legal education in "Brother Justinian Goes to Law School" (1984), 34 *Journal of Legal Education* 190.

106 *Supra* note 101, at 76.

physician or a lawyer has been formed by such stories; *all* of us have. That's how, whether we want to be gentlemen or not, we know what it is to be gentlemen.¹⁰⁷

We understand the gentleman and we see, when the stories are over, that what he does in great matters is fitting, because we know about him in small matters. Atticus and Gavin are heroic in telling the truth because they are ordinary in telling the truth.¹⁰⁸ The ethics of virtue rest on small events, not great ones. We don't talk about the tragic nature of moral life when the matter is small; we talk then in trite phrases. We talk, for example, about tolerance for ambiguity, which really means tolerance for the way people are: People are not interchangeable; tolerance means waiting for the other, and the other is always different. We lawyers mean *people* when we say that no two *cases* are alike. The gentleman's tolerance is a skill for noticing the differences. His integrity carries him intact through the chaos of that. It seems to me not accidental that the ordinary ethos of lawyers in America has a special affinity for gentlemen and an affinity as well for ambiguity. These two affinities, writ large, lead us to the tragic character of professional moral life.¹⁰⁹

Test No. 4: Does the Gentleman's Ethic Give Adequate Consideration to the Moral Significance of Suffering?

The gentleman learns from his religious tradition the differences between suffering and pain. Suffering is pain understood; suffering is pain that has meaning. Stories about gentlemen are filled with the hero's suffering as the price of virtue, from wounds in battle, to being spat upon (as Atticus was), to endurance of the privations of hunger and cold as an expression of love, to suffering fools gladly. Much of this is conventional valor or unselfishness or good manners. It comes about because it is expected; the gentleman treats it as a matter of duty, or kindness, or understanding.

Suffering to overcome evil goes beyond suffering as pain understood. In our culture, suffering to overcome evil expresses the religious tradition. Jews understand the suffering of Israel, for example, as pain endured so that God's kingdom may prevail for the sake of all

107 It is the *knowing* that is significant ethically; in stories, the question is whether the person thinks it is important to be a gentleman. These are more significant questions than whether he *is* a gentleman or not. Trollope's Phineas Finn may or may not have been a gentleman — opinions vary — but it is clear that his was the gentleman's ethic.

108 *Supra* note 55.

109 Dean Monroe Freedman's widely read *Lawyers Ethics in an Adversary System* (1975) is more keenly attuned to this tragic character than it is usually given credit for being.

mankind; that is the traditional Jewish understanding of the songs of the suffering servant in the *Book of the Prophet Isaiah*, and of the image of the Servant of the Lord in the *Book of Daniel*.¹¹⁰

a thing despised and rejected of men, a man of sorrows and familiar with suffering, a man to make people screen their faces . . . like a lamb that is led to the slaughterhouse . . . he offers his life in atonement . . . and through him what Yahweh wishes will be done.

Christians appropriated Hebraic images of the suffering servant as descriptive of the man Jesus, the Lamb of God, whose way of dealing with evil was to tell the truth about it and to *suffer* violence rather than to *be* violent. Jesus taught that the Servant of the Lord was subordinate, that he was not the one who was served at table but the one who did the serving: "For who is greater: the one at table or the one who serves? The one at table, surely? Yet here am I among you as one who serves."¹¹¹

If the moral significance of my fourth test is either of these understandings of what suffering is — either the conventional price of the virtuous life or the means of overcoming evil — the gentleman's ethic takes suffering into account and makes sense of it; it passes the fourth test. Dr. Craig teaches his young colleagues that long hours, exposure to disease, and the violence of inner-city Boston are the ways physicians serve their patients. Andrew Hamilton came out of comfortable retirement to the risk of defending Zenger's defiance of colonial government;¹¹² John Adams endured Boston's disapproval in order to provide legal counsel to the British soldiers who fired on the crowd in the Boston Massacre;¹¹³ Atticus and Miss Habersham went alone to stand between their black friends and the lynch mobs; Judge James Edwin Horton risked his judicial career — and lost, as he knew he would — when he granted a motion for a new trial in the second of the *Scottsboro Cases*.¹¹⁴ Our gentleman-heroes teach us that good doctors and good lawyers suffer for justice, and repent for injustice.¹¹⁵

110 Isaiah 53:3, 9-10, Jerusalem Bible.

111 Luke 22:27, Jerusalem Bible, discussed, as legal ethics, in my essay cited *supra* note 30.

112 A. Schlesinger, *Prelude to Independence: The Newspaper War on Britain 1764-1776* (1966), at 64-65; B. Bailyn and J. Hench (eds.), *The Press and the American Revolution* (1980), at 74, 369; Hamilton's jury speech is in Theodore Schroeder (ed.), *Free Press Anthology* (1909), at 104.

113 Catharine Drinker Bowen, *John Adams and the American Revolution* (1950), at 386-409.

114 *Supra* note 13, ch. 14.

115 *Supra* note 4, at 235-239: Letwin uses the ecclesiastical novels to discuss religion and the gentleman, including the Anglican priests Arabin and Crawley as examples on this point.

Where the gentleman's ethic fails is when sound morals require *others* to suffer. This is not a failure of the gentleman's Hebraic religious heritage but a failure in the gentleman's ethic, a failure to be faithful to the religious heritage. It is, more specifically, a failure to comprehend the mystery and the hope that the heritage provides as the means for being truthful about evil in the world, about what Newman called the passion and the pride of man:¹¹⁶

the greatness and littleness of man, his far-reaching aims, his short duration, the curtain hung over his futurity, the disappointments of life, the defeat of good, the success of evil, physical pain, mental anguish, the prevalence and intensity of sin, the pervading idolatries, the corruptions, the dreary hopeless irreligion, that condition of the whole race, so fearfully yet exactly described in the Apostle's words, 'having no hope and without God in the world' — all this is a vision to dizzy and appall; and inflicts upon the mind the sense of a profound mystery, which is absolutely beyond human solution.

Philip Mason echoes Newman's view (and C.S. Lewis's) that the gentleman's ethic is not finally Christian but only, in Mason's phrase, "a cult derived from Christianity."¹¹⁷ It is in the same way not Jewish either, but in the same way is a cult derived from Judaism. I think the difference between being a gentleman and being a Jew or a Christian is that the gentleman is optimistic and responsible where the radical believer is hopeful. Hope is optimism *with truth*; the religious tradition teaches that it is important to see and to say that the world is the sort of place Newman describes and that most of the circumstances and results Newman describes are beyond the control even of gentlemen. They are mysteries. They wait behind a curtain hung over the gentleman's futurity.¹¹⁸

Truthful response requires hope, not so much when truthful response brings harm to the gentleman but when it brings harm to other people; the harm that may come to others is not a moral argument against truthful response. Here is where the gentleman's sense of responsibility for what happens, his confidence in his abilities, and an optimism born of the view that a person chooses what happens to him, lead the gentleman astray. He wants too much for things to come out right.

What rends the gentleman-lawyer's professional ethic is that gentlemen-lawyers think they can save their clients from suffering.

116 Quoted *supra* note 42, at 182-183.

117 *Id.*, at 152.

118 Joachim Jeremias, *The Parables of Jesus* 153-160 (2d rev. ed. 1972), shows how the parables of the judge (Luke 18:2-8) and of the friend (Luke 11:5-8) are intended by Jesus "to imbue the disciples with the certainty that God will deliver them from the coming tribulation . . . nothing is more certain than his mercy to his own." *Id.*, at 160. *Supra* note 66, ch. 18-19, is Stanley Hauerwas's and my discussion of hope in the life of Thomas More.

The gentleman-lawyer thinks so well of his ability to control his own destiny and to protect those he defines as dependent on him, that he betrays the substance and the purpose of his virtues. Trollope's lawyers show this: Consider Thomas Furnival, defense counsel in *R. v. Mason*, in *Orley Farm*, and compare him with Mrs. Orme in that story or with the Rev. Septimus Harding of *The Warden*. Furnival did a lawyer's job in defending Lady Mason, who was guilty of perjury, and whom Furnival knew to be guilty. But he could not — would not — help her to peace in her guilt or to reconciliation with her family and her community. He could not do that because he could not bear the price she would have to pay if she told the truth. And so he pretended that he thought her innocent, and defended her with cleverness and success, and did her no *good* at all. He abused truthful witnesses, scandalized a young colleague, and contributed to cynicism in his profession. Lady Mason's comforter was not her lawyer, but her neighbor Mrs. Orme, whose skills were the skills of a truthful friend. Mrs. Orme was not clever; her advice to Lady Mason was to tell the truth. Lady Mason finally did tell the truth, after her lawyers left the scene, and of course she suffered.¹¹⁹

It is a fair reading of the story that Lady Mason wanted to tell the truth all along but that she needed a counselor or an advocate or a friend to help her do it. She needed a brother or sister who would wait for her; but her lawyers treated her less as a person to be waited for than as a set of interests. By their lights they protected her; she was after all acquitted of perjury. But in fact they deceived themselves into doing for her only what their profession had licensed them to do. They pretended that this was what she wanted done. Furnival finally supposed his function was the most important thing he could do, the most important thing to be done in the case — not because he was duped by Brougham's ethic but because he thought he could save his client from suffering.

Furnival's difficulty as a gentleman did not have to do with a tragic choice; tragic choices presuppose clear sight. Furnival fooled himself into thinking he could make things come out right in the sort of world Newman described, and therefore Furnival never reached the clarity that makes the understanding of tragedy coherent and useful:

Mr. Furnival did think that he might induce a jury to acquit her; but he terribly feared that he might not be able to induce the world to acquit her also. . . . He . . . seemed to feel that it would suffice for him if he could so bring it about that her other friends should think her innocent. . . . It would be sweet to feel that she

119 I have written more elaborate essays on both examples: *Supra* note 66, ch. 5-7 (*Orley Farm*); "A Lesson From Trollope for Counsellors at Law" (1978), 35 *Washington and Lee Law Review* 727, reprinted as ch. 1 in Robert S. Redmount's and my *Legal Interviewing and Counseling* (1980) (*The Warden*).

was in his hands, and that he would treat her with mercy and kindness . . . he must be able to proclaim aloud his belief in her innocence.

And the only way to do that was to be untruthful with himself and everyone else and to claim as excuse the determination to protect Lady Mason from harm.

It may be that the reason Thomas Furnival “feared that he might not be able to induce the world to acquit her also” was that he distrusted the world; he had described for himself the community in which he and Lady Mason lived. He described a community that had no way to forgive Lady Mason, no way to take her back, as he had forgiven her and taken her back. Whether his description of the community was accurate or not, Furnival was certainly right to see the risk involved. But his refusal to take the risk amounts to a judgment on his community (and Trollope’s calling it “the world,” in an almost scriptural way, signals the judgment): It was not the sort of community that was capable of caring for those who suffer when a gentleman tells the truth. Or, to put that another way, it was not a community in which the gentleman was able to be both among the truthful and among the providers of comfort to those who suffer when the truth is told.¹²⁰

This perspective might also explain why Gavin Stevens was unable to do what Martin Luther King, Jr., did — to bring the racist community to repentance. The community William Faulkner described was not a community able to comfort those who suffer when the truth is told about the continuation of slavery; but the community King described was a community that was able to hear the black church; the black church was a prophetic force; it was not racist, and never had been; it was and always had been Southern. It could bring its community to repentance.¹²¹

Septimus Harding, of *The Warden*, was the manager of an endowed rest home for poor, old men. The rest home got too much money, and Harding was paid too much of what it got; the residents of the rest home got very little. Septimus was not as deeply deceived in his profession as the lawyers in *Orley Farm* were in theirs, nor as deceived as other gentleman-clergymen who held endowed livings in his diocese. It took time and a bit of prodding but Septimus came to see that he was overpaid and to see that he should say so and do what he could to get the income applied not to the clergy but to the poor. The price of his telling the truth was poverty for himself and his daughter and disloyalty to his professional colleagues in the English

120 I am indebted to Stanley Hauerwas for this insight.

121 I hoped to make a somewhat similar argument with regard to women in the legal profession, text accompanying *supra* notes 69-80.

clergy — endowments being, just then, a matter of popular and parliamentary attention. Harding's lawyer, who saw interests where he should have seen a person, an unusual person, as every person is, thought Septimus was added. Septimus was referred by counsel to the ministry of his relatives.

* * *

The gentleman-lawyer comes thus to think of himself as a specialist in the prevention of pain. The notion that he is a protector from pain comes from the delusion that he is able to control events, even such ultimate events as the discovery of his own identity and the identities of those he serves. Thus the medical profession, until very recently, pretended it could cure when it could only predict.¹²² Thus Gavin Stevens, who centered his professionalism in the benevolent racism of patronage, thought he could use his power in the white community to save his black client's life; but he did not listen to his client's attempt to tell the truth. Thus Atticus Finch lied to protect Boo Radley from facing the community and left him to hide and to be hidden from it.¹²³ Thus Dr. Thorne protected Mary Thorne from meeting the drunken Sir Roger Scratcherd, and from learning the painful fact that Sir Roger was her uncle. Thus Thomas Furnival saved Lady Mason from the pain and the promise of telling her neighbors the truth. The description of the gentleman's protection of his client is, as nearly as I can tell, universal in stories of gentlemen who are professionals; literature in English is evidence that protection of the weak who are not weak¹²⁴ is fundamental to descriptions of the gentleman's ethic. Newman's observation that the gentleman cannot bear to inflict pain becomes the observation that the gentleman cannot bear for pain to occur, cannot bear the possibility that he is unable to prevent pain. And so he hides from what he cannot bear, in the delusion that he can protect those who depend on him to save them from suffering. To save them both from pain and from meaning.

Such a delusion is at variance with reality; it is a matter, in Newman's metaphors, of quarrying granite with razors and mooring vessels with silken threads. It is deeply corrupting because it takes away the *telos* on which the ethics of virtue rest — peace and the contemplation of truth — and replaces the *telos* with notions of honor and shame. The end of a virtuous life is to become a good person; the end of virtue in professional life is that one's client become a good

122 *Supra* note 33, at 28.

123 R.A. Dave, "To Kill a Mockingbird: Harper Lee's Tragic Vision," in M.K. Naik, S.K. Desai, and S. Mokashi-Punekar, *Indian Studies in American Fiction* (1974); *supra* note 55.

124 The phrase is Gavin Stevens's: William Faulkner, *The Town* 88-96 (Vintage ed. 1961).

person. Judgments that turn on honor and shame replace that *telos* with the approval and disapproval of a narrow, privileged community, a community of wealth, status, breeding, and shared professionalism — the sort of community Furnival described for himself and for Lady Mason. Such a group nourishes the delusion that pain can be prevented through control and protection of those who are dependent on members of the elite group.¹²⁵ Letwin's celebration of the Victorian gentleman does not take seriously enough this flaw in the gentleman's integrity. I suspect this is because she does not relate the gentleman's view of his religion to his failure to explicate his esteem for honor and his horror of shame.¹²⁶ She does not see as clearly as she should that it was impossible for him to be a gentleman and at the same time come to terms with the fact that the moral life may bring harm to other people. It is not that the gentleman's religious tradition failed him, as Letwin and Mason imply, but that he failed it. The religious tradition that supported and may have created the gentleman's culture in England was conscious of pain in the world Newman described. It gave meaning to pain through images such as the suffering servant of Israel and Jesus on the cross — lives that are borne by the servants who save, but also lives that are to be expected of everyone who is part of the tradition. (One remembers Mrs. Meir's saying, "Every Israeli is a soldier.") In this way Israel explains its centuries of pain. That is, in this way Israel's pain comes to be understood in the tradition as a matter not of *pain* but of *suffering*. In this way the church accounts for the fact that its savior lord died as a matter of law and as an object of capital punishment, *and* for the fact that his followers died the same way. "No one is . . . to be pitied if he cannot at first belong to this minority," Karl Barth said, "nor to be envied if he really must."¹²⁷

125 Bertram Wyatt-Brown, *Southern Honor: Ethics and Behavior in the Old South* (1982), shows how a morality of honor is one that depends on the approval of others, that in such a morality "character divorced from social convention" is incomplete (15). Honor then takes the place of conscience, of personal identity, and of merit (22, 34). In the old American South, honor made it difficult for a gentleman to discover and tell the truth because sociability and manliness were more important to his culture than honesty was (98). The *telos* is lost in such a moral culture — as Aristotle said it would be — because the approval of others takes the place of the quest, or way, that constitutes the virtuous life. See Gilbert Meilaender, "Joseph Pieper: Explorations in the Thought of a Philosopher of Virtue" (1983), 11 *Journal of Religious Ethics* 114; *supra* note 30 (*Church Dogmatics*), at 647-685. The result, in history and in morals, is "a sense of superiority so dense as to be impenetrable," Michael Howard, Book Review, *Washington Post Book World*, Feb. 26, 1984, pp. 1, 4.

126 Mason does; *supra* note 42.

127 Cited and discussed in Shaffer, *supra* note 30.

The English gentleman, who had this tradition at hand, was able at his best to accept the cross for himself, but he was not able to accept it for those he thought he was commissioned to protect. He became instead a muscular Christian. He fashioned for himself a religious sub-culture that looked like Christianity but was not,¹²⁸ because he took away from Christianity (and from Judaism) its shocking and radical view of suffering: "Remove from Christianity its ability to shock . . . and it is altogether destroyed," Kierkegaard said. "It then becomes a tiny, superficial thing, capable neither of inflicting deep wounds nor of healing them."¹²⁹

CONCLUSION

The gentleman's ethic is remarkably hearty. It turns up in a television program about doctors in inner-city Boston. It is in our cowboy stories, our sailor stories, our soldier stories, our lawyer stories, and even our feminist stories.¹³⁰ It looks down on us from the portraits on the walls of our schools, our hospitals, and our courthouses. We love the gentleman and we seek to imitate him. We confront the fact that he is a man, and that his ethic is sexist, by saying that ladies can be gentlemen too. We probe the substance of his ethic and find Aristotle — not a bad mentor. We test his ethic and find that it is not essentially a matter of class or status or wealth or breeding or *noblesse oblige*. His ethic withstands tragedy and the pain that personal courage necessarily demands. But, finally, the gentleman cannot account for the pain that is beyond the reach of personal integrity: Suffering is an acceptable price when it is paid for physical courage and for confronting evil, but it is too great a price when the gentleman must endure or even require it of those he proposes to protect.

Maybe it's unfortunate that we cannot invent an ethic, or fashion it from an inventory of useful ideas. We can at best locate an ethic; describe it, as we describe ourselves. Approaching the matter in that

128 John Galsworthy's novel, *Flowering Wilderness* (1932), shows this. Sir Lawrence Mott says there, "Most of our caste in this country, if they only knew it, are Confucian rather than Christian. Belief in ancestors, and tradition, respect for parents, honesty, moderation of conduct, kind treatment of animals and dependents, absence of self-obtrusion, and stoicism in face of pain and death" (46, Scribners ed. 1970). The offence of Winifred Desert, who is hounded from England in disgrace because he became a convert to Islam at gunpoint, is not betrayal of faith, or even of culture, but, as Sir Lawrence puts it, of loyalty: "The individual Englishman in the East is looked up to as a man who isn't to be rattled, who keeps his word, and sticks by his own breed" (*id.*, at 82).

129 Cited and discussed in Shaffer, *supra* note 30.

130 I have in mind *The Virginian*, *Billy Budd*, and the novels of Jane Austen.

cultural way (as the gentleman's ethic itself says we must), I think we could say that the gentleman's ethic went wrong when it veered away from its religious tradition, and especially from the means the religious tradition uses to account for the suffering of others, from the invitation that follows St. Peter's confession: Take up your cross and follow. And so, Mason says, the gentleman found specific religion uncomfortable:¹³¹ "Men did not care to look on the torn humiliated body that bore witness to human cruelty and divine compassion. Flesh was slightly obscene: and if the Word had been made flesh, the less said about it the better. . . . It was better not to think too much about the Sermon on the Mount and the dangerous doctrines of the *Magnificat*. . . . [W]hat was needed for everyday life was something less demanding. . . ."

Once that happened — and it happened in the English and American gentleman's way of coming to terms with religion long before Newman's Oxford Movement — the English Christian community that had produced saints and martyrs was remembered untruthfully. In this false memory it became an elite community that preserved itself in the false virtue of honor; it sought to avoid the false vice of shame; and it dissipated the teleological nature of the real virtues. It began by protecting the weak who were not weak and it ended with apologies for racism and economic injustice, for exploiting the serfs and marrying money.

You cannot choose a professional ethic as you would choose a husband or a place to live or a church to go to. A professional ethic is mostly something you already have. You don't choose it; you describe it. You try to tell the truth about it. We North American professionals cannot excise Robert E. Lee or Lewis Thomas's father from our lives; they are what we have been and what we are. We can be false to them, as we are often, in our professionalism, false to ourselves; we can pretend to forget them; but they will not go away.

If we tell the truth about the gentleman's ethic, we will, I think, admire its strength and its integrity and we will appreciate it as a source of moral capital that we already have and already *want* to have; we will admit our affection for the gentleman.¹³² This is partly because the gentleman has strength and integrity, and partly because so much of the professional soul-searching one reads these days is not professional, not soulful, not searching. The gentleman shines in comparison. But, then, being as truthful and as thorough as we can, we might have to say that the gentleman got stopped somewhere

131 *Supra* note 42, at 148.

132 *Supra* note 3.

on the road to Jerusalem. It will then be useful — as the proper business of professional ethics — to see if we can figure out why.¹³³

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