

# Ross, Moral Intuitionism, and the Role-Differentiated Amorality of Lawyers

JIAYU WU\*

## TABLE OF CONTENTS

I. INTRODUCTION . . . . .	1033
II. THE ROLE-DIFFERENTIATED AMORALITY OF LAWYERS . . . . .	1034
III. ROSS AND MORAL INTUITIONISM. . . . .	1035
IV. DOES LAWYERS' ROLE-DIFFERENTIATED BEHAVIOR RENDER THEM DETACHED FROM ORDINARY MORALITY? . . . . .	1042
V. CONCLUSION . . . . .	1045

## I. INTRODUCTION

This Note examines a famous question posed by Charles Fried in 1976, “Can a good lawyer be a good person?”<sup>1</sup> Fried, along with Richard Wasserstrom, launched a sub-discipline of legal ethics called philosophical legal ethics.<sup>2</sup> Philosophical legal ethics examines the relationship between the “standard conception” of a lawyer’s role and “ordinary” or “common” morality.<sup>3</sup> The standard conception depicts a lawyer’s role as a partisan advocate for her client, maintaining neutrality and not being held responsible for the morality of her client’s ends.<sup>4</sup> Some legal ethicists like Wasserstrom hold that lawyers acting under the standard conception diverge from ordinary morality.<sup>5</sup> This Note rejects this line of argument. It begins by presenting Wasserstrom’s argument for the amoral nature of the role of a lawyer. It then considers a moral theory known as intuitionism proposed by W.D. Ross and further explains what makes this theory attractive. Finally, it argues that if we adopt

---

\* Georgetown University Law Center, J.D. expected 2026; William & Mary, B.A. 2022; University of Cambridge, MPhil 2023. © 2025, Jiayu Wu.

1. Charles Fried, *The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation*, 85 YALE L.J. 1060, 1060 (1976).

2. See Richard Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 HUM. RTS. 1, 1 (1975).

3. See, e.g., TIM DARE, *THE COUNSEL OF ROGUES? A DEFENSE OF THE STANDARD CONCEPTION OF THE LAWYER’S ROLE* 5–13 (2009).

4. See *id.*

5. See Wasserstrom, *supra* note 2, at 1.

intuitionism in understanding ordinary morality, the standard conception of a lawyer's role does not render them detached from common moral principles.

Examining legal ethics through the lens of philosophy is important because, as David Luban puts it, “[t]he study of legal ethics is part of the study of ethics, and the study of ethics is part of philosophy.”<sup>6</sup> Moral philosophy is not only valuable for resolving specific ethical dilemmas that lawyers may encounter. It also prompts us to consider the meta-ethical question of whether the rules governing lawyers’ ethics are themselves ethical. Luban, however, observes that “only a handful of philosophically informed books and articles on lawyers’ ethics exist.”<sup>7</sup> Therefore, it is crucial to provide a philosophical analysis of the relationship between a lawyer’s role and ordinary morality, a matter fundamentally grounded in philosophy, moral or political.<sup>8</sup>

## II. THE ROLE-DIFFERENTIATED AMORALITY OF LAWYERS

Richard Wasserstrom holds that “at best the lawyer’s world is a simplified moral world; often it is an amoral one; and more than occasionally, perhaps, an overtly immoral one.”<sup>9</sup> Wasserstrom thinks that this is because, in taking on their role as a lawyer, lawyers are involved in a kind of role-differentiated behavior.<sup>10</sup> This behavior “often makes it both appropriate and desirable for the person in a particular role to put to one side considerations of various sorts – and especially various moral considerations – that would otherwise be relevant if not decisive.”<sup>11</sup> In illustrating what role-differentiated behavior is, Wasserstrom invites us to consider the case of being a parent.<sup>12</sup> Parents in most, if not all, human cultures, tend to prioritize the interests of their own children. Therefore, in making moral decisions, they would consider the interests of other people less morally significant, if not morally irrelevant. The role of a parent therefore renders the relevant moral factors that one might consider in forming a moral judgment completely different.<sup>13</sup> As Wasserstrom identifies:

If one were trying to decide what the right way was to distribute assets among a group of children all of whom were strangers to oneself, the relevant moral considerations would be very different from those that would be thought to obtain once one’s own children were in the picture.<sup>14</sup>

Being a lawyer is to be involved in a similar kind of role-differentiated behavior. Lawyers tend to prefer the interests of their clients over those of others. This

---

6. David Luban, *Calming the Hearse Horse: A Philosophical Research Program for Legal Ethics*, 40 MD. L. REV. 451, 451 (1981).

7. *Id.* at 452.

8. See Alice Woolley & W. Bradley Wendel, *Legal Ethics and Moral Character*, 23 GEO. J. LEGAL ETHICS 1065, 1065 (2010).

9. Wasserstrom, *supra* note 2, at 2.

10. See *id.* at 3.

11. *Id.*

12. See *id.* at 4.

13. See *id.*

14. *Id.*

alters the considerations involved in their moral decision-making process and further disconnects them from ordinary morality. The role of a lawyer, according to Wasserstrom, is an amoral one that renders common morality irrelevant.<sup>15</sup> For, in the role of a lawyer, one does not judge her client's ends by appeal to common moral principles.<sup>16</sup> Her task is, instead, to offer adequate legal representation of the client regardless of the moral merits of those ends.<sup>17</sup> The example that Wasserstrom employs to illustrate this point is a criminal defense lawyer.<sup>18</sup> Regardless of her personal belief concerning the client's innocence, a criminal defense lawyer is obligated to offer her best defense of the client at trial. In Wasserstrom's words, "the lawyer as professional [therefore] comes to inhabit a simplified universe which is strikingly amoral – which regards as morally irrelevant any number of factors which nonprofessional citizens might take to be important, if not decisive, in their everyday lives."<sup>19</sup>

Moreover, the role-differentiated behavior that lawyers are involved in might render them occasionally immoral. As Daniel Markovits points out in his work, *A Modern Legal Ethics: Adversary Advocacy in a Democratic Age*, in taking on the role as a zealous advocate for their clients' interests, lawyers might inevitably lie, that is, "assert[] a proposition that one privately (and correctly) disbelieves,"<sup>20</sup> and cheat, that is, "exploit others by promoting claims or causes that one privately (and correctly) thinks undeserving."<sup>21</sup>

Thus, for Wasserstrom, the role-differentiated character of lawyers' professional activity disconnects or even causes them to violate common moral principles. This prompts him and other philosophical legal ethicists to examine the relationship between the standard conception of a lawyer's role and common morality and to offer an adequate answer to the question "Can a good lawyer be a good person?"

### III. ROSS AND MORAL INTUITIONISM

However, the question "Can a good lawyer be a good person?" seems misleading. It rests upon the premise that legal ethicists have a clear and common understanding of what a morally good person is like. Moral philosophers have made many attempts to provide a systematic account of ordinary morality, yet significant disagreement persists regarding what constitutes moral goodness. In this section, the Note introduces W.D. Ross's moral intuitionism. It argues that we should adopt Ross's theory in understanding what moral goodness consists of. This is because Rossian intuitionism best captures some of the most important

---

15. *See id.* at 8.

16. *See id.*

17. *See id.*

18. *See id.* at 10.

19. *Id.* at 8.

20. DANIEL MARKOVITS, *A MODERN LEGAL ETHICS: ADVERSARY ADVOCACY IN A DEMOCRATIC AGE* 35 (2008).

21. *Id.*

features of our moral experience. This Note demonstrates this point by comparing Rossian intuitionism with Kant's moral views.

Kant thinks that what makes a person morally good is the good will.<sup>22</sup> The good will is good in every possible context. As Kant states in Section I of the *Groundwork of the Metaphysics of Morals*, "It is impossible to think of anything at all in the world . . . that could be considered good without limitation except a good will."<sup>23</sup> The good will is also good in itself. For "[it] is not good because of what it effects or accomplishes, because of its fitness to attain some proposed end, but only because of its volition."<sup>24</sup> Kant holds that an action is morally good only when it is done from duty.<sup>25</sup> Therefore, what makes a person morally good, in other words, what constitutes his good will, is that the person acts from duty.

To act from duty is to act out of respect for the moral law, which Kant calls the Supreme Principle of Morality or the Categorical Imperative.<sup>26</sup> Notice that the categorical imperative is to be distinguished from the following types of imperatives: hypothetical imperatives and assertoric imperatives.<sup>27</sup> Both hypothetical and assertoric imperatives are conditional in the sense that the grounds of our obligation to those imperatives are some kinds of desires. Kant notes that the moral law cannot be a hypothetical or an assertoric imperative, for in that case it would not be (i) a strict rule, (ii) known with certainty, or (iii) binding on all possible rational beings.<sup>28</sup> As he points out, the way we are bound by the moral law is unconditional.<sup>29</sup> That is to say that the ground of our obligation to the moral law does not depend upon any desire that we have. Kant believes that the categorical imperative is the imperative of morality, because it "declares the action to be of itself objectively necessary without reference to some purpose."<sup>30</sup>

The categorical imperative has two versions. The first version is the Universal Law of Nature formula, which can be formulated as: It is morally permissible for S to do A if and only if S can consistently will the maxim of his performing A as a universal law of nature.<sup>31</sup> The second version is the Persons as Ends formula, which can be formulated as: It is morally permissible for S to do A if and only if in performing A he treats no person as a mere means.<sup>32</sup>

Ross thinks that what makes a person morally good is that the person acts in accordance with her prima facie duties.<sup>33</sup> Ross makes a distinction between a prima

---

22. See IMMANUEL KANT, *GROUNDWORK OF THE METAPHYSICS OF MORALS* 7 (Mary Gregor ed., 1998).

23. *Id.*

24. *Id.* at 8.

25. See *id.* at 10.

26. *Id.* at 25.

27. *Id.* 25-27.

28. See *id.*

29. See *id.* at 27.

30. *Id.* at 26.

31. See *id.* at 31.

32. See *id.* at 38.

33. See W.D. ROSS, *THE RIGHT AND THE GOOD* 19 (1930).

facie duty and an absolute duty.<sup>34</sup> A prima facie duty is a morally significant kind of action.<sup>35</sup> If a person has a prima facie duty to perform such an action A, then she has *ipso facto* a morally good reason for performing that action. Ross proposes seven kinds of prima facie duties:

*Fidelity*: a duty to keep promises;

*Gratitude*: a duty to return services to those from whom we have benefited;

*Reparation*: a duty to correct wrongful actions;

*Justice*: a duty to distribute pleasure or happiness equally;

*Beneficence*: a duty to bring about some intrinsic goods including innocent pleasures, knowledge, true beliefs, virtue, virtuous actions, and the sort of compound good of pleasure distributed according to virtue;

*Non-maleficence*: a duty to prevent some intrinsic evils including pain, displeasure, error, ignorance, vice, vicious actions, and misapportionment of pleasure and vice;

*Self-improvement*: a duty to improve our moral character.<sup>36</sup>

Ross holds that although prima facie duties always carry some moral weight, no prima facie duty always has priority over the others. In fact, our prima facie duties might come into conflict with one another.<sup>37</sup> Suppose one promised her friend to meet at a local restaurant for lunch at 11 o'clock. On her way to the restaurant, she saw someone who was shot in the leg. If she stops and helps the victim, she will not be able to make it to the lunch on time. In this case, while the person has a prima facie duty to keep her promise to her friend, she also has a prima facie duty to help at the accident.

So, what should we do when we are in a situation in which we have a conflict of prima facie duties? Ross holds that in addition to those prima facie duties, we have our absolute duty, that is, our duty all things considered.<sup>38</sup> An absolute duty is to perform what is at the time the weightiest prima facie duty.<sup>39</sup> Such a duty, according to Ross, has "the greatest balance of prima facie rightness, in those respects in which they are prima facie right, over their prima facie wrongness, in those respects in which they are prima facie wrong."<sup>40</sup>

Ross thinks that there is no useful or informative formula for balancing our prima facie duties. Thus, there is no single rule from which we can deduce our absolute duty deductively. This line of reasoning is known as moral intuitionism. According to intuitionism, our knowledge of our prima facie duties is direct, immediate, and non-inferential. We do not need an argument to see that there are

---

34. *Id.* at 28.

35. *See id.* at 19.

36. *See id.* at 21.

37. *See id.* at 23.

38. *Id.* at 28.

39. *See id.*

40. *Id.* at 41.

such prima facie duties. Rather, we acquire knowledge of these prima facie duties through a kind of intuitive understanding. By the same token, our apprehension of our absolute duty rests on judgments that are not some deductions from general moral principles. As Ross explains, “That an act, *qua* fulfilling a promise . . . is *prima facie* right, is self-evident[.]”<sup>41</sup> “In our confidence that these propositions are true there is involved the same trust in our reason that is involved in our confidence in mathematics. . . . In both cases we are dealing with propositions that cannot be proved, but that just as certainly need no proof.”<sup>42</sup> Therefore, unlike Kant, Ross does not offer an explicitly formulated moral rule to account for what makes a person morally good. This seems to allow his theory to avoid several problems that Kant’s moral views face.

As we noted earlier, acting from duty for Kant is acting out of respect for the moral law, that is, the categorical imperative. At this point, let us consider some problems with the first version of the categorical imperative, that is, the Universal Law of Nature formula (the U.L.F.). Suppose that Jones’s grandmother was seriously injured in a car crash and she asked Jones whether her friend who was also in the car was still alive. Suppose further that her friend passed away and Jones knew that if he told his grandmother the truth, her situation would get worse. In this case, it seems clear that it is not morally right for Jones to tell the truth. Nevertheless, recall the U.L.F. which states that it is morally permissible for S to do A if and only if S can consistently will the maxim of his performing A as a universal law of nature. According to this line of reasoning, if Jones takes the maxim of his telling the truth to be “I should always tell the truth,” given that this personal maxim can be consistently willed as a universal law, that is, “Everyone should always tell the truth,” it is morally permissible for Jones to tell his grandmother the truth, although it may cause her to die. Thus, the U.L.F. seems to generate the wrong result in this example. This objection to the U.L.F. can be formulated as follows:

1. If the U.L.F. is true, then it is morally permissible for Jones to tell his grandmother the truth.
2. But it is not morally permissible for him to do so.
3. Therefore, the U.L.F. is false.

Another problem with the U.L.F. is that in some cases it is very difficult to formulate the maxim that one acts on in performing certain actions. In the example above, it seems reasonable to say that it is morally permissible for Jones not to tell his grandmother the truth. But how are we supposed to formulate the maxim of his lying to his grandmother? Perhaps we can formulate his personal maxim as: “I should lie whenever doing so would save someone’s life.” However, before we rush down this tempting path, let us consider the following situation. Suppose

---

41. *Id.* at 29f.

42. *Id.* at 30.

that one witnessed a murder and the police asked him whether he still remembered what the murderer looked like. Suppose further that the person could recognize the murderer and he knew that if he tells the truth, the murderer would be sentenced to death. Here, it is clear that it is morally wrong for the person to lie to the police. Nevertheless, if he takes the maxim of his lying to be "I should lie whenever doing so would save someone's life," and if this maxim can be consistently willed as a universal law, that is, "Everyone should lie whenever doing so would save someone's life," according to the U.L.F., it is morally permissible for him to lie in this case, which seems false. Thus, it seems that in the Jones's grandmother example, the maxim of Jones's lying to his grandmother in order to save her life is not to be formulated as: "I should lie whenever doing so would save someone's life." But if the maxim that Jones acted on is not "Lie whenever doing so would save someone's life," what should it be then?

The point of this discussion is to show that in determining whether certain actions are morally permissible, we don't deliberate about the maxims that we act on in performing those actions and decide whether these maxims can be consistently willed as a universal law of nature. As we have seen, although it is difficult to formulate the maxim of Jones's lying to his grandmother, we have good reasons to believe that it is morally permissible for him to do so.

Consider again the example in which the person was heading to the restaurant to meet her friend and saw someone who was shot. It is clear that the morally right thing for the person to do in this situation is to break the promise and to help the man, no matter what the maxim of her breaking the promise is and whether she can consistently will that everyone acts on that maxim. Thus, what we may conclude at this point is that Ross's account, which does not focus on the notion of a maxim, but rather on a kind of intuitive understanding of which *prima facie* duty carries the greatest moral weight, would avoid this kind of problem.

Moreover, as we can see from above, objections to the U.L.F. are generally formulated in the following way (note that this kind of objection also applies to the Persons as Ends formula which shares the same form with the U.L.F.):

1. If the U.L.F. is true, then it is morally permissible to do A.
2. But it is not morally permissible to do A.
3. Therefore, the U.L.F. is false.

As we noted, Ross's account of what makes a person morally good does not rely on a formula which explicitly states the sufficient and necessary conditions for what constitutes a morally right action. Thus, his theory avoids the kind of objection which applies to most monistic moral theories, that is, theories which hold that all kinds of moral goodness are rooted in one ultimate principle:

1. If Theory T is true, then it is morally permissible to do A.
2. But it is not morally permissible to do A.
3. Therefore, T is false.

At this point, we may conclude that Ross's moral intuitionism is an attractive theory because it reflects two important aspects of our moral experience. The first concerns the pluralist nature of morality.<sup>43</sup> The idea is that there is a plurality of fundamental moral principles (as Ross's pluralist account of prima facie duties suggests), rather than a single unifying one. This makes sense because what those previous examples tell us is that there is not a single overarching moral principle that provides an adequate justification of what makes an action morally permissible. The way we make moral decisions is nuanced and context-dependent.<sup>44</sup> Instead of appealing to a general formula that tells us "All actions of X type are morally permissible/impermissible," we balance between a plurality of prima facie moral duties and determine which one is the weightiest consideration. This process of balancing between potentially conflicting moral considerations and reaching a judgement about the weightiest one is an important part of our moral decision-making process that intuitionism truthfully depicts. Monistic moral theories like Kant's categorical imperative or utilitarianism, which hold that all morally relevant considerations can be reduced to a single unifying principle, are therefore lacking in this aspect.

Another fundamental part of our moral experience that intuitionism reflects is that we acquire knowledge of our moral duties through intuition. Consider, for example, the proposition "It is wrong to steal." It seems reasonable to say that the truth of this proposition is "self-evident just as a mathematical axiom, or the validity of a form of inference, is evident."<sup>45</sup> For a mature moral agent does not need an argument to see why it is wrong to steal. She comes to learn that this is the case through a kind of intuitive understanding.

We can also find support for Ross's moral intuitionism in anthropological studies. Jonathan Haidt, in his work, *Intuitive Ethics: How Innately Prepared Intuitions Generate Culturally Variable Virtues*, offers an account of our moral intuitions in terms of flashes of feelings of approval or disapproval that come into consciousness as we see or hear about a certain event.<sup>46</sup> For example, when we see someone cheating on an exam or cutting in line, we immediately feel displeased. Whereas when we see someone helping an elder or donating money to a charity, we immediately feel satisfied. Haidt explains why we have those flashes of feelings when we perceive certain events in our social world by appealing to a model that concerns the modularity of mental functioning.<sup>47</sup> The concept of modules was first proposed by Jerry Fodor. Haidt holds that this concept is helpful for thinking for moral intuitions.

According to Haidt, a module is a kind of input-output processing system that evolves to deal with problems or opportunities that presented themselves for

---

43. Garret Cullity, *Ross and the Foundations of Morality*, [https://philosophy.nd.edu/assets/467909/cullity\\_ross\\_and\\_fm\\_nd\\_jii22.docx.pdf](https://philosophy.nd.edu/assets/467909/cullity_ross_and_fm_nd_jii22.docx.pdf) [<https://perma.cc/W4BB-SH5L>] (last visited Apr. 16, 2025).

44. *See id.*

45. *Id.*

46. *See* Jonathan Haidt & Craig Joseph, *Intuitive Ethics: How Innately Prepared Intuitions Generate Culturally Variable Virtues*, 133 *DAEDALUS* 55, 56 (2004).

47. *See id.* at 59.

many generations in the ancestral environment of a species.<sup>48</sup> An evolved cognitive module enables a species to generate fast and automatic responses to specific environmental triggers.<sup>49</sup> Modules, in this respect, function like rules of thumb.<sup>50</sup> They allow the species to handle problems or opportunities by working out an approximate solution quickly and intuitively.

Haidt draws a distinction between the proper and actual domains of a module. The proper domain, on the one hand, is the set of scenarios and stimuli that an evolved module is designed to handle.<sup>51</sup> The actual domain, on the other hand, is the set of all things in the world that may trigger the module.<sup>52</sup> Haidt thinks that there are at least four moral modules: suffering, hierarchy, reciprocity, and purity.<sup>53</sup> Our moral intuitions can be explained in terms of those moral modules. Consider, for example, the reciprocity module. According to Haidt, an original trigger, that is, a proper domain, of this module is cheating.<sup>54</sup> A study by Trivers shows that natural selection favors a strong show of moralistic aggression toward unreciprocating individuals.<sup>55</sup> Thus, when the reciprocity module takes cheating at its input, it will emit a feeling of anger and disapproval. For selection favors individuals who feel angry and are motivated to take revenge when they are cheated.<sup>56</sup> Notice that the flashes of approval or disapproval that a moral module generates as its output are what Haidt calls moral intuitions. This explains why when we see or hear about a husband cheating on his wife, we immediately feel displeased. For, as Haidt observes, marital fidelity is an actual domain of the reciprocity module.<sup>57</sup> That is, it is something in the actual world that may trigger this module.

The modularity model offers support for Ross's moral intuitionism in two ways. First, like intuitionism, which holds that there are some *prima facie* moral duties that we all agree to, the modularity model suggests that human societies share some universal moral values. According to this model, there are some moral rules that are necessary for the survival of a society. All societies therefore must embrace those rules to exist. It follows that all societies must have some shared moral values. An example of such moral rules is the rule against punishing the innocent. Consider a society in which people would be punished even if they are innocent. In such a society, people would live under the fear of being punished at any time. They would then try to escape or form smaller societies that have rules against punishing the innocent. This would prevent the society from

---

48. *See id.* at 60.

49. *See id.*

50. *See id.*

51. *See id.*

52. *See id.*

53. *See id.* at 59.

54. *See id.*

55. *See* Robert L. Trivers, *The Evolution of Reciprocal Altruism*, 46 Q. REV. OF BIOLOGY 35, 49 (1971).

56. *See* Haidt, *supra* note 46, at 59.

57. *See id.*

becoming large-scale. Some people might even be encouraged to commit crimes. For what is the point of obeying the law, if one would be punished anyway? The society would thus no longer be stable.

What this example reveals is that every society must value justice (one of the *prima facie* duties that Ross proposes) to survive and that the prohibition against punishing the innocent is a feature that is necessary for a society. Moreover, the modularity model seems to suggest that some moral values are built into the human mind by evolution. As Haidt puts it, all children who are raised in a reasonable environment will come to grasp those values, even if they are not taught by adults.<sup>58</sup> Therefore, it seems reasonable to say that this model supports Ross's intuitionism by demonstrating, from an evolutionary point of view, that there are some fundamental moral duties that all human societies recognize.

Additionally, like intuitionism, the modularity model holds that some of our moral knowledge is innate and primitive. As we noted above, knowledge concerning moral values such as loyalty, fairness, and chastity is built into our minds by evolution.<sup>59</sup> Such knowledge is thus not learned. Rather, it is acquired through intuition. This proves intuitionism's point that we come to grasp moral truths intuitively.

#### IV. DOES LAWYERS' ROLE-DIFFERENTIATED BEHAVIOR RENDER THEM DETACHED FROM ORDINARY MORALITY?

This section argues that if we adopt Ross's intuitionist understanding of morality, then the standard conception of a lawyer's role does not render them detached from ordinary or common morality. The Note illustrates this argument by appeal to Rule 1.6 of the *ABA Model Rules of Professional Conduct*, which is the ethical rule concerning client confidentiality, and the famous *Buried Bodies Case*.

Rule 1.6 states that:

A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

[Paragraphs (b) and (c) omitted.]<sup>60</sup>

Comment 2 of Rule 1.6 explains the rationale behind this rule:

A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. . . . This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain

---

58. *See id.* at 55.

59. *See id.*

60. MODEL RULES OF PROF'L CONDUCT R. 1.6 (2018) [hereinafter MODEL RULES].

from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.<sup>61</sup>

Therefore, if one is to take on the role of a lawyer, she has to follow Rule 1.6 and keep her client's information confidential regardless of her personal belief about whether it is morally right to do so. Recall Wasserstrom's argument that lawyers, due to their role-differentiated behavior, are detached from ordinary morality. Rule 1.6 seems to be a perfect example of the amoral nature of a lawyer's professional role.

A case that best illustrates this point is the famous *Buried Bodies Case*. In that case, defense attorneys Frank Armani and Frank Belge represented Robert Garrow, who was charged with murdering a teenaged boy named Phillip Doblewski.<sup>62</sup> During their representation, Garrow told the two attorneys that he had killed Doblewski and several other teenagers.<sup>63</sup> He disclosed the locations of where he left the bodies of two of his victims, Alicia Hauck and Susan Petz.<sup>64</sup> Armani and Belge went to the sites that Garrow had identified and located the victims' bodies.<sup>65</sup> The families of the victims and the community pressured Armani and Belge to reveal the information they acquired during their representation of Garrow.<sup>66</sup> However, due to the oath they had taken when they were sworn into the bar, the two attorneys refused to disclose the information and to violate their duty of confidentiality owed to Garrow.<sup>67</sup> When Garrow was put on the stand in the Doblewski trial where he admitted to the other murders he had committed, it turned out that Armani and Belge had known and kept secret the information regarding those murders for some time.<sup>68</sup>

Here, it seems reasonable to say that the role-differentiated nature of the two attorneys' professions has drastically altered their moral point of view. As Wasserstrom suggests, their legal duty of confidentiality rendered irrelevant some moral considerations that people without such a duty might take to be important. For example, if one is not Garrow's lawyer but someone in the local community, she might find it important to disclose the locations of the victims' bodies due to her sympathy to the grieving families. She might also think that it is unfair and unjust to conceal information to protect a murderer. However, if we take a

---

61. MODEL RULES R. 1.6 cmt. 2.

62. See Symposium, *The Buried Bodies Case: Alive and Well after Thirty Years*, 2007 PROF. LAW. 19, 19 (2007).

63. See *id.*

64. See *id.*

65. See *id.*

66. See *id.*

67. See *id.*

68. See *id.* at 20.

closer look at the two attorneys' rationale behind their decision not to reveal the confidences of their client, we might find that what Wasserstrom claims seems to be false.

In an interview with law professor Richard Zitrin, when asked why he chose not to disclose what Garrow had told him, Armani responded, "It's a question of which is the higher moral good."<sup>69</sup> Zitrin found this response to be "a very, very human response."<sup>70</sup> "Of all the things [Zitrin has] ever heard in this field, that may be the most single powerful statement."<sup>71</sup> From Armani's response we could learn that his role as a lawyer did not render common moral principles irrelevant in his decision-making process, as Wasserstrom contends. Rather, he was involved in a kind of Rossian balancing of conflicting moral duties.

Recall that Ross rejects the notion of a duty so absolute that it must be fulfilled regardless of the circumstances. For Ross, even the most fundamental prima facie moral duties might come into conflict and therefore they need to be balanced against each other for us to determine which one is the weightiest. In the *Buried Bodies Case*, it seems that the two defense attorneys were involved in exactly this kind of balancing activity. For they had, on the one hand, the legal duty of confidentiality, and, on the other, the duty owed to the victims' families and the local community. In Ross's view, the duty to be law-abiding is a compound duty that is derived from three prima facie duties: gratitude (the duty to be grateful and to return the favor), fidelity (the duty to keep promises), and beneficence (the duty to promote the general good).<sup>72</sup> It follows that a lawyer has a duty to abide by the rule concerning client confidentiality because she has a prima facie duty to be grateful for the benefits she has received from practicing as a lawyer, a duty to keep the promise she has made when she was sworn into the bar, and a duty to obey a rule that promotes the general good. Therefore, in deciding whether to disclose the confidences of their client, Armani and Belge did not diverge from ordinary morality in the way Wasserstrom suggests. Rather, they were balancing between the duty to abide by the legal ethics rule and the prima facie duty of non-maleficence (the duty not to harm others). Because they decided that the former was the weightiest duty in the situation at hand, they acted in accordance with this duty and refused to reveal the client's confidences. As Armani stated in the interview, "The oath was to defend the Constitution of the United States, the Constitution of the State of New York, and to keep inviolate the secrets and communications of our clients. And that's what we went by. . . . That oath was a sacred oath to us."<sup>73</sup>

---

69. *Id.* at 25.

70. *Id.*

71. *Id.*

72. See Ross, *supra* note 33, at 27f.

73. See Symposium, *supra* note 62, at 29.

## V. CONCLUSION

To conclude, this Note has shown that Ross's moral intuitionism is a theory best captures some important features of our moral experience. Therefore, it seems that we have good reasons to adopt Rossian intuitionism in understanding what constitutes moral goodness. The Note has further argued that if we conceive ordinary morality in a Rossian way, the standard conception of a lawyer's role does not cause them to diverge from common moral principles.