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AMORALITY EXPLAINED. ANALYSING THE REASONS THAT EXPLAIN THE STANDARD CONCEPTION OF LEGAL ETHICS

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Abstract: The standard conception of legal ethics, based on the principles of partisanship and neutrality, affirms that lawyers must adopt a specific attitude towards their client's cause. The paper identifies and explores three main factors that have contributed to the success of this conception. Firstly, state-centred legal positivism as the dominant paradigm in contemporary Western legal theory. Secondly, the adversarial context, presumed to be the environment where lawyers typically perform their function as professionals. Thirdly, the agency model as a metaphor describing the relations between lawyers (agents) and their clients (principals). As all these elements carry with them problems of their own, this paper concludes by highlighting the limits of "amorality" as a general theory of legal ethics. Although moral neutrality is probably a justifiable position for the criminal defendant, it is difficult to extend its justificatory scope to many other areas of legal practice, especially in a globalised post-Westphalian world where lawyers typically act in ways that escape the traditional legal monopoly of the nation-state.

Keywords: *legal ethics; theory of "amorality"; legal positivism; adversarialism; agency theory; globalisation.*

> "No social role encourages such ambitious moral aspirations as the lawyer's, and no social role so consistently disappoints the aspirations it encourages."
>
> *William Simon*

THE STANDARD CONCEPTION OF LEGAL ETHICS

By definition, lawyers occupy a difficult moral position. They represent the interests of their clients, thus fulfilling a partisan role, but they do so within the context of a system of administration of justice that aims at higher communal values.[1] The lawyer serves two masters that may have demands. Indeed, the interest of the client will often confront the general interest of the system. As a consequence, the lawyer is placed in a perpetual dilemma, between two potentially opposing ethical loyalties (La Torre, 2003). Deontological codes in different jurisdictions reflect this essential ambiguity (e.g. Zacharias, 2007; La Torre, 2003; O'Dair, 2001).

It is in this context that the so-called *amorality theory* has become the standard conception of legal ethics (e.g., O'Dair, 2001). According to this dominant view, the work of the lawyer must be determined by two main principles:

- the principle of *partisanship*, according to which lawyers must zealously defend the interests of their client, everything that is not technically illegal in order to further these interests, even when the result clearly thwarts the aims of substantive law.
- the principle of *neutrality*, according to which lawyers must represent their client regardless of their own view on the justice of the cause, and are consequently absolved of any moral responsibility for acts done in the name of the client.[2]

[1] In this paper I will deal with lawyers as "private attorneys", rather than other legal professionals such as judges, public officers, law professors, and so on. This is justified by the fact that private attorneys typically face more serious and frequent ethical dilemmas than other legal professionals. This is also the reason why they receive most of the attention in legal ethics literature.

[2] The second part of the sentence can be considered a third principle in its own right: the *principle of non-accountability* (Wendel, 2010, p. 29).

Although the standard conception is criticised by many, its prevalence within the legal profession is unanimously accepted in legal ethics literature. Of course, it is not plausible to believe that most practicing lawyers have undergone a conscious process of academic-like reflection in order to construct an apologetic theory for their professional behaviour, but we can still identify the prevalence of the standard conception in what has been called the lawyers' "working philosophies" (Simon, 1998, p. 100). This conclusion is indeed backed by social scientific evidence (Wendel, 2010, p. 30).

It is crucial to understand that the standard conception is intrinsically normative rather than descriptive; it prescribes that lawyers must be amoral as regards to the goals pursued by their clients and the means to achieve them (Wasserstrom, 1975). The theory is frequently misunderstood as if it displayed lawyers' lack of interest for moral matters. In fact, the amorality theory claims that by being morally neutral the lawyer achieves moral righteousness. The subtlety of this idea is captured in the expression "moral amorality" (La Torre, 2009, p. 16).[3]

The paradoxical nature of the term "moral amorality" can be clarified by the concept of "role morality". The argument for the amoral role of the lawyer begins by conceiving the administration of justice as a collective task in which every participant has to play a role (Kipnis, 1991). Different roles imply different responsibilities, and as much as a judge should not behave as an attorney-at law, attorneys should not behave as judges of their client's cause. Moral neutrality on the part of the attorney enables a better legal defence for the citizen and client. According to the conception of the legal process that is shared in its basic tenets throughout the Western world, justice is best achieved by the confrontation of two opposing parties in front of an impartial third party – the decision making judge or arbiter. In this context, "the lawyer who refuses giving professional assistance because in his judgment the case is unjust and indefensible, assumes the functions of both judge and jury" (Sharswood, quoted in Luban, 1988, p. 10).

[3] Difficulties in understanding this subtlety, or maybe the hypocritical use that lawyers have often made of it, may explain why they have been so frequently described as despicable in Western literature, philosophy, and popular culture. There are hundreds of examples frequently referred to in legal ethics literature, ranging from Plato to Luther and from Shakespeare to modern TV shows.

The alternative to this theory would be to affirm some sort of moral activism on the part of the lawyer. This would imply that lawyers act as a *moral screen*, inasmuch as they evaluate their client's cause in terms of conventional morals and so allowing their professional behaviour to be determined by this evaluation (in what may be detrimental to the principle of partisanship). According to one of the main advocates for amorality, this type of behaviour would ultimately endanger the fundamental political values of autonomy and equality (Pepper, 1986). People would not only see their access to law curtailed, but since we must assume that different lawyers hold different moral views, the degree of the access to law would differ depending on the particular lawyer that each citizen chooses or can afford. Thus, when looking at the big picture it is likely that by adopting a morally neutral position, the lawyer is contributing to the realisation of justice according to law, that is, within the mindset of liberal political principles.

This way of thinking is closely connected to political philosophy, since it is based on the justification of particular institutions, namely, the legal system and the system of administration of justice (Wendel, 2010). Some advocates for amorality suggest a pragmatic justification of these institutions, based on the fact that there is nothing better in sight (Kipnis, 1991), whereas others try a more principled justification, such as Pepper's "first class citizenship model" based on the above mentioned political values of autonomy and equality (Pepper, 1986). But every version of the amorality theory, independently of the justification that it provides for the legal system, shares the belief that lawyers must not let their personal moral views interfere with their job if they want to fulfil the responsibilities attached to their role. Thus, for example, the lawyer-client privilege (duty of confidentiality) imposes on the professional the obligation not to disclose any information learnt from the client even when private morality urges to disclose the information. The hidden rationale is that without this privilege the client would not reveal all relevant information to the lawyer, and this would prevent lawyers from performing at their best when defending their client's interests, so that ultimately the search for a fair legal outcome would be hindered (Kipnis, 1991).

The idea of role morality is controversial in itself. Thus, for example, La Torre draws on Kant's principle of universalizability to conclude that there is no such thing, since we cannot rationally expect the specific duties attached to a particular occupation to be universally extended to other roles (La Torre, 2003; but *cf* Luban, 1988, pp. 113-15). I will not con-

sider here the philosophical merits of this argument, but in any case most of the literature in the field accepts "role-morality" as a legitimate notion, to the extent that "the fundamental question in theoretical legal ethics is often described as the problem of "role-differentiated morality" (Wendel, 2010, p.20). There is a general agreement that "lawyers are ... subject in their professional lives to a role morality which permits and indeed often requires them to do things that they (and others) would regard as immoral in their private life" (O'Dair, 2001, p. 134). Without this dual level of potentially conflicting moralities, the whole field of legal ethics would either collapse into the broader field of general morals, or be limited to the rather uninteresting activity of ascertaining the deontological black-letter rules that lawyers should follow. It is in the conflict between role morality and ordinary morals that legal ethics becomes challenging both from a theoretical and a practical point of view (Kirkland, 2007).

In this paper I sustain that the success of the amorality theory can be explained by three factors that are both cultural and historical (i) the prominence of legal positivism as a philosophy of law; (ii) the idea that the essential task of lawyers is defending their clients' interests in a court of law; and (iii) the view of the lawyer-client relationship through the lense of the agency model. In the following sections, I will analyse these elements one by one, explaining how they contribute to the dominance of the amorality theory, but at the same time, highlighting how the problems posed by these elements ultimately question the adequacy of the standard conception of legal ethics.

LEGAL POSITIVISM

State-centred positivism has been the dominant paradigm in Western contemporary legal thought at least since the beginning of the 19th century.[4] There are two ways in which positivism has contributed to the success of the amorality theory.

[4] Conventionally, the theory goes simply by the name of "legal" positivism, but I find the term "state-centered" positivism more pertinent, since it adds an important element: the consideration of state law as the only valid source of law, as opposed to legal pluralism (Scott, 2009). This specific point becomes especially relevant in the age of globalisation, at a time when the paradigm is struggling to maintain its prominence (Culver & Giudice, 2010). The field of legal ethics is among the many areas of law

Firstly, following the Hobbesian principle "*auctoritas, non veritas, facit legem*", legal positivism basically concentrates on authority, whereas the field of legal ethics deals mainly with problems involving lawyers and the relationship with their clients. Both lawyers and clients are minor figures in the positivist framework. The key question for positivism is that of legal validity – and this takes us to the quest for the ultimate authority of the legal system that directly or indirectly confers legal validity to all other norms (Bobbio, 1993, p. 204). The legislator is conceived as an independent authority, and the judge as a dependent authority, whereas the lawyer has no authority at all (La Torre, 2003).[5]

H.L.A. Hart's sophisticated version of positivism, as it appears in his seminal work *The Concept of Law*, perfectly illustrates the marginal role that lawyers occupy within the positivist framework. Hart finds the foundation for any legal system in what he calls the "rule of recognition". Concerning the acceptance of the rule of recognition from the internal point of view of the members of a particular society, Hart introduces a crucial distinction between officials and the generality of citizens. Even if it would be desirable that every single individual internally accepted the rule of recognition, Hart sustains that acceptance by officials alone is a sufficient requirement for a legal system to exist. Thus, the active acceptance by officials "may be split off from the relatively passive matter of the ordinary individual acquiescing in the rules by obeying them for his part alone" (Hart, 1994, p. 117). Significantly, lawyers engaged in private practice are not considered officials (unlike judges, public attorneys or other legal professionals endowed with public authority), and as a consequence their internal point of view has no particular relevance in determining the rule of recognition. This argument is controversial in itself, since it may critically undermine the internal consistency of Hart's theory of law (Luban, 2007). But even leaving jurisprudential considerations aside, it is clear that the whole picture downplays the importance of practicing lawyers who are not officials. As it has been rightly pointed

affected by this ongoing transformation (Holmes & Rice, 2011). It is important to bear this point in mind, although I will not develop it further in this paper.

[5] This is, of course, a very general and simplified view of positivism. In particular, it does not consider the positivist school of American legal realism, that places the judge, rather than the legislator, at the centre of the system (see generally, Summers, 1982).

out, within this framework it is "embarrassing" to find an adequate role for the private lawyer (La Torre, 2009, p. 18).

The second reason why positivism contributes to the amorality theory concerns the most basic positivist thesis, namely, the separation between law and morals. In strict terms, the separation thesis implies that moral arguments are extra-legal, and as a consequence, fall beyond the category of law and legal reasoning. As said before, the key question for positivism is that of normative validity, and this must be ascertained by a sort of formal deductive reasoning once the official authority has been established. Contrarily to natural law theories, positivism claims that moral reasoning does not play any necessary role in this process.

An obvious follow-up of the separation thesis is that the ethical dilemmas of lawyers are seen as a confrontation between legal and non-legal (or extra-legal) considerations (Simon, 1998). Thus, the advocates for the standard conception would conceive the typical lawyers' dilemma as a clash between a clear legal duty to zealously defend the client's interests against some sort of moral consideration on the part of the lawyer that could hinder the defence. In other words, the ethical problem is not seen as an *internal* issue within the framework of legal professionalism, but as an *external* confrontation of law and morals. This typically positivist manner of wording the problem has important consequences. Following Simon:

> The psychological effect of this privileging is to reinforce lawyers' commitment to conventional responses – client loyalty in all cases where the client's projects are not prohibited by the positive law, obedience to the positive law in other cases. Typically, the conventional response is portrayed as the "legal" one, and competing ones are "moral" alternatives. The rhetoric connotes that the "legal" option is objective and integral to the professional role, while the moral option is subjective and peripheral. Even when rhetoric expresses respect for the "moral" alternative, it implies that any lawyer adopting it is on his or her own and therefore vulnerable both intellectually and practically. The usual effect is that it becomes psychologically harder for lawyers and law students to argue for the "moral" alternative. (Simon, 1998, pp. 102-03)

This characterisation of legal ethical dilemmas along positivist lines reinforces the amorality theory and the morally neutral role that lawyers are expected to play. Of course, this view does not rule out the possibility of extra-legal moral considerations prevailing in a particular case, especially when disregarding such considerations may seem particularly

unacceptable. But in this exceptional case, the lawyer would behave as a conscientious objector rather than as a good lawyer. A justification for such a position could be at hand depending on the circumstances, and the lawyer might reasonably "become a civil disobedient to professional rules" (Luban, 2007, p. 63). But this leaves the criterion of moral neutrality that – according to the standard conception – defines a good lawyer untouched.

On the other hand, some amongst the most important critics of amorality sustain that ethical dilemmas should be articulated in intra-legal terms; that is, as law *vs*. law problems (Simon, 1998). According to this view, the stereotypical deontological conflict does not confront legal duties with extra-legal moral considerations, but different interpretations of what *the law* demands from the lawyer as a professional in every particular case. From an ethical point of view, the lawyer must "interpret the law, assert his position, plan transactions, and advise clients on the basis of arguments that are internal to law" (Wendel, 2010, p. 71). Significantly enough, both Simon and Wendel state that this way of looking at matters implies not following a strictly positivist theory of law; or, at the very least, following an inclusive rather than an exclusive version of legal positivism that accepts including moral considerations when ascertaining the applicable law to the client's situation (Wendel, 2005b).

As a summary of this section, we can say that legal positivism neglects the discipline of legal ethics both because it concerns lawyers (whereas positivism concentrates on authorities) and because it concerns ethics (whereas positivism leaves moral matters aside).

THE ADVERSARIAL CONTEXT

As described in the first section, the amorality theory sticks to an adversarial view of law. In its most basic formulation, it is the distribution of tasks between attorneys and judges that justifies the former's moral neutrality. It is claimed that in this particular institutional context, morally neutral partisanship works best in discovering truth and finding a fair legal outcome (Kipnis, 1991). But there are at least two ways in which this approach to adversarialism is problematic in itself.

Firstly, there is the well-known distinction in comparative law between adversarial and inquisitorial systems. Broadly speaking, the difference concerns the extent to which the judge can play an active role in guiding

the parties throughout the process. In the adversarial systems, basically those of Anglo-Saxon origin and especially the American system, the judge is generally expected to play a rather passive role, with the responsibility for developing the factual and legal records lying on the shoulders of litigants. Contrarily, in the inquisitorial systems, typically those within the area of influence of continental European legal cultures, the judge plays a much more proactive role managing the process and contributing to develop the factual and legal records.

According to some commentators, these two broad sets of systems, or legal families, correspond to each of the two sides of the perpetual dilemma that lawyers face: the adversarial system privileges the interest of the client and favours moral neutrality, whereas the lawyer participating in the inquisitorial process is more concerned with the general interest of the system (La Torre, 2003). If this is accepted, the success of the amorality theory could be simply explained by means of academic sociology: most of the literature in the field of legal ethics is published in English-speaking countries, and as a consequence it is biased towards the system that more naturally accommodates amorality.

This contrast should be born in mind even though we must avoid undue generalisations, I believe that the difference between adversarial and inquisitorial systems is frequently overstated, at least for the purposes of legal ethics. The justification of amorality does not draw so much on the adversarial *system* but on the adversarial *context* – meaning the situation in which conflicts are dealt with by a process in which two parties confront their positions and leave the decision to an impartial judge or arbiter. The crucial elements here are: i) the existence of a structural separation between decision makers and attorneys; and ii) attorneys serve and defend rather than judge their clients' causes. Since these two features are generally present both in adversarial and inquisitorial systems, it can be affirmed that "most legal systems require lawyers to display some measure of adversarialism in the sense required by the problems of legal ethics" (Markovits, 2008, p. 14). In particular, "lawyers in inquisitorial systems generally, are ... subject to the ethical complexities and uncertainties that adversarialism involves" (Markovits, 2008, p. 15). It partially seems to be a basic feature of attorneys at-law everywhere, and with it comes moral neutrality, according to the standard conception.

The second problem of adversarialism, and in my view a much more decisive problem, concerns the fact that most legal work happens outside the courtroom, and in many cases is neither directly nor indi-

rectly related to an adversarial context. Many attorneys, if not most, play more often the role of lawyers-as-advisers than that of trial lawyers (Luban, 2007). This tendency is only increasing in the current process of globalisation, especially for those private lawyers working in fields related to multinational companies and global economy (Holmes & Rice, 2011).

The consequences for the amorality theory are impossible to overestimate. Since this theory finds the ultimate ethical justification for the amoral lawyer in its contribution to reaching better judicial decisions, "we must bear in mind how atypical and unrepresentative judicial decisions are as legal events" (Luban, 2007, p. 146). As David Luban clearly illustrates using the litigation pyramid, only a minor number of conflicts actually result in judicial decisions. And, still more important law-suits themselves are atypical legal events. "[A] great deal of legal work has little or nothing to do with law-suits", and in fact, "the most basic activity in the legal system [is] the consultation between lawyer and client, in which the client sketches out a problem and the lawyer renders advice" (Luban, 2007, pp. 151-52).

This observation has devastating effects for the standard conception, since it suggests that its justification is very narrow in scope. This does not constitute an attack on the internal consistency of the theory, but it dramatically questions its adequacy to tackle the real problems that lawyers typically encounter during their daily practice. Significantly enough regarding the legal activity that is adversarial *par excellence*, namely, criminal defence, there is unanimous agreement on the merits of amorality, even among its fiercest critics (Luban, 2007; but *cf.* Simon 1998). Thus, the problem does not seem to be amorality *per se*, but the range of professional actions that it aims to justify. By focusing on the adversarial context, mainstream legal ethics literature formulates conditions that are not present when lawyers act as advisers or consultants or transactional agents – conditions such as "an impartial referee, orderly procedures, rules for obtaining, introducing, and excluding evidence, and a competent opposing party". In such circumstances, "one wonders why anyone has ever thought to correlate the role of a lawyer from one context [adversarial] to the other [lawyer-as-adviser]" (Wendel, 2005a, p. 1182).

In short, the standard conception has taken the exception as the rule. Crucially, some of the most dramatic examples of legal ethical failure in recent times, such as the Enron scandal (Cramton, 2002) or the "torture memos" (Markovic, 2007), concern lawyers working as advisers to their

clients. Unfortunately, a deontological theory based on litigation does not shed much light on the behaviour of the lawyers involved.

THE AGENCY MODEL

The third element that contributes to the success of the amorality theory is the conception of the relationship between lawyer and client as an agency relationship. The success of the agency theory in the field of legal services is hardly surprising considering the appeal that this theory has held among academics, especially in the United States. Although it has been mostly used in the fields of economics and political science, the advocates of this theory suggest that its explanatory power is broader, and that it can be used to account for many other dimensions of human and social life (Pratt & Zeckhauser, 1985). In particular, the lawyer-client relationship is an attractive "target" for the agency model because of the knowledge and information asymmetry between the two parties – given the complexities of the legal system and the lawyer's specific training and expertise. To acquire free and equal access to law, ordinary people need lawyers, who thus become a necessary condition for the very concept of citizenship (Pepper, 1986). Following this line of thought, clients should be viewed as principals, whereas lawyers must adhere to a set of ethical standards that qualify them as legitimate agents.[6]

The image of the lawyer-as-an-agent points towards an instrumentalist view of the profession. This way of looking at things is closely connected with the amorality theory, inasmuch as the theory claims that it is the client who bears moral responsibility and uses the lawyer as he/she pleases. Consistently with this paradigm, lawyers have often been described as "hired guns" for their clients (e.g., O'Dair, 2001, p. 326). By the same token, it becomes very difficult to articulate lawyers' responsibilities toward third parties or the system itself (Zacharias, 2007). Unedifying as this instrumental view may be from a deontological point of view, it has the practical virtue of creating an ethical comfort zone for the lawyer that leads to an "anaesthetization of moral conscience" (Nicolson & Webb, 1999, p. 224). In this way, the private attorney "comes to inhabit a sim-

[6] Although the very need of such standards has been the object of debate "due to its tendency to "exclude" some professions or to mark them as separate from important lay expertise and service" (Menkel-Meadow, 2009, p. 196).

plified and strikingly amoral universe which regards those factors that nonprofessional citizens might believe important, if not decisive, in their everyday lives as morally irrelevant." (Wasserstrom, 1976, p. 8).

Unsurprisingly, critics of amorality are also eager to emphasise the limits of the agency model as a metaphor for the lawyer-client relationship. Thus, for example, Wendel sustains a strictly limited version of the agency relationship, where the lawyer acts as an agent to defend the clients' *legal entitlements*, but not (as the standard conception claims) the client's *interests*. In other words, lawyers as agents cannot do whatever the client wants them to do.[7] On the contrary, "the lawyer-client relationship is created by the legal system for a particular purpose, which is to enable clients to receive the expert assistance they need in order to determine their legal rights and duties" (Wendel, 2010, p. 52). Strict respect for that particular purpose is what actually justifies this sort of agency relationship; otherwise, there would not be much difference between being a legal agent and being the counsellor of a criminal gang. Wendel states the problem in strong terms:

> Lawyers may lawfully do for their clients only what their clients lawfully may do... This is such an obvious point that it is hard to understand why lawyers sometimes fail to appreciate it. But it may be the most pervasive feature of the normative framework of practicing lawyers that they proclaim an obligation to defend their clients' *interests* within the law, rather than vindicating their clients' legal entitlements (Wendel, 2010, p. 59).

In practical terms, the key difference between vindicating clients' legal entitlements and merely defending their interests is that in the latter case the law is seen as just an instrument that can be manipulated in order to serve those interests; whereas in the former case, the lawyer owes a broader obligation of "fidelity towards the law". Following this contrast, Wendel's anti-instrumentalist position is better described in his own words:

> The obligation of respect means that lawyers must treat the law as a reason for action as such, not merely a possible downside to be taken into account, planned around, or nullified in some way. This obligation applies even if it would be very much in the client's interests to obtain a result that is not supported by a plausible claim to a legal entitlement (Wendel, 2010, p. 49).

[7] As the classic US Supreme Court Justice Louis Brandeis wrote: "Advise the client what he should have – not what he wants" (quoted in Luban, 1988, p. 148).

According to this conception, the lawyer-agent does not owe loyalty only to the client. On the contrary, lawyers owe a sort of dual-loyalty to their client and to the law, which must be respected and honoured in its own right.

This idea of dual-loyalty is especially relevant outside the courtroom, where the lawyer acts as an adviser and there is no opposing party vigorously defending a different interpretation of the law. This aspect is crucial since, as mentioned in the previous section, most legal activity takes place in the lawyers office (rather than the courtroom) with the lawyer acting as an adviser to the client (rather than as a litigator). In their advising capacity, lawyers occupy a very different role from litigators; and should be viewed as "independent intermediaries between private and public interests" (Luban, 2007, p. 159).[8] Although this view does not necessarily discredit the agency model *per se*, it obviously points towards a very limited and balanced version, somewhere between the two extremes of the perpetual dilemma that was described at the beginning of this paper: the interest of the client, on the one side, and the general interest of the system, on the other. Thus conceived, the role of the lawyers appears as "an amalgam of the judges' and clients' roles, serving as a bridge between the biased position of the client and the ideally neutral position of the judge" (Wendel, 2005a, p. 1177).

Other metaphors have been suggested to describe the lawyer-client relationship, such as the lawyer-as-a-friend (Fried, 1976), or the lawyer-as-a-mirror (La Torre, 2003), but none seems to be strictly compatible with the amoral role. In fact, some of the advocates for amorality have acknowledged the importance of establishing a moral dialogue between lawyer and client, and this necessarily falls beyond lawyers' professional duties as narrowly defined by the standard conception (Pepper, 1986).

In one way or another, all of these alternatives to the merely instrumental view of the lawyer-as-an-agent have something in common: they place the professionals in a much more uncomfortable ethical position

[8] In this respect, it is relevant that social scientific evidence rejects the idea that ordinary people tend to have an instrumentalist view of law that they try to "impose" on their lawyers. It would seem to be completely the opposite, since "there is a great deal of evidence that citizens believe themselves to be constrained to comply with the law", and it is in fact lawyers who tend to infuse an instrumentalist attitude on clients (Wendel, 2010, p. 64; the problem was already identified by Pepper [1986]).

than they occupied under the amoral role. Rather than inhabiting a "simplified moral universe", as amorality purports, "lawyers actually inhabit a world of demanding ethical obligations" (Wendel, 2010, p. 49) in which "they are not entitled to abate their own moral conscience by arguing that the pursuit of this role is a moral act in itself" (Nicolson & Webb, 1999, p. 213). Although humans tend to believe otherwise, there is no direct connection between comfort and righteousness, and it must be admitted that "the neutral partisanship paradigm can be used to rationalize unethical decisions" (Holmes & Rice, 2011, p. 73). In short, the ethical comfort zone vanishes, and lawyers are faced with the moral implications of their social task.

CONCLUSION

Although it may sound paradoxical in its own terms, the theory of amorality is the standard conception of legal ethics, and cannot be readily dismissed. In particular, its success can be explained by three elements that are present to a greater or lesser extent in all Western legal cultures: state-centred positivism as the controlling paradigm in legal thinking; an emphasis on the adversarial context; and the perception of the lawyer-client relationship through the lenses of the agency model.

Besides describing the standard conception and identifying its explanatory factors, this paper has pursued a more critical aim. The theory of amorality appears limited and problematic, since all three above mentioned elements have crucial problems of their own. Firstly, and without going further into jurisprudential debates, the process of globalisation and concomitant mutations in the traditional conception of state sovereignty are severely affecting state-centred legal positivism, which is struggling to maintain its position as a dominant paradigm. Secondly, in popular belief adversarial confrontation in court arguably constitutes the hard-core of the legal profession, but in empirical terms it represents only a minor part of the various ways in which lawyers serve their clients. Finally, the agency model, successful as it has been in other fields of social sciences, points towards a merely instrumentalist view of the legal profession, and ultimately of the law, something which has been sharply and often criticised.

All these problems highlight the limits and weaknesses of the theory of amorality as the dominant conception of legal ethics. The criticisms

that have been reviewed in the previous sections suggest different alternatives to the model of the amoral lawyer. A more complex, more diverse, more pluralistic, and less monolithic theory is gradually taking shape. In my view, though, the final form will depend on the broader debate taking place at the level of general jurisprudence. The obvious struggle of state-centred positivism to keep its prominence is crucial for the discussion of legal ethics, and at the same time, legal ethics can contribute decisively to that debate by combining the most philosophical with the most pragmatic dimensions of law. Now is the time for an active cooperation between the increasingly fashionable field of legal ethics and the ancient and respected discipline of legal philosophy.

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