Deflating Autonomy

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DEFLATING AUTONOMY

Charles R. Mendez

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I. INTRODUCTION

Client autonomy\(^1\) is commonly accepted as the cornerstone of the modern attorney-client relationship. Over a century ago, when the American Bar Association adopted the Canons of Professional Ethics, it stressed that "[The lawyer owes] 'entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability.'"\(^2\) Though the Canons of Professional Ethics have since been superseded,\(^3\) their commitment to autonomy endures. An attorney is expected to foster an environment that enables clients to achieve their goals and make informed autonomous decisions throughout the representation.\(^4\) At the very least, the attorney should not interfere with a client's decisions. The purpose of representation is to assist clients in exercising their legal rights within the system of law.\(^5\) In doing so, it is assumed that an attorney increases a client's autonomy.

\(^1\) The term client autonomy refers to individual autonomy. Autonomy, client autonomy, and individual autonomy will all be used synonymously and interchangeably throughout this Article. Individual, sometimes called personal, autonomy is not to be confused with moral autonomy. Generally, autonomy has been divided into two categories: moral and individual. See John Christman, Autonomy in Moral and Political Philosophy, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (last updated Aug. 11, 2009), http://plato.stanford.edu/entries/autonomy-moral/ (citing GERALD DWORKIN, THE THEORY AND PRACTICE OF AUTONOMY 35 (Sydney Shoemaker ed., 1988); Thomas E. Hill Jr., The Kantian Conception of Autonomy, in THE INNER CITADEL: ESSAYS OF INDIVIDUAL AUTONOMY 91, 94 (John Christman ed., 1989). While the two are indirectly related, moral autonomy, most profoundly developed and defined by the eighteenth century German philosopher Immanuel Kant, is a doctrine concerning the nature of morality. JOSEPH RAZ, THE MORALITY OF FREEDOM 370 n.2 (1986); see Jane Dryden, Autonomy: Overview, INTERNET ENCYCLOPEDIA OF PHILOSOPHY (last updated Nov. 21, 2010), http://www.iep.utm.edu/autonomy/. Kant described moral autonomy as a fundamental organizing principle for morality; the capacity to impose objective moral law on oneself. See Eric Wilson, Kantian Autonomy and the Moral Self, 62 THE REV. OF METAPHYSICS 355, 376 (2008); see also Hill, supra, at 94 (discussing freedom as "moral liberty" that one gives himself). Individual autonomy, by contrast, which is the sole focus of this Article, is instead focused on the freedom a person has to govern and direct their own lives. RAZ, supra, at 370 n.2. It is only one aspect or element of a moral doctrine. Id.

\(^2\) ABA CANON OF PROF'L ETHICS, Canon 15 (1908). It goes on to say that only "the rules of law, legally applied," place limitations on how far an attorney should go in pursuing a client's interests. Id.

\(^3\) ABA ANNOTATED MODEL RULES OF PROF'L CONDUCT, at vii (Ellen J. Bennett et al. eds., 7th ed. 2011) (governing the rules regarding professional conduct and ethics).

\(^4\) See MODEL RULES OF PROF'L CONDUCT R. 1.2(a), 2.1. (2011). Rule 1.2(a) reads, in pertinent part, "A lawyer shall abide by a client's decisions concerning the objectives of representation and . . . shall consult with the client as to the means by which they are to be pursued." R. 1.2(a). The Rules establish a relationship in which the lawyer handles the means to accomplishing the client's objectives. Id. The Rules demand that the lawyer abides by the client's decisions and informs the client about the means to carrying out those objectives. Id. At all times, the lawyer serves as an advisor to the client regarding the client's ends and goals. R. 1.2(a), 2.1.

\(^5\) See infra Part II.A.
This account is especially potent in legal ethics when trying to reconcile a lawyer's actions with ordinary moral considerations of right and wrong. It is no hidden fact that sometimes clients use lawyers to achieve goals that a normal person would view as immoral or wrong. In such circumstances, an attorney is not only permitted, but is obligated, to carry out the goals of the client so long as the goals are within the bounds of the law, even if the goals are morally reprehensible. The moral clout of autonomy is far from miniscule. On the one hand, devotion to client autonomy deprives an attorney from having a moral agenda. On the other, it excuses the attorney from moral responsibility. In either case, a quintessential and fundamental moral argument follows. Client

6. The traditional, yet still widely held, ethical theory dealing with this central legal ethics problem is called "the standard conception" or "dominant view." See generally TIM DARE, COUNSEL OF ROGUES: A DEFENSE OF THE STANDARD CONCEPTION OF THE LAWYER'S ROLE (2009) (discussing the standard conception and the modern role of the attorney). The standard conception defends that attorneys have a very unique role, and it therefore restrucutes morality so that it is properly suited to that role. W. BRADLEY WENDEL, LAWYERS AND FIDELITY TO LAW 29-31 (2010). What is right and wrong for an attorney is not the same as a normal person. See id. Under the standard conception, a lawyer lives by three principles: (1) the principle of partisanship, (2) the principle of nonaccountability, and (3) the principle of neutrality. DARE, supra, at 11-12; see Wendel, supra, at 29-31. A lawyer has the positive duty to exclusively promote a client's interest, so long as it is lawful. DARE, supra, at 12. This duty shall not be interrupted by the lawyer's own moral judgments. Id. The lawyer must place moral judgments aside and ensure they do not get in the way of representation. Id. If there are legal means to achieving the client's goal, then it is irrelevant whether or not the attorney finds the goals immoral. Id. In fact, the attorney is obligated to assist in the achieving of those goals. Id. In representing a client, however, the attorney is not to be judged for the immorality of the client's goals or the means used to obtain them. Id. Furthering the client's interests is at the heart of the attorney's duty, but as a consequence, the attorney is insulated from the morals involved. Id. Therefore, attorney morality is something different than the morality of nonlawyers. Id.

7. This assertion warrants some qualification. Bradley Wendel, for example, has identified that many attorney actions, which raise moral problems, would never arise outside the context of legal representation. See, e.g., id. at 29 (noting that it is almost impossible to conceive of a situation in which an ordinary person would have the duty to ask embarrassing and invasive questions to a complete stranger, as an attorney sometimes must do in a deposition).

8. David B. Wilkins, Legal Realism for Lawyers, 104 HARV. L. REV. 468, 471 (1990) (quoting MODEL CODE OF PROF'L RESPONSIBILITY Canon 7 (1980)). The boundary claim is a term David Wilkins used to describe an attorney's responsibility to further his client's interests to the extent that they are lawful. Wilkins, supra, at 471; see generally Rebecca Aviel, The Boundary Claim's Caeveat: Lawyers and Confidentiality Exceptionalism, 86 TUL. L. REV. 1055 (2012) (exploring the significance of the boundary claim and whether attorneys are exempt from laws that would require them to break client confidentiality). While an attorney has a duty to further a client's interests, the attorney also has a duty to the administration of justice. Wilkins, supra, at 471. Since an attorney must be loyal to the law, the boundary claim limits service provided to a client to that which is within the law's boundaries. Id. Additionally, the Model Rules affirm this point. See MODEL RULES OF PROF'L CONDUCT PMBL, ¶ 9 (2011) (declaring that a lawyer's obligation is to "zealously protect and pursue a client's interests within the bounds of the law"); see also MODEL RULES OF PROF'L CONDUCT R. 1.2(d) (prohibiting a lawyer from assisting a client to do something criminal or fraudulent).
autonomy is a foundational value that justifies an amoral role for attorneys.\textsuperscript{9} Because client autonomy is good, increasing it is good; therefore, the attorney is justified in acting immorally, if on behalf of the client, in pursuing the client’s objectives because the attorney is increasing the client’s autonomy.\textsuperscript{10} Under this framework, client autonomy provides an answer to many of the most difficult issues regarding lawyer morality.\textsuperscript{11} Treated as the very cornerstone of the modern attorney-client relationship, it constitutes an essential element in legal ethics dialogue.\textsuperscript{12} However, a troubling matter has been overlooked.

Despite its magnitude, a systematic account of whether client autonomy truly is a feature of the attorney-client relationship has never been established. Instead, that attorneys enhance client autonomy, to a large extent, has been an assumption comfortably and mistakenly taken for granted. By comfortably accepting without question that autonomy is a function of the modern attorney-client relationship, the many limitations an attorney has when it comes to actually enhancing client autonomy have been overlooked. As this Article will demonstrate, the extent to which client autonomy exists as a feature of the attorney-client relationship is greatly overstated. The consequence is that the value of client autonomy as a moral justification has been equally overstated.

This Article seeks to deflate the current aura surrounding client autonomy, exposing its many limitations and demonstrating how it has been considerably overstated. In the process, it hopes to ground the use of client autonomy by accurately portraying the relatively minor role it plays in the actual attorney-client relationship. From this grounded position, this Article seeks to establish autonomy’s proper role, not as a moral justification but as a component of professionalism. To that end, Part I begins with a comprehensive understanding of the meaning and value of autonomy, as it is understood within our legal system. Part II.A identifies some of the legal scholarship centered upon client autonomy and its moral significance. Part II.B follows with a detailed account of the attorney-client relationship and identifies where client autonomy fits in. Part III presents two problems, a conceptual problem and a transactional problem, which reveal the many limitations an attorney faces in enhancing client autonomy. Conceptually, an attorney is in no way capable of actually ensuring a client will exercise autonomy. The attorney is confined only to helping secure the preconditions that potentially set a client up to exercise autonomy. In a transactional situation, when examined closely, an attorney largely fails to secure

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\textsuperscript{9} See Stephen L. Pepper, The Lawyer’s Amoral Ethical Role: A Defense, a Problem, and Some Possibilities, 1986 AM. B. FOUND. RES. J. 613, 617 (1986). Client autonomy has been the token justification for the standard conception. See id. Stephen Pepper argues that because attorneys assist clients in gaining access to the law, they are increasing client autonomy. See id. at 617; infra Part II.A. Because autonomy is a good in itself, an amoral role not subject to normal, ordinary morality for lawyers is justified. See Pepper, supra, at 617.

\textsuperscript{10} See generally Pepper, supra note 9, at 614 (asserting client autonomy is a moral justification for the generally accepted amoral ethical role of the lawyer).

\textsuperscript{11} MONROE H. FREEDMAN, UNDERSTANDING LAWYER’S ETHICS 48 (1990).

\textsuperscript{12} See infra Part II.A.
even these preconditions and many times in ways the attorney is not aware. Finally, Part IV discusses the implications these limitations have on legal ethics and frames a different understanding for the role of autonomy in the attorney-client relationship. This Article will argue that striving after client autonomy is part of what it means to be a professional.

II. THE MEANING AND VALUE OF AUTONOMY

Although extensive scholarship has been dedicated to defining and understanding individual autonomy, it is a concept that remains somewhat vague. 13 Political theorists and moral philosophers alike acknowledge autonomy as something central to liberal theory and basic rights, but cannot agree on any mutual definition. 14 This has been attributed to the fact that autonomy is only a metaphor, 15 or a term of art, 16 used in a variety of different contexts in which its meaning and significance adapt accordingly. 17 Willard Gaylin and Bruce Jennings, coauthors of the book The Perversion of Autonomy, advise that "[a]utonomy is not a single idea but a cluster of closely related, over-lapping ideas. Or to put it differently, there are various ways of seeing autonomy, various guises in which it can reveal its moral meaning." 18

One particular way of seeing autonomy, and the one pertinent here, is within a political and legal framework that specifically addresses an individual’s rights protected by the legal system. 19 Within this framework, all notions of individual autonomy tend to find common ground on two fundamental points: (a) autonomy

15. Joel Feinberg, Autonomy, in THE INNER CITADEL: ESSAYS OF INDIVIDUAL AUTONOMY 27, 27 (John Christman ed., 1989). Joel Feinberg comments that personal autonomy is familiar to us because it was derived from the notion of the self-government or independence of states and institutions. Id. In other words, its application to individuals was probably intended as a political metaphor. Id.
16. DWORIN, supra note 1, at 6. Gerald Dworkin suggests that autonomy lacks a core meaning because it is a term of art introduced by a theorist in order to clarify or make sense of tangled ideas, issues, and normative claims. Id. at 7.
17. See id. at 6–7.
19. See Feinberg, supra note 15, at 46–49 (relating personal autonomy to sovereignty). One sense of autonomy that Joel Feinberg suggests is autonomy as a right to self-sovereignty. Id. Political discourse has also viewed autonomy as the fundamental idea supporting human rights. See David A.J. Richards, Rights and Autonomy, in THE INNER CITADEL: ESSAYS OF INDIVIDUAL AUTONOMY 203, 207 (John Christman ed., 1989). But see RAZ, supra note 1, at n.2 (conceding the importance of autonomy but denying it is something to which individuals have a right); see also Jeremy Waldron, Autonomy and Perfectionism in Raz’s Morality of Freedom, 62 S. Cal. L. Rev. 1097, 1123–25 (1989) (citing RAZ, supra note 1, at 166, 247, 408, 412, 418, 423) (discussing whether Raz believes that individuals have a right to autonomy).
is a feature of persons, and (b) it is a desirable quality to have, albeit controversial just how desirable a quality it may be.\textsuperscript{20}

\textit{A. Autonomy is a Feature of Persons}

Autonomy is a feature of a person, including an artificial legal person such as a corporation.\textsuperscript{22} The etymology comes from the Greek words \textit{autos}, meaning "oneself," and \textit{nomos}, meaning "law."\textsuperscript{23} Quite literally, it means a self-governing individual, someone who is self-sovereign.\textsuperscript{24} To place this in the political and legal context, autonomy is the right to be self-sovereign.\textsuperscript{25} It is a right which provides someone the authority to self-determine his or her own life.\textsuperscript{26} A person who acts autonomously acts according to that individual's own will.\textsuperscript{27} There is an inseparable association between someone's actions and someone's will.\textsuperscript{28} A person, and only that person, chooses certain and particular ends.\textsuperscript{29} The legal philosopher Joel Feinberg states it most succinctly, "I am autonomous if I rule me and no one else rules I."\textsuperscript{30} Inherent to this understanding of autonomy is the question of whether someone has the capacity for it.

\begin{itemize}
\item[21.] See David Luban, \textit{Partisanship, Betrayal and Autonomy in the Lawyer-Client Relationship: A Reply to Stephen Ellmann}, 90 COLUM. L. REV. 1004, 1037 (1990) (arguing that autonomy has no intrinsic value). Autonomy, by some accounts, has no value on its own. \textit{Id}. Instead, it is merely a precondition for, when exercised responsibly, other things of great value. \textit{Id}. Autonomy's importance is derived from the other values it is intimately connected to. \textit{Id}. This issue will be discussed at greater length below.
\item[22.] At least one court has considered corporations to be artificial legal entities, or persons, for the purposes of the law. See Trs. of Dartmouth Coll. v. Woodward, 17 U.S. (4 Wheat.) 518, 636 (1819). More specifically, Courts have recognized that the law affords and protects certain rights and privileges, and that if the right exists, it also extends to individuals, corporations, and entities alike. See Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 365 (2010) (extending free speech rights to corporations); see also First Nat. Bank of Boston v. Bellotti, 435 U.S. 765, 784 (1978) (holding that speech does not lose protection merely because it was made by a corporation). Based upon this reasoning, individual autonomy extends to corporations.
\item[23.] GAYLIN & JENNINGS, supra note 18, at 30.
\item[24.] \textit{Id}.
\item[26.] \textit{Id}.
\item[27.] \textit{See id}.
\item[28.] \textit{See id}.
\item[29.] \textit{Id}.
\item[30.] Joel Feinberg, \textit{The Idea of a Free Man, in Rights, Justice, and the Bounds of Liberty} 3, 21 (1980). Of course, one can choose to be ruled and subject to a system of law, and by doing so one is choosing to act in a way consistent with those laws.
\end{itemize}
Granting an individual the right to be autonomous is not necessarily ensuring that the person is autonomous. This is because a person must first have the capacity to act autonomously. It is undisputed that while autonomy is a feature of persons, it is not a feature every person has. To borrow language from the moral and political philosopher Joseph Raz, there is a primary sense and a secondary sense of autonomy. The primary sense of autonomy refers to achieving the autonomous life, while the secondary sense of autonomy concerns the capacity for autonomy or the preconditions that are first necessary before a person can achieve the autonomous life.

1. The Primary Sense of Autonomy

The primary sense of autonomy is its achievement. When someone chooses to act in a way that is consistent with both the individual’s own will and self-determined goals, that person achieves the autonomous life. The autonomous individual discovers projects, goals, and pursuits and chases after them. Autonomous persons decide which relationships to develop, building their own personally constructed society. Such a person realizes and understands that there are many options in life to choose from, and thoughtfully chooses options in an attempt to accomplish a particular goal or avoid future consequences.

Achieving autonomy involves a deep reflection on personal wishes and preferences, and includes having the freedom to choose which ones to follow and which to abandon. Gerald Dworkin describes achieving autonomy as the second order capacity to critically reflect on your first order desires and either adopt or attempt to change them. Achieving autonomy for Dworkin is recognizing that “I want to buy a new car,” and then critically reflecting on whether I will or will not buy a new car based upon the future benefits and consequences. As long as I understand that the choice to buy a new car that choice has its own consequences and benefits, and I act to that understanding, I have enjoyed the autonomous life.

A more meaningful example might be the choice between joining the army and starting a business. The autonomous man may do either, so long as there are

31. Hill, supra note 25, at 176.
32. See Feinberg, supra note 30, at 28.
33. See id.
34. Raz, supra note 1, at 204.
35. Id.
36. Id.
37. Id.
38. See id. at 154–55.
39. See id.
40. See id.
41. See Dworkin, supra note 1, at 20.
42. Id.
reasons behind adopting one pursuit at the expense of rejecting the other. Achieving autonomy is having freedom in one’s choices and knowing the reasons for living one’s life.43 “By exercising such a capacity,” Dworkin comments, “persons define their nature, give meaning and coherence to their lives, and take responsibility for the kind of person they are.”44 Raz phrases it in the following manner:

[A]utonomous persons are those who can shape their life and determine its course. They are not merely recreational agents who can choose between options after evaluating relevant information, but agents who can in addition adopt personal projects, develop relationships, and accept commitments to causes, through which their personal integrity and sense of dignity and self-respect are made concrete.45

An important aspect to be drawn from this depiction of autonomy is that it is an internal achievement. It is an achievement that happens within the person. The autonomous life is not discerned by looking at what a particular action is, but instead by looking at why that action came to be.46 Autonomy does not depend upon either the success or completion of a particular goal or project but rather upon the underlying reasoning for its pursuit.47 In choosing to start a business instead of joining the army, a person acts autonomously so long as the person has reasons for doing so. If a person starts a business after contemplating whether the desire to do so is one worth adopting, the person is autonomous. It is of no matter whether the business succeeds or fails, but simply that the person chose to pursue it. An autonomous life need not be accompanied by any measure of what may be considered objective success.48 In determining whether a person is autonomous, one must only consider why that person’s life has turned out the way it has.49 The primary sense of autonomy, however, can only be achieved if a person first has the capacity to achieve it.50 An individual must possess certain abilities before the individual is able to choose one life over another.51 This capacity refers to the secondary sense of autonomy.52

43. See id.
44. Id.
45. RAZ, supra note 1, at 154.
46. Id. at 371.
47. See id.
48. See id.
49. See id.
50. See id. at 372.
51. Id.
52. Id.
2. The Secondary Sense of Autonomy

The secondary sense of autonomy is deeply rich and complex. It concerns the preconditions that are first necessary before a person can achieve autonomy.\textsuperscript{53} The secondary sense of autonomy recognizes the state of the individual—mental and physical—and that the circumstances of the individual’s life are intricately related to that person’s ability to act autonomously.\textsuperscript{54} As identified by Raz, a person possessing the preconditions for autonomy has the appropriate mental abilities, independence, and an adequate range of options.\textsuperscript{55} Of course, these conditions can, and often do, interact.

a. The Appropriate Mental Abilities

The achievement of autonomy requires that an individual have the appropriate mental abilities.\textsuperscript{56} Intrinsic to being self-governing is the belief that the self-governing is conducted by the true self.\textsuperscript{57} To use an illustration, persons who are victims to their addictions to heavy substances do not have the mental capacity to exercise autonomy. As the novelist and public defender Sergio de la Pava playfully notes, “First you take the drugs then the drugs take the drugs and then the drugs take you.”\textsuperscript{58} A person driven by an addiction, incapable of acting in a manner inconsistent with that addiction, is not the true self.\textsuperscript{59} If an individual is incapable of making decisions that reflect the true self, representative of any true desires and goals, then that person does not have the appropriate mental capacity for autonomy.\textsuperscript{60}

This is also true of the person who is psychologically disabled.\textsuperscript{61} An autonomous life implies the use of the underlying human quality of

\textsuperscript{53} Id.
\textsuperscript{54} See id.
\textsuperscript{55} Id. While Gaylin and Jennings also agree on these conditions for autonomy, they use different language. Gaylin and Jennings call the prerequisites for autonomy: (1) independence, (2) self-mastery, (3) detached rationality, and (4) negative liberty. GAYLIN & JENNINGS, supra note 18, at 37–51. Still, the concepts are indistinguishable. Joel Feinberg also embraces somewhat similar concepts, detailing four different meanings of autonomy, but not making the distinction between a secondary and primary sense of autonomy. See Feinberg, supra note 15, at 28–49 (characterizing four different meanings of autonomy: (1) the capacity to govern oneself, (2) the actual condition of self-government, (3) the ideal of autonomy, and (4) the rights expressive of self-sovereignty).
\textsuperscript{56} RAZ, supra note 1, at 372.
\textsuperscript{57} See GAYLIN & JENNINGS, supra note 18, at 37–38; see also Hill, supra note 25, at 179 (discussing that a person’s right of self-determination creates a presumption that the person should act decisively to the individual’s own interests).
\textsuperscript{58} SERGIO DE LA PAVA, A NAKED SINGULARITY 94 (2012).
\textsuperscript{59} See GAYLIN & JENNINGS, supra note 18, at 9 (discussing how a crack addict is not a free human being even though voluntarily choosing to become a user).
\textsuperscript{60} See RAZ, supra note 1, at 372–73.
\textsuperscript{61} See MODEL RULES OF PROF’L CONDUCT R. 1.14. The law is careful to recognize that a person with diminished capacity, or one with a psychological disability, is limited in making decisions and choices that are true to the self. See id. (permitting a lawyer to seek the help of a
rationality. The ability to rationalize, to make decisions not wholly dependent on emotion or feeling and to use reason as an explanation and driving force, is a natural right humans have. It provides the basis for autonomy. Not surprisingly, the person who cannot rationalize, the person whose rational functions are prohibited because of mental disability or otherwise, is not able to achieve autonomy.

Rationality also requires psychological maturity. It is not enough that a person has the potential for mental capacity. Buried within the qualitative component of autonomy is the assumption that the true self, when acting autonomously, will serve its own current or future interests. One may not have the psychological strengths to act and make choices consistent with one's own interests. There is a developmental aspect to ensuring that an individual has the appropriate mental ability to achieve autonomy. This includes biological and intellectual development, two distinct concepts. Biologically, a child may not be able to be autonomous, regardless of whether that child is healthy and intelligent. A vivid appreciation of the range of enjoyments autonomy can offer takes maturity and wisdom—maturity and wisdom that an adolescent may

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62. See Wilson, supra note 1, at 357. Kant formulated his views of moral autonomy on the precept that the ability to rationalize was the natural right of humans. See id. Therefore, rationality provided the very basis for a form of objective morality; the individual imposed objective moral norms, founded in reason, upon himself. See id.

63. See id.

64. See id.

65. See id.

66. See GAYLIN & JENNINGS, supra note 18, at 38; see also Hill, supra note 25, at 181 (discussing how guidance must be given to children because they do not have the requisite psychological maturity).

67. The quality of autonomy will be discussed at length below, but it is important to reference it here as it corresponds to and develops other related points.

68. See Gerald Dworkin, Paternalism, 56 THE MONIST 64, 76 (1972) (referring to children's conception of their present and future interests). A person can act in a way that is seemingly not in that individual's best current interests for the sake of that future person's interests. See id. at 77. A classic example is drawn from The Odyssey. Id. Odysseus asked his men to tie him down and refuse all future requests to set him free until after their ship passed by the Sirens. Id. Odysseus did not want to be overcome by the enchanting power of the Sirens and fall prey to their lure. See id.

69. Hill, supra note 25, at 185.

70. GAYLIN & JENNINGS, supra note 18, at 38.

71. Id.; see also Hill, supra note 25, at 185 (discussing how a child may eventually become autonomous through the physical and mental maturation process).

72. See GAYLIN & JENNINGS, supra note 18, at 37-38 (asserting that children are dependent when they are first born and as such are not autonomous).
not and debatably cannot have.\textsuperscript{73} It is no coincidence that children provide an apt analogy for the justification of paternalism.\textsuperscript{74}

Intuitively, much the same, an adult individual may not be capable of acting consistent with the adult’s own interests due to a lack of knowledge and understanding.\textsuperscript{75} To use an example as ridiculous as it is precise, the caveman who does not know fire will burn the caveman may choose to touch a torch, even though it would be in the caveman’s best interest to refrain from doing so.

\textit{b. Independence: Positive and Negative Liberty}

In addition to the appropriate mental abilities, another precondition to the achievement of autonomy is independence.\textsuperscript{76} At the outset, it is important to realize that no person can be fully independent.\textsuperscript{77} The poet John Donne once wrote that no man is an island.\textsuperscript{78} Every man, instead, is a piece of the continent.\textsuperscript{79} One can never fully escape one’s social and biological influences.\textsuperscript{80} It follows that an autonomous person is only part author of one’s life, and autonomy is rather seen as an ideal that is accomplished or achieved to a degree.\textsuperscript{81} It is not the case that someone is wholly non-autonomous or wholly autonomous.\textsuperscript{82} In fact, such an ideal is impossible.\textsuperscript{83} Independence concerns to what degree a person acts autonomously.\textsuperscript{84} In other words, independence is a sliding scale directly correlated to the degree of autonomy a person achieves.\textsuperscript{85}

\textsuperscript{73} See Hill, supra note 25, at 185 (asserting that children do not have the capacity to become autonomous until they mature).
\textsuperscript{74} See Dworkin, supra note 68, at 76. Few deny that children cannot be autonomous until a fully mature age, and parents, for the purposes of ensuring that their children grow up to make rational, informed choices in their best interests, are not only permitted but expected to act paternalistically to prevent, apart from other purposes, a child from committing self-harm. See id. Consistent with this rationale is the argument that there are adults lacking the necessary psychological strengths to make decisions in their best interests. See id. At the very least, it is reasonable to conclude that a person ought to be prevented from causing harm to himself. See Gerald Dworkin, Moral Paternalism, 24 LAW AND PHIL. 305, 310 (2004); see also Dworkin, supra note 68, at 76 (asserting that children do not possess the traits to know what is in their best interest). The law also concedes this point. See supra note 61 and accompanying text.
\textsuperscript{75} See RAZ, supra note 1, at 373.
\textsuperscript{76} Id. at 378.
\textsuperscript{77} See RAZ, supra note 1, at 155; see also MARTHA A. FINEMAN, THE AUTONOMY MYTH: A THEORY OF DEPENDENCY 28 (2004) (arguing not only that full independence is impossible, it is actually undesirable because we need social and economic relationships to sustain us).
\textsuperscript{79} Id.
\textsuperscript{80} GAYLIN & JENNINGS, supra note 18, at 38.
\textsuperscript{81} RAZ, supra note 1, at 156.
\textsuperscript{82} See id.
\textsuperscript{83} Id. at 155.
\textsuperscript{84} Id. at 156.
\textsuperscript{85} See id.
The person achieving a high degree of autonomy is highly independent.86 Independence involves positive and negative liberty.87

The discussion of positive liberty is similar, and runs parallel, to possessing the appropriate mental abilities. It is the capacity to be in charge of one's own conduct.88 It is the wish of the individual to be his own master, to create a life and make decisions that depend on oneself and not on external forces.89 As mentioned above, this partly includes being free from addiction and mental obstacles. It also includes the circumstances surrounding a person's life.

Raz notes, "The more one's choices are dictated by personal needs, the less autonomous one becomes."90 If a father desires to become a full-time artist but cannot afford to provide for his family unless he works two jobs that prohibit him from working on his art, his life circumstances lessen his independence and thus his ability to live autonomously. Victor Hugo's character in Les Misérables, Fantine, becomes a prostitute in order to provide for her daughter, Cosette.91 Although Fantine made the decision to enter into prostitution, she was not exercising autonomy.92 Fantine's choice depended not on herself, but on the needs of her daughter, as well as on the surrounding circumstances of her life.93

The second aspect to independence is negative liberty.94 Negative liberty is being free from constraint. Berlin describes it as "warding off interference."95 Negative liberty is the protection against intruders, or individuals that infringe upon a person's independence.96 Whereas positive liberty is associated with self-control, negative liberty is the absence of control by others.97 This is not only confined to the protection of rights under the legal system. It also involves being free of coercion and manipulation.98

Coercion diminishes independence, and thereby autonomy, by reducing a person's options.99 It subjects a person, in a similar fashion to the examples mentioned above, to act in a way that is not according to that person's own will.100 Independence is replaced by the necessity to comply with another's demands with the hope of avoiding a horrible consequence.101 A person cannot

86. See id.
87. GAYLIN & JENNINGS, supra note 18, at 44.
88. Id. at 46.
90. RAZ, supra note 1, at 155.
91. See generally VICTOR HUGO, LES MISÉRABLES (Charles E. Wilbour trans., 1992) (portraying Fantine working as a prostitute for the sole purpose of providing for her child).
92. See id.
93. See id.
94. GAYLIN & JENNINGS, supra note 18, at 44.
95. BERLIN, supra note 89, at 127.
96. GAYLIN & JENNINGS, supra note 18, at 44.
97. Id. at 45.
98. RAZ, supra note 1, at 377.
99. Id.
100. Id. at 378.
101. Id. at 377.
exercise a significant degree of autonomy under coercion. Likewise, manipulation invades autonomy. It does not interfere with someone’s options as coercion does, but distorts and perverts the way in which a person reaches decisions. It robs a person’s goals and pursuits, eliminating the independence of self-determination and confusing the reasoning behind a person’s choices.

c. An Adequate Range of Options

Finally, the secondary sense of autonomy requires an adequate range of options. Raz gives two examples to illustrate this point. The first example is of a man who falls into a pit. Within the pit, the man has enough food and water to keep him alive without suffering. He is unable to climb out or call for help, and there is very little room for him to move. His options are confined to whether he will sleep now or later, or eat now or later. Raz’s second example involves a woman on a desert island. On the island she is confronted with a beast who unceasingly hunts her. All of her emotional, physical, and psychological faculties are dedicated to survival. Her actions are limited by the one superseding goal of remaining alive.

Neither the man nor the woman is autonomous. Each case presents a failure in the adequacy of choice. Once again, this aspect of the condition of autonomy is connected with the above aspects. A person has the capacity for autonomy only when there are a variety of adequate options. There must be a choice between several good options. It is not enough that there is one good

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102. An objection may be raised here. Suppose John is held at gunpoint. The gunman says, “Give me your wallet or I’ll shoot you in the head.” Technically, John could resist the gunman and not be coerced into giving him his wallet. This is an autonomous act. Under the framework of negative liberty, John, though being threatened, is still free from the control of the gunman if he resists. See id. at 153 n.1. However, it is important to keep in perspective the other components of autonomy. John is all of a sudden faced with two options, both distasteful, and both that he would not have freely chosen as an autonomous individual.

103. Id. at 378.
104. Id. at 377.
105. Id. at 378.
106. Id. at 373.
107. Id. at 373–74.
108. Id.
109. Id.
110. Id.
111. Id. at 374.
112. Id.
113. Id.
114. Id.
115. Id.
116. Id.
117. Id.
118. Id.
119. Id. at 374–75.
option and one bad option, and it is not adequate to have a choice between bad options. A man being held at gunpoint, choosing between losing his wallet or his life, is not presented with options that allow him to enjoy autonomy. Furthermore, a variety within the options is more important than having a large number of similar options. For example, a choice between hundreds of identical suburban homes is not as meaningful as the choice between a suburban home and an urban flat. Finally, the options must carry meaning or significance in allowing a person to pursue a personal goal, project, or relationship. The autonomous person understands the meaning of one’s choices, and perceives how choosing one option over another will have an impact on any goals.

The woman on the island, though she has a variety of options, some of which are likely good, does not have the ability to add significance or meaning to the options she chooses. Her goals and projects are subverted by her need to survive. There is no prospect for the self-realization of her goals. Without goals, there is no meaning to her choices. She cannot choose to be unimaginative or out of shape. She is not the author of her own life, but instead a character in a life thrust upon her.

The man and the woman above represent extreme examples. Ordinarily, individuals enjoy an adequate range of options in at least some aspects of their lives. In other aspects of life, however, an adequate range of options is unavailable. In such circumstances, a person may not be capable of exercising autonomy. This does not mean that person no longer leads an autonomous life. As previously noted, autonomy is exercised and experienced to a degree. A person does not suddenly become wholly nonautonomous. When a person faces a situation lacking an adequate range of options, that person’s ability to act autonomously is affected only in relation to that particular

120. Id. at 153.
121. The choice between giving his wallet to the criminal now or later is not an exercise in autonomy. Id.
122. Id. at 375.
123. Id. at 375. Gerald Dworkin also discusses, at length, the question of whether “More Choice is Better Than Less.” Dworkin concludes that, for the most part, people prefer more choices, but there are situations, such as the choice between several identical suburban homes, in which it is completely rational to prefer fewer options. Dworkin, supra note 16, at 62–81.
124. RAZ, supra note 1, at 377.
125. Id. at 389–90.
126. Id. at 375–76.
127. Id. at 376.
128. See DWORKIN, supra note 1, at 14.
129. RAZ, supra note 1, at 373.
130. Id.
131. Id. at 156.
132. Id.
133. Id.
In other words, the particular circumstance does not contribute to the person’s autonomous life. Rather, it detracts from it.

B. Autonomy is a Desirable Quality to Have

Because autonomy has value, it is a desirable quality to have. As might be suspected, the value of autonomy is as multilayered as its definition. The difficulty lies in the fact that autonomy is seemingly neutral. It is an empty feature, or freedom, waiting to be filled up with choices. Since autonomy is the construction of meaning for a person’s life, what makes an individual the particular person that this person is, autonomy is a “relatively contentless notion.” This is, of course, because there are innumerable ways to give shape or meaning to one’s life, none of which are necessarily better than the other. There is no denying that certain lives are more admirable than others, but autonomy assumes and respects that persons choose their own values, assigning more or less worth to personal projects, regardless of whether they are publicly admirable. Perhaps, it is this very nature of autonomy, neutral and detached, that makes it so desirable.

Much of the modern relevance of autonomy was born of the political revolutions of the seventeenth and eighteenth centuries. The American colonies sought to overthrow absolute monarchies and replace them with establishments based upon the consent of the governed. The shift in political theory came to focus on the individual, possessive of certain natural rights, and a government that ensured and protected those rights. Liberal democracy saw autonomy as an ideal, and it structured a government and legal system that best accomplished that ideal. The modern system of government is one of liberty. Persons choose to live in accordance with rules that they assign themselves, or rules that they choose to abide by. By doing so, persons consent to a moral doctrine experienced on the individual, social, and political level.

134. See id. at 373.
135. Dworkin, supra note 21, at 55.
137. Id.
138. DWORKIN, supra note 1, at 110.
139. Id.
140. Id.
141. GAYLIN & JENNINGS, supra note 18, at 35.
142. Id. at 36.
143. Id.
144. Id.
145. Id.
146. Id. at 37.
147. See id.
For these reasons, valuing autonomy can lead to a form of moral pluralism. In other words, valuing autonomy, in and of itself, means that one must value a range of options that may or may not be morally compatible. Such a view is only consistent with moral pluralism. This is because, under this view, autonomy is morally good despite whether the autonomous person chooses good or evil. At the very least, autonomy acknowledges that moral values are not the same and reserves to a person the right to choose one over another. Bradley Wendel has identified that there are a wide range of meaningful moral options to choose from in our liberal system. In recognizing that, one also must recognize the value of autonomously choosing them. When viewed in this light, autonomy could be said to have intrinsic value.

There is reason to believe that autonomy is intrinsically valuable. Something has intrinsic value when it is good for its own sake. Autonomy means exercising self-determination, and being recognized as an individual who makes and determines one's own destiny. This enables a person to form self-respect by gaining the respect of others. Because it is closely linked to many desirable qualities unique to human potential—like creativity, risk-taking, formulating and adhering to principles, and responsibility—autonomy is good in and of itself. In one regard, it is intrinsically valuable because it is a quality of humans, and a feature that furnishes human dignity and respect for each other and ourselves.

This notion, that autonomy is intrinsically valuable, however, is far from universal. Many philosophers believe that autonomy has no intrinsic value. Raz gives special attention to limiting the ideal of autonomy to morally acceptable decisions. He presents the question of whether it is morally preferable to let people autonomously choose wrong or be forced into choosing

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148. See RAZ, supra note 1, at 398.
149. See id. at 395–98.
150. Id. at 398.
151. See id. 398–99.
153. See id. (citing RAZ, supra note 1, at 378, 398).
154. DWORKIN, supra note 1, at 111.
155. Id.
156. Id. at 112.
157. Id.
158. Id.
159. Id.
160. See Luban, supra note 21, at 1037. It has been theorized that autonomy has no standard for the conception of the good. Autonomy is therefore only an instrument leading to values such as liberty and equality. See generally JOHN RAWLS, A THEORY OF JUSTICE (1971) (arguing for the principled reconciliation of liberty and equality); see also Ronald Dworkin, Liberalism, in PUBLIC AND PRIVATE MORALITY 113 (Stuart Hampshire ed., 1978) (regarding Dworkin’s theory on liberalism).
161. RAZ, supra note 1, at 380.
right.\textsuperscript{162} Using the reasoning that it is morally worse for someone to choose evil on his own accord than be coerced into evil, the latter may be concluded.\textsuperscript{163}

Those who disagree that autonomy has intrinsic value assign to it an instrumental one.\textsuperscript{164} Something is instrumentally valuable because it leads to other good things.\textsuperscript{165} Autonomy has instrumental value because it is probable that it leads to good results and individuals take pleasure in the process.\textsuperscript{166} People will gain more satisfaction out of their lives if they shape it themselves, partly because, if for no other reason, people are generally best situated to act according to their own interests.\textsuperscript{167} Furthermore, there is something satisfying and pleasing about determining one’s life and reflecting and choosing among preferences.\textsuperscript{168}

Despite the controversy surrounding the value and quality of autonomy, there is no doubt that it is valuable, in a more or less degree.\textsuperscript{169} This is especially true in the American legal system.\textsuperscript{170} The American legal system strives to provide autonomy to individuals by protecting them from the interference of others, and equipping them with means to pursue projects and accomplish goals.\textsuperscript{171} That each person understands autonomy as a desirable quality to have

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162. "The question is, has autonomy any value \textit{qua} autonomy when it is abused? Is the autonomous wrongdoer a morally better person than the non-autonomous wrongdoer?" \textit{Id.} Intuitively, Raz argues it is clearly worse to autonomously choose wrong. \textit{Id.}

163. Raz casts a darker shadow on the autonomous wrongdoer than on the person who momentarily, without exercising true autonomy, succumbs to doing wrong. "Demeaning, or narrow-minded, or ungenerous, or insensitive behavior is worse when autonomously chosen and indulged in." \textit{Id.} Following this reasoning, and taking into consideration other moral values, when autonomy is used for evil, coercing someone to choose right is almost certainly morally preferable and likely morally justified. See generally \textit{id.} (discussing the coercive effect of moral values). It should be noted that the discussion of whether autonomy should be limited or infringed upon to promote other moral values is deeply controversial and highly dichotomized. One common area of discourse is whether criminal sanctions, ones seriously limiting autonomy, are validated by their attempt to control immoral behavior. While this topic will not be addressed here, there are thoughtful arguments on either side. See, e.g., Lawrence C. Becker, \textit{Crimes Against Autonomy: Gerald Dworkin on the Enforcement of Morality}, 40 WM. & MARY L. REV. 959 (1999) (citing \textit{Dworkin, supra} note 1, at 20) (explaining that "liberal political theorists plausibly invoke autonomy to explain why they draw the line about criminalization where they do").

164. \textit{Dworkin, supra} note 1, at 111.

165. \textit{Id.}

166. \textit{Id.} at 112.

167. Of course, there is plenty of scholarship debating the truth of this claim. It is, however, as a generalization, highly probable. See \textit{id.}

168. \textit{Id.}


170. \textit{Id.}

171. \textit{Id.} at 252.
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is fundamental to the way citizens treat each other in a liberal democracy. If people value autonomy, then they value that there are many ways in which a person will define meaning in life, many endeavors in which a person can choose to engage in, many goals in which a person can seek to accomplish, and many relationships a person can choose to appreciate. If people acknowledge this, then they give weight to how a person defines meaning in choosing how they personally act. Mutual respect for autonomy leads to mutual respect for each other.

III. CLIENT AUTONOMY AND THE ATTORNEY-CLIENT RELATIONSHIP

A. The Autonomy Assumption

The attorney-client relationship is often characterized as an agency relationship, in which the client is the principal responsible for determining the goals and objectives of the representation, and the attorney is the agent facilitating and assisting the client in obtaining the client’s goals. Many recognize client autonomy as the cornerstone of this agency relationship. In Charles Fried’s classic article, in which he likens the attorney-client relationship to a friendship, he states that the lawyer “acts in [the client’s] interests, not his own; or rather he adopts [the client’s] interests as his own.” Fried’s analogy

172. See Dworkin, supra note 1, at 112; see also R. Dworkin, supra note 160, at 113 (explaining Dworkin’s theory on liberalism).
174. Id. at 32.
175. See id.
177. See Wald, supra note 176, at 751.
to friendship establishes a relationship in which the attorney finds a client with matching moral goals, to a certain extent, and carries on a moral dialogue with that client. 179 In the process, the attorney gives special attention to the subjectivity of his client, adopts the client’s interests as his own, and ultimately “helps to preserve and express his client’s autonomy” in relation to the legal system. 180 Similarly, Sylvia Law has argued that attorneys serve clients, enhance their individual autonomy and self-control, and encourage clients to know and control their options and lives. 181 Law maintains that attorneys have the special ability to enhance the autonomy and self-control of their clients. 182 Finally, Stephen Pepper, in his classic thought-provoking essay, argues that autonomy serves as the root justification for an amoral ethical role for attorneys. 183 Pepper defends attorney amorality on the principle that law is dedicated to protecting and increasing autonomy, and attorneys are the means by which an individual accesses the law, discovers its benefits of autonomy, and is assisted in exercising those benefits. 184 Pepper’s argument is structured on the following three premises: (1) the law is intended to be a public good which increases autonomy; (2) increasing individual autonomy is morally good; and (3) in a highly legalized society such as ours, autonomy is often dependent upon access to the law. 185

Attorneys have the special role of providing access to the law. 186 Attorneys also have specialized skill and knowledge, which enables them to assist individuals in executing their goals within the legal system. 187 In doing so, attorneys are increasing individual autonomy and providing a societal good. As Webb pronounces it, “lawyers are an essential corollary to any meaningful self-

179. See Gear, supra note 178, at 2490–94.
180. See Fried, supra note 178, at 1074.
182. Id.
183. Pepper, supra note 9, at 613.
184. Id. at 617.
185. Id. at 615–19. Pepper, too, has had his share of responses. Andrew Kaufman comments that when amorality is defended by playing up autonomy and equality, it is one thing, but when it is defended by playing down what is generally agreed upon to be immoral, though not unlawful, it is quite another. See Andrew L. Kaufman, A Commentary on Pepper, 1986 AM. B. FOUND. RES. J. 651 (1986). In other words, it is appropriate for the attorney to refuse an amoral role in a significant number of cases. Id. David Luban also objects to Pepper’s theory, but on the grounds that Pepper mistakenly overvalues individual autonomy. See David Luban, The Lysistratian Prerogative: A Response to Stephen Pepper, 1986 AM. B. FOUND. RES. J. 637 (1986). Luban denies that increasing individual autonomy is to be preferred over right or good conduct. Id. While it is desirable for individuals to act autonomously, Luban argues that not all autonomous acts are desirable. Id. Wendel has also listed some of the most frequent objections to using autonomy as a justification: “clients are entitled only to a just measure of autonomy, autonomously chosen ends are valuable only if the ends themselves are valuable, and even if autonomy has some positive value, helping someone exercise autonomy to do something bad is not turned into a morally praiseworthy act by the presence of the positive value of autonomy.” Wendel, supra note 152, at 1081–82.
186. See Pepper, supra note 9, at 617.
187. See id. at 615.
The lawyer’s function is to ensure, in a neutral way, that a client is afforded all the liberties the law provides. Monroe Freedman adds that the law exists to protect a client’s autonomy, and without the help of an attorney, an ordinary person cannot exercise the autonomy in which the system of law entitles that individual. Therefore, a lawyer’s commitment is first and foremost to the client’s autonomy. Lawyers have the unique task of being neutral legal helpers that assist citizens in gaining access to the law. Freedman suggests that for a lawyer to act professionally, and even morally, the lawyer must maximize his client’s autonomy and advise clients of all of their legal rights. Doing anything less would be depriving the clients of their autonomy.

The missing component in each of these is a comprehensive understanding of autonomy, and a close examination of what enhancing it entails. Law merely assumes, given the special role of attorneys, that the client’s autonomy is being increased. In the same vein, along with being criticized for a variety of other limitations, Fried’s “friend” model equates pursuing the subjective interests of a client with expressing or enhancing the client’s autonomy, which fails to address the complex and demanding nature of autonomy. Pepper also lends more attention to why autonomy is a foundational value that justifies amorality, than if indeed an attorney enhances it. These arguments represent the common trend of the legal profession to overlook the extensive and demanding nature of autonomy.

That autonomy serves as the very cornerstone of the modern attorney-client relationship has, to a large extent, been wrongly taken for granted. The subject of if and how it is a feature of the relationship has not been addressed adequately, and contrary to what has been assumed, an accurate portrayal of client autonomy reveals a relatively minor role. The tall tale of autonomy is greatly overstated.

189. Id.
191. Freedman, supra note 190, at 197.
192. Webb, supra note 188, at 281.
193. Freedman, supra note 190, at 204.
194. Id.
196. See supra note 144 and accompanying text.
197. Fried, supra note 178, at 1071.
198. Pepper, supra note 9, at 618.
B. The Attorney-Client Relationship

It is not necessarily obvious where client autonomy fits in the attorney-client relationship. Identifying its place becomes even more difficult when viewing an accurate account of the typical attorney-client relationship. As David Wilkins points out, traditional legal ethics discourse rested on many assumptions about the typical interaction between a lawyer and a client, assumptions that lacked accuracy. The traditional view presumed a relationship between an unsophisticated, individual client, and a skilled, dedicated solo practitioner who zealously represents that client within the bounds of the law. This traditional view, however, was oversimplified and incomplete. It conveniently categorized all attorneys and clients as the same. In actuality, there are notable and dramatic differences depending on the nature of the relationship and the circumstances of the representation. As a consequence, client autonomy within the attorney-client relationship may not be characterized in a general manner. Its role depends upon the circumstances of the representation and cannot be made into a blanket assumption. One cannot assume that lawyers who represent corporate clients enhance autonomy the same way that lawyers who represent individual clients do. In either case, however, common ground may be found in client decision-making.

One of the primary functions of the professional attorney is to counsel and advise the client, so that the client may make informed decisions regarding the client’s legal objectives and goals. Since autonomy is an internal achievement in which its success revolves around having reasons for choosing to pursue an objective and having reflected on those reasons, an informed decision does not necessarily imply that it is an autonomous one.

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199. David B. Wilkins, Everyday Practice is the Troubling Case, in PROFESSIONAL RESPONSIBILITY FOR A CHANGING PROFESSION 17 (Andrew L. Kaufman & David B. Wilkins eds., 5th ed. 2009). Katherine Kruse has also pointed out a long-standing misconception about clients. See Katherine R. Kruse, Beyond Cardboard Clients in Legal Ethics, 23 GEO. J. LEG. ETHICS 103, 103 (2010). Kruse argues that lethal ethicists, particularly moral philosophers, presume clients are one-dimensional cardboard figures who care only about their legal rights and are indifferent to how those rights affect others. Id. In fact, clients are three-dimensional beings with moral, social, and religious commitments. Id.

200. Wilkins, supra note 199, at 17; Kruse, supra note 199, at 103.

201. John Heinz and Edward Laumann conducted a detailed study about the social structure of Chicago lawyers, and they found that attorneys can generally be divided into two hemispheres. JOHN P. HEINZ & EDWARD O. LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR 127–28 (Nw. U. Press rev. ed. 1994). The first hemisphere involves attorneys that represent large organizations—labor unions, the government, and corporations. Id. The second hemisphere is composed of attorneys that represent individuals. Id. The study reveals that the nature of the interaction between lawyer and client differs dramatically depending on which hemisphere, corporate or individual, the attorney works in. Id.

202. See MODEL RULES OF PROF’L CONDUCT R. 1.2(a), 2.1 and accompanying text to supra note 3.

203. See supra Part II.A.1.

204. See supra Part II.A.1.
The challenge of client autonomy consists in the manner by which an attorney advises the client so that in the decision-making process, the client is not merely informed, but also autonomous. Lawyer advice must carefully be catered to ensure the client is informed in choosing how to accomplish the client's goals, and also that the client is the master of those choices. It is worth noting that it has not always been the case that attorneys favor the client's autonomy when regarding client decision-making. In 1974, Douglas Rosenthal addressed this subject in a book titled *Lawyer and Client: Who's in Charge*.205 Rosenthal compared the success of two very different, and at the time highly controversial, views of the relationship between a professional and a client.206 The traditional model, as Rosenthal phrased it, followed the observation of Alexander Pope, "A little learning is a dangerous thing."207 The professional is the guiding doctor, and the client is the cooperating patient.208 The rationale behind the traditional model is that the professional is skilled and trained, possessing extensive knowledge of an extremely complicated subject, while the client is incapable of actively and meaningfully participating due to the client's limited understanding.209 The traditional model affirmed a form of paternalism in which the client's best interests were served by allowing the professional to take full charge of all decision-making, and the client to sit back and defer, consent, and cooperate with the professional.210 Rosenthal also discussed a different participation model.211 This model was based upon a collaborative relationship in which the professional and the client shared an equal status and were equally engaged in the process.212 Through an intense empirical study of personal injury cases, Rosenthal found that the cases in which the client was actively involved resulted in notably better outcomes.213 At the very least, Rosenthal's study eliminated the myth that a layman client cannot effectively make choices in the client's own interests.214 Indeed, the study broadly demonstrated that laymen, when educated about the relevant matters, add positive contribution to problem solving, even if it deals with a personal issue.215

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206. Id. at 13.
207. Id. at 18.
208. Id. at 9–10 (quoting Thomas Szasz & Marc Hollander, A Contribution to the Philosophy of Medicine: The Basic Models of the Doctor-Patient Relationship, 97 ARCHIVES INTERNAL MED. 585, 587 (1956)).
209. Id.
210. Id.
211. Id. at 10.
212. Id.
213. Id. at 61.
214. Id.
215. Id.
Since Rosenthal’s book, there has been much literature contributing to the topic of attorney counseling and client decision-making. Most of it favors collaborative and client-centered approaches, bent on enhancing client autonomy. Marcy Strauss proffered a revised attorney-client relationship model dedicated almost exclusively to preserving and enhancing client autonomy. The emphasis was placed on client decision-making in and over all aspects of the lawsuit. This proposed revision to the attorney-client relationship has evolved into what is called the client-centered model, a model particularly emphasized in clinical methodology. The client-centered model stresses the importance and vitality of having clients actively participate in the discussion of the client’s problems, possible solutions, and ultimate decisions. The client-centered approach strives to achieve maximum satisfaction for the client, making every reasonable effort to accede to the client’s ends and means in the representation. The relationship is distinctly client dominant, yielding to the client all primary decision-making power, and disregarding the consequences of the client’s wishes. The purpose is to attain the autonomy, dignity, morality, and intelligence of the client.


217. The general presumption, perhaps one among several, necessary for a view promoting autonomous client decision-making is the broad point that Rosenthal’s book made. Clients, when provided with appropriate information, are capable of reaching a rational decision. See Marcy Strauss, Toward A Revised Model of Attorney-Client Relationship: The Argument for Autonomy, 65 N.C. L. REV. 315, 340 (1987). To this point, it is helpful to briefly revisit the relationship between the value of autonomy and pluralism. As stated in Section I.B, if we value autonomy, we value that there are many different ways to find worth in self-determining one’s life that may or may not be contrary to each other’s. There is rarely a right or wrong decision, and the best decision can seldom be identified. Id. In other words, that a lawyer would have chosen differently than a client, or even believes a client’s decision to be wrong, is irrelevant to the purposes and promotion of an autonomy enhancing approach to the attorney-client relationship. Id.

218. Id.

219. Id. As a corollary to this, however, room was left for situations in which the legal issue was so complex that the attorney’s best efforts to provide the client with the appropriate information would not suffice to ensure an informed decision, or when client decision-making jeopardizes the legal process. Id. at 340–41.

220. HERMAN ET AL., supra note 216, at 11 (citing DAVID A. BINDER, PAUL BERGMAN, & SUSAN C. PRICE, LAWYERS AS COUNSELORS: A CLIENT CENTERED APPROACH 18 (1991)).

221. Id at 11–12 (citing BINDER ET AL., supra note 220, at 19–22).

222. Id. at 12 (quoting BINDER ET AL., supra note 220, at 18, 261).

223. Id. Because this model is concerned only with fulfilling the client’s wishes and pays no heed to their consequences, it has been called the “hired-gun” model. Id. This is not to say, of course, that a lawyer should assist a client in unlawful conduct. See Stephen L. Pepper, Counseling at the Limits of the Law: An Exercise in the Jurisprudence and Ethics of Lawyering, 104 YALE L.J. 1545, 1599 (1995) (limiting a lawyer’s assistance to a client to lawful conduct—conduct within the bounds of law).

224. BINDER ET AL., supra note 220, at 18.
The crux of the client-centered model hinges on a dedicated attorney, advising a layman client in a manner that facilitates active and effective engagement in the decision-making process. First and foremost, this entails a duty to inform the client of any and all relevant law. Pepper extends this duty to all attorneys, regardless of their commitment to increasing individual autonomy. It also entails active and ongoing client communication so that the attorney has a comprehensive grasp of the client’s exact goals and interests. Finally, it entails releasing the client to make a decision that is independent of all coercion, manipulation, and even excessive influence on the attorney’s part.

To synthesize the above paragraphs, the role of client autonomy in the attorney-client relationship is an active one. It requires a faithful, extremely conscientious attorney that unflailingly presents all the important and relevant information necessary for a layman client to make an informed decision, and does so in a neutral manner that avoids coercing, manipulating, and even influencing the client to make a decision that is not sufficiently independent of the attorney’s. This is no mean achievement.

IV. THE CONCEPTUAL AND TRANSACTIONAL PROBLEM WITH AUTONOMY

A. The Conceptual Problem

There are two inherent problems when it comes to client autonomy and its assumption—a conceptual one and a transactional one. First, there is a conceptual problem. As previously stated, achieving autonomy is an internal achievement, and it depends on the autonomous individual. In the words of Raz, “it is the special character of autonomy that one cannot make another person autonomous.” A horse can be brought to the water, but not be made to drink. While a person may appear to be leading an autonomous life, it is the internal reflection and reasoning that makes a person’s actions, goals, and projects autonomous. Autonomy has little to do with carrying out the projects of

225. See generally id. (discussing the conceptual differences between client-centered and traditional concepts of lawyering).
226. Pepper, supra note 223, at 1599.
227. Id. Clients have an interest in and are entitled to knowledge of the law that governs them. Id. In fact, our form of government suggests that a person may even have a right to know the law. Id.
228. Id. at 1601. Acknowledging that a “bad-man” client might use knowledge of the law to pursue wicked goals, inflicting a moral dilemma on the attorney—consisting of deciding between a duty to inform the client of the law and a desire to protect the public well-being or avoid assisting an injury to a third party—Pepper is careful to include a premise here. Id. (citing Oliver W. Holmes, The Path of Law, 10 HARV. L. REV. 457, 459 (1897)). An attorney must not assume the client’s goals or desires. Id. The attorney must have open dialogue with the client. Id.
229. Id. at 1607.
230. See supra Part II.A.1.
231. RAZ, supra note 1, at 407.
232. Id.
an individual. Rather, it concerns how the person reached the conclusion to pursue a particular project. To make this relevant, a client seeking representation will not necessarily achieve autonomy if the attorney assists the client in making an informed decision regarding the client’s legal options. The client must be the one to reflect on why the client desires to take one legal avenue over another, and have reasons on which the ultimate decision is based. The attorney cannot perform this task for the client. The attorney may, however, put the client in the best situated position to do the task. This involves more than simply refraining from coercion and manipulation.  

While Raz is firm on the issue that one can be autonomous only if one determines to do so by oneself, Raz does accept and promote that others can help in securing the preconditions of autonomy. Raz is referring to autonomy in the secondary sense, including the conditions of mental ability, independence, and an adequate range of options. Furthermore, Raz compels everyone to help secure these preconditions. Thus, while an attorney cannot—that is, it is conceptually impossible for an attorney to enhance a client’s autonomy in the primary sense of achieving autonomy—an attorney can help in assisting a client to create and develop the inner capacities necessary for a person to act autonomously.

This could include developing the cognitive abilities of a client, the power to absorb information about the law, understand the consequences of legal decisions, and develop the type of reasoning capacity useful to solving legal problems. It could also include creating or advising an adequate range of options that a client could choose from. Obviously, it is neither expected nor constructive for an attorney to go beyond assisting a client’s legal problem and essentially provide a client with a law school education. There is something to be said, however, about an attorney helping a client understand the legal issue in a manner sufficient for the client to make an informed decision. In addition, an attorney can certainly inform a client of all the options, detailing the pros and cons of each and thereby helping in that particular sense. Finally, an attorney can advise and assist a client in effectively exercising those options to the client’s advantage.

233. Id.
234. Id.
235. See id.
236. Id.
237. Id. at 407–08. It should be noted that securing the preconditions to autonomy could lead to achieving autonomy. It is the logical step to achieving the primary sense of autonomy. This is a much weaker, and quite different, conclusion, however, than stating that securing the preconditions to autonomy is increasing an individual’s autonomy. It merely helps by increasing the likelihood that a person could exercise autonomy. Furthermore, in and of itself, there is nothing especially praiseworthy about securing the preconditions of autonomy for an individual. Instead, as Raz explains, it is a duty that everyone has to each other. Id. at 407–09.
238. Id. at 408.
239. Id.
The gist of the conceptual problem is that an attorney is confined only to helping her clients secure the secondary sense capacity for autonomy that can, but does not always, lead to the autonomous life. A very weak thesis remains in that attorneys, at best, can help direct their clients to that stage of autonomy without ever being able to ensure they act upon it. What makes this weaker, still, is that every layperson can do the same and even has such a duty.\textsuperscript{240}

No one can make another person achieve autonomy.\textsuperscript{241} Attorneys are no exception. However, everyone has a duty to help secure the secondary sense of autonomy for each other.\textsuperscript{242} This is not a duty unique to attorneys. The concern is that legal ethics has assigned to autonomy a moral weight that would suggest attorneys are exceptionally situated to increase autonomy for their clients.\textsuperscript{243} In addition, the implication is that such a moral capacity exists because of their role as attorneys and their specialized skill and knowledge. To put it another way, the position of an attorney implies a supererogatory function, a moral function going above and beyond the call of duty, when it comes to advancing autonomy. It would be one thing if client autonomy was treated as an ideal that attorneys ought to pay attention to. Instead, it is treated as a quintessential moral argument that defines and justifies attorney amorality.\textsuperscript{244} Since all people have the duty of securing the preconditions of autonomy,\textsuperscript{245} there is nothing morally special about attorneys' participation in this duty. To claim otherwise is to exaggerate the role of autonomy in the attorney-client relationship. Unfortunately, this has been the lot of moral and legal theory, inaccurately portraying and overstating autonomy.

One might counter, considering the above, that while the argument from client autonomy is significantly diminished, it is by no means destroyed completely. The rationale being that within the context of the legal system, only a lawyer has the knowledge and ability to help secure the preconditions of autonomy.\textsuperscript{246} Even if making a person autonomous is conceptually impossible, and securing the preconditions of autonomy is the duty of everyone, not everyone is poised to secure the mental ability, independence, and adequate options for someone facing the legal system. In fact, such a duty may be exclusive to attorneys. Therefore, even though it is only the secondary sense of autonomy, it is still the special function of lawyers to preserve and increase it. While this argument has potential, it is painstakingly undermined by the second problem associated with client autonomy and its assumption—the transactional problem.

\textsuperscript{240} See supra note 193 and accompanying text.
\textsuperscript{241} RAZ, supra note 1, at 407.
\textsuperscript{242} Id. at 407–08.
\textsuperscript{243} Law, supra note 181, at 212–13.
\textsuperscript{244} Pepper, supra note 223, at 617.
\textsuperscript{245} RAZ, supra note 1, at 407.
\textsuperscript{246} Pepper, supra note 223, at 617.
B. The Transactional Problem:

1. In Securing the Appropriate Mental Abilities

The transactional problem concerns the reality that attorneys rarely succeed in securing the secondary sense of autonomy. First, consider the transactional problem when it comes to assisting a client to develop the appropriate mental abilities. As stated above, an attorney cannot give a client a law school education. The information and context must be succinct and precise. Even assuming that an attorney does an exceptional job of explaining the legal concepts to the layman client, it is still highly probable that the client will not fully understand and appreciate the information. The law can be extremely difficult to understand, even for a professional.\textsuperscript{247} The client may be apathetic to learning the law and disinterested in being included in the decision-making process, much less coming to a comprehensive understanding of the legal issue. In addition, the client may be more concerned with achieving the client’s financial, political, or social interests than understanding the law involved in achieving them.

There are additional time and financial constraints. Explaining the law—especially when dealing with complex issues—takes time—a lot of time. A lawyer does not always have the time, nor does the client have the finances, to help secure the appropriate mental abilities for an informed decision-making process.\textsuperscript{248} Arguably, it is even inappropriate for a professional to afford the time to do so.\textsuperscript{249} In the same vein, the legal profession is fraught with market-based pressures that even well-intentioned attorneys cannot always escape.\textsuperscript{250} In his book, Lawyers in the Dock, Richard Abel richly chronicles the professional lives of six attorneys who fell into a trap of professional misconduct and wrongful lawyer behavior.\textsuperscript{251} What is so fascinating and alarming about his six case studies is that the studies involve hardworking, good-natured attorneys who simply could not keep up with the demands of their otherwise successful careers.\textsuperscript{252} Abel’s book shows that well-intentioned attorneys unintentionally violate the rules of professional conduct.\textsuperscript{253} The culture, competitiveness, and

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\textsuperscript{247} Strauss, \textit{supra} note 217, at 340.
\textsuperscript{248} Strauss admits that there are circumstances in which an attorney may never be able to explain the law in a manner that equips a client to make an informed decision about it. \textit{See supra} notes 217–218 and accompanying text.
\textsuperscript{249} One might consider the metaphor of a doctor explaining to his patient the way in which a particular drug works to alleviate pain. The patient has come to the doctor to feel better. While the patient wants to know the drug’s side effects, he is not particularly concerned with expending time to understand the chemical process of the drug.
\textsuperscript{250} \textit{See generally} RICHARD L. ABEL, LAWYERS IN THE DOCK (2008) (chronicling six case studies of attorney misconduct and wrongful behavior).
\textsuperscript{251} \textit{Id.}
\textsuperscript{252} \textit{Id.}
\textsuperscript{253} \textit{Id.}
\end{flushleft}
overreaching goals of the legal profession leave little time for attorneys to reflect on whether they are adhering to the rules of professional conduct.254 Indeed, these goals leave even less time for the type of conscientious reflection necessary to secure the appropriate mental abilities of a client.

Considering all of the above, it is extremely difficult and unlikely for an attorney to help a client secure the mental capacity for the exercise of autonomy. Adding to this difficulty, there are psychological and emotional obstacles. A client seeking legal representation could be experiencing a traumatic event.255 For example, the client may be charged with a felony, going through a divorce, or being sued for a substantial amount. The trauma may have such an effect that the client is incapable of making rational decisions, ones within the client’s best interest and not driven by emotions and feelings.256 William Simon, in his article discussing lawyer advice and client autonomy, illustrates this point by comparing it to an experience he had with his pediatrician.257 Simon’s two-month-old son needed a vaccination that contained the small probability of an adverse reaction.258 Simon felt paralyzed.259 The stress of deciding whether his child should receive the vaccination was a matter so deeply personal and emotional that he felt incapable of thinking rationally about the circumstances.260 He wanted to defer to the doctor’s wisdom because he did not believe he could make the correct decision.261 There is no doubt that many clients face the same dilemma.

2. In Securing Independence

Secondly, transactional problems obstruct securing the precondition of independence.262 Apart from how a trauma may affect a client’s independence, there are transactional problems, both voluntary and involuntary, in the way that an attorney presents information and options to the client.263 Moreover, there are institutional barriers that also limit securing the independence of a client.

Independence as a precondition to autonomy is invaded by coercion and manipulation from others.264 An individual lacks independence when decisions are made, not according to that individual’s own interests and preferences, but

256. Id.
257. Simon, supra note 255, at 216.
258. Id. at 216-17.
259. Id.
260. Id.
261. Id.
262. Strauss, supra note 217, at 341-42.
263. Id.
264. See RAZ, supra note 1, at 377.
due to external forces. In the most offensive cases, the attorney is the powerful, paternalistic master that coerces the client to make decisions according to the attorney’s interests. Such an attorney will also manipulate the client for purposes of the attorney’s own financial or social gain. Clearly, the attorney is maliciously invading the independence of the client.

There are also cases in which an attorney nonmaliciously, though still voluntarily, invades the independence of a client. Ann Southworth conducted a detailed empirical study about the views and practices of lawyer-client decision-making. Specifically, Southworth found that attorneys involved in legal services and law school clinics, essentially attorneys concerned with poverty law, were disinclined to attempt to secure any sort of independence for their clients. Poverty law attorneys reported that their clients almost never become involved in forming strategies or participating in the decision-making process. These attorneys explain that their clients have “no idea what to do” when confronted with a legal problem, and wholly rely on their attorneys to solve the problem for them. They further report that their clients’ interests, because of their intellectual, financial, and social vulnerability, are only served by a paternalistic model of lawyering. They believe securing client independence and autonomy has a harmful effect on these clients and ought to be discouraged.

A lawyer’s failure to secure the independence of his client is not always voluntary. Sometimes the attorney is trying to genuinely establish independent client decision-making. Unfortunately, the attorney may not fully escape involuntarily invading his client’s independence. Simon soberly admits that the gap between approaching lawyer advice with a paternalistic or autonomy enhancing mindset is not as wide as one might hope. Simon identifies the

265. See id. at 377–78.
266. Strauss, supra note 217, at 342.
267. Id.
269. See generally id. (discussing Southworth’s empirical study regarding the views and practices of lawyer-client decision-making). Southworth surveyed the differences between lawyers working in the fields of legal services, law school clinics, advocacy organizations, civil rights, grass roots organizations, and private business law. Id. at 1107.
270. See id. at 1105.
271. See id. at 1109–10.
272. Id. at 1109.
273. See id. at 1128.
274. See generally id. at 1136–37 (discussing the problems of resource constraints and negative psychological effects on the lawyer from being deprived of an independent role).
275. See id. at 1132.
great difficulty in presenting information to a client in a neutral way.\textsuperscript{277} Even when an attorney gives special care to the way the attorney presents information, there remains a substantial risk that the attorney will inadvertently influence or manipulate the client.\textsuperscript{278} It is extraordinarily difficult for attorneys to present options, void of their own influence, even when set on doing so.\textsuperscript{279} The order in which options are presented, the emphasis and time dedicated to explanation, the details and expressions an attorney uses, and things buried in the attorney’s subconscious have a negative effect on a client’s independence.\textsuperscript{280} Robert Gordon argues that corporate lawyers “influence their clients to some extent, whether they want to or not.”\textsuperscript{281} Corporate lawyers do this simply by the manner and setting in which they present advice, by plainly submitting to company norms, or by changing company culture with the exploitation of certain leverage points.\textsuperscript{282} Lawyers devoted to securing the independence of their clients face an uphill battle. Much of the struggle to do so is, at the very least, unknown, and at the very most, entirely outside of their control.

Finally, the legal profession as an institution has its own interest in limiting client independence.\textsuperscript{283} Gordon discusses the ideal that lawyers, in the greater pursuit of maintaining an effective and functioning pluralist society—a healthy society—must retain some independence as professionals.\textsuperscript{284} In addition to their clients’ interests, lawyers ought to support the interests of the general public, “even when doing so hurts their clients.”\textsuperscript{285} The sacrifice made to the particular client’s interests is justified, and required, in order for a society to operate well.\textsuperscript{286} Gordon adds, in another article, that the legal-social framework is a common good, a common good that a selfish individual could destroy for everyone if a lawyer is not careful.\textsuperscript{287} This is especially relevant when applied to corporate clients who might try to abuse the system of law and use their lawyers

\begin{footnotes}
\item 277. See Simon, supra note 255, at 217.
\item 278. See id.
\item 279. See id.
\item 280. See id.
\item 281. Robert W. Gordon, The Independence of Lawyers, 68 B.U. L. Rev. 1, 30 (1988). Gordon mentions that one ideal requires lawyers to reflect critically on the way they influence their clients, and to change accordingly if the results of their influence are bad. See id.
\item 282. Id.
\item 283. See generally id. at 1–19 (pointing to lawyers’ interests in preserving corporate self-regulation, control over their conditions of work, and political independence).
\item 284. Id. at 17.
\item 285. Id.
\item 286. Id. at 17–18.
\item 287. See Robert W. Gordon, Why Lawyers Can’t Just Be Hired Guns, in ETHICS IN PRACTICE 42, 46 (Deborah L. Rhode ed., 2000). As the title suggests, Gordon is arguing against a hired gun model of lawyering. See id. at 42. This model of lawyering defeats some of the good the law is intended to provide. See id at 46. Anthony Kronman agrees that part of a lawyer’s job is to be directly concerned with the public good, the integrity of the legal system, its fairness, and the well-being of the community. See Anthony T. Kronman, The Law as a Profession, in ETHICS IN PRACTICE 29, 31 (Deborah L. Rhode ed., 2000). Such a view is likely incompatible with a hired gun model.
\end{footnotes}
to achieve goals that are not within their legal rights. In such a situation, the legal profession would strive to prevent independent decision-making, and influence the client to act in a manner consistent with the common good. This may be the morally preferable option, but it is nonetheless incompatible with securing the independence of client decision-making.

3. *In Securing an Adequate Range of Options*

Lastly, an attorney has little control over securing an adequate range of options for a client. An adequate range of good options is not always in the cards. It is not enough for a client to have a choice among several bad options, or even between one good option and one bad option. A client must have a choice between a variety of good options to enjoy an autonomous life.

There are occasions when a client seeks representation that will involve an attorney presenting several different good options. For example, if the client desires to form a partnership, start a business, negotiate a deal, or adopt a child. The attorney informs the client how best to go about the endeavor, and presents the several options, as well as different benefits and risks. Such a situation is probably most common when representing corporate clients and wealthier individuals.

In large part, however, the client is not faced with a variety of good options. Instead, the client has retained counsel because the client faces a problem. The attorney only has the occasion to inform the client which option is the best option among several dissatisfying choices. For example, a divorce attorney has to advise the client about different options in splitting up assets or parenting time. A client facing eviction is provided different defenses or maybe told to find a new place. Even plaintiff attorneys seeking damages for their clients are merely providing options derived from a very traumatizing experience, options that are hardly good in comparison to the event not occurring. The same can be true in the corporate sphere where high stakes litigation is common.

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288. See Gordon, supra note 287, at 47 (discussing the power possessed by attorneys representing large corporations and the far-ranging impact of their policy decisions).

289. See Southworth, supra note 268, at 1112.

290. See RAZ, supra note 1, at 373.

291. See id.


293. See Charles R. Schaefer, You and Your Eager Entrepreneur, BUS. L. TODAY Nov.–Dec. 1995, at 43, 44 (weighing and outlining the myriad of decisions clients and attorneys must make in buying and selling small businesses).

294. See Ellmann, supra note 292, at 718.

295. See Southworth, supra note 268, at 1112.

296. Cf. RAZ, supra note 1, at 373–74 (using The Man in the Pit and The Hounded Woman as instances where the client may only be able to choose from undesirable options).

Attorneys in such situations advise about settlement options or the risks of enduring a painstaking trial.\textsuperscript{298}

An adequate range of options means clients have several good options, and they are aware of those options and the meaning of their choices among them.\textsuperscript{299} The above circumstances are neither adequate, nor provide an opportunity for clients to understand the meaning of their choices. When faced with a difficult legal problem, a person is not striving to achieve a goal.\textsuperscript{300} The client is often struggling to avoid possible consequences.\textsuperscript{301} Informing the client in these cases is not securing an adequate range of options.

The common objection might be that no one expects an attorney to provide an adequate range of options.\textsuperscript{302} Instead, the attorney’s role involves enabling the client to make the best of the hand the client has been dealt.\textsuperscript{303} The most talented attorneys discover creative and inventive options for their clients\textsuperscript{304} but they cannot simply erase an unfortunate event. It might also be argued that since autonomy is an ideal experienced only to a degree,\textsuperscript{305} one unfortunate event does not eradicate a client’s autonomy.

This objection only affirms the transactional problem. It acknowledges that attorneys are incapable of enhancing autonomy for some of their clients. This is not intended to suggest that a client is no longer leading an autonomous life. Rather, it reveals that some legal issues present circumstances that do not contribute to an individual’s achievement of autonomy. In those circumstances, it is impossible for the attorney to increase a client’s autonomy. Securing an adequate range of options is a rare accomplishment for the average attorney.\textsuperscript{306}

V. DEFLATING AUTONOMY

The conceptual problem, on its own, significantly undermines the value of autonomy as a moral argument. An attorney is limited to helping secure the secondary sense of autonomy, which is a duty that everyone has, and is neither unique nor morally special. Because everyone is capable of helping others secure these conditions, then the moral justification would equally apply to all

298. See id.
299. See RAZ, supra note 1, at 389–90.
300. Cf. Simon, supra note 255, at 216 (considering Mrs. Jones’ desire for Simon to choose the legal option that would adversely affect her record the least).
301. Cf. id. (describing Mrs. Jones’ choice to accept the plea bargain rather than risk losing at trial or going to jail).
302. Cf. Southworth, supra note 268, at 1112 (stating that lawyers often do not provide an adequate range of options because there are not many options to choose from).
303. See id. at 1135.
305. See RAZ, supra note 1, at 156.
306. See Southworth, supra note 268, at 1112.
individuals.\(^{307}\) In other words, anyone and everyone would be justified in acting immorally if for the purpose of securing the preconditions for autonomy. Granted, an autonomy-valuing society does entail a form of moral pluralism,\(^{308}\) but it would be ridiculous to argue that all immoral and wrongful conduct is justified in the name of securing another’s capacity for autonomy. Such a case is really not too far off from the current status of autonomy invoked in legal ethics.\(^{309}\)

A weaker argument then becomes that attorneys alone have the special duty of securing the preconditions of autonomy within the system of law. This, however, is undermined when embracing the greater, more serious, transactional problem. Attorneys are rarely successful in securing even the secondary sense of autonomy for their clients.\(^{310}\) An attorney may never accomplish this duty, which all persons have. The cases in which an attorney can and does help set the background stage for autonomy are rather the exception than the rule, and they rely on a variety of events, some within the attorney’s control but many outside of it.\(^ {311}\) The distasteful conclusion is that attorneys are lacking in this area, and are certainly not morally praiseworthy.

Recognizing the conceptual and transactional problem sheds light on the demanding nature of autonomy. More specifically, it reveals that the argument for autonomy fails almost entirely on the theoretical level and faces dramatic limitations in practice. Even as aspirational, autonomy plays an insignificant role in the attorney-client relationship. This deflated role is duly troubling because autonomy serves as a profound piece to the understanding of attorney morality.\(^{312}\) By wrongly exaggerating the extent to which it is a feature of the attorney-client relationship, the strength of its moral weight is thrown into jeopardy. To put it bluntly, celebrating client autonomy as a moral justification is specious. To take its limitations seriously means a new dialogue in legal ethics, one proceeding with caution.

This paper contends that client autonomy is not a moral justification, but it is nonetheless a value each professional should be committed to.

**A. Deflating the Moral Argument of Client Autonomy**

As a moral justification, autonomy is dissatisfactory and inadequate. When Pepper first used client autonomy to defend the amoral role of attorneys, it was presented as a catch all justification for lawyer morality.\(^ {313}\) Providing access to

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\(^{307}\) See RAZ, supra note 1, at 407.

\(^{308}\) See id. at 395–98.

\(^{309}\) See id. at 407.

\(^{310}\) See supra Part IV.B.1.

\(^{311}\) See Simon, supra note 255, at 224.

\(^{312}\) See FREEDMAN, supra note 11, at 48.

\(^{313}\) See Stephen Pepper, Integrating Morality and Law in Legal Practice: A Reply to Professor Simon, 23 GEO. J. L. ETHICS 1011 (2010).
the law, according to Pepper, is inherently an autonomy-enhancing act.\footnote{314} Therefore, attorneys, because they increase autonomy, are justified in acting immorally because they are contributing to an overall moral good.\footnote{315} Pepper has since clarified his argument.\footnote{316} The focus has shifted from being justified in acting immorally, to not being morally responsible for the client’s autonomously chosen conduct.\footnote{317} While the distinction is subtle, it is important. In the first, an attorney acts only on behalf of the wishes of the client.\footnote{318} The attorney is neither conscious of personal morality, nor thoughtful of the client’s. In the second, the attorney is morally conscious and engages in a moral dialogue with the client.\footnote{319} In fact, the attorney has ethical obligations to counsel the client as to whether a certain action is right.\footnote{320} If the client has a legal option that, in the attorney’s view, is morally wrong or at the very least is inconsistent with justice, the attorney must clarify that to the client.\footnote{321} In the end, however, it is the client’s ultimate decision what to do—and the attorney must honor that—and thus it is the client who is morally responsible for the conduct.\footnote{322} The lawyer is responsible for ensuring that the client knows the conduct is morally wrong, but not responsible for the morally wrong conduct.\footnote{323} Still, this view is not prudent enough.

Pepper’s suggested method of moral dialogue seems to be correct, but the workings of client autonomy remain overstated and taken for granted. The argument continues to assume that the client’s actions, after engaging in a moral dialogue with the attorney, are autonomous.\footnote{324} The conceptual and transactional

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314. See id. at 1016.
315. This Article intentionally refrains from addressing whether this reasoning is objectionable on other grounds; for example, whether enhancing autonomy is morally valuable when the autonomously chosen action is immoral. Autonomy may be lacking as a moral justification for other reasons, but since this Article argues that attorneys do not enhance autonomy, discussing the proceeding moral implications is unnecessary. For a list of objections to autonomy on other grounds, see supra note 152 and accompanying text.
316. In responding to a critique, Pepper clarifies that morality is not irrelevant, but that the ultimate decision on how to act rests with the client and not the attorney. See Pepper, supra note 313, at 1028. Therefore, the ultimate moral responsibility rests with the client and not the attorney. See id.
317. See id. at 1012.
318. See id.
319. The lawyer has an obligation to inform the client on the following: “(1) the basic law at issue or to be applied; (2) the reasons for the legal provisions or the purposes they serve; and (3) the overall morality of the situation as best understood by the lawyer.” Id. at 1039. If the lawyer proves diligent in that task, then the lawyer is not morally responsible for the client’s decision. See id.
320. See id. at 1018 (quoting Stephen L. Pepper, Lawyer’s Ethics in the Gap Between Law and Justice, 40 S. Tex. L. Rev. 181, 190–91 (1991) [hereinafter Pepper, Gap]).
321. See id. (citing Pepper, Gap, supra note 320, at 190–91); see also Stephen L. Pepper, The Lawyer Knows More Than the Law, 90 Tex. L. Rev. 691, 699 (2012) [hereinafter Pepper, The Lawyer Knows].
322. See Pepper, supra note 313, at 1039.
323. See id.
324. See id.
\end{footnotes}
problems declare otherwise. In this method of moral counseling, the attorney would have to effectively secure the appropriate mental abilities, independence, and adequate range of options for the client. To be exact, the client must fully understand the consequences surrounding a decision to act. The client must have sufficient independence from the influence of the attorney’s moral opinions and advice. Finally, a variety of different options, all of which are good, must be made available to the client. Even in the rare chance an attorney is able to secure all of that, the rarer chance that it is even within the attorney’s control, it is by no means certain the client will achieve autonomy. In all respects, it is more likely the client will not. Therefore, it can hardly be said that the attorney is free from moral responsibility.

To illustrate with a common legal ethics example, consider the valid debt that has passed the statute of limitations period. The debtor is a wealthy businessman who can easily pay the debt. The creditor, however, struggles financially to survive. The attorney, being mindful of both the statute of limitations defense as well as the debt’s validity, fully explains the options to the client. The attorney reveals that the statute of limitations bars the creditor from enforcing the debt.\(^{325}\) The attorney further counsels the client that utilizing this defense would impose an unfair harm on the creditor who, after all, is owed the money. The client fully understands the options, and the moral and legal consequences associated with those options. Further, the attorney has not interfered with the client’s independence by imposing the attorney’s own opinion. It would seem the decision, resting solely on the client, of whether to avoid paying the debt is an autonomous one.

To the contrary, a truly autonomous decision in this example may not be possible. The client may dislike both of the options. The client may believe that paying the debt is the morally right thing to do, but nonetheless is a financially bad option. On the other hand, the client may not want to use the statute of limitations defense because the client believes it would be immoral, despite the fact that it is financially better. In this scenario, the client is not really in a position to act autonomously. The client is not presented with an adequate range of options. The client is left with insufficient options to embark on the process of reflecting on and developing reasons for choosing one option over the other.

A critic would point to the fact that the client freely made a decision without the attorney’s interference. Even if the client does not like the choices, the client still chose one over the other. This mindset wrongly equates autonomy with negative liberty, being free from the control of others. Autonomy is more demanding than that. It requires that the individual has available several adequate options and chooses one option after reflecting and providing a reason for doing so.\(^{326}\) While the client may have a reason as to why the client ultimately chose to avoid paying the debt, this choice does not contribute to the

\(^{325}\) See id. at 1023.

\(^{326}\) See RAZ, supra note 1, at 375.
client’s otherwise autonomous life. It is instead a hiccup on the autonomy continuum.

The attorney in this scenario is in no position to secure the preconditions of autonomy. Due to the inadequacy of choice, enhancing the client’s autonomy is impossible. Therefore, from a moral standpoint, the attorney would not be free from moral responsibility. If the client asks the attorney to draft the legal document to dismiss the debt, the attorney is not justified in doing so on the grounds that the attorney enhanced the client’s autonomy. Indeed, the attorney did not.

This example may seem crass, especially when conceding that autonomy is an ideal, but it accurately demonstrates the considerable limitations an attorney faces when it comes to advancing client autonomy. The complications visible here represent only a fraction of the reality. In some circumstances, an attorney will not be able to enhance a client’s autonomy even when the attorney makes a conscientious effort not to interfere with it. If this is taken seriously, the moral argument for autonomy is almost entirely deflated.

B. Client Autonomy and Professionalism

From this deflated position, the function of client autonomy properly emerges not as a moral justification, but as a value an attorney becomes committed to when entering the profession. The system of law affirms that autonomy is both important and valuable.327 The law is intended to be both an instrument by which citizens may exercise autonomy and also a guardian that protects it.328 Citizens who subscribe to this legal system are expected to respect the autonomy of others, to let others choose freely their own individual values and self-determine their own individual goals.329 One of the responsibilities an attorney has when entering the profession is striving to secure and protect client autonomy.

In Wendel’s book, Lawyers and Fidelity to Law, in which he defends, as the title suggests, ethical duties centered upon allegiance and diligence to the purpose and political legitimacy of the legal system, he makes a similar point.331 Wendel reintroduces autonomy from a political standpoint instead of a moral one.332 Wendel’s argument for client autonomy relies on the political values of “liberty, equality, and the rule of law.”333 Instead of a moral notion, the emphasis is placed on ensuring that one’s autonomy is not limited unless on the grounds of objective and impartial rules, ones which openly limit autonomy for

327. See supra Part II.B.
328. See Pepper, supra note 9, at 616.
329. See supra Part II.B.
330. See FREEDMAN, supra note 11, at 48 (citing Law, supra note 181, at 212).
331. See WENDEL, supra note 6, at 35.
332. Id. at 35.
333. Id.
everyone, and only for worthwhile purposes. Under this view, autonomy means allowing clients to freely exercise their legal entitlements without the attorney’s interference. Wendel’s position on autonomy contributes to his holistic account of loyalty to the law, and he is careful not to color outside the lines.

Accordingly, client autonomy is only relevant within the legal framework when choosing to exercise a legal entitlement. Wendel urges client autonomy to the extent that he discourages a lawyer from interfering with a client’s choice to exercise a legal right that results in morally wrongful conduct. The client is the primary actor, and the lawyer must refrain from inflicting personal morals and values onto the client. Eli Wald and Russell Pearce have exposed a possible shortcoming. Wald and Pearce present an example in which a client wants to put together a deal and is given the option between two plans. Under plan A, the client will receive $1.5 million. Under plan B, the client will receive $2 million, but will impose moderate costs on innocent third parties for which the client will not be legally responsible. If the client wants to maximize profits and also follow the law, how should the lawyer advise the client? Wald and Pearce worry that Wendel’s view is agnostic on the issue; Wendel affirms this is true. It is the client’s decision, and the attorney must respect that and refrain from imposing the attorney’s own self-righteousness on the client. While both Pepper and Wendel agree that the lawyer is not morally responsible if the client chooses plan B, Wendel differs from Pepper on the subject of moral counseling. Wendel disagrees that the attorney has any obligation to discuss the attorney’s own moral opinions with the client. The attorney is hired to distinguish between lawful and unlawful conduct, not moral and immoral conduct. Wendel is using autonomy in its political sense, not its moral sense.

334. Id.
335. Id. at 37.
336. See W. Bradley Wendel, Putting Morality in its Place, 15 LEGAL ETHICS 175, 177 (2012).
337. Wendel, supra note 152, at 1082.
338. See id.
340. Id.
341. Id.
342. Id.
343. Id.
344. Id. at 158, 159; Wendel, supra note 336, at 176.
346. Id. at 738 n.50.
347. Id.
348. Wendel, supra note 336, at 177.
349. WENDEL, supra note 6, at 35.
Wendel takes a more grounded position on autonomy by confining it to the political context, but rather than requiring attorneys to strive after securing the autonomy of their clients, he argues they must simply avoid actively interfering with it. By framing client autonomy as a value in professionalism, this Article is careful not to overstate its role within the attorney-client relationship, but also not to undermine its importance within the legal system. The expectation of professionalism is that attorneys will strive to secure the preconditions of autonomy for their clients, even with the knowledge that they have very little power to do so.

Attorney professionalism, as understood in this Article, regards an ideal, one in which each member of the bar becomes committed. As an ideal, professionalism primarily concerns morals, though it also concerns occupational and educational responsibilities. Professionalism refers to the ethics of character, the importance of virtues, and the image and spirit of the noble lawyer. The professional ideal recognizes that attorneys have moral obligations that ordinary people do not. Among these are obligations to their clients, to the system of law, and to the public. Each professional commits to these obligations.

While the notion of professionalism is partially vague, it is not altogether indefinite. The legal profession and its members define many of the moral obligations which compose the professional ideal. The Model Rules of Professional Conduct, for example, serve as both regulations as well as moral guidelines. In some circumstances, the Rules clarify how a lawyer must act, and in others they provide guidelines for how a lawyer should act. To use an example, every attorney is committed to volunteer service. Specifically, the

350. Id. at 36.
353. See Thomas L. Shaffer, Inaugural Howard Lichtenstein Lecture in Legal Ethics: Lawyer Professionalism As A Moral Argument, 26 Gonz. L. Rev. 393, 405 (1991). Shaffer argues that professionalism bears in mind the concept of the "lawyer-gentleman," the person who is an architect of society, an aristocrat, promoting and instigating positive change, standing up for those without a voice, and having the interests of others at his forefront. Id. at 398, 399 n.22. Shaffer, however, acknowledges that professionalism has dark aspects as well—gender, race, and class discrimination—and he is wary about those who avoid their discussion. Id. at 401 n.26.
354. Davis, supra note 352, at 164.
356. Id.
358. Id.
359. Id.
360. Id. at R. 6.1.
Model Rules state that every attorney should aspire to provide fifty hours of pro bono legal services. Similarly, so must an attorney aspire after client autonomy.

Striving to secure the preconditions of client autonomy is one of the obligations, one of the commitments, a professional has. Jack Sammons, in his book *Lawyer Professionalism*, argues that professionalism may be boiled down into one thing—meaningful participation. Sammons defines meaningful participation as the process by which clients are able to reflect and become involved in their legal problems. A lawyer helps the client understand the options and involves the client in each step of choosing those options, ultimately allowing the client to be the author of the client’s own life. Sammons is referring to client autonomy.

### C. Applying the Professional Value of Autonomy

This Article began with a detailed and systematic account of the meaning and value of autonomy, revealing its demanding nature. It then demonstrated the difficulty an attorney faces in trying to advance it. Specifically, there are conceptual and transactional problems that limit an attorney’s ability to enhance client autonomy. Finally, this Article argued for a deflated role of client autonomy. Instead of a moral justification, it argued that striving after client autonomy is a professional responsibility in which each attorney should be committed. This section illustrates what this means within the context of the attorney-client relationship. Using the case of Mrs. Jones as an example, this section explains how an attorney may strive after securing the secondary sense of autonomy.

William Simon wrote about the struggles he encountered in trying to advance the autonomy of his client, Mrs. Jones, who faced criminal charges. Mrs. Jones was an elderly African American woman who lived in Boston. She belonged to a predominately black, lower middle class neighborhood. She was charming, liked, and respected in her community, and in sixty-five years had never had a run-in with the law.

She was charged with leaving the scene of a minor traffic accident without identifying herself. A younger white woman, Mrs. Strelski, had complained

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361. Id.
362. SAMMONS, supra note 351, at 8.
363. Id. at 6.
364. Id. at 7.
365. Id.
367. Id.
368. Id.
369. Id.
370. Id.
371. Id.
to the police who had taken her at her word.\textsuperscript{372} Contrary to the story Mrs. Strelski told the police, Mrs. Jones insisted that she did remain at the scene to identify herself.\textsuperscript{373} In fact, Mrs. Strelski was the one who sped off without stopping, and this was after she caused the accident by rear-ending Mrs. Jones.\textsuperscript{374} Mrs. Jones’ version of the story was confirmed by the chipped paint and dents on each of the women’s cars.\textsuperscript{375}

The facts seemed to be on Mrs. Jones’ side. In addition, the procedure also favored Mrs. Jones.\textsuperscript{376} There would first be a bench trial, and even if she lost that, she was still entitled to have a subsequent jury trial.\textsuperscript{377} Simon, though, inexperienced in criminal law, was optimistic about the case and believed that exposing the police’s racism would be an effective approach.\textsuperscript{378} That, of course, was only up until the moment he consulted with his friend, an attorney who was experienced in traffic offenses.\textsuperscript{379}

Simon’s friend immediately dismissed the racism theory and then began a negotiation with the prosecutor, as was customary in nearly all such cases.\textsuperscript{380} Mrs. Jones was offered a plea bargain that, in effect, meant six months’ probation.\textsuperscript{381} She would have a criminal record, but after a year she could apply to have it sealed.\textsuperscript{382} Refusing the offer exposed her to the chance of having to endure two separate trials, both of which contained the small, though real, possibility of losing.\textsuperscript{383} In the event that both trials were lost, she would lose her license, pay a fine, and run the risk—albeit a highly unlikely one—of receiving a jail term of up to six months.\textsuperscript{384}

Simon counseled Mrs. Jones.\textsuperscript{385} He began by mentioning the pros of accepting the plea, such as not going to trial, and he ended by spelling out the cons.\textsuperscript{386} He concluded their ten minute conversation by expressing that the plea bargain did not have any practical consequences, but it was not “total justice.”\textsuperscript{387}

After Simon refused to make the decision for her, Mrs. Jones agreed she wanted justice.\textsuperscript{388} She rejected the offer.\textsuperscript{389} Her decision flipped, however, after
Simon's friend counseled her.\textsuperscript{390} In opposite order, Simon's friend chose to discuss the disadvantages of trial last, and he did not end with the opinion that the plea bargain was not total justice.\textsuperscript{391} In the end, Mrs. Jones decided to accept the plea bargain.\textsuperscript{392}

Even though both Simon and his friend had the right intentions, it is doubtful that Mrs. Jones' decision was ultimately autonomous. Simon provides a couple insights as to why.\textsuperscript{393} First, he noted that Mrs. Jones initially wanted to defer to Simon's judgment and expertise.\textsuperscript{394} She wanted him to make the decision for her, probably due to a combination of her anxiety and her lack of understanding.\textsuperscript{395} Second, Simon noted that the counseling he and his friend gave was not neutral, even though they intended it to be.\textsuperscript{396} The points they chose to explain, and the order in which they presented them, influenced Mrs. Jones in a manner that precluded her from making a truly autonomous decision.

These insights are consistent with the conceptual and transactional problem. Conceptually, since making an autonomous decision is an internal achievement, Mrs. Jones alone was capable of doing it. Simon and his friend could not ensure an autonomous decision for her. Instead, they could only attempt to secure the preconditions of autonomy that might put Mrs. Jones in the best situated position to do so herself. Transactionally, Simon and his friend may have failed to best secure the appropriate mental ability, independence, and adequate range of options for Mrs. Jones. An attorney committed to autonomy as a professional obligation could have made greater efforts to secure each of these.

First, an attorney would strive to secure the appropriate mental ability. Mrs. Jones was an elderly woman who had never been in trouble with the law.\textsuperscript{397} She probably knew very little about the criminal justice system, including presenting evidence, the presumption of innocence, trials, and plea offers.\textsuperscript{398} The only initiative she took was to bring along her minister who would testify to her good character.\textsuperscript{399} In addition, this was the first time she had been charged with a crime.\textsuperscript{400} As Simon recalled, the uncertainty and stress of the situation put her in a state of anxiety.\textsuperscript{401} She felt worried and vulnerable.\textsuperscript{402}

\begin{itemize}
\item \textsuperscript{390} Id.
\item \textsuperscript{391} Id.
\item \textsuperscript{392} Id.
\item \textsuperscript{393} Id. at 216–18.
\item \textsuperscript{394} Id. at 216.
\item \textsuperscript{395} Id.
\item \textsuperscript{396} Id. at 218.
\item \textsuperscript{397} Id. at 214.
\item \textsuperscript{398} See id. at 215 ("You're the expert. That's what we come to lawyers for," [Mrs. Jones and her minister] said.).
\item \textsuperscript{399} Id.
\item \textsuperscript{400} Id. at 214.
\item \textsuperscript{401} Id. at 216.
\item \textsuperscript{402} Id.
\end{itemize}
Striving to secure the appropriate mental ability for Mrs. Jones required explaining the criminal system sufficiently for her to understand what was involved in going to trial, as opposed to accepting the plea offer. Moreover, it required that Mrs. Jones be concerned with gaining a sufficient understanding, that she was a willing and active participant in making the decision. Finally, it required that the attorney make every effort to calm Mrs. Jones so that her anxiety did not overwhelm her ability to clearly reflect on the decisions before her. Doing all of that represents a real commitment to striving after autonomy. It is apparent that securing the mental ability of Mrs. Jones is both highly demanding and not necessarily within the attorney’s control. An attorney must understand that, and approach each case with the same willingness despite the obvious limitations.

Next, an attorney would strive to secure the independence of Mrs. Jones. Simon and his friend associated Mrs. Jones’ independence with her not being ordered to act one way or the other. They assumed that if they presented information neutrally, devoid of their own opinion as to how she should act, her decision would be autonomous. However, their counseling was not neutral, as Mrs. Jones’ decision changed based solely upon the order and emphasis of the information they presented to her.

Striving to secure the independence of Mrs. Jones required moving beyond neutral counseling. It required a dialogue between the attorney and Mrs. Jones, in which her concerns, values, and perception of the situation were made clear. The attorney first should have attempted to appreciate from where Mrs. Jones was coming, and only then presented the information and options that were available. The attorney must recognize the fiction of neutrality, that their counseling does not come void of the attorney’s own opinions and influence, but also that the attorney’s expertise is a necessary component that enables the client to make an independent and informed choice. If the attorney had attempted to grasp Mrs. Jones’ point of view, and engaged in a dialogue where she was informed and equipped to make the decision, then the attorney would have met the professional obligation to strive after securing her independence.

Finally, an attorney would strive after securing an adequate range of options for Mrs. Jones. Mrs. Jones may or may not have had a sufficient amount of good options available to her. She may have found both the plea offer and going to trial inadequate. On the other hand, she may have found both satisfactory, though that seems highly unlikely. The attorney was required to work closely with Mrs. Jones to gauge which options she found to be adequate. In fact, the attorney was required to engage in a dialogue with Mrs. Jones to determine if

403. See id. ("[Mrs. Jones] would have been immensely relieved if I had told her without explanation what she should have done, and she would have done it.").
404. Id. at 218.
405. Id. at 216.
406. Id. at 217.
407. Id. at 222.
there were other options that she might have found better. For example, extending a counteroffer to the prosecutor or proceeding to trial, but on a different theory than racism. Striving after an adequate range of options is difficult, especially in criminal cases similar to Mrs. Jones. An attorney committed to autonomy will realize that, but still attempt to discover or create potential options for and with the client.

Every attorney has the obligation of attempting to secure the secondary sense of autonomy for his clients.\footnote{408} Doing so is part of what it means to be a professional.\footnote{409} It goes without saying that not all attorneys achieve the professional ideal.\footnote{410} Rather, it is the identity in which attorneys aspire and the standard of conduct in which the public expects, the manner in which the public may judge an attorney’s value.\footnote{411} It is important to mention this because, as it has been demonstrated, an attorney may not be successful in securing the secondary sense of autonomy for his client.\footnote{412} It is a demanding duty that extends beyond noninterference, and is often outside an attorney’s control. The professional recognizes that the autonomy of the client is an important part of representation and aspires to best accomplish securing the preconditions necessary to exercising autonomy. However, the professional also recognizes there are incredible limitations in trying to do so.

VI. CONCLUSION

The conceptual and transactional problems reveal that attorneys face considerable limitations in striving after client autonomy. Most attempts to enhance autonomy will be littered in failure and outside of the attorney’s control. It is for this reason that autonomy serves as a very weak argument for lawyer amorality, and considering it to be the cornerstone of the attorney-client relationship is a mistaken enterprise. Instead, autonomy plays a relatively minor role.

From this deflated role, autonomy should rather be seen as one of the commitments of professionalism. Attorneys have a professional obligation to strive after securing the secondary sense of autonomy for their clients. This entails a commitment to establishing the mental capacity, independence, and an adequate range of options for each client. It also entails the understanding that doing so is difficult, demanding, and not always possible. As a component of professionalism, client autonomy is one among several commitments an attorney has. One must remember, however, that there may be cases in which the attorney is incapable of securing the secondary sense of autonomy for a client.

\footnote{408} RAZ, supra note 1, at 372.  
\footnote{409} Davis, supra note 352, at 162.  
\footnote{410} See, e.g., Simon, supra note 255, at 214–20 (regarding the story of Mrs. Jones).  
\footnote{411} SAMMONS, supra note 351, at 5.  
\footnote{412} See the story of Mrs. Jones supra notes 398–403 and accompanying text.