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MAKING LAWYERS GOOD PEOPLE: POSSIBILITY OR PIPEDREAM?

*Subha Dhanaraj**

Law schools are like medieval monasteries. We seclude our novices from the world, give them sacred texts We give them ritual incantations . . . to perform when their faith flags. Unlike other monasteries, however, we have no holy songs, for our faith holds that everything significant can be said. Our students take the vow to think like lawyers. As if in perpetual meditation, they must exclude from consciousness their prior lives and thoughts, their opinions, their outrage. We provide no spiritual room for their doubts. If they continue to have them, they will simply fail—in law school, and in the profession. There is no way to impart the calling to those who are not blessed. The exam will tell whether the incantations are working or whether they are tainted by doubt.¹

INTRODUCTION

“OOOhhh! It’s perfect!” Sara said to the real estate agent. Sara and Mike had been scrounging for years to save enough money for the down payment on a home, and had finally found their dream house. Their enthusiasm for the beautiful Victorian cottage did not prevent them from having an engineer inspect the house and their attorney handle the closing and the other legal matters. The house seemed sturdy and fine. When Sara and Mike met with the seller’s attorney, she handed them a report indicating that the house was pest free. Within a month, Sara and Mike move in.

Within a few weeks, perhaps even days, Sara and Mike discover that everything is not quite perfect in their new home. Mice appear everywhere. They eat the couple’s food and destroy personal belongings. Their filth pervades everything. To make matters worse, Sara has severe allergies and cannot stop sneezing whenever

* J.D. Candidate, 2002, Fordham University School of Law; B.A., 1997, Cornell University. The author would like to thank Professor Russell Pearce for his constant support, encouragement, and editorial supervision. This Comment is dedicated to my parents, Shyamala Dhanaraj and Dhanaraj Kabali, for instilling in me the ability to think critically and to act morally. Without their guidance, courage, love, and support, all the achievements of the author’s life never would have been possible.

1. Karl Johnson & Ann Scales, *An Absolutely, Positively True Story: Seven Reasons Why We Sing*, 16 N.M. L. REV. 433, 438-39 (1986).

the mice are near. In fact, her quality of life worsens to the point that Sara and Mike decide to move out. Angry, sad, and vengeful, they decide to take action against the seller's attorney for providing them with an inaccurate report, only to find out that they have no recourse.

In the adversarial world of today's legal system, the seller's attorney in the aforementioned situation can offer a simple apology for the tragic situation and walk away. What makes the attorney able to walk away without fear or moral trepidation?² Surely that is not a natural human reaction. Where is it learned? Why is it taught? Where has the lawyer's morality gone?³

Today's lawyers seem nonchalant about their clients, their clients' problems, and the ethical situations in which they find themselves.⁴ Attorneys appear to practice in a universe in which morality and compassion are not considerations. Lawyers seem to have distanced themselves entirely from moral responsibility.⁵ Without moral responsibility, social accountability cannot exist. Without social accountability, achieving and maintaining a truly just society is nearly impossible.

Some scholars argue that the lawyer's lack of ethical accountability stems from an inherent failure in the methodology of legal education⁶ and, perhaps, from a failure of the profession itself.⁷

2. "[E]ach fall [Harvard Law School] takes five hundred of our brightest, most idealistic young people and in three years transforms them into Wall Street moneygrubbers." Calvin Trillin, *A Reporter at Large: Harvard Law School*, THE NEW YORKER, Mar. 26, 1984, at 53.

3. As Chief Justice Earl Warren noted, "Throughout history, and never more than in our own day, the great question has been whether law was to be compatible with the basic instinct of all human beings for freedom, for opportunity, for dignity and for peace." Earl Warren, Remarks at the unveiling of the cornerstone at Fordham University School of Law, in A.B.A. INT'L & COMP. L.B., July 1960, at 36.

4. Paul J. Zwier & Ann B. Hamric, *The Ethics of Care and Reimagining the Lawyer/Client Relationship*, 22 J. CONTEMP. L. 383, 383 (1996) (noting the alienation of clients from their attorneys and the general lack of human concern lawyers seem to have for individuals they represent). Zwier and Hamric note how lawyers are taught and encouraged through traditional legal education to perceive all problems in terms of legal issues without taking into account the non-legal interests of clients. *Id.* at 391-92. For example, if a young man retains a lawyer to have his elderly father committed to a nursing home against his will, the young man is the lawyer's client and the lawyer will review the issue from the perspective of the young man, failing to consider the more comprehensive and more important human relationships at stake. *Id.* at 391-92.

5. Walter H. Bennett Jr., *Making Moral Lawyers: A Modest Proposal*, 36 CATH. U. L. REV., 45, 46 (1986).

6. See e.g., Deborah L. Rhode, *Ethics by the Pervasive Method*, 42 J. LEG. EDU. 31 (1994) (discussing the general apathy on the part of legal educators and law schools with regard to taking an active role in making ethics and professional responsibility a central part of the academic curriculum).

Admittedly, law school prepares students to understand the intricacies of legal issues by grounding students in the bedrock of substantive law, but, in so doing, forces lawyers to separate their souls from their profession. Society should expect lawyers to be more morally responsible than most non-lawyers because of the way in which lawyers can impact clients, other legal parties in a lawsuit, and even the general public. Law schools, however, fail to achieve this goal.⁸ This Comment examines the failings of the current system of legal education to inculcate future lawyers with a heightened sense of moral responsibility.⁹ Although some studies suggest immutable personality traits contribute to one's success as a lawyer,¹⁰ "[t]he best empirical data indicates [sic] that an individual's moral development can and does continue during the years when most people attend law school."¹¹ Whether or not this notion is true, law schools have a duty to morally educate their students because of the critical situations lawyers regularly find themselves in. Lawyers work with confidential information in time-sensitive situations that can affect the judicial system, the general public, and the lives of legal parties. Thus, lawyers need to function with a great sense of moral imperative.

Lawyers handle delicate information and have the potential to make dramatic societal change, or, at the very least, affect the lives of their clients. Instead, the behavior of practicing attorneys has caused scorn and jocularly in mainstream society. The legal profession must maximize the ability of law students to grow morally,

7. Bennett, *supra* note 5, at 46; Richard K. Burke, *Truth in Lawyering: An Essay on Lying and Deceit in the Practice of Law*, 38 ARK. L. REV. 1 (1984).

8. Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 38 (1992) (noting that law schools have an important responsibility to produce ethical lawyers); Rhode, *supra* note 6, at 43; *see, e.g., Teaching Legal Ethics: A Symposium*, 41 J. LEGAL EDUC. 1 (1991); Richard Waserstrom, *Legal Education and the Good Lawyer*, 34 J. LEGAL EDUC. 155 (1984).

9. Perhaps, as Professor Robert A. Solomon muses:

Students do come to law school filled with passion, with morality, with a sense of justice, and we spend, the generic we, the law school itself, spends three years doing our best to crush them under the weight of the rule of law instead of helping them to integrate their ideas and values with the law.

Robert A. Solomon, *The Justice Mission of American Law Schools*, 40 CLEV. ST. L. REV. 507, 508 (1992).

10. Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1352-54 (1997) (evaluating empirical studies indicating certain traits to be linked to success in the legal profession).

11. Bennett, *supra* note 5, at 52.

not only to produce more ethical lawyers, but also to improve the diminished prestige of the legal profession.¹²

Part I of this Comment outlines general conceptions of morality and moral development according to the widely accepted model promulgated by Professor Lawrence Kohlberg, and enunciates the importance of moral theory in the context of legal education. Part II analyzes competing views of moral development and challenges some general concerns about the value of moral education in law schools. Part III proposes the incorporation of moral teaching in the law school curriculum to remedy the disjunction between personal convictions and legal analysis stemming from the Langdellian method of legal training.¹³ Part IV discusses the challenges to incorporating moral education into legal training. Finally, this Comment concludes that moral education is critical to producing compassionate, concerned legal professionals.

I. CONCEPTIONS OF MORAL DEVELOPMENT

When speaking of morality, scholars often describe man's moral spectrum as a dynamic equilibrium between opposing moral forces.¹⁴ That is, two diametrically opposing ways of thinking about morality are in constant tension with each other,¹⁵ namely "morality from above" and "morality from below."¹⁶ Morality from above comes from within.¹⁷ Because morality from above comes from the individual, he or she will be more apt to behave in accordance with such ethical thinking.¹⁸ Professor Lon Fuller, as

12. Scholars generally agree that the public perception of lawyers is an increasingly negative one. Daicoff, *supra* note 10, at 1344; Gary A. Hengstler, *Vox Populi: The Public Perception of Lawyers: ABA Poll*, 79 A.B.A. J. 60 (1993).

13. The Langdellian method, introduced by Harvard Law Professor Professor Christopher Langdell in 1870, implements the use of scientific methodology in the teaching of law. Kurt M. Saunders & Linda Levine, *Learning to Think Like a Lawyer*, 29 U. S. F. L. REV. 121, 128 (1994). In particular, Langdell reasoned that law students could learn the patterns and doctrines of law through the analysis of appellate court opinions. *Id.* The Langdellian method strives to wed "the teaching of legal doctrine with the teaching of legal analysis." *Id.* at 129.

14. See generally A.D. LINDSAY, *THE TWO MORALITIES* (1940); H.L.A. HART, *THE CONCEPT OF LAW* (1961); W.D. LAMONT, *THE PRINCIPLES OF MORAL JUDGMENT* (1946).

15. See generally HART, *supra* note 14; LAMONT, *supra* note 14; LINDSAY, *supra* note 14.

16. Although scholars describe these differing forces of morality using varying terms, the thrust of the argument centers on two human forces encouraging human behavior—one from within and one from without.

17. LON FULLER, *THE MORALITY OF LAW* 5 (1977).

18. *Id.*

part of the William L. Storrs Lecture Series at Yale Law School in 1963, defined morality from above as the morality of aspiration.¹⁹ Morality of aspiration “is the morality of the Good Life, of excellence, of the fullest realization of human powers.”²⁰ This morality of aspiration is the achievement of one’s potential. In terms of an analysis based purely on the morality of aspiration, a morally reprehensible man is one who fails “to realize his fullest capabilities”²¹ and is culpable, not for failing to meet his societal obligations, but for failure to comport with “the conception of proper and fitting conduct, conduct such as befits a human being functioning at his best.”²² Morality from above is, thus, ethical behavior based on personal motivations.

Morality from below, on the other hand, comes from without and largely involves the standardization of individual behavior to achieve societal norms.²³ Such morality encourages obedience largely through the use of communal incentives, like punishment and mutual benefit.²⁴ Morality from below, or the morality of duty, as Professor Fuller describes it, focuses on maintaining order within society.²⁵ This conception of morality does not entail improvement, but mere maintenance of the existing social order.²⁶ After setting specific objectives, a community based on the morality of duty promulgates rules and obligations to which all members of society must comport.²⁷ Failure to do so results in civil or criminal penalties.²⁸ Most criminal justice systems are the result of morality from below. For example, society, as a whole determines a particular individual behavior, such as stealing, to be unacceptable. Then, persons who steal face prosecution. Both morality from above and morality from below discourage people from stealing, but in different ways.

Extrapolating from these traditional conceptions of morality, Jean Piaget, an eminent child psychologist, revolutionized the field of moral theory by presenting a developmental theory of morality stemming from the cognitive processes that take place as individu-

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *See id.* at 5-6.

24. *Id.*

25. *Id.* at 5.

26. *See id.* at 5-6.

27. *Id.*; *see, e.g.,* LINDSAY, *supra* note 14.

28. *See e.g.,* HART, *supra* note 14.

als grow.²⁹ Piaget examined changes in thinking in relation to age and dealings with other people, ideas, and surroundings.³⁰ Piaget showed that, as children age and interact in different ways with their environment, they learn to use logic differently.³¹ With the continuing desire to reconcile their personal perceptions with new information gained through experiences with the people, ideas, and objects in their environment, children often have to modify their own perceptions, without necessarily surrendering them as incompatible with objective reality.³² For example, Piaget notes:

The average seven-year-old looks at the sun and understands more about it than does the average four-year old. At seven, the child knows *about* the sun's relative size and distance from the earth, but he also logically relates these discrete data in order to judge that the sun is larger than the earth. Even if the average four-year-old were taught this information, he would not be able to apply it, for he has not yet developed the cognitive capacity to understand why the logical principle of perspective makes sense. *To understand a logical principle properly, we must have developed it as part of our capacity to make sense of the world in which we live.*³³

Thus, as individuals relate to their environment, their view of phenomena and ideas change, in accordance with their subjective perception of these experiences.³⁴ Higher logical thinking comes from interaction with the environment.³⁵ Cognitive experience leads to knowledge.³⁶

Piaget expounded upon his developmental theory to formulate a ready analogy in the context of moral development.³⁷ He theorized that individuals grow in moral reasoning skills as they interact with ideas and notions present in their environment.³⁸ When exposed to new ideas, individuals must react to this change in information.³⁹ Piaget reasoned that individuals, when they encounter

29. JOSEPH REIMER ET AL., PROMOTING MORAL GROWTH 18 (1979).

30. *Id.* at 18-20.

31. *Id.* at 19-20.

32. *Id.*

33. *Id.* at 2 (describing Piaget's clinical analysis of children at various stages in developmental growth) (emphasis added).

34. *Id.* at 19-20.

35. *Id.*

36. *See id.*

37. *Id.* at 21.

38. *Id.* at 20-21.

39. *Id.*

stimuli through cognitive experience, could either assimilate or accommodate this information.⁴⁰

“Assimilation” refers to an incorporation of new information and/or experience without an accompanying shift in morality or philosophy.⁴¹ Assimilation is the mere recognition of difference without any corresponding change in one’s perception of the world.⁴² “Accommodation,” on the other hand, focuses on an inability for the new information or experience to coexist contemporaneously with the ideology and moral philosophy of the individual⁴³ and the resulting transformation of the individual’s moral principles to end cognitive dissonance.⁴⁴ By its very name, accommodation connotes change.⁴⁵ Reconciliation between subjective perceptions and objective information in the environment necessarily follows when the perception and phenomena or experience differ substantially.⁴⁶

In relating these ideas to moral development, Piaget found a gradual progression in moral reasoning generally proportional to the age of the children involved in his clinical analysis.⁴⁷ As individuals grow and gather new data from their surroundings, this new information needs to fit into the individual’s schemata of the world. Such growth takes place in all facets of thinking, including morality. Although Piaget’s findings were significant, he explored moral development theory in a limited fashion. Piaget did not extend his clinical studies to children more than twelve years old.⁴⁸ Children over twelve and even adults continue to absorb information

40. *Id.*

41. *Id.* at 21-23.

42. *Id.* at 22.

43. *Id.* at 22-23. The authors provide an interesting example contrasting assimilation and accommodation. *Id.* They present a hypothetical involving a college freshman raised in an extremely conservative home. *Id.* Upon arriving at college, the freshman becomes increasingly concerned as he discovers other ways of looking at the world. *Id.* If he can reconcile these new-found liberal views while still maintaining his overall conservative philosophy, he has assimilated the information. *Id.* If, upon reflection, the college freshman no longer considers himself to be conservative, he has accommodated the ideas to which he has been exposed. *Id.*

44. *Id.*

45. To accommodate is to “make consistent with, adapt to. . . become accustomed or acclimatized to, get used to.” THE OXFORD DESK DICTIONARY AND THESAURUS 5 (Am. ed. 1997).

46. REIMER ET AL., *supra* note 29, at 20-23.

47. *Id.* at 40-42 (describing Piaget’s clinical analysis of children at various stages in developmental growth).

48. *Id.*

through cognitive processes relevant to moral development.⁴⁹ Moreover, Piaget also did not complete delineating the intricacies of his moral development theory.⁵⁰ He did, however, stimulate thinking about moral reasoning in relation to development.

Building upon Piaget's work, the late Lawrence Kohlberg, Professor of Education and Social Psychology at the Harvard Graduate School of Education, formulated the cognitive-developmental theory of moralization.⁵¹ Kohlberg examined the role cognitive processes play in changes in moral reasoning.⁵² He crystallized the application of staged development to moral reasoning.⁵³ Kohlberg studied trends in moral reasoning and related these trends to cognitive development.⁵⁴ Using Piaget's cognitive development model, he performed his own clinical analyses⁵⁵ and categorized moral reasoning into six hierarchical stages within three major levels. Kohlberg noticed that moral reasoning increased with age, but age was not a clearly dispositive variable in determining moral behavior.⁵⁶ Kohlberg recognized that moral reasoning changed as individuals interacted with their environment through traditional cognitive processes.⁵⁷

Kohlberg's six-stage model describes the general trends he found in moral reasoning. The first level, the Preconventional level, contains Stage I and Stage II.⁵⁸ Individuals who moralize on a Stage I level avoid breaking rules for fear of punishment.⁵⁹ Their primary reason for doing right is to avoid punishment.⁶⁰ Such morality is similar to basic "morality from below" reasoning.⁶¹ Stage II indi-

49. Individuals continue to have new experiences and exposure to new ideas as they age. *Id.* at 45-46. For example, a woman with an unwanted pregnancy, who believes abortion is wrong, may look to friends, family, religion, and the law in determining whether or not to have an abortion. *Id.* Such a process naturally involves the incorporation and examination of the woman's existing mode of thinking regarding abortion. *Id.*

50. *Id.* at 40-42.

51. LAWRENCE KOHLBERG, *Stages of Moral Development as a Basis for Moral Education*, in MORAL EDUCATION 42 (1984).

52. REIMER ET AL., *supra* note 29, at 44-45.

53. *Id.*

54. *Id.*

55. LAWRENCE KOHLBERG, THE PSYCHOLOGY OF MORAL DEVELOPMENT 1 (1984).

56. LAWRENCE KOHLBERG, THE PSYCHOLOGY OF MORAL DEVELOPMENT 172-83 (1984).

57. *Id.* at 170-72.

58. *Id.* at 172.

59. *Id.* at 174.

60. *Id.*

61. *See supra* pp. 2040-41.

viduals tend to be more responsive to the needs of others in society, but adhere to a "concrete individualistic perspective."⁶² That is, they behave so as to serve the interests of others, but only when doing so is in their own immediate interest.⁶³ Stage II individuals view the world in pure market exchange terms.⁶⁴ They see moral behavior as a bargain. A Stage II person will act morally when acting morally is of long or short-term individual benefit.⁶⁵

Stages III and IV fall within the Conventional Level.⁶⁶ Stage III thinking involves a broader dimension of reasoning.⁶⁷ Individuals fitting within Stage III ethical thought focus on how others perceive them and how they appear to others.⁶⁸ As with image-conscious teens, one's peer group becomes central to one's analysis of the environment and view of the world.⁶⁹ The drive to do right becomes equated with the drive to be liked.⁷⁰ Individuals act to curry favor with those they know and whose opinions they value.⁷¹ Stage IV expands this peer-oriented perspective into one of societal order.⁷² The notions that individual behavior should uphold the existing social order and that societal institutions exist to prevent chaos and disorder drives Stage IV thinkers.⁷³ In sum, just as Stage III thinking relies on the desire to win approval from friends and family, Stage IV reasoning centers on the perpetuation of society as a whole.

The third level of Kohlberg's developmental model is the Principled level.⁷⁴ The Principled, or Postconventional, level contains the two highest methods of moral analysis.⁷⁵ Stage V, called the social contract or utility and individual rights stage,⁷⁶ motivates individuals to do right because of

a sense of obligation to law of one's social contract to make and abide by laws for the welfare of all and for the protection of all

62. KOHLBERG, *supra* note 56, at 174.

63. *Id.*

64. *Id.* at 172-83.

65. *Id.* at 174.

66. *Id.* at 172.

67. *Id.* at 174.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.* at 175.

73. *Id.*

74. *Id.* at 172.

75. *Id.* at 172-73.

76. *Id.* at 175.

people's rights. A feeling of contractual commitment, freely entered upon, to family, friendship, trust, and work obligations. Concern that laws and duties be based on rational calculation of overall utility, "the greatest good for the greatest number."⁷⁷

Persons at Stage V assume a macrocosmic view of morality.⁷⁸ Considerations of society as a whole in relation to individual liberties become central.⁷⁹ Questioning of the socio-legal order may result, because the protection of individual rights and societal considerations are not always identical or even analogous.⁸⁰

Individuals who subscribe to Stage VI, the stage of universal ethical principles, follow larger principles of justice in the interests of human rights and human dignity that may or may not transgress man-made law.⁸¹ Doing right becomes a philosophical question.⁸² Stage VI thinkers question and will even disregard societal conventions and personal convictions that do not correspond to universal ethical principles like life, liberty, and equality.⁸³

Although, at first glance, Kohlberg's description of moral development may seem esoteric and too theoretical to have much practical purpose, this cognitive development model of moralization is an effective tool for increasing levels of moral reasoning in individuals, as has been demonstrated by countless clinical studies.⁸⁴

Moshe Blatt, a pioneer in the field of moral education based on the Kohlberg developmental model, suggests an artificial mechanism to spark the cognitive processes necessary for moral growth.⁸⁵ He hypothesized that the systematic exposure of individuals to a stage of moral reasoning exactly one stage above their own would stimulate individuals into reasoning at the higher stage.⁸⁶ By so doing, Blatt hoped individuals would adopt the higher stage of moral reasoning, in a manner similar to that described by Piaget in

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.* at 182-83.

82. *Id.* at 176-78.

83. *Id.* at 176.

84. Such studies include the clinical analyses described in M.W. Berkowitz et al., *The Relation of Moral Judgment Stage Disparity to Developmental Effects of Peer Dialogues*, 26 MERRILL PALMER Q. 341-57 (1980); A. Lockwood, *The Effects of Values Clarification and Moral Development Curricula in School-Age Subjects: A Critical Review of Recent Research*, 48 REV. OF EDUC. RES. 325-64 (1978); A. Schl  fli et al., *Does Moral Education Improve Moral Judgment?*, 55 REV. OF EDUC. RES. 319-52 (1985).

85. F. CLARK POWER ET AL., LAWRENCE KOHLBERG'S APPROACH TO MORAL EDUCATION 11 (1991).

86. *Id.*

his discussion of assimilation or accommodation of differing moral precepts.⁸⁷ If natural exposure to new ideas in one's environment can spark moral growth, a managed, carefully constructed artificial exposure, Blatt argued, could do the same.⁸⁸

In order to demonstrate his hypothesis, Blatt worked with a class of sixth grade students.⁸⁹ He began by testing their moral stage to obtain an initial assessment.⁹⁰ Blatt presented a moral dilemma to the students on a weekly basis and asked the group to discuss solutions and explain which solutions were best.⁹¹ In conjunction with this discussion, Blatt would then expound upon the resolution proposed by the student with the highest level of moral reasoning or clarify and support an argument exactly one developmental stage above that of the majority of the children.⁹² When twelve weeks had passed, Blatt tested the children again and learned that sixty-four percent of the children had advanced one full stage in moral reasoning.⁹³ This change was not transient. Most of the children remained at the higher stage of moral reasoning when they were tested one year after the completion of Blatt's initial work with them.⁹⁴

Moreover, the moral reasoning developed by these students was universally applicable.⁹⁵ The students not only reasoned at the higher stage when facing dilemmas to those problems brought up in class, but also when confronting other ethically problematic issues.⁹⁶ Many researchers have replicated Blatt's work with analogous results.⁹⁷ These studies generally indicate that long-term moral education is possible and that such education is most effective when individuals are gradually taught at exactly one stage above their own.⁹⁸ The works of Piaget, Kohlberg, Blatt and their successors thus provide, not only a structured theoretical analysis

87. See generally Part I.

88. POWER ET AL., *supra* note 85, at 11.

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.* at 12.

96. *Id.*

97. *Id.* at 13; Berkowitz et al., *supra* note 84, at 341-57; Lockwood, *supra* note 84, at 325-64; Schläfli et al., *supra* note 84, at 319-52.

98. L.J. Walker, *Sources of Conflict for Stage Transition in Moral Development*, 19 DEV. PSYCHOL. 103-10 (1983).

of moral development, but also a concrete and successful method for morally educating individuals.

Kohlberg's cognitive development model of moralization has significance for the legal profession. Practicing attorneys generally follow Conventional Stage IV morality to a much greater degree than the general population.⁹⁹ The primary focus of most lawyers is on the perpetuation of current ways of thinking about law and society. Not only do attorneys maintain the current socio-legal order, but they also represent this system.¹⁰⁰ The Stage IV moral orientation of most attorneys suggests that lawyers rely heavily on rules and the maintenance of the socio-legal order, with little regard for their personal convictions and universal ethical principles.¹⁰¹

Stage IV morality is the morality of society's status quo, and involves minimal concern for individual values or macrocosmic perceptions of morality beyond conventional societal norms.¹⁰² Professor Steven Hartwell of the University of San Diego Law School noted such Stage IV morality to be the belief that law has a moral basis that must be maintained.¹⁰³ Under a Stage IV analysis, lawyers act in accordance with socio-legal rules without any personal reflection.¹⁰⁴ Stage V, Hartwell notes, is the morality of civil disobedience and accommodates the conflict between legal principles and personal morality.¹⁰⁵ Stage V morality in a legal setting is

99. Lawrence J. Landwehr, *Lawyers as Social Progressives or Reactionaries: The Law and Order Cognitive Orientation of Lawyers*, 7 LAW & PSYCHOL. REV. 39, 39-42 (1982) (finding that 90.3% of lawyers function at a Stage IV level, 2.5% at Stage V, and 7.2% at Stage III); June Louin Tapp & Felicia J. Levine, *Legal Socialization: Strategies for an Ethical Legality*, 27 STAN. L. REV. 1, 22 n.86 (1974) (generally affirming Landwehr's findings).

100. Daicoff, *supra* note 10, at 1411 (stating that lawyers' "tendency towards conventional, Stage IV . . . moral reasoning may well appear odd, rigid, and even amoral to a public . . . who reason[s] at Kohlberg's Stages III, IV, and V (including post-conventional reasoning)").

101. *Id.* at 1396.

102. *Id.*

103. See Lisa G. Lerman, *Teaching Moral Perception and Moral Judgment in Legal Ethics Courses: A Dialogue About Goals*, 39 WM. & MARY L. REV. 457, 464-65 (1998) (quoting Steven Hartwell, *Promoting Moral Development Through Experiential Teaching*, 1 CLINICAL L. REV. 505 (1995)). In addition to describing the behavior of attorneys using a Stage IV and Stage V analysis, Professor Hartwell also detailed the behavior of attorneys who reason using Stage III. He noted that such attorneys practice "Watergate morality." *Id.*

104. *Id.* at 465-66 (wondering if there can be "a merger between personal morality and lawyer morality" and noting that one of the goals in "teaching ethics is to advance students' moral development by teaching ethics in the context of lawyering experience").

105. *Id.*

the recognition that conventional law and the application of the legal system may not always be truly ethical or comport to personal morality.¹⁰⁶ When personal morality differs from the law or the legal system, the Stage V lawyer questions, reflects, and responds, in an effort to change the law and society.¹⁰⁷ If attorneys do not subscribe to any Stage V moral analysis, they will not incorporate moral conviction into their practice.¹⁰⁸ Social change and activist lawyering will therefore suffer.¹⁰⁹

Furthermore, studies show that the higher the cognitive developmental moral stage at which an individual reasons, the more consistent will be the individual's behavior.¹¹⁰ That is, if an attorney reasons at Stage V, he or she will behave more consistently.¹¹¹ For example, two individuals, one reasoning at Stage III and the other at Stage V, may both agree that stealing is wrong. The Stage V person, however, will almost never steal because of his or her universal ethical principles, while the Stage III individual's behavior will be more difficult to predict. An individual at Stage III may steal, if doing so might make his family, friends, and peer group like him more.

106. See Richard A. Matasar, *The Pain of Moral Lawyering*, 75 IOWA L. REV. 975, 976 (1990) (recognizing that "[i]t is the rare lawyer who cannot say with great certainty that he or she has often believed a client's position to be wrong, though arguably acceptable. It is the lawyer's odd lot to argue simultaneously the correctness of matters he or she subjectively believes to be incorrect").

107. Michael Daneker, *Moral Reasoning and the Quest for Legitimacy*, 43 AM. U. L. REV. 49, 64-65 (1993) (arguing that the Supreme Court should, at times, use Kohlberg Stage V reasoning to revise law for the benefit of society).

108. Matasar, *supra* note 106, at 975. Matasar admits:

I didn't like some of the things I did as a lawyer. I took positions I didn't believe in. I made arguments that I thought bordered on untrue. I postured. I bluffed. I pursued advantages provided more by clients' resources than the value of their claims. And, I found out that doing the things that lawyers do—ethical things!—can be painful. The problem is, I didn't learn this lesson until I became a lawyer.

Id.

109. W. Bradley Wendel, *Lawyers and Butlers: The Remains of Amoral Ethics*, 9 GEO. J. LEGAL ETHICS 161, 180 (1995) (noting that "lawyers may be psychologically reluctant to follow the imperatives of private morality, believing that their role in the legal system somehow compels them to follow legal norms").

110. See, e.g., Richard A. Tsujimoto & Kathy A. Emmons, *Predicting Moral Conduct: Kohlberg's and Hogan's Theories*, 115 J. PSYCHOL. 241, 241 (1983). Tsujimoto and Emmons tested forty nine college students to determine their Kohlberg moral judgment stage in order to predict whether these students would volunteer to work for a charity and whether they would actually show up to work for it.

111. JAMES R. REST, *DEVELOPMENT IN JUDGING MORAL ISSUES* (1979); Augusto Blasi, *Bridging Moral Cognition and Moral Action: A Critical Review of the Literature*, 88 PSYCHOL. BULL. 1 (1980).

Despite the general acceptance of Kohlberg's cognitive development model of moralization and its foundational underpinnings, critics and commentators have noted the predominant use of male behavior and perceptions in establishing norms in moral reasoning.¹¹² Beginning in the 1970s, critics of traditional moral developmental models began focusing on gender differences in the moral reasoning of males and females.¹¹³ One of the most influential theorists to attack Kohlberg, Carol Gilligan, posited that men and women place different weights on factors influencing moral decision-making.¹¹⁴ She then related these variations to the diverging views of self and human interactions between men and women.¹¹⁵ Specifically, Gilligan noted that men view the world with a hierarchical, rights perspective—a perspective that recognizes differing rights among individuals and that places varying value on those

112. CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* 2 (1982); *MAPPING THE MORAL DOMAIN: A CONTRIBUTION OF WOMEN'S THINKING TO PSYCHOLOGICAL THEORY AND EDUCATION* (Carol Gilligan et al. eds., 1988). *But cf.* SIGMUND FREUD, *Some Psychological Consequences of the Anatomical Distinction Between the Sexes and Female Sexuality*, reprinted in SIGMUND FREUD, *SEXUALITY AND THE PSYCHOLOGY OF LOVE* 183-211 (P. Reiff ed., 1963) (1925) (remarking that women are guided by feelings, whereas men rely on a sense of justice and right and wrong).

Piaget also branded women to be morally deficient in relation to men. In studying male and female children at play, Piaget noted that girls focused on the preservation of relationships and harmony, but boys worked through and resolved disputes. JEAN PIAGET, *THE MORAL JUDGMENT OF THE CHILD* 13-108 (Marjorie Cabain trans., 1965).

113. NANCY CHODOROW, *THE REPRODUCTION OF MOTHERING* 167 (1978); Norma Haan, *Two Moralities in Action Contexts: Relationships to Thought, Ego Regulation, and Development*, 36 J. PERSONALITY & SOC. PSYCHOL. 286 (1978); Constance Boucher Holstein, *Irreversible, Stepwise Sequence in the Development of Moral Judgment: A Longitudinal Study of Males and Females*, 47 CHILD DEV. 51 (1976).

114. GILLIGAN, *supra* note 112, at 2-3; Carol Gilligan, *In a Different Voice: Women's Conceptions of Self and Of Morality*, 47 HARV. EDUC. REV. 481, 481-83 (1982).

115. GILLIGAN, *supra* note 112, at 2-3. Gilligan develops her discussion of morality and gender differences from the paradigmatic Heinz dilemma. In the Heinz dilemma, Heinz's wife will die if she does not receive a particular medication that he cannot afford to buy. The moral quandary is whether or not he should steal the drug. In a study on adolescent moral development, the eleven year-old female participant looked to alternatives besides stealing, including getting a loan or discussing the problem with the pharmacist, while the eleven year-old male participant advocated theft of the drug, since human life is of immeasurable value. Applying a traditional Kohlberg analysis, the girl reasoned at Stage III, while the boy applied a Stage IV analysis. GILLIGAN, *supra* note 112, at 5-30; *see also* Gilligan, *supra* note 114, at 481-83. Carol Gilligan theorized that men have a distinct sense of self, separate from others, thus leading them to reason on a foundation of rules and rights. Women, on the other hand, view themselves as part of a web of relationships and recognize that what impacts one relationship affects the entire connected nexus of relationships. *Id.*

rights.¹¹⁶ Women, instead, examine ethical conflict situations through a contextual lens, placing value on the continuance and maintenance of the relationships forming the situation, as opposed to any hierarchical evaluation of the respective rights of the parties involved.¹¹⁷

Gilligan devised three stages to categorize thinking from a care perspective. In the first stage, an individual's only concern is herself.¹¹⁸ Moral reasoning centers on an individual's needs and goals.¹¹⁹ The second stage, on the other hand, equates moral good with caring for others and selflessness, perhaps to the detriment of the self.¹²⁰ The third stage is, in effect, an amalgamation of the first two stages, that is, the recognition that caring for others is important, but that such care necessarily includes caring for oneself.¹²¹ Thus, Gilligan's three-stage model differs from Kohlberg's more punctuated stratification of hierarchical principles. Interestingly, later empirical studies suggest that males and females do not differ in terms of Kohlberg's moral development stages,¹²² but do disagree considerably on the expression of that moral perspective.¹²³

The varying ways in which men and women express this morality demonstrate the potential of law school to influence an individual's moral reasoning skills. Although individuals generally adhere to a rights or care perspective, the completion of one year of law school produces a dramatic change; the rights perspective largely replaces the care perspective.¹²⁴ Legal education promotes masculine struc-

116. Nina J. Crimm, *A Study: Law School Students' Moral Perspectives in the Context of Advocacy and Decision-Making Roles*, 29 NEW ENG. L. REV. 1, 18 (1994).

117. *Id.*

118. GILLIGAN, *supra* note 112, at 74-79.

119. *Id.*

120. *Id.*

121. *Id.* at 79-82.

122. Muriel J. Bebeau & Mary M. Brabeck, *Integrating Care and Justice Issues in Professional Moral Education: A Gender Perspective*, 16 J. MORAL EDUC. 189, 191 (1987) (citing studies that show gender differences to cause only trace differences in moral reasoning).

123. John C. Gibbs et al., *Sex Differences in the Expression of Moral Judgment*, 55 CHILD DEV. 1040-43 (1984).

124. Janet Taber et al., *Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates*, 40 STAN. L. REV. 1209, 1250 (1988). Taber learned that women focus on relationships and communication, but noted that women adhered to legal precedent to the same extent as men. *Id.* She rationalized that the "socialization of legal training may have led women to respond in the traditional manner to legal precedent." *Id.* See also Sandra Janoff, *The Influence of Legal Education on Moral Reasoning*, 76 MINN. L. REV. 193, 217-29 (1991). Janoff concluded that the first year of law school had a dramatic impact on the moral reasoning of female students. Specifically, after one year at law school, the female

tures of thought and the consideration of the hierarchy of rights.¹²⁵ This emphasis on the rights orientation seems to be pervasive, as demonstrated by Professor Michael Daneker, who studied the use of moral reasoning in judicial methodology, in his analysis of moral reasoning in judicial decision-making.¹²⁶

In particular, Daneker focuses on *DeShaney v. Winnebago Department of Social Services*,¹²⁷ noting the United States Supreme Court had the opportunity to assume a strong care and connection approach, but failed to do so, instead relying on a traditional rights orientation.¹²⁸ In *DeShaney*, a mother sued the Winnebago Department of Social Services for returning her son home to his bio-

students had adopted the rights-oriented perspective of the greater number of their male colleagues. She also discovered that all students, regardless of gender, became much more situated in a rights perspective in analyzing moral dilemmas. *Id.*; Crimm, *supra* note 116, at 24. Crimm presented seventy second-year law school students with a moral dilemma as part of an essay examination in required course on federal taxation course. *Id.* Of the seventy students, divided about equally in gender, all of the responses came from a rights perspective. *Id.* Only five students included a trace of the ethics of care perspective. *Id.* For further discussion, see Michael Burns, *The Law School as a Model for Community*, 10 NOVA L. J. 329, 332 (1986); Carrie Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School,"* 38 J. LEGAL EDUC. 61, 67-68 (1988).

125. K.C. Worden, Note, *Overshooting the Target: A Feminist Deconstruction of Legal Education*, 34 AM. U. L. REV. 1141, 1141-42 (1985) (discussing the demands of legal education on the female mode of thinking and the necessity of conforming to male attitudes and behavior to succeed in law school); see also Jane W. Coplin & John E. Williams, *Women Law Students' Descriptions of Self and the Ideal Lawyer*, 2 PSYCHOL. WOMEN Q. 323, 329-31 (1978) (commenting that female law students saw successful attorneys as being emotionally independent, competitive, quantifiably objective, and distancing).

126. See generally Daneker, *supra* note 107.

127. 489 U.S. 189 (1989). After several reports of child abuse, the Winnebago County Department of Social Services took Joshua DeShaney into protective custody. *Id.* at 189. The Department returned Joshua to his father after three days and ignored subsequent reports of severe child abuse. *Id.* at 190. When Joshua's father beat him so severely that the child sustained permanent brain damage, Joshua and his mother sued Winnebago County for failure to protect. *Id.* at 189. The United States Supreme Court determined that the state has no obligation to protect its citizens unless the state had so constrained the individual as to prevent the individual from taking care of himself. *Id.* at 199.

128. Daneker, *supra* note 107, at 60-65. Daneker compares the majority opinion to the dissent by Justice Blackmun, in which Justice Blackmun assumes a strong care approach. *Id.* "Poor Joshua!" Justice Blackmun laments, noting the web of relationships formed by the County's awareness of the child abuse and its responsibility to Joshua and his father. *Id.* at 63. Daneker notes the majority's reaction to be one of Stage IV analysis—that is, the perception of due process as a static concept, one which may only be interpreted in the same manner as past interpretations. *Id.* at 64; see also Martha Minow, *Words and the Door to the Land of Change: Law, Language, and Family Violence*, 43 VAND. L. REV. 1665, 1667-68 (1990) (criticizing the judicial inaction by the Supreme Court in *DeShaney*).

logical father despite the fact that substantiated evidence of abuse had previously led the Department to remove Joshua DeShaney from his father's custody.¹²⁹

Using abstract rights and values in its analysis, the majority opinion legitimized and reaffirmed static conceptions of due process as a "normative principle distilled from prior cases."¹³⁰ Disavowing its ability to transform existing law for the benefit of society, the Supreme Court, instead, "sought maintenance of the social system not because it was right or just, but simply because it already existed."¹³¹ Not only did the majority fail to use moral reasoning in order to revise the law to further societal interests in protecting children, but it relied on Stage IV reasoning in devising a view of due process that stems from shared social norms, not universal principles.¹³² Even when a situation strongly indicates the use of Stage V reasoning, that is, the consideration of broader, overarching principles of ethics, instead of the promulgation of existing social conceptions, lawyers remain reluctant to challenge societal norms that may be of greater harm than good to the interests of society.

II. MORALITY AND LEGAL EDUCATION

Current legal education techniques may, in fact, discourage students from achieving any potential Stage V reasoning.¹³³ Legal education relies on an extensive infrastructure of legal categories and pigeonholing, which perpetuates this structural stratification. The rigidity and formalistic nature of legal education potentially can hinder personal progress to Stage V perceptions of broader ethical principles and behavior promoting the good of all, particularly if such behavior necessarily involves transforming the current socio-legal order.¹³⁴

Instinctively realizing the effects of current legal education, many practicing attorneys and academics criticize the law school experience, recognizing that current legal training encourages

129. 489 U.S. 189 (1989).

130. Daneke, *supra* note 107, at 65.

131. *Id.* at 65.

132. *Id.* at 64-65.

133. Janoff, *supra* note 117, at 194 n.3.

134. See Walter W. Steele Jr., *A Comparison of Attitudes of Freshman and Senior Law Students*, 23 J. LEGAL EDUC. 318, 321 (1970) ("If substantial numbers of freshman law students do, in fact, [as the empirical data suggest,] come to law school already equipped with lawyer-like attitudes and insights, then legal education might make some adjustments to capitalize on this advantage.").

alienation¹³⁵ and produces greed and cynicism¹³⁶ by engendering the separation of the law student's sense of self into halves—one half that analyzes the law in objective Langdellian fashion and the other half that embodies his personal morality.¹³⁷ The current state of law school education fails to prepare students “for the actual rigors of practice and the ethical quandaries that await.”¹³⁸

Legal training readily accomplishes its goal of making law, by definition societally determined,¹³⁹ appear to be comprised of concrete calculations, much like the analytical sciences.¹⁴⁰ In reality, law is “that which is laid down. [It is] a rule or method according to which phenomena or actions co-exist or follow each other. Law, in its generic sense, is a body of rules of action or conduct prescribed by controlling authority, and having binding legal force.”¹⁴¹ Thus, law is not defined according to predetermined natural laws in the same way as gravity or the intricacies of chemical bonding.¹⁴² Instead, law necessarily involves morality and the exploration of the reasons motivating the creation and application of a statute,

135. Ruta K. Stropus, *Mend It, Bend It, and Extend It: The Fate of Traditional Law School Methodology in the 21st Century*, 27 LOY. U. CHI. L.J. 449 (1996) (commenting on the manner in which the generally accepted Langdellian method stresses logic and reason at the expense of personal values and moral conviction).

136. Michael E. Carney, *Narcissistic Concerns in the Educational Experience of Law Students*, 18 J. PSYCHIATRY & L. 9, 17 (1990); see also Paula A. Franzese, *To Be The Change: Finding Higher Ground in the Law*, 50 ME. L. REV. 11, 14 (1998). Franzese recognizes that:

The model of lawyer as statesperson --as an individual of good, independent judgment and practical wisdom, a peacemaker as well as a problem solver-- seems to have become the exception rather than the norm. Instead, today's prototype in many respects is that of lawyer as hired gun, skilled technician and/or business getter.

Id.

137. See, e.g., Stropus, *supra* note 135.

138. Franzese, *supra* note 136, at 19 (“Theoretically—as well as practically—applied considerations of right and wrong, of prudence and fairness, and of what the law *should* be, must play a role in all course offerings [at law school], and must not be relegated exclusively to the domain of professional responsibility classes.”).

139. BLACK’S LAW DICTIONARY 612 (7th ed. 1991). Oliver Wendell Holmes once defined the law as “the witness and external deposit of our moral life.” Address by Oliver Wendell Holmes, *The Path of the Law* (Jan. 8, 1897), reprinted in OLIVER WENDELL HOLMES, *COLLECTED LEGAL PAPERS* 167 (1920).

140. Saunders & Levine, *supra* note 13, at 128-29.

141. BLACK’S LAW DICTIONARY 612 (7th ed. 1991).

142. Even Judge Harry T. Edwards, who laments the theoretical bent of recent legal scholarship and fears that students of legal theory “will not understand how to practice as a professional” and “will be woefully unprepared for legal practice,” admits the critical importance of legal ethics as a pervasive part of the law school curriculum. Edwards, *supra* note 8, at 38.

code, regulation, or case.¹⁴³ Nevertheless, as noted by Professor Anthony Kronman in *The Lost Lawyer*, the legal profession stands in peril of losing its soul.¹⁴⁴ Morality and the law are gradually becoming mutually exclusive goals, as personal morality becomes lost from legal practice and, more importantly, law school education.

In large part, the traditional Langdellian method of legal education, developed by Dean Christopher Columbus Langdell of Harvard Law School, has caused the estrangement of morality from legal practice.¹⁴⁵ The Langdellian method aspires to make law an objective science. In this method:

[L]aw was considered a science which was learned so that lawyers could maintain the concept of order. Law was both the instrument and the expression of that order. The fundamental concepts of right and wrong were not taught; law schools focused upon the more complex rules of moral order protected by the law.¹⁴⁶

Combining this depiction with the previously mentioned definition of law, law becomes the calculated behavior necessary to maintain the moral rules determined by society. The law is thus virtually synonymous with Stage IV moral reasoning as defined by Kohlberg.

In *DeShaney v. Winnebago Department of Social Services*, in constraining itself to conventional Stage IV morality, the Supreme Court "used the intent of the Framers, unchanging constitutional language, and precedent to create a vision of a shared social norm of due process that could be applied simply to the facts before it."¹⁴⁷ In so doing, the majority failed to recognize the relationship

143. Roger C. Cramton, *The Ordinary Religion of the Law School Classroom*, 29 J. LEGAL EDUC. 247, 249 (1978).

144. ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 1 (1993).

145. James R. Elkins, *Thinking Like a Lawyer: Second Thoughts*, 47 MERCER L. REV. 511, 522-23 (1996); Franzese, *supra* note 136, at 19 (acknowledging that traditional legal teaching separates the people and human problems from the abstract principles within the cases); Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLINICAL L. REV. 37, 39 (1995).

146. James E. Moliterno, *An Analysis of Ethics Teaching in Law Schools: Replacing Lost Benefits of the Apprentice System in the Academic Atmosphere*, 60 U. CIN. L. REV. 83, 85 (1991) (arguing for greater emphasis on legal ethics education in light of the replacement of the apprentice system by the typical three year law school curriculum).

147. Daneker, *supra* note 107, at 65.

between the government and its citizens.¹⁴⁸ Instead, the Supreme Court used Stage IV morality to maintain a social order that reflects the will of the majority, in spite of contravening universal ethical principles suggesting a greater responsibility should be borne by the state.¹⁴⁹

The Langdellian method cares only for the analytical dimension of legal education;¹⁵⁰ personal values play no role.¹⁵¹ The Langdellian model of legal instruction involves emotional detachment and abstract scientific reasoning without consideration of personal values¹⁵² in a largely Stage IV fashion. Even classes in legal ethics cannot erase the rights orientation resulting from traditional legal education.¹⁵³

Just as scientific determinations of acceleration or density no longer involve moral conviction, the Langdellian case method strives to base the study of case law on analogous scientific methods.¹⁵⁴ Also, as Dean Roger Cramton of Cornell Law School noted, the continuous discussion of cases in the first year of law school that involve situations in which both sides have good arguments and either party could prevail leads to "value skepticism" in law students.¹⁵⁵ Values arguably appear to be equally worthy and

148. *Id.* at 65-66.

149. *Id.* at 66. Daneker does acknowledge, however, that Stage IV moral reasoning in judicial decision-making may be the result of necessity. *Id.* In crafting a judicial opinion, the judge writes for the legal community, a community that primarily employs Stage IV morality. *Id.* Stage IV reasoning would thus be the most effective way to persuade attorneys to subscribe to the rationale of judicial decisions. *Id.* at 67-68.

150. Lorie M. Graham, *Aristotle's Ethics and the Virtuous Lawyer: Part One of Study on Legal Ethics and Clinical Legal Education*, 20 J. LEGAL PROF. 5, 27 (1996); Elkins, *supra* note 1, at 519.

151. Elkins, *supra* note 145, at 527 ("In the first year of law school, professors attempt to make you believe cases and situations can be analyzed without regard to your own or society's morals and ethics. After a while, students come to view cases in this way: they learn to disregard their own feelings.").

152. Duncan Kennedy, *Legal Education As Training for Hierarchy*, in THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 45 (David Kairys ed., 1990); Quigley, *supra* note 145, at 39; *see also* Worden, *supra* note 125 (detailing the distancing of women from their personal beliefs and emotions stemming from traditional legal education).

153. Thomas E. Willging & Thomas G. Dunn, *The Moral Development of the Law Student: Theory and Data on Legal Education*, 31 J. LEGAL EDUC. 306, 355 (1981) (finding law students to remain at a Stage IV level of moral development upon completion of legal ethics); Tapp & Levine, *supra* note 99, at 25-26 (noting the overwhelming tendency of law students to reason using Stage IV morality in ethical conflict situations).

154. Solomon, *supra* note 9, at 508 (noting that legal educators need to teach students how to integrate their feelings and morality with the law, instead of indoctrinating students to distinguish between the law and morality).

155. Cramton, *supra* note 143, at 254-55.

society, through its judges, seemingly places arbitrary weight on conflicting notions of what is proper behavior. This plethora of borderline cases encourages the perception of moral relativism in the law and stresses instability in the law.¹⁵⁶ In such a society, in which morals really do not matter, law students unsurprisingly begin to devalue their own personal convictions.¹⁵⁷ Law students begin to think of the legal system as a value-free forum in which decision making has little, if any, moral implication.¹⁵⁸ Naturally, this approach to learning leads to the divestment of individual beliefs from legal interactions.¹⁵⁹

Critics of legal education argue this separation between personal values and professional practice is a necessary byproduct of professionalism. That is, a legal professional thinks in a manner necessary to solve a legal problem, even when the issues involved are unclear and contradictory.¹⁶⁰ In fact, professionalism is the ability

156. *Id.* at 255; Elkins, *supra* note 145, at 521 (recognizing that "a tension appears in the study of law as the student moves between poles (the poles themselves constantly moving and shifting) of certainty and uncertainty").

157. Solomon, *supra* note 9, at 510. Solomon states:

I am shocked . . . at how uncomfortable law students are at giving personal opinions to a client. We [legal educators] teach students what to tell clients. We teach students the law so that they can advise clients as best as possible. We fail to teach students that they are allowed to say to a client, "You should not do that. Although you are allowed legally to do that I think it is wrong!"

Id.

158. Cramton, *supra* note 143, at 255.

159. Some scholars argue that the separation of personal values from legal practice is necessary. DAVID A. BINDER ET AL., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* 21 (1991) (telling lawyers and law students that "your advice should generally be based on your understanding of the client's values. Giving advice based on consequences you personally think important would impose your values on a client and would be antithetical to client-centeredness"); see also Serena Stier, *Legal Ethics: The Integrity Thesis*, 52 OHIO ST. L. J. 551, 555-56 (1991) (criticizing moral activism in the legal profession). But see William H. Simon, *Ethical Discretion in Lawyering*, 101 HARV. L. REV. 1083, 1091 (1988) (arguing that lawyers have a responsibility to use ethical discretion, even when such evaluation of personal values contravenes client goals). George Sharswood comments:

There is, perhaps, no profession, after that of the sacred ministry, in which a high-toned morality is more imperatively necessary than that of the law There are pitfalls and mantraps at every step, and the mere youth, at the very outset of his career, needs often the prudence and self-denial, as well as the moral courage, which belong commonly to ripper years.

GEORGE SHARSWOOD, *AN ESSAY ON PROFESSIONAL ETHICS* 55 (1993); see also Thomas L. Shaffer & Robert F. Cochran Jr., *Lawyers as Strangers and Friends: A Reply to Professor Sammons*, 18 U. ARK. LITTLE ROCK L.J. 69 (1995) (discussing the importance of moral counseling to legal practice).

160. Donald A. Schon, *Educating the Reflective Legal Practitioner*, 2 CLINICAL L. REV. 231, 239 (1995).

to find a solution amidst uncertainty and opposing ideas.¹⁶¹ Under such a definition of legal professionalism, personal morality is irrelevant, as the ability to crystallize a solution to a legal problem is not to look within oneself, but to apply traditional legal principles and analysis to the facts of a situation to achieve a result that will satisfy the client.

First described by Susan Price and David Binder in 1977, client-centered lawyering focused more on the precise goals of a client coupled with the treatment of the client as a collaborator in problem-solving, as opposed to a perception of the client as a person needing the expert guidance of a legal professional.¹⁶² The rationale for client-centered lawyering is that:

We have no special wisdom about what clients should want, and each client has to live with the results of our work long after the case has faded into the back of our memory. Clients are not helpless, and even if they were, only rarely could we rescue them . . . [T]he client is a capable person who has hired us to help the client accomplish a particular goal.¹⁶³

Client-centered lawyering thus has the attorney focusing on how best and most effectively to accomplish the client's desired results without considering the attorney's own perspective on a given legal problem.¹⁶⁴ Lawyering becomes acting as an agent of the client, with the client's desires paramount. As an individual merely fulfilling the wishes of her client, the attorney need not account for her own morality in any substantive manner when engaging in the decision-making process.¹⁶⁵

Unlike the traditional model of passive client and powerful professional, client-centered lawyering focuses on the development of viable solutions to legal questions that combine the client's non-legal interests as well as his legal concerns.¹⁶⁶ In this participatory

161. *Id.* at 244.

162. BINDER ET AL., *supra* note 159, at 22 (referring to DAVID A. BINDER & SUSAN M. PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* (1977)).

163. *Id.*

164. *Id.* at 21.

165. Of course, even if acting on behalf of a client and using the guiding principles of client-centered lawyering, an attorney may not act as to violate her relevant state ethics codes for lawyers.

166. BINDER ET AL., *supra* note 159, at 22-23 (1991). Binder, Bergman, and Price argue that the participatory model of client-centered lawyering is better than the traditional model of lawyering with passivity on the part of clients:

First, because lawyers are human, they make mistakes, and an actively involved client will catch at least some of those mistakes before they cause

model of legal analysis, the lawyer acknowledges that she needs the client to address the legal issue and, in fact, recognizes the client as necessary for "an added measure of creativity and an often superior knowledge of the facts."¹⁶⁷ Under a client-centered lawyering model, the lawyer's primary relevant consideration is what the client wants done.¹⁶⁸ The lawyer carries out the client's wishes and advises the client regarding the likelihood of legal success.¹⁶⁹ Only the opposing legal counsel and the judicial decision-making system constrain the achievement of the client's goals.¹⁷⁰

The *Model Rules of Professional Conduct* ("Model Rules")¹⁷¹ reinforce the goal of client participation in legal decision-making by requiring lawyers to "abide by a client's decisions concerning the objectives of representation" and to "consult with the client as to the means by which they are to be pursued."¹⁷² In so representing the client, "[a] lawyer's representation of a client, including repre-

harm. Many clients can understand more of how to solve their problems than some lawyers give them credit for, and most clients know at least as much or even more about their own needs than a lawyer will Third, "[t]he participatory model promotes the dignity of clients as citizens" because "it makes the client a doer, responsible for his choices." Fourth, it reduces the client's anxiety because the client is not kept in the dark about what is happening. Fifth, it protects "the integrity of professionals by liberating them from . . . the burdens imposed [by a] paternal role" and from client suspicion caused by client ignorance. And sixth, it "invites personal contact in a society becoming increasingly impersonal."

Id. at 23 (citing DOUGLAS E. ROSENTHAL, *LAWYER AND CLIENT: WHO'S IN CHARGE?* 168-70 (1974)).

167. *Id.*; see also DOUGLAS E. ROSENTHAL, *LAWYER AND CLIENT: WHO'S IN CHARGE?* (1974) (comparing the traditional and participatory models of lawyering and determining that the participatory model results in better tangible rewards, that is, larger jury awards, for clients in personal injury lawsuits).

168. Zwier & Hamric, *supra* note 4, at 392.

169. *Id.*

170. *Id.*

171. The House of Delegates of the American Bar Association adopted the *Model Rules of Professional Conduct* on August 2, 1983. The *Model Rules* recognize that "lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship." MODEL RULES OF PROF'L CONDUCT Pmb. (1983).

172. MODEL RULES OF PROF'L CONDUCT R. 1.2(a) (1983). Comment [1] to Rule 1.2 notes that:

Both lawyer and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. Within these limits, a client also has the right to consult with the lawyer about the means to be used in pursuing those objectives.

MODEL RULES OF PROF'L CONDUCT R.1.2 cmt. 1 (1983).

sentation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities."¹⁷³ The *Model Rules*, therefore, support the rationale underlying client-centered lawyering, that is, the lawyer is distinct from the client and acts merely on behalf of the client. Because the lawyer acts as the direct representative of the client's wishes, the independent morality of the lawyer has no tangible role in the determination of the client's goals, as long as the achievement of those objectives does not overtly transgress the pertinent professional codes.

Unlike the *Model Rules*, however, the American Bar Association's *Model Code of Professional Responsibility*¹⁷⁴ ("Model Code") acknowledges that, while the client's desires and objectives are important, the lawyer may act in adherence with her own moral values.¹⁷⁵ For example, Canon 7 of the *Model Code* ("A Lawyer Should Represent a Client Zealously Within the Bounds of the Law"), while acknowledging that "the authority to make decisions is exclusively that of the client and, if made within the framework of the law, such decisions are binding on the lawyer,"¹⁷⁶ notes that "[i]n assisting his client to reach a proper decision, it is often desirable for the lawyer to point out those factors which may lead to a decision that is morally just as well as legally permissible."¹⁷⁷ Canon 7 of the *Model Code*, in fact, provides attorneys with a way not to engage in legally permissible action that is morally abhorrent to the lawyer on a personal level.¹⁷⁸ The *Model Code* thus attempts to integrate the lawyer's personal value system into the legal decision-

173. MODEL RULES OF PROF'L CONDUCT R.1.2(b) (1983).

174. The American Bar Association adopted the *Model Code of Professional Responsibility* in 1981 to acknowledge the obligation that attorneys have "to maintain the highest standards of ethical conduct." MODEL CODE OF PROF'L RESPONSIBILITY pmbl. (1981).

175. See MODEL CODE OF PROF'L RESPONSIBILITY canon 7 (1981).

176. MODEL CODE OF PROF'L RESPONSIBILITY EC 7-7 (1981).

177. MODEL CODE OF PROF'L RESPONSIBILITY EC 7-8 (1981).

178. Ethical Consideration 7-9 of the *Model Code of Professional Responsibility* provides that:

In the exercise of his professional judgment on those decisions which are for his determination in the handling of a legal matter, a lawyer should always act in a manner consistent with the best interests of his client. However, when an action in the best interest of his client seems to be unjust, he may ask his client for permission to forgo such action.

MODEL CODE OF PROF'L RESPONSIBILITY EC 7-9 (1981). See also MODEL CODE OF PROF'L RESPONSIBILITY EC 7-10 (1981) (recognizing that "[t]he duty of a lawyer to represent his client with zeal does not militate against his concurrent obligation to treat with consideration all persons involved in the legal process and to avoid the infliction of needless harm").

making process. The tension between the incorporation of personal beliefs on the part of the lawyer and the conception of the lawyer as the executive agent of the client remains upon scrutiny of the existing professional codes.

Whether a lawyer subscribes exclusively to the notion of client-centered lawyering or, instead, includes her personal morality in advising the client, "the public looks to the legal system for truth."¹⁷⁹ Lawyers, therefore, have an important duty to the public in defining this truth and, as noted by legal ethics experts Richard Zitrin and Carol M. Langford:

American lawyers in a wide variety of practices face competing ethical principles—among the most important, the choice between representing a client's interests diligently and being truthful in one's words and deeds Just as the rules of ethics are based substantially on moral standards, each lawyer must ultimately decide how to balance ethics with the moral principles of our society: whether being "ethical" should be defined by what a lawyer can "get away with"; whether a lawyer must remain loyal to a client who insists on acting illegally; whether a lawyer is willing to pay the practical and economic consequences of "doing the right thing," even if it means losing a job; and whether, and to what extent a personal sense of morality should play a part in a lawyer's behavior.¹⁸⁰

To satisfy this obligation—to define this truth and to determine what is moral behavior in handling legal issues—for the public, and for themselves, attorneys must learn to incorporate their ideas and views on morality as part of their legal training.

III. COMBINING PERSONAL MORALITY WITH LEGAL EDUCATION

In a society that views lawyers as selfish¹⁸¹ and in which the general consensus among academics is that lawyers consciously sepa-

179. RICHARD ZITRIN & CAROL M. LANGFORD, *THE MORAL COMPASS OF THE AMERICAN LAWYER: TRUTH, POWER, JUSTICE, AND GREED* 3 (1999).

180. *Id.* at 3-4.

181. Graham, *supra* note 150, at 8-9 (arguing that "law students need to be taught how to reflect critically on ethical dilemmas from a practical perspective if they are to develop the kind of 'excellence' in virtue necessary to recover the 'human side' of the profession" and that clinical education "offers a rich opportunity for students to reestablish and redefine the values of the profession"); *see also* ZITRIN & LANGFORD, *supra* note 179, at 3 ("Many consider the typical American Lawyer to be either immoral or amoral, while many others believe that our justice system no longer protects the interests of the average person. Polls show that public confidence in lawyers has never been lower.").

rate law from morality,¹⁸² the benefit of moral education in law school is practically self-evident.¹⁸³ Recognition of one's own ethical beliefs leads to respect for the beliefs of others. If lawyers began to appreciate the personal beliefs of the parties opposing their clients, they might act more ethically toward these parties, thereby enriching the judicial system as a whole. Nevertheless, one cannot fault an attorney, the product of Langdellian discourse, from doing exactly what three years of training has taught him or her to do.¹⁸⁴ If law is an objective science, lawyering becomes a means of fitting objectively evaluated experimental data into the laws of that science, with no conception of subjective considerations.

Law is not a science. As one scholar notes, "law is the means to an end, and is to be appraised only in the light of the ends it achieves."¹⁸⁵ In order for society and the legal profession to evaluate the impact of law and lawyering, we must look to what the law accomplishes. If justice and proper moral behavior are among those goals, lawyers must be taught this duty of moral conduct while still in law school. Individuals become lawyers and learn how to behave in their professional role during law school.¹⁸⁶

Legal training needs to prepare students for assuming this role. The lawyer must be taught how to behave when the norms of his societal role conflict with universal ethical principles.¹⁸⁷ W. Brad-

182. Bennett, *supra* note 5, at 46.

183. In any event, law school may be the only institution available to teach moral reasoning and ethics so they must do so, since attorneys will otherwise never learn the intricacies of legal ethics. Hon. Tom C. Clark, *Teaching Professional Ethics*, 12 SAN DIEGO L. REV. 249, 252 (1975); *see also* Sidney P. Simpson, *The Function of the University Law School*, 49 HARV. L. REV. 1068, 1070 (1936) ("If the law is to remain . . . a profession, some means must be provided for instilling . . . that sense of obligation and responsibility which is the essence of a profession.").

184. Graham, *supra* note 150, at 43-44 (1996).

The traditional Socratic method. . . focuses more on conflict, and less on "justice, fairness, and morality." Accordingly, it fosters a kind of "moral indifference" to the resolution of legal disputes. The student learns about the "able advocate" who can argue both sides of a controversy, but is never told about the "responsive advisor" who, in rendering candid advice to a client, considers the legal, moral, economic, social and political factors of the situation.

Id. But *see* Russell G. Pearce, *Teaching Ethics Seriously: Legal Ethics as the Most Important Subject in Law School*, 29 LOY. U. CHI. L.J. 719 (1998).

185. M. McDougal, *Fuller v. The American Legal Realists*, 50 YALE L.J. 827, 834-35 (1941).

186. *See, e.g.*, Wendel, *supra* note 109 (arguing that competing visions of the role of the lawyer complicate the ethical conflicts faced by legal practitioners).

187. *Id.* at 163.

ley Wendel, an associate at the Seattle law firm of Bogle & Gates, contends:

A person's professional or social role may provide a justification for what would otherwise be ethically impermissible conduct. A moral norm that purports to apply universally may not actually bind a person who is subject to a countervailing norm derived from her station in society. In other words, when role-dependent norms conflict with universal norms, role morality may provide an excuse.¹⁸⁸

Thus, law school must necessarily prepare law students to grapple with the issues that may arise from ethical conflict situations in which their duties as a lawyer contravene more macrocosmic ethical values. Just as the soldier is taught to kill enemy combatants in times of war, transgressing the morally universal norm placing primacy on life, the lawyer must be taught to work within and with their societal role as a soothsayer of justice.

Instead of preparing law students for their role in society, legal education, as it currently exists, an outgrowth of the Langdellian method, may actually discourage Stage V and Stage VI moral reasoning by ignoring the tension between law and personal conviction.¹⁸⁹ The motivations for social change and the scrutiny of the socio-legal order in these two stages result from the very questioning of laws and the legal system that law school training treats with disdain. Without this examination, lawyers are agents of the system and cannot perceive incentives to change the system, no matter what vision of lawyering they aspire to.

For example, in describing two commonly subscribed models of professional conduct, the "hired gun" and "social engineer" models, Dean Roger Cramton of Cornell Law School notes the inher-

188. *Id.* Wendel further argues that "in order to justify actions against the claims of universal morality, a professional must show both that the role is itself justified morally, and that the nature of the role trumps the particular universal ethical maxim that would otherwise apply." *Id.* at 164-65.

189. Daicoff, *supra* note 10, at 1396; Elkins, *supra* note 145, at 528. Elkins notes that

[t]he orchestration of the typical everyday class under the famed "Socratic method" is nothing more than a barrier to understanding the human aspects of the law. . . . From what I gather, thinking like a lawyer means we deal with problems in a finely tuned, rational manner. Emotional reaction to problems is unnecessary, unwanted, irrelevant, and unlawyerlike. How the rules and principles apply to people is unimportant.

Id.

ent contradiction between personal beliefs and values that law students and attorneys wrestle with.¹⁹⁰ In particular, he says:

The role of the "hired gun" forces the potential lawyer to visualize himself as an intellectual prostitute. In law school he is asked to argue both sides of many issues. It is common for a student to respond to the question "How do you come out on this case?" with the revealing reply, "It depends on what side I'm on." If the lawyer is going to live with himself, the system seems to say, he can't worry too much about right and wrong.¹⁹¹

The "hired gun" model thus encourages the mechanical application of the existing legal order. An attorney who acts as a "hired gun" holds the concept of zealous advocate to be of paramount importance and will act to further client interests, even if furthering those interests comes at great personal cost for the client or involves large societal costs.¹⁹² The "hired gun" attorney carries out the wishes of the client, with few, if any, concerns beyond achieving the goals articulated by the client.¹⁹³

Nor does the "social engineer" model provide greater guidance for combining personal morality with the practice of law:

The "social engineer" model is cast on a larger scale, dealing with issues and interests rather than with individuals, but this role has a somewhat lifeless, bureaucratic and technocratic flavor. There is also a moral tension between the instrumental character of the role and democratic values. If the social engineer provides the goals for his own effort, he contradicts the values of democratic self-determination. On the other hand, if he takes his values from the interests of the groups he represents, he suffers from the same subservience to values of others that is characteristic of the hired gun.¹⁹⁴

Hence, even the "social engineer," who at first glance may be considered a moral activist, is not without the value-free imprint of the Langdellian method. The attorney who acts as a "social engineer"

190. Cramton, *supra* note 143, at 259-60.

191. *Id.*

192. *Id.*

193. As described by Lord Henry Brougham,

[a]n advocate, in the discharge of his duty, knows but one person in all the world, and that person is his client. To save the client by all means and expedients, and at all hazards and costs to other persons, and, among them, to himself, is his first and only duty; and in performing this duty he must not regard the alarm, the torments, the destruction which he may bring upon others.

2 TRIAL OF QUEEN CAROLINE 8 (J. Nightingale ed. 1821).

194. Cramton, *supra* note 143, at 260.

thus merely carries out the wishes of many clients, just as the "hired gun" attorney acts in strict adherence with the directives of a single client.¹⁹⁵ Seemingly, no matter which one of these conventional perceptions of lawyering a law student aspires to, he or she faces the divergence between personal beliefs and the law. Lawyers cannot think of the law as value free. Law students and attorneys must necessarily look into themselves for moral guidance based on their personal principles of ethics.

Such inner reflection becomes increasingly difficult for individuals upon completion of legal training. Society places conflicting and challenging demands on attorneys—"as advisor, facilitator, and advocate; as zealous representative and manipulator; as self and alter ego to the client."¹⁹⁶ As one scholar aptly put it, "[t]he art of persuasion and its demands on lawyers as persons are the core of the conflict many lawyers feel."¹⁹⁷ The lawyer's personal morality "is held separate, the stuff of idle office chatter, late-night drinks with coworkers, or pillow talk."¹⁹⁸ This disjunction between individual opinion and the lawyer's duty in his role begins in law school. Psychological analysis of law students suggests that the development of analytical skills and simultaneous disdain for the emotional and social implications of decision-making that takes place in law school produces high levels of emotional distress among individuals in the legal profession.¹⁹⁹ Law students become gradually more rational, at the cost of more human concerns and emotions.

Law school smothers imagination and personal creativity.²⁰⁰ Learning the rules of substantive law, albeit a critical component of the first year curriculum, leaves little time for creative dialogue.

195. *Id.*

196. Matasar, *supra* note 106, at 975 (describing the need for attorneys to acknowledge and accept the conflicting demands placed on them by society).

197. *Id.*

198. *Id.* at 977.

199. G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students*, 1986 AM. B. FOUND. RES. J. 225, 250. *But see* Daicoff, *supra* note 10, at 1412 (arguing that "there is evidence that humanistic, people-oriented individuals are the least satisfied lawyers"). *Cf.* G. Andrew H. Benjamin et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*, 13 INT'L J. L. & PSYCH., 233, 240-41 (1990) (recognizing the extraordinarily high levels of substance abuse and mental illness among legal practitioners as opposed to the general population); *see also* Stephen B. Shanfield & G. Andrew H. Benjamin, *Psychiatric Distress in Law Students*, 35 J. LEGAL EDUC. 65, 69 (1985) (acknowledging that law students had higher rates of emotional distress than either the general population or medical students).

200. E. Griswold, *Intellect and Spirit*, 81 HARV. L. REV. 292, 300-02 (1967).

Rationality is exalted, while other societal values are met with scorn.²⁰¹ In this temple of logic known as law school, and particularly in the first year curriculum of substantive legal indoctrination, law students must discard any creative, personally reflective habits they may have had in exchange for the goddess of cognitive rationality in order to succeed academically. Traditional conceptions of the law become ends in and of themselves, with little room for personal and/or other perceptions of societal morality.

Moreover, the codification of legal professional responsibility into ethical canons, rules of conduct, and conventions of professional responsibility may dissuade attorneys from reasoning using universal ethical principles.²⁰² For example, in a greater societal context, French sociologist Emile Durkheim, who studied methods of morally educating children,²⁰³ critiqued the notion of the social contract. He argued that individuals born into a social contract generally have no role in the formation or amendment of that contract.²⁰⁴ They merely enter an existing order. The social contract is thus effectively an involuntary agreement to which the individual has limited, if any, choice at all.²⁰⁵

By definition, most lawyers born into societies with legal systems have little choice in formulating the laws or dramatically changing them. Instead, they simply learn the laws and the categories within which legal problems fall.²⁰⁶ In practice, attorneys apply this ability to recognize issues involving the law and sorting them into the groupings, perhaps with limited manipulation of the categories. The attorneys and society at large glorify this ability as analytical thinking and laud the high level of intelligence believed to be necessary to this classification process.

The formalistic method by which law schools educate law students stresses such categorical thinking.²⁰⁷ The use of codes outlin-

201. *Id.*

202. Steven R. Salbu, *Law and Conformity, Ethics and Conflict: The Trouble with Law-Based Conceptions of Ethics*, 68 IND. L.J. 101, 106 (1992); see also Bruce Jennings, *The Regulation of Virtue: Cross-Currents in Professional Ethics*, 10 J. BUS. ETHICS 561, 567 (1991) (proposing the injection of moral dialogue into the evolution of codes of professional ethics).

203. REIMER ET AL., *supra* note 29, at 39.

204. EMILE DURKHEIM, *ON MORALITY AND SOCIETY: SELECTED WRITINGS* 88 (Robert N. Bellah ed., 1973).

205. *Id.*

206. Cramton, *supra* note 143, at 255 ("Most law school teaching places the law student in the position of an advocate who is asked to work with existing rules and arguments. The goals underlying the competing rules are adverted to in passing, but are evaluated only rarely.").

207. Quigley, *supra* note 145, at 39.

ing the duties of legal ethics merely complements this categorical perception of legal situations and enables lawyers to avoid the stimulation of moral thought necessary for ethical decision-making.²⁰⁸ In fact, "conformity to established ethical guidelines is not simply a function of degree of training or understanding of the codes."²⁰⁹ As an amalgamation of imprecise guidelines with little situational specificity, ethical codes leave much to individual determinations of morality.²¹⁰ Lawyers thus need the skills to work with these rules and utilitarian principles instead of around them.²¹¹ Without personal reflection and ethical challenges in law school, law students do not have the opportunity to face the moral dilemmas critical to moral development.²¹² In Piagetian terms, without the tension created by conflict between personal perceptions and cognitive processes, moral development cannot occur.

Moreover, one of the most important skills legal educators instill in law students is the skillful manipulation of bodies of rules to achieve personally desirable results.²¹³ In his critique of legal education, Dean Erwin Griswold of Harvard Law School described the

208. Jonathan M. Freiman, *Steps Toward a Pedagogy of Improvisation in Legal Ethics*, 31 J. MARSHALL L. REV. 1279, 1285-86 (1998) (remarking that current ethics teaching methods in law school causes the student to manipulate "the ethical code as she would manipulate the law; she does not *ruminate* on it as she would ruminate on a moral decision").

209. Todd S. Smith et al., *Clinical Ethical Decision Making: An Investigation of the Rationales Used to Justify Doing Less Than One Believes One Should*, 22 EDUCATIONAL PSYCHOLOGY: RESEARCH AND PRACTICE (1990) (analyzing an empirical study suggesting that, despite the fact that individuals consider "what *should* be done in ethical conflict situations in line with existing ethical guidelines . . . [they] are more likely to respond to personal values and practical considerations in determining what they actually *would* do if faced with the situation").

210. *Id.* at 236 (acknowledging the mutability of professional ethical standards and the rare mention of specific ethical conflict situations in ethical codes).

211. Cramton, *supra* note 143, at 249 ("Because law students and lawyers are constantly tempted to invest generalizations with reality and to assume that law is more preexisting, certain and stable than it really is, the foremost task of legal education is to inculcate a skeptical attitude towards generalizations, principles, concepts and rules.").

212. REIMER ET AL., *supra* note 29, at 40-42.

213. Professor Paula A. Franzese of Seton Hall University School of Law points out:

We are living in a time when soul is being drained from the very social institutions that are supposed to be preserving life and values. We see signs of this drain in language that has become manipulative and empty, in the anemic condition of ethics and morality, and in the hunger for real pleasure and meaningful lives that even affluent and successful people confess to.

Franzese, *supra* note 136, at 11 (quoting Thomas Moore, *Forward to BENJAMIN SELLS: THE SOUL OF THE LAW* 9 (1994)).

“premium on verbal manipulation.”²¹⁴ Such verbal manipulation, especially if no personal moral convictions guide behavior, leaves attorneys with the ability and desire to maneuver the rules of professional ethics for maximum personal benefit. In effect, ethical guidelines become another set of rules for lawyers to manipulate through categorical thinking. Thus, when bar associations present practicing attorneys with ethics rules, the lawyers may easily circumvent the objectives behind these ethical regulations,²¹⁵ just as law school trains them to do with the rules of evidence, the rules of procedure, and other statutory and regulatory laws. Current legal ethics codes, dividing dilemmas into distinct categories, do not necessarily promote morality among lawyers, who are trained in law school to use the law by manipulating the categories to achieve desired results.²¹⁶ Instead, ethical guidelines present practicing attorneys with a way to feel morally superior without taking moral responsibility.

IV. THE VIABILITY OF MORAL EDUCATION FOR LAWYERS

Neither professional ethics codes for legal professionals nor law school teaching techniques promote moral growth in lawyers or law students. Current methods of incorporating moral convictions into the legal classroom generally involve courses on professional responsibility.²¹⁷ These courses vary in teaching style and emphasis.²¹⁸ Some legal ethics classes emphasize an experiential method of teaching in a clinical or other client-centered setting. Others are simple tutorials on the pertinent rules of professional conduct for the state bar exam.²¹⁹ No matter the approach, the manner in which law schools currently teach legal ethics does not seem to

214. Griswold, *supra* note 200, at 299.

215. “[S]ome of the students may use what they learn from [studying cases and bar opinions] to go just short of the line of impropriety and say, ‘Well, now I have learned how to outmaneuver my Bar Association disciplinary committee.’” Robert E. Matthews, *The Legal Profession Course*, 41 U. COLO. L. REV. 379, 381 (1969).

216. See ZITRIN & LANGFORD, *supra* note 179, at 3 (“There is a palpable tension between the rules of legal ethics and other important principles of our society: telling the truth, being fair and compassionate, seeking justice, being courageous, acting as a moral human being.”).

217. Lerman, *supra* note 103, at 457-64 (1998). At the W.M. Keck Foundation Forum on the Teaching of Legal Ethics in 1997, professional responsibility educators gathered to set goals and discuss the status of and prognosis for ethics education in law schools. *Id.*

218. *Id.* (noting that most legal ethics professionals seem to agree that ethical education through clinical experience may be the best way to inculcate moral reflection and the routine examination of personal values in lawyering).

219. *Id.*

have a significant effect on the moral development of law students.²²⁰

Professional responsibility courses do, however, share a common goal: they support consistent and morally-directed action on the part of all attorneys in giving advice and being advocates.²²¹ As described by Professor Thomas Schaffer of Notre Dame Law School, ethics courses aspire to have students begin to ask the following questions:

What is a worthy human life? Is there some kind of dissonant enterprise where we talk about living like a lawyer? That has to be a subsidiary question, because if you can't be a lawyer and live as a worthy person, then you should not be a lawyer. Which has priority, conscience or the rules? If it is the rules, the question is: are you clever enough to stay out of trouble? Are there enough common values that you can conduct the first enterprise?²²²

Classes on legal ethics thus involve historic rhetorical questions on the perpetual discord between societal goals and individual freedoms and beliefs. Despite the noble aspirations of professional responsibility seminars, they remain difficult to teach. Former Chief Justice Warren E. Burger observed that law schools deemphasized professional ethics by making professional responsibility courses one credit classes and by separating legal ethics into a single class, isolated from any real discussion of the practice of law.²²³ Just as law schools distinctively classify the traditional areas of substantive law separately, they pigeonhole ethical thinking in law, a critical component of all areas of lawyering, into its own compartment.²²⁴

220. Moliterno, *supra* note 146, at 96.

221. One of the least discussed, but most effective, ways in which legal educators teach ethics is by example. See Cramton, *supra* note 143, at 253 (describing the "hidden curriculum" ethically educating law students as being comprised of "the example of teachers and administrators in the handling of issues and people; the implication by students that matters not included in the formal curriculum are unimportant to lawyers; and the powerfulness of the student culture in affecting attitudes toward grading, examinations, competition, status and 'success'").

222. Lerman, *supra* note 103, at 464-65 (1998) (quoting Professor Thomas Schaffer).

223. Hon. Warren E. Burger, *The Role of the Law School in the Teaching of Legal Ethics and Professional Responsibility*, 29 CLEV. ST. L. REV. 377, 391-93 (1980).

224. See generally Freiman, *supra* note 208. Freiman argues that, whether the purpose of teaching legal ethics is to explain ethical doctrine or to teach law students how to behave ethically, traditional legal teaching methods are unsuccessful in the realm of legal ethics. *Id.*

In conjunction with this peculiar method of classification, anecdotal evidence supports the notion that students and even members of law school faculties scorn legal ethics courses and consider legal ethics to be useless and a waste of time.²²⁵ Law students tend to view these classes as detracting from valuable time that might be better spent on learning more legal principles. Likewise, law school faculties tend to treat professional ethics less seriously because the impact of these classes is harder to quantify.²²⁶ This disdainful attitude toward legal ethics professionals and classes²²⁷ would change if law schools incorporated professional accountability into all facets of legal education, including the teaching of substantive law.

Although critics of moral education in law school contend that, by the time an individual enters law school, his or her values are immutable,²²⁸ empirical studies in moral psychology suggest that individuals in their twenties and thirties have a *greater* capacity to improve their moral reasoning than younger students.²²⁹ Even assuming, arguendo, that entering law students have delineated val-

225. David Luban & Michael Millemann, *Good Judgment: Ethics Teaching in Dark Times*, 9 GEO. J. LEGAL ETHICS 31, 37-38 (1995). Luban and Millemann analyzed anecdotal data to demonstrate that students despise classes on professional responsibility and that the faculty at large do not deem legal ethics educators to be "real" legal professors. *Id.* at 37-39; Rosemary C. Harold, *Dilemmas: Ethics Are Lawyers' Biggest Concern—So Why Isn't There Any Rational Way to Teach Them in Law School?*, STUDENT LAW., Dec. 1989, at 9 (noting that students treat ethics classes as a joke and waste of time). *But see* David F. Cavers, *Signs of Progress: Legal Education*, 33 J. LEGAL EDUC. 33, 39 (1983) (outlining the results of a 1980 survey demonstrating that students considered ethics classes to be as important as other classes).

226. Luban & Millemann, *supra* note 225, at 37-38.

227. "It is a standard bit of student conventional wisdom that professional ethics classes are a joke. For many people, at best it's a blowoff course, one that can be skipped often and without guilt." Harold, *supra* note 225, at 9.

228. Noted jurist Oliver Wendell Holmes remarked, "We learn how to behave as lawyers, soldiers, merchants, or what not by being them. Life, not the parson, teaches conduct." Richard A. Posner, *The Deprofessionalization of Legal Teaching and Scholarship*, 91 MICH. L. REV. 1921, 1924 (1993) (quoting a letter from Oliver Wendell Holmes to Frederick Pollock (Apr. 2, 1926), in 2 HOLMES-POLLOCK LETTERS: THE CORRESPONDENCE OF MR. JUSTICE HOLMES AND SIR FREDERICK POLLOCK 1874-1932, at 178 (Mark D. Howe ed., 1941)); Katharine T. Bartlett, *Teaching Values: A Dilemma*, 37 J. LEGAL EDUC. 519, 520 (1987). Although Bartlett admits that values are generally formed by the time individuals begin law school, she emphasizes that legal educators have "some responsibility for our students' reflection about their own professional definition and values, about 'who they are what should be their future.'" *Id.* at 519 (quoting Roger C. Cramton, *Beyond the Ordinary Religion*, 37 J. LEGAL EDUC. 509 (1987)).

229. REIMER ET AL., *supra* note 29; James S. Leming, *Curricular Effectiveness in Moral Values Education: A Review of Research*, 10 J. MORAL EDUC. 147 (1981); *cf.* Posner, *supra* note 228, at 1924 ("As for the task of instilling legal ethics in law stu-

ues, the teaching of legal ethics can and will impact how these personal values factor into the professional role of attorney.²³⁰ Law schools can, at the very least, teach students how to confront their own values when legal dilemmas arise in the context of their professional role.²³¹ In addition, as Professor Elliott M. Abramson of DePaul University School of Law has noted, law professors can teach students that:

[T]heir ethical responsibilities extend to wider dimensions than their own and their clients' selfishly narrow materialistic interests [S]tudents can be infused with some modest sense that their work has social and collective impact as well as personal and individual impacts and that, accordingly, they must look outward, and comprehensively, as well as inwardly to the personal selfish nucleus of that work.²³²

Only if legal education recognizes that lawyering includes an acknowledgement of personal beliefs, even if this reflection is simply cursory, will lawyers be more human.

Being a lawyer does not mean being value-neutral.²³³ An attorney can consider each and every legal problem in value-driven terms. In fact, lawyering often involves reconciling clients' values that may differ from the beliefs of others or conventional societal values. Law schools must acknowledge the interplay of values and

dents at elite, or for that matter at any, law schools, I can think of few things more futile than attempting to teach people to be good.").

230. See Moliterno, *supra* note 146, at 95; see also Elliott M. Abramson, *Puncturing the Myth of the Moral Intractability of Law Students: The Suggestiveness of the Work of Psychologist Lawrence Kohlberg for Ethical Training in Legal Education*, 7 NOTRE DAME J.L. ETHICS & PUB. POL'Y 223 (1993) (arguing that, based on the work of Lawrence Kohlberg, legal education fails to fulfill its responsibility of training law students in morality on the fallacious premise that law students are too old to improve their moral reasoning skills).

231. Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINN. L. REV. 1599, 1662 (1991) (stating that law school should encourage students "to examine their personal values and the relationship of these values to their professional role, which, in turn, compels students to evaluate their professional responsibility"). See also Roger C. Cramton, *Beyond the Ordinary Religion*, 37 J. LEGAL EDUC. 509, 511 (1987) (describing the broader responsibility legal educators have to inculcate their students with a sense of public duty); Graham, *supra* note 150, at 30. But see Cramton, *supra* note 143, at 250. Cramton notes:

[S]ince the lawyer is engaged in the implementation of the values of others—a client or a government agency or the general society—he need not be concerned directly with value questions. His primary task is that of the craftsman or skilled technician who can work out the means by which the client or the society can achieve its goals.

Id.

232. Abramson, *supra* note 230, at 248.

233. Bartlett, *supra* note 228, at 520; Graham, *supra* note 150, at 29.

the law and incorporate the discussion of values in the context of lawyering, even if they consider increased moral development to be an unattainable goal. As Professor Deborah L. Rhode of Stanford University School of Law notes

[p]rofessional schools should require instruction in ethics for the same reason that they require courses in other areas; the subject is central to effective practice and not all students will elect it. Historical experience demonstrates that a laissez-faire approach is particularly inadequate when it comes to ethics . . . Many practicing lawyers will never encounter a shifting (or springing) executory interest; virtually all will confront issues of honesty, confidentiality, and loyalty.²³⁴

The ethical lessons taught and examples set by legal educators may be among the most useful learning law students accomplish while in law school.

Admittedly, the limited teaching time available to legal educators makes the incorporation of moral discourse into the discussion of substantive law challenging. Understandably, legal educators already have a heavy burden in teaching both the substance of the law and the relationship between law and society. Nevertheless, the importance of moral development, particularly in the legal community, justifies the inclusion of some moral dialogue in each and every law school class and throughout each year of law school.²³⁵ Such a fusion is certainly possible. The University of California at Berkley has developed such a fusion with a first year curriculum incorporating ethics education²³⁶ and Harvard Law School has implemented an interdisciplinary approach to teaching ethics.²³⁷ These innovations portend much for the future of legal ethics in law schools.

Models for pervasive ethics teaching and anecdotal analyses in a clinical legal education setting indicate that students will emerge from law school with a better sense of professional accountability when education results from the combination of moral dialogue

234. Rhode, *supra* note 6, at 43.

235. Throughout much of world history, the teaching of moral analysis was a critical part of the educational curriculum. Rhode, *supra* note 6, at 33-34. From the ancient Greek academies to medieval universities, to the early colleges and universities in the fledgling United States, the shaping and development of moral character was a substantial concern of educators. *Id.*

236. Stephen Bundy, *Ethics Education in the First Year: An Experiment*, 58 LAW & CONTEMP. PROBS. 19 (1995).

237. David B. Wilkins, *Redefining the "Professional" in Professional Ethics: An Interdisciplinary Approach to Teaching Professionalism*, 58 LAW & CONTEMP. PROBS. 241, 247-57 (1995).

and legal training.²³⁸ Ethical issues permeate every area of substantive law and provide a normative arena in which the legal educator may demonstrate the critical role ethics plays in legal analysis.²³⁹ Teaching techniques that foster the interplay between morality and the law are critical to the development of professional ethics because they enable law students to observe and practice ethical behavior in a legal context without any disastrous implications for clients and society at large.²⁴⁰

If law schools engaged their students in moral conversation throughout law school, fledgling attorneys would feel closer to their clients and see themselves as more accountable to society. Most importantly, it might make lawyers happier with themselves.²⁴¹ The constant struggle to resolve personal beliefs with categorical, formalistic legal training would naturally be emotionally draining. Law and morality, however, can coexist. The inclusion of the law into one's mind does not necessarily preclude the consideration of one's personal values.²⁴² In fact, the environment of legal training must necessarily include moral introspection to foster ethical thinking, because societal reasoning derives from a communal sense of values.²⁴³ In addition, by encouraging students to reason

238. Rhode, *supra* note 6, at 32 (arguing that law schools need to adopt a comprehensive approach to professional responsibility that includes separate coverage of legal ethics as well as the pervasive teaching of legal ethics); Franzese, *supra* note 136, at 19; Graham, *supra* note 150, at 35-41; Robert P. Burns, *Teaching the Basic Ethics Class Through Simulation: The Northwestern Program in Advocacy and Professionalism*, 58 LAW & CONTEMP. PROBS 37 (1995).

239. Rhode, *supra* note 6, at 50-51.

240. *Id.*

241. Laurie A. Morin, *Reflections on Teaching Law as Right Livelihood: Cultivating Ethics, Professionalism, and Commitment to Public Service from the Inside Out*, 35 TULSA L.J. 227, 254-55 (2000).

242. Freiman, *supra* note 208, at 1285 (recognizing that "[w]ithin time, the particular ethical conundrums of the profession are not seen through the prism of the personal moral system previously developed, but through the prism of a set of legal requirements: the Code, malpractice doctrine, etc.").

243. Matthew Lipman, *Ethical Reasoning and the Craft of Moral Practice*, 16 J. Moral Educ. 139, 141 (1987). Lipman notes that:

[T]he reason of the child is helpless in the absence of conditions which nurture reflection and are in turn hospitable to it. If the school, the family, the teacher and the curriculum do not foster thinking and do not welcome it when it occurs, the likelihood that the child will be able to engage in ethical reasoning is fairly remote. It is of equal importance that children learn to reason together with their peers, for the only way to deal effectively with peer pressure is not to engage in futile efforts to eliminate it, but to endeavor to make it rational, and this can be done by converting the classroom into a reasoning community.

Id.

with their peers, educators can effectively harness peer pressure to encourage the development of moral reasoning skills.²⁴⁴ Currently, law school fails to combine moral conviction with legal training.²⁴⁵

Reflecting on his experience as a legal educator, one scholar comments:

Incorporating right livelihood into the curriculum would require a paradigm shift in the way we think and deliver legal education. The traditional model of law school teaching, with its emphasis on the Langdellian method, rigorous categorical thinking, and competitive adversarial process, may accomplish some important pedagogical goals, but it leaves many casualties in its wake."²⁴⁶

As so skillfully demonstrated in this personal reflection, traditional legal discourse lauds the separation of values and beliefs from objective, conclusory determinations of law.²⁴⁷ To prevent such separation, and rather an amalgamation of morality and the law, legal educators can look to the teachings of Piaget and Kohlberg.

The inherent tension found between legal and personal convictions can actually serve as a moral tool²⁴⁸ in a manner similar to that employed by Moshe Blatt in applying Kohlberg's cognitive-developmental theory of moralization²⁴⁹ and Piaget's work on the evolution of morality through cognitive processes.²⁵⁰ Instead of ignoring personal values in the legal context or viewing these beliefs as a liability, the law should embrace personal morality as a way to enhance the law and the application of legal precepts. In terms of legal training, educators should strive to push their students to

244. *Id.*

245. See generally Franzese, *supra* note 136, at 18 (reflecting on the lack of development in moral reasoning present in traditional legal education).

246. Morin, *supra* note 241, at 233.

247. *Id.* at 255. Morin suggests the creation of a "community of truth," in which "'objects' of knowledge and ultimate authorities are replaced by a community of learners gathered around a common 'subject' and guided by shared rules of observation and interpretation." *Id.*; see also PARKER J. PALMER, *THE COURAGE TO TEACH: EXPLORING THE INNER LANDSCAPE OF A TEACHER'S LIFE 2* (1998) (describing a teaching model that centers on the student and not the teachers' knowledge as the basis for learning).

248. Eleanor W. Myers, "Simple Truths" About Moral Education, 45 AM. U. L. REV. 823, 826 (1996) (suggesting that the legal profession would be better served if law schools trained students to incorporate moral intuitions in resolving ethical dilemmas).

249. See Part I.

250. See Part I; see Morin, *supra* note 241, at 233. Morin, although not relying on Piaget's theory of morality shifts arising from traditional cognitive growth, argues that the conflicts between personal values and the law would prevent alienation and encourage social accountability in law students. *Id.*

higher stages of moral judgment in order to encourage advanced reasoning on the basis of ethical principles and personal reflection, as opposed to more selfish, ego-based drives or the mere maintenance of the current socio-legal order.

Some teaching techniques embrace the dichotomy between the socio-legal order and individual morality in such an educational fashion.²⁵¹ Adult learning theorist Jack Mezirow applied the groundwork of Piaget's description of the accommodation learning model in proposing that experience becomes educational when the experience involves a "disorienting moment."²⁵² He describes a disorienting moment to be a cognitive exposure that defies the learner's perception and analysis of his surrounding environment and the events that transpire therein.²⁵³ Such a disorienting moment then, according to Mezirow, may precipitate a reflection and exploration of the experience such that the individual must reorient himself.²⁵⁴ In this manner, when personal views conflict with objective legal reality,²⁵⁵ the lawyer will morally grow if he must reconcile this reality and the motivations with his or her personal views. If such reconciliation does not occur, the lawyer will be motivated to transform the socio-legal order in conjunction with his personal values, whatever they may be. In any event, the tension between personal and legal morality will be recognized and explored by the attorney.

Although adult learning techniques based on the experiential accommodation concept have been proposed with regard to clinical

251. Wendel, *supra* note 109, at 179 (recognizing that "legal education does not incline law students to question the foundation of the norms of their profession").

252. See generally JACK MEZIRROW ET AL., *FOSTERING CRITICAL REFLECTION IN ADULthood: A GUIDE TO TRANSFORMATIVE AND EMANCIPATORY LEARNING* (1990).

253. *Id.* at 168; see also PAULO FRIERE, *PEDAGOGY OF THE OPPRESSED* 80-81 (1970) (suggesting that constant evaluation of cognitive processes is critical to the continued well-being of individuals and society).

254. MEZIRROW ET AL., *supra* note 252, at 168.

255. Professor Richard A. Matasar notes:

Lawyers, masters of manipulation, take on a role that potentially alienates their moral judgments from their actions on behalf of clients. But lawyers are not merely professionals, they are people who belong to religious organizations, study moral philosophers, read popular texts on justice, and have complicated sets of beliefs about what is right and what is wrong. And whether their beliefs spring from complex and unbending external standards or from less definite or flexible idiosyncratic feelings, lawyers cannot escape from themselves.

Matasar, *supra* note 106, at 975.

legal education,²⁵⁶ Piaget's accommodation model in the context of Kohlberg's cognitive development theory and Blatt's moral education method has significance for legal education in general. Lawyering, from the attorney's perspective, ultimately is about relationships—relationships between lawyers, between lawyers and society, and, most significantly, between lawyer and client. Legal ethics forms the crux of this last relationship.²⁵⁷ In fact, professional accountability is, in effect, synonymous with how the attorney conducts himself in all of his or her relationships. Given the magnitude and frequency of these relationships, the lawyer who remains unable to reconcile his personal values with that of the socio-legal order finds herself in a rather difficult situation.

CONCLUSION

Professor Richard A. Matasar describes the continuous battle in which attorneys find themselves. He describes the lawyer's fate as the need "to argue simultaneously the correctness of matters he or she subjectively believes to be incorrect. Doing so for oneself conjures up images of split personalities and fundamental contradictions."²⁵⁸ This mental separation is not necessary and, in fact, may be counter-productive, not only to the attorney, but to society at large. When attorneys forego moral considerations for the mere continuance of the existing social order, they do not achieve any potential they may have for Stage V morality in the cognitive developmental model of moralization engendered by Kohlberg.

256. Quigley, *supra* note 145, at 37. Quigley proposes that clinical legal educators apply adult learning techniques "to seize" the disorienting moments available in clinical legal education to teach social justice. *Id.* at 38.

257. Moliterno, *supra* note 146, at 98 ("Although the law student can learn the substantive law of contracts quite well without entering into a contract, the student cannot appreciate the experiential aspects of the law that is formed by data from the lawyer's various relationships without experience in those relationships.") Moliterno theorizes that legal educators must expose their students to the relationships that form the substance of the legal profession. *Id.* He defines those relationships to be that between lawyer-client, lawyer-justice system, lawyer-adverse lawyer, lawyer-witness, lawyer-juror, subordinate lawyer-supervisory lawyer, lawyer-society. *Id.* at 100. Each of these interactions involves a different set of norms, but all center on one question, "who am I as a lawyer and as a person?" *Id.* at 101. According to Moliterno, traditional law school classroom teaching does not teach law students how to conduct themselves appropriately in these relationships and comport to the most socially responsible behavior, while not compromising personal values. *Id.* In particular, Moliterno contends that having a professional responsibility course is not the most efficacious manner in which to teach ethics, although this method is most commonly adopted by law schools in light of its similarity to other learning theories generally found in the legal classroom. *Id.* at 105.

258. Matasar, *supra* note 106, at 976.

Such Stage V reasoning forms the basis for social change. In order for attorneys to fulfill professionalism's promise, law school needs to promote, not discourage, higher levels of moral ability. As articulately stated by Professor Paula Franzese of Seton Hall University School of Law:

There is no such thing as living a neutral life. As attorneys each of us is powerful, no matter what we may have been told or may have felt to the contrary. Let us proceed, then, to define our calling carefully as well as mightily As we chart our course, it will be up to us to ask, "Does this path have a heart?" Let us hope that we will always have the wisdom to choose that road. Our doing so will transform for the better the shape of this world, far more than any courtroom or boardroom victory ever could.²⁵⁹

259. Franzese, *supra* note 136, at 18 (emphasis omitted).

