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NOTE

INCENTIVIZING MORAL DEVELOPMENT IN LAW SCHOOL: THE BENEFITS OF PERSONAL MORAL GROWTH MOVING FORWARD

MICHAEL MCSHERRY

ABSTRACT

This Note is directed toward law students focused on meeting the challenges of a changing legal industry. In identifying key issues facing prospective lawyers, this Note demonstrates the value of moral development on an individual level. Using Lawrence Kohlberg's theory of moral development as a framework, this Note parallels law-school experiences to Kohlberg's six moral stages in order to show students how, and why, self-directed moral growth can and should be achieved.

INTRODUCTION

Law school is tough, but life after graduation will be immeasurably more difficult. Success in the industry will take more than just a *juris doctor* in hand, and if students have yet to begin planning and preparing for the challenges ahead, now is a good time to start. The legal industry is in a state of flux, and the problems plaguing the profession will soon become students' problems too. The last decade has been one of drastic transformation, testing the adaptability and endurance of lawyers, firms, and law schools alike. This Note will identify three problems facing students and soon-to-be lawyers: (1) an uncertain job market with a dearth of employment prospects; (2) shifting public perception of the profession; and (3) a troubling trend of mental and emotional health problems among lawyers. In response to these problems, this Note urges a focus on the development of personal morality.

While students are still waiting in the safe harbor of law school, the trends identified above might seem more like distant trouble on the horizon when compared to the more immediate stresses of academia. But regardless of any amount of foresight, students are probably still painfully aware that

they are faced with entry into a uniquely challenging industry. A practical plan necessitates directing education in a way that gives one a leg up after graduation.

In its essence, a legal education retains core components familiar to both current students and their predecessors, regardless of the generational gap; one works to become analytical, logical, organized, detail-oriented, well-spoken, and practiced in writing. But recent years have demonstrated the necessity of a new focus on the practical realities of the profession, not all of which are strictly job-related. Many law schools, in response to the changing circumstances of the profession, have shifted their focus to include more responsive remedies like clinical and mentor education; students can better prepare for “real-world” challenges by facing them early on in their education.

The aim of this Note is not to attack or detract from the value of typical professional preparation. Clinical education, networking, internships, externships, and the plethora of assistance offered by career services are invaluable tools for students in their professional development. Further, students should not employ one tool to the exclusion of all others; success inevitably hinges on the ability to identify and utilize all of the available tools.

This Note *does* aim at identifying and incentivizing the development of a competency that is too often overshadowed for a perceived lack of practical application: moral competency. For a profession whose central function is so closely tied to a heightened professional ethic and the moral zeitgeist of the public it serves, personal morality is perceived by many as irrelevant at best, anathema at worst. The Model Rules of Professional Conduct do, after all, provide the ethical floor; so why bother in the sphere of moral reasoning on the individual level at all?

The answer, in essence, is that it is good for job prospects, good for the profession, and good for the individual. Put so simply, it sounds like a prescription. But moral development is not, in itself, a cure to any malady. It is an aspiration and a tool, good in itself and good for its uses, which students may find value in pursuing as part of their professional development. So what problems can this tool be turned toward? In order to prove useful, moral development must be able to contribute toward career success while mitigating, if not ameliorating, larger problems facing the profession.

The structure of this Note will revolve around the value of moral development to students and future lawyers, but this necessitates both a cursory examination of the large-scale issues facing the profession alongside a working theory of moral development. Once the issues have been identified and a working theory of moral development established, the value of continuing moral development will be examined by its utility for both the individual student and the legal profession at large. A practical approach toward

the inclusion of moral development goals in education will follow. As such, the structure of this Note will be broken down into four main Sections:

- I. Issues Facing Students and the Profession: This Section will provide a broad overview of many issues facing the profession at large which, through cumulative interplay, affect the job market and the primary interest of the law student population.
- II. Moral Development in a Legal Education: Kohlberg's Post-Conventional Morality: This Section will summarize and analyze Lawrence Kohlberg's theory of moral development, drawing parallels between his six developmental stages and the degrees of moral instruction offered in the typical legal education.
- III. The Value of Moral Advancement in the Profession: This Section will provide insight into how continuing moral development adds to professional value, framed within the broader demands and issues facing the profession.
- IV. Pushing for Moral Development and Utilizing the Institution to the Student's Advantage: This Section will propose a plan for students, through self-conscious assessment and inventory, to work to continue moral development in their legal education.

There is no single path to employment or success after law school. The variety of practitioners and their endlessly diverse iterations of strengths and weaknesses are evidence enough of that. This Note acknowledges that a moral approach may not fit the precise needs of some students. Regardless, the general value of moral growth is such that it warrants time, effort, and concentration in professional development.

I. ISSUES FACING STUDENTS AND THE PROFESSION

This Note began by identifying three key issues: (A) a transitioning job market and industry demands; (B) shifting public perception; and (C) a trend of mental and emotional health issues in the profession. Developing moral competency, while in no way the cure-all solution, is valuable insofar as it provides students with one more tool to utilize in their work. Before the utility of moral development may be addressed, students must be aware of the challenges that await them after graduation.

A. *The Transitioning Job Market and Industry Demands*

Students should be well-aware by now that they will be entering a different world than the one their professors and mentors first began their practice in. The financial crisis, which began boiling over in late 2007, resulted in massive layoffs, slashed budgets, and a sharp decline in the rate of new hires. It was also one of the most dramatic shifts in the legal industry

as a whole.¹ As the economy began to show signs of improvement, it was expected that the legal industry as a whole would heal but would *not* return to its former prosperity.²

Law school enrollment reflects the same uncertainty both in the student population and in the profession. A legal education is a sizeable investment, and the constricted job market does little to induce the hopes of prospective students. Law school enrollment over the past few years has shown sharp declines and minimal recuperation: a 9% decrease from 2011 to 2012;³ an 11% decrease from 2012 to 2013;⁴ a 6.9% decrease from 2013 to 2014;⁵ and a 4.9% decrease from 2014 to 2015.⁶ In 2015, 53% of schools saw a decline in 1L enrollment, with fifty-four schools reporting a decline exceeding ten percent.⁷

Some scholars have tentatively forecasted continuing recovery in enrollment rates, but also point to shifting trends in the composition of enrolling law school classes.⁸ While this might indicate an eventual recovery in the legal education industry, it does not presently eliminate the issue. These numbers are merely symptoms of larger problems in the industry, which this Note focuses on, but such symptoms are more readily apparent to students already committed to their education.

The larger issue plaguing many new lawyers and students alike is the transitioning job market. The legal industry has yet to recover from the “Great Recession” of 2008 onward. While the United States’ economy has improved, the necessity of layoffs, cost-reduction, and general strategy re-

1. See William D. Henderson & Rachel M. Zahorsky, *Law Job Stagnation May Have Started Before the Recession—And It May Be a Sign of Lasting Change*, A.B.A. J. (July 01, 2011, 9:40 AM), http://www.abajournal.com/magazine/article/paradigm_shift/.

2. *Id.*

3. *ABA Section of Legal Education Reports Preliminary Fall 2012 First-Year Enrollment Data*, A.B.A. NEWS (Nov. 28, 2012), http://www.americanbar.org/news/abanews/aba-news-archives/2013/08/aba_section_of_legal.html.

4. *ABA Section of Legal Education Reports 2013 Law School Enrollment Data*, A.B.A. NEWS (Dec. 17, 2013), http://www.americanbar.org/news/abanews/aba-news-archives/2013/12/aba_section_of_legal.html.

5. *ABA Section of Legal Education Reports 2014 Law School Enrollment Data*, A.B.A. NEWS (Dec. 16, 2014), http://www.americanbar.org/news/abanews/aba-news-archives/2014/12/aba_section_of_legal.html.

6. *2015 Standard 509 Information Report Data Now Available*, A.B.A. SEC. OF LEGAL EDUC. & ADMISSIONS TO THE BAR, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_fall_enrollment_announcement.authcheckdam.pdf (last visited Mar. 6, 2016).

7. *Id.* It is worthy to note, however, that thirty-nine schools reported an *increase* in their 1L matriculants (those beginning their studies), indicating that some recovery in admission sizes is occurring. *Id.*

8. See generally Jerry Organ, *Projections for Law School Enrollment for Fall 2015*, THE LEGAL WHITEBOARD (Apr. 13, 2015), <http://lawprofessors.typepad.com/legalwhiteboard/2015/04/projections-for-law-school-enrollment-for-fall-2015.html> (estimating a 2.5% decrease from the 2014 entering class size, and speculating on an “unusual enrollment/profile pressure that may then have a ripple effect down through the rankings.”).

formulation left the profession staggering. Whatever optimism one may have about the future of the job market for lawyers, data suggests that optimism be tempered by a dose of realistic expectation: in 2012, for example, Forbes estimated a rough 2:1 ratio of law school graduates to estimated job openings.⁹ Forbes' data also indicated that these ratios varied widely depending on the state,¹⁰ but so long as the amount of graduating students substantially exceeds available jobs, students can expect fierce competition and restricted opportunities.

The prospective job market is uncertain to say the least, hinging in the end (as it always has) on the demand for legal services in the economy at large. According to the 2015 Peer Monitor Report on the State of the Legal Market, demand for law firm services grew modestly (under 0.5 percent) in 2014.¹¹ Additionally, law firm financial performance in 2014 showed signs of improvement compared to 2013.¹² The Peer Monitor Report, in assessing the changes and challenges facing the legal industry, calls particular attention to new types of competition in the legal market, citing "evidence that the market share of traditional law firms is being eroded by the presence of new competitors in the legal services sector."¹³ This trend, the Report indicates, is in response to client demands for "efficiency and cost effectiveness in the delivery of legal services" and a willingness to "disaggregate services among a variety of different firms and providers."¹⁴

The economic collapse of 2008 was followed by a transition to a "buyer's market" where more decisions about services and pricing were made to cater to clients' changing demands and expectations.¹⁵ The Peer Monitor Report concludes by advocating for long-term strategies which account for this shift toward a truly client-oriented, and in many ways client-determined, market.¹⁶ Law students should be mindful of this advice, as it

9. Joshua Wright, *The Job Market for Lawyers: Side Work on the Rise Amid Continuing Glut of New Grads*, FORBES (Jan. 10, 2014, 11:20 AM), <http://www.forbes.com/sites/emsi/2014/01/10/the-job-market-for-lawyers-side-work-on-the-rise-amid-continuing-glut-of-new-grads/> (comparing 46,565 individuals graduating with law degrees in 2012 with an estimated 21,640 job openings in the field).

10. Joshua Wright, *The Oversaturated Job Market for Lawyers Continues, and On-The-Side Legal Work Grows*, EMSI (Jan. 10, 2014), <http://www.economicmodeling.com/2014/01/10/the-oversaturated-job-market-for-lawyers-continues/> (Forbes' state-by-state analysis compares 2012 graduates to 2013 estimated job openings. The highest observed ratio was 7.9 students for every one job opening (Vermont), while the lowest observed an even ratio (Alaska, which "imports" lawyers due to a lack of law schools in the state).).

11. GEORGETOWN LAW CENTER FOR THE STUDY OF THE LEGAL PROFESSION & THOMSON REUTERS PEER MONITOR, 2015 REPORT ON THE STATE OF THE LEGAL MARKET 3 (2015), <http://www.law.georgetown.edu/academics/centers-institutes/legal-profession/upload/FINAL-Report-1-7-15.pdf>.

12. *Id.*

13. *Id.* at 10.

14. *Id.* at 11.

15. *Id.* at 15.

16. *Id.* at 16.

applies equally to their service as to that of major firms. The development of personal morality, as discussed later in this Note, will contribute to competencies that firms and clients alike expect lawyers to have in this client-directed market.

B. Poor Public Perception

A young boy and his mother are walking through a cemetery when the boy sees a tombstone reading: “Here lies a good man and a great lawyer.” The boy asks his mother why they buried two people together.

Students already know their chosen profession is the punchline of more than just a few jokes. But students should also understand that, true to the saying “there’s a grain of truth in every joke,” the public at large does not view the profession very favorably. For a profession inextricably tied to foundational principles like “truth” and “justice,” lawyers are rarely vaunted as moral arbiters and are more often portrayed as corrupt mercenaries.

Public esteem in the profession is flagging. According to the Pew Research Center’s 2013 polling on perceived contribution, lawyers are not perceived as making significant contributions to society at large.¹⁷ In a poll ranking ten general professions based on the amount of participants who believed the profession contributed “a lot” to society’s well-being, lawyers came in dead last. Lawyers ranked below, in order from highest to lowest percentages: Military (78%); Teachers (72%); Medical Doctors (66%); Scientists (65%); Engineers (63%); Clergy (37%); Artists (30%); Journalists (28%); and Business Executives (24%).¹⁸ Lawyers came in at only 18%, a full five percentage points lower than the same poll conducted in 2009.¹⁹

For all of the perceived (or lack-thereof) contributions lawyers make to the well-being of society, public perception of honesty in the profession is also less-than-stellar. According to a 2015 Gallup poll, only 21% of respondents rated lawyers highly in terms of honesty.²⁰ Lawyers were not last in this race, but flagged behind several other ranked professions, as indicated by Figure 1²¹ below:

17. *See Public Esteem for Military Still High*, PEW RESEARCH CENTER (July 11, 2013), <http://www.pewforum.org/2013/07/11/public-esteem-for-military-still-high/>.

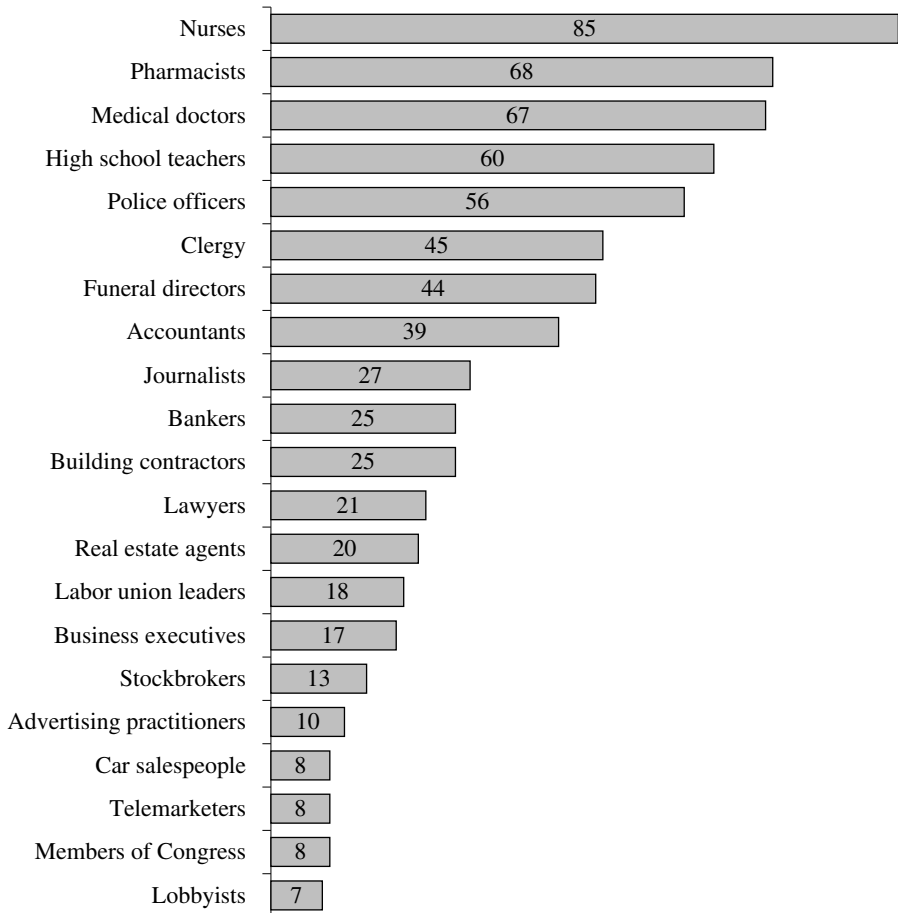
18. *Id.*

19. *Id.*

20. *Honesty/Ethics in Professions*, GALLUP (Dec. 2–6, 2015), <http://www.gallup.com/poll/1654/honesty-ethics-professions.aspx>.

21. *Id.*

FIGURE 1



The poll revealed that only 8% of respondents believed members of Congress were highly honest, and coincidentally, a 2015 Congressional profile indicated that 159 House members and 54 Senators in the 114th Congress have law degrees.²²

Of course, these polls only deal with public *perception*; they do not gauge the profession's actual contribution to society's well-being, nor do they accurately gauge how trustworthy lawyers are. Perception does not necessarily capture the truth of the matter, though the effects of such perception become very real. Regardless, trustworthiness and value to society constitute the essence of the profession; clients often entrust very personal and important information to their lawyers, and in turn expect their lawyers to effect a positive outcome for their problems. The less a lawyer is trusted,

22. Jennifer Manning, *Membership of the 114th Congress: A Profile*, CONGRESSIONAL RESEARCH SERVICE (Oct. 31, 2015), <https://www.fas.org/sgp/crs/misc/R43869.pdf>.

the less effective that lawyer will be. A reputation for trustworthiness and value is important both to individual lawyers and firms alike.

Perhaps one of the largest contributing factors to the poor public perception of the profession is the fact that lawyers are associated with high ethical standards, and subsequent failure to meet those standards appears as a striking hypocrisy. The failure of those charged with upholding the law reflects poorly on the profession, but also speaks to (in some instances) a dearth of personal moral accountability on the part of individuals. Take, for example, the calamity that followed the Enron scandal. Business executives and accountants received the brunt of public scrutiny, while the lawyers who walked away relatively unscathed still invited scrutiny of the profession and its ethical standards.²³ Further examples of lawyers crossing the lines of moral permissibility abound: perhaps most notably, the Watergate scandal, which led to an overhaul of ethical rules and obligations.²⁴

The American Bar Association, in its preface to the Model Rules of Professional Conduct, sets forth the goal of “assuring the highest standards of professional competence and ethical conduct.”²⁵ A multitude of rules pertaining to the trust and value implicit in the client-attorney relationship exist. Yet even with the guidance provided by the Model Rules of Professional Conduct, lawyers still violate those rules (either willfully or through their own negligence) in striking numbers. The American Bar Association’s Survey on Lawyer Discipline Systems shows a large number of both public and private national disciplinary sanctions in recent years. Private disciplinary sanctions, not including admonitions and reprimands, totaled by year include: 1,742 (2011);²⁶ 2,073 (2012);²⁷ 2,034 (2013);²⁸ and 2,077

23. See, e.g., Dan Ackman, *It’s the Lawyers’ Turn to Answer for Enron*, FORBES (Mar. 14, 2002, 6:30 AM), <http://www.forbes.com/2002/03/14/0314topnews.html>; Ellen Joan Pollock, *Enron’s Lawyers Faulted Deals but Failed to Blow the Whistle*, WALL ST. J. (May 22, 2002, 12:01 AM), <http://www.wsj.com/articles/SB1022015509705465440>; Julie Hilden, *Scummy Judgment: Why Enron’s Sleazy Lawyers Walked While Their Accountants Fried*, SLATE (June 21, 2002, 10:45 AM), http://www.slate.com/articles/news_and_politics/jurisprudence/2002/06/scummy_judgment.html.

24. See generally Mark Curriden, *The Lawyers of Watergate: How a ‘3rd-Rate Burglar’ Provoked New Standards for Lawyer Ethics*, A.B.A. J. (June 1, 2012, 10:20 AM), http://www.abajournal.com/magazine/article/the_lawyers_of_watergate_how_a_3rdrate_burglary_provoked_new_standards.

25. MODEL RULES OF PROF’L CONDUCT Preface (1983).

26. *2011 Survey on Lawyer Discipline Systems*, A.B.A. CENTER FOR PROF. RESP. (May 2013), http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2011_sold_final_report.authcheckdam.pdf.

27. *2012 Survey on Lawyer Discipline Systems*, A.B.A. CENTER FOR PROF. RESP. (Oct. 2014), http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2012_sold_complete_results.authcheckdam.pdf.

28. *2013 Survey on Lawyer Discipline Systems*, A.B.A. CENTER FOR PROF. RESP. (Oct. 2014), http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2013_complete_sold_results.authcheckdam.pdf.

(2014).²⁹ Public disciplinary sanctions totaled by year include: 4,174 (2011),³⁰ 2,880 (2012),³¹ 2,600 (2013),³² and 4,566 (2014).³³

The Model Rules of Professional Conduct provide a floor of ethical obligation for lawyers that is—unfortunately—not always met. These violations undermine the integrity of the profession and contribute to the unfavorable public perception of the profession. The problem of public perception is one that is elusive to capture but that inevitably affects the legal industry. Students must be aware of the difficulties posed by a lack of general trust in the profession; it affects everything from the lawyer-client relationship to the client-directed structuring of legal services.

C. *Personal Well-Being Issues in the Profession*

Outside of the more practical concerns of “business as usual,” students should also be aware that they will enter a surprisingly *unhappy* profession. While discussion of problems facing the legal profession inevitably drifts toward the economic/job-market issues discussed earlier, general “quality of life” issues remain important considerations for students in the course of their professional development.

In a 2012 study gauging over 65,000 employees’ job satisfaction and happiness in multiple employment areas, the lowest rated job (receiving a 2.89 “Bliss” score out of a 5-point scale) was “Associate Attorney.”³⁴ The study asked participants to evaluate ten factors used to gauge overall workplace happiness, including: “one’s relationship with the boss and co-workers, work environment, job resources, compensation, growth opportunities, company culture, company reputation, daily tasks, and control over the work one does on a daily basis.”³⁵

Students need not look to currently practicing attorneys to see the effect the profession has on many individuals; for many, a marked decrease in quality of life begins during law school. One study indicated that students tend to experience “increases in depression, negative mood, and physical symptoms, with corresponding decreases in positive affect and life satisfaction”³⁶ as well as “shifts from helping and community-oriented values to

29. 2014 Survey on Lawyer Discipline Systems, A.B.A. CENTER FOR PROF. RESP. (Jan. 2016), http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2014_sold_final_results.authcheckdam.pdf.

30. A.B.A. CENTER FOR PROF. RESP., *supra* note 26.

31. A.B.A. CENTER FOR PROF. RESP., *supra* note 27.

32. A.B.A. CENTER FOR PROF. RESP., *supra* note 28.

33. A.B.A. CENTER FOR PROF. RESP., *supra* note 29.

34. Jacquelyn Smith, *The Happiest and Unhappiest Jobs in America*, FORBES (Mar. 22, 2013, 2:55 PM), <http://www.forbes.com/sites/jacquelynsmith/2013/03/22/the-happiest-and-unhappiest-jobs-in-america/>.

35. *Id.*

36. Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy?: A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554, 556 (2015).

extrinsic, rewards-based values in the first year.”³⁷ A second study confirmed these findings, observing that three years of law school saw an increase in student distress and a decrease in internal motivation for legal work.³⁸

The industry also has a long history of substance-abuse issues. Studies suggest that lawyers struggle with drug and alcohol abuse at a rate roughly twice that of the general population.³⁹ Correlation does not equal causation, but the relatively high rate of substance abuse in the profession supports the inference that *something* in the profession pushes lawyers to rely on these unhealthy coping mechanisms. A variety of factors may contribute to the high rate of substance abuse in the profession, including: “social influences within the work environment, heavy workloads, stress attributed to working with clients, and co-occurring psychological illnesses that precede and/or exacerbate substance abuse problems.”⁴⁰

Students should be mindful that law school and the remainder of their professional careers will be ripe with stress, conflict, and inevitable times of dissatisfaction. If professional development is intended to span the course of a career, then providing for personal well-being is a worthwhile endeavor.

This Section has given a broad overview of three issues facing law students. As discussed later in this Note, the development and maintenance of late-stage personal morality will assist students in their efforts to meet these challenges. The next Section provides a theory of moral development that closely parallels the typical law school experience.

II. MORAL DEVELOPMENT IN A LEGAL EDUCATION: KOHLBERG’S POST-CONVENTIONAL MORALITY

This Section will examine a theory of moral development explored by psychologist Lawrence Kohlberg.⁴¹ In providing the fundamental concepts

37. *Id.*

38. *Id.* at 567.

39. See Meghan Vivo, *Addicted Lawyers Start as Addicted Law Students*, ELEMENTS BEHAVIORAL HEALTH, http://www.americanbar.org/content/dam/aba/administrative/law_students/article.addicted.authcheckdam.pdf (last visited Apr. 28, 2015); see also *Attorneys and Substance Abuse*, BUTLER CENTER FOR RESEARCH (Sep. 2012), http://www.hazelden.org/web/public/document/bcrup_attorneysubstanceabuse.pdf. See generally James Podgers, *Younger Lawyers Are Most at Risk for Substance Abuse and Mental Health Problems*, *a New Study Reports*, A.B.A. J. (Feb. 07, 2016, 11:15 AM), http://www.abajournal.com/news/article/younger_lawyers_are_most_at_risk_for_substance_abuse_and_mental_health_prob (stating that “First, the levels of problem drinking and mental health issues in the legal profession appear to be higher than indicated by previous studies. And second, younger lawyers are the segment of the profession most at risk of substance abuse and mental health problems.”).

40. BUTLER CENTER FOR RESEARCH, *supra* note 39.

41. Lawrence Kohlberg was an influential American psychologist whose most noted works dealt with his theory of stage-based moral development. His work was influenced and inspired by the earlier work of Jean Piaget, another pioneer in developmental psychology. Kohlberg’s work was distinguished, in its time, for its unique blend of moral philosophy with psychology. Kohlberg

of Kohlberg's theory of moral development, this Section will draw parallels to the typical law school education. Such parallels will allow students to assess their current level of moral development and to chart possible progression in their continuing education.

To begin, Lawrence Kohlberg's work in moral psychology was influenced by, and is inseparable from, moral philosophy. For many, the moral philosophies of Greeks like Plato and Aristotle are dry subjects better left in dusty textbooks; but Kohlberg's theory of moral development imports lessons from older philosophies in order to frame his ideas in ways particularly pertinent to lawyers and students alike. Kohlberg writes: "Philosophic theory is the reflective analysis of, and justification for, fundamental normative ideas such as the ideas of truth and justice."⁴² Law school, and the legal profession in general, are hard-coded with these "ideas of truth and justice." This Note will allow students to perceive, and therefore take full advantage of, the philosophical process at work in their legal education.

The core of Kohlberg's theory of moral development is a three-level, six-stage system.⁴³ The three levels "may be considered separate moral philosophies, distinct views of the social-moral world."⁴⁴ In order of progression and development, these stages are: (A) Preconventional; (B) Conventional; and (C) Postconventional.⁴⁵ Each of these levels is comprised of two distinct stages, though each retains the general moral philosophy of its respective level. Kohlberg's levels focused on the education of children, but these levels of moral achievement are still observable in the general population. This Section will move through Kohlberg's levels, drawing parallels to aspects of law school that students will most likely recognize from their personal experiences.

A. *Preconventional Morality and Parallels*

One who falls in the first level, the "Preconventional" level of morality, is "responsive to cultural rules and labels of good and bad, right or wrong, but interprets these labels in terms of either the physical or the hedonistic consequences of action (punishment, reward, exchange of favors) or in terms of the physical power of those who enunciate the rules before them."⁴⁶ One can imagine a child who gets a cookie when he does well and a time-out when he misbehaves; the child can understand the rules of his

lived from 1927 until 1987. More information may be found at <http://www.famouspsychologists.org/lawrence-kohlberg/>.

42. Lawrence Kohlberg, *Moral Stages and the Aims of Education*, in *THE PHILOSOPHY OF MORAL DEVELOPMENT VOL. 1: ESSAYS ON MORAL DEVELOPMENT I* (1981).

43. See generally Lawrence Kohlberg, *Indoctrination Versus Relativity in Value Education*, in *THE PHILOSOPHY OF MORAL DEVELOPMENT VOL. 1: ESSAYS ON MORAL DEVELOPMENT 16-22* (1981).

44. *Id.* at 16.

45. *Id.* at 16-17.

46. *Id.* at 17.

life, but he only considers them for the rewards and punishments they entail. There is no understanding of rules, and the child is motivated out of self-interest.

Kohlberg then divides the Preconventional level into two separate stages that illustrate moral development, albeit development constrained to a basic level. The first stage Kohlberg describes as “Punishment and Obedience Orientation,” where “physical consequences of action determine its goodness or badness regardless of the human meaning or value of these consequences. Avoidance of punishment and unquestioning deference to power are valued in their own right.”⁴⁷ The second stage is an “Instrumental Relativist Orientation,” where “right action consists of that which instrumentally satisfies one’s needs and occasionally the needs of others.”⁴⁸

At first glance, it may seem that Kohlberg’s Preconventional level describes a morality which only children could subscribe to, but it closely parallels much of the structure in law school. Of course, the rule systems in law school are much more subtle than a single authority figure waving a finger while proclaiming the rules before the student population. But rule systems governing student conduct, academic conduct, and social conduct exist. Even the Model Rules of Professional Conduct, which students learn as part of their curriculum, provide a rule system with the clear threat of discipline.

Kohlberg’s Preconventional level lays out a moral system hinging on a basic cost/benefit analysis, where punishment is to be avoided and personal gains are to be sought. The obvious distinction between a child’s rule orientation and a law student’s rule orientation is that Kohlberg identified more *physical* motivators. Students, in following the particular rules of their school, obviously are not afraid of the physical consequences of any rule-breaking. But a simple substitution of the carrot and stick show that law school provides a variety of incentives and disincentives that appeal to a level of Preconventional morality.

For example, imagine a student who has achieved a spot on the Dean’s list, and who ardently refrains from any conduct that might get him into trouble. The fact of academic achievement and rule-agreement do not mean this student participates in a later stage of morality. If this student pursues good grades solely in order to receive recognition, and if the student follows rules only in order to avoid punishment, he can remain locked in a Preconventional level. Furthermore, his conduct might be outwardly indistinguishable from similarly situated students who make the same choices, but for different reasons.

The “instrumental relativist orientation” is particularly relevant to the law school environment. Kohlberg notes that “elements of fairness, reci-

47. *Id.*

48. *Id.*

procity, and equal sharing are present. . . . Reciprocity is a matter of ‘You scratch my back and I’ll scratch yours.’”⁴⁹ In an academic environment like law school, where curved grades determine academic standing, the Preconventional moralist might actually be at an advantage. If the reward is a high grade, and any other-directed action runs the risk of affecting that reward, a Preconventional moralist would only act for the benefit of others if there was a mutual exchange benefitting the Preconventionalist. Every student should be able to recall a time where a classmate has asked for notes or assistance; did this exchange not entail at least some reciprocal benefit in the end?

This is not a criticism of the Preconventional moralist, nor of the various incentives and disincentives law schools provide that cater to Preconventional morality. Any rule system, be it academic, social, or otherwise, necessitates a level of Preconventional incentive for those who are still at the Preconventional level. This Section hopes only to illuminate the Preconventional moral aspect of law school, so students can perceive and process the various motivations at play in their academic experiences.

B. Conventional Morality and Parallels

The Conventional level is described generally as “conformist,” insofar as it is focused on “maintaining the expectations and rules of the individual’s family, group, or nation” as being “valuable in its own right.”⁵⁰ Imagine the child from the first Section who has experientially matured and who no longer behaves just to receive rewards and avoid punishments. The child has seen some measure of value in his morality and is willing to defend it. In Kohlberg’s words, “the attitude is not only one of conformity to personal expectations and social order, but of loyalty to it, of actively maintaining, supporting, and justifying the order and of identifying with the people or group involved in it.”⁵¹

Again, Kohlberg divides this Conventional level in two. Stage three is the “Interpersonal Concordance or ‘Good Boy-Nice Girl’ Orientation,” where morality hinges largely on what is acceptable to larger groups, as well as the intention behind any given action.⁵² Stage four is the “Society Maintaining Orientation,” where “right behavior consists of doing one’s duty, showing respect for authority, and maintaining the given social order for its own sake.”⁵³ The third and fourth stage each provide for morality established apart from the individual but still allows for the moral development necessary to internalize those rules.

49. Kohlberg, *supra* note 43, at 17.

50. *Id.* at 17.

51. *Id.* at 18.

52. *Id.*

53. *Id.*

Numerous aspects of these two stages of morality are observable in the typical law school environment. Law school is a mixing-pot of people, cultures, ideas, and perceptions. At the same time, it requires students to study law and shape their understanding of morality in a way that is congruent (or at least not wholly incompatible) with the premise that laws demand respect and observation. Stage four is particularly applicable to the legal education as a belief in the maintenance of social order naturally ties to the idea that the law is in place to maintain that very same order.

The Conventional level, as Kohlberg stated, entails a level of personal attachment to the moral system, of “loyalty to it, of actively maintaining, supporting, and justifying the order and of identifying with the people or group involved in it.”⁵⁴ Throughout their education, students are introduced to “the profession,” which connotes an inescapable binding of the student (the individual) to other students and lawyers (the group at large). The specialized education, admission to the Bar, and even the looming threat of discipline under rules tooled for a single profession, all promote a sense of identity “with the people or group involved” in the same order. Students should ask how their moral perception has changed during their time in law school and to what extent do they owe their moral growth to the culture and norms of their fellow students, professors, mentors, and employers?

C. *Postconventional Morality and Parallels*

Last is the Postconventional level, characterized by “a major thrust toward autonomous moral principles that have validity and application apart from authority of the groups or people who hold them and apart from the individual’s identification with those people or groups.”⁵⁵ The child discussed earlier has now matured to a point where right and wrong no longer depend on what one person or group says but on some external principle that can be used independently to determine morality.

Kohlberg’s fifth stage, the “Social Contract Orientation,” defines right actions “in terms of general individual rights and in terms of standards that have been critically examined and agreed upon by the whole society.”⁵⁶ This level of morality is particularly appealing if the law is truly and rightly a representation of the morality “examined and agreed on” by the whole society. The sixth stage, the “Universal Ethical Principal Orientation,” moves beyond the concepts of social contracts and premises morality on “self-chosen ethical principles appealing to logical comprehensiveness, universality, and consistency.”⁵⁷ Kohlberg stresses that these moral principles are no longer propositions like “you must never do X,” but rather are

54. *Id.*

55. Kohlberg, *supra* note 43, at 17.

56. *Id.* at 18.

57. *Id.* at 19.

“universal principles of justice, of the reciprocity and equality of human rights, and of respect for the dignity of human beings as individuals.”⁵⁸

The penultimate and final stages are, ideally, the goal in terms of moral development in a legal education. Seeing this type of morality “at work” becomes more difficult because the moral motivation is more internally focused than externally focused. Even so, it is undeniable that much of the loftier goals encompassed in case law, lectures, service opportunities, and community involvement are consistent with the “universal principles of justice” which Kohlberg discusses.

At this point, it is worth stopping to examine Kohlberg’s sixth stage for its potential conflicts with the premise of law and its utility in society at large. It would seem that the fifth stage, focusing on “general individual rights [and] standards that have been critically examined and agreed on by the whole society,”⁵⁹ would be the ideal stopping point for moral development during law school. The sixth stage, which proposes a self-actualized type of morality, would seem to lead to the inevitable conflict of a person who deems the law as wrong and substitutes his/her own truth.

The apparent inconsistency may be resolved by a measure of practical compromise. While a stage-six individual might certainly find inconsistencies between their personal morality and the implicit morality of a specific law, this does not mean that one moral consideration cannot be overridden by the preference of another. For example, a lawyer might be able to set aside certain moral qualms in order to achieve a higher moral goal, such as access to the justice provided by the system. The late-stage moralist is able to identify universal and consistent principles, and adapt them to individual situations. Kohlberg points to multiple Postconventional minds who grasped upon this aspect of late-stage moral development:

But in the higher postconventional levels, Socrates, Lincoln, Thoreau, and Martin Luther King [Jr.] tend to speak without confusion of tongues, as it were. This is because the ideal principles of any social structure are basically alike, if only because there simply are not that many principles that are articulate, comprehensive, and integrated enough to be satisfying to the human intellect. And most of these principles have gone by the name of justice.⁶⁰

In providing Kohlberg’s theory of moral development, and drawing parallels to aspects of law school, this Section demonstrates that the individual students, their colleagues, and the structure of their law school most likely embody a sampling of all six stages. Students might find themselves in a stage of transition, either through personal effort or through happy accident. The goal in this Section is to provide students with a way to observe

58. *Id.*

59. *Id.* at 18.

60. *Id.* at 27.

some of the nuanced moral incentives in their schooling and take an inventory of their personal development.

Accepting Kohlberg's theory of moral development, a point of potential confusion regarding the goal of this Note ought to be addressed. This Note supports advancement toward late-stage morality that is based on inward motivations, principles, and universal ethical truths. Yet incentivizing late-stage moral development necessitates a certain degree of focus on external incentives, norms, and behaviors. This Note provides incentives for moral development to Preconventional and Conventional moralists that match the values of those levels. In addressing the specific issues presented in Section I, these moralists will find good reason to continue pursuing further moral development. The following Section will examine the value of this push toward Postconventional morality.

III. THE VALUE OF MORAL ADVANCEMENT IN THE PROFESSION

With a theory of moral development in place to frame individual morality in the context of typical law school incentives, a return to the issues outlined in Section I illustrates just how pushing for late-stage morality can benefit students, and the profession at large, in the years to come. Again, these three issues are: (A) a transitioning job market and industry demands; (B) shifting public perception; and (C) a trend of mental and emotional health issues in the profession. This Section considers how moral development will assist students in meeting these specific challenges.

A. *Developed Morality as a Marketable Competency: Meeting the Demands of a Transitioning Job Market and Industry*

Section I indicated the widespread troubles and uncertainty facing the legal profession following the economic collapse of 2008. With fewer jobs, more competition, and an industry shifting toward client-determined legal solutions, students face a difficult job market. Section II outlines Kohlberg's theory of moral development, particularly post-conventional morality focusing on internalized, highly-developed morality. This Section focuses on how moral development can assist students in increasing their professional worth by providing more value to firms and clients alike.

To begin to incentivize moral development, students need to understand what employers are looking for in their young associates. Typical competencies include being well-organized, driven to succeed, able to take responsibility for one's work, among a plethora of other qualities which define a "good employee." According to a survey of Minnesota's fourteen largest law firms ranking the relative importance of a wide range of competencies in prospective associate hires, "integrity/honesty/trustworthiness"

ranked at the top spot.⁶¹ Likewise, this category ranked second among surveyed small law firms in Minnesota, just behind “good judgment/common sense/problem solving.”⁶²

And while things like “integrity, honesty, and trustworthiness” are obvious choices for top picks among prospective employers, it is interesting to see that these qualities have, at their core, a moral component. Even the other category, led by “good judgment,” implies that the ideal associate will possess the ability to make not just any decision but a *good* decision. Good judgment, in this sense, is a skill, which entails a certain moral component as well. Neil Diloff, in proposing the retooling of legal education in order to prepare students for practice, says: “Judgment is about knowing what is right or wrong, what to do in the particular situation, and how to deal with clients (both happy and unhappy), judges, mediators, opposing counsel, co-counsel, staff, partners, and peers in your own place of employment.”⁶³ Likewise, problem-solving necessitates a degree of morality, insofar as a lawyer must “devise solutions that are within both legal and ethical bounds.”⁶⁴

Developing morality will directly contribute to the development of these key competencies identified above. The applicability of moral advancement to competencies like trustworthiness, integrity, honesty, good judgment, and problem-solving is explored in a general sense above, but is better demonstrated in Kohlberg’s discussion of the theory of reversibility as applied to morality. Reversibility, in one of Kohlberg’s descriptions, consists of the following:

- (1) The decider is to successively put himself imaginatively in the place of each other actor and consider the claims each would make from his point of view.
- (2) Where claims in one party’s shoes conflict with those in another’s, imagine each to trade places. If so, a party should drop his conflicting claim if it is based on nonrecognition of the other’s point of view.⁶⁵

In essence, Kohlberg describes a situation where a person must examine conflicts from a neutral point of view. The late-stage moralist, as Kohlberg would maintain, is able to exercise better judgment because the judgment achieves a complete equilibrium of reversibility (i.e., the moral judgment about a situation is agreeable to all parties, assuming they traded

61. Neil Hamilton, *Changing Markets Create Opportunities: Emphasizing the Competencies Legal Employers Use in Hiring New Lawyers (Including Professional Formation/Professionalism)*, 65 S.C. L. REV. 567, 572 (2014).

62. *Id.* at 573.

63. Neil Diloff, *Law School Training: Bridging the Gap Between Legal Education and the Practice of Law*, 24 STAN. L. & POL’Y REV. 425, 438 (2013).

64. *Id.*

65. Lawrence Kohlberg, *Justice as Reversibility: The Claim to Moral Adequacy of a Highest Stage of Moral Judgment*, in *THE PHILOSOPHY OF MORAL DEVELOPMENT VOL. 1: ESSAYS ON MORAL DEVELOPMENT* 199 (1981).

places with one another).⁶⁶ The ability to make moral evaluations that are fully reversible is an important one for a lawyer both in itself and for the exercise of the key competencies noted above.

In working toward late-stage morality, students will begin to manifest that personal morality through reflexive exercise of desirable competencies. Basing decisions on universal principles applied to individual cases will *naturally* lead to integrity. This type of fully internalized morality will promote honesty on the student's part as well as the reciprocated trust it invites. Universalized principles, applied with an even hand to the facts of any given problem, will result in the exercise of *good* judgment. And finally, in reaching evaluations and decisions with full reversibility, students will be able to more firmly grasp issues as well as the strengths and weaknesses of various positions.

In short, moral development enhances competencies employers want. Recent trends in the industry indicate a shifting tide, where clients direct more and more aspects of the legal service. Lawyers who key into the demands of employers and clients alike will gain a competitive edge in the job market. Of course, traditional job competencies deserve focus and practice. But late-stage morality allows for more efficient, directed, and valuable exercise of other competencies, and may serve as the uniting aspect of a student's developing skillset.

B. *Lawyers as Moral Exemplars: Regaining Public Trust*

The second issue identified in Section I was one of public perception. The profession is not held in high-esteem by the public at large.⁶⁷ In a survey capturing the general public's criticisms of lawyers, consumers thought lawyers were greedy, manipulative, and corrupt and do a poor job of self-policing.⁶⁸ Recent polls indicate an ongoing perception that lawyers do not contribute much value to society.⁶⁹

The exact causes of this poor public perception are impossible to pin down because a variety of factors might contribute to this problem. Section I discussed the possibility that negative public perception is linked to the real or perceived failures of lawyers to live up to the high ethical standards of the profession. Another contributing factor could be a general lack of understanding or an excess of misinformation in the general public. In an article exploring the dangerous notion of "justice for sale," Shira Goodman writes: "Generally, an individual's knowledge about the courts is quite limited unless and until—and often even after—one becomes involved in a

66. *See id.*

67. PEW RESEARCH CENTER, *supra* note 17; GALLUP, *supra* note 20.

68. Leo J. Shapiro, *Public Perceptions of Lawyers Consumer Research Findings*, A.B.A. SEC. LITIG. (Apr. 2002), <http://www.cliffordlaw.com/abaillinoisstatedelegate/publicperceptions1.pdf>.

69. PEW RESEARCH CENTER, *supra* note 17; GALLUP, *supra* note 20.

case as a party, witness, or juror. That narrow experience may ultimately define one's perception of the courts."⁷⁰

Writing particularly about the court system, Goodman points out that public perception has far-reaching implications where courts are concerned: "Public adherence to court decisions and orders depends on public confidence in and respect for the courts. Simply put, the power of the courts lies in the public's trust that court decisions are fair and impartial."⁷¹ Even erroneous public perception can still weaken the courts.⁷²

The same is true by analogy of the profession in general. But where public adherence is the primary concern of courts, lawyers and law firms should be concerned about client confidence. Public perception of lawyers, even if it is an erroneous public perception, is dangerous to the profession. If clients' trust in the role of a lawyer as zealous advocate and knowledgeable advisor is eroded, the essence or very existence of the client-lawyer relationship is at risk. Regardless of the cause of poor public perception, it remains a problem.

Late-stage morality offers, at least in part, a way to mitigate the harm of this public perception. Students need to be prepared to provide counterexamples to the negative stereotype of a lawyer who is greedy, manipulative, and corrupt. As discussed above in Subsection A, a transition toward late-stage morality carries with it implicit, integrated qualities. Particularly relevant is the ability to assess and empathize (reversibility) and the ability to make *good* calls (based on universalized principles and their reason-based application).

The impact of moral development on the individual level is relatively small, taken in the much larger context of public perception of the profession at large. But while one late-stage moral lawyer can reshape the perception of a few clients, the same change reflected across larger segments of the profession, or even student population, can propagate a much larger positive impact. Take, for example, the relatively large number of disciplinary actions taken each year.⁷³ Major and minor violations of the Model Rules of Professional Conduct cast a poor light on the profession as a whole and are further complicated by the potential inference that the profession's self-policing is insufficient. A push for moral development in law school and in the profession will also help curb the negative effects of ethical violations. The late-stage moralist will, through virtue of internalized ethics and a commitment to universal principles of justice, avoid these problems altogether.

70. Shira J. Goodman, *The Danger Inherent in the Public Perception That Justice Is for Sale*, 60 *DRAKE L. REV.* 807, 807 (2012).

71. *Id.* at 818.

72. *Id.* at 819.

73. A.B.A. CENTER FOR PROF. RESP., *supra* notes 26–33.

Students can prepare to combat negative perception by being the antithesis of that negativity. In pushing toward late-stage morality, students will begin to reflexively counteract and subvert this negativity, altering the perception of clients through their daily interactions. The same push for post-conventional morality, if employed in student populations in general, will work to repair negative public perception and benefit the profession as a whole.

C. *Morality as Self-Maintenance: Curbing Unhealthy Trends in the Profession*

The last issue is concerned with the well-being of lawyers in general and alarming trends of personal and professional dissatisfaction, often coupled with substance abuse issues. In entering this particular profession, students have made a significant financial investment that, if not for *all* students then for *many* students, signifies a lifetime commitment to *being* a lawyer. As such, part of preparation for entry into the profession should include a way to maintain healthy, personal well-being.

Section I discussed many of the issues facing students and lawyers alike, including: low job satisfaction rates;⁷⁴ increases in depression and other negative moods;⁷⁵ decreases in overall life satisfaction;⁷⁶ and high rates of substance abuse.⁷⁷ Contributing factors are wide and varied, including: work relationships, work environment, job resources, compensation, company culture, social influences, workloads, stress, and many others.⁷⁸ These issues will affect many students and lawyers alike.

So how will moral development help to fend off this problematic mental and emotional turmoil? In a study that calculated the well-being of over 6,000 attorneys, correlating a variety of factors in their respective law school experiences, the association between internal motivation and well-being was very strong.⁷⁹ In addition, “all data were consistent with findings in other populations, with both measures showing greater well-being for lawyers with more intrinsic, rather than extrinsic, values.”⁸⁰ The study noticed that internal factors were the strongest predictors of well-being, while

74. Smith, *supra* note 34.

75. Krieger & Sheldon, *supra* note 36.

76. *Id.*

77. Vivo, *supra* note 39; BUTLER CENTER FOR RESEARCH, *supra* note 39; A.B.A. J., *supra* note 39.

78. See generally Smith, *supra* note 34; Vivo, *supra* note 39; BUTLER CENTER FOR RESEARCH, *supra* note 39; A.B.A. J., *supra* note 39.

79. Krieger & Sheldon, *supra* note 36, at 580 (“The association with well-being was very strong ($r = .55, p < .001$). This finding is particularly important, because law students have been found to turn away from internally motivated careers, often in favor of more lucrative or prestigious positions, after beginning law school.”).

80. *Id.*

external factors stressed by law school and employers were very weakly associated with well-being.

The message to be drawn is that if students intend to provide for their long-term well-being, developing internal moral motivation is a successful tactic to achieve that end. While the natural tendency is to focus on items like employment income, law school debt, class ranks, and law review participation, those aspects actually have very little correlation with total well-being.⁸¹ Returning to Kohlberg, it is clear to see how late-stage morality is more conducive to long-term well-being. “At this level, there is a clear effort to define moral values and principles that have validity and application apart from the authority of the groups or people holding these principles and apart from the individual’s own identification with these groups.”⁸² The late-stage moralist relies on internal motivation rather than external, which correlates strongly with well-being.

This Section demonstrated the particular value that continuing moral development can have for students as they shape their careers for years to come. The question of well-being, taken as a whole, is one both personal and unique to each individual; this Section does not pretend that moral advancement is a cure to the difficulties, stresses, and realities of the profession. Rather, moral advancement may help students find new perspective and strength to deal with the numerous challenges inherent to the profession. Section III, taken as a whole, has demonstrated clear incentives for pursuing moral development by showing how such development will help to solve problems facing students presently and in the years to come, as well as problems for the profession at large.

IV. PUSHING FOR MORAL DEVELOPMENT AND UTILIZING THE INSTITUTION TO THE STUDENT’S ADVANTAGE

The previous Sections have explained, and offered incentives for, pursuing the progression of personal moral development from early-stage to late-stage morality. But even if students recognize the advantage of moral development, the question remains: How might one go about it? This Section offers a “virtue through practice” approach, wherein students expose themselves to experiences that reflect the moral valuation embodied in Kohlberg’s Postconventional level, but do so in a self-conscious and self-directed way.

Kohlberg’s system provides for linear development (e.g. a Stage-One moralist cannot skip directly to Stage Four). In order to provide for personal moral development, it is first necessary to be honest in self-evaluation. Students should identify which level (and stage) of Kohlberg’s system their current moral system most closely mirrors. If the aim is to further moral

81. *See id.* at 583, Figure 1.

82. Kohlberg, *supra* note 43, at 18.

development, the goal must be directed at the level or stage immediately following the current level or stage. This Section focuses on two transitions in moral development:

- Level One: Preconventional Morality → Level Two: Conventional Morality
- Level Two: Conventional Morality → Level Three: Postconventional Morality

In order to transition from one level to the next, this Section focuses on developing morality through experiential learning, a “virtue through practice” approach that can be aptly described by the idiom “fake it till you make it.” This proposition hinges largely on a second theory of moral development, most concisely set forth in Aristotle’s *Nicomachean Ethics*.⁸³ Aristotle believed that a primary aspect of moral development entailed morality through practice and the formation of habit:

. . . Moral excellence is the result of habit or custom. . . . From this it is plain that none of the moral excellences or virtues is implanted in us by nature; for that which is by nature cannot be altered by training. For instance, a stone naturally tends to fall downwards, and you could not train it to rise upwards, though you tried to do so by throwing it up ten thousand times. . . . The virtues, then, come neither by nature nor against nature, but nature gives the capacity for acquiring them, and this is developed by training.⁸⁴

Aristotle’s view of moral acquisition is, for purposes of personal moral development, optimistic. Students already have the natural disposition that *allows* them to progress through stages of moral development. At the same time, it is *not* in a student’s nature to fall into, or transition out of, any moral stage by a passive process. Rather, a student’s position or transition in moral stages happens through active and repeated practice of morality. Figure 2 below reiterates the moral values encompassed in Kohlberg’s Conventional and Postconventional levels of morality, which in turn provide the basis to direct moral habituation to develop those levels of morality:

FIGURE 2

<i>Pre-Transition Level</i>	→	<i>Post-Transition Level</i>	<i>Moral Values</i>
Preconventional Morality	→	Conventional Morality	Morality is determined by the group at large. Right behavior is defined by duty, authority, and maintaining the social order.
Conventional Morality	→	Postconventional Morality	Morality is determined by critically examined rights and standards. Right action is defined by self-chosen ethical principles.

83. See generally THE NICOMACHEAN ETHICS OF ARISTOTLE (F.H. Peters trans., Kegan Paul, Trench, Trubner & Co., 5th ed. 1893).

84. *Id.* at 34–35.

The first step in transitioning in virtue through practice must be to act consistently with the moral value encompassed by either the Conventional or Postconventional stage. However, recall the example of the Preconventional moralist whose *outward behavior* was indistinguishable from the Postconventional moralist; simply mimicking the choices of a Conventional or Postconventional moralist is not sufficient to transition into that respective level. A certain amount of intentional moral reasoning is required as well. For example, in order to become a Conventional moralist, a Preconventional moralist must both: (1) cognize the Conventional moralist's reasons for making choices; and (2) act and develop habits consistent with the Conventional moralist's reasons.

Thus, if a student is currently a Preconventional moralist looking to advance to the Conventional level of morality, he must ask: "How can my actions be guided in a way that moves beyond personal benefit or detriment? Could my actions be guided by any authority outside myself, or be informed by my group of colleagues, professors, or mentors? Can I direct my actions, in some way, to the maintenance of order outside myself?" In order to transition from the Preconventional level to the Conventional, students must try to frame their motivations and actions in accordance with these guiding considerations.

In terms of just *how* to become exposed to experiences conducive to the development of a Conventional level of morality, this Note proposes two aspects of law school to develop the appropriate habits: (1) active consideration of the policy behind the law; and (2) the study of the Model Rules of Professional Conduct.

Active consideration of the policy that drives law will help students to go beyond mere acknowledgement that "the law is X" to "*why* the law is X." This type of consideration gives particular focus to the Conventional moral valuation, which focuses on duty and the maintenance of social order. In considering the law as more than isolated rules, students can develop moral reasoning that focuses on their role in the practice of law, their duty to uphold the law, and the purpose of social order in that practice.

The second aspect of law school practice conducive to a transition toward Conventional morality is the study of the Model Rules of Professional Conduct. Beyond the practical concerns of rule compliance, the study of the Model Rules necessitates contemplation of duty and authority. Students will be entering a self-regulating profession that imposes duties of professional responsibility upon all of its adherents. In acknowledging the authority of the profession at large and in identifying the value of the Model Rules, students will form a habit of moral valuation that moves beyond self-interest to the valuation of their professional group at large.

Transitioning from the level of Conventional morality to Postconventional morality requires a heightened level of virtue through

practice. If a student is a Conventional moralist wanting to transition to a level of Postconventional morality, he will need to focus on experiences which reflect a level of internalized, universal ethical principles. This student should ask: “Can my moral reasoning be translated outside of specific situations? What will I do when confronted with new, ethically challenging situations? Will I act consistently? Will I make *good* decisions?”

Practically speaking, virtue through practice acquired during the transition from Conventional to Postconventional morality requires experiences that test and refine Conventional moral valuations. If students want to develop an internalized level of morality premised on universal ethical principles, this Section suggests focusing on service and “hands-on” experience. Students should expose themselves to situations where “the rubber hits the road” and where the moral values imposed by the profession and internalized at the Conventional level are put to the test. As students make moral judgments in the course of volunteer work or clinic education, they will need to make decisions consistent with Kohlberg’s idea of “reversibility.”⁸⁵ As students reason through the morality of their actions, they should consider whether their actions would be justified if they were in a different position. Students must consider, and attempt to identify, the potential ethical principles to be drawn from any specific situation. The more focus students place on developing universal principles, and the more they refine resultant principles through practice, the closer they will come to Kohlberg’s final stage of moral development.

This Section has provided an approach to moral development that suggests: (1) identifying the moral motivation in the desired level of morality; and (2) attempting to acquire virtue through practice by acting consistently with the identified moral reasoning. This Section then provided short, practical focuses for both Preconventional and Conventional moralists whose aim is to advance to the next level of moral development. Students can expect transitions between levels of moral development to be difficult and require a large amount of self-directed purpose and effort. As Aristotle ascribes to Euenus, “Train men but long enough to what you will, and that shall be their nature in the end.”⁸⁶

CONCLUSION

In conclusion, students face several difficulties moving forward in the profession. Jobs will be difficult to come by. Public perception of the profession is poor. Lawyers struggle with emotional and mental health issues at a relatively high rate. Focusing on personal moral development will help students to meet these challenges by making students more valuable to po-

85. See Kohlberg, *supra* note 65.

86. THE NICOMACHEAN ETHICS OF ARISTOTLE, *supra* note 83, at 239.

tential employers, more trustworthy to their future clients, more representative of the profession's ethical aspirations, and more able to cope with the daily stresses, demands, and difficulties of day-to-day lawyering. In order to provide for personal moral development, students must focus on identifying the moral values of their desired moral stage and must acquire virtue through practice by acting in accordance with those moral values.