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## Ethical Leadership in Professional Life

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## ARTICLE

# ETHICAL LEADERSHIP IN PROFESSIONAL LIFE

NEIL W. HAMILTON\*

### INTRODUCTION

The economy is in yet another train wreck with \$50 trillion in wealth erased on a global basis over the last 18 months caused by failures of morally responsible leadership in both the government and private financial sector.<sup>1</sup> Virtually no leaders in either government or the private financial sector are undertaking a self-assessment to ask about personal responsibility for their catastrophic failures and what can be learned to improve in the future.

The legal profession, more than other occupations, dominates leadership positions with formal directing authority in government regulation of the financial sector and plays a major leadership role through positions of persuasion and influence in shaping the decisions of private financial sector enterprises. It follows that the legal profession and legal education should undertake an assessment of the profession's role in the financial sector catastrophe. Among the private-sector gatekeeper occupations (those people trusted to protect the public from unlawful conduct and catastrophic failures of prudence by boards and executive management, including rating agencies, auditors, accountants and lawyers), the legal profession plays a uniquely important role. In comparison with rating agencies, accountants

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\* Professor of Law and Director of the Holloran Center for Ethical Leadership in the Professions. My research assistants, Laura Hammargren, Meghann Kantke, and Dan Olson gave me invaluable assistance on this paper. John Berry, Robert Cullen, Tom Holloran, Tom Mengler, Dan Pennie, Hank Shea, Greg Sisk, Stan Stroup, Scott Taylor, and Rob Vischer also gave useful suggestions to improve earlier drafts of the essay.

1. Kevin Hall, *Top Economic Adviser: The 'Excess of Fear' Must Be Broken*, STAR TRIB. (Minneapolis-St.Paul), Mar. 14, 2009, at A3. While investigations will uncover some actual fraud, this catastrophic failure of our government and private financial sector leaders is not principally the result of criminal wrongdoing. Rather, many leaders failed with respect to the virtue of prudence. Prudence (from the Latin *prudencia* meaning foresight) is the ability to discern sensible and right action in the circumstances of a given time and place using foresight, reason, and self-control. Essentially, excessive short-term self interest caused extraordinary failures of prudential judgment about leverage and risk. Neil Hamilton, *The Financial Sector's Catastrophic Failure of Prudence: A Time for Self-Assessment*, MINN. LAW., Dec. 15, 2008, at A10.

and auditors, lawyers are a much more powerful peer-review profession. They can thus provide some protection for an individual lawyer's independent professional judgment necessary to persuade and influence corporate boards and senior management to prevent catastrophic failures of prudential judgment. The responsibility to persuade and influence pursuant to a lawyer's independent professional judgment is a form of leadership.

Our rhetoric as a profession also urges law students and practicing professionals to provide leadership to society in the area of the profession's responsibility—justice.

Senator Walter Mondale urged my law school graduating class almost forty years ago to become leaders serving justice in our society; virtually every one of the forty law school graduation speakers I have heard since then has also emphasized that the graduates should become leaders in both the profession and society. Orientation speeches are almost identical in emphasizing leadership. Law schools also seek applicants who have demonstrated leadership, and alumni awards and honorary degrees extol leadership in professional life.

Even though both the profession's rhetoric and lawyers' responsibilities in government and private sector decision-making call for morally responsible leadership, virtually nothing happens in the law school curriculum to help students develop leadership skills. This omission is a type of train wreck in legal education itself. Legal education's failure to engage students and the profession in developing leadership skills including character and moral courage may in turn contribute to professional dereliction. A number of scholars have asked why lawyers failed to provide ethical leadership in the corporate scandals of just a few years ago. For example, John Coffee observes that the key mystery in the wave of corporate scandals of the late 1990s and early 2000s is why the watchdogs, including the lawyers, remained silent. Why did the lawyers fail to exercise independent judgment?<sup>2</sup> I am certain this same question will arise again in the context of the current financial sector catastrophe. This is a failure of ethical leadership in a professional context.

This essay agrees with the orientation and graduation speeches and law school awards by arguing, first, that lawyers clearly should and do play ethical leadership roles (1) in their relationships with clients, (2) in the legal

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2. JOHN COFFEE, *GATEKEEPERS: THE ROLE OF THE PROFESSIONS AND CORPORATE GOVERNANCE* 15, 32–34 (2006). Former GE general counsel Ben Heineman Jr. concludes that many general counsel “failed as guardians” in the financial scandals that began with Enron and centered on fraudulent accounting practices. BEN HEINEMAN, JR., *HIGH PERFORMANCE WITH HIGH INTEGRITY* 67 (2008). Marianne Jennings looks at the Savings and Loan collapses of the 1980s, the insider trading and junk bond debacle of the 1990s, and the financial collapses of the late 1990s and early 2000s and argues for more emphasis in legal education on virtue ethics and moral courage to socialize students into the role of independent counselor. Marianne Jennings, *The Disconnect Between and Among Legal Ethics, Business Ethics, Law and Virtue: Learning Not to Make Ethics So Complex*, 1 U. ST. THOMAS L.J. 995, 996 (2004).

profession and (3) in society generally and, second, that legal education should prepare students for these roles. The current train wreck in the economy is a particularly important time to assess the profession's and legal education's responsibilities regarding ethical leadership. This essay defines leadership as either the quality of a person who leads or the office or position of a person who leads.<sup>3</sup> "To lead" includes definitions of "to cause to go with oneself," "to guide on a way," "to go with and direct the operations of a group," and "to bring by reasoning, cogency, or some other influence to some conclusion or condition."<sup>4</sup>

To what degree does legal education currently prepare students for the ethical leadership roles they will assume? This essay argues that legal education has vast room for improvement to help students with the initial steps of leadership formation and can look to the scholarship on leadership theory for guidance. If those in legal education intentionally socialized students to assume leadership roles, a first question would be: which leadership theories are most helpful for the leadership roles that lawyers assume? More specifically, which leadership theories reflect the types of ethical decisions that lawyers are called upon to make as "a representative of clients" (particularly in the counseling role), "an officer of the legal system," and "a public citizen having special responsibility for the quality of justice?"<sup>5</sup>

This essay explores both of the questions above. Part I of this essay establishes that lawyers occupy both positions of formal directing authority over a group and counseling positions where they guide clients on a way, or influence clients through reasoning, to some conclusion. These are forms of leadership. Part I also argues that lawyers' fiduciary obligations as members of a peer-review profession responsible for justice requires that lawyers exercising leadership do so ethically. "Ethically" in this context means that each lawyer should give attention in his or her leadership not just to the minimum standard of what is lawful, but also to the principles of morality defining right and wrong conduct that guide the lawyer and the client. Part II analyzes where legal education falls short in terms of ethical leadership qualities and skills. Parts III, IV, and V answer the question which leadership theories are most helpful for the leadership roles that lawyers assume. Part III provides a strengths versus weaknesses analysis of the major leadership theories that do not incorporate ethics to provide a basis for comparative evaluation of these five theories against the three leadership theories outlined in Part IV that do incorporate ethics. Part V concludes that servant leadership, which does not require hierarchical authority and has an ethical foundation, may be the most effective leadership model for many of the leadership roles that lawyers assume, particularly lawyers who are just start-

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3. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1283 (2002).

4. *Id.* at 1282.

5. MODEL RULES OF PROF'L CONDUCT pmb1. ¶ 1 (2007).

ing their careers. Part VI briefly explores how a student or new lawyer can grow into servant leadership. Overall, this essay is an introduction to a new area of inquiry for legal scholarship to both analyze leadership theory and apply relevant lessons to legal education.

## I. LAWYERS' LEADERSHIP ROLES

In order to move beyond rhetoric urging students to become leaders in the profession and society, a first task is to define what leadership roles lawyers perform. The data discussed below in Part I.A indicate that lawyers occupy a surprising proportion of the leadership positions with formal directing authority in our society. Of course, lawyers also undertake critical counseling roles in society, but the scholarly literature on lawyer counseling has not yet recognized the important insights that the scholarly literature on leadership can provide. Part I.B explores these insights.

### A. *Leadership Positions with Formal Directing Authority*

One common understanding of leadership is the assumption that this role requires a formal directing role or position with some hierarchical authority over a group. Much of the business leadership literature assumes a leader has a formal directing role over a group. Jim Collins calls this type of position "executive leadership," in which "the individual leader has enough concentrated power to simply make the right decisions."<sup>6</sup> Lawyers hold many such positions in government, private for-profit and nonprofit organizations, and law firms and departments.

#### 1. *Government*

Although members of the legal profession constitute approximately two-thirds of 1 percent of the working adult population in the United States, they hold a high proportion of the positions with formal directing authority in government relative to the members of all other occupations. For example, lawyers constitute:

1. 59 percent of all Presidents (through the 2008 election);<sup>7</sup>
2. 45 percent of Congress (including both the Senate and the House) in the period 1960 to 2004, with business people second at 14 percent;<sup>8</sup>

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6. JIM COLLINS, *GOOD TO GREAT AND THE SOCIAL SECTORS* 11 (2005).

7. See AMERICA'S LAWYER-PRESIDENTS: FROM LAW OFFICE TO OVAL OFFICE (Norman Gross ed., 2004). Of America's forty-four presidents, including President Obama, twenty-six have been lawyers.

8. Chadd K. Kraus & Thomas A. Suarez, *Is There a Doctor in the House . . . Or the Senate?* 292 J. AM. MED. ASS'N 2125, 2126 tbl.1 (2004). The proportion of members of Congress who are lawyers has decreased somewhat over the period from 1960 to the present. In the early 60s, two-thirds of all U.S. Senators and between 55 and 58 percent of Representatives were lawyers. Currently that ratio is 40 percent of the Senate and 25 percent of the House. This is still a high

3. 100 percent of the Supreme Court, the Courts of Appeals and the federal District Courts;
4. 100 percent of all federal prosecutors;
5. 100 percent of the chief legal officers of every department and agency;
6. 44 percent of all state governors serving as of the 2006 election;<sup>9</sup>
7. 17 percent of all state legislators serving as of the 2006 election;<sup>10</sup>
8. 100 percent of the Supreme Court of each state, and virtually 100 percent of all other state judges;
9. 100 percent of all state prosecutors;
10. 100 percent of the chief legal officers of each state, and of the chief legal officers of each department and agency in the states; and
11. 100 percent of local prosecutors and chief legal officers for local government entities.

The proportion of mayors and local government governing board members who are lawyers and the proportion of presidential or gubernatorial cabinet appointees who are lawyers are also likely to be significant. Overall, the legal profession is the only profession whose members control one branch of government—the judiciary—and occupy substantial proportions of the positions in the other two branches of government.

## 2. *Private For-profit and Nonprofit Organizations*

In the period 2001 to 2007, lawyers held the CEO position in at least 10 percent of all S&P 500 companies.<sup>11</sup> It seems logical that lawyers hold a similar proportion of the CEO positions in smaller companies and in the financial sector generally. Lawyers hold 100 percent of the general counsel positions in private organizations, making them a member of the senior management team.<sup>12</sup> It is reasonable to expect that lawyers hold some portion of the senior positions on the corporate management team other than

proportion. Jeffrey W. Stempel, *Lawyer's, Democracy and Dispute Resolution: The Declining Influence of Lawyer-Statesmen Politicians and Lawyerly Values*, 5 NEV. L.J. 479, 484–86 (2004).

9. See NATIONAL GOVERNORS ASSOCIATION, GOVERNORS OF THE AMERICAN STATES, COMMONWEALTHS AND TERRITORIES 2009 (2009), available at <http://www.nga.org/Files/pdf/BI-BOOK.pdf>.

10. RITA C. AGUILAR, AMERICAN BAR ASSOCIATION., 2007 50-STATE LAWYER-LEGISLATOR SURVEY (2007), available at [http://www.abanet.org/poladv/state/2007lawyerleg\\_21jun07.pdf](http://www.abanet.org/poladv/state/2007lawyerleg_21jun07.pdf).

11. MEGHAN FELICELLI, SPENCER STUART, 2007 ROUTE TO THE TOP 10 (2007), available at [http://content.spencerstuart.com/sswebsite/pdf/lib/Final\\_Summary\\_for\\_2008\\_publication.pdf](http://content.spencerstuart.com/sswebsite/pdf/lib/Final_Summary_for_2008_publication.pdf).

12. A paper considering the evolution of the role of general counsel in U.K. companies looks to the U.S. model, where general counsel are likely “to be fully integrated into the business . . . [with] a seat at the top table as a matter of course.” SPENCER STUART, LAWYERS AT THE TOP TABLE: THE EVOLUTION OF THE ROLE OF GENERAL COUNSEL IN UK LISTED COMPANIES 6 (2005), available at <http://content.spencerstuart.com/sswebsite/pdf/lib/lawyersATTT.pdf>.

general counsel. Experience indicates that many lawyers hold directing positions, including the CEO position, in nonprofit organizations including churches, charities, and community and political groups.<sup>13</sup> Given the substantial proportion of high political offices that lawyers hold relative to all other occupations, it is reasonable to assume that lawyers are particularly active in political organizations.

### 3. *Law Firms*

Seventy-four percent of all lawyers in 2004 were in private practice,<sup>14</sup> and lawyers hold virtually all of the directing positions in these firms. In contrast to the employment conditions of other peer-review professions such as medicine and the professorate, in which many members of the governing boards and executive management are not members of the profession, the governing boards as well as executive management of law firms are virtually all members of the profession.

Lawyers with directing authority positions in law firms do not have the same type of power as senior executives in for-profit corporations. Jim Collins distinguishes “executive leadership” derived from hierarchical power from the form of leadership prevalent in the social nonprofit sector. He calls this “legislative leadership” where “no individual leader—not even the nominal chief executive—has enough structural power to make the most important decisions by him or herself. Legislative leadership relies more on persuasion, political currency, and shared interests to create conditions for the right decisions to happen.”<sup>15</sup>

Leadership in a law firm is similar to legislative leadership. David Maister comments, “In a professional firm, you can manage only what the professionals will *let* you manage . . . They must willingly vote (or at least consent) to give up their jealously guarded autonomy.”<sup>16</sup> Maister continues, “Winning the power to lead professionals is no easy task. Before a leader can be accepted, let alone succeed, autonomous professionals must agree to be influenced by that person. . . . [They ask] ‘Why should I follow you? Why should I listen to what you have to say?’”<sup>17</sup>

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13. Note that directing positions in nonprofit organizations may not have the same degree of hierarchical power as similar positions in for-profit corporations. This difference in management power in the social nonprofit sector is explored in the next section discussing directing positions in law firms.

14. CLARA N. CARSON, *THE LAWYER STATISTICAL REPORT: THE LEGAL PROFESSION IN 2000* 6 tbl.6 (2004).

15. COLLINS, *supra* note 6, at 11.

16. DAVID MAISTER, *TRUE PROFESSIONALISM* 56 (1997).

17. *Id.* at 65–66. “If you lead a group of professionals . . . [y]ou have limited, if any powers, to issue instructions, commands or orders, and if you have such authority, you rarely use it.” PATRICK MCKENNA & DAVID MAISTER, *FIRST AMONG EQUALS* xix (2002).

*B. Positions in Which Leadership Takes the Form of Influence*

A senior or junior lawyer in his or her counseling role does not have a formal directing role with a client. Even when the lawyer knows the client intends to violate the law, the lawyer is to counsel the client not to do so and to withdraw if the client proceeds with the unlawful conduct.<sup>18</sup> Clients are not the lawyer's followers. Rather, a lawyer is called to lead in client relationships by bringing them "by reasoning, cogency or some other influence to some conclusion or condition."<sup>19</sup> The lawyer leads through persuasion and influence. We could call this peer-review profession leadership with respect to the client (or patient, parishioner or university student in other peer-review professions). Some leadership authors argue that influence is the essence of leadership.<sup>20</sup> By stepping into the client's shoes as best as he or she can, the lawyer in the counseling role leads in the sense of influence to help the client think through all aspects of the client's situation. The lawyer can also "guide on a way" by modeling the conduct desired.

The notion that a lawyer in the counseling role is exercising a form of leadership is a novel proposition in legal scholarship. Ronald Heifetz points out that because we are not accustomed to distinguishing leadership from positions with formal directing authority, "the idea of leadership without authority is new and perplexing . . . . Analysts have generally neglected the distinctive problems and opportunities of mobilizing work from positions of little or no authority."<sup>21</sup> For Heifetz, leading without authority involves helping others clarify their competing purposes and values; face hard realities; understand the contradictions among purposes, values, and realities; and see new possibilities in solving problems. Leading without authority means asking the hard questions and helping others to think through the answers.<sup>22</sup> It can mean articulating an idea that strikes a resonant chord or focusing attention on a missing point of view that should be considered.<sup>23</sup> Leading without authority also requires listening to and learning from competing perspectives, including the arguments of adversaries, and helping others to understand those perspectives.<sup>24</sup> An individual can gain informal leadership authority with others over time through moral persuasion and the growth of respect and trust.<sup>25</sup> Leading without authority, as Heifetz defines the concept, is what lawyers do for clients in the counseling role.

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18. The Model Rules of Professional Conduct provide for limited situations where the lawyer is given permission to reveal a client's wrongdoing. For examples, see MODEL RULES OF PROF'L CONDUCT R. 1.6, R. 1.13 (2007).

19. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, *supra* note 3.

20. JOHN C. MAXWELL, LEADERSHIP 101: WHAT EVERY LEADER NEEDS TO KNOW 61 (2002).

21. RONALD HEIFETZ, LEADERSHIP WITHOUT EASY ANSWERS 184 (1994).

22. *Id.* at 23, 25, 183-84, 252-53.

23. *Id.* at 115-16.

24. *Id.* at 22-23, 187, 220.

25. *Id.* at 115-16.



In addition to the counseling role with clients, lawyers, whether senior or junior, in their roles as peers in a law firm or department or in the wider profession, do not have executive leadership power in the same sense as senior management of a for-profit corporation, but they do have the ability to influence other lawyers, paralegals, and staff through reasoning, cogency and their skills of persuasion.<sup>26</sup> Even a junior lawyer can ask questions that help the peer group think through issues. Each lawyer can “guide [the peer group] on a way” by modeling desired conduct for other lawyers and staff.

### C. *Integrating Ethics into a Lawyer’s Leadership*

A lawyer who leads in either a position of formal directing authority or a position of influence in counseling clients has a duty to consider for him or herself and should help the client and others consider the ethical dimensions of a decision. As used here, “ethical” means those dimensions of a decision that bring into play principles defining right and wrong conduct.<sup>27</sup> There are several reasons why lawyers’ leadership must be ethical.

#### 1. *Ethical Leadership in Positions with Directing Authority*

Alexis de Tocqueville observed over 165 years ago that American society has “entrusted” substantial authority in the government to the legal profession.<sup>28</sup> Tocqueville’s observation remains true 165 years later. Lawyers occupy all the directing positions in one branch of government and a significant proportion of the directing positions in the other two branches, including all the prosecutor positions. The American people, Mary Ann Glendon observes, have “a remarkable and widely-shared faith in constitutionalism and law.”<sup>29</sup> The spirit of the law has penetrated deeply into the popular culture.<sup>30</sup> “For better or worse, it is lawyers who are stationed at all the pulse points and switches of our vast legalistic republic.”<sup>31</sup>

26. See MODEL RULES OF PROF’L CONDUCT pmb. ¶ 7 (2007) (“[a] lawyer is also guided by personal conscience and the approbation of professional peers.”).

27. While “philosophers often use *ethics* when discussing the study of morality and *morality* when discussing general principles of right and wrong . . . in both popular usage and work on leadership, the terms are largely interchangeable. . . .” Deborah L. Rhode, *Where is the Leadership in Moral Leadership?*, in *MORAL LEADERSHIP: THE THEORY AND PRACTICE OF POWER, JUDGMENT, AND POLICY* 1, 4 (Deborah L. Rhode ed., 2006).

28. “In visiting the Americans and studying their laws, we perceive that the authority they have entrusted to members of the legal profession, and the influence which these individuals exercise in government, is the most powerful existing security against the excesses of democracy . . . . Scarcely any political question arises in the United States which is not resolved, sooner or later, into a judicial question. Hence all parties are obligated to borrow, in their daily controversies, the ideas, and even the language peculiar to judicial proceedings . . . . [T]he spirit of the law, which is produced in the schools and courts of justice, gradually penetrates beyond their walls into the bosom of society . . . .” ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 123–26 (Richard D. Heffner ed., 1956).

29. MARY ANN GLENDON, *A NATION UNDER LAWYERS* 284 (1994).

30. *Id.* at 258.

31. *Id.* at 283–84.

The profession recognizes the trust society reposes on it and the fiduciary duties this trust creates in the first sentence of the American Bar Association's Model Rules of Professional Conduct. Each member of the profession promises not just to be a representative of clients, but also "an officer of the legal system and a public citizen having special responsibility for the quality of justice."<sup>32</sup> Paragraph thirteen of the Preamble adds: "Lawyers play a vital role in the preservation of society."<sup>33</sup> Paragraph eleven states "An independent legal profession is an important force in preserving government under law . . . ."<sup>34</sup> Paragraph ten emphasizes "the legal profession is unique in this respect [its self-governing powers] because of the close relationship between the profession and the processes of government and law enforcement."<sup>35</sup>

Paragraphs ten to twelve of the Preamble capture the social contract of the profession with society in which society grants significant control over professional work relative to other occupations in the form of autonomy to regulate the profession through peer review.<sup>36</sup> Occupational control over the work through peer review translates into significant autonomy for members of the profession to make discretionary judgment calls in the work.<sup>37</sup>

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32. See MODEL RULES OF PROF'L CONDUCT pmb. ¶ 1 (2007). An "officer" is used here in the sense of one appointed to a position of trust and authority. Paragraph six of the Preamble explains that as a public citizen having special responsibilities for the quality of justice, "a lawyer should seek improvement of the law, access to the legal system, the administration of justice, and the quality of service rendered by the legal profession." *Id.* ¶ 6.

33. *Id.* ¶ 13.

34. *Id.* ¶ 11.

35. *Id.* ¶ 10.

36. Paragraph eleven provides "[t]o the extent that lawyers meet the obligation of their professional calling, the occasion for government regulation is obviated." MODEL RULES OF PROF'L CONDUCT pmb. ¶ 11 (2007). Paragraph twelve adds "The legal profession's relative autonomy carries with it special responsibilities of self-government." *Id.* ¶ 12. See Neil Hamilton, *Professionalism Clearly Defined*, 18 PROF. LAW. 4, 4-20 (2008) and Neil Hamilton, *Assessing Professionalism: Measuring Progress in the Formation of an Ethical Professional Identity*, 5 U. ST. THOMAS L.J. 470, 470-77 (2008) (providing a more detailed analysis of the social contract). The social contracts of the peer-review professions are subject to renegotiation when the public loses trust that members of a profession are in fact restraining self-interest to some degree to serve the public good in the area of the profession's responsibility. Congress, acting on behalf of society, concluded that lawyers advising clients in the corporate scandals of the early 2000s failed to fulfill their fiduciary duties to the public. Congress restructured the legal profession's social contract to reduce the autonomy of the profession to regulate itself by enacting Section 307 of Sarbanes Oxley in 2002. Section 307 instructs the SEC to issue rules setting forth minimum standards of professional conduct for attorneys appearing and practicing before the SEC in any way in the representation of an issuer of securities. Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, § 307 (2002). Part 205 of the consequent SEC regulations formally approved an up-the-ladder reporting requirement for lawyers who come across credible evidence of material ethical and fiduciary violations by management. Implementation of Standards of Professional Conduct for Attorneys, 17 C.F.R. § 205 (2003). The ABA amended the Model Rules using similar language.

37. Peers in the practice understand that professional judgment requires the exercise of discretion under conditions of substantial uncertainty, and they distinguish and protect autonomy to make "honest mistakes" from mistakes that are caused by gross negligence or willful indifference.

In both the Model Rules Preamble and the tradition of the profession, lawyers have recognized the trust and power that society has reposed in them.<sup>38</sup> Each lawyer agrees to serve not just as a representative of clients, but also as an officer of the legal system (a person holding a position of trust) and a public citizen having special responsibility for justice. Each lawyer holding a leadership position with formal directing authority has fiduciary duties to exercise the authority ethically in the service of justice.

## 2. *Ethical Leadership in Positions of Influence*

Model Rule of Professional Conduct 2.1 and its comments further explain the ethical duties of the Preamble's social contract for all lawyers in counseling clients. The Rule requires, "In representing a client, a lawyer shall exercise independent professional judgment and render candid advice."<sup>39</sup> The comments note, "Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant . . . . It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice."<sup>40</sup> Geoffrey Hazard and William Hodes emphasize that this provision is "more than merely permissive;" it "should be read as active encouragement for lawyers to provide more broadly based and richer professional advice."<sup>41</sup>

The counseling required by both Rule 2.1 and the profession's social contract is a type of ethical leadership. It is true that the client in the lawyer-

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Peer review tends to look closely at the quality of the process through which a professional exercises judgment.

38. See Hamilton, *Professionalism Clearly Defined*, *supra* note 36, at 4–8.

39. MODEL RULES OF PROF'L CONDUCT R. 2.1 (2007).

40. *Id.* at cmt. 2.

41. 1 GEOFFREY C. HAZARD, JR. & W. WILLIAM HODES, *THE LAW OF LAWYERING* § 23.4, at 23-6 (3d ed. 2006). Ben Heineman, former general counsel of General Electric, urges that lawyers ask questions that "expose and explore the value tensions inherent in most decisions," "find a fair balance, in the ultimate course taken, between legitimate competing values," "think about the ethical, reputational, and enlightened self-interest of their client or the institution they are leading," and "lead and build organizations . . . [through] persuasion, motivation, and empowerment of teams around a shared vision." Ben Heineman, Jr., *Law and Leadership*, 56 J. OF LEGAL EDUC. 596, 599–601 (2006). Counsel should be both a partner with executive management and a guardian of the corporation's integrity and reputation. HEINEMAN, *supra* note 2, at 67. Former Delaware Chief Justice Norman Veasey argues that lawyers "serving their clients with integrity and professional independence may act as persuasive counselors. Under the persuasive counselor model, lawyers attempt, through their legal counsel, persuasively to guide their clients to the right course of action." E. Norman Veasey, *The Tensions, Stresses and Professional Responsibilities of the Lawyer for the Corporation*, 62 BUS. LAW. 1, 30 (2006). The "right course of action" is clear if the contemplated conduct is unlawful, but what if the conduct is arguably lawful? Heineman observes that "many mixed business-integrity issues are gray. In those (frequent) instances, I tried to give the decision makers options that, while all lawful in my view, had varying degrees of legal, regulatory, ethical, and reputational risk and were based on clearly articulated assumptions about facts." Ben Heineman, Jr., *Caught in the Middle*, CORP. COUNS., Apr. 2007, at 2.

client relationship sets the objectives<sup>42</sup> and that the lawyer does not have hierarchical authority over the client. Rule 2.1 and the profession's social contract, however, call on the lawyer to influence the client by helping the client (from the client's perspective) to think through the client's situation not just in terms of technical legal questions, but also in terms of the much broader context of problem solving for the client.<sup>43</sup> The lawyer should discuss practical considerations such as "effects on other people."<sup>44</sup> Risk management in general, the impact of alternative courses of action on a client's good name and reputation risk management in particular would be important considerations for the lawyer to raise.<sup>45</sup>

As a member of a peer-review profession, each lawyer also has responsibilities to hold others in the profession accountable for compliance with the Rules of Professional Conduct.<sup>46</sup> Every lawyer should foster in him or herself the core values and ideals of the profession and should influence other members of the profession, especially within the lawyer's law firm or department, to embrace these values and ideals as well.<sup>47</sup> Each lawyer has special responsibilities to the community for the quality of justice. Carrying out these responsibilities requires a type of ethical leadership.

## II. LEGAL EDUCATION AND PREPARATION FOR ETHICAL LEADERSHIP

Where do law students and lawyers learn the ethical leadership qualities and skills necessary for positions with directing authority or influence? Legal education offers students useful skills for leadership in terms of what the Carnegie Foundation for the Advancement of Teaching calls the cognitive apprenticeship—thinking like a lawyer.<sup>48</sup> At one level the ability to think like a lawyer "emerges as the ability to translate messy situations into the clarity and precision of legal procedure and doctrine and then to take strategic action through legal argument in order to advance a client's cause

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42. See MODEL RULES OF PROF'L CONDUCT R. 1.2(a) (2007). This process of setting the objectives is more complex in an organizational representation where the client is the organization itself, but the organization can act only through its duly authorized constituents who include a multi-member board and the board's senior management agents and advisors. MODEL RULES OF PROF'L CONDUCT R. 1.13(a) (2007).

43. Extensive surveys of practicing lawyers indicate that problem solving is among the most important skills for practicing lawyers. See John Sonsteng & David Camarotto, *Minnesota Lawyers Evaluate Law Schools, Training and Job Satisfaction*, 26 WM. MITCHELL L. REV. 327, 337 (2000); Bryant Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 J. OF LEGAL EDUC. 469, 477 (1993).

44. MODEL RULES OF PROF'L CONDUCT R. 2.1 (2007).

45. Neil Hamilton & Laura Hammargren, *Reputation Risk Management for Law Firms and Business Clients*, MINN. LAW., Feb. 19, 2007, available at <http://www.minnlawyer.com/article.cfm?recid=75002>.

46. MODEL RULES OF PROF'L CONDUCT R. 2.1, pmb. ¶ 1 (2007).

47. Hamilton, *Professionalism Clearly Defined*, *supra* note 36, at 8 (listing all seven core values and four ideals of the profession).

48. WILLIAM J. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 28 (2007).

before a court or in negotiation.”<sup>49</sup> At another level, thinking like a lawyer includes looking at a problem from all sides and a dialectical engagement that subjects practical reason and common sense to “a process of critical examination and evaluation . . . [that] attends to available data and experience, forms hypotheses, tests them against concrete particulars, weighs competing hypotheses, and stands ready to repeat the process in light of new data, experience, or insight.”<sup>50</sup> The doctrinal courses also develop skills of written and oral presentation and some creative problem solving skills. They also help students develop an appreciation for the importance of fair process in decision making. The clinics, lawyering skills courses, and externships—what Carnegie calls the practical apprenticeship—develop these skills further in an applied setting in which students actually practice the skill and add others useful for leadership: fact investigation and development, negotiation, counseling, and alternative dispute resolution.<sup>51</sup> Carrie Menkel-Meadow observes that in order for lawyers to more fully serve their role in a deliberative democracy, “they must be taught different, additional things than they are taught now.”<sup>52</sup> She suggests more attention to “economic, sociological and psychological theories and empirical verities of group behavior, the social and psychological dimensions of human interaction . . . and the intellectual breadth to manage more than oppositional, binary thinking.”<sup>53</sup>

Carnegie gives legal education weak marks on the third apprenticeship of formation of an ethical professional identity.<sup>54</sup> The foundation of an ethical professional identity is self-knowledge, which includes habits of self-scrutiny and feedback from others.<sup>55</sup> Part IV of this essay argues that the foundation on which the skills of ethical leadership are built is also self-knowledge, including habits of self-scrutiny and feedback from others.

Overall, while legal education provides some skills useful for leadership, it does not attend adequately to developing the foundation for both an ethical professional identity and ethical leadership—self knowledge. It fails to help students understand ways in which they can build on a foundation of

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49. *Id.* at 54.

50. GLENDON, *supra* note 29, at 237–38.

51. SULLIVAN ET AL., *supra* note 48, at 87–125.

52. Carrie Menkel-Meadow, *The Lawyer's Role(s) in Deliberative Democracy*, 5 NEV. L.J. 347, 368 (2004).

53. *Id.*

54. SULLIVAN ET AL., *supra* note 48, at 85, 132. Carnegie's third apprenticeship of “identity and purpose, introduces students to the purposes and attitudes that are guided by the values for which the professional community is responsible . . . . The essential goal, however, is to teach the skills and inclinations, along with the ethical standards, social roles, and responsibilities that mark the professional. *Id.* at 28. The third apprenticeship informs the purposes to which the analytical and other skills of the lawyer are committed. It prevents lawyers from becoming legal technicians. *Id.* at 160.

55. See Hamilton, *Assessing Professionalism*, *supra* note 36, at 484.

self-knowledge over their careers toward the qualities and skills necessary in the ethical leadership roles the students will assume.

Some law deans urge schools to pay more attention to leadership skills,<sup>56</sup> and in recent years, a few law schools have started to offer courses designed to foster leadership skills. For example, Harvard, Ohio State, Santa Clara and Elon offer leadership courses, and the University of St. Thomas in Minnesota offers ethical leadership courses.<sup>57</sup> Some law firms and bar associations are also developing leadership courses.<sup>58</sup> However, virtually no law journal scholarship on leadership exists on the subject,<sup>59</sup> although one practitioner-oriented book, discussed in the next section, considers the topic,<sup>60</sup> and one leadership textbook is in development.<sup>61</sup> Ironically, a January 2009 survey of mission statements on the websites of all two hundred ABA accredited law schools indicates that thirty-eight law schools included fostering leadership in students in the mission statement, but only two of those schools actually have a leadership course in the curriculum.<sup>62</sup>

One reason that so few law schools offer any curriculum on leadership may be the professorate's confusion in distinguishing between leadership and management and the tendency of law faculty to dismiss law office man-

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56. See Thomas M. Mengler, *What's Faith Got to Do with It?*, 35 U. TOL. L. REV. 145 (2003) (arguing that we should educate students to be servant leaders); Donald Polden, *Educating Law Students for Leadership Roles and Responsibilities*, 39 U. TOL. L. REV. 353 (2008) (arguing that leadership is an important lawyering skill); E. Thomas Sullivan, *Decanal Leadership: Managing Relationships*, 31 U. TOL. L. REV. 749 (2000) (arguing that leadership skills are important in academic administration); Robert Jerry, *Reflections on Leadership*, 38 U. TOL. L. REV. 539 (2007) (analyzing academic leadership).

57. See Neil Hamilton & Marlon Cush, *Ethical Leadership in the Sarbanes-Oxley World*, MINN. LAW., June 19, 2006, available at <http://www.minnlawyer.com/article.cfm?recid=74238>; HERB RUBENSTEIN, *LEADERSHIP FOR LAWYERS* 6 (2d ed. 2008). A few schools are offering a type of business ethics course which may include some ethical leadership skills and some schools offer courses on professional responsibility in corporate practice. These professional responsibility rules-driven courses, however, are generally not focused on the skills of ethical leadership.

58. See RUBENSTEIN, *supra* note 57, at 6–7, 52.

59. Notable exceptions are Heineman, *Law and Leadership*, *supra* note 41; Laura Hammargren, *Servant Leadership and Women in the Law: A New Nexus of Women, Leadership and the Legal Profession*, 4 U. ST. THOMAS L.J. 624 (2007); John Montgomery, *Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students*, 39 U. TOL. L. REV. 323, 343–46 (2008) (pointing out that emotional intelligence correlates with superior leadership and increased levels of performance); Laura Padilla, *A Gendered Update on Women Law Deans: Who, Where, Why and Why Not?*, 15 AM. U. J. GENDER SOC. POL'Y & L. 443 (2007) (analyzing leadership and gender for law deans); Filippa Anzalone, *Servant Leadership: A New Model for Law Library Leaders*, 99 LAW LIBR. J. 793 (2007).

60. RUBENSTEIN, *supra* note 57, at 6–7, 52.

61. ROBERT CULLEN, *THE LEADING LAWYER: A GUIDE TO PRACTICING LAW AND LEADERSHIP* (forthcoming) (offering his own model of leadership that is somewhat similar to the virtues, attributes and skills of a servant leader).

62. Mary Dienhart, *Compilation of Research on ABA Approved Law Schools with Mission Statements Including Language Indicative of Leadership, Professionalism or Ethics and Corresponding ABA Approved Law Schools Offering Courses in Leadership* (Jan. 6, 2009) (unpublished research, on file with author).

agement as a nonacademic subject. This essay analyzes leadership, not management, but it is important first to understand the difference. John Kotter states that “[m]ost U.S. corporations today are overmanaged and underled.”<sup>63</sup> Kotter distinguishes the two concepts; he defines the fundamental purpose of management as keeping the current system functioning and coping with complexity. He then defines the fundamental purpose of leadership as producing and coping with useful change, especially non-incremental change.<sup>64</sup> In other words, management’s purpose is to provide for order and efficiency, while leadership’s purpose is to influence people toward adaptive and constructive change.

Leadership envisions the future, the challenges evident in that future, and the changes necessary to address the challenges. Management builds the administrative processes and systems to get there, producing orderly results, and realizing the desired end. Kotter concludes,

Management develops the capacity to achieve its plan by *organizing* and *staffing*—creating an organizational structure and set of jobs for accomplishing plan requirements, staffing jobs with qualified individuals, communicating the plan to those people, delegating responsibility for carrying out the plan, and devising systems to monitor implementation. The equivalent leadership activity, however, is *aligning people*. This means communicating the new direction to those who can create coalitions that understand the vision and are committed to its achievement.<sup>65</sup>

Thus, while leadership works hand-in-hand with management, ultimately its focus is different. Warren Bennis observes that management makes sure things are done right—leadership ensures we are doing the right things.<sup>66</sup> Leadership and management are both needed to motivate a group to achieve a vision or goal.

### III. THEORIES OF LEADERSHIP

There is currently no general theory of leadership, no single profile of a leader, and no widely accepted guide to becoming a leader.<sup>67</sup> Deborah Rhode observes that “A central difficulty plaguing analysis of leadership in general, and moral leadership in particular, is the lack of consensus on what exactly it means . . . . One comprehensive review of twentieth-century pub-

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63. JOHN P. KOTTER, JOHN P. KOTTER ON WHAT LEADERS REALLY DO 51 (1999).

64. *Id.* at 11.

65. *Id.* at 54.

66. David Zeeck, *Leadership vs. Management*, 12 AM. EDITOR 2 (1997).

67. BILL GEORGE, TRUE NORTH: DISCOVER YOUR AUTHENTIC LEADERSHIP xxvi (2007); RAKESH KHURANA, FROM HIGHER AIMS TO HIRED HANDS: THE SOCIAL TRANSFORMATION OF AMERICAN BUSINESS SCHOOLS AND THE UNFULFILLED PROMISE OF MANAGEMENT AS A PROFESSION 355–61 (2007) (leadership as a body of knowledge “remains without either a widely accepted theoretical framework or a cumulative empirical understanding leading to a usable body of knowledge.”).

lications on leadership found that two-thirds did not even bother to define the term.”<sup>68</sup>

Herb Rubenstein’s *Leadership for Lawyers* captures the lack of consensus on what leadership means. The book lists ten specific theories of leadership,<sup>69</sup> ninety “brands of leadership” currently on the market organized into sixteen categories,<sup>70</sup> sixty leadership behaviors organized into five categories,<sup>71</sup> forty-one competencies for successful leadership,<sup>72</sup> and forty leadership behavioral styles.<sup>73</sup> While Rubenstein’s book is a pioneering look at leadership theories applicable to the practice of law, the multiple lists of theories, brands, behaviors, competencies, and styles with little analysis are confusing. The book and the current scholarship on leadership generally do not focus on the unique challenges of peer-review profession leadership in both flat organizations of professional colleagues and client relationships. Furthermore, Rubenstein gives passing attention to ethical leadership.<sup>74</sup>

To cut through the confusion of so many competing theories and brands of leadership, I provide below a succinct and clear summary of five major categories of leadership theory that focus on leadership positions with directing authority, but offer little analysis on the ethical dimensions of leadership.<sup>75</sup> This overview of the competing major theories of leadership involving directing authority provides a basis for the reader to make a comparative evaluation of these theories and the ethical leadership theories analyzed in Part IV with respect to the roles that lawyers assume in their work.<sup>76</sup>

### A. *The Trait Theory*

Rooted principally in psychology, the trait theory of leadership developed in the 1920s and 1930s. The theory was based on the premise that people have distinguishing qualities, many of which were inherited, and this

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68. RHODE, *supra* note 27, at 4.

69. RUBENSTEIN, *supra* note 57, at 14–17, 188.

70. *Id.* at 153–83.

71. *Id.* at 17, 21–24, 188.

72. *Id.* at 90–92.

73. *Id.* at 93–111.

74. Rubenstein emphasizes “[u]nderpinning all aspects of leadership are values and ethics.” RUBENSTEIN, *supra* note 57, at 11. Rubenstein, however, does not focus on ethical leadership theories.

75. This summary of the major categories of leadership theories and models is not exhaustive, but it is sufficient to provide an introductory map of the field. For a more complete exposition of leadership theories, see PETER G. NORTHOUSE, *LEADERSHIP: THEORY AND PRACTICE* (4th ed. 2007). Northouse also covers leader-member exchange theory, the team leadership model, and the psychodynamic approach. There is much more analytical work to be done to mine insights useful to lawyers from the scholarship on these major categories of leadership theory.

76. This information on the major theories of leadership for positions with directing authority also helps a lawyer understand what leadership model a client may be explicitly or implicitly seeking to implement which should make the lawyer a more effective counselor for that client.



literature thus studies effective leaders to find what traits effective leaders demonstrate. In essence, according to this theory, great leaders in large part are born, and by observing them, we can define the traits that led to their successful leadership.

Lists composed from 1904 to 1970 included the following identified traits:

- Energetic
- Tactful
- Knowledgeable about how to get things done
- Assertive
- Cooperative
- Sound in judgment
- Creative
- Insightful
- Adaptable
- Self-sufficient
- Sociable
- Ambitious
- Dominant
- Persistent
- Responsible
- Self-confident
- Courageous and true to convictions
- Modest
- Self-controlled<sup>77</sup>

Another 1983 list included the following traits:

- Emotional stability and composure
- Willingness to admit error
- Good interpersonal skill<sup>78</sup>

Trait theory is very inexact for determining effective leadership in certain environments and contexts. Research on trait theory did not demonstrate a correlation of any particular constellation of traits with successful leadership.<sup>79</sup> There are examples of both assertive, dominant leaders and also examples of cooperative leaders with strong interpersonal skills, showing that dramatic differences in personality do not necessarily correlate with differences in effective leadership. Further, trait theory has not developed a ranking of which traits are most important or even a consistent list of traits found in successful leaders. The theory fails to take into account different

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77. BERNARD M. BASS, *THE BASS HANDBOOK OF LEADERSHIP* 81–102 (2008).

78. MORGAN W. MCCALL, JR. & MICHAEL M. LOMBARDO, *OFF THE TRACK: WHY AND HOW SUCCESSFUL EXECUTIVES GET DERAILED* 9–10 (1983).

79. HEIFETZ, *supra* note 21, at 17.

personalities and styles, especially gender and generational differences. Earlier versions of trait theory also minimized the potential for individual growth to develop the traits.<sup>80</sup> Finally, trait theory does not consider the environment or context where leadership takes place. Although qualities like those identified in trait theory are generally accepted as important to leadership, leadership studies have moved toward examining situations and the behaviors that are appropriate for particular situations or contexts.

### B. *The Behavioral Theory*

The behavioral theory of leadership looks at what behaviors effective leaders exhibit and theorizes that leadership flows from definable, learnable behavior. Many models fit within behavioral theory.<sup>81</sup>

Behavioral models often focus on specific tasks that a group must complete and often do not try to transform the structure or values (for example, company culture) within which those tasks are set. An example is the managerial grid. The Blake and Mouton managerial grid produces four main styles of leadership from a graph with two axes: concern for people and concern for production.<sup>82</sup> The four styles are as follows:

1. **Authoritarian:** High concern for production, low concern for people. The leader is very task oriented, doing whatever it takes to achieve that task, and therefore hard on subordinates. Collaboration is lacking, with little room for questions, dissent, or flexibility. This style keeps subordinates from reaching their potential.<sup>83</sup>
2. **Country Club:** Low concern for production, high concern for people. The leader concentrates on rewards and encouragement to accomplish tasks but does not use punishment so as not to jeopardize relationships. Acceptance by subordinates is more important than pressing people to get tasks done. This style stifles output and makes relationships superficial since conflict is discouraged.<sup>84</sup>
3. **Impoverished:** Low concern for production, low concern for people. The leader delegates and disappears. The leader has little control and no relationship with subordinates. The group is allowed a lot of autonomy, which results in power struggles. A business with a leader like this will not survive in a competitive market.<sup>85</sup>
4. **Team Leader:** High concern for production, high concern for people. The leader tries to set a positive example and develop an envi-

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80. William E. Halal, *Toward a General Theory of Leadership*, 27 HUMAN RELATIONS 401, 401 (1974).

81. Behavioral theory is sometimes also described as style theory. See NORTHOUSE, *supra* note 75, at 69.

82. ROBERT R. BLAKE & JANE S. MOUTON, THE MANAGERIAL GRID 10 (1994).

83. *Id.* at 18–21, 48.

84. *Id.* at 57–62, 79.

85. *Id.* at 85–88, 103–05.

ronment in which people reach their potential. The leader sets goals for subordinates to fulfill but also gives priority to relationships and bonds among the group. The setting of clear goals and developing strong relationships give effective control to the leader. Subordinates are willing to invest in the goals. Blake and Mouton consider this the most effective leadership style because it commits people to the work and utilizes the group's capabilities as much as possible.<sup>86</sup>

Critics of the behavioral theory echo the critics of the trait theory that in their opinion the behavioral theory models focus too closely on the leader's capabilities and do not account adequately for dynamic outside influences and factors surrounding the leader. In addition, behavioral theory models in general assume the leader has to adapt to the existing structure and values rather than to transform them in order to lead successfully.<sup>87</sup>

### C. *Two Theories Focusing on the Context in Which Leadership Takes Place*

Both contingency theory and situational theory models of leadership focus on the context in which the leadership takes place, not just the leader's behavior or traits. Context includes the motivations, expectations, and capabilities of followers; the characteristics of the task; the amount of power the leader has; and the relationship the leader has with his or her followers. Both contingency and situational theories reject the concept that there is a best leadership style that is appropriate in all situations.

In contingency theory, effective leadership is contingent on matching the leader's style to specific situational variables. Fred Fiedler describes leadership styles as either task-motivated (concerned primarily with reaching a goal) or relationship-motivated (concerned with close interpersonal relationships).<sup>88</sup> He also defines three situational variables: (1) the degree of confidence, loyalty, and attraction the followers feel for the leader; (2) the degree to which the group's task is highly structured; and (3) the degree of power the leader has to reward or to punish followers.<sup>89</sup> Empirical research indicates that task-motivated leaders tend to be most effective in situations rated either most favorable or least favorable on all three situational variables. Leaders who are more relationship-motivated tend to do better in situations that are moderately favorable on all three situational variables.

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86. *Id.* at 142–48, 177–80, 316–18.

87. See Daniel R. Denison, Robert Hooijberg & Robert E. Quinn, *Paradox and Performance: Toward a Theory of Behavioral Complexity in Managerial Leadership*, 6 *ORG. SCI.* 524, 526 (1995); NORTHOUSE, *supra* note 75, at 79, 85–87.

88. NORTHOUSE, *supra* note 75, at 114.

89. FRED E. FIEDLER, *A THEORY OF LEADERSHIP EFFECTIVENESS* 142–44 (1967); NORTHOUSE, *supra* note 75, at 113–14.

While empirical support is strong for these findings, it is not entirely clear why the correlation exists.<sup>90</sup>

The situational leadership theory also looks at context, but emphasizes that a leader must adapt his or her style to the developmental level, including competence and commitment of followers.<sup>91</sup> Two examples of the situational leadership model are the Hersey-Blanchard Situational Model and the Vroom-Yetton Leadership Model.

### 1. *The Hersey-Blanchard Situational Model*

This model matches the leadership style with the developmental level of followers. It depends on three components: the competence and commitment level of the followers for the task, the amount of guidance and direction the leader gives, and the amount of social and emotional support the leader provides. A good leader must be able accurately to assess the followers' competence and commitment levels and adjust leadership style to the readiness level of each follower in order to succeed.<sup>92</sup>

The model has four styles that advance with the follower's developmental level: telling, delegating, selling, and participating. These four styles are similar to the managerial grid theory, but the follower's development level determines the leadership style.<sup>93</sup>

### 2. *Vroom-Yetton Leadership Model*

The Vroom-Yetton model is a decision-making framework that requires the leader to assess a problem and the amount of group involvement the problem requires.<sup>94</sup> This model contains five management styles on a continuum ranging from autocratic to consultative to group-based. The leader examines the nature of the problem, the decision, and possible consequences, and then decides how much involvement the group should have in the specific situation. This model consists of five decision-making methods:

1. Autocratic I: Leader individually solves the problem or makes the decision by using only information already available to him or her.
2. Autocratic II: Leader obtains necessary information from the group but makes the decision relatively alone.

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90. NORTHOUSE, *supra* note 75, at 114–18.

91. *Id.* at 91.

92. PAUL HERSEY, KENNETH H. BLANCHARD & DEWEY E. JOHNSON, *MANAGEMENT OF ORGANIZATIONAL BEHAVIOR* 132 (9th ed. 2008). The concept that the leader adjusts leadership style to the developmental level of followers applies even when the leader does not have hierarchical power over the follower. *Id.*

93. *Id.* at 142–48.

94. VICTOR H. VROOM & PHILIP W. YETTON, *LEADERSHIP AND DECISION-MAKING* 13 (1973); MARTIN J. GANNON, *ORGANIZATIONAL BEHAVIOR* 7 (1979).

3. Consultative I: Leader discusses the problem with each subordinate individually and solicits ideas and suggestions. The leader then makes a decision without bringing the group together.
4. Consultative II: Leader discusses the problem and gets ideas with the group as a whole, and then the leader makes a decision.
5. Group: The leader gives the group power to generate ideas and decide on the problem, with the leader spearheading the group. The leader will implement the decision of the group.<sup>95</sup>

The situational leadership theory does not yet adequately explain the theoretical basis for its definition of subordinates' developmental levels and how subordinates move forward on competence or commitment. This in turn brings into question how a leader matches leadership style to subordinates' developmental level.<sup>96</sup>

Contingency and situational leadership theories also give little attention to the potential for changes in group dynamics and culture.<sup>97</sup> In addition, they concentrate narrowly on the task at hand and do not engage the true needs and hearts of the followers.<sup>98</sup> Finally, an unintended consequence of these theories may be mistrust because the leader shifts course when expedient to achieve the goals. This may include renegeing on commitments and promises.<sup>99</sup>

#### D. Transactional Leadership

Transactional leadership focuses on what leaders and followers gain in exchange for cooperation. It emphasizes a contractual relationship between a leader and a subordinate. This relationship is premised on the belief that people are motivated almost exclusively by rewards and punishments; the leader outlines what is required and specifies both rewards for achieving the goals and the consequences for failure.<sup>100</sup> The agreement outlines the rewards and punishments at the outset of the relationship.<sup>101</sup>

Transactional leadership theory seems appealing where the need for structure and clear chain-of-command is critically important. However, if it is the only model of leadership a leader employs, it dehumanizes subordinates by attempting to reduce individual motivation and potential to self-

95. VROOM & YETTEN, *supra* note 94, at 13.

96. NORTHOUSE, *supra* note 75, at 97–99, 111.

97. Bradley L. Kirkman, *The Impact of Demographic Heterogeneity and Team Leader–Team Member Demographic Fit on Team Empowerment and Effectiveness*, 9 GROUP & ORG. MGMT. 3 (June 2004).

98. JAMES O'TOOLE, LEADING CHANGE 11 (1996).

99. WARREN BENNIS, DANIEL GOLEMAN, JAMES O'TOOLE & PATRICIA WARD BIEDERMAN, TRANSPARENCY: HOW LEADERS CREATE A CULTURE OF CANDOR 63 (2008).

100. See NORTHOUSE, *supra* note 75, at 176, 185.

101. BERNARD M. BASS & RONALD E. RIGGIO, TRANSFORMATIONAL LEADERSHIP 3–4 (2d ed. 2006). Transactional leadership includes management by exception that specifically focuses on how leaders should monitor deviance from standards and failure to meet goals. *Id.* at 8.

interest expressed in contractual terms.<sup>102</sup> Bernard Bass and Ronald Riggio find in their research that a combination of transactional and transformational leadership (transformational leadership is discussed below) is most effective.<sup>103</sup> They recommend a full range of leadership models that includes both transactional and transformational leadership depending on what is most appropriate in the situation.<sup>104</sup>

All five of these leadership theories measure leadership success by prominence, authority, or influence at the goals of the group or organization. While all five theories claim to be value neutral in terms of purpose or ethics, the goals of prominence, authority, or influence do have ethical dimensions in terms of the positive or negative impact of the choices and conduct of the leader on others as the leader pursues prominence, authority and influence.<sup>105</sup> If impact of conduct on others is not considered, this means that decision-making in these models devalues ethics.

#### IV. LEADERSHIP THEORIES EMPHASIZING ETHICS

Part III explored five major leadership theories not emphasizing ethics so the reader can decide for him or herself the strengths and weaknesses of these alternative major leadership theories compared to the ethical leadership theories analyzed here. Section C of Part I argued that lawyers in positions with directing authority or of influence should consider, and help others consider, the ethical dimensions of a decision.<sup>106</sup> Transformational, adaptive, and servant leadership theories incorporate ethics in leadership.

##### A. *The Transformational Theory*

James MacGregor Burns was one of the first to articulate the difference between leading people in a specific task and inspiring people to continue to follow and invest in a leader. He also used the word “transformational” to state that people will follow leaders who inspire them, and the way to get things accomplished is to infuse people with enthusiasm and energy toward a shared vision. These leaders develop a vision that they completely believe in, which is meant to inspire and convert followers. The

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102. Deanne N. Den Hartog et al., *Transactional vs. Transformative Leadership: An Analysis of the MLQ*, 70 J. OF OCCUPATIONAL AND ORG. PSYCHOL. 19, 20–22 (1997).

103. BASS & RIGGIO, *supra* note 101, at 83.

104. *Id.* at 7–11. The path-goal model of leadership is a variation of transactional leadership. The effective leader clarifies the transactional exchange and the path the subordinate needs to follow to attain the goal. This model emphasizes the relationships among the leader’s style, the characteristics of the subordinate, and the work setting. The leader must meet the subordinates’ motivational needs. Subordinates are motivated if they think they can do the work, their efforts will result in a certain outcome, and the payoffs from the work are worthwhile. NORTHOUSE, *supra* note 75, at 127.

105. HEIFETZ, *supra* note 21, at 18.

106. Ethical as used here means those dimensions of a decision that bring into play principles defining right and wrong conduct. *See* discussion, *supra* note 27.

transformational leader brings the vision to fruition both by example, where his or her conduct shows everyone else what their values and behavior should be, and by effective communication. Such leaders are people-oriented and believe success comes through deep commitment.<sup>107</sup>

Bernard Bass explains,

[T]ransformational leaders attempt and succeed in raising colleagues, subordinates, followers, clients, or constituencies to a greater awareness about the issues of consequence. This heightening of awareness requires a leader with vision, self-confidence, and inner strength to argue successfully for what he [or she] sees is right or good, not for what is popular or is acceptable according to the established wisdom of the time.<sup>108</sup>

Bass and Riggio emphasize four effective transformational skills:

1. **Inspirational motivation:** the degree to which the leader articulates a vision that appeals to and inspires followers. Leaders using inspirational motivation articulate and effectively communicate a clear vision of high purpose and meaning for the group. The vision translates into meaning for each task and creates energy to drive the group to achieve the vision. These leaders also convey both optimism about achieving the vision and high expectations and standards of performance.
2. **Idealized Influence:** the degree to which the leader acts admirably in ways that help followers identify with the leader. Transformational leaders appeal to followers on an emotional level by having deep convictions and following those convictions. The leader has an apparent and high set of values, which are demonstrated in all actions and provide a role model of integrity for the followers.
3. **Intellectual Stimulation:** the degree to which the leader challenges the followers' assumptions and asks for followers' participation. These leaders work to stimulate and encourage creativity and commitment in their followers.
4. **Individualized Consideration:** the degree to which the leader pays attention to each follower's needs. A leader can do so by listening to the follower's concerns and coaching that individual. The leader emphasizes both that each follower is adding to the team and that diversity of perspective and experience is critical to solving problems effectively.<sup>109</sup>

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107. JAMES MACGREGOR BURNS, *LEADERSHIP* 4–5 (1978); see NORTHOUSE, *supra* note 75, at 176, 348.

108. BERNARD M. BASS, *LEADERSHIP AND PERFORMANCE BEYOND EXPECTATIONS* 17 (1985); see Bernard M. Bass & Paul Steidlmeier, *Ethics, Character and Authentic Transformational Leadership Behavior*, 10 *LEADERSHIP Q.* 181, 181–83 (1999).

109. BASS & RIGGIO, *supra* note 101, at 6–7.

One critique of transformational leadership theory noted by Northouse is that it may be “a personality trait or personal predisposition rather than a behavior in which people can be instructed. If it is a trait, training people in the approach becomes problematic because it is difficult to teach people how to change their traits.”<sup>110</sup> Transformational scholars counter that this model focuses on leader behaviors that can be learned.<sup>111</sup>

One of the traps of transformational leadership is that passion can become unhinged from ethics and integrity. Great things can be achieved through charismatic leaders, but so can great catastrophes. Just because someone passionately believes he or she is right, does not necessarily mean the person is ethically right. The leader might convince the followers to share in a set of values, but the world has seen many sets of values that are ethically questionable.<sup>112</sup> Both Burns and Bass argue that transformational leadership must be authentic, meaning driven by social values focused on what benefits people other than the leader, including followers, the organization, and society.<sup>113</sup> Transformational leaders also tend to focus on the big picture and forget the details, sometimes including the individual followers.<sup>114</sup>

### B. Adaptive Leadership

Adaptive leadership theory created by Ron Heifetz is “the activity of persons engaged in the mobilization of people around them to make progress on the important challenges of their place and their time.”<sup>115</sup> Such challenges arise in the context of families, groups, communities and society at all levels. Heifetz uses “mobilize” to connote “motivating, organizing, orienting and focusing attention.”<sup>116</sup> He proposes that in order to mobilize people to address a challenge for a group, adaptive leaders help the group both to clarify and articulate the group’s guiding purposes, values and beliefs and to confront the group with the realities that they face.<sup>117</sup>

Adaptive work consists of the learning required to address conflicts in the values people hold, or to diminish the gap between the values people stand for and the reality they face. Adaptive work requires a change in values, beliefs, or behavior. The exposure and orchestration of conflict—internal contradictions—

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110. NORTHOUSE, *supra* note 75, at 193.

111. *Id.*

112. See Gary Yukl, *An Evaluation of Conceptual Weaknesses in Transformational and Charismatic Leadership Theories*, 10 LEADERSHIP Q. 285, 285–305 (1999).

113. BASS & RIGGIO, *supra* note 101, at 12–14.

114. See Yukl, *supra* note 112, at 285–305.

115. SHARON DALOZ PARKS, LEADERSHIP CAN BE TAUGHT: A BOLD APPROACH FOR A COMPLEX WORLD 166 (2005); HEIFETZ, *supra* note 21, at 20.

116. HEIFETZ, *supra* note 21, at 20.

117. *Id.* at 22–23.



within the individuals and constituencies provide the leverage for mobilizing people to learn new ways.<sup>118</sup>

Heifetz emphasizes that adaptive leadership does not require a position of directing authority; it is an activity to mobilize people to address a challenge. It can occur “from multiple positions in a social structure. A President and a clerk can both lead . . . .”<sup>119</sup>

While adaptive leadership also allows for a variety of qualities and skills depending upon the situation, including the culture and abilities of the group,<sup>120</sup> Heifetz emphasizes several specific skills:

1. identifying the adaptive challenge facing the group;<sup>121</sup>
2. identifying the relevant critical stakeholders who need to be involved in addressing the challenge;<sup>122</sup>
3. helping others clarify competing purposes and values;<sup>123</sup>
4. helping others understand the hard realities they face;<sup>124</sup>
5. asking the difficult questions that help others understand the contradictions among purposes, values and hard realities in their positions;<sup>125</sup>
6. helping others use the contradictions to do the work necessary to learn new ways;<sup>126</sup>
7. helping others to see new possibilities in addressing the challenge;<sup>127</sup>
8. using the skill of reflection in action so that even during the fray, the leader can metaphorically “go to the balcony” momentarily to reflect on what is really going on with the group;<sup>128</sup>
9. keeping the group’s distress of taking on the challenge in a productive range;<sup>129</sup>
10. demonstrating courage in the face of not knowing everything;<sup>130</sup> and
11. protecting the less powerful voices in the community so they can be heard.<sup>131</sup>

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118. *Id.* at 22.

119. *Id.* at 20. See discussion, *supra* notes 21–24.

120. *Id.*

121. RONALD HEIFETZ & MARTY LINSKY, LEADERSHIP ON THE LINE 128 (2002).

122. HEIFETZ, *supra* note 21, at 20.

123. *Id.* at 22–23.

124. *Id.* at 22, 24.

125. *Id.* at 25, 188, 252.

126. *Id.* at 22.

127. *Id.*

128. HEIFETZ, *supra* note 21, at 252–53.

129. *Id.* at 128.

130. *Id.*

131. *Id.*

Adaptive leadership has powerful insights both in seeing that leadership is an activity that anyone can do whether or not the person has formal directing authority and in analyzing the specific skills needed to identify the adaptive challenge and mobilize people to make progress on the challenge. The theory emphasizes that the adaptive leader is to help others clarify their values and possible tensions among the values.

However in terms of the personal values of the adaptive leader, Heifetz provides modest guidance, and only briefly touches on the need for the leader to develop self-knowledge because “a person who leads needs to understand his [or her] own ways of processing and distorting what he [or she] hears. To sustain the stress of leadership, [the person also] needs to know enough about his [or her] own biases to compensate for them.”<sup>132</sup> Heifetz urges a life-long habit of self-examination and “reflection on daily actions, successes and failures, of ourselves and others.”<sup>133</sup> He also recommends that a leader find others who will give honest feedback as a hedge against self-deception,<sup>134</sup> as well as a sanctuary where a person can reflect.<sup>135</sup>

The weakness of the theory is that Heifetz, beyond noting that exercising adaptive leadership gives meaning by contributing to the lives of others,<sup>136</sup> does not clearly define values. This essay uses “ethical” to mean those dimensions of a decision that bring into play principles of right and wrong conduct,<sup>137</sup> but Heifetz does not analyze how self-knowledge, reflection and feedback from others relate to ethical principles of right and wrong conduct and, except for the five values mentioned below, which ethical principles are appropriate to guide an adaptive leader. Heifetz does make indirect references to spirituality but does not explain how spirituality would inform a leader’s ethical principles.<sup>138</sup> When a group is addressing an adaptive challenge, the adaptive leader helps the group clarify their values. However, Heifetz does not specify which values are ethical except the values of: (1) not imposing values and morality on others; (2) staying open to examine one’s own values and morality; (3) facing the internal contradictions among values, morality and hard realities; (4) increasing community cohesion; and (5) developing norms of responsibility.<sup>139</sup>

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132. *Id.* at 271.

133. *Id.* at 271–72.

134. HEIFETZ, *supra* note 21, at 272.

135. *Id.* at 273.

136. HEIFETZ & LINSKY, *supra* note 121, at 223.

137. *See* discussion, *supra* note 27.

138. HEIFETZ & LINSKY, *supra* note 121, at 227–34.

139. HEIFETZ, *supra* note 21, at 24–25.

### C. *Servant Leadership*

Servant leadership, originally articulated by Robert Greenleaf, encourages leaders to serve others' highest priority needs, helping others to reach their potential—to be their better selves, to be what they are capable of becoming. Servant leaders, Greenleaf notes, also ask with respect to any decision “what is the effect on the least privileged in society. . . ?”<sup>140</sup> As with Heifetz's theory of adaptive leadership, servant leadership does not require a position with directing authority. Any person can be a servant leader in the circles of communities around him or her—clients, family, friends, colleagues at work, or social groups.

The foundation on which a servant leader builds over a lifetime is self-knowledge and the growth of personal conscience.<sup>141</sup> The leader must seek to know him or herself in every regard, including a dedication to defining and realizing a calling or life purpose to serve others.<sup>142</sup> The self-knowledge both that a person is called to serve and how to serve is essentially lifelong growth in understanding the “moral insight.” Ken Goodpaster, looking to nineteenth century philosopher Josiah Royce, observes that ethics is grounded in the “moral insight” or what philosophers today call the “moral point of view.” Goodpaster notes “The moral insight is the realization of one's neighbor, in the full sense of the word realization . . . . We see the reality of our neighbor, that is, we determine to treat him as we do

140. ROBERT GREENLEAF, *SERVANT LEADERSHIP* 13–14 (1977).

141. Stephen Covey believes,

[T]he essential quality that sets servant leaders apart from others is that they live by their conscience—the inward moral sense of what is right and what is wrong . . . . There is a mass of evidence that shows this moral sense, the conscience, this inner light, is a universal phenomenon . . . . When people live by their conscience, responding to universal principles . . . their behavior echoes in everyone's souls. People instinctively feel trust and confidence toward them. This is the beginning of moral authority.

STEPHEN COVEY, *Foreword* to ROBERT GREENLEAF, *SERVANT LEADERSHIP: A JOURNEY INTO THE NATURE OF LEGITIMATE POWER AND GREATNESS* 4–5 (Larry C. Spears ed., 2002). In his work, Covey emphasizes service to others embodied in day-to-day conduct based on self-knowledge and core values. Covey offers seven guiding principles for daily living:

1. Be proactive—the principle of self-awareness, personal vision, responsibility;
2. Begin with the end in mind—the principle of mission;
3. Put first things first—the principle of managing time and prioritizing;
4. Think Win-Win—the principle of seeking mutual benefit;
5. Seek first to understand, then be understood—the principle of empathic communication;
6. Synergize—the principle of creative cooperation; and
7. Sharpen the Saw—the principle of continuous improvement.

STEPHEN R. COVEY, *PRINCIPLE-CENTERED LEADERSHIP* 40–47 (1991).

142. Greenleaf wrote over thirty years ago that servant leadership “begins with the natural feeling that one wants to serve, to serve first.” This natural feeling to serve comes from self-knowledge. Greenleaf emphasized “the most dependable part of the true servant. . .” is “psychological self-insight.” Such insight flows from study and reflection. The true servant constantly evaluates whether the service to others in fact serves the others' highest priority needs. GREENLEAF, *supra* note 140, at 13–14.

ourselves.”<sup>143</sup> One’s “neighbor” in many faith traditions includes the poor and disadvantaged. Goodpaster argues that the field of ethics is about understanding the full implications of the moral insight.<sup>144</sup> The moral insight leads to growth of shared ethical norms and each individual’s ethical principles—what philosophy calls normative ethics or the principles and judgment that define right and wrong conduct.<sup>145</sup>

Self-knowledge in terms of the moral insight grows through lifelong habits of reflection and consultation and engagement with others to seek honest and candid input. Greenleaf wrote,

Part of the human dilemma is that the meaning of *serve*, in practical behavior terms for both persons and institutions, is never completely clear. Thus one who would be [a] servant is a life-long seeker, groping for light but never finding ultimate clarity. One constantly probes and listens, both to the promptings from one’s own inner resources and to the communications of those who are also seeking. Then one cautiously experiments, questions and listens again. . . . No matter what stature a person reaches as a servant, there is always room for more growth.<sup>146</sup>

Building on a foundation of growing self-knowledge, a servant leader focuses on several key virtues and attitudes:

1. Stewardship, meaning responsibility to care for and use wisely something held in trust for another. In religious traditions, stew-

143. KENNETH GOODPASTER, *CONSCIENCE AND CORPORATE CULTURE* 52–56 (2007) (quoting JOSIAH ROYCE, *THE RELIGIOUS ASPECT OF PHILOSOPHY: A CRITIQUE OF THE BASES OF CONDUCT AND OF FAITH* 155–56 (Harper & Row 1965) (1865)). Respecting the dignity of the neighbor, Goodpaster notes, is foundational to all major religious traditions.

144. *Id.*

145. Normative ethics is aimed at judgments of right and wrong, virtue and vice. It provides criteria to support or refute claims of rightness or wrongness, or virtue or vice. Descriptive ethics is a social science aimed at empirically neutral description of the values of individuals and groups. Meta-ethics (sometimes called analytical ethics) examines “the meaning and objectivity of ethical judgments. Meta-ethics is therefore at a level removed from normative ethics. At this remove, one might [for example] explore the differences among scientific, religious and ethical perspectives; the relation of legality to morality; the implications of cultural differences for ethical judgment, and so forth.” KENNETH E. GOODPASTER & LAURA L. NASH, *POLICIES AND PERSONS: A CASEBOOK IN BUSINESS ETHICS* 522 (3d ed. 1998).

There are two general approaches to normative ethics. A rational approach uses analysis and logic in any situation to determine right conduct from a set of first ethical principles. This “ethics of principle” approach can be derived from faith or religious teachings, cultural norms or moral philosophy, such as Kant’s categorical imperative or John Stuart Mills’ utilitarianism. A second general source emphasizes the virtues and good habits of character in any situation and is more intuitive about the right conduct that a virtue or habit of character demands in the situation. Some people using this “ethics of character” approach find the relevant virtues or habits of character in faith or religious teachings. Others look to moral philosophy or cultural norms. WILLIAM SULLIVAN, *WORK AND INTEGRITY: THE CRISIS AND PROMISE OF PROFESSIONALISM IN AMERICA* 262–67 (2d ed. 2005).

146. ROBERT GREENLEAF, *SEEKER AND SERVANT: REFLECTIONS ON RELIGIOUS LEADERSHIP* 201 (1996).

ardship calls each person to share his or her time and energy to help and serve others, particularly the poor and disadvantaged.<sup>147</sup>

2. Empathy, meaning the imaginative projection of one's own consciousness to stand in the shoes of another human being. The servant leader strives to respect the dignity of each person by understanding the other's situation, experience and emotions.<sup>148</sup>
3. Commitment to the holistic growth of other people, meaning a belief that each person has an intrinsic dignity and a commitment to the holistic growth of each individual in the community. This commitment includes helping others grow from the pain and difficulty of life.<sup>149</sup>

In addition to these commitments to self-knowledge and the virtues and attitudes of stewardship, empathy, and commitment to the growth of others, servant leaders develop the following skills (many of which overlap transformational and adaptive leadership) through which they can express and realize the virtues and attitudes above:

1. Reflection and Solicitation of Feedback Skills: Self-knowledge grows through a cycle of reflection, feedback, further reflection on feedback, action, and back to reflection;<sup>150</sup>
2. Listening Skills: The leader should use active listening to truly understand where the person(s) served is and where the person should consider going;<sup>151</sup>
3. Conceptualization Skills: The leader should reflect back to the person or persons who served their highest aspirations. The leader can help synthesize a dream or a vision of the individual's or group's potential that they feel represents their vision;<sup>152</sup>
4. Persuasion Skills: The leader should rely on persuasion rather than coercion to gain the support of each person served. If possible, the leaders should foster a consensus within groups and correlate each

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147. ROBERT BANKS & BERNICE M. LEDBETTER, REVIEWING LEADERSHIP: A CHRISTIAN EVALUATION OF CURRENT APPROACHES 107–110 (2004); see also Laura Hammargren, *Servant Leadership and Women in the Law: A New Nexus of Women, Leadership, and the Legal Profession*, 4 U. ST. THOMAS L. J. 624, 633 (2007); Robert H. Jerry, *Reflections on Leadership*, 38 U. TOL. L. REV. 539, 542–43 (2007).

148. LARRY C. SPEARS, *Introduction: Tracing the Past, Present and Future of Servant Leadership*, in FOCUS ON LEADERSHIP: SERVANT LEADERSHIP FOR THE 21ST CENTURY 1–16 (Larry C. Spears & Michele Lawrence eds., 2002). I have reordered Spears' ten characteristics of servant leaders to put the five virtues and attitudes first. I use self-knowledge rather than "awareness." I also combined "healing" into "commitment to the holistic growth of other people." I then list the six skills through which a leader lives out and realizes the virtues and attitudes. I added both the reflection and solicitation of feedback skill and the counseling skill to Spears' list of skills, but dropped the skill of "foresight." Spears was uncertain whether foresight was a trait or a learnable skill.

149. *Id.*

150. GREENLEAF, *supra* note 146.

151. SPEARS, *supra* note 148, at 4–8.

152. *Id.*

group member's goals with the leader's and the group's vision and goals;<sup>153</sup>

5. Community-building Skills: The leader should encourage supportive relationships and collaborative work;<sup>154</sup> and
6. Counseling Skills: The leader should stand in the shoes of the person(s) served and help that person to understand his or her best interests and best options under the circumstances.<sup>155</sup>

This list of skills differs from the list of qualities under trait theory. Instead of focusing on the leader's attributes, servant leadership focuses on a continuing development of self-knowledge; the virtues or attitudes of stewardship, empathy, and commitment to the growth of others; and the development of the skills listed above.

Some leadership scholars have understood "servant" in servant leadership to mean that the leader is excessively focused on helping others to reach their potential at some cost to the mission of the leader's organization. "Leadership" in the context of servant leadership, however, means helping others reach their potential in order to realize the mission and goals of the organization.<sup>156</sup> A servant leader tries to help each person, but ultimately will take the necessary steps to achieve the mission, even if it means discipline or termination of an employee.

Concerned that servant leadership implies too great a degree of selflessness and humility that may undermine success at the organizational mission, Jim Collins, in *Good to Great*,<sup>157</sup> coined "level 5 leader" to describe the type of leader at the helm of each company in his study that made the transition from good to great.<sup>158</sup> Level 5 leaders have substantial executive power, but their ambition first and foremost is for the organization itself to be great, not for self-promotion and their own ego needs.<sup>159</sup> A level 5 leader exhibits a strong duality; he or she blends intense, even ferocious, professional will to move the organization toward greatness with "extreme personal humility."<sup>160</sup> This type of leader also exhibits a deep passion or calling that includes core values and life purpose.<sup>161</sup>

Collins also speaks to Level 5 leadership at earlier stages of an executive's career. Before the leaders studied in *Good to Great* became CEO,

153. *Id.*

154. *Id.*

155. Spears identified foresight as a tenth characteristic of a servant leader but speculated that intuitive foresight might be a trait with which a person is born, rather than a skill consciously developed like the other characteristics he listed. I dropped foresight as a skill and substituted the counseling skill for those servant leaders in the peer-review professions.

156. BANKS & LEDBETTER, *supra* note 147, at 110–11.

157. JIM COLLINS, *GOOD TO GREAT* 30 (2001).

158. *Id.* at 21.

159. *Id.* at 21, 36.

160. *Id.* at 21, 22, 30.

161. *Id.* at 203, 209.

“they were also really good at figuring out the three or four people in the organization who really mattered and became very good at presenting to them evidence and arguments that were persuasive. If you produce exceptional work, your ability for influence is very high.”<sup>162</sup>

Servant leadership has a high degree of similarity to authentic leadership.<sup>163</sup> In his book *Authentic Leadership: Rediscovering the Secrets to Create Lasting Value*, former Medtronic CEO Bill George cautions that attempting to emulate all the characteristics of other successful leaders is doomed to fail. Rather, “the one essential quality a leader must have is to be your own person, authentic in every regard.”<sup>164</sup> To be one’s own person, George argues that an individual must continually ask, “What is the purpose of my life?”<sup>165</sup> Purpose flows from self-knowledge. George notes that purpose may take time to become clear. “Many leaders search for years, even decades, to find purpose in their leadership . . . . If your early career experiences do not inspire you, then it is wise to continue your search in a different venue, job, or company.”<sup>166</sup> Throughout the book, George repeatedly urges that an authentic leader focus on the development of an inner circle of core values—a moral compass. The core values are developed through study, introspection, and consultation and discussion with others.

#### V. ETHICAL LEADERSHIP MODELS MOST USEFUL FOR THE ROLES LAWYERS ASSUME

##### A. *The Strengths of Servant Leadership (But Open to Insights from Transformational and Adaptive Leadership)*

All three of the leadership theories incorporating ethics are useful to guide lawyers who serve in positions with formal leadership authority. However, only adaptive leadership and servant leadership theories apply to either the lawyer’s role as a counselor or the lawyer’s role within a law firm or within the profession or community group where the lawyer does not have a position of formal authority.<sup>167</sup> A new associate, for example, could use adaptive or servant leadership.

Among the three leadership theories that incorporate ethics, servant leadership is clearer than either transformational or adaptive leadership on the ethical purpose and principles that guide both the leader’s growth to-

162. Jim Collins, *Good to Great Expectations*, BUS. WEEK, Aug. 25, 2008, at 33.

163. Robert Terry defined leadership as a subset of authentic human action. It requires an active engagement with life and those participating in it, and a commitment to human fulfillment. Leadership then becomes a total engagement that strives to increase the welfare of everyone connected to the leader. Leadership involves creating communities that utilize everyone’s strengths. ROBERT TERRY, *AUTHENTIC LEADERSHIP: COURAGE IN ACTION* 275 (1993).

164. BILL GEORGE, *AUTHENTIC LEADERSHIP: REDISCOVERING THE SECRETS TO CREATING LASTING VALUE* 12 (2003).

165. *Id.* at 19.

166. *Id.* at 36–37.

167. See discussion, *supra* notes 39–47.

ward self-knowledge and personal conscience, as well as the use of leadership skills. The servant leader, guided by the moral insight discussed earlier, is committed to fostering the growth of others and personal conscience over a lifetime.

Both adaptive and servant leadership apply to lawyers acting in the counseling role (or other roles without formal authority), but servant leadership seems a better fit with the counseling role. Adaptive leaders focus on identifying an adaptive challenge and mobilizing the group to make progress on the challenge. Adaptive leadership “consists of choreographing and directing learning processes in an organization or community,”<sup>168</sup> and helps a group clarify the group’s values as discussed earlier.<sup>169</sup> It focuses on the adaptive leader as the active agent in the identification of the adaptive challenge, discernment of the group’s purposes and values and mobilization of the group to meet the challenge. This approach implies the lawyer is the dominant moral force in the counseling role.

In contrast, servant leadership in the counseling role would focus the lawyer on helping the client think through the client’s best interest from both the client’s perspective and the client’s level of development as a person or organization and then on honoring the client’s choices, whether or not the lawyer would have made those choices him or herself.<sup>170</sup> The servant leader model asks the lawyer not to be the dominant moral force in the lawyer/client relationship. If the client, after counseling, exercises bad judgment, the servant leader sees the situation as a learning opportunity for the client.

The servant leader also reflects (and helps the client to reflect to the degree the client is willing) on the impact of decisions on the least privileged members of society. Neither transformational nor adaptive leadership incorporate the same specific degree of concern for the disadvantaged. The Preamble to the ABA Model Rules of Professional Conduct specifically asks each lawyer “to be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance.”<sup>171</sup>

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168. HEIFETZ, *supra* note 21, at 187.

169. See the earlier discussion on adaptive leadership in Part IV, section B.

170. The outer boundary is that the servant leader lawyer cannot serve objectives that are unlawful or objectives that, while lawful, are so repugnant for the lawyer that the lawyer cannot serve as a zealous advocate.

171. MODEL RULES OF PROF’L CONDUCT pmb. ¶ 6 (2007). The Preamble also notes that a lawyer is guided by personal conscience (¶ 7), and that “when an opposing party is well-represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done.” (¶ 8). Thus, if the disadvantaged are affected by a decision but not well-represented, the lawyer cannot assume that justice is being done. The comments to Rule 2.1 also urge a lawyer, in counseling a client, to refer to relevant moral and ethical considerations in giving advice.



At the same time, servant leadership theory, in contrast to adaptive leadership, does not offer a lawyer the same highly useful list of specific day-to-day skills to engage a client to address adaptive challenges.<sup>172</sup> For example, adaptive leadership specifically endorses identifying the relevant stakeholders who need to be involved in addressing an adaptive challenge and looking at the issues from their perspective. Law students and lawyers have a discipline of walking around a problem and being able to make the best argument for each affected group. They normally employ this skill to anticipate opposing arguments to gain tactical advantage to benefit the client, but it is an extremely useful skill also in the counseling role to identify all the stakeholders in a situation (including the disadvantaged) and to reflect on a decision's impact on each stakeholder. There is more work to be done to explore the usefulness of adaptive and transformational leadership for the roles lawyers serve. This essay focuses on servant leadership because of the clarity of its ethical foundation and its fit with the lawyer's counseling role as the most promising for lawyers of the three ethical leadership theories.

## *B. Servant Leadership in Positions with Formal Directing Authority*

### *1. Law Firms and Departments*

Section A.3 of Part I noted that to get autonomous professionals to move together toward common goals, peer-review profession leadership in a flat organization like a law firm flows much more from influence and persuasion than from structural power. Patrick McKenna and David Maister, based on their substantial experience as consultants to professional firms, conclude, "Our point of view, based upon the most effective managers we have seen, is that they don't say 'Follow me.' Instead they say 'Let me help you!' The management writers call this 'servant leadership.'"<sup>173</sup> McKenna and Maister emphasize that effective firm leaders have a foundation of self-knowledge, security in self, and integrity that flows from self-knowledge.<sup>174</sup> They care about others and are committed to the growth of others.<sup>175</sup> They work on developing the relationship skills of listening, understanding, and then articulating a shared vision and influencing others toward the vision.<sup>176</sup>

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172. See discussion, *supra* notes 118–28.

173. MCKENNA & MAISTER, *supra* note 18, at 9.

174. *Id.* at 32–33, 37, 261–63.

175. *Id.* at 3–4.

176. *Id.* at 3, 9, 31–34, 75, 260–61.

## 2. Leadership Positions with Formal Authority Within Government

Society has entrusted substantial governmental authority and influence over government to the legal profession. In response, each member of the profession promises to undertake roles as an officer of the legal system and a public citizen having special responsibility for the quality of justice. Inherent in these roles are fiduciary duties to exercise the directing authority ethically.

Accumulating evidence suggests that servant leadership is effective in larger organizations. Initial studies have found statistically significant and positive correlations: (1) between servant leadership at both the individual and organizational levels and team effectiveness at the team level;<sup>177</sup> and (2) between implementation of servant leadership through training in a business and significant increases in productivity.<sup>178</sup> In *Good to Great*, Jim Collins found that the companies that most outperformed their industries over extended periods had level 5 leaders (servant leaders).<sup>179</sup> Emotional intelligence and the qualities and virtues of servant leadership overlap significantly on self-knowledge and empathy. Emotional intelligence is a set of competencies involving self-awareness of emotions, the empathetic awareness of the emotions of others, and the ability to use this awareness to influence the behavior of others.<sup>180</sup> Emotional intelligence competencies “empirically correlate with increased levels of performance and leadership.”<sup>181</sup> There is also evidence that servant leadership will be highly effective in meeting the future needs for leadership in business and by analogy, government. Business executives in an extensive 2007 survey indicated the three most critical skills for effective leadership in the future are (1) collaboration (working across boundaries effectively), (2) building effective teams, and (3) influencing others without directing authority over them.<sup>182</sup> Servant leadership focuses on these skills.

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177. Justin Irving, *Exploring the Relationship Between Servant Leadership and Team Effectiveness* 3, 8–10 (Regent University Servant Leadership Research Roundtable, 2005), available at [http://www.regent.edu/acad/global/publications/sl\\_proceedings/2005/irving\\_exploring.pdf](http://www.regent.edu/acad/global/publications/sl_proceedings/2005/irving_exploring.pdf).

178. DENNIS ROMIG, *SIDE BY SIDE LEADERSHIP* 20–21, 39 (2001) (good listening by a leader increases followers’ performance ten percent, and two-way performance reviews can improve performance by fifteen percent); Paul Wong & Dean Davey, *Best Practices in Servant Leadership* 6 (Regent University Servant Leadership Research Roundtable, 2007), available at [http://www.regent.edu/acad/global/publications/sl\\_proceedings/2007/wong-davey.pdf](http://www.regent.edu/acad/global/publications/sl_proceedings/2007/wong-davey.pdf).

179. See earlier discussion of Jim Collins in Part I.

180. Montgomery, *supra* note 59, at 323, 325.

181. *Id.* at 345–46.

182. André Martin, *The Changing Nature of Leadership* 3 (Center for Creative Leadership Research Whitepaper, 2007), available at <http://www.ccl.org/leadership/pdf/research/NatureLeadership.pdf>.

### 3. *Other Leadership Positions with Formal Directing Authority*

The studies cited above indicate a significant and positive correlation between servant leadership and both team effectiveness and group productivity in business organizations. Servant leadership is also a promising leadership model in nonprofits where many lawyers volunteer their time. Collins observes that leadership in the nonprofit social sector is much more like legislative leadership where persuasion is critical.<sup>183</sup> Servant leadership is a strong model for this sector.

#### C. *Servant Leadership in Positions Exercising Influence*

##### 1. *Servant Leadership in the Client Relationship*

Earlier discussion emphasized that while management involves formal directing authority, leadership includes influence, persuasion, and informal authority, whether or not the leader has directing authority.<sup>184</sup> A lawyer does not have hierarchical authority in the relationship with the person or organization the lawyer represents. The lawyer does not control the relationship's ultimate goals which are the province of the client. However, a lawyer can creatively intervene in the relationship to offer acts of servant leadership to influence the client's thinking. Model Rule 2.1 and the legal profession's social contract call on the lawyer to help a client think through a problem (from the perspective of the client) both technically, in terms of the law, and ethically.

A lawyer trying to live the virtues, attitudes and skills of servant leadership (self-knowledge, stewardship, empathy, commitment to the holistic growth of others, reflection and solicitation of feedback, listening, conceptualization, persuasion, community building and counseling) will form strong relationships with clients. The servant leader's virtues, attitudes and skills match substantially the virtues, attitudes and skills of the trusted advisor approach to client relationships. David Maister observes that the more clients trust a lawyer, the more they reach for the lawyer's advice, are inclined to act upon it, refer the lawyer to friends, and pay the lawyer's bills.<sup>185</sup> The trusted advisor also moves out of the highly competitive market for technical legal advice that is similar to a commodity toward a unique relationship of trust with clients.<sup>186</sup>

Trusted advisors have sufficient self-knowledge and healthy ego-strength to subordinate their own ego and focus on care for the other person.<sup>187</sup> They show empathy for the client<sup>188</sup> and have strong active listening

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183. See discussion, *supra* note 16.

184. See discussion, *supra* notes 39–47.

185. DAVID MAISTER, CHARLES GREEN & ROBERT GALFORD, *THE TRUSTED ADVISOR* 3–4 (2001).

186. *Id.* at 7–9.

187. *Id.* at 11, 13, 15, 80–82.

skills.<sup>189</sup> They have strong conceptualization and counseling skills. They understand and help the client envision and frame the client's true goals and the key issues.<sup>190</sup> They counsel using language the client can hear and understand.<sup>191</sup> They ask questions to help the client think through the issues (as if the trusted advisor were in the client's shoes to the degree possible).

Max De Pree observed, "I have come to believe that asking the right questions may be more important than getting to the answer. Questions help us bring to surface what is most important."<sup>192</sup> In order to ask questions that the client can hear, understand, and on which clients can reflect, the lawyer, as an ethical leader, must understand the client's stages of ethical sensitivity, moral reasoning, moral motivation, and moral character leading to moral action. Likewise, the lawyer must understand and account for the same four components of moral action within him or herself.<sup>193</sup> The lawyer must know him or herself in order to provide the best counsel to the client.

A growing literature on courageous followership describes qualities and skills similar to servant leadership in positions of influence. The courageous follower grows from being a resource serving a leader with formal directing authority toward becoming a partner who provides both high loyalty and support (for example, asking each day, "what do you need from me today to help you?") as well as high honesty. The courageous follower speaks truth to influence the leader with formal directing authority to act ethically.<sup>194</sup> The courageous follower's foundation is a courageous conscience<sup>195</sup> and the most important skill is speaking honestly to link the issues to the leader's own core values.<sup>196</sup>

## 2. *Junior Lawyers Using Servant Leadership to Influence the Culture of the Team and Firm or Department*

A law student or new associate practicing servant leadership will form strong relationships within the team, the firm or the department. The law

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188. *Id.* at 197.

189. *Id.* at 97, 105, 107–08, 197.

190. MAISTER, GREEN & GALFORD, *supra* note 185, at 88–89.

191. *Id.* at 27–34.

192. Max De Pree, *Foreword* to ROBERT BANKS & BERNICE M. LEDBETTER, REVIEWING LEADERSHIP: A CHRISTIAN EVALUATION OF CURRENT APPROACHES 11 (2004).

193. MURIEL BEBEAU & VERNA MONSON, *Guided by Theory, Grounded by Evidence: A Way Forward for Professional Ethics Education*, in HANDBOOK OF MORAL AND CHARACTER 557, 558 (L. Nucci & D. Narvaez eds., 2007); Neil W. Hamilton, *Part II: Legal Practice and Moral Psychology in Minnesota*, MINN. LAW., Oct. 27, 2003, at 2, available at <http://www.minnlawyer.com/article.cfm?recid=71951>.

194. Ira Chaleff, *Creating New Ways of Following*, in THE ART OF FOLLOWERSHIP 67, 75 (R. Riggio, I. Chaleff, & J. Lipman-Blumen eds., 2008); Warren Bennis, *Introduction* in THE ART OF FOLLOWERSHIP xxiii, xxv (R. Riggio, I. Chaleff & J. Lipman-Blumen eds., 2008); Robert Kelley, *Rethinking Followership*, in THE ART OF FOLLOWERSHIP 5, 14 (R. Riggio, I. Chaleff, & J. Lipman-Blumen eds., 2008).

195. Kelley, *supra* note 194, at 14.

196. Chaleff, *supra* note 184, at 83.

student and junior lawyer can focus on asking those around them each day, “what can I do to help you?” The law student and junior lawyer can model the behavior they hope to see in others. They can influence others through their skills or reasoning and persuasion. Practicing servant leadership within the team or firm will help move a junior lawyer toward the skills necessary to build strong relationships with clients.

## VI. GROWING INTO SERVANT LEADERSHIP

### A. *Personal Commitment to Servant Leadership*

The first step toward servant leadership is simply for a person to decide that this is an aspiration in his or her life. For example, if an associate attorney decides that servant leadership is an aspirational goal, the next step is then to focus on fostering the virtues, attitudes and skills of servant leadership. This path to servant leadership is a career-long process that is not a straight ascending path to being a servant leader, but rather a journey with peaks and valleys where the valleys are times of failure, disappointment, and pain, but the overall trend is positive as a person reflects, takes feedback, and works through challenges.

Bill George gives a rough estimate that the years up to age thirty are preparing for leadership by “rubbing up against the world.” The years from ages thirty to sixty are “stepping up to lead” with “peak leadership” occurring from ages sixty to late life when a person gives back even more fully to others.<sup>197</sup> David Maister observes that a lawyer evolves into a trusted advisor to a client over years. The relationship starts with the lawyer as a subject-matter technical expert and evolves to include other affiliated matters, and then to a general valuable resource of the client, and finally to trusted advisor.<sup>198</sup>

Growth toward servant leadership occurs principally through a feedback loop in which the lawyer who aspires to be a servant leader focuses in any period of time on one or two of the virtues, qualities, or skills of a servant leader and practices them, subject to reflection and feedback from others.<sup>199</sup> Each lawyer on this path needs one or more trusted advisors or mentors who can give the lawyer the same independent counsel that the lawyer is supposed to give the client. Mistakes and disappointments are times to remember that the way people learn good judgment is through bad judgment and feedback and reflection on what can be learned from bad judgment. A lawyer can take training on specific skills such as active listening or effective counseling.

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197. GEORGE, *supra* note 67, at 16–17.

198. MAISTER, GREEN & GOLFORD, *supra* note 185, at 7–10.

199. GREENLEAF, *supra* note 140, at 201.

B. *Servant Leadership Education in Law Schools, Firms or Departments*

All law professors and senior lawyers who themselves are growing as servant leaders can both model servant leadership and serve as mentors for law students and junior lawyers on servant leadership. Orientations, forums, retreats and written and oral communications from the law school or law firm leadership are occasions to introduce and reinforce the concept and key virtues and attitudes of servant leadership. Clinics, lawyering skills courses, and externships (and similar professional training for practicing lawyers) offer excellent opportunities to foster students' servant leadership attitudes and virtues and servant leadership skills of reflection and solicitation of feedback, listening, problem conceptualization, persuasion, and counseling. Doctrinal courses and seminars using role plays, small-group learning, case studies, peer discussion of moral dilemmas, reflective analytical essays, and journals also can contribute to the development of these skills.

McKenna and Maister observe that skills can be taught, but "attitudes are harder to change."<sup>200</sup> It is true that self-knowledge and the other attitudes and virtues of a servant leader (stewardship, empathy, and commitment to the holistic growth of others) cannot be taught in the same way as knowledge of legal doctrine or the skill of legal analysis, but research supports that legal education can encourage and foster these virtues and attitudes. For example, there is strong evidence that peer discussion of moral dilemmas and role-taking opportunities that compel perspective taking and induce cognitive disequilibrium "press students to build new understandings that propel them forward to increasingly adequate and more complex moral reasoning and perspective taking."<sup>201</sup> Development of moral reasoning fosters self-knowledge. John Montgomery observes that leadership education is making progress on teaching the attitudes and skills of emotional intelligence (like empathy).<sup>202</sup> However, it is also true that a review of thirty-three moral judgment studies covering professional education in several disciplines including law shows that professional school education programs do not promote moral judgment development "unless the program includes a well-validated ethics curriculum."<sup>203</sup>

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200. MCKENNA & MAISTER, *supra* note 17, at 4.

201. DARCIA NARVAEZ, *Integrative Ethical Education*, in HANDBOOK OF MORAL DEVELOPMENT 703, 708 (M. Killen & J. Smetana eds., 2006) ("Interventions that use moral dilemma discussion positively influence moral judgment scores."). See Anne Colby, *Fostering the Moral and Civic Development of College Students*, in HANDBOOK OF MORAL DEVELOPMENT 391, 397 (M. Killen & J. Smetana eds., 2006) ("A large body of research makes it clear that the experience of grappling with challenging moral issues in classroom discussions or in activities that require the resolution of conflicting opinions contributes significantly to the increasing maturity of individual's moral judgment.").

202. Montgomery, *supra* note 59, at 326.

203. BEBEAU & MONSON, *supra* note 193, at 570.

## VII. CONCLUSION

Legal education needs both to assess its failures of socialization that contribute to catastrophic failures of morally responsible leadership in our society and to move from rhetoric and exhortation about opportunities for ethical leadership in speeches to law students toward educational engagements to equip students for the leadership roles lawyers serve in society. We need to move from articles bemoaning lawyers' failures of ethical leadership toward helping students develop as ethical leaders, including specific engagements on how and why professional derailment happens. For example, during the period leading up to the current economic trainwreck, what would have happened if lawyers, both in their counseling role to financial sector enterprises and in their roles as government decision-makers regulating the financial sector had demonstrated ethical leadership by asking the hard questions about excessive short-term risk and leverage and long consequences and sustainability? Charles Prince, then CEO of CitiGroup, describes a culture where "[w]hen the music stops, in terms of liquidity, things will get complicated. But as long as the music is playing, you've got to get up and dance. We're still dancing."<sup>204</sup> It is a lawyer's duty to exercise independent judgment to try to check a mad momentum among business people racing over a cliff. Where is the evidence that lawyers in the current trainwreck were demonstrating the virtues, attitudes and skills of ethical leadership analyzed in this essay?

Yet it is possible for legal education to introduce students to the theories of ethical leadership and to start them forward in developing the attitudes, virtues, and skills necessary for leadership in professional life. There is much we can learn from each other across the professions about how best to foster ethical leadership in students.<sup>205</sup> For example, the business schools have been offering leadership courses for some years, and their experience, including developed textbooks and case studies, could offer useful guidance.<sup>206</sup> To give another example, the Carnegie Foundation for the Advancement of Teaching has funded a series of studies on graduate education for clergy, the law, medicine, engineering, and nursing that offer helpful analysis of how each profession engages students on professional identity

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204. Michiyo Nakamoto & David Wighton, *Citigroup Chief Stays Bullish on Buy-Outs*, FIN. TIMES, July 9, 2007.

205. For articles on how graduate schools in engineering, medicine, law, the sciences, and the seminary are approaching these questions, see Neil Hamilton, *Foreword: The Formation of an Ethical Professional Identity*, 5 U. ST. THOMAS L.J. 361-65 (2008).

206. Rob Atkinson, *Growing Greener Grass: Looking from Legal Ethics to Business Ethics and Back*, 1 U. ST. THOMAS L.J. 951-94 (2004) (arguing that legal ethics education can learn a good deal from business ethics education); Neil Hamilton, *Foreword: Understanding the Intersection of Business and Legal Ethics*, 1 U. ST. THOMAS L.J. 781, 790 (2004) (all the symposium authors emphasized the importance of fostering the moral compass of students and practitioners to achieve ethical conduct in business. None thought that more rules would help.).

formation.<sup>207</sup> Both an ethical professional identity and servant leadership build on a foundation of self-knowledge and personal conscience so leadership education can borrow from what Carnegie suggests to improve legal education regarding the formation of an ethical professional identity. To give a third example, there is strong evidence that West Point's educational engagements for students to integrate and mesh personal values with professional values and expectations into an ethical professional identity do in fact foster student growth on professional identity.<sup>208</sup> Building on what we can learn from other professions on leadership education and what we can learn from education to help students form an ethical professional identity, legal education can experiment with education by engaging students on servant leadership, and then assess what we are doing to see which of our efforts are most effective in fostering servant leadership.

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207. See SULLIVAN ET AL., *supra* note 48, at 87–125; see also CHARLES R. FOSTER ET AL., *EDUCATING CLERGY: TEACHING PRACTICES AND THE PASTORAL IMAGINATION* (2006).

208. See Neil Hamilton & Lisa Brabbit, *Fostering Professionalism Through Mentoring*, 57 J. LEGAL EDUC. 102, 115–19 (2007).