

PRECONDITIONS OF LEADERSHIP IN LAW

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Lawyers are expected to be leaders in a variety of contexts, but there are no guarantees that legal education or legal practice will equip a lawyer for leadership. The emergence and growth of leadership studies in the law have brought valuable attention to the need for intentional leadership preparation. Recent work related to the well-being of law students and lawyers has also shed much-needed light on the importance of seeing lawyers not simply as problem-solving automatons but as complex human beings who face various professional pressures, occupational hazards, and even trauma.

Yet, even earnest efforts to inculcate leadership skills can fall flat if they do not consider broader questions associated with the purpose of law and legal work, the agency of individual lawyers to effect change, and the communities that shape and support lawyers. If leadership training is not integrated into the culture of legal institutions and into the identity of law students and lawyers, leadership training risks being seen as a nonessential luxury of legal education, a marketing gimmick, or a regulatory box-ticking exercise rather than fundamental to good lawyering. Proper attention to these preconditions of leadership will redound not only to the advantage of individual lawyers who often struggle to find professional satisfaction but also to the legal profession, which is widely distrusted by the public.

For law schools and the legal profession to prepare lawyers for success as leaders, legal institutions must be attentive to leadership development and lawyer well-being, while recognizing the many ways in which the study and practice of law can frustrate the realization of key preconditions of leadership, including purpose, agency, and community.

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INTRODUCTION

The *Wake Forest Law Review's* 2021 Spring Symposium did a masterful job showcasing many of the obstacles lawyers face to reach their professional goals, maintain their well-being, and form professional identities. From acute forms of secondary trauma associated with high-stress settings, such as capital defense, child sexual abuse, and asylum adjudications, to seemingly more run-of-the-mill professional pressures and occupational hazards, such as balancing client demands, meeting billable hour expectations, or maintaining a balance between life and work, the legal profession has often struggled to provide lawyers with the support systems they need to succeed, much less to lead. As a result, “[l]awyers have among the highest rates of stress-related dysfunctions of any occupation. And leaders are particularly susceptible, given the pace and pressures of

their work.”¹ This Article identifies three preconditions of leadership—purpose, agency, and community—and outlines some of the ways that legal education and practice frequently frustrate their realization. The Article then proposes possible reforms designed to aid lawyers in developing healthier habits and attitudes regarding their work.

While lawyers have long been overrepresented in various leadership contexts,² law schools and legal employers have not always been actively concerned with teaching and cultivating leadership.³ This historic reluctance is rooted in many things, including an overconfidence that the study and practice of law somehow automatically prepared one for leadership;⁴ a fear that legal education and practice would be compromised by a focus on “soft skills” associated with leadership studies;⁵ a belief that leadership capacities are established by the time students arrive at law school;⁶ and concerns that a more holistic approach would lead law schools into the fraught business of moral formation.⁷

Over the last decade or so, this skepticism towards leadership training has started to subside, giving way to new scholarship, programs, and courses focused on leadership in the law.⁸ The increased interest in leadership in the law is good news for those interested in legal institutions addressing leadership more intentionally. Yet even earnest efforts to inculcate leadership skills can fall flat if they do not consider broader questions associated with the purpose of law and legal work, the agency of individual lawyers to effect change, and the communities that shape and support lawyers.⁹ If leadership training is not integrated into the culture of legal institutions and into the identity of law students and lawyers, leadership training risks being seen as a nonessential luxury of legal education, a marketing gimmick, or a regulatory box-ticking exercise rather than fundamental to good lawyering. Proper attention to these preconditions of leadership will redound not only to the advantage of individual lawyers who sometimes struggle to find professional

1. Deborah L. Rhode, *Preparing Leaders: The Evolution of a Field and the Stresses of Leadership*, 58 SANTA CLARA L. REV. 411, 417–18 (2019).

2. Deborah L. Rhode, *Leadership in Law*, 69 STAN. L. REV. 1603, 1605 (2017).

3. *Id.*

4. *Id.* at 1637–38.

5. Rhode, *supra* note 1, at 413–14.

6. *Id.* at 415.

7. See, e.g., STANLEY FISH, *SAVE THE WORLD ON YOUR OWN TIME* 24 (2008).

8. The Association of American Law Schools chartered its Leadership Section in 2017. *Section on Leadership*, ASS’N AM. L. SCHS., <https://www.aals.org/sections/list/leadership/> (last visited Sept. 10, 2021). For an overview of recent efforts, see, for example, Rhode, *supra* note 1, at 412–13.

9. See Rhode, *supra* note 2, at 1606, 1635, 1637–39.

satisfaction¹⁰ but also to the legal profession, which is widely distrusted by the public.¹¹

The last thirty years have seen a proliferation of theories and models of leadership.¹² It is the intention of this Article to present leadership in a capacious way so that the observations and recommendations outlined below will have as much applicability as possible to as many different approaches to leadership as possible. As a general matter, however, leadership can be understood as influencing others to pursue a common objective within a relevant context or community.¹³

Parts I, II, and III of this Article examine the role and relevance of purpose, agency, and community, respectively, in the education, work, and professional identity of lawyers. These Parts consider the ways in which legal education and legal practice can undermine the realization of these preconditions of leadership. While the norms of legal education and legal practice might seem to provide few openings for improvement, recent trends in legal education and practice provide new opportunities to think critically and creatively about possible reforms and solutions. Part IV undertakes this solution-oriented work.

While this Article is primarily concerned with the preconditions of leadership in the context of law, the arguments implicate broader considerations as well, including what it means to be a leader of character in the professions, how to find meaning in work, and what accounts for the growing distrust between elites and the public. Future scholarship should consider the applicability of this Article's arguments to professional contexts beyond the law.

10. "In sum, attorneys seem to be an unhealthy lot. . . . [R]esearchers who have studied the legal profession are unanimous that lawyers are, as a group, in remarkably poor health." Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 881 (1999). For a more nuanced view of lawyer satisfaction levels, see generally Jerome M. Organ, *What Do We Know About the Satisfaction/Dissatisfaction of Lawyers? A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being*, 8 U. ST. THOMAS L.J. 225 (2011) (arguing that evidence does not support blanket claims of lawyer dissatisfaction but rather pockets of dissatisfaction concentrated in certain sectors and populations); AM. BAR ASS'N, ABA WORKING GROUP TO ADVANCE WELL-BEING IN THE LEGAL PROFESSION COMMISSION ON LAWYER ASSISTANCE PROGRAMS REPORT TO THE HOUSE OF DELEGATES RESOLUTION 103 (Aug. 2018), https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_proposed_resolution_103_impairment_policy.authcheckdam.pdf.

11. See, e.g., Danielle Braff, *Good Press Many People Ignore Their Legal Needs Because They Don't Trust Attorneys. What Can Lawyers Do to Combat Their Bad PR?*, A.B.A. J., Feb.–Mar. 2020, at 18.

12. PETER G. NORTHOUSE, *LEADERSHIP: THEORY AND PRACTICE* 1 (5th ed. 2010).

13. See, e.g., *id.* at 1, 4.

I. PURPOSE

A. *What Purpose Means and Why it Matters*

William Damon, one of the world's leading scholars of purpose, has defined purpose as "a stable and generalized intention to accomplish something that is at once meaningful to the self and of consequence to the world beyond the self."¹⁴ This conceptualization of purpose is helpful in thinking about purpose's relationship to well-being and leadership. Purpose enables both individual meaning-making as well as productive engagement in the world.¹⁵

Purpose is contingent upon and sustained by self-reflection and self-awareness, the two being hallmarks of effective leadership.¹⁶ Leadership requires understanding one's strengths and weaknesses as well as the needs and opportunities of a given context or community in which the leader could lead.¹⁷ Purpose also plays a key role in ensuring that leaders are resilient in the face of adversity, including in response to trauma.¹⁸ A leader who is guided by a clear sense of purpose is often more effective at inspiring others and enlisting them in their efforts.¹⁹ Such a leader is able not only to answer questions of "why?" but also to mobilize others towards that shared vision.²⁰ For leaders, purpose frames and inspires the vision that a leader discerns and advances.²¹

Purpose is simultaneously "stable" and "productive" and, as such, reflects durable as well as dynamic elements of individual and organizational identity.²² The stableness of purpose can aid an individual or community in recognizing the core values and traditions

14. William Damon et al., *The Development of Purpose in Adolescence*, 7 APPLIED DEVELOPMENTAL SCI. 119, 121 (2003).

15. *See id.*

16. *See, e.g.*, WARREN BENNIS, ON BECOMING A LEADER 49–51 (2009); Daniel Goleman, *What Makes a Leader*, HARV. BUS. REV. (Jan. 2004), <https://hbr.org/2004/01/what-makes-a-leader>.

17. JAMES M. KOUZES & BARRY POSNER, LEARNING LEADERSHIP: THE FIVE FUNDAMENTALS OF BECOMING AN EXEMPLARY LEADER 136 (2016).

18. *See, e.g.*, WILLIAM DAMON, THE PATH TO PURPOSE: HOW YOUNG PEOPLE FIND THEIR CALLING IN LIFE 29–30 (2009).

19. JAMES M. KOUZES & BARRY Z. POSNER, THE LEADERSHIP CHALLENGE 37 (6th ed. 2017) ("People expect leaders to have a sense of direction and a concern for the future of the organization. . . . Leaders are not content with things as they are today; they focus on how things should be better in the future.").

20. *See, e.g.*, KEITH GRINT, THE ARTS OF LEADERSHIP 27 (2000) ("[L]eadership is critically concerned with establishing and coordinating the relationships between four things: the *who*, the *what*, the *how*, and the *why*: . . . *Why* should followers want to embody the identity, pursue the strategic vision, and adopt the organizational tactics?").

21. KOUZES & POSNER, *supra* note 17, at 65.

22. *See* William Damon et al., *supra* note 14, at 121.

that have constituted the individual's or community's identity, while purpose's "productive" orientation ensures that it is forward-looking.²³

Consideration of purpose is important, but not always easy, for law students and lawyers. Given that exploring purpose is rarely a formal feature of legal education or practice, it is not obvious where questions should begin or focus. Should a law student or lawyer be principally concerned with institutional questions regarding the purpose of law and the legal profession? Or personal questions of purpose? Or some combination and integration of professional and personal purposes? And more fundamentally, what is the purpose of law? Of legal education? Of the legal profession? These, in turn, lead to questions such as: Does my work matter? How does my work or the work of my organization relate to my personal values? On what basis can a lawyer-leader mobilize others around shared goals? How can a lawyer avoid burnout when her purposes become all-consuming?

By enabling and even supporting these questions, law schools and legal employers can enhance well-being and facilitate the leadership potential of lawyers.²⁴ The remainder of this Part outlines various obstacles to the healthy and productive engagement with purpose in legal education and practice.

B. *Challenges to Purpose*

The procedural nature of law, along with the client-oriented nature of legal work, presents distinctive challenges for lawyers. The so-called "dominant conception" or "hired gun" model of lawyer morality sees the lawyer as a "neutral partisan" who fights zealously for his client but remains morally neutral or detached regarding the substantive values associated with the client's aims.²⁵ This "dominant conception" reflects a professional legal culture that generally prioritizes the client's interests over other competing interests, including those associated with the public good, the profession itself, or the personal values of the lawyer.²⁶ Among other things, this approach is meant to keep the lawyer's own preferences

23. See *id.* KOUZES & POSNER, *supra* note 19, at 37–38.

24. See generally ANNE M. BRAFFORD, WELL-BEING TOOLKIT FOR LAWYERS AND LEGAL EMPLOYERS (2018), https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_well-being_toolkit_for_lawyers_legal_employers.pdf (providing information and resources for employers to examine the well-being and potential of attorneys).

25. See, e.g., Jane B. Baron & Richard K. Greenstein, *Constructing the Field of Professional Responsibility*, 15 NOTRE DAME J.L. ETHICS & PUB. POL'Y 37, 74, 79 (2001).

26. *Id.* at 74.

and values from interfering with his ability to advise and advocate on behalf of his clients.²⁷

The “neutral partisan” conception of lawyer morality is endorsed in Rule 1.2 of the American Bar Association’s Model Rules of Professional Conduct (“Model Rules”). Rule 1.2 states that “a lawyer shall abide by a client’s decisions regarding the objectives of representation and . . . shall consult with the client as to the means by which they are to be pursued.”²⁸ The client determines the objective, and the lawyer tries to figure out the means to accomplish that objective.

This dominant conception is by no means the only way of conceiving a lawyer’s professional identity or ethical obligations.²⁹ Its dominance is the result of specific historical and cultural developments,³⁰ and its place at the top, while seemingly secure at the moment, is not certain.³¹

One potential casualty of the “neutral partisan” approach to lawyering is the lawyer’s sense of purpose. The lawyer’s purposes are expected to be those of the client, and any independent purpose identified by the lawyer tends to be procedural rather than substantive.³² Lawyerly purposes, including those with a moral valence, are meant to be bracketed to the greatest extent possible. As a practical matter, when moral considerations are engaged, they complicate the more grounded work of the law.³³ As a matter of principle, lawyers who impose their own morality onto clients will potentially undermine their clients’ own moral autonomy.³⁴

Bracketing one’s values and purposes presents clear risks, but given current professional and institutional norms, it is not clear that

27. MONROE H. FREEDMAN & ABBE SMITH, *UNDERSTANDING LAWYERS’ ETHICS* 13 (5th ed. 2016).

28. MODEL RULES OF PRO. CONDUCT r. 1.2 (AM. BAR ASS’N 2019).

29. It is worth noting that, at least as a formal matter, lawyers in the United States can choose their own clients, unlike barristers in the United Kingdom who are regulated by the “cab-rank rule,” which requires them to represent any party that falls within their area of competency. *See, e.g.*, JOHN FLOOD & MARTIN HVIID, *THE CAB RANK RULE: ITS MEANING AND PURPOSE IN THE NEW LEGAL SERVICES MARKET* 3 (2013), https://www.legalservicesboard.org.uk/wp-content/media/Cab-Rank-Rule_final-copy.pdf.

30. *See, e.g.*, Russell G. Pearce & Eli Wald, *Rethinking Lawyer Regulation: How A Relational Approach Would Improve Professional Rules and Roles*, 2012 MICH. ST. L. REV. 513, 521–23.

31. *See, e.g.*, RENEE JEFFERSON ET AL., *PROFESSIONAL RESPONSIBILITY: A CONTEMPORARY APPROACH* 569–634 (4th ed. 2020).

32. For example, excellence in client services is an appropriate independent purpose for a lawyer within the “neutral partisanship” model.

33. *See, e.g.*, Stephen L. Pepper, *Lawyers’ Ethics in the Gap Between Law and Justice*, 40 S. TEX. L. REV. 181, 199–200 (1999).

34. FREEDMAN & SMITH, *supra* note 27, at 25.

purpose-oriented approaches to lawyering will necessarily make a lawyer happier or more successful. If a lawyer brings her purposes to a professional climate where such reflection is unwelcome or where the lawyer has no agency to act upon those purposes, the lawyer could easily find herself alienated from her work, if not replaced by someone less inclined to question the dominant conception of lawyering.³⁵ Other professional settings might welcome a lawyer's personal purposes but lack the resources or wherewithal to support the lawyer when those purposes become all-consuming.

There are (at least) three ways in which law students and lawyers can be prevented from living and leading with purpose.

1. *No Time for Purpose*

The combination of the “neutral partisan,” client-oriented lawyer morality, and the fast-paced nature of legal work often leaves little time or space to consider such heady topics as “purpose.” If a lawyer is expected to bill 2,000 hours in a year, that means, as a practical matter, a lawyer is likely “working,” even if not “billing,” twelve hours or more per day.³⁶ When there are memos to be written, briefs to be filed, client meetings to organize, and so much else, who has time to think about purpose? Lawyers cannot bill for self-reflection time related to purpose, and following the Great Recession, clients are increasingly scrutinizing their billings.³⁷

Law schools regularly gesture towards purpose-based mission statements and aspirations,³⁸ but the setting aside of questions of purpose often begins in law school, where, according to Columbia Law's Susan Sturm, “[s]tudents have no time for reflection about what they are doing, why they are doing it, and how it relates to their aspirations.”³⁹

There are many reasons, of course, why law students' professional aspirations might change during law school—from being exposed to additional career paths, to appreciating the challenges of student debt, to recognizing the limits of what any one lawyer can accomplish, among other things. While it is important not to conflate

35. See, e.g., Sharon Miki, *Lawyer Burnout: Stopping It Before It Starts*, CLIO, <https://www.clio.com/blog/lawyer-burnout/> (last visited Sept. 10, 2021).

36. See, e.g., *The Truth About the Billable Hour*, YALE L. SCH., https://law.yale.edu/sites/default/files/area/departments/cdo/document/billable_hour.pdf (last visited Sept. 10, 2021).

37. See, e.g., Nick Gaffney, *A Shift in the Financial Landscape for Law Firms*, L. PRAC. TODAY (June 15, 2015), <https://www.lawpracticetoday.org/article/financial-landscape-law-firms/>.

38. See Irene Scharf & Vanessa Merton, *Table of Law School Mission Statements*, UNIV. MASS. SCH. L., 2016, at 2–3, https://scholarship.law.umassd.edu/cgi/viewcontent.cgi?article=1174&context=fac_pubs.

39. Susan Sturm, *Law Schools, Leadership, and Change*, 127 HARV. L. REV. F. 49, 51 (2013).

a change of purpose with a loss of purpose, it is also important to recognize the cultural and structural ways that legal education can sideline questions of purpose.⁴⁰

The marginalization of purpose is rooted in reasons related to law as a discipline as well as in ways that law is taught. No document in the last twenty years has done more to highlight the distinctive features of legal education—the good and bad—than the 2007 Carnegie Report EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (“*Carnegie Report*”).⁴¹ The *Carnegie Report* authors identified three key “apprenticeships” for the preparation of lawyers: the knowledge-based apprenticeship; the practice-based apprenticeship; and “[t]he third apprenticeship,” which the authors called “the apprenticeship of identity and purpose” because it “introduces students to the purposes and attitudes that are guided by the values for which the professional community is responsible.”⁴² The *Carnegie Report* identified a number of problems with legal education, noting that its “unbalanced” and “relentless focus” on “procedural and formal qualities of legal thinking” often “undercut[] the principal aims” of the third apprenticeship related to identity and purpose.⁴³

While implicating theoretical concerns, law is not an abstract discipline or practice. Law requires working with real-life clients, addressing concrete disputes, and making difficult decisions between and among competing goods. Law school necessarily brings aspiring lawyers down to earth and focuses primarily on questions of *what* and *how* rather than questions of *why*.⁴⁴ *What* is the law? *How* will the judge rule? *How* can I make the best argument for my client? Diane Hoffmann has noted, “law students are typically taught to determine whether something can be done—whether it is consistent with the law—rather than whether it should be done, which leaders must

40. See, e.g., Stephen Wizner, *Is Learning to ‘Think Like a Lawyer’ Enough?*, 17 YALE L. & POL’Y REV. 583, 587 (1998) (“The not-so-hidden message that law professors give to their students is that to be a lawyer one must ‘think like a lawyer,’ even if that means suppressing one’s compassion, idealism, and concern for truth and justice.”).

41. See generally WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter CARNEGIE REPORT] (discussing the marginalization of purpose).

42. *Id.* at 28.

43. *Id.* at 145.

44. See, e.g., John Rappaport, *What Early Childhood Development Can Teach Us About Mastering Legal Reasoning*, UNIV. CHI. L. SCH. (Oct. 4, 2017), <https://www.law.uchicago.edu/news/learning-think-lawyer> (discussing how law schools educate law students by attaching a fact pattern to a concept).

constantly do.”⁴⁵ The result, according to Peter Davis, is that “[d]uring these three years, law students largely lose sight of the ‘big picture’ issues.”⁴⁶

It only takes a few weeks of the standard 1L curriculum for a student to shift her mindset from one that reads a case and roots for the “good guy” to a mindset that zeroes in on what the law requires, for “good” or “bad.”⁴⁷ This means that the virtues and capacities that seem to make a good lawyer are sometimes different from the virtues and capacities that inspired a student to pursue a legal career in the first place.⁴⁸ Consider, for example, the 1L whose compassion and empathy for marginalized or disadvantaged populations inspired her to enroll in law school to fight for justice. Law school tends to reform and reorient this student. To the extent it figures into legal education at all, empathy is intellectualized so that students can better understand the arguments, but not necessarily the feelings, of different parties.⁴⁹

This process of internalizing how to “think like a lawyer”⁵⁰ has a way of quickly disabusing students of their naiveté about making the world a better place, but all too often, the law student’s idealism and sense of purpose are collateral damage in this reorientation to the world. This change, or loss, of purpose often comes at a personal and

45. Diane Hoffmann, *An Argument for Leadership Education in Law Schools*, in *LAW AND LEADERSHIP: INTEGRATING LEADERSHIP STUDIES INTO THE LAW SCHOOL CURRICULUM* 127, 128 (Paula Monopoli & Susan McCarty eds., 2013).

46. Peter L. Davis, *Why Not a Justice School? On the Role of Justice in Legal Education and the Construction of a Pedagogy of Justice*, 30 *HAMLIN L. REV.* 513, 525 (2007).

47. At Wake Forest Law, a 1L professor is well-known for asking students, rhetorically, “Do we care about justice?” and then responding, “Hell no!” See also Brenda Bratton Blom et al., *Charting a New Professional Responsibility Course in a Post-Carnegie World*, in *LAW AND LEADERSHIP: INTEGRATING LEADERSHIP STUDIES INTO THE LAW SCHOOL CURRICULUM* 167, 170 (Paula Monopoli & Susan McCarty eds., 2016) (“You are not here to find truth and justice, you are here to learn the Law.” (quoting BENJAMIN SELLS, *THE SOUL OF THE LAW: UNDERSTANDING LAWYERS AND THE LAW* 36 (1996))).

48. See Lawrence S. Krieger, *What We’re Not Telling Law Students—and Lawyers—That They Really Need to Know: Some Thoughts-in-Action Toward Revitalizing the Profession from its Roots*, 13 *J.L. & HEALTH* 1, 17 (1999).

49. See Lynn N. Henderson, *Legality and Empathy*, 85 *MICH. L. REV.* 1574, 1576 (1987).

50. See, e.g., FREDERICK SCHAUER, *THINKING LIKE A LAWYER: A NEW INTRODUCTION TO LEGAL REASONING* 1 (2009).

emotional cost.⁵¹ The law student faces a choice, as some have put it, of becoming a good lawyer or remaining a good person.⁵²

Since law schools generally do not assess students based on their capacity for exploring purpose, every minute that a law student spends focused on questions of purpose is a minute not spent on something that the law school will assess and that will influence the student's grades and job prospects. As a result, there is often no clear incentive for students to take seriously such questions and plenty of disincentive for doing so.⁵³ Looking beyond law school, students also recognize that the bar exam does not test for purpose, and most employers are more concerned with a student's class rank than his sense of purpose.⁵⁴

A life lived where questions of purpose are ignored or bracketed presents serious challenges for any lawyer seeking fulfillment in work, much less the opportunity to be a leader.⁵⁵ Leaders exert influence by inspiring others to pursue a shared objective.⁵⁶ Lack of clarity concerning the purposes that animate the leader or the organization will hamper a would-be leader's efforts. Someone who

51. See, e.g., David R. Culp, *Law School: A Mortuary for Poets and Moral Reason*, 16 CAMPBELL L. REV. 61, 98 (1994) ("Legal instruction teaches students to exercise rational, critical judgment and exalt logic over other values, such as emotional sensitivity.").

52. Lawyers and law students face the same moral dilemma: "Can a good lawyer be a good person?" Charles Fried, *The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation*, 85 YALE L.J. 1060, 1060 (1976) ("Can a good lawyer be a good person? The question troubles lawyers and law students alike. They are troubled by the demands of loyalty to one's client and by the fact that one can win approval as a good, maybe even great, lawyer even though that loyalty is engrossed by over-privileged or positively distasteful clients. How, they ask, is such loyalty compatible with that devotion to the common good characteristic of high moral principles?").

53. See Krieger, *supra* note 48, at 17.

54. See, e.g., *Decoding Class Rankings What Should the Recruiter Look For*, BCG ATTORNEY SEARCH, https://www.bcgsearch.com/bcgguide/decoding_class_rankings_what_should_therecruiter_Look_for.php (last visited Sept. 10, 2021).

55. Law students are more likely to find fulfillment if they are encouraged to think beyond the typical external markers of success for lawyers. Rhode, *supra* note 1, at 416. ("Positions of influence offer many rewards, but those that are most fulfilling are generally not the extrinsic perks of power, money, and status that individuals often envy. . . . [R]esearch indicat[es] that workplace satisfaction generally depends most on other, intrinsic factors, such as feeling effective, exercising strengths and virtues, and contributing to socially valued ends that bring meaning and purpose.").

56. Teresa Correira de Lacerda, *Understanding Leadership Effectiveness in Organizational Settings: An Integrative Approach* 144 (Jan. 2015) (Ph.D. thesis, University of Lisbon), https://www.researchgate.net/publication/279931559_Understanding_leadership_effectiveness_in_organizational_settings_An_integrative_approach.

exerts influence on others may be deemed a proficient, or even skilled, manager, but can that person be called a leader without inspiring others to follow a shared vision and common purpose?

The ABA seems to recognize that considering questions of purpose is important to being a good lawyer, as is reflected in the recent proposal to amend Standard 303,⁵⁷ which would law schools to support “the development of a professional identity” among law students.⁵⁸ Identity is an orienting mechanism, an interpretive lens that connects one’s core beliefs and purposes with one’s actions in the world.⁵⁹ Bracketing considerations of purpose are incompatible with the development of a robust professional identity.⁶⁰

2. *Cross-Purposes*

While ignoring questions of purpose can present problems, engaging considerations of purpose is not without risk, given current norms in the practice of law. Reconciling personal purposes and professional obligations is relatively straightforward within the “neutral partisan” conception of lawyer morality. There is little room for conflict between one’s personal values and purposes and one’s professional obligations because one’s personal values and purposes are irrelevant.⁶¹ The lawyer takes the client’s purposes as his own for the sake of the professional relationship but remains morally neutral regarding the substance of those purposes.⁶²

Any lawyer with a more aspirational view of purpose, or who seeks to integrate personal and professional purposes, however, will confront difficult questions and hard choices, including: Does my work matter?; Does my work reflect or advance my values and purposes?; How, if at all, can I give voice to my values at work?⁶³

57. See Memorandum from The Standards Committee on Final Recommendations: Standards 205, 303, 507, and 508, (Aug. 16, 2021) [hereinafter ABA Memo], <https://taxprof.typepad.com/files/aba-council.pdf> (providing an approved proposal from the ABA Standards Committee, scheduled for full review by the ABA House of Delegates in February 2022).

58. *Id.* at 3.

59. Daphna Oyserman et al., *Self, Self-Concept, and Identity*, in HANDBOOK OF SELF AND IDENTITY 69, 69–70, 88 (Mark R. Leary & June Price Tangney eds., 2012).

60. See *infra* Subpart I.B.2.

61. Melissa Mortazavi, *The Cost of Avoidance: Pluralism, Neutrality, and the Foundations of Modern Legal Ethics*, 42 FLA. ST. U. L. REV. 151, 154 n.11 (2017).

62. See *supra* notes 28–34 and accompanying text.

63. See, e.g., MARY C. GENTILE, GIVING VOICE TO VALUES: HOW TO SPEAK YOUR MIND WHEN YOU KNOW WHAT’S RIGHT 3 (2012). For an application of Gentile’s approach to legal education, see Doris Del Tosto Brogan, *Stories of Leadership, Good and Bad: Another Modest Proposal for Teaching Leadership in Law Schools*, 45 J. LEGAL PRO. 183, 184–96 (2021).

Neither law schools nor most legal employers prepare lawyers for navigating these tensions and potential cross-purposes.

Consider the devout Catholic attorney who is appointed by a court to represent a minor seeking an abortion without the consent of her parents.⁶⁴ Or the lawyer who is deeply committed to the environment but who is assigned a case representing a major polluter that has a well-known reputation for skirting environmental regulations. Or the lawyer whose parents died of lung cancer who is tasked with representing Big Tobacco. Or, perhaps the lawyer simply works for a firm whose primary purpose is profit, but the lawyer sees herself as driven by something other than profit. Regardless of the specific form they assume, such conflicts between a lawyer's personal and professional purposes are common, if not inevitable, for any lawyer who is less than fully devoted to the "neutral partisan" approach to lawyer morality.⁶⁵

The Model Rules provide a measure of protection for a lawyer's purposes. In the context of court appointments, for example, Rule 6.2(c), states "[a] lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as . . . the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client."⁶⁶ For most lawyers, of course, only a small fraction of their work involves court appointed representation, so the reach and impact of Rule 6.2 is necessarily limited.

Rule 1.16(a)(2) requires an attorney to refuse or withdraw from a case where "the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client."⁶⁷ This requirement has primarily been interpreted to apply to physical and mental disabilities, not broader questions of a lawyer's purposes.⁶⁸

Rule 1.16(b)(4) provides perhaps the most expansive leeway for lawyers whose values and purposes radically depart from those of their clients. It allows a lawyer to "withdraw from representing a client . . . if the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement."⁶⁹ Lawyers must nevertheless "comply with applicable law requiring notice to or permission of a tribunal when terminating a representation," and, "[w]hen ordered to do so by a tribunal, a

64. *See Formal Ethics Opinion 96-F-140*, BD. PRO. RESP. SUP. CT. TENN. (June 13, 1996), https://www.tbpr.org/ethic_opinions/96-f-140.

65. *See* Richard A. Matasar, *The Pain of Moral Lawyering*, 75 IOWA L. REV. 975, 975 (1990).

66. MODEL RULES OF PRO. CONDUCT r. 6.2 (AM. BAR ASS'N 2019).

67. MODEL RULES OF PRO. CONDUCT r. 1.16(a)(2) (AM. BAR ASS'N 2019).

68. *See, e.g.*, Mark J. Fucile, *Model Rule 1.16(a)(2): Where Wellness Meets Withdrawal*, PRO. LAW., OCT. 2020, at 13, 13–14.

69. MODEL RULES OF PRO. CONDUCT r. 1.16(b)(4) (AM. BAR ASS'N 2019).

lawyer shall continue representation notwithstanding good cause for terminating the representation.”⁷⁰

The biggest challenge for most lawyers, however, is not insufficient protection under the Model Rules but rather the institutional and professional norms that prevent lawyers from exercising agency in light of their purposes.⁷¹ In the aggregate, lawyer well-being would likely be improved if lawyers had more opportunity to consider questions of purpose and to integrate their personal and professional purposes.⁷² However, given the dominance of the “neutral partisan” approach to lawyer morality, it is not clear that grappling with questions of purpose in many professional settings will contribute to the professional advantage, or psychological well-being, of the lawyer. By giving voice to one’s values, a lawyer risks losing respect at work, being passed over on assignments, losing clients, and even receiving sanctions under the Model Rules.⁷³ On the other hand, the lawyer who takes questions of purpose seriously but who decides not to give voice to his values risks confronting his lack of moral agency and losing self-respect.⁷⁴

Given the strong disincentives for lawyers to question the status quo, law schools and legal employers must recognize the role of purpose in lawyer well-being and as a precondition for meaningful leadership. Possible reforms are discussed in Part IV *infra*.

3. *All-Consuming Purposes*

Lawyers who separate their personal purposes and values from their professional responsibilities can easily become professionally disillusioned and personally dissatisfied.⁷⁵ But what about lawyers whose personal values are completely intertwined with their professional obligations? Given current norms and expectations in the legal profession, these lawyers face risks as well, as reflected, for example, in recent research related to secondary trauma and the law.⁷⁶

70. MODEL RULES OF PRO. CONDUCT r. 1.16(c) (AM. BAR ASS’N 2019).

71. See BRAFFORD, *supra* note 24, at 20.

72. See *id.* at 22.

73. See MODEL RULES OF PRO. CONDUCT pmb. 9, 19 (AM. BAR ASS’N 2019).

74. See Matasar, *supra* note 65, at 981–82.

75. “Simply stated, professional satisfaction comes when ‘who you are’ and ‘what you do’ have a strong correlation. . . . In the contemporary profession, the disconnect between what you do and who you are exists for many.” Ben W. Heineman, Jr., *Law and Leadership*, 56 J. LEGAL EDUC. 596, 602 (2006) (citing the Cantrell Study of Yale Law graduates who expressed disappointment that their jobs produced less social impact than anticipated).

76. See, e.g., Jennifer Brobst, *The Impact of Secondary Traumatic Stress Among Family Attorneys Working with Trauma-Exposed Clients: Implications for Practice and Professional Responsibility*, 10 J. HEALTH & BIOMED. L. 1, 2–4 (2014); Kate Aschenbrenner, *In Pursuit of Calmer Waters: Managing the Impact of*

When there is little or no separation between one's personal and professional purposes, successes at work can provide great personal fulfilment,⁷⁷ but the inverse can also occur. Difficulties at work can feel devastatingly all-consuming, much more than simple professional setbacks.⁷⁸ This dynamic presents particular risks for those lawyers for whom a commitment to purpose is the animating force in their work. Consider the capital defense attorney who commits his life and career to saving people from executions only to witness his clients put to death;⁷⁹ the immigration asylum adjudicator whose identity is shaped by a commitment to justice for the oppressed but who lacks the time and/or capacity to alleviate much of the extreme suffering she encounters;⁸⁰ or the family lawyer whose own identity and worth is intertwined with that of her clients, including those who have experienced trauma.⁸¹

Lawyers whose personal and professional purposes are inseparable also face greater risk of being manipulated to assume disproportionate responsibilities, exacerbating existing injustices. Research has shown that secondary trauma disproportionately affects women and racial and ethnic minorities, a reminder that these groups are more likely to occupy some of the most personally high-pressure work contexts and less likely to have relevant professional networks and support systems.⁸² This results in “complex” or

Trauma Exposure on Immigration Adjudicators, 24 KAN. J.L. & PUB. POL'Y 401, 401–02, 405–06 (2015); Susan Ayres, *Trauma-Informed Advocacy: Learning to Empathize with Unspeakable Horrors*, 26 J. WM. & MARY J. RACE GENDER & SOC. JUST. 225, 254–55 (2020).

77. See William Schiemann, *Beyond Engagement: Fulfillment as a Competitive Advantage*, SHRM, <https://www.shrm.org/executive/resources/people-strategy-journal/fall-2018/Pages/beyond-engagement.aspx> (last visited Sept. 10, 2021).

78. See Erin Reid & Lakshmi Ramarajan, *Managing the High-Intensity Workplace*, HARV. BUS. REV. (June 2016), <https://hbr.org/2016/06/managing-the-high-intensity-workplace>.

79. See, e.g., Mark Rabil, *Secondary Trauma in Lawyering: An Introduction*, 56 WAKE FOREST L. REV. 719, 719–24 (2021) (describing the personal narrative of the author, Mark Rabil, and the emotional implications of serving as a capital defense attorney).

80. See generally Lindsay M. Harris & Hillary Mellinger, *Asylum Attorney Burnout and Secondary Trauma*, 56 WAKE FOREST L. REV. 733 (2021) (presenting an empirical study on the secondary trauma and burnout of immigration asylum attorneys).

81. See, e.g., Brobst, *supra* note 76, at 3–4 (suggesting that the personal motivations of some family attorneys are “protected by professional responsibility tenets of zealous advocacy and client loyalty”).

82. See, e.g., generally Harris & Mellinger, *supra* note 80 (addressing this significant research in the asylum attorney context).

compounded trauma, in which different forms of trauma accumulate over time.⁸³

Exposure to secondary trauma can also lead to additional counterproductive outcomes for the lawyer, including burnout and secondary traumatic stress.⁸⁴ All of this is exacerbated by legal-work culture norms that often frown upon, if not penalize, lawyers for speaking up to express the need for help.⁸⁵ Lawyers who have no emotional bandwidth, however, will be unable to take care of themselves or their clients, much less develop other capacities necessary for leadership.⁸⁶

While essential to lawyer well-being—and an important precondition for leadership—purpose is not a magic bullet. An all-purpose-all-the-time approach to lawyering can also undermine lawyer well-being if not accompanied by other things, such as a basic sense of agency over one’s work and communities to shape and support the lawyer,⁸⁷ including during times of difficulty.

II. AGENCY

A. *What Agency Means and Why it Matters*

It is common to hear that becoming a lawyer comes with the “keys to the courthouse.”⁸⁸ This message is presumably intended to encourage and empower lawyers with the knowledge that they can be guardians of justice and advocates for change. In a word, lawyers are

83. See, e.g., *Complex PTSD*, U.S. DEPT. VETERANS AFF., https://www.ptsd.va.gov/professional/treat/essentials/complex_ptsd.asp (last visited Sept. 10, 2021).

84. See Harris & Mellinger, *supra* note 80, at 736 (providing statements from surveyed attorneys indicating “high levels of both burnout and secondary traumatic stress”); Mark Rabil, Dawn McQuiston & Kimberly D. Wiseman, *Secondary Trauma in Lawyering: Stories, Studies, and Strategies*, 56 WAKE FOREST L. REV. 825, 833–34 (2021) (referencing empirical studies that demonstrate secondary traumatic stress and burnout in abuse prosecutors).

85. See Rabil et al., *supra* note 84, at 830 (noting that some attorneys feel a constant “inability to admit weakness . . . to admit not being at the top of one’s game” and “suffer[] in silence” instead of seeking help (quoting Wake Forest Law Review, *2021 Spring Symposium: Secondary Trauma in Lawyering*, YOUTUBE at 00:33 (Feb. 15, 2021), <https://www.youtube.com/watch?v=hDCGWaB71Gg> [hereinafter *2021 Spring Symposium*] (Eilene Zimmerman)).

86. Rabil et al., *supra* note 84, at 846–52.

87. See *id.* at 830 (describing how “the punishing culture of an Am Law 200 firm, the misery of billable hour requirements, [and] the 24/7 never-off culture that technology has made possible” often leads to burnout and “a variety of drugs and alcohol” (quoting *2021 Spring Symposium*: at 00:33 (Eilene Zimmerman)).

88. See, e.g., Robin Frazer Clark, *A Message from the President*, STATE BAR GA., <https://www.gabar.org/aboutthebar/presidentprobono.cfm> (last visited Sept. 10, 2021) (“You, my colleagues, hold the keys to the courthouse.”).

supposed to have *agency* because of their legal training and professional status.

Agency is a necessary and logical precondition of leadership and is related to the precondition of purpose. Leading requires having the wherewithal and capacity to influence others to act in accordance with one's purposes. As outlined in the previous Part, no matter how much clarity one might have regarding one's purposes, if a lawyer is not equipped or empowered to act upon those purposes, the lawyer is likely to encounter personal and professional frustrations and is unlikely to reach their leadership potential.⁸⁹

Agency includes, but is not limited to, the sort of social activism and transformation towards which some lawyers devote their lives. For many law students and lawyers, however, agency takes on a much more mundane quality. As used in this Article, agency is the process by which one's purposes are enabled and operationalized, the "[a]bility or capacity to act or exert power."⁹⁰

Agency implicates, but is not identical with, the concept of autonomy, which some philosophers define as "rational self-direction"⁹¹ and which psychologists might call "self-efficacy."⁹² For the purposes of this Article, agency in the leadership context includes, but is not limited to, moral agency. Agency is connected to the idea of freedom and implies choice in more than a formal sense.⁹³ Agency requires the hope, but not assurance, of effectiveness.⁹⁴ Agency is important for lawyers not only because it meets basic human needs associated with freedom and self-determination but also because it is necessary for lawyers to develop the judgment and discretion for which the best lawyers are known.⁹⁵

Importantly, agency should be distinguished from individualism or strong forms of independence. The practice of law necessarily

89. See *supra* Subpart I.B.1.

90. *Agency*, OXFORD ENG. DICTIONARY (3d ed. 2012). "Agency" in the context of this article is to be distinguished from the common legal use of the term that describes the relationship that exists when one person or party (the principal) engages another (the agent) to act for him.

91. Kathryn Abrams, *From Autonomy to Agency: Feminist Perspectives on Self-Direction*, 40 WM. & MARY L. REV. 805, 808 (1999); see also Joel Feinberg, *Autonomy*, in THE INNER CITADEL: ESSAYS ON INDIVIDUAL AUTONOMY 27, 33, 45 (John Christman ed., 1989).

92. See ALBERT BANDURA, SELF-EFFICACY: THE EXERCISE OF CONTROL 3 (1997).

93. See Feinberg, *supra* note 91, at 45.

94. *Id.* at 43–44.

95. See Robert E. Shapiro, *Learning Good Judgment*, LITIG., Fall 2015, at 20, 20 ("A lawyer without good judgment, no matter how well he can build a record or knows the law, is of no more use than a racecar with a tipsy driver, whereas those who have it in abundance can sometimes turn a jalopy into a winner.").

involves collaboration⁹⁶ and, as will be outlined in Part III, could benefit from a more robust professional community to check the occasionally alienating features of legal practice.⁹⁷ Calling attention to the importance of agency in the work of lawyers, including would-be lawyer-leaders, is not to advocate for a “lone ranger” model of lawyer independence whereby the “enlightened” individual lawyer simply follows his own preferences while running roughshod over his clients or the norms and rules of the professional community. The form of agency outlined in this Article is always situated in and mediated by personal and professional communities.

The mismatch between one’s purposes and one’s actions can result from many factors, including legal education that is inattentive to what a lawyer needs to succeed, professional contexts that are inhospitable to the exercise of agency, financial constraints, and more. Below, this Article identifies three primary threats to agency.

B. *Threats to Agency*

1. *Legal Education*

Various critics have highlighted the ways that law school has often failed to prepare law students to apply the knowledge they have gained in law school—whether in service to their clients’ particular objectives⁹⁸ or to advance a vision of justice and social change.⁹⁹

The *Carnegie Report* has provided perhaps the most notable and comprehensive critique of legal education in the last generation.¹⁰⁰ Among other things, the *Carnegie Report* observed that law schools are effective at helping law students learn to “think like a lawyer,” which involves extracting and applying ostensibly neutral and general principles, but are not always effective at preparing lawyers for the practice of law.¹⁰¹ The intellectually heady work of learning to “think like a lawyer” often “convey[s] the impression that lawyers are more like competitive scholars than attorneys engaged with the

96. See Sha-Shana Crichton, *Teaching Collaboration*, SECOND DRAFT, Fall 2018, at 38, 38 (2018) (“The ability to collaborate effectively is critical to survival and success in the legal and business markets.”).

97. See *infra* Subpart III.B.

98. See, e.g., CARNEGIE REPORT, *supra* note 41, at 186–87.

99. See, e.g., Hoffman, *supra* note 45, at 129.

100. See generally CARNEGIE REPORT, *supra* note 41 (using extensive research to discuss how law schools transform students into professionals).

101. See *id.* at 186–87 (“[T]he case-dialogue method drills students, over and over, in first abstracting from natural contexts, then operating on the facts so abstracted, according to specified rules and procedures; they then draw conclusions based on conclusions. . . . By contrast, the task of connecting these conclusions with the rich complexity of actual situations that involve full-dimensional people . . . remains outside the method.”).

problems of clients.”¹⁰² In addition, according to the *Carnegie Report*, “law schools rarely pay consistent attention to the social and cultural contexts of legal institutions and the varied forms of legal practice.”¹⁰³ The result is that the “moral imagination of students” is disconnected from the realities of professional work.¹⁰⁴

One important implication of the *Carnegie Report* is that legal education has often set lawyers up for professional frustrations because of the mismatch between what law school has prepared them for and what is expected of lawyers.¹⁰⁵ One solution, according to the *Carnegie Report’s* authors, is for law schools to diversify the case-method approach of legal education to incorporate more case studies, simulations, and experiential learning to help students recognize the opportunities and complexities of legal practice.¹⁰⁶ In so doing, law schools can supplement the good work law schools have historically done—training students to “think like a lawyer”—with the practical experiences and resources to act like one.¹⁰⁷

As important as the *Carnegie Report* has been in catalyzing and reshaping conversations in legal education, some critics have argued that it was too quick to accept certain disempowering features of legal education. Berkeley Law’s Kristen Holmquist insists, “[t]he report’s stress on the distinction between thinking and doing belies the inter-relatedness of understanding, experience, evaluating and creating. As a result, it defines ‘thinking like a lawyer’ downward to encompass only the sharp, non-value-based doctrinal analysis and application in which law school so thoroughly immerses its students.”¹⁰⁸ As long as more holistic approaches to legal education are seen as supplemental to, rather than fundamental to, “thinking like a lawyer,” these approaches will not be prioritized in the ways that are needed to transform law students into lawyers who are equipped to integrate their knowledge, purposes, and work.

Law students’ lack of agency affects not only students and their future clients but also the broader public. In his provocative piece *Law Schools Are Bad for Democracy*, Yale Law School’s Samuel Moyn recently argued that many law schools—especially elite ones—present themselves as vehicles for social change but in the end simply replicate and exacerbate various social hierarchies.¹⁰⁹ “Having

102. *Id.* at 186–88.

103. *Id.* at 188.

104. *Id.*

105. *See id.*

106. *See id.* at 157–59.

107. *Id.* at 54.

108. Kristen Holmquist, *Challenging Carnegie*, 61 J. LEGAL EDUC. 353, 356 (2012).

109. Samuel Moyn, *Law Schools Are Bad for Democracy: They Whitewash the Grubby Scramble for Power*, CHRON. HIGHER EDUC. (Dec. 16, 2018), <https://www.chronicle.com/article/law-schools-are-bad-for-democracy/>.

entertained inchoate dreams about social transformation, the students themselves are transformed the most,” argues Moyn, “especially when they accept a set of beliefs about how the world is likeliest to change—through a politics of marginal legal reform by insiders to the system. That is, if the world can change at all.”¹¹⁰ According to Moyn, this “transformation” not only produces negative psychological effects for the individual lawyer and her sense of self-efficacy but also is “bad for democracy” by obscuring the ways that law can complement, rather than stifle, democratic reform and self-governance.¹¹¹

2. *Changing Norms in the Regulation and Practice of Law*

A lawyer’s professional identity has historically been rooted in the ideal of the lawyer as zealous advocate and wise counselor.¹¹² In exercising wisdom and good judgment, the lawyer advocates on behalf of, and provides counsel to clients, in various and difficult circumstances. This ideal is increasingly elusive, however. As Robert Cochran has argued, lawyer discretion has decreased as lawyer regulation has increased.¹¹³ This trend is reflected both in the growth of rules as well as in the “content of the codes” that have “moved from ethical guidance to mandatory rules.”¹¹⁴ Cochran notes that the “1908 Canons were almost entirely hortatory” and the 1969 Code was a mix of hortatory “Ethical Considerations,” which “attempted to define the good lawyer,” and “‘Disciplinary Rules,’ the violation of which would subject a lawyer to discipline” and which “attempted to define the bad lawyer.”¹¹⁵ The 1983 Model Rules, which continue to regulate lawyers, “dropped the aspirational standards.”¹¹⁶ As a result, “[w]ith a few exceptions, the Model Rules consist entirely of rules with which lawyers *must* comply. The drafters of the Model Rules gave up on defining the good lawyer; they define only the bad lawyer.”¹¹⁷

110. *Id.*

111. *Id.*

112. See MODEL RULES OF PRO. CONDUCT pmbl. 2 (AM. BAR ASS’N 2019).

113. Robert F. Cochran, Jr., *Lawyers and Virtues: A Review Essay of Mary Ann Glendon’s A Nation Under Lawyers: How the Crisis in the Legal Profession is Transforming American Society and Anthony T. Kronman’s The Lost Lawyer: Failing Ideals of the Legal Profession*, 71 NOTRE DAME L. REV. 707, 722 (1996).

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.* (emphasis in the original). While I generally accept Cochran’s interpretation, it is perhaps worth noting that if one only considers the binding ethical requirements of the 1969 Model Code’s Disciplinary Rules, and not the more ambitious “Ethical Considerations,” the advent of the 1983 Model Rules did not necessarily reduce lawyer discretion. See M. Peter Moser, *The A.B.A. Model Rules of Professional Conduct: A Selective Commentary*, U. BALT. L.F., Spring

One implication is that this “narrowing of lawyer discretion undercuts the development of virtues in lawyers.”¹¹⁸ If legal ethics and professional responsibility are reducible to complying with rules, then there is little place for discretion, wisdom, or agency in ethical matters, all of which are required for the exercise of virtue.¹¹⁹ In the current model, it might appear that all lawyers need to do to uphold their professional responsibilities is to learn the rules and follow them. While following the rules is important, a lawyer’s professional responsibility and professional identity include so much more than simply avoiding trouble.¹²⁰ As various commentators have noted, the Model Rules “operate as a floor and not a ceiling.”¹²¹ A lawyer’s professional identity should include space for more aspirational aspects of what it means to be a lawyer, including the ways in which virtues, such as wisdom and empathy, enable a lawyer to serve clients, provide access to the law, and advance justice.¹²²

Changes in law firm structure and culture have also complicated lawyers’ search for agency. As law firms have grown larger, the bureaucratization of law firm work has made it even harder for lawyers to have a say in what they do.¹²³ Law firm efficiency has resulted in unprecedented profits for the most successful firms but has taken a toll on the individual lawyers who comprise the law firms.¹²⁴ The dominance of the billable-hour and associated billable-hour requirements impose serious quality of life costs on associates

1984, at 8, 8 (noting that while the 1983 Model Rules reformatted the mandatory Disciplinary Rules from the Model Code, the Model Rules did not incorporate the Model Code’s “Ethical Considerations” which had sometimes been incorrectly applied as mandatory disciplinary standards rather than discretionary).

118. Cochran, *supra* note 113, at 723.

119. See Stephen L. Pepper, *Counseling at the Limits of the Law: An Exercise in the Jurisprudence and Ethics of Lawyering*, 104 YALE L.J. 1545, 1607–08 (1995).

120. See generally James A. Noe, *Outreach: A Professional Responsibility*, EXPERIENCE, Fall 2000, at 20 (discussing a lawyer’s responsibility to engage in community outreach).

121. Blom et al., *supra* note 47, at 175.

122. See, e.g., Pepper, *supra* note 119, at 1609–10.

123. “[W]ith increasing firm size lawyers reported more external motivation for their work and less autonomy satisfaction.” Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy?: A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554, 596 (2015).

124. See Hugh A. Simons & Joe Blackwood, *The Lessons and Implications of Big Law’s Stunning 2020 Profitability*, AM. LAW. (Jan. 25, 2021, 3:36 PM), <https://www.law.com/americanlawyer/2021/01/25/the-lessons-and-implications-of-big-laws-stunning-2020-profitability/>; DANIEL MARKOVITS, THE MERITOCRACY TRAP: HOW AMERICA’S FOUNDATIONAL MYTH FEEDS INEQUALITY, DISMANTLES THE MIDDLE CLASS, AND DEVOURS THE ELITE 32 (2019).

as well as partners.¹²⁵ Insecurity and competition among associates lead to environments in which associates feel they can never say no without risking reputational and financial disaster.¹²⁶ As Yale Law School's Daniel Markovits has noted, "[l]aw firms . . . obsessively track every partner's contributions to hours billed—one updates the online database through which partners can review one another's contributions (by smartphone) every twenty minutes, twenty-four hours a day."¹²⁷ Increasing evidence shows a link between legal professional pressures and declining well-being.¹²⁸

One might be tempted to think that the most elite lawyers are to some extent insulated from concerns associated with agency. After all, those from the most prestigious law schools who occupy the most sought-after positions in the profession would appear to be doing just fine at matching their aspirations and their actions. Recent studies suggest, however, that professional dissatisfaction is not limited to those at the bottom rungs of the legal profession.¹²⁹

The American ideal of meritocracy has provided a compelling narrative for connecting talent, effort, and outcomes, but there are signs that the "American Dream" is losing its purchase on the American consciousness.¹³⁰ There is increased attention to growing income inequalities. This is coupled with a body of evidence to suggest that social and economic inequalities are deeply shaped by geographic, institutional, and cultural factors outside the control of individuals.¹³¹

Meritocracy is now being questioned by those on the "inside," those elites who have ostensibly benefited from it. In the last two years, a Harvard professor and a Yale Law professor have written

125. Susan Saab Fortney, *The Billable Hours Derby: Empirical Data on the Problems and Pressure Points*, 33 FORDHAM URB. L.J. 171, 180 (2005).

126. Bryan J. Dik & Matthew J. Schaap, *From Workaholism to Work-Life Balance*, LAW PRAC. MAG., Nov.–Dec. 2014, at 30, 32.

127. MARKOVITS, *supra* note 124, at 32.

128. *See, e.g.*, Organ, *supra* 10, at 264–65 (noting that professional dissatisfaction is disproportionately concentrated among young lawyers and those working in private practice, contexts in which professional pressures are especially acute).

129. "[T]he most elite students are the least satisfied with their career choice and the most likely to be thinking of leaving their employer." Ronit Dinovitzer & Bryant G. Garth, *Lawyer Satisfaction in the Process of Structuring Legal Careers*, 41 LAW & SOC'Y REV. 1, 12 (2007).

130. Raj Chetty et al., *The Fading American Dream: Trends in Absolute Income Mobility Since 1940*, OPPORTUNITY INSIGHTS (Dec. 2016), <https://opportunityinsights.org/paper/the-fading-american-dream>.

131. *Id.*; *see also* Gregor Aisch et al., *The Best and Worst Places to Grow Up: How Your Area Compares*, N.Y. TIMES (May 4, 2015), <https://www.nytimes.com/interactive/2015/05/03/upshot/the-best-and-worst-places-to-grow-up-how-your-area-compares.html>.

separate books addressing the problems of American meritocracy.¹³² As Markovits has observed, “[a]n epidemic of effort consumes the meritocratic elite. Superordinate work pervades elite life virtually from cradle to grave. . . . All these workers give harder, longer, and more intensive effort than they want to. Superordinate workers overwhelmingly say they would sacrifice income to gain leisure.”¹³³ These elite “superordinate workers” increase working hours despite lack of desire to do so because they lack agency to get off the meritocratic treadmill. They cannot stop—either because of internalized expectations of what constitutes success and/or because negative professional repercussions are visited upon those who resist the status quo.¹³⁴

3. *Financial Threats*

For many law students and lawyers outside of elite legal institutions, decisions regarding work often take on a very practical dimension. Because of the increasing cost of law school and corresponding rise in debt,¹³⁵ along with trends in law hiring following the Great Recession,¹³⁶ many new lawyers do not have the luxury of choosing where to work, much less the opportunity to ask if their job provides meaning or supplies an opportunity to manifest their values.¹³⁷ When debt is a factor, questions of agency require peeling back one more layer of the lawyer’s life to understand the constraints that financial considerations impose on the lawyer’s agency and self-determination. The Young Lawyers Division of the ABA recently published the *2020 Law School Student Loan Debt Survey Report*¹³⁸ that paints a bleak picture of the impact of student debt.¹³⁹ Law graduates participating in the survey reported an average debt of \$164,742¹⁴⁰ and indicated that concerns over debt shaped a range of personal and professional decisions.¹⁴¹ For

132. See generally MICHAEL J. SANDEL, *THE TYRANNY OF MERIT: WHAT’S BECOME OF THE COMMON GOOD?* (2020); MARKOVITS, *supra* note 124.

133. MARKOVITS, *supra* note 124, at 32.

134. Dik & Schaap, *supra* note 126, at 32.

135. See AM. BAR ASS’N YOUNG LAWYERS DIV., *2020 LAW SCHOOL STUDENT LOAN DEBT SURVEY REPORT 25* (2020) [hereinafter ABA], https://www.americanbar.org/content/dam/aba/administrative/young_lawyers/2020-student-loan-survey.pdf.

136. *Employment Rate of New Law Grads Up for the First Time Since 2007, Helped by Smaller Class Size*, NAT’L ASS’N L. PLACEMENT (Aug. 2015), <https://www.nalp.org/0815research>.

137. ABA, *supra* note 135, at 14–17.

138. See generally *id.*

139. See *id.* at 14–17.

140. *Id.* at 7. This exceeds recent U.S. Department of Education figures that show “the average debt of a law school graduate is around \$145,000.” *Id.* at 2.

141. *Id.* at 14–17.

example, when asked “[w]hich of these ways, if any, has your total student loan debt affected your life?” over a third of respondents stated that they “chose a job that pays more money instead of a job [they] really wanted” and that they “chose a different career path than [they] originally expected.”¹⁴²

The personal impact of student loan debt is perhaps even more striking. Over a quarter of respondents stated that, because of student loan debt, they had “postponed or decided not to get married”; half had “postponed or decided not to buy a house”; and nearly half had “postponed or decided not to have children.”¹⁴³

According to the report, “[p]erhaps the most troubling result of this survey was found in open-ended responses,” which reflected “concerns such as stress, anxiety, depression, anger, and mental wellness. This is jarring, not only for the content within these responses but also for the number of times it was mentioned.”¹⁴⁴ A total of 13.6% of all open-ended responses referenced concerns associated with mental health and well-being, even though “nowhere in the survey did it refer to mental or psychological effects.”¹⁴⁵

Perhaps unsurprisingly, the report noted that “student loans take a disproportionate toll on lawyers of color.”¹⁴⁶ Similarly situated non-White law school graduates “took on around \$25,000–\$40,000 more” in loans. “Whereas about a quarter of White respondents said they had more than \$200,000 in loans at graduation, across each group, at least a third of Asian, Black, Hispanic, and Multiracial said the same.”¹⁴⁷

The negative impacts of student debt are heightened by an uncertain job market.¹⁴⁸ After a declining job market following the Great Recession, the percentage of law graduates employed after graduation has started to increase in recent years.¹⁴⁹ This is not, however, because of more law jobs but is instead the result of a steady decline in the number of graduating lawyers since 2013.¹⁵⁰ The COVID-19 pandemic has added further disruptions and another layer of uncertainty to the law hiring market for recent graduates.¹⁵¹ It is

142. *Id.* at 12–13.

143. *Id.* at 13.

144. *Id.* at 19.

145. *Id.*

146. *Id.* at 17.

147. *Id.*

148. See James G. Leipold, *Class of 2019 Employment and Salary Outcomes Are Strong, Notching Several Historic Highs*, in JOBS & JDS: EMPLOYMENT FOR THE CLASS OF 2019 SELECTED FINDINGS 2, 2 (2020), <https://www.nalp.org/uploads/Classof2019SelectedFindings.pdf>.

149. *Id.*

150. *Id.*

151. *Id.* at 3.

too early to know the long-term consequences of these recent developments.¹⁵²

If leadership requires purpose and the agency to act in light of those purposes, legal institutions must examine and address the ways in which financial pressures are preventing lawyers from exercising self-determination in pursuing their personal and professional purposes.

III. COMMUNITY

A. *What Community Means and Why it Matters*

Leadership is an inherently relational and communal activity.¹⁵³ It is in the context of a given community that leaders influence others in advancing a shared objective.¹⁵⁴ Community is often a byproduct of effective leadership as well.¹⁵⁵ As leadership scholar Keith Grint has observed, leadership requires followers and is thus impossible in the absence of community.¹⁵⁶

A leader's sense of purpose is deeply shaped by her community, as is the leader's understanding of her ability to exercise agency and affect change.¹⁵⁷ A leader's community also provides support in times of need.¹⁵⁸ As such, a lawyer's community is an essential precondition of leadership. It shapes the leader's identity;¹⁵⁹ protects the leader's well-being;¹⁶⁰ and provides the context for the leader to acquire relevant knowledge, develop necessary skills, and cultivate appropriate character traits.¹⁶¹

While a lawyer is simultaneously a member of various communities, the primary concern of this Part is a lawyer's professional community, including the ways that it "gives [its members] purpose and genuine belonging, and . . . provides them with a valued place in a larger social order."¹⁶² This Part begins by examining cultural trends that have complicated formation of meaningful communities, in general, before offering preliminary

152. *Id.*

153. *See, e.g.*, John P. Dugan & Susan R. Komives, *Leadership Theories*, in *THE HANDBOOK FOR STUDENT LEADERSHIP DEVELOPMENT* 35, 44 (2d ed. 2011).

154. *See id.*

155. *See id.* at 45.

156. *See, e.g.*, GRINT, *supra* note 20, at 15.

157. Dugan & Komives, *supra* note 153, at 47–48.

158. *See, e.g.*, Pamela Bucy Pierson et al., *Stress Hardiness and Lawyers*, 42 *J. LEGAL PROF.* 1, 57–58 (2017).

159. Dugan & Komives, *supra* note 153, at 44.

160. *See* Pierson et al., *supra* note 158, at 57–58.

161. *See id.* at 55.

162. Yuval Levin, *Law Schools and Democracy*, *NAT'L REV.* (Dec. 18, 2018, 5:15 PM), <https://www.nationalreview.com/corner/law-schools-and-democracy/>.

reflections regarding the elusiveness of community in legal education and practice.

B. *Threats to Community*

1. *Alienation and Loneliness*

The individualism of the Enlightenment is central to our rights-based constitutional order and has inspired the can-do, rugged individualism that has shaped American culture, law, and politics since the founding.¹⁶³ Unchecked individualism presents serious dangers, however, as acknowledged by the Founders¹⁶⁴ as well as subsequent thinkers, from Alexis de Tocqueville¹⁶⁵ to feminists,¹⁶⁶ communitarians,¹⁶⁷ and multiculturalists in more recent years.¹⁶⁸ The sort of individualism celebrated in early America was a situated individualism.¹⁶⁹ Even though the government was expected to leave people alone, various cultural, institutional, and familial affiliations grounded, situated, and constrained individualism in the early republic.¹⁷⁰

As the purchase and power of various institutions have declined, American individualism has become less situated and less constrained, resulting in individuals untethered from traditional institutions and communities of support and meaning-making.¹⁷¹ Among other things, this shift has resulted in a retreat from various forms of civic and communal life, as noted in great detail, for example, in Robert Putnam's classic *Bowling Alone*.¹⁷²

163. See, e.g., Isaac Kramnick, *The "Great National Discussion": The Discourse of Politics in 1787*, 45 WM. & MARY Q. 3, 4–5 (1988).

164. See *id.* The term "individualism" would not be coined until de Tocqueville's *Democracy in America* in 1835, but various founders expressed concerns about an imbalance resulting from individuals being untethered from communities. See Dana Villa, *Hegel, Tocqueville, and "Individualism,"* 67 REV. POLITICS 659, 664 (2005).

165. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* ch. 2 (2006).

166. See, e.g., CAROLE PATEMAN, *THE SEXUAL CONTRACT* 21 (1988).

167. See, e.g., Amy Gutmann, *Communitarian Critiques of Liberalism*, 14 PHIL. & PUB. AFF. 308, 308–09 (1985).

168. See, e.g., BHIKHU PAREKH, *RETHINKING MULTICULTURALISM: CULTURAL DIVERSITY AND POLITICAL THEORY* 224–25 (2d ed. 2006).

169. See Kramnick, *supra* note 163, at 10.

170. See *id.*

171. Michael Sandel, *The Procedural Republic and the Unencumbered Self*, 12 POL. THEORY 81, 94–95 (1984).

172. See ROBERT PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* 272 (2000) ("The changes are probably part of a larger societal shift toward individual and material values and away from communal values.").

In addition to steadily declining rates of participation in civic, social, and religious institutions, a record number of Americans have never married;¹⁷³ the percentage of adults living alone has nearly doubled in the last fifty years;¹⁷⁴ and the average household size has declined nearly twenty percent in the same period.¹⁷⁵

These trends have coincided with a so-called “epidemic of loneliness,” as reflected in surveys that show as many as 60% of Americans reporting loneliness.¹⁷⁶ This “epidemic of loneliness” has many unwelcome consequences. A 2020 Report from Harvard’s Making Caring Common Project noted that “[l]oneliness is a culprit in a whole slew of problems, including depression, anxiety, substance abuse, heart disease, and domestic abuse—problems that all appear to [have] tick[ed] up during the [COVID-19] pandemic.”¹⁷⁷

As the relevance of local, physical, and organic communities has receded, our identities have become increasingly shaped by other factors and forces, including virtual affiliations with a worldwide community of similar interests and concerns.¹⁷⁸ While such community formation can be valuable for those struggling to find a community in their immediate contexts, overreliance on virtual

173. Wendy Wang, *The Share of Never-Married Americans Has Reached a New High*, INST. FAM. STUD. (Sept. 9, 2020), <https://ifstudies.org/blog/the-share-of-never-married-americans-has-reached-a-new-high> (“In 2018, a record 35% of Americans ages 25 to 50, or 39 million, had never been married.”).

174. Esteban Ortiz-Ospina, *The Rise of Living Alone: How One-Person Households are Becoming Increasingly Common Around the World*, OUR WORLD DATA (Dec. 10, 2019), <https://ourworldindata.org/living-alone>.

175. *Average Number of People Per Household in the United States from 1960 to 2020*, STATISTIA RESE. DEP’T (Jan. 20, 2021), <https://www.statista.com/statistics/183648/average-size-of-households-in-the-us/>.

176. See, e.g., Susie Demarinis, *Loneliness at Epidemic Levels in America*, 16 EXPLORE 278, 278 (2020), <https://www.sciencedirect.com/science/article/pii/S1550830720302159> (“[M]ore than three in five Americans are lonely, with more and more people reporting feelings of being left out, being poorly understood and lacking companionship.”); *The “Loneliness Epidemic,”* HEALTH RES. & SERV. ADMIN., <https://www.hrsa.gov/enews/past-issues/2019/january-17/loneliness-epidemic> (last visited Sept. 10, 2021); Sian Leah Beilock, *Why Young Americans Are Lonely and What We Can Do About It*, SCI. AM. (July 27 2020), <https://www.scientificamerican.com/article/why-young-americans-are-lonely/> (“Loneliness has been a growing problem for decades—and it’s only been made worse by the COVID-19 lockdown.”); RICHARD WEISSBOURD ET AL., LONELINESS IN AMERICA: HOW THE PANDEMIC HAS DEEPENED AN EPIDEMIC OF LONELINESS AND WHAT WE CAN DO ABOUT IT 1 (2021), https://static1.squarespace.com/static/5b7c56e255b02c683659fe43/t/6021776bdd04957c4557c212/1612805995893/Loneliness+in+America+2021_02_08_FINAL.pdf (“36% of all Americans—including 61% of young adults and 51% of mothers with young children—feel ‘serious loneliness.’”).

177. WEISSBOURD ET AL., *supra* note 176, at 3.

178. Demarinis, *supra* note 176, at 278.

relationships, often mediated by social media, can be unhealthy.¹⁷⁹ The psychology of social media encourages superficial connection, emphasizes appearance over substance, and provides a never-ending buffet of material to validate our own preferences without honestly encountering difference.¹⁸⁰ The nationalization of politics has further sidelined local and organic forms of community, leading individuals to look for meaning and connection in remote and, at times, abstract commitments.¹⁸¹

This backdrop of loneliness and dislocation from traditional communities of support and meaning-making has arguably rendered professional organizations and associations less influential in the lives of individual lawyers than in the past.¹⁸² The decline in coherence and cohesion of civic and voluntary associations has coincided with professional entities and organizations increasingly becoming rule-making, regulatory, and compliance-oriented bodies rather than centers of meaning or identity formation.¹⁸³

2. *The Elusiveness of Community in Legal Education*

The legal profession is notoriously competitive, and law schools have not been innocent bystanders. For too long, questions of student well-being were ignored or mocked, and only recently have institutions begun to take seriously the structural dynamics that contribute to student stress.¹⁸⁴

Perennial concerns at most law schools include grades and class rankings. The development of a robust, collegial law school community is conceptually at odds with the intense competition engendered by class rankings. Even law schools open to a radical shake-up must face the reality that, barring major changes in legal hiring, employers will continue looking for ways to distinguish among potential employees.¹⁸⁵ As average firm size has grown, class rank

179. See Peter Wehner, *Jonathan Haidt Is Trying to Heal America's Divisions*, THE ATLANTIC (May 24, 2020), <https://www.theatlantic.com/ideas/archive/2020/05/jonathan-haidt-pandemic-and-americas-polarization/612025/>.

180. See *id.*

181. Scholars of so-called “affective polarization” have offered various explanations regarding the increased role politics plays in social identity formation. See, e.g., Shanto Iyengar et al., *The Origins and Consequences of Affective Polarization in the United States*, 22 ANN. REV. POL. SCI. 129, 130 (2019).

182. See *supra* Subpart I.A.

183. Cochran, *supra* note 113, at 722–23, 725–26.

184. See, e.g., BREE BUCHANAN ET AL., THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE 1 (2017), <https://lawyerwellbeing.net/wp-content/uploads/2017/11/Lawyer-Wellbeing-Report.pdf>.

185. See Douglas A. Henderson, *Uncivil Procedure: Ranking Law Students Among Their Peers*, 27 U. MICH. J.L. REFORM 399, 404 (1994) (“[E]mployers demand student rankings to make determinations about whom they should

has become even more important in hiring decisions, since larger firms are often less equipped than smaller or mid-sized firms to consider less quantifiable aspects of an application.¹⁸⁶ Law schools may not feel like they can responsibly alter their approach to grades without putting their students and graduates at a competitive disadvantage.¹⁸⁷

Another deterrent for all but the most elite law schools is fear of what changes regarding grades might mean for the institution's *U.S. News & World Report* rankings.¹⁸⁸ Since a law school's collegiality is not part of the *U.S. News* methodology,¹⁸⁹ and since anything that poses a reputational risk is typically avoided,¹⁹⁰ there are strong disincentives for most law schools to tinker with something as important as grades and class rankings.¹⁹¹

Promotion of community in law schools is further hampered by inadequate attention to broader questions of professional identity that connects the law student's course of study with her future work and her membership in a professional community.¹⁹² Law schools often "encourage students to be individual leaders, i.e., stand up for their rights . . . [but] law students are often 'not connected' to the legal profession in a way that makes it personal to them."¹⁹³ Yuval

interview, and ultimately, whom they should hire."); *see also* Catherine Rampell, *In Law Schools, Grades Go Up, Just Like That*, N.Y. TIMES (June 21, 2010), <https://www.nytimes.com/2010/06/22/business/22law.html> ("Employers say they . . . press law schools for rankings, or some indication of G.P.A.'s for the top echelon of the class.").

186. *See* Henderson, *supra* note 185, at 428 ("The value of a class rank system is probably much greater for large corporate firms than for other legal employers." (citing Philip C. Kissam, *Law School Examinations*, 42 VAND. L. REV. 433, 486 (1989))).

187. *See id.* at 430 (finding that "[s]ome law professors might argue that, with time and resources currently in short supply, the traditional law school . . . ranking . . . makes some sense even if only to placate employers").

188. *See* Jeffrey Evans Stake, *The Interplay Between Law School Rankings, Reputations, and Resource Allocation: Ways Rankings Misperceive*, 81 IND. L.J. 229, 264 (2006).

189. *See* Robert Morse et al., *Methodology: 2022 Best Law School Rankings*, U.S. NEWS & WORLD REP. (Mar. 29, 2021), <https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology> (citing several factors, including the "successful placement of graduates, their faculty resources, the academic achievements of entering students, and opinions by law schools, lawyers, and judges on overall program quality," as the evaluation criteria).

190. *See* Stake, *supra* note 188, at 264.

191. *See* Caleb N. Griffin, *Incentives, Culture, and Change in American Legal Education*, 87 U. CIN. L. REV. 325, 326–27 (2018).

192. *See* Lawrence S. Krieger, *Human Nature as a New Guiding Philosophy for Legal Education and the Profession*, 47 WASHBURN L.J. 247, 266, 274, 295 (2008).

193. Hoffman, *supra* note 45, at 127.

Levin has argued that law schools fail to “subject [students] to a strong professional code—a self-understanding that is fundamentally professional and institutional.”¹⁹⁴ As a result, legal education often “grant[s] too little potential of the legal profession *as a profession* to help close some of the gap between today’s guilt-ridden elites and resentful public”¹⁹⁵ and fails to emphasize the ways that the legal profession, like all professional communities, “gives [its members] purpose and genuine belonging, and it provides them with a valued place in a larger social order.”¹⁹⁶

This idealized view of legal education and the legal profession is often elusive. The following Subpart considers some of the reasons why community is difficult to create and maintain in the legal profession.

3. *The Elusiveness of Community in the Legal Profession*

A lawyer’s professional identity has historically included a sense of professional responsibility to serve clients as well as to guard—if not advance—the public good.¹⁹⁷ These common concerns provided a shared basis for identity formation and maintenance, irrespective of a lawyer’s particular work setting.¹⁹⁸ As lawyers’ professional identity has come to be more fully associated with the so-called dominant conception of lawyer morality that prioritizes client services, there has been a corresponding decline in concern for non-client-oriented objectives, including those associated with the public good.¹⁹⁹

The logic of this shift is clear, if not inexorable. What makes a good lawyer, according to the “neutral partisan” approach, is whatever serves the client best.²⁰⁰ Obligations to uphold the public good or support democracy are broad and unifying—yet vague—and often take a back seat to more individualized, client-specific concerns, if they are even considered at all. As a result, the formation of professional identity lacks a substantive basis or common set of aspirations that could check the potential excesses and particularity of client-centric professional services.

194. Levin, *supra* note 162.

195. *Id.*

196. *Id.*

197. See, e.g., Bruce A. Green & Russell G. Pearce, “Public Service Must Begin at Home”: *The Lawyer as Civics Teacher in Everyday Practice*, 50 WM. & MARY L. REV. 1207, 1208 (2009).

198. CARNEGIE REPORT, *supra* note 41, at 126–28.

199. See, e.g., Russell G. Pearce, *Rediscovering the Republican Origins of the Legal Ethics Codes*, 6 GEO. J. LEGAL ETHICS 241, 254 (1992).

200. See Robert K. Vischer, *How Do Lawyers Serve Human Dignity?*, 9 U. ST. THOMAS L.J. 222, 223 (2011).

The way that law firms and legal work are organized and managed has also contributed to the elusiveness of a clear sense of community among lawyers. Small firms have been swallowed up by large ones, resulting in less intimate, more bureaucratic working conditions that prioritize profits per partner over all else.²⁰¹ One attendant consequence has been the decline of the generalist.²⁰² As law firms grow, there is an accompanying pressure to develop and market specialized expertise. While this specialization likely benefits the most sophisticated clients, it is not clear that it benefits the public or is good for the legal profession itself.²⁰³ At the very least, it presents another hurdle for lawyers seeking a common basis for professional identity.

Writing over 100 years ago, during another period of cultural and technological disruption, Louis Brandeis bemoaned the loss of the generalist of old who “tended to make his practice diversified not only in the character of matters dealt with, but also in the character or standing of his clients. For the same lawyer was apt to serve at one time or another both rich and poor, both employer and employee.”²⁰⁴ Exposure to different people and positions enabled the lawyer to be attuned to the concerns of the public and to see his work, and the work of all lawyers, as characterized by a commitment to public service. Even in 1915, Brandeis saw this model slipping away, and a century later it is even more elusive.

The increasingly large and impersonal firms that dominate private practice in the twenty-first century are characterized by intense competition and precarity.²⁰⁵ In these big law firms, the path toward partnership and long-term success is longer, more

201. See, e.g., Gretta Rusanow, *Big Law Firms Cut Their Way to Double-Digit Profits Growth in 2020*, AM. LAW. (Feb. 10, 2021, 3:00 AM), <https://www.law.com/americanlawyer/2021/02/10/big-law-firms-cut-their-way-to-double-digit-profits-growth-in-2020-405-76910/>.

202. See, e.g., Adrienne Kalyna, *Tectonics in the Legal Industry: Is the Generalist Attorney a Thing of the Past?*, MESTEL & CO., <https://www.mestel.com/legal-industry-generalist-attorney-thing-past/> (last visited Sept. 10, 2021) (finding that “the legal world veers toward the consolidation of specialists” and “generalists are on the wane”).

203. See, e.g., ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 289 (1993) (“[T]here is something that a generalist possesses which a team of specialists does not: the capacity to synthesize, to integrate from a single point of view all the considerations that the client’s case presents.”).

204. Louis D. Brandeis, *The Living Law*, 10 ILL. L. REV. 461, 469 (1916).

205. MILTON C. REGAN & LISA H. ROHRER, *BIGLAW: MONEY AND MEANING IN THE MODERN LAW FIRM* 7–8 (2021) (finding that many big law firms have a culture of intense competition, which often leads to “partners . . . protect[ing] themselves by acting in their immediate self-interest rather than cooperating with others”).

competitive, more difficult, and less predictable than in the past.²⁰⁶ Even as “large firms are growing in size . . . growth in the number of equity partners at these firms has stalled.”²⁰⁷ Moreover, “[l]aw firms now ruthlessly separate even their partners into tiers based on contributions to firm profits (and income spreads within the partner ranks can reach twenty to one), and the firms expel even top-tier equity partners who stop generating enough business, a practice unheard of a generation ago.”²⁰⁸ The result is that a hyper-competitive profession risks becoming even more competitive, less collegial, and less receptive to the forms of community needed to foster shared purpose, support individual agency, and supply the context for lawyers to become leaders.²⁰⁹

IV. THE NEED FOR INSTITUTIONAL LEADERSHIP

The rather poor reputation of the legal profession, along with high levels of professional dissatisfaction among lawyers, suggest that not all is well.²¹⁰ The *Wake Forest Law Review*'s 2021 Symposium offered one reminder after another that doing things the way they have always been done is not working.²¹¹ This final substantive Part seeks to provide some preliminary suggestions for better paths forward.

As emphasized throughout this Article, institutional norms and expectations constrain what an individual law student or lawyer should be expected to do to resist unhealthy features of legal education and legal practice. Equipping individual lawyers for leadership will require legal actors, including law schools, legal employers, and the legal profession itself, to demonstrate leadership.²¹² These institutions must be prepared to acknowledge

206. See John C. Coffee, Jr., *The Future of the Large Law Firm: Growth, Mergers, and Inequality*, CLS BLUE SKY BLOG, (Jan. 6, 2020), <https://clsbluesky.law.columbia.edu/2020/01/06/the-future-of-the-large-law-firm-growth-mergers-and-inequality/>.

207. *Id.*

208. MARKOVITS, *supra* note 124, at 33.

209. The most substantive empirical study of lawyer attitudes and organizational structure is the three-part *After the JD* study undertaken by NALP and the ABA. The study surveyed the law school graduating class of 2000 in 2002, 2007, and 2012 and provides rich detail regarding the lives and working conditions of lawyers who are currently mid-career. Given the constraints of the survey group, it is less instructive regarding the circumstances of those who have become lawyers after the Great Recession. See Bryant G. Garth et al., *After the JD*, AM. BAR FOUND., <http://www.americanbarfoundation.org/research/project/118> (last visited Sept. 10, 2021).

210. See *supra* notes 11–12 and accompanying text.

211. See, e.g., Harris & Mellinger, *supra* note 80, at 797–818.

212. See Susan Sturm, *Law Schools, Leadership, and Change*, 127 HARV. L. REV. F. 49, 49–51 (2013).

shortcomings and to use their power and influence to adopt meaningful reforms. If legal institutions are more attentive to the preconditions of leadership and the institutional and cultural factors that enable their realization, lawyers will not only be happier people but also more effective lawyers and leaders.²¹³

The recommendations of this Part are by no means comprehensive and are not meant to provide a formulaic response to each of the problems noted above but rather are intended to frame and prompt possible responses. Since I am based in the legal academy, my recommendations regarding how to improve legal education are more detailed than my modest-by-comparison observations for the legal profession.

A. *Law Schools Leading*

Law schools are notoriously conservative in the way they are organized and operate, reflecting in various ways the risk-averse character of lawyers and the legal profession.²¹⁴ Change is slow, if it comes at all, including with respect to curricular and cultural factors affecting law schools' ability to prepare students for leadership.²¹⁵

There are positive indications that law schools are recognizing the need to approach legal education more holistically, including in ways that will enable law schools to provide explicit leadership education and training and also secure the preconditions for leadership that are the focus of this Article. Recent efforts directed at well-being, for example, reflect law schools' growing willingness to expand into unfamiliar terrain.²¹⁶

Law schools have opportunities for reform beginning with the recruitment of students. Reform opportunities abound through legal education and extend to student engagement with alumni in the legal profession. In this Part, I have drawn upon my own experience in recent collaborations between the Wake Forest Program for Leadership and Character and Wake Forest School of Law. While these efforts have not explicitly addressed the preconditions of leadership that are the focus on this Article, they have included relevant, related work.

213. See BRAFFORD, *supra* note 24, at 4–6.

214. See Mark A. Cohen, *Law Schools Must Restructure. It Won't Be Easy.*, FORBES (May 15, 2017, 7:10 AM), <https://www.forbes.com/sites/markcohen/2017/05/15/law-schools-must-restructure-it-wont-be-easy/?sh=7f296c253d3f> (noting that “[l]aw schools and firms have long had a symbiotic relationship” and face similar challenges).

215. See Sturm, *supra* note 212, at 49–51.

216. See, e.g., BUCHANAN ET AL., *supra* note 184, at 35–40 (discussing recommendations for law schools to improve law students' well-being).

1. *Creating a Culture of Leadership*

Creating a law school culture that supports preconditions of leadership requires starting before students arrive on campus. Law schools like to claim they look for leaders when recruiting students, but law schools often focus on the most easily quantifiable aspects of applications, particularly the LSAT and undergraduate GPA.²¹⁷ Doing so is both administratively simpler and incentivized by the *U.S. News* rankings (which place a premium on these scores).²¹⁸ While these measures—especially when taken together—are somewhat predictive of a law student’s success in law school, they have little predictive power beyond law school performance or for qualities like leadership potential.²¹⁹

There has been a movement in recent years to de-emphasize standardized test scores in undergraduate admissions on the grounds that standardized tests disproportionately benefit the privileged.²²⁰ Proponents argue that a more holistic view enables colleges and universities to avoid a narrow focus on a test for which wealthy applicants are most likely to have received beneficial tutoring and test preparation.²²¹ While similar efforts to do away with the LSAT are limited, there is growing interest in finding ways to assess candidates in more holistic ways.²²² Based on trends in law school admissions, the Education Testing Services (“ETS”), for example, is currently piloting a new “assessment management and scoring system . . . that adaptively measure[s] up to [twenty-one] behavioral attributes” in law school settings with the intention of marketing this

217. See, e.g., *Just How Important is the LSAT?*, UNIV. MASS. AMHERST, http://prelaw.umass.edu/topics/LSAT_importance (last visited Sept. 10, 2020) (“[L]aw school admission committees rely heavily on the LSAT (and undergraduate GPA) in making their admission decisions.”).

218. See *id.*

219. See, e.g., Alexia Brunet Marks & Scott A. Moss, *What Predicts Law Student Success? A Longitudinal Study Correlating Law Student Applicant Data and Law School Outcomes*, 13 J. EMPIRICAL LEGAL STUD. 205, 205–06 (2016); Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 L. & SOC. INQUIRY 620, 620 (2011) (“[Undergraduate GPA and LSAT], although predictive of first-year law school grades, make no effort to predict professional competence and, for the most part, they do not.”).

220. See, e.g., Valerie Strauss, *It Looks like the Beginning of the End of America’s Obsession with Student Standardized Tests*, WASH. POST (June 21, 2020), <https://www.washingtonpost.com/education/2020/06/21/it-looks-like-beginning-end-americas-obsession-with-student-standardized-tests/>.

221. See *id.* (“Spending mountains of money for inequitable testing accountability systems isn’t compatible with calls for more holistic ways of educating and helping students grow and thrive.”).

222. See *id.*

“soft skills” assessment to recruit students and develop relevant curricula for matriculated students.²²³

The LSAC’s standardization of law school applications makes it easy for students to apply simultaneously to many law schools²²⁴ and likely increases access for less privileged applicants,²²⁵ but it also incentivizes the presentation of a generalized—and artificially flattened—sense of purpose, which feeds into a sense of fungibility among lawyers-to-be. Almost all law schools use the Credential Assembly Service (“CAS”), a service of the LSAC, which defaults to a standardized application process.²²⁶ Those who write letters of reference for law school candidates, for example, typically write a single letter addressed “Dear Admissions Committee,” and then the CAS sends around this generic letter to the various schools to which the candidate has applied.

The last fifteen to twenty years have witnessed an uptick in optional, supplemental application components that allow applicants to share more about their background and interests.²²⁷ Law schools should continue and expand use of these mechanisms to encourage a stronger emphasis on student purpose and agency. While law schools obviously need to prioritize applicants’ analytical capacities, knowing more about a candidate’s values, purposes, and leadership potential is helpful for determining scholarship eligibility and providing a supplemental tie-breaking device in admissions decisions.²²⁸ The more that law schools can genuinely signal during the admissions process that they are interested in more than a student’s GPA/LSAT combination, the more likely students will be to enter law school with the expectation that their values, purposes, and identity matter. Law schools should also consider inviting their students at the end of their 1L or 2L year to revisit their law school applications, including their personal statements and any supplemental questions related to their

223. *The ETS FACETS Engine*, EDUC. TESTING SERV., https://www.ets.org/s/accelerate/pdf/facets_flyer.pdf (last visited Sept. 10, 2021).

224. Shawn P. O’Connor, *Navigate the 4 Parts of the LSAC Credential Assembly Service*, U.S. NEWS & WORLD REP. (June 1, 2015), <https://www.usnews.com/education/blogs/law-admissions-lowdown/2015/06/01/navigate-the-4-parts-of-the-lsac-credential-assembly-service>.

225. *The LSAT – Promoting Access and Equity in Law School Admission*, LAW SCH. ADMISSION COUNCIL, <https://www.lsat.org/lsat/promoting-access-equity> (last visited Sept. 10, 2021).

226. See O’Connor, *supra* note 224.

227. See, e.g., *Optional Essays/Addenda*, UNIV. WIS.–MADISON, <https://prelaw.wisc.edu/optional-essaysaddenda/> (last visited Sept. 10, 2021) (“Most law schools offer applicants the opportunity to submit additional information about themselves in the form of optional essays.”).

228. See *Law School Personal Statement: The Ultimate Guide*, SHEMMASSIAN ACAD. CONSULTING, <https://www.shemmassianconsulting.com/blog/law-school-personal-statement> (last visited Sept. 10, 2021).

professional aspirations. Incorporating this type of formalized check-in would further show law students that consideration of purpose extends beyond the admissions process.

An even more daunting challenge facing law schools that are serious about recruiting and educating leaders of character involves financial aid. As discussed, average indebtedness for law school graduates is \$145,000, and that number is only growing—not to mention outpacing inflation—every year.²²⁹ Law schools, like higher education in general, are increasingly under scrutiny for their cost and associated student debt.²³⁰ As outlined in Part III, this debt pervasively shapes and constrains a lawyer's personal and professional choices.²³¹ As a result, law students lack agency in their professional lives to pursue their careers of choice and, in their personal lives, lack agency to pursue some of the most basic of human needs.

The all-important *U.S. News* rankings attempted to consider the role of debt for the first time in its latest rankings, released in March of 2021. According to the new formula, the lower the average indebtedness of graduates, the better the institution's score on that metric.²³² While no doubt well-intentioned, some reasonable concerns were immediately raised regarding unintended negative consequences.²³³ The path of least resistance for a law school looking to improve its ranking in this metric would be to admit more students from wealthy backgrounds who will be less likely to have to take out loans for law school.²³⁴ This recent dust-up provided a depressing

229. *Law School Costs*, LAW SCH. TRANSPARENCY DATA DASHBOARD, <https://data.lawschooltransparency.com/costs/tuition/> (last visited Sept. 10, 2021) (noting that “public school was 5.92 times as expensive in 2019 as it was in 1985 after adjusting for inflation” and that “private law school was 2.76 times as expensive”).

230. See, e.g., Abigail Johnson Hess, *Only 23% of Law School Grads Say Their Education Was Worth the Cost*, CNBC (Feb. 21, 2018, 3:37 PM), <https://www.cnbc.com/2018/02/21/only-23-percent-of-law-school-grads-say-their-education-was-worth-the-cost.html>.

231. See *supra* Part III.

232. Robert Morse et al., *Methodology: 2022 Best Law Schools Rankings*, U.S. NEWS & WORLD REP. (Mar. 29, 2021, 9:00 PM), <https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology>.

233. See, e.g., Steven Chung, *The New U.S. News Law School Rankings Should Have Used Tuition as a Ranking Metric Instead of Student Loans*, ABOVE THE L. (Mar. 24, 2021, 11:13 AM), <https://abovethelaw.com/2021/03/the-new-u-s-news-law-school-rankings-should-have-used-tuition-as-a-ranking-metric-instead-of-student-loans/>.

234. See *id.*; Mike Spivey, *Understanding and Implications of the New USNWR Law School Rankings Methodology*, SPIVEY CONSULTING (Mar. 18, 2021), <https://blog.spiveyconsulting.com/understanding-and-implications-of-the-new-usnwr-law-school-rankings-methodology/>.

reminder of just how complicated it is to measure and incentivize responsible institutional behaviors.

Lowering the average student's debt burden while promoting broad access to legal education might seem impossible for many law schools that feel they are already trying to do too much with too little.²³⁵ But the crushing reality of student debt should be ever-present in the minds of administrators, even if no immediate action appears available. Too many law school graduates view entire career paths as foreclosed because of student debt, most typically students who come from less privileged backgrounds.²³⁶ Legal education should provide paths for purposeful action in the world for all graduates—not simply the wealthy graduates. For law schools that are increasingly vocal about using the law to promote social justice,²³⁷ one of the most transformative steps possible would involve reducing the constraints associated with student debt. Reducing these constraints could be accomplished—at least theoretically—by lowering the cost of tuition, increasing support for need-based financial aid, providing institutional support for loan forgiveness for graduates in certain jobs, and developing partnerships with external entities that would provide delayed loan repayment, if not debt forgiveness.²³⁸

235. See, e.g., Stephanie Francis Ward, *Urge to Merge: Difficult Times for Law Schools Have Prompted Several to Attempt to be Acquired by Other Schools*, ABA J. (July 1, 2019, 12:15 AM), <https://www.abajournal.com/magazine/article/urge-to-merge-law-school> (discussing the trend of struggling law schools' attempts to merge with local universities to boost revenue and lower tuition for students).

236. See Jack Karp, *Are Law Schools Helping Students Who Want to Help Others?*, LAW360 (Mar. 31, 2019, 8:02 PM), <https://www.law360.com/articles/1143092>.

237. See, e.g., Pearl Stewart, *Law Schools Respond to the Movement for Social Justice*, DIVERSE EDUC. (Apr. 12, 2021), <https://diverseeducation.com/article/210890/> (highlighting the Southern University Law Center, the University of New Mexico School of Law, and the University of Southern California Gould School of Law as some of the law schools that have “taken action to address social injustice” in the past year).

238. See Victor Gold, *Reducing the Cost of Legal Profession: The Profession Hangs Together or Hangs Separately*, 66 SYRACUSE L. REV. 497, 508 (2016) (advocating that a decrease in law school tuition will spawn more public interest attorneys from all backgrounds); Gabriel Kuris, *How Law School Financial Aid Works*, U.S. NEWS & WORLD REP. (Apr. 5, 2021), <https://www.usnews.com/education/blogs/law-admissions-lowdown/articles/how-law-school-financial-aid-works> (explaining that need-based financial aid for law school is less commonly provided than merit-based financial aid); Karp, *supra* note 236 (highlighting the shortfalls of the current loan forgiveness scheme); AM. BAR ASS'N, LIFTING THE BURDEN: LAW STUDENT DEBT AS A BARRIER TO PUBLIC SERVICE 29–35 (recommending the increased use of externally-funded loan repayment programs to correct for many law graduates' inability to work in the public sector due to debt incurred in law school).

2. Curricular Reforms

If law schools are serious about nurturing and supporting leaders, the work extends beyond simply recruiting students who show promise. A student's mere presence in law school does not automatically turn that student into a purposeful, empowered member of the legal community. Law schools must take concrete steps to develop students' professional identity and leadership potential by attending to important preconditions of leadership. Nowhere is this more important than through the curriculum.

The Professional Responsibility course is one of the most reliable ways to engage broader issues of professional identity, including questions associated with purpose, agency, and community.²³⁹ It is useful because of its subject matter and because it is required of all law students.²⁴⁰

Questions associated with purpose naturally arise when discussing, for example, the allowance in Rule 2.1 for lawyers to engage "other considerations such as moral, economic, social, and political factors, that may be relevant to the client's situation."²⁴¹ Questions of agency emerge when discussing Rule 1.2 and the allocation of authority between the client and lawyer.²⁴² The entire Professional Responsibility course is premised upon helping law students better understand what it means to become a member of the community of lawyers.²⁴³

A temptation in teaching Professional Responsibility is simply to cover the Model Rules so that students are prepared to take and pass the Multistate Professional Responsibility Exam (MPRE).²⁴⁴ Courses in legal ethics and professional responsibility are often viewed by students as second-tier courses behind the analytically rigorous core

239. See Shirlene Brown, *Professional Responsibility 101 – A Quick Look at Upperclassmen Courses*, LAW SCH. TOOLBOX (Oct. 23, 2019), <https://lawschooltoolbox.com/professional-responsibility-101-a-quick-look-at-upperclassmen-courses/>.

240. According to ABA Standard 303(a)(1), "A law school shall offer a curriculum that requires each student to satisfactorily complete at least . . . one course of at least two credit hours in professional responsibility that includes substantial instruction in rules of professional conduct, and the values and responsibilities of the legal profession and its members." AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2020–2021 17 (2020) [hereinafter ABA STANDARDS].

241. MODEL RULES OF PRO. CONDUCT r. 2.1 (AM. BAR ASS'N 2019).

242. MODEL RULES OF PRO. CONDUCT r. 1.2 (AM. BAR ASS'N 2019).

243. CARNEGIE REPORT, *supra* note 41, at 148.

244. The MPRE is required for admission to the bar in almost every jurisdiction and tests candidates' knowledge of the ethical standards imposed on lawyers in the United States. *Jurisdictions requiring the MPRE*, NAT'L CONF. BAR EXAM'RS, <https://www.ncbex.org/exams/mpre/> (last visited Sept. 10, 2021).

law school courses.²⁴⁵ Treating Professional Responsibility as a rules-oriented course can give the course more credibility among skeptical students and faculty.²⁴⁶ Focusing on the Model Rules is also easier from an assessment standpoint. Using a multiple-choice exam to grade students on whether they recognize and apply the relevant Model Rule is much easier than designing creative rubrics to assess more amorphous concepts.

While law students must learn the Model Rules, it is a mistake to prepare lawyers to view legal ethics or professional responsibility simply through the prism of compliance. Lawyers' professional responsibilities include, but are not limited to, compliance with the Model Rules.²⁴⁷ The Model Rules provide a floor below which lawyers cannot go,²⁴⁸ but they do not prepare lawyers to think in an aspirational way about their purposes and agency as lawyers or how their actions impact their communities.

A more expansive and holistic Professional Responsibility course can give students space to consider broader questions related to the "values" as well as the purposes of "the legal profession and its members,"²⁴⁹ while also helping students understand the extent, and limits, of their agency in the context of their professional community.

For the last two years at Wake Forest School of Law, I have taught an expanded three-credit version of Professional Responsibility that includes additional time and material focused on questions surrounding leadership and character in the law. The course combines a somewhat traditional Model Rules-oriented component with a more aspirational and holistic approach to topics concerning legal ethics, professional identity, and social responsibility. In addition to imparting relevant knowledge and skills needed for practicing law, this course also asks students to think about what sort of person and lawyer they want to be and attempts to aid students in developing strategies for cultivating the habits, skills, sensibilities, and virtues needed to fulfill their purposes.²⁵⁰

245. See, e.g., Russell G. Pearce, *Teaching Ethics Seriously: Legal Ethics as the Most Important Subject in Law School*, 29 LOY. U. CHI. L.J. 719, 722–24 (1998).

246. CARNEGIE REPORT, *supra* note 41, at 148–49.

247. MODEL RULES OF PRO. CONDUCT pmb. 7 (AM. BAR ASS'N 2020) ("Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers.")

248. *Id.*

249. ABA STANDARDS, *supra* note 240, at 18.

250. For example, one class session entitled "Standing Up for Your Convictions" featured a visit from a Department of Justice lawyer who resigned in protest from the Roger Stone prosecution. Prior to class, students read an excerpt from C.S. Lewis's *The Inner Ring* regarding the subtle ways that institutional culture can undermine integrity. The lawyer provided a compelling

There are of course dangers associated with putting too many expectations on the Professional Responsibility curriculum.²⁵¹ If students perceive broader leadership education as separate from the rest of the law school curriculum, it might signal to those students that leadership preparation is not something integrated into the law school experience but rather a box to tick.

For students to meet the preconditions of leadership and to develop additional skills and virtues for leadership, relevant opportunities must be integrated throughout the curriculum. For faculty who are interested in incorporating broader concerns into their courses, it is not always clear how or where to begin. Through a grant from the Lilly Endowment, the Wake Forest Program for Leadership and Character provided grants to faculty in the summers of 2020 and 2021 to create or redesign courses in ways that incorporated leadership and/or character.²⁵² The grants were available to all faculty, but more Law School faculty participated than any other department or school at Wake Forest.²⁵³

The grants came with a stipend to support the faculty member's additional work and a three-day intensive workshop featuring modules focused on how to teach leadership and character and, importantly, how to assess courses incorporating leadership and character.²⁵⁴ The workshops were designed to create a sense of community among faculty adding leadership and character to their courses; to provide productive, interdisciplinary cross-pollination; and to equip faculty with relevant research and tools for teaching the material and cultivating leadership and character in students. The workshops were well-received. One law faculty member observed,

and personal overview of the importance of self-reflection in grounding one's values in leadership.

251. CARNEGIE REPORT, *supra* note 41, at 149 (“When legal ethics courses focus exclusively on what a lawyer can and cannot get away with, they can inadvertently convey a sense that knowing this is all there is to ethics.”).

252. *A Look at the Impact of Leadership and Character's Grants to Faculty*, WAKE FOREST UNIV.: LEADERSHIP & CHARACTER, <https://leadershipandcharacter.wfu.edu/news/a-look-at-the-impact-of-leadership-and-characters-grants-for-faculty/> (last visited Sept. 10, 2021).

253. Law School courses included: “Criminal Law”; “Practical Wisdom and the Law: Cultivating Dispositions and Abilities to Do the Right Thing Well”; “Women, Law, Leadership, and Character”; “Essential Business Concepts”; “Race, Social Science, and the Law”; “Innocence and Justice Clinic”; “Contemplative Practices in the Law”; and “Criminal Procedure.” *Courses*, WAKE FOREST UNIV.: LEADERSHIP & CHARACTER, <https://leadershipandcharacter.wfu.edu/what-we-do/academic-courses/> (last visited Sept. 10, 2021).

254. *Id.*

“[t]his has been the most meaningful program that I’ve participated in since I started teaching full time in 2013.”²⁵⁵

One of the biggest challenges associated with incorporating nontraditional material into the law school curriculum concerns assessment. Most law schools grade students on a curve,²⁵⁶ and law professors frequently, and understandably, feel ill-equipped to grade students on things outside the scope of a traditional law school class.²⁵⁷ Even if a professor wants to consider questions of purpose, agency, and community, how can that be done in a way that minimizes any unwanted disruption to the professor’s other course objectives?

There is no one-size-fits-all approach, but at least four observations are worth considering:

1. Questions of purpose can be easily added to courses without disrupting—and perhaps even complementing—other course objectives. One of the easiest ways to start purpose-based conversations involves asking law students to think more broadly about clients’ purposes. Law students are taught and socialized to think about clients’ interests first, but law students are not always taught to recognize the complexity and contours of those interests.²⁵⁸ It is easy for law students to conflate a client’s interests with the “correct” legal answer, but there are times in which a client might have goals and objectives that do not perfectly map on to his legal interests.²⁵⁹ Family law presents perhaps the most

255. *A Look at the Impact of Leadership and Character’s Grants to Faculty*, *supra* note 252.

256. *See* Sue Shapcott et al., *The Jury Is In: Law Schools Foster Students’ Fixed Mindsets*, 42 *LAW & PSYCH. REV.* 1, 20 (2018) (“[W]ith a few exceptions, law schools grade on a curve.”); Victor Villarreal, *The Learning Curve: What You Need to Know to Make the Most of Law School*, 76 *TEX. BAR J.* 415, 415 (2013) (“Some law schools grade on a pass/fail basis, for instance, while many more grade on a curve ranging from A+ to F.”).

257. *See, e.g.*, Susan Swaim Daicoff, *Expanding the Lawyer’s Toolkit of Skills and Competencies: Synthesizing Leadership, Professionalism, Emotional Intelligence, Conflict Resolution, and Comprehensive Law*, 52 *SANTA CLARA L. REV.* 795, 873 (2012) (discussing legal educators’ discomfort with and resulting tendency to avoid teaching nontraditional legal skills).

258. *See* Benjamin V. Madison, III & Larry O. Natt Gantt, II, *The Emperor Has No Clothes, but Does Anyone Really Care? How Law Schools Are Failing to Develop Students’ Professional Identity and Practical Judgment*, 27 *REGENT U. L. REV.* 339, 388–89 (2015) (“[L]awyers who lack the broader perspective that comes with emotional intelligence, empathy, and moral sensitivity often yield to the temptation to act in ways that go beyond the bounds of proper advocacy.”).

259. *See* Pepper, *supra* note 33, at 188–90 (addressing a lawyer’s obligations in the context of hypothetical situations involving clients with viable legal claims or arguments, but where the clients’ interest in pursuing those claims or

obvious examples of where this disconnect might be found. Initiating conversations about purpose by reference to clients' purposes can then open broader questions about purposes of the law (e.g., Is this law just? Should law advance justice?) as well as the purposes of the law student (e.g., How would I feel about representing a client in this context? How will my work affect my values?).

2. Law school leaves little time for self-reflection, but it is essential to the work of a lawyer and a leader. Lawyers must understand their strengths and weaknesses, including the cognitive and implicit biases that can undermine their effectiveness. Building in regular reflection opportunities throughout the law school curriculum will normalize the necessary work of self-evaluation and provide an outlet for students to work through the often implicit and unspoken ways in which their identity is shaped in law school.
3. Almost all law school courses could benefit from adding simulations that provide concrete opportunities for law students to occupy the mindset of a legal actor other than a judge. Lawyers must constantly make decisions between and among competing goals and objectives. Incorporating simulations that help law students recognize their agency and responsibilities is helpful, whether teaching a required 1L course or an upper-level elective.²⁶⁰
4. In addition to formal simulations, most law school courses could benefit from regular references to the role and importance of a lawyer's professional community. Law schools do a good job of helping students figure out the correct legal answers to problems but are less effective at helping law students understand how their community of fellow lawyers will shape their work. For example, a civil procedure course will teach law students the basics of discovery, but it is less likely to prepare them to respond to a discovery extension request by an opposing party. Is the opposing counsel someone the lawyer knows and is likely to encounter again? Has the opposing counsel made the request because she recently lost her spouse or must take care of a seriously ill child?

arguments potentially stems from immoral or otherwise improper objectives that do not mesh with the legal goal).

260. See, e.g., Paul Schaefer, *Injecting Law Student Drama into the Classroom: Transforming an E-Discovery Class (or Any Law School Class) with a Complex, Student-Generated Simulation*, 12 NEV. L.J. 130, 131–37 (2011) (outlining the manifold benefits of simulations in law school education).

What if the client objects to the extension but the lawyer knows he will risk reputational harm by opposing it? These types of questions will help law students recognize that the practice of law is not the same thing as taking law school exams.²⁶¹ The practice of law is deeply situated; recognizing such will help law students become more prepared and effective lawyers within their community.

Whether or not a professor develops a formal assessment mechanism for constructs like purpose, agency, and community, devoting class time to these preconditions of leadership and incorporating them into the existing course material will elevate their significance and normalize their consideration.

At Wake Forest, we have also attempted other, larger-scale efforts that disentangle assessment from performance in particular classes and thereby reduce the chances that students will mimic the “right” answers regarding questions of professional responsibility and identity. For example, over the last four semesters, fourteen courses, including over 300 students, at Wake Forest Law School have administered a “Character and Professional Identity” survey at the beginning and end of the semester.²⁶² The surveys are designed to measure how, if at all, law students’ attitudes and values change over the course of a semester.²⁶³ This data will also provide a baseline to compare against as additional efforts related to leadership and character which are integrated into law school courses.

A new “Character and Values” survey was also administered to every entering 1L in August of 2020 and 2021 before the start of classes. A similar survey will be administered to the classes of 2023 and 2024 periodically during their time at Wake Forest to determine how, if at all, their values and purposes change during law school. These findings will enable faculty and administrators to better understand the impact of the law school experience on the professional identity of our students, including on students’ sense of purpose, agency, and community.

These efforts are new at Wake Forest but have been well received and, we hope, provide an ongoing basis for enhancing the student experience and better prepare our students to be the lawyers and leaders they seek to be.

261. See, e.g., Steven Friedland, *A Critical Inquiry into the Traditional Uses of Law School Evaluation*, 23 PACE L. REV. 147, 181 (2002) (“Arguably, exams measure only a limited number of skills relevant to legal practice, omitting much of what makes practicing attorneys successful.”).

262. E.M. Dykhuis, K. Townsend, & K.R. Allman, Wake Forest Univ. Program for Leadership and Character, *Leadership and Character Development in Law School Survey* (research ongoing) (survey model on file with the author).

263. *Id.*

B. *Leadership from Lawyers and the Legal Profession*

It is easy to feel overwhelmed by what feels like the pervasive, intractable, and multifaceted nature of challenges facing lawyers. It is admittedly easier to point to common problems in the legal profession than to identify solutions that are both generalizable across very different contexts and specific enough to be actionable. Nevertheless, this Subpart outlines a handful of possible reforms that, if adopted by leaders in the legal profession, would make it easier for lawyers to develop important preconditions of leadership. Further, this Subpart focuses on the ABA and state bars, rather than particular professional settings, given the broad roles they play in setting norms and standards for lawyers. As the reader will see, these suggestions for the legal profession are less developed than the ones this Article has previously outlined for legal education. That these proposals are neither comprehensive nor particularly complicated should not be seen as a limitation but as a reminder that addressing big problems often requires a series of small steps. Future scholarship should devote additional attention to cultivating preconditions of leadership in the legal profession.

1. *ABA and Agenda Setting*

In addition to setting standards for legal education and formulating the Model Rules, the ABA plays an important role in setting the agenda for national conversations related to the practice of law. Recent reports on topics such as access to legal services,²⁶⁴ lawyer well-being,²⁶⁵ and student debt²⁶⁶ reflect the ABA's increasingly expansive understanding of what lawyers need to succeed and lead. It appears the ABA will soon publish a book on trauma in the law.²⁶⁷ These publications have been accompanied by new resource tabs on the ABA's website devoted to "Leadership

264. See, e.g., ABA COMM'N ON THE FUTURE OF LEGAL SERV., REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES 4–6 (2016), https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf (describing the findings of a two-year study that examined the relative inaccessibility of legal services, as well as the evolving delivery models for legal services, within the United States).

265. See BUCHANAN ET AL., *supra* note 184, at 7 (“[A study] found that between 21 and 36 percent [of currently practicing lawyers] qualify as problem drinkers, and that approximately 28 percent, 19 percent, and 23 percent are struggling with some level of depression, anxiety, and stress, respectively.”).

266. See AM. BAR ASS'N YOUNG LAWYERS DIV., *supra* note 135, at 23 (“The student loan problem represents a threat to the stability of the profession, and its experienced and successful members should be leading and participating in efforts to help reduce the student loan burden on their younger colleagues.”).

267. Marjorie Florestal et al., *Trauma-Informed Law Book*, TRAUMA-INFORMED L., <http://www.traumainformedlaw.org/traumainformed-law-book> (last visited Sept. 10, 2021).

Development” and “Professional Development,” featuring short practice-oriented articles and relevant CLEs.²⁶⁸ Although focused on law schools and not the profession itself, the ABA’s recently proposed revisions to Standard 303 further reflect the ABA’s growing interest in advancing discussions on professional identity.²⁶⁹

While all of these efforts are to be commended, there is an opportunity to bring much-needed coherence to new and ongoing conversations related to well-being, trauma, leadership, and professional identity. The ABA should consider authoring or commissioning a report on lawyers’ professional identity that prioritizes preconditions of leadership related to purpose, agency, and community. Producing such a report and centering these preconditions of leadership would provide a clear analytical structure for considering various aspects of lawyers’ professional dissatisfaction, the poor reputation of the legal profession, and opportunities for reform. In 2006 the ABA published a report on “professionalism” in legal education,²⁷⁰ followed by a 2009 report examining “professionalism” in the practice of law.²⁷¹ Much has happened since then, however, including the Great Recession and the many changes it occasioned. New scholarship related to professional identity and leadership studies could also inform the ABA’s recommendations.²⁷²

A formal ABA report on professional identity could be accompanied by short, practice-oriented articles on the ABA website and CLEs designed to highlight the importance of purpose, agency, and community. Doing so could help operationalize recommendations from a report and provide a clearer and more compelling narrative structure for CLEs, especially for those addressing mental health, substance abuse, and lawyer dissatisfaction. CLEs of this nature can easily come across as more focused on symptoms, or superficial causes, of dissatisfaction than on the root issues.

268. *Leadership Development*, A.B.A., <https://www.americanbar.org/topics/leader/> (last visited Sept. 10, 2021).

269. ABA Memo, *supra* note 57, at 2 (discussing proposed changes to Standard 303, which would require law schools to emphasize the development of students’ professional identities, as well as provide education and training on “bias, cross-cultural competency, and racism”).

270. ABA STANDING COMM. ON PROFESSIONALISM, REPORT ON A SURVEY OF LAW SCHOOL PROFESSIONALISM PROGRAMS iii, v (2006), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/reports_migrated/LawSchool_ProfSurvey.pdf.

271. RONALD C. MINKOFF, REVIVING A TRADITION OF SERVICE: REDEFINING LAWYER PROFESSIONALISM IN THE 21ST CENTURY 3–4 (2009), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/professionalism_migrated/century.pdf.

272. *See supra* note 8 and accompanying text.

2. State Bars

While the ABA plays an important agenda-setting function, it has little or no role in making formal policy changes outside of its role in formulating the Model Rules.²⁷³ As such, state bars will need to show leadership in designing and implementing policies that enable lawyers to become empowered, purposeful leaders in the professional community and beyond.

One relatively easy step that state bars could take is to promote CLEs focused on preconditions of leadership such as purpose, agency, and community. State bars typically limit CLEs to topics that, for example, “increase the participant’s professional competence and proficiency as a lawyer.”²⁷⁴ State bars are often less inclined or equipped to see connections between nontraditional subjects, such as the preconditions of leadership, and typical “instruction . . . on subjects that will enhance legal knowledge or performance.”²⁷⁵ The catalogues of prominent CLE providers, such as the ABA, Lawline, LexVid, and others, reveal a dearth of programming devoted to leadership in general and a near, if not complete, absence of programming related to preconditions of leadership.²⁷⁶

State bars should also take steps to avoid discriminating against law students who are interested in particular areas of legal practice. Most state bars currently set their bar application deadlines to coincide with the hiring and recruitment timelines of relatively large private law firms.²⁷⁷ Most law students who end up working in mid-

273. *Model Rules of Professional Conduct: About the Model Rules*, A.B.A., https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/ (last visited Sept. 10, 2021) (“[The ABA Model Rules of Professional Conduct] serve as models for the ethics rules of most jurisdictions.”).

274. 27 N.C. ADMIN. CODE 1519 (2019).

275. Email from Lori Nicolichia, Accreditation Coordinator, North Carolina State Bar, to Kenneth Townsend, Scholar in Residence, Wake Forest Univ. Sch. of L. (Jan. 8, 2021) (on file with author).

276. For examples of CLE curriculums on leadership see LAWLINE, <https://www.lawline.com/> (last visited Sept. 10, 2021); LEXVID, <https://www.lexvid.com/> (last visited Sept. 10, 2021). This programming lacks training on the preconditions of leadership. See A.B.A., <https://www.americanbar.org/cle-marketplace/> (last visited Sept. 10, 2021). (demonstrating a marked lack of purpose, agency, and community based leadership training).

277. See, e.g., Valerie Fontaine, *The Law Firm Recruiting Calendar*, SELTZERFONTAINE LLC, <https://www.seltzerfontaine.com/the-search/planning-your-search/the-law-firm-recruiting-calendar/> (last visited Sept. 10, 2021) (“The first-year of associates traditionally starts after Labor Day at most large firms. . . . As the economy improved, start dates pretty consistently returned to Setember.”); see also NAT’L CONF. BAR EXAM’RS & AM. BAR ASS’N, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 2021 34–36 chart 9 (Judith A. Gunderson & Claire J. Guback eds., 2021), <https://www.americanbar.org/>

to large-sized law firms work as summer associates between their 2L and 3L years and receive offers for permanent employment by the beginning of their 3L years. This leaves these students plenty of time to meet the bar application deadlines for the July bar exam, which, in some states are as early as January.²⁷⁸

Smaller firms and public-interest firms typically recruit and hire later and along a less predictable timeline.²⁷⁹ As a result, even the most talented and qualified students who are pursuing careers outside of mid- to large-private firms often do not have jobs until well into the spring semester of their 3L year.²⁸⁰ Unnecessarily early bar application deadlines create serious dilemmas for students who have decided to apply in geographically diverse settings—often essential for landing a competitive public interest position. In North Carolina, for example, the initial deadline for applications for the July 2022 bar exam is January 4, 2022.²⁸¹ The “late registration” deadline is March 1 and requires an additional \$350 fee.²⁸² This timeline forecloses meaningful vocational exploration for many students and leads many talented students to exclude prematurely entire categories of legal practice.

While state bars no doubt need time to undertake a complete review of every applicant for the state’s bar, there seems no compelling reason to maintain such early deadlines when many other jurisdictions have moved deadlines to May or June.²⁸³ State bars could meaningfully assist students’ vocational discernment and enable their exploration of purpose by simply pushing back the bar application deadlines.

content/dam/aba/publications/misc/legal_education/2021-comp-guide.pdf (finding that thirty-nine states set their initial application deadlines for bar examination in or before April).

278. NAT’L CONF. BAR EXAM’RS & AM. BAR ASS’N, *supra* note 277, at 34–35 chart 9.

279. *Law Firms*, GEO. L., <https://www.law.georgetown.edu/your-life-career/career-exploration-professional-development/for-ll-m-students/starting-your-job-search/explore-your-career-options/practice-settings/law-firms/> (last visited Sept. 10, 2021) (“One feature that many small firms have in common is that they do not follow predictable hiring cycles for entry-level attorneys.”); *see also 3L Timeline*, OHIO STATE UNIV., <https://moritzlaw.osu.edu/careers/students/finding-job-opportunities/3l-timeline/> (last visited Sept. 10, 2021).

280. *See, e.g., 3L Timeline*, *supra* note 279 (advising 3L students to “[c]heck Symplicity often” to “[a]pply to public interest positions with late deadlines” and to “[i]dentify and apply to small firms” because employers often have “late-breaking job opportunities throughout the Spring”).

281. *General Application Deadlines*, BD. L. EXAM’RS STATE N.C., <https://www.ncble.org/application-info-deadlines> (last visited Sept. 10, 2021).

282. *Id.*

283. *See* NAT’L CONF. BAR EXAM’RS & AM. BAR ASS’N, *supra* note 277, at 34–35 chart 9.

State bars should also take steps to signal that the legal profession is committed to supporting the mental health and well-being of members of the legal community. Law students and lawyers are disproportionately likely to report mental health problems, but most state bars continue to ask bar applicants to reveal detailed information about mental health problems, including whether applicants have sought support from mental health professionals.²⁸⁴ Those who admit to mental health challenges are subject to additional questioning and scrutiny before being allowed to sit for the bar.²⁸⁵ This unnecessary and intrusive practice signals to law students that they should keep silent about their problems.²⁸⁶ These law students go on to become lawyers who face a range of stresses and trauma and have been ill-prepared to seek the help they need. A better approach—and one that several states have adopted—involves simply asking bar applicants to report problematic *conduct* resulting from mental health issues.²⁸⁷

CONCLUSION

Lawyers are expected to be leaders in a variety of contexts, but there are no guarantees that legal education or legal practice will equip a lawyer for leadership. The emergence and growth of leadership studies in the law have brought valuable attention to the need for intentional leadership preparation. Recent work related to the well-being of law students and lawyers has also shed much-needed light on the importance of seeing lawyers not simply as problem-solving automatons but as complex human beings who face various professional pressures, occupational hazards, and even trauma. For law schools and the legal profession to prepare lawyers for success as leaders, legal institutions must be attentive to leadership development and lawyer well-being, while recognizing the many ways in which the study and practice of law can frustrate the realization of key preconditions of leadership, including purpose, agency, and community.

284. Marilyn Cavicchia, *A New Look at Character and Fitness: Bar Leaders, Lawyers, Others Urge Elimination of Mental Health Questions*, A.B.A., https://www.americanbar.org/groups/bar_services/publications/bar_leader/2019_20/january-february/a-new-look-at-character-and-fitness-bar-leaders-lawyers-others-urge-elimination-of-mental-health-questions/ (last visited Sept. 10, 2021) (“39 states and the District of Columbia ask about the existence of a mental health condition or impairment . . .”).

285. *Id.* (“Many applicants are flagged for further inquiry even though they pose no reasonable risk to clients (because their condition is in remission, in treatment, or otherwise under control) . . .”).

286. *See id.*

287. *See id.*