Amorality in the Lawyering Skills Classroom

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In April 2023, an internal training presentation from Paul Hastings, an international corporate law firm, publicly leaked. The leak made national business and legal news, from Bloomberg Law to the ABA Journal to Business Insider.[1] Coverage exposed a PowerPoint slide describing the firm's expectations for new lawyers. The slide reminded firm lawyers that they worked for an AmLaw 20 firm: "You're in the big leagues, which is a privilege, act like it."[2] Working at such a firm meant that "You are online 24/7. No exceptions, no excuses."[3] According to the presentation, "clients expect everything to be done perfectly and delivered yesterday."[4]

The PowerPoint also described the role of junior attorneys and their relationship to clients. "We are in the business of client service—you are the concierge at the Four Seasons, a waiter at Alinea."[5] It continued: "The client always comes first and is always right." "If a client wants a mountain moved," according to the presentation, "we move it. No questions."[6]

Shortly after the internal slide leaked, the damage control commenced. In an official statement, the firm disclaimed responsibility, instead fingering the

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1 *See* Norm Tabler, *A Look at Paul Hastings' Viral 'No Exceptions, No Excuses' Presentation Missteps*, ABA J. (May 23, 2023), https://www.abajournal.com/voice/article/the-gaffe-and-the-reverse-gaffe; Vivian Chen, *The Paul Hastings Associate Presentation That Wasn't Offensive*, Bloomberg L. (Apr. 11, 2023), https://news.bloomberglaw.com/us-law-week/the-paul-hastings-associate-presentation-wasnt-that-offensive; Bethany Biron, *Big Law Firm Draws Ire For Leaked List of 'Non-negotiable Expectations' For Associates—Including Being Online 24/7 'No Exceptions, No Excuses'*, Bus. Insider (Apr. 8, 2023), https://www.businessinsider.com/big-law-paul-hastings-list-non-negotiable-expectations-debate-2023-4.

2 Biron, *supra* note 1.

3 *Id.*

4 *Id.*

5 *Id.*

6 *Id.*

associate who purportedly drafted the material.[7] The "rogue" associate, in turn, went quiet, their identity and version of events unknown. In-house lawyers interviewed about the leak claimed to be "aghast." One said, "This whole slide perpetuates an entirely toxic, warped version of what the company—the client—actually cares about."[8] A law firm partner announced: "This slide is at odds with my experience and the experience I try to create for my team . . . . The partners I worked with, and now the clients I work with, wouldn't put up with this approach, because they are good people."[9]

Other commentators, however, saw the episode as unexceptional. Instead, they argued, the slide's depiction of the attorney's concierge-like role is endemic to corporate practice. According to one article, "the Paul Hastings presentation [] delivers the unvarnished truth of what being a Big Law associate entails: absolute, ridiculous devotion to the money-making machinery."[10] The same author added: "Many lawyers and firms would happily sacrifice a relative for the chance to service a deep-pocket client who makes relentless demands. And the suggestion that 'good' clients would never make such unreasonable demands? Puh-leese."[11] Another commentary compared the firm's official disavowal of the presentation to Claude Raines' illustrious declaration from *Casablanca*: "I'm shocked! Shocked! To find that gambling is going on here."[12]

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A long-standing critique of lawyers is that they often act as skillful, but ultimately amoral, technicians to their clients. Observers of the Paul Hastings episode attributed that client-is-always-right mindset to the pressures and rewards of corporate practice. But even brand-new lawyers would unlikely have found the values endorsed in the Paul Hastings slide particularly novel or surprising. Rather, junior associates would likely already have been initiated into the "concierge model" of client service going back to the first year of law school.

To be sure, Paul Hastings' presentation on the role of lawyers said the quiet part out loud. Legal education typically doesn't do that. It isn't so brazen. Instead, law school often operates implicitly, through what has been called the "hidden curriculum."[13] Professors teach doctrine, and they talk policy. But students absorb more. They infer messaging—whether professors intend it or

7 *See id.* ("[A]nd the views expressed do not reflect the views of the firm or its partners.").

8 Trudy Knockless, *'I'm Aghast': Viral Paul Hastings Presentation Garners Strong In-House Reaction*, Law.com (Apr. 7, 2023), https://www.law.com/corpcounsel/2023/04/07/im-aghast-viral-paul-hastings-presentation-garners-strong-in-house-reaction/.

9 *Id.*

10 Chen, *supra* note 1.

11 *Id.*

12 Tabler, *supra* note 1.

13 *See* Roger C. Cramton, *The Ordinary Religion of the Law School Classroom*, 29 J. Legal Educ. 247 (1977).

not—about how lawyers conduct themselves, how they treat one another, what they value, and what they couldn't care less about.

This article explores one facet of the hidden curriculum as it relates to the attorney's role. It does so by tracing an undercurrent of amorality often etched into the first class in law school devoted to the core competencies needed for practice—the first-year lawyering skills[14] course.

Pedagogically, the lawyering skills class does many things right, making it an admittedly nonobvious starting point. Whereas doctrinal courses often receive criticism for artificiality and outmoded pedagogical approaches,[15] lawyering skills is often praised. Commentators have noted not just that lawyering skills teaches the right stuff, i.e., the writing, research, and persuasion skills law graduates need, particularly early in their careers. They've also lauded the use of innovative and evidence-based techniques to teach those skills.[16]

But lawyering skills, as many teach it today, contains problematic implicit messaging about morality. That messaging, I will argue, arises in part from the well-intentioned decision by many instructors to adopt an approach called client-centered lawyering. According to the client-centered viewpoint, whatever the client wants is the overall or ultimate goal.[17] This approach, according to proponents, can bring realism to class assignments and can counter lawyers' paternalistic impulses toward clients.

As this article will explore, however, imposing a client-centered lens in the 1L classroom can thwart, rather than promote, the goal of preparing students to confront the challenges of practice reflectively and ethically. Instead, however well-intentioned and seemingly uncontroversial, adoption of the client-centered frame can unwittingly advance a shriveled view of attorney morality and professional identity, similar to the portrait revealed by the Paul Hastings PowerPoint. And it can do so largely through what lawyering skills teachers *don't* say when they talk about client-centeredness.

For one, client-centered lawyering is *not* a brute fact about right-minded professional practice, as some lawyering skills textbooks and articles suggest. It is a *model* only, and one subject to an array of ethics-related challenges and criticisms in the literature. For example, client-centered lawyering shares material commonalities with the frequently criticized "role-differentiated"

14 "Lawyering skills" in this paper refers to the first-year required law school course covering basic writing, research, and other practice skills. At different law schools, the course goes by different names, including legal research and writing and lawyering process.

15 William M. Sullivan et al., Educating Lawyers: Preparation for the Practice of Law 29 (2007).

16 *See, e.g.*, Kirsten A. Dauphinais, *Sea Change: The Seismic Shift in the Legal Profession and How Legal Writing Professors Will Keep Legal Education Afloat in its Wake*, 10 Seattle J. Soc. Just. 49, 103 (2011).

17 Stefan H. Krieger, Richard K. Neumann & Renee McDonald Hutchins, Essential Lawyering Skills: Interviewing, Counseling, Negotiation, and Fact Analysis 10 (6th ed. 2020) ("The client wants something, and that is the overall or ultimate goal.").

approach or "amoral conception" of lawyering.[18] Both client-centeredness and the amoral conception hinge on the supposed primacy of client autonomy, and both downplay, or raise concerns about, the role of lawyers' personal moral beliefs in representing clients. Both thus risk a form of moral self-estrangement by lawyers. Teaching students the client-centered model, without recognizing its pitfalls, can convey approval of lawyers who act merely as amoral fixers—or mere concierges—for their clients.

Nor is the client-centered model the only legitimate vision for the lawyer's role. Rather, a rich spectrum of lawyering models exists. For example, there's moral activism, which posits that client preferences should be limited not just by the floor of applicable legal rules, but by each lawyer's own moral scruples. Alternatively, some commentators argue that the extent to which lawyers should resist legal client requests based on their own moral beliefs should depend on how much power the particular client possesses in the relationship. A third framework postulates that lawyers' day-to-day decision-making should be driven not solely by what the client wants, but by what serves the interests of justice.[19]

When teachers don't identify client-centeredness for what it is—just one model—and neglect to recognize alternative lawyering frameworks, the question of what professionalism lens to use is not merely a matter of scholarly curiosity. Getting the theory right in the classroom matters for what students infer about their role as lawyers in the world. The existence of competing frameworks bears, for example, on widespread negative public perceptions about the legal profession. Teaching only client-centered lawyering in lawyering skills may fuel the development of lawyers who segregate their own moral values from their legal practice. Those lawyers, in turn, can feed negative public views about a "morally neutered" profession.

Relatedly, when teachers truncate description of the spectrum of available professional identities for students, professors may constrict students' own considerations of what kind of lawyers they want to be. For years, scholars have identified "bleached out professionalism" as a core problem for the profession and have argued that legal education should do more to help students develop their own sense of professional identity.[20] To encourage students to consider how they want to create and express their own identity as lawyers, professors should not treat one of multiple models of professionalism as if it were the one true way.

Further, artificially limiting the classroom presentation of lawyering models to just the client-centered approach has implications for attorney well-being. As commentators have argued, compartmentalized approaches to lawyering,

18 *See infra* Section III.B.

19 *See infra* Section III.C.

20 *See, e.g.*, David B. Wilkins, *Beyond "Bleached Out" Professionalism: Defining Professional Responsibility for Real Professionals*, *in* Ethics in Practice: Lawyers' Roles, Responsibilities, and Regulation 207 (Deborah Rhode ed., 2000).

especially those that can press lawyers to override their personal moral intuitions, can contribute to career dissatisfaction and burnout.[21]

Nor can lawyering skills professors sidestep these concerns by trying to avoid teaching lawyering models altogether. As legal scholars have long acknowledged, professors can't *not* teach ethics. As one commentator put it, "It is not possible to choose to have no moral influence: The choice is between good moral influence and bad moral influence."[22] This article therefore provides a detailed prescription for faculty to invite lawyering skills students to grapple with conflicting models of the attorney's role. And this proposal includes not just specific role-play exercises, but guidelines for professors to model reflectiveness and ethical values, recognizing again that direct instruction is just one part of impactful curriculum.

This article proceeds as follows. Parts I, II, and III introduce the client-centered model, depicting both its history and justifications, and describe critiques of the client-centered approach. Part III also introduces several of the major alternatives to the client-centered approach, demonstrating a rich debate about how lawyers should view their role. Part IV adduces evidence that—despite the ongoing controversy over competing lawyering models—lawyering skills courses widely endorse just one of those approaches, the client-centered model. Drawing on the literature of "the hidden curriculum," Part IV also identifies what is not often said about critiques of and alternatives to client-centeredness in lawyering skills textbooks and scholarship. It further analyzes what students likely make of the silence on those matters. Part V explains why the rise of client-centeredness in lawyering skills matters. It connects the focus on client-centeredness to public perceptions about amoral lawyers. It also integrates scholarship on professional identity formation and attorney well-being, explaining how early adoption of just one model of lawyering could hamper professional development. Part VI proposes an approach to confronting problems with and alternatives to client-centered lawyering in lawyering skills. Drawing on pedagogical research regarding analytical frameworks, simulations, and effective mentoring, this part proffers a multifaceted strategy for teaching about and modeling reflections on the different approaches to the lawyer's role. Finally, Part VII responds to major objections, including that this article attacks only a caricature of client-centeredness, that the proposal would overload the curriculum with theory, and that lawyering skills—unlike clinics or professional responsibility courses—is the wrong place for surfacing these matters for law students.

Ultimately, this article tackles a critical issue about how law schools teach students about clients, ethics, and what kind of lawyers they want to be. It

21 *See, e.g.*, Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 Clinical L. Rev. 425, 432 (2005); Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 Minn. L. Rev. 705, 729, 737 (1998).

22 Thomas L. Shaffer, Lawyers in the United States: A Brief Moral History 41, 58 (1995).

does so by exploring the unintended consequences of well-intentioned, but inadequately theorized, choices in the classroom. And it acknowledges the key role of the hidden curriculum—the quiet part of law school pedagogy—in influencing the development of reflective, ethical lawyers.

I. Background on the Client-Centered Approach

Client-centered lawyering is rooted in part in humanistic psychology. Carl Rogers pioneered a client-centered approach to therapy based on a nonjudgmental attitude toward patients.[23] His approach assumed that the patient-client is basically good and advocated unconditional acceptance or "positive regard"[24] for the patient-client as a core therapeutic goal.[25]

Building on this psychotherapeutic perspective, client-centered lawyering calls for not judging the client's goals according to the lawyer's values but instead helping the client achieve those goals.[26] Client-centered lawyering has therefore been described as nonjudgmental, accepting, or neutral.[27]

Thus, the client-centered lawyer aims to ensure decisions and objectives in a representation do not flow from the lawyer's perspective. Instead, "The client wants something, and that is the overall or ultimate goal."[28] According to David Binder's seminal text on client-centered lawyering, this means lawyering for results that provides the "greatest client satisfaction."[29] For client-centered lawyers, client satisfaction is not limited to legal goals or protecting legal interests. Rather, being client-centered means serving the "whole client"—including both the client's legal and nonlegal needs and interests.[30]

In part because client-centered lawyering lauds going "the whole nine yards" for clients, the approach has been characterized as "partisan."[31] Some

23 *See* Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 Clinical L. Rev. 369, 386 (2006).

24 *See* Robert Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 Ariz. L. Rev. 501, 538 (1990).

25 *See* Kruse, *supra* note 23, at 386.

26 *See* Robert F. Cochran, Jr., Deborah L. Rhode, Paul R. Tremblay & Thomas L. Shaffer, *Symposium: Client Counseling and Moral Responsibility*, 30 Pepp. L. Rev. 591, 605 (2003); Mitchell M. Simon, *Navigating Troubled Waters: Dealing with Personal Values When Representing Others*, 43 Brandeis L.J. 415, 419 (2005); Dinerstein, *supra* note 24, at 542; Kruse, *supra* note 23, at 373.

27 *See* sources cited *supra* note 26.

28 Krieger et al., *supra* note 17, at 10.

29 *See* Dinerstein, *supra* note 24, at 509 (quoting David A. Binder, Paul B. Bergman & Paul R. Tremblay, Lawyers As Counselors: A Client Centered Approach (4th ed. 2019)).

30 Kruse, *supra* note 23, at 378 (citing Binder et al., *supra* note 29); *see also* Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 Buff. L. Rev. 1, 48 (1990) (arguing against "pigeonholing" client in a way that would "fragment her voice").

31 *See* Katherine Hunt Federle, *Lawyering in Juvenile Court: Lessons from a Civil Gideon Experiment*, 37 Fordham Urb. L.J. 93 (2010); Abbe Smith, *The Difference in Criminal Defense and the Difference it*

scholars have likewise described client-centeredness as justifying attorney zeal in representing clients.[32] As one well-known attorney (who also served as a U.S. senator and secretary of state) described it, "The client never wants to be told he can't do what he wants to do; he wants to be told how to do it, and it is the lawyer's business to tell him how."[33] To be sure, advocates of client-centeredness do acknowledge the need for compliance with rules of professional conduct, including rules establishing duties to courts and third parties. But client-centeredness can mean zealously pursuing partisan goals up to the boundaries of those rules.[34]

The "core argument" for client-centered lawyering rests on the principle of client autonomy.[35] The argument begins with the premise that personal autonomy is a moral good.[36] Exercising the moral good of personal autonomy depends on access to the law.[37] Therefore, lawyers should facilitate their clients' autonomous decisions and goals, and lawyers contribute a social good when they do so.[38]

Another justification for the client-centered approach is to avoid paternalistic lawyering. Paternalistic lawyering can involve pursuing legal interests without understanding or exploring a client's underlying values.[39] Rather than pursue what clients want, paternalistic lawyers instead nonneutrally substitute their own perspectives or otherwise dominate their clients. Client-centered lawyering aims to avoid the faults of paternalistic lawyering by placing each client's values and objectives at the center of every representation.[40]

Makes, 11 Wash. U. J.L. & Pol'y 83, 88 (2003), *cited in* Kruse, *supra* note 23, at 372 n.12.

32 *See* Katherine S. Broderick, *Colloquium Introduction: Understanding Lawyers' Ethics: Zealous Advocacy in a Time of Uncertainty*, 8 U.D.C. L. Rev. 219, 220 (2004); Charles J. Ogletree, Jr., *Beyond Justifications: Seeking Motivations to Sustain Public Defenders*, 106 Harv. L. Rev. 1239, 1250 (1993) (citing Stephen L. Pepper, *The Lawyer's Amoral Ethical Role: A Defense, A Problem, and Some Possibilities*, 1986 Am. B. Found. Res. J. 613, 617–18 (1986); Nathan M. Crystal, *Developing a Philosophy of Lawyering*, 14 Notre Dame J.L. Ethics & Pol'y 75, 86 (2000) (citing Murray L. Schwartz, *The Professionalism and Accountability of Lawyers*, 66 Calif. L. Rev. 669 (1978)).

33 David Luban, *Partisanship, Betrayal and Autonomy in the Lawyer-Client Relationship: A Reply to Stephen Ellmann*, 90 Colum. L. Rev. 1004, 1004 (1990).

34 *See* Smith, *supra* note 31, at 88 ("lawyers do justice when they pursue their clients' interests with devotion and zeal"); Crystal, *supra* note 32, at 86.

35 *See* Dinerstein, *supra* note 24, at 512; Kruse, *supra* note 23, at 400.

36 *See* Dinerstein, *supra* note 24, at 513.

37 *See id.* at 514 (citing Pepper, *supra* note 32, at 617–18).

38 *See id.*

39 *See* Kruse, *supra* note 23, at 382 (citing Richard Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 Hum. Rts. 1 (1975)).

40 *See id.*

This client-centered approach to lawyering originally gained popularity in law school clinics.[41] Clinicians viewed the approach as well suited to law students who had not yet developed the expertise to take full responsibility for cases.[42] In addition, the client-centered approach embodied the values of many clinical teachers. Those values included commitment to addressing the problem of poverty and promoting social justice causes.[43]

Although client-centered lawyering first achieved wide-scale adoption in law school clinics, client-centeredness is now, according to commentators, generally accepted in legal practice as well.[44] Nevertheless, advocates of the approach lack evidence that client-centeredness actually gets better results for clients than other models. As a leading advocate of the approach acknowledged, "As intriguing as the better results argument is, it must be considered as yet unproven and, at best, tentative support for client-centered lawyering."[45]

Some variation exists in how scholars describe the client-centered approach. For example, an initial version of client-centeredness called for lawyers counseling clients to first present alternative courses of action generated by the lawyer, and then to solicit input from the client.[46] However, some commentators have instead advocated more client-centered brainstorming alternatives with the client before the lawyer presents purely lawyer-generated options.[47] Similarly, although an early description of client-centeredness urged attorneys to avoid informing clients about the lawyer's preference among alternatives, critics have argued that lawyers should instead favor advising clients about what the attorney views as preferable outcomes as more client-centered under certain circumstances.[48] Despite these variations, a primary focus for client-centeredness remains loyalty to client goals and achieving them to promote client autonomy.[49]

II. Critiques of Client-Centeredness: Limitations and Inconsistencies

Client-centered lawyering is just one model of attorney behavior, and it is subject to an array of critiques. To help demonstrate what's left out when lawyering skills courses simply adopt the client-centered model as the right way to practice law, this section summarizes several of those criticisms related to the history and primary purposes of client-centeredness.

41 *See id.* at 384.

42 *See id.*

43 *See id.*

44 *See id.* at 439.

45 *See* Dinerstein, *supra* note 24, at 544.

46 *See id.* at 589.

47 *See id.* at 591.

48 *See* Stephen Ellmann, *Lawyers and Clients*, 34 UCLA L. Rev. 717, 777–78 (1987).

49 *See* Dinerstein, *supra* note 24, at 507–09; Kruse, *supra* note 23, at 378, 400.

First, some commentators have asserted that importing psychotherapeutic approaches into the lawyer-client relationship is inappropriate. For example, although therapists are trained to probe people's problems and emotions, lawyers are not.[50] Relatedly, a lawyer's use of therapeutic techniques in nontherapeutic contexts could raise concerns including the risk of boundary-crossing or exploitation. More generally, because the goals of therapy and legal representation are so different, using the tools of one profession in the context of another creates an "uneasy fit."[51]

A related critique arises from the development of client-centeredness within legal clinics. As described above, law school clinicians widely adopted client-centered approaches in part because the approach jibes with social justice goals for less powerful clients.[52] By contrast, even supporters of the approach acknowledge that the justifications for client-centeredness are weaker when clients are large or powerful organizational entities.[53] Instead, deferring to the values and preferences of powerful corporate clients may raise concerns, especially considering the competitive pressures of big law firm practice. In other words, extending client-centeredness outside of law school clinics or representations of less powerful clients may lack the same justifications.

Another criticism is that client-centered lawyering may frustrate, rather than promote, the objective of client autonomy. Client-centered lawyering can be used to manipulate clients, rather than help them make their own choices. For example, client-centered approaches call for active listening and conveying empathetic acceptance in part to encourage clients to speak freely.[54] But lawyers might not actually *feel* empathetic acceptance about what the client has done or desires. Thus, this client-centered tactic may manipulate clients into speaking freely on the basis of a lawyer's techniques for projecting attitudes that the lawyer doesn't in fact embrace.[55]

Similarly, the traditional formulation of client-centeredness generally calls for withholding lawyers' own views of what a client should do so that clients can decide on courses of action for themselves.[56] But this tactic can manipulate clients, rather than maximize autonomy, by blocking clients from realizing that

50 *See* Dinerstein, *supra* note 24, at 571.

51 Kruse, *supra* note 23, at 386.

52 *See* Dinerstein, *supra* note 24, at 584.

53 *See* Katherine R. Kruse, *Beyond Cardboard Clients in Legal Ethics*, 23 Geo. J. Legal Ethics 103, 128–29 (2010).

54 *See* Ellmann, *supra* note 48, at 735.

55 *See id.* at 735–39.

56 *See id.* at 744. Although this formulation is part of the traditional approach to client-centered lawyering, it is not the only approach to client-centered lawyering. To the contrary, scholars who support client-centeredness reject this facet of client-centered lawyering. *See id.* at 745–46.

they should get to decide whether to hear lawyers' advice or not.[57] Moreover, client-centered lawyers may eschew raising moral questions with clients about impacts on third parties to avoid imposing their values on clients. But this may cause clients to think that their lawyer views such issues as irrelevant and may therefore discourage clients from considering moral matters when they otherwise would do so.[58]

Another critique asserts that by encouraging lawyers to become deeply engaged in client struggles, the client-centered approach may lead lawyers to overidentify with their clients' needs.[59] Overidentification can push some lawyers to lose sight of appropriate professional limits and may lead to disregard for third-party interests, as well as attorney burnout.[60]

Additionally, the notion of neutrality toward a client's goals as part of the client-centered approach has been described as essentially a fantasy. According to this critique, lawyers necessarily have views of their clients and their clients' ends.[61] Therefore, to try to deny that reality by maintaining some appearance of neutrality toward client goals would sanction a fiction. Trying to convey neutrality when it doesn't exist may also contribute to a form of attorney self-deception.[62]

Finally, neutrality as part of client-centeredness can be grounded in culturally based assumptions that marginalize certain groups rather than center clients in the relationship.[63] Because lawyers' conceptions of "neutrality" can be influenced by cultural assumptions, focusing on neutrality may cause lawyers to "pathologize" marginalized or underrepresented clients as difficult or atypical.[64] Put differently, "Without cross-cultural and difference-based identity analysis, client-centered methods perpetuate stigma-induced marginalization in law and society."[65] In sum, trying to be neutrally client-

57 *See id.* at 745–46.

58 *See id.* at 749.

59 *See* Dinerstein, *supra* note 24, at 572.

60 *See id.*; Ezra Ross, *Some Pitfalls of Empathic Lawyering*, 18 Legal Commc'n & Rhetoric: JALWD 173 (2021).

61 *See* Dinerstein, *supra* note 24, at 580; *see also* William H. Simon, *Lawyer Advice and Client Autonomy: Mrs. Jones's Case*, 50 Md. L. Rev. 213 (1991).

62 *See* Dinerstein, *supra* note 24, at 580.

63 *See* Kruse, *supra* note 23, at 388; Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 Golden Gate U. L. Rev. 345 (1997).

64 For example, David Binder's approach to client-centered lawyering describes some clients as difficult or atypical because those clients are uncommunicative or seem reluctant to discuss their cases. However, as Michelle Jacobs points out, a client's reluctance might in fact relate to "the race of the lawyer, and/or the lawyer's expectations regarding the client and the client's culture." Jacobs, *supra* note 63 ("[C]ommunication inhibitors can arise out of interracial stereotypes of communication traits . . . .").

65 *See* Anthony V. Alfieri, *Against Practice*, 107 Mich. L. Rev. 1073, 1084 (2009).

centered can lead to denial of inevitable influences, instead of helping lawyers critically examine their own preconceptions and biases.[66]

III. The Amorality Problem and Alternatives to the Client-Centered Model

This section explores the critique that client-centered lawyering is amoral. It details the robust literature criticizing lawyering approaches that involve an amoral or "role-differentiated" perspective on lawyering. Next, it explains how these challenges to amoral lawyering generally apply to the client-centered approach. The section then describes some of the major alternatives to the client-centered model. Finally, this section concludes with a summary of recent developments in the literature of competing lawyering models, demonstrating a rich ongoing debate about which lawyering models attorneys should adopt.

A. Amoral, Role-Differentiated Lawyering and Its Critics

The challenge to client-centeredness from morality can be traced back to an influential scholarship starting in the 1970s exploring the ethics of legal practice.[67] This section will detail that literature on amorality in practice. The next section will more explicitly link the scholarship regarding amorality in lawyering to the client-centered approach.

One key thread of the scholarship on attorney ethics relates to the foundational question: Can a good lawyer be a good person?[68] The question arises in part because, as some commentators have argued, many attorneys operate as "amoral technicians" for their clients.[69] Lawyers can be described as amoral when they see nothing wrong with representing a client with immoral

66 *See* Kruse, *supra* note 23, at 389–90. Advocates of client-centeredness have responses to many of the objections in this subsection. *See* Dinerstein, *supra* note 24, at 574; Monroe H. Freedman, *Client-Centered Lawyering—What It Isn't*, 40 Hofstra L. Rev. 349 (2011). *Contra* Robert F. Cochrane, Jr., *Which "Client-Centered Counselors"?: A Reply to Professor Friedman*, 40 Hofstra L. Rev. 355 (2011). This section does not delve deeply into counterarguments to these critiques, because the key insight for this article is that client-centeredness is just one model of lawyering that is subject to various attacks and challenges, even as to achieving its own purposes.

67 *See, e.g.*, Wasserstrom, *supra* note 39; David Luban, Lawyers and Justice: An Ethical Study 84 (1988); William H. Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics*, 1978 Wis. L. Rev. 29 (1978); Gerald J. Postema, *Moral Responsibility in Professional Ethics*, 55 N.Y.U. L. Rev. 63 (1980); Richard Wasserstrom, *Roles and Morality*, *in* The Good Lawyer: Lawyers' Roles and Lawyers' Ethics 24 (David Luban ed., 1983); Alan Donegan, *Justifying Legal Practice in the Adversary System*, *in* The Good Lawyer, *supra*, at 123; Arthur Isak Applebaum, Ethics for Adversaries: The Morality of Roles in Public and Professional Life (2000); Deborah L. Rhode, In the Interests of Justice: Reforming the Legal Profession 52–65 (2000).

68 *See* Charles Fried, *The Lawyer as Friend: The Moral Foundation of the Lawyer-Client Relation*, 85 Yale L.J. 1060 (1976).

69 *See* Wasserstrom, *supra* note 39 at 6, 8; *see also* William H. Simon, *Homo Psychologicus: Notes on a New Legal Formalism*, 32 Stan. L. Rev. 487, 501 (1980).

purposes. Amoral technicians view their purpose as providing the best possible legal assistance regardless of whether they approve their clients' objectives.[70]

Scholars have likewise described such lawyers as role differentiated, or as adopting a form of role morality.[71] Role differentiation refers to the position that lawyers can and sometimes must disregard as irrelevant moral considerations that would be dispositive in their everyday lives.[72] As one commentator put it, these lawyers embrace a "peculiar" ethical role: refusal to be bound by personal and social norms that they consider binding on others.[73]

Commentators have also described the amoral, role-differentiated approach as "neutral partisanship." "Neutrality" in this context means that these attorneys will represent clients whose ends the lawyers view as unjust: Such lawyers view themselves as "nonaccountable" for legally permissible actions they take on behalf of clients. Partisanship refers to a lawyer's aggressive work to advance client ends and use of means the attorney would not consider proper in nonprofessional contexts.[74]

According to critics of amoral lawyering, the role-differentiated approach lacks justification for deviating from the morality of everyday life. The principle of client autonomy, for instance, cannot justify role-differentiated lawyering. To explain why, commentators distinguish the good of exercising autonomy from the undesirability of bad actions. The mere fact that an act is freely done, the argument runs, does not make it right.[75] For example, helping manufacture cigarettes, dissembling to the public, or stonewalling can all be legal under some circumstances but may not be considered morally right. Nor, according to these commentators, would attorneys do wrong by limiting client autonomy when acting as informal filters of clients' legal, but arguably unjust, projects. Rather, social pressure and noncooperation by lawyers serve essential roles in a society in which scruples and morality make a difference.[76]

Critics of amoral lawyering also argue that the nature of the adversary system does not justify the role-differentiated approach. Although some commentators assert that hardball lawyering is part of how the adversary system functions, critics have countered that the adversary system can hide the truth as well as reveal it.[77] The adversary system may help justify an amoral approach to lawyering only if that system works well—where, for example,

70 *See* Wasserstrom, *supra* note 39, at 8.

71 *See id.* at 6; Luban, *supra* note 67, at 7.

72 *See* Wasserstrom, *supra* note 39, at 7–8; Postema, *supra* note 67.

73 Simon, *supra* note 67, at 30–31.

74 *See id.* at 36.

75 *See* David Luban, *The Lysistratian Prerogative: A Response to Stephen Pepper*, 11 Am. B. Found. Rsch. J. 637, 639 (1986); Wasserstrom, *supra* note 39, at 11.

76 *See* Luban, *supra* note 75, at 642.

77 *See* Luban, *supra* note 67, at 68–81.

adept lawyers represent all parties, judges are well prepared and decide cases fairly, and bias plays little role in the system.[78] Put differently, there needs to be a great deal of trust in legal institutions to defer important moral concerns based on an adversary system justification. But there are many reasons to doubt the fairness of the American legal system.[79]

Another reason critics have disapproved of role-differentiated lawyering is that it can lead lawyers to a form of self-deception. Cutting oneself off from one's own moral attitudes can work a sort of self-estrangement, in which attorneys feel like spectators to the harms they cause.[80] Further, the pressures of law practice can cause attorneys to adopt character traits such as competitiveness, aggressiveness, ruthlessness, and pragmatism rather than principled contemplation.[81] And morally estranged attorneys, particularly when they take positions and make arguments they don't believe, invite charges of hypocrisy and insincerity.

Finally, attorney role differentiation can be bad for clients. By sidelining personal qualms and reasoning, amoral attorneys can contribute to impersonal relationships with their clients.[82] Indeed, self-distancing from conventional morality might even limit an attorney's ability to make reflective, successful arguments.[83]

B. Critiques of Amoral Lawyering Apply to the Client-Centered Approach

Some commentators have expressly recognized that the morality-related critiques apply to the client-centered approach.[84] For example, one author asserted that "[t]he most fundamental attack on the concept of a client-centered philosophy is that it is morally unsound."[85] Others have said that the critics challenging amoral, role-differentiated lawyering were "fundamentally hostile to the concept of client-centered representation and convinced that it is to blame for professional misconduct and malaise."[86]

Moreover, strong reasons exist to view certain core tenets of client-centered lawyering as largely the same as role-differentiated amorality. For example, commentators have recognized that client autonomy is a core justification whether the lawyering approach is described as client-centered or role-

78 *See id.*

79 *See, e.g.*, Wasserstrom, *supra* note 39, at 13.

80 *See* Postema, *supra* note 67, at 80.

81 *See* Wasserstrom, *supra* note 39, at 13.

82 *See* Postema, *supra* note 67, at 80.

83 *See id.* at 79.

84 *See* Crystal, *supra* note 32; Norman Spaulding, *Reinterpreting Professional Identity*, 74 U. Colo. L. Rev. 1 (2002); Dinerstein, *supra* note 24, at 560.

85 Crystal, *supra* note 32, at 87.

86 Spaulding, *supra* note 84, at 1.

differentiated lawyering.[87] Likewise, lawyer neutrality has been described as a key element of approaches described as client-centered or role-differentiated lawyering.[88] And scholars have described partisanship as involved in approaches labeled as client centered or role differentiated.[89]

Indeed, even when the language commentators use to describe client-centeredness and role-differentiated lawyering is different, the substantive concerns that drive the approaches appear essentially the same. For example, although some advocates of client-centeredness sometimes highlight the principle of achieving client satisfaction, this focus largely parallels the autonomy justification related to role-differentiated lawyering. Similarly, some descriptions of client-centeredness focus on lawyers' not being judgmental or paternalistic,[90] which matches the prioritization of neutrality in role-differentiated neutral partisanship.[91]

Not surprisingly, numerous authors, including major contributors to the legal ethics literature, use the term client-centeredness interchangeably with concepts such as the amoral role, neutral partisanship, and role differentiation.[92] Indeed, even staunch advocates of client-centeredness have acknowledged that challenges related to role morality *do* apply directly to the client-centered model.[93]

C. Alternative Models

In addition to critiquing the client-centered approach, scholars have articulated alternative models of lawyering, none of which are typically surfaced in lawyering skills courses. This section details three alternative approaches

87 *See* Dinerstein, *supra* note 24, at 512; Kruse, *supra* note 23, at 400; Luban, *supra* note 75, at 639.

88 *See* Kruse, *supra* note 23, at 373; Simon, *supra* note 67, at 36.

89 *See* Federle, *supra* note 31; Smith, *supra* note 31, at 88; Simon, *supra* note 67, at 36.

90 *See* Cochran, Jr. et al., *supra* note 26, at 605; Dinerstein, *supra* note 24, at 542.

91 Further, when advocates of client-centered lawyering promote privileging and strongly pursuing the client's legal and nonlegal objectives, Kruse, *supra* note 23, at 378, this focus finds a parallel in the principle of partisanship.

92 *See* Susan D. Carle, *Power as a Factor in Lawyers' Ethical Deliberation*, 35 Hofstra L. Rev. 115 (2006); Crystal, *supra* note 32, at 86 (equating traditional view and "neutral partisanship" with "client-centered philosophy"); Fred C. Zacharias, *Integrity Ethics*, 22 Geo. J. Legal Ethics 541, 542, 543 (2009); Melinda L. Seymore, *Ethical Blind Spot in Adoption Lawyering*, 54 U. Rich. L. Rev. 461, 470–71 (2020); Susan Daicoff, *Asking Leopards to Change Their Spots: Should Lawyers Change? A Critique of Solutions to Problems with Professionalism by Reference to Empirically-Derived Attorney Personality Attributes*, 11 Geo. J. Legal Ethics 547, 562 (1998); Andrew M. Perlman, *A Behavioral Theory of Legal Ethics*, 90 Ind. L.J. 1639, 1639 (2015) (clumping Binder with Pepper and Schwartz); Keith N. Hylton, *Selling Out: An Instrumentalist Theory of Legal Ethics*, 34 Geo. J. Legal Ethics 19, 21 (2021) (citing Binder and Pepper together and mixing client-centered approach with autonomy justification).

93 *See* Spaulding, *supra* note 84, at 1; Dinerstein, *supra* note 24, at 560; Kruse, *supra* note 23, at 439 (recognizing that client-centeredness is not self-justifying).

to lawyering: morality-centered lawyering; justice-centered approaches; and models dependent on the relative power of clients.

1. Morality-Centered Alternatives

Some scholars have advocated models that more robustly integrate common or personal morality into practice than the client-centered approach. These approaches draw inspiration from the maxim that lawyers should advise clients what they should have, not what they want.[94]

David Luban is the primary proponent of this morally centered approach to lawyering. His work advocates leaving moral intuitions in the "on position" while lawyering.[95] In contrast to role-differentiated models of lawyering, "moral activist" attorneys remains morally accountable for actions taken in their professional capacity.[96]

According to moral activism, the "common morality" from which attorneys should draw in their professional lives is complex and untidy yet can also provide a sure-footed path.[97] Luban encourages lawyers to "[t]ry to construct a situation involving a nonlawyer doing something analogous to what the lawyer proposes. Would you be inclined to characterize the nonlawyer as a willing accomplice in wrongdoing? The answer to this question, whatever it is, gives the verdict of common morality."[98] Under this analysis, according to Luban,

94 *See* Luban, *supra* note 33, at 1004.

95 *See* David Luban & W. Bradley Wendel, *Philosophical Legal Ethics: An Affectionate History*, 30 Geo. J. Legal Ethics 337, 359 (2017).

96 *See* Luban, *supra* note 33, at 1021. A related model of lawyering also rejects role differentiation. Carol Gilligan, In a Different voice: Psychological Theory and Women's Development (1982); Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Woman's Lawyering Process*, 1 Berkeley J. Gender, L. & Justice 39, 57 (1985). But this alternative model focuses on the "ethic of care" rather than Luban's "common morality." Stephen Ellmann, *The Ethic of Care as an Ethic for Lawyers*, 81 Geo. L.J. 2665, 2668 (1993). The ethic of care accentuates empathy and cooperation, as opposed to a more adversarial ethic focused solely on serving the client. Marie A. Failinger, *Face-ing the Other: An Ethics of Encounter and Solidarity in Legal Services Practice*, 67 Fordham L. Rev. 2071, 2091 (1999); Menkel-Meadow, *supra*, at 52-53. The ethic of care also highlights connections with adversaries and third parties. Failinger, *supra*. Some commentators have identified complexities related to duties to client and care. For example, Stephen Ellmann asserted that the ethic of care should mean more caring for the client than for nonclients. Ellmann, *supra*, at 2681. And care can help develop a full understanding of all a client's wants and needs. Menkel-Meadow, *supra*, at 57. Despite the care focus, some commentators believe this model permits hurting others, although with strong qualifications. Ellmann, *supra*, at 2722–24.

97 *See* Luban, *supra* note 33, at 1024–25. Critics counter that "morality" may be too subjective a reed to rest on. *See* Stephen Ellmann, *Lawyering for Justice in a Flawed Democracy*, 90 Colum. L. Rev. 116, 129 (1990).

98 *See* Luban, *supra* note 33, at 1025. Whereas some commentators ground morally inflected approaches in moral philosophy, as does Luban, others root their approach in other sources, including religious beliefs. *See, e.g.*, Russell G. Pearce & Amelia J. Uelmen, *Religious Lawyering in a Liberal Democracy: A Challenge and an Invitation*, 55 Case W. L. Rev. 127 (2004); Aziza al-Hibri, *On Being a Muslim Corporate Lawyer*, 27 Tex. Tech. L. Rev. 947, 949 ("As a person of faith I had already internalized my own religious values, which demanded fairness. The Qur'an is

"Creating an international incident for private gain is reckless and irresponsible. Fomenting religious hatred is demagogic. Exploiting antisemitism ignores the lessons of the Holocaust. Blocking a legitimate market transaction through chicanery transgresses the rules of fair dealing."[99]

Attorneys can then weigh common morality against the demands of role morality. For example, criminal defense for Luban typically requires deferring to a partisan adversarial approach because the institutional justifications favoring zealous defense against government prosecutions are very strong.[100] By contrast, custody blackmail, which involves a divorce lawyer's helping one spouse threaten filing a joint custody demand to depress the other spouse's legal demands, cuts the other way.[101] The import of common morality in such a case is strong enough to outweigh the justifications for a role-differentiated response in a civil divorce matter.[102] In this sense, Luban posits a rebuttable presumption favoring following the partisan attorney role unless the demands of common morality outweigh the justifications for role morality.

As a practical matter, moral activism can play out in multiple ways. First, the moral activist can participate in law reform, putting the attorney's legal skill to work for the common good.[103] Second, the moral activist approach involves attorneys' relying on their moral scruples and therefore declining representations or withdrawing from matters more frequently than if they were merely client centered.[104] The moral activist model could also mean more negotiation between attorney and client about what will and won't be done within the scope of a representation, with the attorney potentially imposing conditions before agreeing to a retainer.[105] Finally, common morality can also play a significant role in ongoing client counseling. For example, morally centered counseling can involve both significant discussion with the client of the rightness or wrongness of the client's projects and conversation about the impacts of the client's projects on third parties.[106]

2. Justice-Centered Models

Another set of scholars has devised lawyering approaches focused on justice as a core value.[107]

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replete with statements asking us to deal with others fairly.").

99 *See* Luban, *supra* note 33, at 1024–25.

100 Luban, *supra* note 67, at 60–62.

101 *See* Luban, *supra* note 33, at 1015–16.

102 *See id.* at 1021.

103 *See* Luban, *supra* note 67, at 173.

104 *See id.* at 160.

105 *See id.* at 173.

106 *See id.*

107 *See* Carle, *supra* note 92, at 123; William H. Simon, The Practice of Justice: A Theory of Lawyers' Ethics 138 (1998); Robert W. Gordon, *The Citizen Lawyer—A Brief Informal History of a*

A leading version of this alternative to client-driven neutral partisanship was proposed by William Simon.[108] The core principle of this model is that lawyers should do what is needed to promote justice under the circumstances.[109] Simon expressly rejects the view that lawyers should pursue any arguably legal goal a client wants.

Unlike the moral activist model, Simon's justice-oriented view does not root itself in notions of common morality. Rather, justice in this approach is defined as the "basic values of the legal system."[110] Justice can also be understood as "legal merit," and, according to Simon, lawyers should operate to vindicate the "legal merits" of their cases.[111] For Simon, the distinction between legal merit and common morality is important because legal merit is a value of the legal system itself; lawyers therefore know well how to evaluate such a consideration and weigh it against other legal interests.[112]

To help lawyers make judgments about serving justice or vindicating the legal merits of a case, Simon proposes what he calls "the contextual view."[113] Simon has described this approach as one in which lawyers use their ethical discretion to decide whether to help clients achieve their legal objectives. This discretion arises from the fact that the rules of professional conduct governing lawyers "are likely to leave a good deal of autonomy to individual lawyers."[114]

A core principle Simon espouses to help lawyers promote justice through the exercise of their discretion is that the more reliable the procedures in a legal matter, the less responsibility a lawyer needs to take to ensure a just result. Less reliable procedures call for attorneys to assume direct responsibility to achieve not just client goals, but substantive justice.[115] For example, Simon describes a lawyer who has devised a tax-avoidance strategy, and a nonfrivolous argument

Myth with Some Basis in Reality, 50 Wm. & Mary L. Rev. 1169, 1173–74 (2009) (describing "citizen lawyer" who dissuades clients from meritless claims, guides clients toward the spirit of laws and regulations, and acts as a "wise counselor").

108 *See* Simon, *supra* note 107.

109 *See id.* at 138.

110 *Id.*

111 *See id.* A related approach comes from Bradley Wendel. *See* W. Bradley Wendel, Lawyers & Fidelity to Law (2012). Wendel's approach differs from some models in that it does not focus on serving the public interest or morality. Instead, Wendel argues for retention of the principle of partisanship, but with that principle modified to focus not just on client *interests*, but on protection of their legal *entitlements*. Thus, attorneys under this model must maintain "fidelity to law," such that they should not pursue a result, even if in a client's interest, if that result is not supported by a plausible claim. Lawyers, under Wendel's approach, should treat the law not as just a possible downside for clients to absorb or nullify but as an affirmative reason for action.

112 *See* Simon, *supra* note 107, at 18.

113 *See id.* at 139–40.

114 *See* William H. Simon, *Ethical Discretion in Lawyering*, 101 Harv. L. Rev. 1083, 1084 (1988).

115 *See* Simon, *supra* note 107, at 140.

for the legality of the strategy, but does not believe it *should* be allowed. The lawyer also knows that the IRS will unlikely review uses of the strategy for lack of resources.[116] Under the contextual view, the lawyer should respond to this "procedural failure" by flagging the issue to the IRS, or, if that is not possible, taking greater responsibility for ensuring justice by refusing to assist a client trying to pursue the strategy.[117] That is, the lawyer should pick up the slack for the procedural problem to ensure a just result, even though doing so would not promote the client's personal interest.

In sum, advocates of justice-centered models enshrine justice, not just client autonomy, as a core value. Justice-oriented lawyering does not exclude vigorous representation for clients under some circumstances. But the principle of justice can require decisions that don't optimize client interests, even when the rules of professional conduct don't expressly require those decisions.[118]

3. Approaches Based on Relative Client Power

Another model of lawyering seeks to reconcile facets of both client-centered approaches with morally centered and justice-focused models. For example, Susan Carle argues that client-centric and morality/justice-centered models are two potential emphases that should be tailored to the context of a particular representation.[119]

Recognizing that different practice settings strongly influence practice dynamics, this model posits that client power is critical to ethical decision-making. To determine whether to lawyer in a more client or justice-centered style, law graduates should gauge the relative power of the client represented.[120] Carle's justification is that "[i]n the context of representing powerful clients, lawyers' incentive is to do too much for their clients; in the context of clients lacking substantial resources, lawyers' incentive is to do too little."[121] For example, lawyers may need to work harder to adopt and serve less powerful clients' perspectives, in part because poorer clients' inability to pay large sums can incentivize attorneys to do too little. By contrast, in the face of massive fees and significant law firm competition, corporate attorneys' self-interest is often to do just what big business interests want.[122]

Based on these differences in dynamics in different practice areas, using client power as a factor to drive attorney decision-making can temper the flaws of both client-centered and justice- or morality-centered lawyering. According to Carle, "Using relative client power to guide lawyers' choices between client-

116 *See id.* at 142.

117 *See id.* at 142–43.

118 *See id.* at 139-41.

119 *See* Carle, *supra* note 92, at 117.

120 *See id.* at 119.

121 *See id.*

122 *See id.* at 146.

and justice-centered approaches prevents lawyers from imposing their own substantive visions of justice on clients who cannot easily walk away, while still calling on lawyers representing powerful interests to refrain from exploiting opportunities that would bar adequate consideration of less powerful interests affected by the representation."[123]

Carle provides an example in which relative client power would make a significant difference in how attorneys operate. In her illustration, an attorney represents a coal company defending a claim for black lung benefits by a miner-employee. The client-coal company wants to terminate benefits to the miner because the miner's lesions slightly decreased to just below the cutoff size triggering benefits. But the decrease might be from measurement variation and within the margin for error. Under the client-power model, the lawyer should decline to help the coal company terminate benefits, resolving the close case in favor of the miner because the miner possesses less power and greatly needs the benefits.[124] By contrast, were a lawyer representing the miner in the same situation, according to the client-power model, that lawyer could avoid highlighting that the lesion may have fallen below the threshold—within the range of evidentiary ambiguity—because the client is the less powerful party. In other words, the lawyer representing the miner would resolve the close ethical judgment call in favor of the less powerful entity and would thereby adopt a more partisan client-centered tactic.[125]

D. Current Issues in the Literature of Lawyering Models

This section briefly sketches some current issues in the discussion about competing lawyering models, demonstrating continuing disagreements that, I will argue, teachers should surface for their students.

Some scholars have devised theories that aim to resolve the tensions among competing lawyering models. For example, Daniel Markovits has argued that some of the debates among ethical models have conflated first-person and third-person perspectives.[126] He contends that ongoing disagreements about legal ethics have confused critiques related to a lawyer's outward-facing duties to third parties and the justice system with critiques related to the lawyer's first-person duties to themselves, including cultivating integrity and authenticity. By disentangling the different perspectives and critiques, Markovits attempts to cut through existing scholarly conflicts and more accurately capture the experience of confronting ethical issues in the practice of law.[127]

Other scholars have argued that framing debates around role morality is itself misguided. Norman Spaulding, for example, contends that in evaluating

123 *See id.* at 120.

124 *See id.* at 151.

125 *See id.* at 152.

126 *See* Daniel Markovits, *Legal Ethics from the Lawyer's Point of View*, 15 Yale J.L. & Humans. 209 (2003).

127 *See id.* at 211.

attorney morality and decision-making, ethicists should instead focus on the degree to which lawyers identify with their clients.[128] According to this line of argument, greater identification with clients—as opposed to role differentiation—can account for much of the ethical misconduct by attorneys.[129] Thus, under Spaulding's account, disagreements about the benefits and drawbacks of client-centric role morality are largely irrelevant to concerns about legal ethics in practice.

Despite these attempts to cut through ethical debates about lawyering models, however, core tensions among competing lawyering approaches remain unresolved. For example, scholars have questioned whether a novel focus on first-person and third-person ethical perspectives substantially settles existing debates.[130] And despite efforts to shift discussion away from the impact of role morality, scholars have continued to produce work exploring whether role differentiation is in fact justifiable.[131]

Indeed, foundational disagreements continue to trouble conversations about client-centeredness, morality, and competing lawyering models. For example, commentators have continued to attack both client-centeredness and justice- or morality-oriented models as resting on faulty assumptions. While critics of role-differentiated lawyering argue that representing clients so as to maximize client autonomy hinges on the erroneous assumption that acts autonomously done must also be good,[132] advocates of client-centeredness contend that critics of client-centeredness premise their arguments on "cardboard" versions of immoral clients that don't capture the true complexity of client motivations and goals.[133] Advocates of client-centeredness and justice- or morally centered models also continue to challenge the consequences of one another's lawyering approaches. For example, role-differentiated client-focused lawyering may contribute to the high-profile corporate scandals in which Big Law attorneys have helped their clients pursue highly problematic ends.[134] On the other hand, some critics have decried how the moral activist approach can potentially lead to moral elitism, or the perception by lawyers that their own ethical judgment is superior to their clients' determinations.[135] Critics have also highlighted difficulties in actually administering a practicable

128 *See* Spaulding, *supra* note 84.

129 *See id.*

130 *See* Ted Schneyer, *The Promise and Problematics of Legal Ethics from the Lawyer's Point of View*, 16 Yale J.L. & Humans. 45, 45–46, 58, 70–71 (2004).

131 *See* David Luban, *The Inevitability of Conscience: A Response to My Critics*, 93 Cornell L. Rev. 1437 (2008) (responding to criticisms by Spaulding, defending moral activism in face of arguments about moral pluralism).

132 *See* Luban, *supra* note 75, at 639.

133 *See* Kruse, *supra* note 53, at 128–29.

134 *See* Carle, *supra* note 92, at 136.

135 *See* Kruse, *supra* note 53, at 120.

version of moral activism—which doesn't lead to complex philosophical conundrums—in the context of real-world client issues.[136]

Beyond consequences, commentators have not even been able to reach consensus about which lawyering models attorneys in practice actually use. While some data arguably indicate that lawyers tend to default to a client-centric mode,[137] other studies suggest that lawyers instead opt for a paternalistic approach to clients.[138] Other works suggest that the default depends on the practice area involved. And some commentators assert that persuasive evidence about which model lawyers in fact use is simply lacking one way or the other.[139]

In sum, rich debates over the competing models of lawyering continue unabated. There appears to be no evidence that any principle-based, consequentialist, or empirical resolution or consensus has even begun to emerge.

IV. Client-Centeredness Endorsed in Lawyering Skills

This section transitions to the role of client-centeredness in the 1L lawyering skills course. It introduces the content of lawyering skills courses and uses evidence from both textbooks and scholarship to depict how these courses have treated the client-centered model.

The mandatory 1L lawyering skills course goes by different names at different schools: legal writing, legal research and writing, legal practice, lawyering process. The course is typically one year long and covers legal research and writing, oral argument, legal method, reasoning, and analysis, and sometimes interviewing and negotiation.[140]

Some scholars have praised the lawyering skills course as utilizing best practices for teaching students what lawyers need to know for practice.[141] Among these practices are innovative use of "multimodal" instructional techniques in the classroom, including extensive formative as well as summative feedback,

136 *See* Paul R. Tremblay & Judith A. McMorrow, *Lawyers and the New Institutionalism*, 9 U. St. Thomas L.J. 568 (2011).

137 *See* Crystal, *supra* note 32, at 88, 93.

138 *See* Rodney J. Uphoff & Peter B. Wood, *The Allocation of Decisionmaking Between Defense Counsel and Criminal Defendant: An Empirical Study of Attorney-Client Decisionmaking*, 47 U. Kan. L. Rev. 1, 5 (1998).

139 *See* Minna J. Kotkin, *Creating True Believes: Putting Macro Theory into Practice*, 5 Clinical L. Rev. 95, 99 (1998); Sofia Yakren, *Lawyer as Emotional Laborer*, 42 U. Mich. J.L. Reform 141, 151 (2008); Fred C. Zacharias, *Specificity in Professional Responsibility Codes: Theory, Practice, and the Paradigm of Prosecutorial Ethics*, 69 Notre Dame L. Rev. 223, 235 n.39 (1993).

140 *See, e.g.*, Helene S. Shapo, Marilyn R. Walter & Elizabeth Fajans, Writing and Analysis in the Law (7th. ed. 2018).

141 *See, e.g.*, Dauphinais, *supra* note 16, at 74. *See also* Alison Donahue Kehner & Mary Ann Robinson, *Mission: Impossible, Mission: Accomplished or Mission: Underway? A Survey and Analysis of Current Trends in Professionalism Education in American Law Schools*, 38 U. Dayton L. Rev. 57, 67 (2012).

in-class exercises, outside-of-class exercises, and one-on-one in-person work meetings between professors and students.[142]

Despite scholarship extolling the lawyering skills course as a strong example of teaching for practice-readiness, some commentators have described the default approach to teaching legal writing in the 1L course as "regnant."[143] Regnant in this context means paternalistic and can refer to a lawyering approach that privileges lawyer expertise and dominance. This approach, according to scholars, results in part from lawyering skills professors teaching structured or formulaic strategies for crafting legal writing.[144] The lawyer-centric perspective is also bolstered by an emphasis in lawyering skills courses on thinking like a lawyer and writing for other lawyers.[145] The use of "canned" hypothetical problems in lawyering skills purportedly can also contribute to approaches that center around lawyer expertise and craft, as opposed to clients' lives.[146]

Evidence suggests, however, that many legal writing instructors now try to counterbalance any paternalistic undercurrents by embracing client-centered lawyering in lawyering skills. Scholars have stated that the client-centered approach has become "the predominant model for teaching lawyering skills."[147] The leading textbooks, which many legal writing faculty use and adopt, teach client-centered approaches. For example, one widely used text approvingly cites David Binder's seminal work in multiple places in its discussion of lawyering skills.[148] It also endorses the client-centered creed that the client is in the best position to make the decision about a legal problem. The authors assert that the lawyer's role is simply to assist the client in achieving what the client views as the best solution to the problem.[149] And this requires the lawyer to adopt the client's perspective to determine what the client wants most.

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142 *See* Dauphinais, *supra* note 16, at 103.

143 Mary Nicol Bowman, *Engaging First-Year Law Students Through Pro Bono Collaborations in Legal Writing*, 62 J. Legal Educ. 586 (2013); Sarah O'Rourke Schrup, *The Clinical Divide: Overcoming Barriers to Collaboration Between Clinics and Legal Writing Programs*, 14 Clinical L. Rev. 301 (2007).

144 For example, one leading lawyering skills text provides writing rules for organizing "large scale structure" and an additional five-step sequence for "small scale structure." Shapo et al., *supra* note 140, at 99–139. Another lists seven steps for describing a legal rule, including "main rules," "interpretive rules, supplemental definitional rules, and sub-rules." *See* Michael D. Murray & Christy H. DeSanctis, Legal Writing and Analysis 96–109 (3d ed. 2021).

145 *See* Schrup, *supra* note 143, at 314.

146 *See* Bowman, *supra* note 143.

147 Kruse, *supra* note 23, at 370; *see also* Robert A. Baruch Bush, *Mediation Skills and Client-Centered Lawyering: A New View of the Partnership*, 19 Clinical L. Rev. 429, 447 (2013).

148 *See* Shapo et al., *supra* note 140, at 258, 269.

149 *See id.* at 259.

Conversely, according to the text, a lawyer would go wrong by suggesting a result informed by the lawyer's, not the client's, values.[150]

Another often-used text expressly adopts a client-centered approach to all skills instruction, devoting a full section of the text to client-centeredness.[151] Consistent with that approach, the text describes lawyers' job as positioning the client to gain control of a situation.[152] The text also devotes sections to what clients like and what they dislike and warns against taking a paternalistic approach toward clients.[153] Other well-known lawyering skills texts likewise expressly endorse the client-centered approach to lawyering.[154]

Moreover, in addition to the adoption of client-centered lawyering in major lawyering skills textbooks, there seems to be significant agreement among lawyering skills scholars that lawyering skills instructors should teach client-centeredness as a best practice. A wide swath of articles has approved the client-centered approach to teaching 1L lawyering skills.[155] For example, authors have praised skills-based programs "designed to instill a client-centered philosophy and approach."[156] Others advocate increased instruction in fact development and client counseling to promote the client-centered viewpoint.[157] Indeed, some of these lawyering skills scholars appear to support a client-centered approach strongly enough that they urge lawyering skills professors to bring real client representations into the lawyering skills classroom in part to promote client-centeredness for students.[158] Part of the justification offered by these scholars is

150 *See id.* at 270.

151 *See* Krieger et al., *supra* note 17, at 25–26.

152 *See id.* at 9.

153 *See id.* at 27.

154 *See* Richard K. Neumann, Ellie Morgolis & Kathryn M. Stanchi, Legal Reasoning and Legal Writing 156 (9th ed. 2021); Richard K. Neumann, Sheila Simon & Suzianne D. Painter-Thorne, Legal Writing 121–22 (4th ed. 2019).

155 *See, e.g.*, Bowman, *supra* note 143; Mary Nicol Bowman & Lisa Brodoff, *Cracking Student Silos: Linking Legal Writing and Clinical Learning Through Transference*, 25 Clinical L. Rev. 269, 296 (2019); Nantiya Ruan, *Student, Esquire? The Practice of Law in the Collaborative Classroom*, 20 Clinical L. Rev. 429, 442 (2014); Katherine R. Kruse, Bobbi McAdoo & Sharon Press, *Client Problem Solving: Where ADR and Lawyering Skills Meet*, 7 Elon L. Rev. 225, 257 (2015); Michael A. Millemann & Steven D. Schwinn, *Teaching Legal Research and Writing with Actual Legal Work: Extending Clinical Education into the First Year*, 12 Clinical L. Rev. 441, 484 (2006); Brook K. Baker, *Traditional Issues of Professional Responsibility and a Transformative Ethic of Client Empowerment for Legal Discourse*, 34 New Eng. L. Rev. 809, 905 (2000) (ultimately endorsing client-centered approach after surveying various ethical matters and moral issues in lawyering skills course).

156 *See* Kruse et al., *supra* note 155, at 257.

157 *See* Bowman & Brodoff, *supra* note 155, at 296.

158 *See* Bowman, *supra* note 143; Ruan, *supra* note 155, at 442; Millemann & Schwinn, *supra* note 155, at 484.

that the client-centered approach can help combat an otherwise paternalistic perspective in the lawyering skills course.[159]

Finally, in contrast to the chorus of lawyering skills commentators advocating the client-centered approach in lawyering skills, there do not appear to be legal writing scholars who have argued *against* endorsing client-centered approaches in the lawyering skills classroom.[160]

A. Client-Centeredness and the Hidden Curriculum in Lawyering Skills

The section begins with discussion of a critical lens for understanding the dynamics around client-centeredness in lawyering skills courses: the concept of the "hidden curriculum." This section then explores the hidden messaging that can occur when lawyering skills courses approve client-centeredness, but without identifying it as a model, raising critiques of that model, or acknowledging alternative models of lawyering.

1. Defining the Hidden Curriculum

The hidden curriculum is "an amorphous collection of implicit academic, social, and cultural messages, unwritten rules and unspoken expectations, and unofficial norms, behaviours and values of the dominant-culture context in which all teaching and learning is situated."[161] The unarticulated and often unexamined values of legal education have also been described as the "ordinary religion of law school classroom."[162] Those values can include moral relativism or discouragement from discussing values at all. They can also include the tendency of advocates to take goals of clients for granted, along with related commitments such as adversariness, argumentativeness, and zeal.[163]

Part of the operation of the hidden curriculum is the inference made by students that matters not included in the formal law school curriculum are unimportant to lawyers.[164] As commentators have said, the hidden unarticulated values in law school can be as influential as explicit instruction.[165]

159 *See* Bowman, *supra* note 143.

160 *See supra* note 155 (listing texts that advance the client-centered approach); Baker, *supra* note 155, at 845 n.25 (endorsing client-centered approach after noting other approaches).

161 Sarah J. Schendel, *Due Dates in the Real World: Extensions, Equity, and the Hidden Curriculum*, 35 Geo. J. Legal Ethics 203, 220 (2022); *see also* David M. Moss, *Hidden Curriculum of Legal Education: Toward a Holistic Model for Reform*, 2013 J. Disp. Resol. 19, 21 (2013); Philip W. Jackson, Life in Classrooms (1968); Sullivan et al., *supra* note 15, at 29.

162 Cramton, *supra* note 13, at 253.

163 *See* Carrie J. Menkel-Meadow, *Can a Law Teacher Avoid Teaching Legal Ethics?*, 41 J. Legal Educ. 3, 7 (1991).

164 *See* Cramton, *supra* note 13, at 253.

165 *See id.*; Robert L. Nelson & David M. Trubek, *Arenas of Professionalism: The Professional Ideologies of Lawyers in Context*, *in* Lawyers Ideals/Lawyers' Practices: Transformations in the American Legal Profession 177, 186 (Robert L. Nelson, David M. Trubek & Rayman L. Solomon eds., 1992).

This dynamic may exert a powerful influence with legal ethics instruction. As Deborah Rhode said, "Every law school does, in fact, teach some form of ethics by the pervasive method, and pervasive silence speaks louder than formal policies and commencement platitudes."[166] Put differently, " 'moral influence is inevitable. It is not possible to choose to have no moral influence: The choice is between good moral influence and bad moral influence.' In other words, the question for us academics is not whether we will shape the character of our students, but how."[167]

The hidden curriculum operates in skills instruction as well. For example, authors have criticized the "adoption of particular conceptions of [] skills in a number of areas where the conceptualization of those skills is . . . controversial."[168] Doing so can "enact[]" a particular substantive model that omits important alternatives or considerations.[169] It can also "rigidif[y] a far more complex and textured possibility of teaching . . . ."[170] Thus, rather than omit discussion of competing conceptions of skills, teachers should—according to commentators—embrace the richness and controversy of an exciting, percolating discipline to students.[171]

Finally, the impact of the hidden curriculum can be particularly acute for first-year law students. Law students, as novices, are typically at their most "imprintable" as 1Ls in terms of what's important and not important to being a lawyer.[172] This is in part because the first year involves a formative socialization period. Conversely, teaching about key values issues *after* the first year may fall flat because "many students will be too cynical or preoccupied to give it full attention."[173] Thus, instruction about key moral and ethical issues is important for 1Ls in order "to provide enough background for students to engage in informed discussion in other courses."[174] Moreover, the nature of the first year of law school can exacerbate a core facet of the hidden curriculum: The exclusion of models or values from the 1L curriculum can signal to students *at*

166 Deborah L. Rhode, *Ethics by the Pervasive Method*, 42 J. Legal Educ. 31, 32 (1992).

167 Schiltz, *supra* note 21, at 779 (citing Thomas L. Shaffer, *Legal Ethics and the Good Client*, 36 Cath. U. L. Rev. 319 (1987)); *see also* Menkel-Meadow, *supra* note 163, at 10.

168 Carrie Menkel-Meadow, *Narrowing the Gap by Narrowing the Field: What's Missing from the MacCrate Report—Of Skills, Legal Science and Being a Human Being*, 69 Wash. L. Rev. 593, 608 (1994).

169 *Id.* at 611.

170 *Id.* at 609.

171 *See id.* at 608.

172 Russell G. Pearce, *Teaching Ethics Seriously: Legal Ethics as the Most Important Subject in Law School*, 29 Loy. U. Chi. J.L. 719, 736 (1998) (quoting Howard Lesnick, *Infinity in a Grain of Sand: The World of Law and Lawyering as Portrayed in the Clinical Teaching Implicit in the Law School*, 37 UCLA L. Rev. 1157, 1159 (1990)); *see also* Elizabeth D. Gee & James R. Elkins, *Resistance to Legal Ethics*, 12 J. Legal Pro. 29, 34 (1987).

173 Rhode, *supra* note 166, at 51.

174 *Id.* at 54; *see also* Pearce, *supra* note 172, at 736.

their most impressionable that professors and law schools don't view those values or models as important.

2. Hidden Messaging About Client-Centeredness in Lawyering Skills

The concept of law school's hidden curriculum can help explain how the model of client-centered lawyering operates in the lawyering skills course. The primary impact is that when lawyering skills teachers teach client-centeredness without identifying it as just one lawyering model, this can misleadingly convey that it is the *only* proper approach. This dynamic can play out in multiple ways.

For example, some lawyering skills textbooks do name client-centeredness and approve it but without saying it's a contested model.[175] Instead, these texts simply approve "going the whole nine yards for the client" and not treating clients like inanimate items of work.[176] The strong implication of such language is that client-centeredness is not a contested model but simply a commonsense truth.

Other lawyering skills books seem to approve client-centeredness but without naming the approach in the text.[177] For example, *Writing and Analysis in the Law* simply states that lawyers must not suggest results based on their own values.[178] The mandatory language of that injunction arguably cloaks that the approach is just one of multiple available models, as opposed to simply "the way." The same text also cites the Model Rules of Professional Conduct for its description of the attorney-client relationship.[179] Such citations could indicate that the prescribed approach to lawyering simply follows from baseline legal requirements rather than being just one model consistent with the rules.

By uncritically advancing the client-centered model without identifying that it's one of multiple models, teachers doing so arguably "enact" a contested approach without acknowledging lurking complexities.[180] Moreover, when texts and teachers don't name the client-centered approach—much less identify it as just one model of lawyering—it can hinder students from evaluating or probing the benefits and drawbacks of that approach. That's especially true because the students in lawyering skills courses are first-year students, so they may be largely soaking up what's conveyed to them rather than independently formulating critiques and alternatives not mentioned by their teachers.[181]

175 *See* Krieger et al., *supra* note 17, at 26; Neumann, Morgolis & Stanchi, *supra* note 154, at 156; Neumann, Simon & Painter-Thorne, *supra* note 154, at 121–22.

176 Krieger et al., *supra* note 17, at 26.

177 Shapo et al., *supra* note 140, at 258 (citing Binder's book on client-centeredness but omitting client-centered label in text).

178 *See id.* at 270.

179 *See id.*

180 Menkel-Meadow, *supra* note 168, at 611.

181 *See* Pearce, *supra* note 172, at 736.

Further compounding the hidden curriculum issue, lawyering skills classes typically appear not to acknowledge critiques of client-centeredness or alternative models of lawyering. Established textbooks that prescribe client-centeredness as an approach do not seriously probe the weaknesses of the model.[182] Instead, they often provide significant arguments favoring the client-centered approach, but without counterarguments.[183] Concededly, some texts do acknowledge considerations and challenges in applying client-centeredness in certain contexts.[184] But these discussions do not frame the problems as issues with applying a particular model of lawyering. Instead, they largely assume that client-centeredness is the proper perspective and that the only issue is how to utilize that framework in various circumstances. Thus, these discussions do not seriously notify students that the client-centered approach is just one approach that presents its own unique drawbacks.

Standard texts likewise do not mention alternative models such as moral activism, the contextual view, or client power.[185] By not identifying client-centeredness as one model with robust competitors, and instead framing any divergence from client-centeredness as the clearly misguided practice of treating clients as mere "items of work,"[186] these texts contribute to cementing client-centeredness as the uncontestable way to practice law. And because the alternative models are omitted, students may assume there is no approach to lawyering that places common morality or justice front and center in the practice of law. Similarly, the texts' omissions could be described as glossing over texture and interest beneath the surface-level standard model of lawyering.

Advocacy for client-centeredness in lawyering skills *scholarship*—not just textbooks—also doesn't necessarily identify key competing models or articulate drawbacks of the client-centered approach. The same articles that praise client-centeredness in lawyering skills typically do not acknowledge weaknesses of or alternatives to that approach.[187]

One objection to this depiction of lawyering skills courses as overly privileging client-centered lawyering is that lawyering skills teachers may present

182 *See* Shapo et al., *supra* note 140; Neumann, Morgolis & Stanchi, *supra* note 154.

183 *See* Krieger et al., *supra* note 17, at 26 (discussing reasons favoring client-centered lawyering, including that clients are not helpless, and clients have to live with the results of a representation).

184 *See id.* at 119, 142 (describing things that might inhibit clients; addressing problems that can arise in implementing interviewing strategies, e.g., dealing with organizations and distraught clients).

185 *See* Krieger et al., *supra* note 17; Neumann, Morgolis & Stanchi, *supra* note 154; Neumann, Simon & Painter-Thorne, *supra* note 154.

186 Krieger et al., *supra* note 17, at 26.

187 *See* Bowman, *supra* note 143; Ruan, *supra* note 155, at 442; Kruse et al., *supra* note 156, at 257; Millemann & Schwinn, *supra* note 155, at 484. *But see* Baker, *supra* note 155 (discussing role for morality in lawyering and acknowledging potential tension among competing interests but ultimately endorsing client-centeredness and social justice program).

students with an innocuous, streamlined version of client-centeredness that sidesteps critiques of amoral lawyering and avoids any need for presentation of alternative models. According to this objection, there would be no cause for concern about simply teaching students the uncontroversial principle that they should view their clients as whole people, not mere items of work.

As an initial matter, however, whether client-centeredness can be analytically separated from the amoral, role-differentiated approach that legal philosophers criticize is unclear. To the contrary, the client-centered model, however conceived, is premised on the same principle of client autonomy that undergirds role-differentiated lawyering generally. And it is that principle, and its impacts, that critics challenge and from which other lawyering models in certain ways diverge. Not surprisingly, scholars have recognized that many of the attacks on role morality and role differentiation also apply to the notion of being client-centered.

In any event, even could a streamlined presentation of client-centered lawyering somehow subtract out concerns about morality, students would likely understand the presentation—in the context of the lawyering skills course more generally—as approving amoral role differentiation. Lawyering skills courses often encourage students to develop all sides' strongest arguments. As commentators have argued, an emphasis that issues can and should be argued both ways can contribute to value skepticism in students.[188] Further, in teaching persuasive writing, the lawyering skills course often focuses on specific techniques and tools for winning for whatever client you represent. One text, for example, tells students that they can win, even with "only limited evidence," if an attorney can construct a persuasive story.[189] Other lawyering skills texts describe the use of various rhetorical devices to win, plus the power of narrativity and sound bites.[190] These positions can potentially play into the perspective that there aren't final answers, just winning arguments and zealousness to engineer them.

With this baseline emphasis in lawyering skills on rhetorical or technical tools to make persuasive arguments, whatever the side, layering on an even innocuous-sounding client-centered approach can be understood to prescribe a nonjudgmental deployment of technical skill to best serve the client. Put differently, the general focus in lawyering skills on harnessing rhetoric to win for whatever side you're assigned could effectively fill out students' conception of client-centered lawyering, especially when students receive little guidance about what to do or how far to go for a client. To be sure, accentuating the importance of serving clients as whole people may lead to a fuller embrace

188 *See* Cramton, *supra* note 13, at 254–55; Melissa H. Weresh, *Fostering a Respect for Our Students, Our Specialty, and the Legal Profession: Introducing Ethics and Professionalism into the Legal Writing Curriculum*, 21 Touro L. Rev. 427, 453 (2005) (arguing that legal writing instruction can contribute to moral neutering).

189 *See* Krieger, *supra* note 17, at 183.

190 *See* Murray & DeSanctis, *supra* note 144, at 28, 63, 65.

of different client goals. But pursuing a wide variety of client goals doesn't necessarily add moral considerations to an otherwise technically focused and client-centric approach. In fact, teaching students to be even more sensitive to discerning and pursuing wide-ranging client goals may encourage students to be even more fixated on merely maximizing client objectives rather than other considerations.

Nor would law faculty who altogether omit reference to client-centeredness avoid the problem of the hidden curriculum and role differentiation. A teacher might conclude that just *not* teaching about client-centeredness could obviate the need to present weaknesses of the approach and to surface competing models for analytical completeness.

However, this approach would fail for the general reason that professors cannot avoid teaching their students about ethics and morality.[191] Lawyering skills, like other law school courses, is not a transparent funnel for knowledge. At the least, it accentuates the importance of rhetoric and technique in crafting arguments for whoever is assigned as the client.

If to that analytical and argument-focused lens, lawyering skills faculty add nothing about client-centered—or morality-centered—lawyering approaches, then students receive from the class a predominantly morals-free and lawyer technique-focused perspective on practicing law. And that amoral perspective wouldn't even be particularly concerned with treating clients as whole people if the teacher deliberately omits talking about client-centeredness. Indeed, lawyering skills students in such a scenario could infer their teacher's approval of the "regnant" model, in which lawyer technical expertise paternalistically drives decisions.[192] In other words, stripping lawyering skills of client-centered approaches could lead students to simply infer approval of a *different* model. And that inferred model, the paternalistic one, has been roundly disapproved in the lawyering skills scholarship.[193] Thus, again, professors can't avoid teaching some lawyering model if they're teaching the lawyering skills course.

V. Impacts of Presenting Only the Client-Centered Model in Lawyering Skills

Neglecting to acknowledge alternatives to role-differentiated client-centric lawyering presents a truncated picture about which lawyering models are available to students. But this omission is not just a matter of theoretical incompleteness. Failing to acknowledge that the client-centered lawyering approach is just one model, with alternative philosophies available, potentially exacerbates key challenges facing the legal profession. These challenges include failure to nurture lawyers' professional identity formation; negative public perceptions about lawyers; and problems of attorney well-being.

191 *See* Rhode, *supra* note 166, at 32; Schiltz, *supra* note 21, at 779.

192 *See* Bowman, *supra* note 143; Schrup, *supra* note 143, at 314.

193 *See, e.g.*, Bowman, *supra* note 143.

A. Skewed Professional Identity Formation

A developing scholarship explores professional identity formation for attorneys.[194] This includes work related to professional identity formation in the context of the 1L lawyering skills course.[195] Acknowledging the importance of the topic, the ABA recently enacted rule revisions calling for greater attention to professional identity formation for students in law school.[196]

Commentators have defined professional identity formation in several complementary ways. According to the Carnegie Report, "Th[e] apprenticeship of professional identity . . . include[s] conceptions of the personal meaning that legal work has for practicing attorneys and their sense of responsibility toward the profession."[197] Similarly, according to one commentator, "Professional identity relates to one's own decisions about professional behaviors 'above the line,' as well as a sense of duty as an officer of the legal system and responsibility as part of a system in our society that is engaged in preserving, maintaining, and upholding the rule of law."[198] Put differently, "Professional identity refers to the way that a lawyer integrates the intellectual, practical, and ethical aspects of being a lawyer and also integrates personal and professional values. A lawyer with an ethical professional identity is able to exercise practical wisdom and to live a life of satisfaction and well-being."[199]

Scholars have expressed concern that certain aspects of the law school experience can inhibit professional identity formation. According to one commentator, "Exacerbating the negative effect of all of the competitive paradigms, the exclusive valuing of thinking 'like a lawyer' directly discourages students from being themselves. They learn to inhibit the expression or consideration of ideals, values, and personal beliefs, and they lose sight of the potential satisfaction inherent in cooperation and mutually beneficial outcomes. Enthusiasm and the sense of relevance that would result from engaging more of the student's inborn capacities are simultaneously undermined by this process."[200] Other scholars have expressed doubts about

194 *See* Wilkins, *supra* note 20; Devon W. Carbado & Mitu Gulati, *Working Identity*, 85 Cornell L. Rev. 1259, 1262 (2000); Swethaa S. Ballakrishnen, *Pluralistic Professionalisms: Religious Identity, Excluded Voice, and a Toolkit for the Periphery*, 10 Tex. A&M L. Rev. 89, 94-96 (2022); Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. Legal Educ. 112 (2002).

195 *See* Beth D. Cohen, *Helping Students Develop a More Humanistic Philosophy of Lawyering*, 12 Legal Writing 141 (2006); David I.C. Thomson, *"Teaching" Formation of Professional Identity*, 27 Regent U. L. Rev. 303 (2015).

196 *See* Standards & Rules of Proc. for Approval of L. Schs. Standard 303 (Am. Bar Ass'n 2024-2025).

197 Sullivan et al., *supra* note 15, at 132.

198 Thomson, *supra* note 195, at 315.

199 Daisy Hurst Floyd, *Practical Wisdom: Reimagining Legal Education*, 10 U. St. Thomas L.J. 195, 201-02 (2012).

200 Krieger, *supra* note 194, at 118.

whether law school adequately encourages students to integrate their personal values into their professional identities and lives.[201]

Given these concerns, commentators have urged law schools to do more to help students formulate their professional identities. For example, some advocate pedagogies related to moral values.[202] Scholars also argue that professors should provide students different points of view about professional identity and should focus students on thinking about their own values.[203] There have also been calls for the pervasive teaching of ethics throughout law school as a means of promoting student character formation.[204]

Here, teaching lawyering skills students the client-centered approach as if it were the one way to practice law could stunt students' considerations about forming their own professional identity. Adopting client-centeredness without acknowledging alternatives suggests to students that they have no choice of lawyering philosophies when the truth is the opposite. One-size-fits-all approaches contradict the idea of forming professional identity, which is that different students have different backgrounds and different commitments and that formation of professional identity is a very personal choice.[205] Thus, to promote students' reflections about professional identity formation, it is important to recognize contested alternatives for the attorney's role.

An additional characteristic of lawyering skills exacerbates the problem of cutting off professional identity consideration by law students. Commentators have frequently asserted that lawyering skills courses *already* helpstudents form their professional identities.[206] This purportedly results from the emphasis in lawyering skills courses on such matters as meeting deadlines and empathizing with the reader.[207] But telling students that they are already forming their professional identities by focusing on timeliness and polished work product can make students think they're getting the complete picture for professional identity formation.[208] As described above, there's more to professional identity

201 *See* Swethaa S. Ballakrishnen, *Law School as Straight Space*, 91 Fordham L. Rev. 1113, 1129 (2023); Schiltz, *supra* note 21, at 737.

202 *See* Neil W. Hamilton, Verna E. Monson & Jerome M. Organ, *Empirical Evidence that Legal Education Can Foster Student Professionalism/Professional Formation to Become an Effective Lawyer*, 10 U. St. Thomas L.J. 11, 15, 21–22 (2012).

203 *See id.*

204 *See* Rhode, *supra* note 166, at 32.

205 *See* Thomson, *supra* note 195, at 317.

206 *See id.* at 328; Lawrence J. Trautman, *The Value of Legal Writing, Law Review, and Publication*, 51 Ind. L. Rev. 693, 701 (2018); Louis D. Bilionis, *Law School Leadership and Leadership Development for Developing Lawyers*, 58 Santa Clara L. Rev. 601, 625 (2018); Maureen R. Van Neste, *Law Student Professional Development and Formation*, 27 Legal Writing 309, 313 (2023).

207 *See* Trautman, *supra* note 206, at 701.

208 *See* Cramton, *supra* note 13, at 254–55.

formation than editing documents carefully and being on time;[209] thus, lawyering skills teachers risk encouraging a shriveled view of professional identity if they say they're teaching about identity without tackling larger questions about different potential identity conceptions for professionals.

A slightly different point is that if professors teach only the client-centered mode, they may be endorsing a particular model that's *less* open to incorporating personal values in lawyering. Some lawyering models, such as moral activism, place the attorney's personal moral values at the center of legal representations. Not acknowledging that, but instead enacting a purely client-centered approach, could convey to students the lack of a significant role for personal values in representations of clients. Indeed, it could even communicate a form of hostility toward injecting personal values into representations, i.e., "don't let your values contaminate deference to the client's values." But the literature on professional identity says moral views *are* part of professional identity formation.[210] Thus, teaching in a way that might convey no or minimized role for an attorney's own values could hinder law students' "integration" of personal values into their ideas of professional role.

Another way to view the issue is that teaching just the client-centric model of lawyering in lawyering skills could contribute to bleached-out professional identity for students. Bleached-out professionalism refers to lawyers' adoption of an identity based on the norms and practices of their craft that "subsumes" other aspects of the person's identity.[211] Commentators have linked this negative notion of bleached-out professionalism to the neutral partisanship standard and the practice of amoral lawyering.[212] In other words, teaching only client-focused approaches in lawyering skills could add to pressures for law students to deprioritize personal values and other aspects of their identities in exchange for a more monolithic version of professional identity.

Finally, these considerations related to development of professional identity formation are particularly acute given that lawyering skills students are 1Ls. As commentators have noted, professional identity development can and should begin during the first year of law school. [213] This provides even more reason to

209 *See* Thomson, *supra* note 195, at 315 (discussing moral facets of identity formation); Floyd, *supra* note 199, at 201–02 (2012) (same).

210 *See* Thomson, *supra* note 195, at 315.

211 *See* Wilkins, *supra* note 20; *see also* Ballakrishnen, *supra* note 194, at 107 (describing how institutional cues urged Muslim lawyers to "bleach out"); Ballakrishnen, *supra* note 201, at 1129 (describing how suggestions about professionalism caused a genderqueer student to feel pressure to "perform an inauthentic version of their identity").

212 *See* Bruce A. Green, *The Religious Lawyering Critique*, 21 J.L & Religion 283, 289–90 (2006) (linking amoral standard conception to "bleached out professionalism"); John Bliss, *Divided Selves: Professional Role Distancing Among Law Students and New Lawyers in a Period of Market Crisis*, 42 Law & Soc. Inquiry 855, 860 (2016) (linking neutral partisanship to bleached-out professionalism).

213 *See* Bilionis, *supra* note 206, at 611 n.42; David Grenardo, *A Lesson in Civility*, 32 Geo. J. Legal Ethics 135, 141 (2019).

present a variety of ways to think about the lawyer's role rather than corral all students toward one professional approach.

B. Problems of Public Perception and Attorney Well-Being

Teaching client-centeredness without surfacing competing models could also contribute to problems of public perception and attorney well-being.

As commentators have indicated, more ethical lawyering by attorneys could potentially improve the public's ideas about attorneys.[214] Teaching only client-centered lawyering in lawyering skills may implicate issues of attorney misconduct that negatively affect public sentiment. As some commentators have asserted, attorneys who segregate their own moral values from practice may lose their moral bearings and slide into misconduct.[215] Put another way, "Attorneys who are deeply committed to their own values are less likely to pursue the values or desires of their clients with unethical or abusive tactics."[216] Thus, although the forces contributing to attorney misconduct are ultimately complex, neglecting to surface lawyering models in lawyering skills that more powerfully accentuate the role of the attorney's morals may not optimally influence behavior by those future attorneys.[217]

Teaching client-centeredness without surfacing competing models could also contribute to diminished law student well-being. Research indicates that lawyers suffer high rates of depression, anxiety, and substance abuse.[218] Indeed, some suggest "lawyers seem to be among the most depressed people in America."[219]

The problems related to attorney well-being appear to begin in law school. One study showed "very marked, negative changes in well-being, life satisfaction, values and motivation" over the course of law school.[220] That same data shows negative trends for well-being even within law school's first year.[221] Other studies show that law students and attorneys can

214 *See* Kathleen M. Ridolfi, *Law, Ethics, and the Good Samaritan: Should There Be a Duty to Rescue?*, 40 Santa Clara L. Rev. 957, 961 (2000); Susan Daicoff, *On Butlers, Architects, and Lawyers: The Professionalism of the Remains of the Day and the Fountainhead*, 17 J.L. Bus. & Ethics 23, 34 (2011).

215 *See* Krieger, *supra* note 21, at 430.

216 *Id.*

217 *See* Postema, *supra* note 67. *But see* Spaulding, *supra* note 84, at 7, 39, 60 (identifying thick identity with clients as cause of attorney misconduct).

218 *See* Kathleen E. Hull, *Cross-Examining the Myth of Lawyers' Misery*, 52 Vand. L. Rev. 971, 974–77 (1999); Patrick R. Krill, Ryan Johnson & Linda Albert, *The Prevalence of Substance Abuse and Other Mental Health Concerns Among American Attorneys*, 10 J. Addiction Medicine 46 (2016).

219 *See* Hull, *supra* note 218, at 974; *but see* Ronit Dinovitzer et al., After the JD II: Second Results from a National Study of Legal Careers 48–51 (2009) (providing evidence of attorney job satisfaction).

220 Krieger, *supra* note 21, 441.

221 *See* Debra S. Austin, *Positive Legal Education: Flourishing Law Students and Thriving Law Schools*, 77 Md. L. Rev. 649, 650 (2018); Krieger, *supra* note 21, at 441–44.

become unhappy when they fail to integrate their personal values with their professional work. As one researcher stated, "[D]epression and unprofessional behavior among law students and lawyers typically proceed from a loss of integrity—a disconnection from intrinsic values and motivations, personal and cultural beliefs, conscience, or other defining parts of their personality and humanity."[222] Put differently, "separating the lawyer from key parts of her self—her conscience, sense of decency and/or intrinsic values . . . will ultimately undermine her health."[223]

The relationship between lack of values integration and unhappiness has direct implications for instruction about lawyering models in lawyering skills. As described above, role-differentiated client-centeredness can sideline attorneys' personal moral qualms about legally permissible client goals. By contrast, competing models, such as moral activism, pay greater heed to an attorney's intrinsic moral values. Thus, if lawyering skills professors teach client-centeredness as the way to practice law, without identifying competing models that place greater emphasis on morality or other values students care about, lawyering skills may effectively nudge students toward an approach that exacerbates attorney unhappiness. Indeed, commentators have specifically argued that serving clients seeking immoral but legally permissible ends—as in the client-centered approach—can magnify attorney dissatisfaction. [224]

These considerations favor incorporating exposure to competing lawyering models, especially because first-year lawyering skills may already threaten some aspects of student well-being.[225] As some commentators say, the mere focus on "thinking like a lawyer" in law school can itself contribute to well-being concerns, because it is "fundamentally negative; it is critical, pessimistic, and depersonalizing."[226] If only to offset the inertia in lawyering skills toward depersonalizing legal analysis, lawyering skills professors should surface models that focus more on personal moral considerations.

Finally, failure to surface competing lawyering models in lawyering skills may contribute to diminished well-being in a different way. Regardless whether moral activism or other alternative approaches are viewed as more likely to promote law student well-being, merely identifying alternative models could itself improve satisfaction. That is, autonomy in professional work can enhance

222 Krieger, *supra* note 21, at 426; *see also* Larry Natt Gantt & Benjamin Madison, *Self-Directedness and Professional Formation: Connecting Critical Concepts in Legal Education*, 14 U. St. Thomas L.J. 498, 511–12 (2018).

223 Krieger, *supra* note 21, at 432; *see also* Schiltz, *supra* note 21, at 729, 737.

224 *See* Thomas L. Shaffer, *The Legal Profession's Rule Against Vouching for Clients: Advocacy and "The Manner That is the Man Himself,"* 7 Notre Dame J.L. Ethics & Pub. Pol'y 145, 166 (1993); Gantt & Madison, *supra* note 222, at 512; *see also* Russell G. Pearce & Eli Wald, *The Obligation of Lawyers to Heal Civic Culture: Confronting the Ordeal of Incivility in the Practice of Law*, 34 U. Ark. Little Rock L. Rev. 1, 47 (2011).

225 *See* Weresh, *supra* note 188, at 447–49.

226 Krieger, *supra* note 194, at 117, 125.

satisfaction and well-being. Thus, presenting competing lawyering models in a way that emphasizes students' voluntary choice about what kind of lawyer to be could contribute to feelings of well-being.

VI. Proposed Solutions

This section provides suggestions for surfacing and analyzing, rather than suppressing, competing models of lawyering in a lawyering skills course. The three primary proposals are to (1) supplement client-centeredness with descriptions of several alternatives to avoid inadvertent endorsement of just one model; (2) add concrete exercises springing off existing curriculum to challenge students to think about how different models might lead to different ethical judgments; and (3) cultivate a backdrop of ethical modeling in the course to encourage student receptivity to adopting different lawyering approaches.

As a general matter, being up front about these matters can yield key pedagogical benefits. For one, acknowledging to students that there isn't a final, uncontested approach to lawyering philosophies can improve student buy-in. That is, by recognizing the disputed nature of lawyering approaches, lawyering skills teachers can build interest for students. Unresolved foundational matters, rather than being boring, can ignite interest from students. Instead of ignoring the controversy beneath the surface of skills instruction, teachers can profitably give students some of the richness of the controversy beneath.[227]

Relatedly, admitting that there isn't just one way to think about the lawyer's role, and being transparent about the challenges of deciding for oneself what to do, can endow lawyering skills professors with added credibility. Rather than smooth over the difficulty and the uncertainty, teaching in an intellectually honest way that invites students to grapple with the problem can empower students by showing them that their teachers believe they are up to the challenge.[228] Showing students the reality of competing perspectives, in this way, can improve the odds that students will see their teachers as honest and reliable sources of true information and wisdom.

A. Introducing Students to Alternative Models

The first step is to introduce client-centered lawyering specifically as one widely adopted model for lawyering, but not the only one. The introduction can briefly define it as the view that an attorney should not judge legally permissible client objectives or substitute what the lawyer thinks those objectives should be but should instead zealously pursue what the client wants. The instructor can then disclose alternative lawyering models that, for example, place greater weight in attorney decision-making on common morality or doing what promotes justice rather than privileging the client's chosen desires.

227 *See* Menkel-Meadow, *supra* note 168, at 608; Postema, *supra* note 67, at 67.

228 *See* Gerald VandeWalle, *A Tribute to Patti Alleva,* 94 N.D. L. Rev. 305, 329–30 (2019); Sherman J. Clark, *To Teach and Persuade*, 39 Pepp. L. Rev. 1371, 1397 (2013); Cynthia Fuchs Epstein, *Knowledge for What?*, 49 J. Legal Educ. 41, 47, 67 (1999).

Ideally, the instructor should provide a short illustration of how different models can inform different decisions. For example, one scenario could introduce a client who wants its lawyer to cross-examine a hostile witness to suggest that witness is lying. The lawyer can seize on some apparent inconsistencies in deposition testimony to convey that argument. The lawyer, however, doesn't think it's right to suggest someone's lying when you don't actually think they are. But the rules don't clearly disallow it. As the lawyering skills instructor could explain, a strongly client-centered lawyer could discredit the witness to help the client's cause so long as there's no rule violation. By contrast, a lawyer believing that common morality should drive certain attorney decisions may instead try to persuade the client to take a different strategy, or, failing that, decline to do what the client wants or withdraw.

Instructors can conclude these baseline descriptions of competing models by emphasizing that the rules governing attorney behavior leave much to lawyer discretion; students will therefore have to make choices and use judgment about which model they want to follow and what sort of lawyer they want to be. The teacher could then end these initial disclosures by promising that the course will soon revisit the models in concrete exercises to discuss how they play out.[229]

Providing these up-front acknowledgments can establish an "analytical framework" for students' thinking about their roles. Scholars have long acknowledged the benefits of analytical frameworks to help students.[230] And leading ethics scholars have highlighted the benefits of providing students frameworks for the teaching of ethics as well.[231]

Furthermore, ending these disclosures with an emphasis on students' needing to grapple with what kind of lawyering philosophy they want to adopt is a way to improve student buy-in by highlighting students' choice and autonomy on the issue. In other words, it deliberately links lawyering models to students' reflections about professional identity. Finally, promising upcoming exercises to help elaborate the models in concrete situations is another way to be transparent about what the teacher is doing and to assure students these important issues won't be left in the abstract.

One objection, however, is that the suggested presentation significantly oversimplifies both client-centeredness and the competing models. That

229 There may be opportunities for pedagogical cross-fertilization. In some schools, 1Ls are required to take ethics or professionalism courses or short courses that do address different models of lawyering. *See* Ann Southworth & Catherine L. Fisk, *Our Institutional Commitment to Teach about the Legal Profession*, 1 U.C. Irvine L. Rev. 73 (2011). Under such circumstances, a lawyering skills professor can highlight to students that the students' other course also addressed these same models. Making such a connection can convey to students that these issues are important enough to cut across multiple classes.

230 *See* David Binder & Paul Bergman, *Taking Lawyering Skills Training Seriously*, 10 Clinical L. Rev. 191, 199 (2003).

231 *See* Rhode, *supra* note 166, at 43.

oversimplification, the argument could run, may hamper students' thinking about the models by addressing only "sound bite" versions of nuanced theories.

Admittedly, the suggested initial descriptions of the models are simple summaries, but I would argue that streamlining is justified for several reasons. First, more theoretical detail before launching the class into exercises could be lost on students. Instead of overloading students with up-front theory, I advise instead providing enough discussion for a basic framework, and then touching on finer-grained detail as it arises in exercises.

Furthermore, some evidence indicates that practicing lawyers don't use meticulously detailed theoretic constructs in any event. Instead, as some commentators have observed, lawyers instead may "satisfice" by using streamlined versions of lawyering approaches.[232] Thus, providing leaner versions of the theories in a skills course may be more easily deployable in the real world by students.

In any event, professors can minimize any problems from the streamlining of these model descriptions by acknowledging the issue to students. By admitting to students that the depictions provided are simplifications for the purposes of the class, a professor can help avoid the implication that there's been an exhaustive description. And it can incidentally add to the perception that the professor is being transparent about coverage in the course—another pedagogical benefit.

B. Using Concrete Exercises

Once the frame of different models has been presented, lawyering skills teachers can engage students in concrete role-playing exercises. As commentators have noted, role-plays and interactive problem-solving can help build skill in ethical analysis.[233] Commentators have advocated exercises specifically to help students consider incorporating students' personal values into practice situations.[234]

One category of exercise could arise during instruction about client interviewing and counseling and can involve a client's desire to do something that is legal but that the lawyer may have personal or moral qualms about. For example, as part of an exercise about helping a client generate and decide among objectives related to a prospective lawsuit, the client could express the desire to use a sharp but legal tactic. Some lawyering skills courses already discuss or involve exercises on generating or discussing client objectives, so this additional facet could be grafted to existing discussions to save time. Or

232 Paul R. Tremblay, *Practiced Moral Activism*, 8 St. Thomas L. Rev. 9, 47 (1995) (describing streamlined potential use of moral activist approach). Moreover, even in the scholarly literature commentators regularly clump related lawyering approaches rather than break out distinct variants of the models. *See* Carle, *supra* note 92, at 116 (lumping Luban, Simon, Wendel, Rhode, and Gordon as "justice centered"); Spaulding, *supra* note 84, at 52–53 (lumping Simon, Luban, Gordon, Kronman, Wasserstrom as "role critics").

233 *See* Rhode, *supra* note 166, at 47–48.

234 *See* Krieger, *supra* note 194, at 128; Schiltz, *supra* note 21, at 785.

this issue could be surfaced in discussion about client advice letters, a written context for client counseling.

As one example, students could assume that a client, a potential defendant in a lawsuit,[235] would like to hire private investigators to try to turn up evidence about the potential plaintiff that would undermine the plaintiff's credibility for purposes of the lawsuit and that might also incidentally discourage the potential plaintiff in the lawsuit. The professor could also posit that the client would like to have the attorney hire the investigators as a way to try to preserve attorney-client privilege, so as to shield more information from disclosure in a subsequent suit.[236]

Faced with the scenario, students could be asked to discuss whether they had objections to the client's desire to use investigators in that way and what they think they should do. Instructors could also ask students to assume the client's preferred strategy is technically legal and to keep in mind contested models of how lawyers should think about their role in relation to notions of morality and justice.

Students who have no reservations about moving forward for the client can be prompted to explain why. Their rationales may touch on the legality of the tactic and the duty to the client, which can be linked to the client-centered model and the value of client autonomy. Students who resist doing the work for the client can be asked to articulate justifications, and students' responses may implicate common morality or ideas of justice or caring (for both the client and the individuals on the other side).[237]

Further, students could be asked—if they object to the client's request—how they might proceed. This discussion could raise options including refusal to represent (or withdrawal if already representing) but also moral discussions

235 As a threshold issue, when the professor assigns mock clients to the students, students could be asked whether they would have a problem working for the client they were assigned. This could arise particularly if one client is a large organization and is accused of morally distasteful behavior against less powerful individuals. Indeed, a professor could even design a writing or research problem that would involve a client wanting help to achieve some distasteful goal, e.g., enjoinment of climate change regulations. An initial discussion about whether and why students would be willing to do the work could implicate a variety of different models of lawyering. Further, when discussing differences between objective and persuasive writing for an assignment, the professor could engage students in a discussion of how different lawyering models might treat the drafting of an internal counseling memo differently than a persuasive brief to a decision-maker.

236 Scenario drawn from Ann Southworth & Catherine Fisk, The Legal Profession: Ethics in Contemporary Practice 61 (2d ed. 2019). Another possibility is revisiting the illustration provided when first introducing the different models, i.e., that the client wishes to attack the credibility of the plaintiff in discovery (e.g., at deposition) when the lawyer believes that the plaintiff is credible.

237 If no students take issue with the client's desire, the scenario could be tweaked to make the issue more difficult. For example, the professor could disclose that this actually happened with Harvey Weinstein's attorneys.

with the client, which many commentators have discussed.[238] Time permitting, any treatment of moral discussions could include the question of whether to accentuate moral or instrumental reasons (e.g., bad public relations) to the client as a way to order the discussion. The professor could also address whether the goal of the discussion would be to persuade the client to drop the request (which might align with a moral activist's approach) or simply to inform the client about considerations the client might find relevant (which might be framed as a sort of nuanced client-centrism).

Additional exercises could arise in different parts of the course. For example, negotiation can raise issues about the attorney's role in part because no court typically monitors conduct during negotiations. Further, some tactics are legally permitted in negotiation that are not permitted in other contexts.[239] This difference may magnify the disconnect for some students between their values and what many lawyers would legally do.

One such exercise could draw on a mistake-of-law scenario in which the adverse attorney exhibits confusion about the relevant substantive law.[240] For example, in an Equal Pay Act case file, one provision of the act entitles a prevailing plaintiff to "liquidated damages" equal to any back pay award under certain circumstances. Defense counsel in a settlement negotiation could be informed about the issue and asked to assume that plaintiff's counsel has made a settlement offer that demonstrates that plaintiff's counsel failed to properly read the statute. The question would be whether students, as defense counsel, would be comfortable settling the case for a figure lower than it likely would be were plaintiff's counsel aware of the law. Or would students want to inform plaintiff's counsel about the error, which would likely increase the expected payout by the student's client?

Class discussion could address some of the same issues presented by the preceding exercise. For example, students comfortable with the nondisclosure could be asked to justify their position, which could lead into various justifications for client-centeredness, including the nature of the adversary system. Students could also grapple with the argument that it would harm the client to make the disclosure, which could sway students toward nondisclosure.[241]

238 *See, e.g.*, Kruse, *supra* note 23, at 431–32; Robert Dinerstein, Stephen Ellmann, Isabelle Gunning & Ann Shalleck, *Connection, Capacity and Morality in Lawyer-Client Relationships: Dialogues and Commentary*, 10 Clinical L. Rev. 755, 787–804 (2003).

239 *See* Model Rules of Pro. Conduct r. 4.1 cmt. 2 (Am. Bar Ass'n 2024) (permitting untruthful statements about "[e]stimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim").

240 Scenario drawn from William H. Simon, *Role Differentiation and Lawyers' Ethics: A Critique of Some Academic Perspectives*, 23 Geo. J. Legal Ethics 987, 993 (2010).

241 Another mistake-driven scenario could arise in a contract drafting segment. For example, students could be presented with a scenario in which a draft settlement from the other side included a scrivener's error that would benefit the client. Students could be asked how they would respond and what different approaches—client-centered, moral activism, etc.—

On the other side, students could be pressed to describe how common morality would support making the disclosure. The class could also discuss whether the absence of a judge and other procedural safeguards might make disclosure important to achieving a just result. In other words, students could discuss whether it would promote justice to procure settlements based on misunderstandings of the law.[242]

Moreover, teachers could flip the mistake-of-law exercise to ask students whether their answers would change if the tables were turned. Students could be asked to represent the plaintiff and could be informed that plaintiffs cannot recover emotional distress or punitive damages under the Equal Pay Act. Students could then assume that the lawyer for the employer—a large organizational entity—makes an offer based on estimated emotional distress damages (in addition to back pay). The teacher could then ask whether students representing the plaintiff would be comfortable settling the case for a higher recovery based on the employer's attorney's mistaken understanding.

Flipping the dynamic in this way could inject the role of client power into the consideration of competing lawyering models. Students could be led to discuss whether the relative degree of client size or power should influence lawyers' approach to a representation. For example, some students might feel very comfortable remaining client-centered and zealous when representing an individual against a company. But some of those same students might want to follow moral principles in a less client-centric manner if the client is a large company adverse to a mistaken or confused individual plaintiff.

Note that one risk with any of these exercises is that discussing pros and cons of multiple scenarios and models could potentially overwhelm students, suggesting that no position is better than any other. In other words, the exercises might appear to endorse a form of moral relativism about these issues. That could undermine some of the goals of surfacing competing models in the first instance.

In response to this concern, teachers should acknowledge that many day-to-day attorney decisions are *not* gray but can be quite clear-cut. Vigorous client-centered attorneys, moral activists, and justice-centered attorneys could agree, for example, about the importance of timely informing clients about matters

might guide an attorney to do. *See* David Luban, *Fiduciary Legal Ethics, Zeal, and Moral Activism*, 33 Geo. J. Legal Ethics 275, 294 (2020).

242 Again, students objecting to taking advantage of the adversary's mistake could be asked how they would handle the situation. This could potentially flow into a discussion not just of dialogue with the client but pressures from colleagues or practices where the attorney works. As commentators have noted, the practices and professional values of lawyers' field and employer can exert powerful pressure on lawyers to adopt those values. *See* Scott L. Cummings & Rebecca Sandefur, *Beyond the Numbers: What We Know—and Should Know—About American Pro Bono*, 7 Harv. L. & Pol'y Rev. 83, 94–95 (2013); John P. Heinz & Edward O. Laumann, Chicago Lawyers: The Social Structure of the Bar 1–4 (1994). This could also lead into a discussion of the potential challenges of adopting a lawyering model other than neutral partisanship in the private sector, where role-differentiated client-centeredness appears dominant.

in their cases, disclosing on-point adverse legal authority to a presiding court, avoiding conflicts of interest with clients, providing zealous and vigorous defense for criminal defendant clients, and putting prosecutors through their paces in such cases.[243] Teachers can therefore acknowledge to students that the specific ethical issues raised by the exercises invite room for disagreement and differences among different models, but that many day-to-day issues for lawyers don't implicate such ambiguities. Admitting this in class could potentially help protect students from feeling flooded by conflicts among lawyering approaches. In any event, as commentators have argued, the risk of cynicism and overwhelmed students is a risk in *all* law school classes, not just here.[244]

C. Exemplifying Values and the Role of Experience

In addition to framing the competing models for students and engaging students in concrete exercises, lawyering skills instructors can take another critical step: exemplifying moral conduct and values as professors.

As Deborah Rhode stated, "Actions speak louder than words and examples work better than exhortation."[245] Put another way, "While teachers naturally emphasize what they are attempting to teach—the formal curriculum—the total learning environment influences what students learn. Ethics, in particular, is primarily taught by example."[246] My third recommended step thus acknowledges the key role in education of not just what professors directly teach but what students infer from other aspects of the process.

If professors don't set the right moral tone through their actions and background behaviors, students may view discussions of moral issues as not credible or hypocritical (i.e., just talking points).[247] Conversely, if professors want students to be open to discussing moral values, professors may need to try to model the sort of good conduct or character that students might want to adopt.

One baseline practice professors should undertake is generously giving time to their students. Doing so can help demonstrate that instructors care about students' futures and their reflections about what kind of lawyers they want to be. Although this point sounds uncontroversial, scholars have recognized institutional pressure *not* to spend significant time with students

243 *See* Rhode, *supra* note 166, at 49.

244 *See id.* at 50.

245 Deborah L. Rhode, *Cultures of Commitment: Pro Bono for Lawyers and Law Students*, 67 Fordham L. Rev. 2415, 2429 (1999).

246 Cramton, *supra* note 13, at 253; *see also* Shaffer, *supra* note 22, at 41, 58.

247 *See* Kirstin K. Davis, *Building Credibility in the Margins: An Ethos-Based Perspective for Commenting on Student Papers*, 12 Legal Writing 73, 75 (2006) (discussing importance of teacher credibility); Rhode, *supra* note 166, at 55 (discussing risk of students' viewing professors as hypocritical).

(primarily because it doesn't advance published scholarship).[248] Fortunately, many lawyering skills instructors already spend substantial time with their students, in part because of the intense one-on-one work necessary to improve writing skills.[249]

Similarly, professors can further model sensitivity to ethical matters by treating students, colleagues, and support staff with civility.[250] By contrast, treating some or all curtly, or hurrying through cursory interactions, can undermine efforts to encourage students to consider the role of matters such as caring and good conduct in their own pictures of professional identity.

Further, professors can reinforce these efforts by drawing on their own practice experience and sharing it with students, particularly when relevant to the models of lawyering.[251] Discussing their practice experience can help professors convince students that teachers are credible sources of wisdom on these issues. If students know professors speak from significant practice experience, students may take professors' discussions of philosophical-sounding concepts of attorney roles more seriously.

The flip side of this point is that professors obviously should not express disdain for legal practice.[252] This tends to likely be less of an issue in lawyering skills, where real-world skills form the foundation of the course. Nevertheless, this issue can be particularly important in teaching lawyering models. For example, rather than merely bemoan that many lawyers behave unethically, instructors can show the options available for thinking about moral quandaries and questions of identity posed by practice. Doing so may help students feel not judged for entering a venal industry but guided through some of the difficult questions about what kind of lawyer to be.

Relatedly, and much more controversially, professors could at least consider steering some of their scholarship toward legal education topics or the work of practicing lawyers or judges. As one commentator said, "A teacher who is seen by students to be disengaged from political reality and the humdrum affairs of professional life may be disadvantaged in the effort to inculcate moral standards applicable to professional thinking and conduct in public roles."[253] Of course, "practical" scholarship might not fit some professors' interests. And it may also not meet some schools' standards for tenure or promotion. Ultimately, whether to refocus scholarship should be left to each teacher's judgment.

248 *See* Schiltz, *supra* note 21, at 772–74.

249 *See* Dauphinais, *supra* note 16, at 94.

250 *See* Schiltz, *supra* note 21, at 779.

251 *See id.* at 781–82.

252 *See* Menkel-Meadow, *supra* note 163, at 7; Schiltz, *supra* note 21, at 762–63.

253 Paul D. Carrington, *Butterfly Effects: The Possibilities of Law Teaching in a Democracy*, 41 Duke L.J. 741, 801 (1992).

In addition, law professors can model for their students by engaging in pro bono or other service-related work.[254] I have written specifically about ways lawyering skills professors in particular can benefit their students with pro bono.[255] Admittedly, pro bono can be time-intensive. But I and others have written about ways to limit pro bono projects to accommodate professors' schedules. Ultimately, doing pro bono can help embody for students a model of lawyer whose first job isn't public interest work or law reform but who does such work anyway.

VII. Objections and Responses

This section addresses three main categories of objections to my argument: first, that my argument depends on a caricature of real client-centeredness and therefore manufactures a problem that doesn't exist; second, that the proposal misguidedly suggests teaching theory and philosophy that has little bearing on real-world practice; and third, that lawyering skills is not the right course for these issues for a range of reasons.

A. Objections that the Proposal Rests on a Caricature of Client-Centeredness

At the outset, critics could object that some parts of client-centeredness are beyond dispute, e.g., that lawyers should treat clients as whole people, not just items of work. My proposal, by setting off alternative models against client-centeredness, could communicate to students that serving clients holistically is something lawyers might legitimately reject.

But neither I nor authors who endorse alternative models disagree that serving whole clients is better than treating them as items of work. That's in part why the proposal here recommends highlighting that client-centered and justice-centered models agree about much of lawyers' day-to-day conduct, including the importance of treating clients respectfully and humanely. The issue, rather, is what happens when client desires violate common morality or would not promote justice. That's simply a different question from whether, in general, it's better to look at clients as whole people rather than just assignments.

Some commentators, however, have seemed to suggest that when lawyers view their clients "three dimensionally," purported conflicts between client desires and common morality may become insignificant.[256] But even these scholars appear to acknowledge that in some circumstances, e.g., Big Law with corporate clients, conflicts between role morality and common morality can be a problem and can even lead to high-profile scandals.[257] Some clients

254 *See* Schiltz, *supra* note 21, at 784; David Luban, *Faculty Pro Bono and the Question of Identity*, 49 J. Legal Educ. 58 (1999); Erwin Chemerinsky, *A Pro Bono Requirement for Faculty Members*, 37 Loy. L.A. L. Rev. 1235 (2004).

255 *See* Ezra Ross, *Reframing Faculty Pro Bono*, 70 J. Legal Educ. 3 (2020); Ezra Ross, *Legal Writing and Faculty Pro Bono*, Legal Writing (forthcoming 2024).

256 *See* Kruse, *supra* note 53.

257 *See id.* at 128.

can still want to do things that are legal but morally wrong, even when those clients are understood in a multifaceted way.

Another objection rooted in concerns about caricaturing client-centeredness is that the proposal here misguidedly drains client-centeredness of its moral content. When moral facets of client-centeredness are acknowledged, critics could argue, the putative problem underlying my argument largely disappears. For example, some commentators have discussed the use of moral dialogues by client-centered lawyers.[258] A moral dialogue involves discussion with the client of the rightness or wrongness of the client's projects and the possible impact of those projects on other people.[259]

Although some commentators who support client-centered approaches have advocated using certain types of moral dialogue with clients, others have questioned whether moral dialogues are consistent with client-centeredness at all. "Because moral dialogue is especially intrusive . . ., it has been particularly suspect from the perspective of client-centered representation."[260] The primary source of tension is that client-centeredness strongly promotes client autonomy, but if a lawyer uses a moral dialogue to try to change a client's mind, the dialogue could appear designed to undermine client autonomy. This tension between moral dialogues and client-centeredness justifies at least surfacing models that conflict less with using moral dialogues. Otherwise, presenting only the client-centered model and including the use of moral dialogues may idealize one model as satisfying all different considerations when the reality is that there are tensions between client-centeredness and moral persuasion of clients.

Another caricature-related objection is that my proposal disregards that client-centeredness can come in different forms. For example, Katherine Kruse identified five different versions of client-centeredness: holistic, narrative integrity-focused, client-empowerment-focused, partisan, and client-directed.[261] This objection could run that by addressing only a reductive version of client-centeredness, my proposal has invented a need to surface alternative models, when simply being more nuanced about client-centeredness would obviate that need.

However, commentators continue to debate the merits of client-centric versus other contested models of lawyers' roles. Converting the lawyering skills class into an extended defense of a highly nuanced version of one model—without raising other models—would seem to be less reflective of real nature of debate than instead raising general versions of the competing models.

258 *See* Kruse, *supra* note 23, at 431–32; Dinerstein et al., *supra* note 238, at 787–804.

259 *See* Luban, *supra* note 67, at 173.

260 Kruse, *supra* note 23, at 431.

261 *See id.* at 420.

B. Objections that the Proposal Would Overload the Course with Theory

An initial part of this objection is that actual moral conflicts that would invite different actions under client-centered lawyering and alternative approaches arise so rarely as to make teaching the different models pointlessly hypothetical.

As commentators have indicated, however, lawyers might not *think* such moral quandaries arise because those lawyers have already been desensitized to conflicts between their morals and their work.[262] This potential explanation heightens the importance of alerting students to these conflicts and helping them develop their sensitivity to them.

In addition, there is reason to think that conflicts between the client-centered and justice-centered approaches could arise regularly. Differences could emerge not just regarding the use of hardball tactics in litigation but in transactional work, because moral conflicts can develop when deciding how to counsel clients on desired projects. Further, corporate work can involve powerful clients and fierce competition among firms to best serve client desires. Raising alternatives to client-centeredness in law school may help students resist pressures from corporate clients if those students want to practice in a more justice-centered way.

In any event, exposure to competing models would be important for students even were it true that scenarios in which the models conflict arise rarely. Pivotal moral decisions are important even if rare. As David Luban argued, a principle of morality such as "I would die for my child" can be central to a person even if never tested.[263] Relatedly, frameworks such as moral activism, the contextual view, or the ethic of care can be viewed as not just tools to decide what to do in some narrow band of scenarios. They can also be viewed as perspectives relevant to lawyers integrating their own values with their professional identity. That additional role justifies surfacing competing models of professional role as a way to help students think about their professional identities even if certain morally difficult scenarios arise infrequently.

A related objection is that raising alternatives to the dominant client-centric approach is purely aspirational. Rather than teaching students skills to succeed in the modern marketplace, introducing these theoretical approaches arguably promotes philosophy that doesn't play in the real world.

However, some lawyers *do* appear to adopt alternative models, including moral activism. For example, David Luban points to attorneys who disapproved helping a client who wanted to take legally permissible action that would have hurt community interests.[264] Luban also compares these attorneys to another famous attorney who practiced a form of moral activism, Louis Brandeis. He

262 *See* Luban, *supra* note 33, at 1010.

263 *Id.*

264 *See id.* at 1014–15.

concludes that evidence "shows that the moral activism I aim to promote is not simply a kind of philosopher's pipe-dream; instead, it is a reaffirmation of one of the bar's own vital traditions."[265]

In any event, even assuming there is an aspirational component to teaching the models of lawyering, that doesn't necessarily weigh against doing so. Indeed, commentators have said that teaching professionalism is in many ways about the aspirations of the profession.[266] So, arguably, is instruction about legal writing in lawyering skills. As many commentators have noted, lawyers are widely perceived as awful writers: wordy, pompous, unclear, and dull.[267] Yet lawyering skills courses push against the practice reality of bad legal writing and try to teach an ideal of clear, plain English. So here, even if few lawyers consider the nature of their role and make deliberate decisions about how their values will influence their day-to-day work, it is still beneficial to teach about even if characterized as aspirational.

C. Objections that Lawyering Skills is the Wrong Course for Introducing Lawyering Models

Critics are also likely to contend that the lawyering skills curriculum is far too crammed and lawyering skills professors far too busy[268] to try to add a new lawyering models segment to the course. Lawyering skills is admittedly a tight squeeze, but the proposal here is designed to address time limitations. For example, the introductions to alternative models are short. The exercises would arise from existing case files and curricula and would not require introducing new simulated cases. Nor would having class discussions about such scenarios require a time-pressed teacher to grade a new set of assignments.

Moreover, the third segment of the proposal—involving recommendations related to creating a receptive environment to morality discussions through modeling and mentoring—would require no additional class time. For the most part, it would not even require additional outside-of-class time for lawyering skills instructors, because many lawyering skills instructors already spend significant one-on-one time mentoring their students. This part of my recommendation primarily serves to recognize that some of these things that many teachers already do play an important role in laying a groundwork for helping students think about what kind of lawyers they want to be.

A related objection is that clinics and professional responsibility courses would work better to teach about the contested lawyering approaches. Clinics, for example, could more effectively illustrate models in action because they involve real cases with real clients. By contrast, critics could reasonably doubt

265 *Id.*

266 *See* Chloe Sovinee-Dryoff, *Introverted Lawyers: Agents of Change in the Legal Profession*, 36 Geo. J. Legal Ethics 111, 115 (2023).

267 *See* Richard C. Wydick & Amy E. Sloan, Plain English for Lawyers (6th ed. 2019); Steven Stark, *Why Lawyers Can't Write*, 97 Harv. L. Rev. 1389, 1389 (1984).

268 *See, e.g.*, Dauphinais, *supra* note 16, at 94.

that "hypothetical exercise[s]" as in lawyering skills "can induce a lasting emotive transformation."[269] A dedicated PR class could also be better than lawyering skills because such a class might more easily devote sustained time to the debate about lawyering models. PR is also often taught by PR experts who wouldn't need to get up to speed on various theories of lawyering.

However, these alternatives to lawyering skills themselves present potential downsides. Clinics have the benefit of real clients, but they may not significantly raise issues showing tensions between competing models of lawyering. Clinic clients are typically individuals or relatively powerless entities. As commentators have noted, a lawyering approach that challenges clients' desires on moral grounds may not fit well with clients who lack money, power, or legal sophistication.[270] Thus, clinicians may not feel comfortable resisting a client's problematic goals on moral grounds when the client has little power. Additionally, powerless clients might not feel comfortable asking for things that might press the envelope morally when receiving free services from a clinic. These clinic dynamics could result in a lack of scenarios demonstrating tension among the lawyering models.

As for PR courses, these do seem like natural courses for discussion of lawyering models. However, one drawback is that, as some commentators have said, PR is "often presented to vacant seats or vacant minds."[271] This dynamic might limit how much students absorb of important discussion of competing models.

And both PR and clinics often come after the first year of law school. As discussed above, first-year students can be highly impressionable. Providing a full year of law school in a way that primarily plays into conventional partisan model—but without expressly noting that it does—could retard effectiveness of later efforts to raise alternative models. That's in part why advocates of effective ethics instruction argue for teaching about morality in the first year. By contrast, lawyering skills can introduce clients with both money and power and can do so for first-year students. Moreover, lawyering skills can accomplish these goals in the context of a course focused on day-to-day legal skills, punching home the real-world applicability of the models.[272]

In any event, the decision about the proper class for discussion of lawyering models is not an either/or matter. Instruction about important moral and ethical matters can and arguably should pervade the entire curriculum.[273] So

269 *See* Tanina Rostain, *The Company We Keep: Kronman's The Lost Lawyer and the Development of Moral Imagination in the Practice of Law*, 21 Law & Soc. Inquiry 1017, 1035 n.36 (1996).

270 *See* Tremblay, *supra* note 232, at 32, 58–59.

271 *See* Rhode, *supra* note 166, at 40.

272 *Cf.* Weresh, *supra* note 188, at 437 ("Indeed, because students in legal writing would have to immediately put the ethical and professional considerations into context, might they better assimilate an ethical and professional discourse practice if introduced to the concepts as they begin to master the more basic competencies?").

273 *See* Rhode, *supra* note 166.

even if other classes might be better, that wouldn't necessarily weigh against raising these questions in lawyering skills.

Finally, there's the objection that lawyering skills courses already sometimes do tackle ethical and professionalism matters, and therefore already assuage any concerns about client-centered or amoral lawyering. Laudably, some lawyering skills teachers do raise ethical rules and issues in the 1L course.[274] Indeed, some lawyering skills instructors have called for incorporation of ethical rules and issues throughout the lawyering skills class.[275]

However, addressing ethics in these ways does not obviate the need to acknowledge alternative models of lawyering in lawyering skills. To the contrary, a mere rules focus in ethical instruction can in fact convey that staying within the rules relieves attorneys of grappling with ethical quandaries, or that moral intuitions and beliefs play no role in proper lawyering.[276] To avoid that messaging, lawyering skills professors would need to acknowledge the reality that ethics rules set a floor and give attorneys significant discretion. Acknowledging that floor to students arguably necessitates providing them some idea how to think about what to do with their discretion. Exposure to the competing models of lawyers, as a solution, could help students evaluate how to deploy their above-the-floor discretion in practice.

Similarly, instruction about professionalism in lawyering skills does not undermine the importance of acknowledging that client-centeredness is a model and that there are alternatives. Many lawyering skills professors have incorporated professionalism-related instruction in their classes.[277] Professionalism instruction generally emphasizes competence, diligence, preparation, and promptness.[278]

Praiseworthy as this is, professionalism emphasis (like coverage of ethics rules) does not substitute for teaching about different models of lawyering. Although the topics typically emphasized by professionalism instruction in lawyering skills are important, they are not the same issue as how to view the attorney's role in relation to morality and justice. In fact, emphasis on such qualities as diligence, promptness, and competence, without discussion of the role of common morality, can communicate that being a professional is limited to those narrow matters related to expertise and attention to detail. [279]

274 *See, e.g.*, Shapo, *supra* note 140, at 258–59, 269; Neumann, Morgolis & Stanchi, *supra* note 154, at 220, 246; 26 Second Draft 2 (2012) (multiple short essays devoted to ethics-related exercises in lawyering skills).

275 *See* Melissa H. Weresh, Legal Writing: Ethical and Professional Considerations (2d ed. 2009); Baker, *supra* note 155.

276 *See* Rhode, *supra* note 166, at 41.

277 *See* Kehner & Robinson, *supra* note 141, at 86.

278 *See* Ben Bratman, *Toward a Deeper Understanding of Professionalism: Learning to Write and Writing to Learn During the First Two Weeks of Law School*, 32 J. Legal Pro. 115, 122 (2008).

279 *See* Cramton, *supra* note 13; David Luban & Michael Millemann, *Good Judgment: Ethics*

VIII. Conclusion

Commentators consistently lament the state of the legal profession. Lawyers and law firms make dispiritingly regular headlines for misconduct and unethical behavior. Responsibility is often pinned to the pressures of practice, particularly in the corporate setting.

But legal education bears accountability too, albeit in a subtler way. Hidden messaging in law school courses can play an influential role for lawyers in training. And particularly on matters of ethics, what professors don't explicitly teach can have as much impact as what they do.

Law school skills instruction may appear an exemplar of pedagogical best practices. But impliedly approving a client-centered approach, as if it were the one true way, implicates a host of concerns. Failure to recognize faults in the model, or to acknowledge good-faith alternative approaches, glosses over critical nuances underlying the teaching of skills. But it doesn't just get the theory incomplete. It also can effectively endorse the morally neutered perspective that pollutes public perceptions about the profession.

Particularly as discussions about professional identity formation take center stage, law schools should seize on the opportunity to audit their own contribution to the challenges faced by law students and lawyers. The proposal here aims to help promote discussion about how to nurture not just skillful but morally engaged and reflective legal professionals.

Teaching in Dark Times, 9 Geo. J. Legal Ethics 31, 35 (1995).