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TEACHING MORAL PERCEPTION AND MORAL JUDGMENT IN LEGAL ETHICS COURSES: A DIALOGUE ABOUT GOALS*

LISA G. LERMAN†

We who toil in the fields of legal ethics are privileged to try to educate our students about one of the most complex and rapidly growing fields of American law during a two- or three-credit, required, upper-level course that is widely regarded as "the dog of the curriculum." Many have written of the intractable difficulties of teaching what should be a fascinating course. We re-

* In this Essay, Professor Lisa G. Lerman reports on the 1997 W.M. Keck Foundation Forum on the Teaching of Legal Ethics proceeding concerning setting goals for the teaching of professional responsibility. This proceeding occurred on March 21, 1997. Panel members included Steven Hartwell, Professor of Law, University of San Diego; Judith L. Maute, Professor of Law, University of Oklahoma; Michael Millemann, Jacob A. France Professor of Public Interest Law and Director of the Clinical Law Program, University of Maryland; James E. Moliterno, Vice Dean, Professor of Law and Director of the Legal Skills Program, The College of William and Mary School of Law, Panel Moderator; Lizabeth Moody, Dean, Stetson University College of Law; and Thomas L. Shaffer, Robert E. & Marion D. Short Professor of Law Emeritus, Notre Dame University. All remarks attributed to these participants were made during the panel discussion unless otherwise indicated.

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1. David Luban & Michael Millemann, Good Judgment: Ethics Teaching in Dark Times, 9 GEO. J. LEGAL ETHICS 31, 37 (1995). Luban and Millemann described a 1979 survey that concluded that the standard required course in professional responsibility is "despised by students, taught by overworked deans or underpaid adjuncts and generally disregarded by the faculty at large." Id. at 37-38.

The authors reported anecdotal data suggesting that "the legal ethics course is among the most difficult to teach; professors . . . do substantially worse on their ethics evaluations than on evaluations for any other course they teach." Id. at 38.

turn again and again in throngs to sit through conferences and try to work out how we should teach these classes. Like rejected children trying in vain to please narcissistic parents, we struggle to overcome the cynicism and discontent that infects so many of our classes. We produce a stream of creative teaching materials, videotapes, simulations, and problems. 3 We create experimental first-year courses, 4 simulation courses, 5 clinical ethics courses, 6 intensive week-long courses, 7 multiple-semester programs integrating the teaching of lawyering skills and legal ethics, 8 interdisciplinary courses, 9 specialized ethics courses, 10 and proposals for the pervasive teaching of ethics. 11 The exchange of infor-


4. See, e.g., Stephen McG. Bundy, Ethics Education in the First Year: An Experiment, LAW & CONTEMP. PROBS., Summer/Autumn 1995, at 19 (describing the first-year ethics curriculum at the University of California at Berkeley's School of Law).

5. See Robert P. Burns, Teaching the Basic Ethics Class Through Simulation: The Northwestern Program in Advocacy and Professionalism, LAW & CONTEMP. PROBS., Summer/Autumn 1995, at 37 (describing the simulation method for teaching ethics used at Northwestern University School of Law).


10. See Mary C. Daly et al., Contextualizing Professional Responsibility: A New Curriculum for a New Century, LAW & CONTEMP. PROBS., Summer/Autumn 1995, at 193, 199-211 (describing specialized ethics courses offered at Fordham Law School).

information draws us to meetings, as does our wish to keep up with the burgeoning law governing lawyers. But for many of us, another draw is the sense of failure and the quest to find a different formula for success.

This conversation about how to solve the terrible problems in the teaching of professional responsibility is an old and rich dialogue. For over twenty years, experts have discussed the pedagogical challenges of this field and recommended experientially-oriented teaching of ethics. Pedagogical advances have occurred, and attitudes toward the teaching of professional responsibility have improved. Still, at most schools, the principal teaching about the legal profession and about the law and ethical norms that govern lawyers occurs in a single, large, upper-class, required course. Despite endless innovation, nei-

12. The American Bar Association (ABA) amended its standards for accreditation in 1974 to add a requirement for teaching of professional responsibility. See Warren E. Burger, The Role of the Law School in the Teaching of Legal Ethics and Professional Responsibility, 29 CLEV. ST. L. REV. 377, 391 (1980). Chief Justice Burger noted a 1977 survey indicating that professional responsibility courses at one-third of U.S. law schools were one-credit courses. See id. The Chief Justice observed that clinical legal ethics courses facilitate the teaching of legal ethics but that they cannot accommodate all law students. See id. at 392-93. In any event, he concluded that law schools should not segregate legal ethics in any single course. See id. at 393; see also Tom C. Clark, Teaching Professional Ethics, 12 SAN DIEGO L. REV. 249 (1975) (discussing the difficulties of teaching legal ethics and the desirability of expanding clinical programs to teach the subject more effectively).

13. See generally Ian Johnstone & Mary Patricia Treuthart, Doing the Right Thing: An Overview of Teaching Professional Responsibility, 41 J. LEGAL EDUC. 75 (1991) (discussing contemporary approaches to the teaching of professional responsibility).

14. A large number of schools have increased the number of credits assigned to professional responsibility courses. Compare Burger, supra note 12, at 391 (noting that in 1977, one-third of schools assigned only one credit) with PROFESSIONALISM COMM., AMERICAN BAR ASS'N, TEACHING AND LEARNING PROFESSIONALISM app. B, Law School Survey on Professionalism 39, 40 (1996) [hereinafter PROFESSIONALISM COMM.] (reporting that, in 1994, 67% of schools offered two- or three-credit professional responsibility classes and many other schools offered multiple credit classes). Although most schools continue to offer professional responsibility as an upper-level course, nineteen schools now require first-year students to take this course. See PROFESSIONALISM COMM., supra, at 40.

15. A recent survey of law school ethics curricula obtained information from 131 law schools—74% of the accredited American schools. Over two-thirds of these law schools require that upper-class students take a two- or three-credit course in professional responsibility. See PROFESSIONALISM COMM., supra note 14, at 39-40.
ther teachers nor students are satisfied.\textsuperscript{16}

The first topic discussed at the 1997 W.M. Keck Foundation Forum on the Teaching of Legal Ethics was setting goals for the teaching of professional responsibility. In this Essay, I report some of the ideas that were exchanged during the discussion\textsuperscript{17} and comment on a few of them. I also will discuss experimental teaching initiatives that some panelists have undertaken to implement their articulated goals. Then I will comment on some of the problems we encounter in setting goals for the teaching of professional responsibility and on the implications of these observations for our law schools' curricula.

I. THE PANEL DISCUSSION: EMBRACING MUSHY PAP

Professor James Moliterno, who convened the conference and moderated this panel discussion, urged the assembled group of law professors to focus on an apparent disagreement among some teachers about whether the primary goal of teaching professional responsibility is to engage them in moral dialogue, to try to contribute to the students' moral development—or to teach the growing body of law governing lawyers. Professor Moliterno reminded us that during the 1996 W.M. Keck Foundation Forum on the Teaching of Legal Ethics, Professor Susan Koniak of Boston University asserted: "Any of this talk about moral development is mushy pap... [Instead] we must talk about the law."\textsuperscript{18} Moliterno then invited comments from the panelists.

Professor Judith Maute teaches at the University of Oklahoma. Her goals in teaching professional responsibility include

\textsuperscript{16} See supra note 1.

\textsuperscript{17} I was the designated "reporter" for this panel. As such, my role was to listen, think, and take notes. In the first part of this Essay, I have variously quoted, paraphrased, and summarized the comments of the panelists. I have tried to report the panelists' ideas as accurately as possible, but in many instances I have not presented their ideas in the order in which they occurred in the discussion. I apologize to the panelists for any errors or omissions. I presented to each panelist a draft of the parts of this Essay that reported his or her commentary and invited each to provide any correction, expansion, etc. In some instances, the discussion as written is more detailed or more fully developed than the conversation that formed the basis for this Essay.

providing students with a grounding in the law that governs lawyers and engaging students in discussions about the moral dilemmas that practicing lawyers face. Maute has taught this course in both large class and seminar formats, and she has used role-playing exercises and problems drawn from film, literature, and popular culture. For some years, she has been a member of the Drafting Committee for the Multistate Professional Responsibility Examination (MPRE). Maute urged:

We must equip our students to practice "safe law" . . . . Our students must be prepared to apply the law of lawyering, because they will encounter it on a daily basis . . . . They need to stay out of jail and avoid civil liability and [the] harm that could come to them from blind devotion to a client's interests. The analysis [they will need to do] is essentially a legal analysis.

Maute asserted that law schools must provide "comprehensive doctrinal exposure to the law of lawyering, so that when a lawyer encounters an ethical dilemma, she can work out a solution that is consistent with her values and will not result in her losing her license to practice law." To Maute, a "moral dialogue" is one that a lawyer must have with her client and with reference to the underlying substantive law." Maute stated:

What a lawyer can do in the course of representing a client is limited by the underlying substantive law. That is, a lawyer must define the legal options available to a client. This serves as the essential starting place: moral dialogue between client and lawyer [involves choosing] among the available options.¹⁹

To illustrate her conviction that teaching the law of lawyering should be a top priority, Professor Maute described a recent Colorado case that exemplifies the type of professional disaster that we hope to help our students avoid. In People v. Chappell,²⁰ the


Colorado Supreme Court disbarred a lawyer after she helped a client to flee the jurisdiction with her child. A court order prohibited the client from removing the child from the jurisdiction. The client testified that "the [lawyer] advised her as her attorney to stay, but as a mother to run." After assisting the client in emptying bank accounts and placing her belongings in storage, the lawyer represented to the court that the child remained in the jurisdiction. She accepted an offer from the husband to continue child support payments, even though the court had granted him custody of the child. The client later pleaded guilty to a felony charge for having violated the court order. The court held that the lawyer "used her license to violate the core ethical and professional standards of her profession."

Professor Maute urged that if the lawyer was convinced that awarding custody of the child to the father would put the child at risk of abuse, the lawyer should have "contested the court order to the limits of the law." If those efforts failed, and "the lawyer chose to become an active participant in the escape plan, she should be ready to submit her resignation from the bar." She would then be "an outlaw for justice in a system with a blind spot to these domestic issues." This case could be the basis for a classroom discussion about the legal limits on what a lawyer may do and the divergence in some cases between what the law requires and what conscience requires.

School of Law voiced a similar sentiment in an essay about his goals in teaching professional responsibility:

I want students to understand the rules that will daily govern their professional lives . . . . I do not want to see their names in the advance sheets after "In the Matter of . . . ." I cannot teach them to be honest if they are not, but I can teach them the details that constitute honesty, integrity, and loyalty in law practice.

Stephen Gillers, Getting Personal, LAW & CONTEMP. PROBS., Summer/Autumn 1995, at 61, 63.

22. See id.
23. Id.
24. See id. at 829-30.
25. See id. at 830.
26. See id.
27. Id. at 831.
Dean Lizabeth Moody of Stetson University College of Law argued that the teaching of rules of law governing lawyers is important, in part because no true consensus exists in the profession about the values of the profession. Dean Moody asserted: "The challenge we are facing is that a central value in our profession is greed." She maintained that some values are or should be mandatory for members of the legal profession and that the law articulates some of these values. Perhaps she was suggesting that teaching the law governing lawyers is one way to combat the moral relativism that allows some attorneys to rationalize unethical conduct.

Professor Michael Millemann has been on the faculty of the University of Maryland since 1973; he teaches both clinical and traditional courses. Professor Millemann endorsed teaching what Professor Koniak had described as "mushy pap."²⁸ Millemann stated: "Mush is a nourishing combination of corn, oats, and milk. We need to feed them mush. That is the richness of moral development." Millemann agreed with Maute that students must be taught the "increasingly complex law that has many different sources" and that we "must teach competency, and teach our students how to practice safely." Millemann noted, however, that the ABA's model rule on competency lacks substance, because "the Kutak Commission milked Rule 1.1 of all its content."²⁹

²⁸. See supra note 18 and accompanying text (relating Professor Koniak's use of the term "mushy pap").

(b) A lawyer acts incompetently in a particular matter, if:
(i) He or she fails to use the knowledge, skill, preparation, and judgment that a reasonably competent lawyer would use in the circumstances; and
(ii) The result of the lawyer's act or failure to act is substantial expense, delay, harm, or risk of harm to a client or other person for whose benefit the advice or assistance is provided.

STEPHEN GILLERS & ROY D. SIMON, JR., REGULATION OF LAWYERS: STATUTES AND STANDARDS 19 (1994). As was the case for many other model rules, the review and revision process by which the Model Rules obtained ABA approval resulted in the elimination of much specificity in the proposed standards. See id. at 3. Rule 1.1 illustrates this phenomenon.
Some of the Model Rules are so general that law students cannot be expected to learn much about standards of practice by studying them. "The real law of competency," said Millemann, "is in the traditions and values of lawyer-client relations, and in the dialogue that arises out of personal relationships." Millemann observed:

The problem in the professional responsibility course is the divorce of values and action. The core [of what is taught in professional responsibility] ought to be acting responsibly as well as thinking about the rules that one is bound by. No one can do this type of work until he is engaged in action. An ordinary classroom course does not ask students to act: to be responsible or irresponsible and then to deal with the consequences. We have disconnected the cognitive from the affective. Clinical education has an important role to play in the teaching of professional responsibility.

Millemann concluded that clinical experience and classroom based analysis both are essential to the successful teaching of professional responsibility.

Professor Thomas Shaffer of Notre Dame Law School has advocated for many years that professional responsibility should be principally a dialogue about moral values.\(^\text{30}\) Shaffer noted that there is much discussion about what should be the goals of teaching professional responsibility because "we have less of a sense of what we are up to [than do people teaching in other fields]. The object of the enterprise is unsettled. That is what makes it fun." As to his own goals, Shaffer explained that the purpose of teaching professional responsibility "ought to be ethics itself." It should be a course "where people come together and talk about the purpose and content of their morals, and attend to one another without coercion."

The fundamental goal of teaching ethics, said Shaffer, is to think about:

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

Shaffer was unabashedly critical of those who identified the teaching of law as the primary goal: "Constructing a course around the law is a recipe for idolatry. It is not interesting enough to be ethics. Some of it is in the same category as the manual you read to get a driver's license." The advocates of teaching the law of lawyering might observe that given the high rate of injury and death from car accidents, this teaching of rules is essential and requires greater attention. The same might be said of the law that governs lawyers. Shaffer observed that many law students desire analytical conclusions and that some teachers emphasize the teaching of rules because they like analytical conclusions. Shaffer noted that Socrates urged teachers and students to abandon this goal. One way to move the dialogue of ethics classes beyond this logic game, he suggested, is to work on ethical issues in clinics. "In the clinic," Shaffer said, "students really do have to figure out what they want to do."

Professor Steven Hartwell of the University of San Diego School of Law is principally a clinical teacher. Like Shaffer and Millemann, his primary goal in teaching ethics is to advance students' moral development by teaching ethics in the context of lawyering experience. Professor Hartwell placed the goals discussion on the template of Lawrence Kohlberg's stages of moral development.

31. See generally Steven Hartwell, Promoting Moral Development Through Experiential Teaching, 1 CLINICAL L. REV. 505 (1995) (summarizing research results obtained from teaching legal ethics courses over a six-year period and concluding that an experiential, one-semester class in legal ethics can promote development of moral reasoning).

32. Kohlberg posited that different people are at different stages of moral development. See id. at 507-08. A stage one person might justify action by reference to
Can there be a merger between personal morality and lawyer morality? This takes us to Kohlberg stage four, where one thinks that rules have a moral basis. Stage three is loyalty, this is Watergate morality. Stage five allows for conflict between rules and personal morality. Stage five allows for civil disobedience.

Hartwell shared the following story, which became a point of reference throughout the conference:

I was telling my grandchildren one of their favorite stories, the story of *The Three Little Pigs*. You will remember how, once upon a time, there was a mother pig who had three little pigs. They lived on the edge of the great forest along the road that led to town. One day the mother pig said to her sons: “Children, we have no more food to eat. You must leave home and each of you must find your own way.” She gave each of them a clean shirt and a juicy apple wrapped in a red handkerchief that she tied to the end of a stick. So prepared, the three little pigs started down the road to town. Along the way, they soon separated, each following his own path.

You will recall the rest of the story: how the first two pigs built houses of straw and sticks that the wolf blew down so that he could eat them. But the third little pig built a house of brick which the wolf could not blow down. The wolf tries to trick the third little pig to get him out of his house but each time the pig is too clever. Finally, in desperation, the wolf tries to enter through the chimney, but the little pig has placed a pot of boiling water under the chimney which the wolf falls into. The wolf is boiled alive. The little pig eats him for dinner.

Several weeks ago, when I was at the point in the story where the three little pigs separate, my granddaughter,
Charlotte, [age four,] sat up in bed and said: "No, that's not the story!"
I asked, "well, what is the story?"
She responded, "The pigs stay together and build a big house with a big bedroom with three beds."
"Does the wolf come by?" I asked.
"Yes," she said.
"Do they let him in?" I asked.
"Yes," she said, "because he is hungry, lonely, and has no friends."
"Does the wolf eat the pigs?" I asked.
"No," she responded, "not if they stay together."

The story says that we start life with connectedness. As boys, especially, we are emotionally abandoned too early so that we lose our sense of connectedness. We fear that to survive we must build brick walls around ourselves. We must eat the enemy before he eats us.

Our present legal ethics is designed to accommodate the traditional Three Little Pigs. We have lost our vision. We need to unlearn these messages to know what it means to be related and how to talk to each other. No one told Charlotte her version of the story. I asked her parents explicitly. Simply put, Charlotte has not yet lost that vision.

Professor Hartwell illustrated this point with another story that suggests that adopting the role of lawyer narrows the perception and judgment of law students. Hartwell and a colleague, Dr. Sharon Grodner, taught a class in which they assigned the students a problem relating to Model Rule 8.3, the duty to report professional misconduct to the disciplinary authorities.

33. Sharon Grodner, Ph.D., a clinical psychologist, has been instrumental in designing as well as teaching this and other exercises. As Adjunct Professor of Law, she teaches a course in Interviewing and Counseling and another in Law and Psychology of Gender. She also teaches gender and ethical issues to trial court judges through the California Judicial Education and Research Project.

34. MODEL RULES OF PROFESSIONAL CONDUCT Rule 8.3 (1995). This Rule titled "Reporting Professional Misconduct," states in part: "A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority." Id. Rule 8.3(a).
Hartwell and Grodner divided the class into pairs. In each pair, one student played the role of a lawyer, and one student played the role of a woman who previously had seen another attorney, but had decided to get a new lawyer. Hartwell and Grodner gave role instructions, and then each pair met for a ten-minute simulated interview. Hartwell and Grodner told the clients that the previous, male attorney had "overstepped professional boundaries." They told the "clients" that, if asked, "they"\textsuperscript{35} should explain that the "overstepping" consisted of a number of improprieties. Each client was to explain that the male attorney asked her to lunch and eventually barred his office door and said she could not leave until the two of them "worked this out." If the lawyer did not ask the client to explain "overstepping," Hartwell and Grodner instructed the clients to say nothing about these improprieties.

After the simulated interviews, Hartwell and Grodner debriefed the students. Some students who played lawyers said that they did not want to know more about the improprieties. Other "lawyers" said that they did not think the improprieties were relevant. Still other students insisted that their clients never said anything about "overstepping professional boundaries." These students' clients responded to this comment either with outrage or with laughter.\textsuperscript{36}

Professor Mary Daly of Fordham University School of Law asked whether there were gender differences in the way men and women played the roles.\textsuperscript{37} Professor Hartwell responded that women who acted as "attorneys" were much more likely to ask about the "overstepping." One woman playing the attorney who had not asked about it later explained that she was asked to play a \textit{male} attorney, and she assumed that a male attorney would not ask. Professor Hartwell added that when the lawyers asked the clients if the conduct of the first attorney was a one-time event or part of a pattern, the women who played clients

\textsuperscript{35} Both male and female students played the role of the female client.

\textsuperscript{36} Professor Hartwell now has done this exercise four times in different courses. He has had similar results each time. The collective group of participants numbers about 100.

\textsuperscript{37} \textit{See} Mary Daly, Remarks at the W.M. Keck Foundation Forum on the Teaching of Legal Ethics (Mar. 21, 1997).
overwhelmingly said it was a pattern. The men who played attorneys generally believed that the improper conduct toward the client was a one-time event.

Professor Hartwell commented:

The exercise is not about moral reasoning, which is our typical focus of academic interest, but about moral perception. Most of us are able to figure out some reasonably moral conduct when the problem is laid out for us. The exercise is designed to help teach perception, where we must first see. In this sense, it is closer to art than science.

II. THE PEDAGOGICAL CONTEXT OF THE GOALS DISCUSSION

One could construct a continuum of teaching goals for legal ethics. At one end of the continuum are teachers who focus exclusively on the teaching of positive law. At the other end are teachers who aspire to teach moral perception or moral judgment. For example, a teacher interested in teaching positive law would aspire to familiarize the students with the Model Rules of Professional Conduct and to prepare them to take the MPRE. Toward the middle of the spectrum would be a teacher who teaches all of the law governing lawyers, including not only ethical rules and their interpretation in disciplinary opinions and ethics opinions, but malpractice law, relevant criminal law, court rules, and other bodies of law that govern lawyers. This teacher might eschew the use of problems and video dramatizations and focus principally on teaching substantive law and its application.

Toward the moral perception end of the continuum one might find a teacher who recognizes the vast morass of law governing lawyers, but who opts for depth rather than breadth. This teacher would select topics from law governing lawyers and use problems and videos that require students to apply and discuss, i.e., internalize, the process of identifying and evaluating ethical dilemmas.

38. The newly expanded scope of the MPRE would encompass most or all of the law governing lawyers—this may lead to the disappearance of the narrow end of the spectrum.
At the moral perception end of the continuum one might find a few experienced teachers who have backgrounds in moral philosophy or psychology and who have spent a great deal of time thinking about what really matters in educating future lawyers. They might have concluded that teaching students how to think about moral dilemmas is more important than covering any particular body of legal doctrine. They might believe that an experiential learning environment is necessary to engage students in the development of moral judgment. Some of these teachers have carved out niches in which they can teach small experientially-oriented seminars in which students learn the law that governs lawyers as they develop their skills in moral perception, moral reasoning, and moral judgment. These courses become demonstration projects; their teachers are invited to present their pedagogy at conferences attended by professors who teach the large required courses.

Each of the panelists’ teaching goals include both transmission of knowledge of the law of lawyering and the development of students’ skill in moral judgment. Differences among the panelists are in emphasis and methodology, not in fundamental goals. Some panelists have published works examining the various experimental approaches to teaching legal ethics. The following discussion synthesizes some of their work and their comments during the panel discussion.

Professor Maute and Dean Moody share the concerns about moral development and moral judgment articulated by the other panelists. Their approaches appear to differ only in emphasis and focus. Professor Maute has spent years on the MPRE Drafting Committee considering what students need to know about the law governing lawyers in order to pass the bar. Dean Moody, as a former member of the MPRE Drafting Committee and as the Chair of the Review Panel for the new MPRE specifications, also wants to ensure that all licensed lawyers have mastered

certain basic values and boundaries. Dean Moody and Professor Maute have taught both large and small classes in professional responsibility. They are concerned with how to convey a complex body of law in a manner that will foster competent representation of clients.

In recent years, Professor Millemann has taught a professional responsibility course with Professor David Luban. The course combines

a full classroom legal ethics course of two or three credit hours with a multicredit clinical course in which students, under faculty supervision, and faculty, with student critique, represent clients. In addition to the expected classroom hours, students meet weekly in clinical rounds (a second set of classes), in which they and the teachers discuss ethical issues arising in their clinical work.\(^ {40} \)

The two teachers reorganize the ethics syllabus throughout each semester so that issues can be covered in class during weeks in which related issues arise in the clinical work.\(^ {41} \)

The premise of Luban and Millemann’s course is that “moral judgment (judgment about right and wrong) can be taught through practice. And . . . the best way to teach legal ethics—the only way to teach legal ethics that incorporates the all-important element of moral judgment—is clinically.”\(^ {42} \) Clinical teaching without a focus on ethics will not accomplish this purpose. Luban and Millemann believe that:

[Insisting on an overlay of theoretical reflection on the undercoating of habit is vitally important for clinical teaching. Precisely because clinical education is a more powerful cultivator of affect and judgment than the classroom, it runs a heightened danger of being a corrupter of youth unless clinicians systematically build into their teaching the capacity for reflection and self-critique . . . .]\(^ {43} \)

\(^{40}\) Luban & Millemann, supra note 1, at 64.

\(^{41}\) See id. at 65.

\(^{42}\) Id. at 40.

\(^{43}\) Id. at 63.
Luban and Millemann highlight the problem in clinical teaching of “excessive engagement,” in which the immediacy and intensity of the representational work interferes with a student's ability to detach and reflect on the issues at hand.\(^4\) They report a degree of success in the hybrid clinic and ethics course in accomplishing “[m]oral learning through practice and imitation” in which an ongoing dialogue ensures that the students are “answerable” for their choices.\(^4^5\)

Until recently, Professor Shaffer taught exclusively classroom-based courses. In recent years, he moved his office into the clinical program at Notre Dame, where he teaches a seminar in legal ethics to clinic students.\(^4^6\) As in Luban and Millemann’s course at the University of Maryland,\(^\text{47}\) the students’ clinical experience becomes the basis for study and dialogue in the seminar.\(^4^8\) Unlike most traditional professional responsibility classes, students make decisions on the basis of the discussion and act on them.\(^4^9\)

In an article about teaching ethics in the clinic, Professor Shaffer noted that the attempt to foster moral dialogue in the clinic was more successful than in classroom courses that lacked an experiential component.\(^5^0\) He observed that the clinical experience allowed the students to “push past some of the modern barriers to moral discourse.”\(^5^1\) Shaffer characterized some of these barriers as the “interpersonal tactics of evasion,”\(^5^2\) which include:

(1) silence, on virtually all deep moral questions; or, when discussion is not easily avoidable, (2) responses that go no

\(^{44.}\) See id. at 83-87.
\(^{45.}\) Id. at 87.
\(^{46.}\) For a description and evaluation of this pedagogical structure, see Shaffer, supra note 39 and Thomas L. Shaffer, Surprised by Joy on Howard Street, in LABORS FROM THE HEART 221 (Mark L. Poorman ed., 1996).
\(^{47.}\) See supra notes 40-45 and accompanying text.
\(^{48.}\) See Shaffer, supra note 39, at 613.
\(^{49.}\) See id.
\(^{50.}\) See id. at 609.
\(^{51.}\) Id. at 606.
\(^{52.}\) Id. at 607.
further than court rules; or—the most common of all moral conclusions in modern America—(3) the dogma that what makes behavior bad or good, right or wrong, is the choice of the moral agent: Every person is her own tyrant.\textsuperscript{53}

Shaffer attempted to "export th[e] communal quality of moral discourse"\textsuperscript{54} that he was able to cultivate in the clinical ethics seminars by including other students who were not enrolled in the clinic in some classes.\textsuperscript{55} Ethical dilemmas encountered in the clinic were a primary focus of discussion.\textsuperscript{56} This approach was not very successful. Professor Christine Venter, who taught some of these courses, explained:

[T]he dynamics are altered when facts have to be changed and identities concealed to protect confidentiality. . . . [Also], students who do not work actively with clients do not come to know the realities of clients' lives and problems.\textsuperscript{57}

Shaffer observed that "what we have proved with our clinical ethics seminars is that much more of legal education—maybe all of it—should be as 'hands on' as our law office ethics discussions are."\textsuperscript{58}

Unlike Shaffer and Millemann, Professor Hartwell uses simulation rather than clinical experience as the basis for reflective dialogue. He recently published an empirical study conducted over three semesters in professional responsibility classes on whether moral reasoning can be taught in a law school class.\textsuperscript{59} Hartwell's professional responsibility students filled out questionnaires that measured their moral reasoning in relationship to Kohlberg's stages of moral development at the beginning

\textsuperscript{53} \textit{Id.}
\textsuperscript{54} \textit{Id.} at 617.
\textsuperscript{55} See \textit{id.}
\textsuperscript{56} See \textit{id.}
\textsuperscript{57} \textit{Id.} (quoting Venter, \textit{supra} note 39, at 293 (footnote omitted)).
\textsuperscript{58} \textit{Id.}
\textsuperscript{59} See Hartwell, \textit{supra} note 31. In his article, Hartwell described the first of the three semesters in which he conducted the study. \textit{See id.} at 522-24. Hartwell made some changes to the course in the two subsequent semesters. \textit{See id.} at 524-26.
The courses included "a series of out-of-class attorney-client simulations in which the students confronted various ethical dilemmas. Some of the exercises were quite elaborate, involving four or more students meeting several times during the week." During the classes that followed these simulations, Hartwell divided the students into small groups and instructed them to engage in reflective discussions about the simulations and to construct rules that would address the ethical issues raised. The small groups then reported their results to the class. Hartwell spent over half of the semester's class time on these exercises.

During all three of the semesters in which Hartwell conducted the study, the students' scores on the moral development questionnaire, the Defining Issues Test (DIT), were substantially higher at the end of the semester than at the beginning of the semester. Reviewing the test results, Hartwell noted: "The DIT results indicate that the experientially taught professional responsibility courses significantly and positively influenced the level of moral reasoning of the students . . . . The positive change was maintained for at least four months after the end of [the third] course . . . ."

Professor Hartwell considered whether the impact on the students' moral reasoning would occur equally in other simulation courses. He administered the questionnaire to five other groups of students, some in his Negotiations course and others in his Interviewing & Counseling courses. The students' scores on the moral development questionnaire, the Defining Issues Test (DIT), were substantially higher at the end of the semester than at the beginning of the semester. Reviewing the test results, Hartwell noted: "The DIT results indicate that the experientially taught professional responsibility courses significantly and positively influenced the level of moral reasoning of the students . . . . The positive change was maintained for at least four months after the end of [the third] course . . . ."

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60. See id. at 511-12, 524.
61. Id. at 522-23.
62. See id. at 523.
63. See id.
64. See id.
65. See id. at 527. The DIT presents six different scenarios and asks questions about what moral reasoning would be most important in resolving each scenario. See id. at 511-12. The mean score for the first course was 51.8 at the beginning of the semester and 61.8 at the end. See id. at 524. For the second course, the mean score was 44.35 at the beginning of the semester and 58.37 at the end. See id. at 526. The mean score for the third course was 40 at the beginning of the semester and 50.2 at the end of the semester. See id. at 527. In each course, therefore, the students' average scores increased by at least 10 points by the end of the semester.
66. Id. at 527.
67. See id.
68. See id. Hartwell administered the test in the Negotiations course three times
scores on the moral reasoning assessment in these other courses did not change significantly from the beginning to the end of the semester.\textsuperscript{69} This result suggests that experiential learning without moral dialogue does not affect moral reasoning skills, whereas experiential learning coupled with moral dialogue may benefit moral reasoning skills.

Hartwell's study is exploratory rather than definitive, but it strongly suggests that students' moral reasoning capacity may be affected by experience in law school classes. In other words, perhaps virtue can be taught. Hartwell hypothesized that these classes "affect[ed] the students as significantly as they did" because they provided an opportunity for true "moral discourse."\textsuperscript{70} "In moral discourse," Hartwell explained, "the method is self-revelation and the goal is self-knowledge: students cooperate together to understand mutually what each is saying with the goal of revealing to themselves and others their moral positions and moral reasoning."\textsuperscript{71} He identified small group work, role-playing, and bonds of trust and affection between the students as ingredients that made moral discourse possible.\textsuperscript{72}

The Hartwell study invites us to learn more about whether and how moral reasoning and moral judgment\textsuperscript{73} can be taught in a law school environment. In addition to thinking about our teaching goals and about what methods will best accomplish our goals, we should attempt to assess the impact of our teaching, to find out whether, in fact, we have taught what we set out to teach.

\textsuperscript{69} See id. at 528.
\textsuperscript{70} Id. at 530.
\textsuperscript{71} Id. (footnote omitted).
\textsuperscript{72} See id. at 531-32. For another view on factors that contribute to the creation of a good learning environment for the teaching of professional responsibility, see Deborah L. Rhode, \textit{Into the Valley of Ethics: Professional Responsibility and Educational Reform}, \textit{Law & Contemp. Probs.}, Summer/Autumn 1995, at 139, 140-48.
\textsuperscript{73} Luban and Millemann argued that the focus in teaching ethics should be on the development of students' skill in moral judgment, which "represents the faculty of evaluating particulars," rather than moral reasoning, which involves "reasoning about principles." Luban \& Millemann, \textit{supra} note 1, at 83 n.186. Although Luban and Millemann had difficulty "imagining what an empirical index of moral judgment would be," \textit{id.} at 83, perhaps others will identify or create such an instrument and investigate the impact of teaching on students' moral judgment.
The panelists and many other speakers at the conference expressed different versions of a common view that legal ethics should be taught in small experientially-based seminars. Through the use of pedagogy that combines live-client or simulated learning with regular opportunity for critical reflective conversation and writing about the ethical issues, professors can lead students to engage much more deeply in thinking about ethical dilemmas. Through this process, students will develop their skills in moral reasoning and moral judgment.

Experientially-oriented ethics teaching is not just desirable; it is essential.74 This type of teaching, however, is so resource intensive that it is entirely out of step with the dominant structure of legal education in the United States. To understand how badly additional teaching resources are needed to teach ethics and professionalism, it is useful to explore some of the dynamics in law school culture and in large professional responsibility classes that make it difficult to teach the law governing lawyers or to engage the students in a moral dialogue.

A. Law School Culture: The Individual in the Educational Factory

With apologies to the real Charlotte,75 I suggest that we follow Charlotte after she grows up. Perhaps she will go to law school, following in her grandfather's footsteps. If the law school of 2015 is anything like our current institutions, Charlotte will arrive eager for the intellectual challenge, a little nervous about keeping up, but determined to do her very best. If offered the opportunity for moral discussion about the conduct of lawyers during her first semester of law school, Charlotte and her classmates may engage with real interest and openness.76 After her

74. Much recent discussion has focused on an observed decline in professionalism among lawyers and a need for law schools and bar associations to invest significant resources to address this problem. See, e.g., PROFESSIONALISM COMM., supra note 14.

75. See supra pp. 466-67.

76. I often introduce ethical issues into discussion of cases and problems in my first-semester contracts class. I have observed that the first-semester students respond with great interest to these discussions. Stephen Bundy, however, reported
first semester, Charlotte's interest in moral dialogue may decline gradually and be replaced by a cynical, instrumental view of lawyering. Meanwhile, she may develop a professional style that projects a high degree of poise and control and a noticeable absence of vulnerability. If this pattern develops, she may wait until her third year to take professional responsibility, focusing instead on more "serious" courses. Once enrolled in a legal ethics class, she may view the discussion of hypothetical problems as "mushy" and "indeterminate" and perhaps even "a waste of time."

What happened to Charlotte? Perhaps she abandoned some human perceptions and values in favor of some "legal" ones. Hartwell's simulation exercise suggests that becoming a lawyer for many students includes the acquisition of a kind of moral myopia, the donning of role-based blinders. Law students learn to screen out some facts as irrelevant. They become less concerned with context and more concerned with rule application. In their evaluation of what to do, they may restrict the questions they ask to those they believe are appropriate to their roles as lawyers.

that when he taught a legal ethics course to first-year students at Berkeley, he encountered some cynical and alienated students in first-year classes. See Bundy, supra note 4, at 25.

77. This description of the changes that might occur during law school is based on impressions of the changes that I have observed in some of my students. Research suggests that female law students, in particular, learn to think about problems in a more rule-oriented and less care-oriented manner than they did before they entered law school. See Sandra Janoff, The Influence of Legal Education on Moral Reasoning, 76 MINN. L. REV. 193, 194 n.3 (1995). Psychologist Sandra Janoff conducted a study on the change in the moral reasoning processes of male and female law students during their first year at Temple School of Law. See id. at 208-09. She concluded that:

Women enter law school predominantly oriented to the web of interpersonal relationships rather than to a hierarchy of abstract principles. However, after one year of learning about a structure that emphasizes rights and rules within a learning environment that is congruent with that content, women express their connectedness to others less frequently but their objectivity and separateness more frequently.

Id. at 238.


79. Professor Hartwell urged participants to read a book on lawyers and morality by Rand Jack and Dana Crowley Jack called MORAL VISION AND PROFESSIONAL DE-
roles of lawyers were reluctant to investigate possible misconduct by a fellow member of the bar or to think that the client's problem warranted serious attention.\textsuperscript{80}

Why? The students are not yet in practice, not yet constrained by professional or social relationships with the other lawyers at issue. Perhaps the disinclination is that the client has come to the lawyer seeking help on another matter, so the possible misconduct of the lawyer simply is not on the agenda.\textsuperscript{81} But perhaps their response reflects an acquired disinclination to care about what sounds like a complex personal problem.

For many students, going to law school is a rite of passage into adulthood. The students buy suits, get their hair cut, and learn how to project self-confidence. They learn to manage time, to reduce or eliminate frivolous activity, to build their resumes, and to measure up to external standards. They are taught mainly in large groups by teachers who may or may not know their names. Professors ask each student to read the same pages of the same books as scores of other students. Law professors grade exams anonymously and give little feedback on exam performance.

cisions: The Changing Values of Women and Men Lawyers (1989). The book reports the authors' study of lawyers' moral thinking through in-depth interviews with 36 lawyers. See id. at xi-xiii. The comments of the interviewed lawyers offer many examples of this kind of role-based thinking. One such example is a statement by Brent Stephens about his responsibility in representing a criminal defendant who had confessed to a murder:

You're the hired gun for this guy and you have the duty, obligation to represent him, which includes preparation of a defense to the charges. If there's a chance of excluding the confession, then you've got to do that. The other side of the dilemma I see is . . . of his dangerousness to society. I've never had too much trouble with that fact situation, because I didn't make the rules that you play by. The government did . . . .

Id. at 22-23 (quoting Brent Stephens).

80. See, e.g., supra pp. 467-69.

81. Professor Teresa Collett asked whether the students had prior training in client counseling and noted that in her course, in which students counsel terminally ill patients, "it takes at least a month to persuade the students that there is no unaskable question." Teresa Collett, Remarks at W.M. Keck Foundation Forum on the Teaching of Legal Ethics (Mar. 21, 1997). During the panel discussion, Hartwell reported that the students had some prior training in client counseling. With additional training, more of the students might have pursued the client's comment about her bad experience with her previous lawyer. Even so, the failure of many students to inquire into the matter and the claims of some students that the client had not spoken of her discomfort with the previous lawyer is significant.
The large class structure of legal education communicates an important institutional message to the students. The message is that individuals and their problems do not really matter. Consider the position of law professors as role models. Our students are our clients. For many students, law professors are the first lawyers they meet and observe. In our conduct toward our students, we model a set of values about the relationship of professional to client. Even before the students become lawyers and represent clients, they will mirror the values we model in their conduct toward us and toward one another. We do not teach in a way that respects individual identity. Should we be surprised, then, that the students' thinking becomes more rule-oriented and less care-oriented, or that they tend to pay too much attention to law and not enough attention to facts? Perhaps the structure of legal education is responsible for the observable decline in moral sensitivity among law students as they matriculate.

Some of the difficulties in teaching legal ethics may be caused by these problems in the institutional culture and value systems of our law schools. If we aspire to inculcate professionalism to assist students to remain or to become "moral persons," we need to pay more attention to individuals. The learning environment should be one that attends to the educational experience and the professional development of each student. The educa-

82. Professor Thomas Morgan urged that, although most of our students do not aspire to become law professors, they "do want to live a professional life of which they can be proud. The effort to do that is something that law teachers model—for better or worse. The traits we hope they model have been called by some writers 'virtues.'" Thomas D. Morgan, Law Faculty as Role Models, 1997 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO THE BAR 37, 38.

83. See Carrie J. Menkel-Meadow, Can a Law Teacher Avoid Teaching Legal Ethics?, 41 J. LEGAL EDUC. 3, 6-9 (1991) (discussing negative messages about ethics and professionalism communicated by law professors through conduct modeled in class).


85. See supra note 77.

86. See, e.g., supra pp. 467-69.

87. See supra text accompanying note 45.

88. Many other schools, colleges, and graduate programs focus on individual development. The Montgomery County Public Schools, for example, have a program titled "Success for Every Student" that includes initiatives to focus attention on cultivating
tional structure should foster cooperation, connection, and community. Curricular changes that increase opportunities for academic or professional counseling or for tutorial teaching humanize the law school environment. The growth of clinics, externship programs, and simulation courses has been beneficial. Law students, nevertheless, spend most of their class time in large classes. In those large classes, our "clients" receive little individual attention.

B. Academic Politesse: The Ordinary Deception of the Educational Factory

In many professional responsibility classes, the communication between teacher and students is obstructed by a dynamic we might call "academic politesse." The students pretend that they want to learn the material and that they are doing the reading, attending class regularly, and taking the course seriously. In reality, many of them are quite disengaged from the course. By their third year, law students are accustomed to

the skills, interests, and talents of each individual student in the public school system. See Dan Beyers, Schools Emphasize Test Scores, WASH. POST, Jan. 11, 1996, at Md. 1.

89. See supra text accompanying notes 42-43.

90. As of 1990, one survey reported that "clinical programs are generally available to only 30% of law students at schools where live client clinics are offered" and that "professional skills training occupies only nine (9%) percent of the total instructional time available to law schools." TASK FORCE ON LAW SCHOOLS AND THE PROFESSION, AMERICAN BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM 241 (1992); Marjorie Anne McDiarmid, What's Going on Down There in the Basement: In-House Clinics Expand their Beachhead, 35 N.Y.L. SCH. L. REV. 239, 280-81 (1990) (providing data illustrating the limited clinical space at most law schools).

91. In the spring semester of 1997, I taught a very demanding five-credit seminar in which the students were required to turn in reflective writing and other assignments every week. When students turned in assignments late, I brought their tardiness to their attention. The students commented to me about how different my expectations were from those of their other teachers. In my seminar, they had to do substantial work throughout the semester. I told them about my observation that in many classes the students and the teachers pretend that the students are doing the reading, while everyone really knows what is going on. They responded with a loud, embarrassed, collective guffaw. I do not know whether they were surprised that I knew about "academic politesse" or whether they were just surprised that I would mention it.
classes in which the teachers do not particularly care whether they do the reading or come to class and in which they can obtain passing grades by studying at the end of the semester. This pattern simply becomes more pronounced in professional responsibility classes than in other upper-level courses.

Some teachers tacitly concur in this "academic politesse" as a kind of survival strategy. They might have students sign up to participate in the discussion on particular days or call on students predictably, going down the rows in the classroom so that each day five percent of the class will be on notice of the need actually to do the reading. Other teachers rely principally on students who volunteer to participate and spend the semester in dialogue with the ten percent of the students who are unusually conscientious or interested in the course.

Deliberate deception of teachers is common in law school classes, including ethics classes. The student who is unprepared when called on, but who attempts to bluff her way through a dialogue is engaged in deception. So is the student who sits in a different seat to feign absence when unprepared. So is a student who sits in one class trying to appear to be engaged, but who in fact is reading her assignment for her next class. Some law students attend class very little, feeling that they have better things to do. Those who know that class attendance is required are also engaged in a kind of chronic deception.

A teacher who pretends not to notice that students are not doing the reading or are not attending class enables the deception. This kind of behavior conveys a confusing message, which

92. Law teachers express this lack of concern in different ways. Some law teachers take the position that the students are adults, and as adults they are responsible for making their own decisions about whether to read or come to class. As long as they are prepared to accept the consequences, they can make their own decisions. Other law teachers articulate some distress about the low level of attendance and preparation, but despair of any possibility of affecting it. A typical attitude expressed is that: "Everyone knows third-year students do not study very much." A third variant is a law teacher who believes that his responsibility simply is to present the material. He has better things to do than to worry about whether the students are doing their homework.

93. The academic rules of every accredited law school require class attendance for students to receive credit for a course. See STANDARDS FOR APPROVAL OF LAW SCHOOLS Standard 304(c) (1996) (requiring regular class attendance).
the students perceive quite clearly. If it were stated, it would go something like this:

I am giving you reading assignments for each class, and I know that most of you are not going to do the reading, at least not more than skimming the material, which will not enable even a minimal understanding of it. I don't want to embarrass you or myself, so I will structure class in a way that will not expose the unprepared majority. You will help me by being sure to do the reading on those few days when you are “on deck,” and I will leave you alone otherwise.

This is similar to a message that students receive during and after law school about the ethical rules and about the law that governs lawyers. If stated, it would go something like this:

There are all these formalistic ethical rules, and, of course, we in the legal profession are supposed to comply with them, but some of them are ridiculous. Take the “tattle-tale” rule for example. Almost no one turns in another lawyer. It would be professional suicide. Or turning in your client if he lies on the stand? Hah. Do you think you would ever get your fee? You have to know the difference between the real rules and the fluff. Stay away from your trust account and you'll be okay.

Because professional responsibility classes deal with ethical issues, “academic politesse” produces an extra layer of awkwardness between the teacher and the students. The patterns of low attendance and preparation are more conspicuous in these classes than in others. Also, because the course examines issues of professional conduct, the teachers tend to want students to conduct themselves in a professional manner by reading and coming to class. Often there is sharp divergence between the teacher's expectations and the students' conduct. If the teacher calls attention to the students' poor performance, she risks increasing the level of cynicism and alienation. But if the teacher avoids overt attention to low levels of attendance and preparation for

class, she is colluding in the pretense. The structure of the situation, to say the least, is not conducive to meaningful teaching.

In addition to the unspoken deception that occurs in professional responsibility classes, sometimes there is overt cynicism. In some classes, there is a group in the back of the classroom, usually men: the “peanut gallery.” Their self-appointed task is to throw verbal tomatoes during class. They deride conversations about values and treat the law governing lawyers as if it was not law, but just advice given by sissies. In one of my classes, for example, I was leading a discussion of an ABA Formal Opinion on lawyer billing practices. 95 I pointed out the assertion in the opinion that billing two clients for one block of time is unethical. 96 “That can’t be right,” blurted a voice from the back of the room. “I know that’s okay, because people at my firm do that all the time.” Other students agreed. I experienced a familiar bind. An argumentative student had made a categorical, though incorrect, assertion. His buddies backed him up. My options were 1) to expose the flaws in his reasoning, 2) to acknowledge the familiar gap between law and practice, or 3) to invite the rest of the class to comment on this statement. None of the available options could remedy the tension and hostility, visible in this comment, that was produced by requiring unwilling students to sit through this course during their last semester of law school.

Some students express their resentment about being required to take professional responsibility by chattering during class. In one class the back row became so noisy that I left a note in the mailbox of one student who appeared to be a ringleader.

“Come see me at once,” it said. He did.
“I feel as if I’ve been called to the principal’s office,” he said.
“You have,” I said.
“I assume you want to graduate?” I asked.
“I do,” he said.
“Then I assume you want to stay in my class?” I asked.
“Of course,” he said.
“If you want to stay in my class, you need not only to stop

96. See id.
your own disruptive behavior, but to get your friends to cut it out also.”

“I’m sorry,” he said. His fiancee was a teacher; I think he understood my situation. When confronted with my reaction to his behavior, he acceded to my request. The chatter stopped. I found this nose-to-nose confrontation refreshing. I spoke candidly to the student about what I observed; he acknowledged the problem. We abandoned “academic politesse” and stepped into a more direct relationship.

Overcoming “academic politesse” is an important challenge for teachers of professional responsibility. One way to achieve this goal is to evaluate student performance throughout the semester, to make the students accountable for their class preparation and participation in the course. Any meaningful evaluation of students in a large class is a time-intensive proposition. Ministerial monitoring, on the other hand, by asking students to turn in attendance records or reading logs, does not lead to any meaningful engagement between teacher and student and may be perceived as patronizing. The choices are not satisfactory. The only good option is to teach professional responsibility to smaller classes.

C. Implementing Expensive Ideas with Limited Resources

The economics of legal education is premised on a high student/teacher ratio. This works particularly badly in the teaching of ethics. Even so, the institutional structure is such that curricular reform in this arena is difficult. Like teaching law students to write well, most law professors agree that teaching legal ethics is important, but few schools are willing to commit the necessary resources.

A law faculty that wishes to upgrade its ethics curriculum might retain or expand the current required ethics course to ensure broad exposure to the law governing lawyers. It might also add to the curriculum a second ethics course—an experientially-oriented seminar—in which the primary goal would be the development of moral sensitivity and moral judgment through dialogue about live or simulated lawyering experience. The primary focus would be on ethical issues raised in simulation, in live-client experience, or in fieldwork at organizations outside the law
school. To offer such a seminar to a class of 300 students, a law school would need to offer twenty sections of the seminar. The coverage of these two courses would require a commitment of the equivalent of five or six full-time faculty.97

Serious thinking about the educational goals of the teaching of professional responsibility leads to recommendations that cannot be implemented without substantial additional resources. One cannot set meaningful teaching goals without thinking about their implementation. After confronting the boundaries imposed by limited resources, the goals must be reshaped to fit the available resources. At most schools, the best scenario for the development of the legal ethics curriculum will be incremental change. Here are a few options that could be implemented by the initiative of one or two law teachers.

Teach an ethics course to clinic students: Propose to teach professional responsibility to students enrolled in a clinic in collaboration with the teacher who supervises the students’ work. Construct the seminar around the issues that arise in the clinic, attending at the same time to coverage of a predetermined body of material.98

Teach an ethics course in an externship seminar: Many schools give academic credit to a large number of students who do fieldwork at legal organizations in their communities. Many schools offer seminars to foster reflective discussion and writing about the field experience. Even if the students are in diverse placements, the fieldwork provides a body of lawyering experience on which an ethics teacher might draw to better engage a group of students.99

97. This assumes each full-time teacher could teach four sections of the seminar per year. A possible alternative, of course, would be to hire adjuncts to teach these seminars, perhaps trained and supervised by a full-time teacher. This might solve the resources problem but would be unlikely to allow the pedagogical quality that can be cultivated over years by full-time faculty whose teaching is a central focus of their work.

98. Most clinical courses are structured to encourage careful attention to ethical dilemmas that arise in cases. This work could be done more effectively in combination with a course designed to teach the law governing lawyers more systematically. Also, some clinical teachers tend to focus on the counseling, strategic, or supervisory aspects of ethical dilemmas and may not be as aware of the relevant law as an ethics teacher would be. For an example of this different emphasis, see A Teacher’s Trouble: Risk, Responsibility and Rebellion, 2 CLINICAL L. REV. 315 (1995).

99. A forthcoming book from West Publishing, which I coauthored, presents teach-
Teach a Professional Responsibility class with limited enrollment: It is more possible to conduct simulation exercises and to facilitate moral dialogue in a class of thirty students than in a class of eighty. A law school that cannot afford to offer all of its ethics classes in seminar format might allow a teacher to offer an experimental small section of professional responsibility.

Teach an ethics seminar in conjunction with a simulation course: Students in trial advocacy or negotiation courses inevitably encounter ethical issues in the course of their work. Many simulation courses have such a heavy skill-development agenda that there is not enough time or credit to focus readings, discussion, and reflective writing around exploration of the ethical issues. A piggybacking arrangement (in which an ethics course is paired with a simulation course) could provide a resource-efficient method of expanding the experiential teaching of legal ethics.

Teach a specialized Professional Responsibility course: Professor Bruce Green of Fordham University School of Law explained in his presentation at the conference some of the many benefits of developing specialized ethics courses. A substantive focus may better promote moral judgment through experiential learning. Narrowing the coverage agenda allows more time for experiential classroom exercises. In addition, giving students a selection of specialized legal ethics courses from which to choose may increase motivation and reduce the sense of coercion that erodes the learning environment in many professional responsibility classes. A specialized course may draw a lower enrollment, another pedagogical boon.

CONCLUSION

As a profession, we express our aspirations in our codes of ethics. Some of our most important goals as educators of lawyers are relegated to implementation through the teaching of courses on the legal profession and on the law governing lawyers. To

ing materials that could be used in an externship seminar. See J.P. Ogilvy et al., Learning From Practice: A Professional Development Text for Legal Externs (forthcoming 1998).

100. See Bruce Green, Remarks at the W.M. Keck Foundation Forum on the Teaching of Legal Ethics (Mar. 21, 1997).
teach our students to become "reflective practitioners" who retain and develop their moral perception and their moral judgment, law schools must encourage the pervasive teaching of legal ethics. They must invest additional resources in the development of the ethics curriculum to include a set of smaller classes in which students can engage in moral dialogue about live or simulated lawyering experience.