

## A Human Rights Code of Conduct: Ambitious Moral Aspiration For a Public Interest Law Office or Law Clinic

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## ARTICLES

### **A HUMAN RIGHTS CODE OF CONDUCT: AMBITIOUS MORAL ASPIRATION FOR A PUBLIC INTEREST LAW OFFICE OR LAW CLINIC**

LAUREN E. BARTLETT<sup>†</sup>

#### INTRODUCTION

Incivility and unethical behavior in the legal profession have long been topics of concern in the United States.<sup>1</sup> In recent years, many state and local bar associations, as well as the American Bar Association (“ABA”), have taken steps to address incivility, including adopting professional rules, amending lawyers’ oaths of office, and more.<sup>2</sup> Yet current events continue

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<sup>1</sup> See LAWYERS’ ETHICS AND THE PURSUIT OF SOCIAL JUSTICE: A CRITICAL READER 46, 49 (Susan D. Carle ed., 2005) (discussing the development of lawyers’ ethical rules and values); Carol Rice Andrews, *Standards of Conduct for Lawyers: An 800-Year Evolution*, 57 SMU L. REV. 1385, 1389 (2004); Eli Wald & Russell G. Pearce, *Being Good Lawyers: A Relational Approach to Law Practice*, 29 GEO. J. LEGAL ETHICS 601, 602–03, 608–11 (2016) (discussing the bar leaders and scholars’ complaints regarding the “decline, betrayal, or death of the legal profession” for more than a generation); see also Jeremiah Ho, *Civility Matters*, HUMAN RIGHTS AT HOME BLOG (Apr. 4, 2017), [http://lawprofessors.typepad.com/human\\_rights/2017/04/civility-matters.html](http://lawprofessors.typepad.com/human_rights/2017/04/civility-matters.html).

<sup>2</sup> See David A. Grenardo, *Making Civility Mandatory: Moving from Aspired to Required*, 11 CARDOZO PUB. L. POL’Y & ETHICS J. 239, 242 (2013); Cheryl B. Preston & Hilary Lawrence, *Incentivizing Lawyers To Play Nice: A National Survey of Civility Standards and Options for Enforcement*, 48 U. MICH. J.L. REFORM 701, 707–08 (2015). For a list of civility and professionalism codes enacted at the state and local level across the United States, see *Professionalism Codes*, ABA, <http://www.>

to test limits of tolerance for incivility and unethical behavior.<sup>3</sup> What is more, too many lawyers are unhappy and unhealthy in the legal profession, which has been tied to ethics and integrity.<sup>4</sup> In these difficult times for the legal profession, moral aspiration,<sup>5</sup> or the hope or ambition for high ethical integrity, is incredibly important.<sup>6</sup>

Lawyers seek moral aspiration from a variety of sources, including other lawyers,<sup>7</sup> religion, and cultural norms.<sup>8</sup> They

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americanbar.org/groups/professional\_responsibility/resources/professionalism/professionalism\_codes.html (last updated Mar. 2017) [hereinafter ABA Professionalism Codes].

<sup>3</sup> See, e.g., Matea Gold, *White House Grants Ethics Waivers to 17 Appointees, Including Four Former Lobbyists*, WASH. POST (May 31, 2017), <https://www.washingtonpost.com/news/post-politics/wp/2017/05/31/white-house-grants-ethics-waivers-to-17-appointees-including-four-former-lobbyists/>; Andrew Kent, *Legal Ethics Questions for Trump's Personal Lawyer*, LAWFARE (June 12, 2017, 2:32 PM), <https://lawfareblog.com/legal-ethics-questions-trumps-personal-lawyer>.

<sup>4</sup> See Jeena Cho, *Why Are Lawyers So Unhappy?*, ABOVE THE LAW (Aug. 1, 2016, 2:32 PM), <http://abovethelaw.com/2016/08/why-are-lawyers-so-unhappy/> ("Recent research from the American Bar Association suggests that lawyers are really unhappy."); Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy?: A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554, 623 (2015).

<sup>5</sup> See LON L. FULLER, *THE MORALITY OF LAW* 3–13 (rev. ed. 1969); see also WILLIAM H. SIMON, *THE PRACTICE OF JUSTICE: A THEORY OF LAWYERS' ETHICS* 1–25 (1998); Susan Wolf, *Ethics, Legal Ethics, and the Ethics of Law*, in *THE GOOD LAWYER: LAWYERS' ROLES AND LAWYERS' ETHICS* 38, 38–59 (David Luban ed., 1983) [hereinafter *THE GOOD LAWYER*]; *Aspiration*, MERRIAM-WEBSTER DICTIONARY (9th ed. New Collegiate Dictionary 1989) ("A strong desire to achieve something high or great.").

<sup>6</sup> See Wald & Pearce, *supra* note 1, at 613–16 (discussing the need for a relational self-interest approach to law practice that includes additional values such as honesty, trust, cooperation, and a consideration of the public good).

<sup>7</sup> Some lawyers look to their colleagues, mentors, or friends, as role models. Other lawyers look to celebrity lawyers such as Erin Brokovich or Johnnie Cochran as role models. See, e.g., Melissa L. Breger, Gina M. Calabrese, & Theresa A. Hughes, *Teaching Professionalism in Context: Insights from Students, Clients, Adversaries, and Judges*, 55 S.C. L. REV. 303, 308, 318–21 (2003) (discussing lawyers as professionalism role models for law students and using the Erin Brockovich movie in class to teach and model professionalism); Michael Asimow, *Popular Culture and the Adversary System*, 40 LOY. L.A. L. REV. 653, 668–85 (2007) (discussing pop culture and its role in shaping legal professionalism); André Douglas Pond Cummings, *Pushing Weight*, 33 T. MARSHALL L. REV. 95, 108 (2007) ("To African American lawyers around the nation, Johnnie Cochran was a role model and trail blazer."). Still, others look to fictional lawyers as role models, such as Atticus Finch, Alicia Florrick, or Perry Mason. See Christopher Ryan, *No Longer Perry Mason: How Modern American Television's Portrayal of Attorneys Shifts Public Opinion*, 17 U. DENV. SPORTS & ENT. L.J. 133, 150 (2015) (discussing the portrayal of Alicia Florrick in the context of professionalism and lawyers' civility); Asimow, *supra*, at 673 ("I believe that we sit at the feet of that revered teacher of trial advocacy, the

also seek the rules, standards, and guidance applicable to lawyers in the United States.<sup>9</sup> This Article offers an alternative source for moral aspiration for lawyering<sup>10</sup>—human rights—and suggests establishing a human rights code of conduct in a public interest<sup>11</sup> law office or law clinic to create a dignified, respectful, and safe space, and to hold colleagues, students, and others, to high ethical standards. The idea of a human rights code of conduct for a law office or law clinic builds on recent scholarship applying human rights principles to *lawyering*.<sup>12</sup> In addition,

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greatest lawyer role model who ever lived: the immortal Perry Mason.”). *See generally*, Thomas L. Shaffer, Essay, *The Moral Theology of Atticus Finch*, 42 U. PITT. L. REV. 181 (1981).

<sup>8</sup> DEBORAH L. RHODE & GEOFFREY C. HAZARD, JR., PROFESSIONAL RESPONSIBILITY AND REGULATION 4 (2d ed. 2007).

<sup>9</sup> *See infra* Part III.

<sup>10</sup> For the purposes of this Article, *lawyering* will be used to refer to the behavior and decision making, of a lawyer or lawyers. Regarding a definition of *lawyering*, the term is widely used, yet there has been little written on either its origins or on proposed definitions. Josiah M. Daniel, III, *A Proposed Definition of the Term “Lawyering,”* 101 L. LIBR. J. 207, 207 (2009). This may be because “[e]veryone seems to know what it means.” *Id.* One proposed definition of *lawyering* is:

[T]he work of a specially skilled, knowledgeable, or experienced person who, serving by mutual agreement as another person’s agent, invokes and manipulates, or advises about, the dispute-resolving or transaction-effectuating processes of the legal system for the purpose of solving a problem or causing a desired change in, or preserving, the *status quo* for his or her principal.

*Id.* at 215 (emphasis omitted). The term *lawyering* was first used in 1676 by William Wycherley in his play “The Plain Dealer.” WILLIAM WYCHERLEY, *THE PLAIN-DEALER* act. 4, sc. 1 (1676).

<sup>11</sup> The author of this Article has chosen to focus on human rights codes of conduct specifically for public interest law firms or law clinics. There is a movement—and accompanying scholarship—encouraging the development of human rights codes of conduct at corporate law firms and other businesses. *See infra* Part II.A.5. In addition, while a human rights code of conduct could be developed by an office for government attorneys, those codes would look quite different, because government officials are bound by human rights law. *See, e.g.*, *Filartiga v. Pena-Irala*, 630 F.2d 876, 878 (2d Cir. 1980) (holding a government official from Paraguay responsible for violations of human rights law in Paraguay).

<sup>12</sup> The National Economic Social Rights Initiative (“NESRI”) has done some deep thinking on this and developed an internal document regarding the same. *See generally* HUMAN RIGHTS, SOCIAL JUSTICE AND STATE LAW: A MANUAL FOR CREATIVE LAWYERING, NAT’L ECON. & SOC. RTS. INITIATIVE (2008), [https://www.nesri.org/sites/default/files/Human\\_rights\\_social\\_justice.pdf](https://www.nesri.org/sites/default/files/Human_rights_social_justice.pdf). In addition, there has been some scholarship on this concept. *See, e.g.*, Caroline Bettinger-Lopez et al., *Redefining Human Rights Lawyering Through the Lens of Critical Theory: Lessons for Pedagogy and Practice*, 18 GEO. J. POVERTY L. & POL’Y 337, 384 (2011) (describing a proposal by a law student in the Columbia Human Rights Clinic that suggests

this idea follows the recent proliferation of corporations choosing to adopt social justice and human rights related codes of conduct.<sup>13</sup>

A human rights code of conduct provides practical, consistent, and significant ways to apply human rights principles to lawyering. Modeled loosely after professionalism codes or civility codes across the United States,<sup>14</sup> a human rights code of conduct draws on human rights principles and provides ambitious moral aspiration for attorneys and law students. A human rights code of conduct provides practical guidance for navigating difficult ethical dilemmas, without necessitating additional regulation. A human rights code of conduct also promotes attorney and law student happiness and helps the reputation of the legal profession as a whole.

Part I of this Article argues that the lack of moral aspiration in legal ethics rules helps contribute to unhappy and unhealthy law students and lawyers, undermining the legal profession. Part II reviews the existing rules and standards that guide the ethical behavior of lawyers in the United States, arguing that all too often the binding rules focus on providing guide posts, signaling where behavior is unacceptable and disciplinary action is possible, instead of providing moral aspiration and options or next steps to describe what a lawyer *should* do to deal with an ethical dilemma.

Part III of this Article argues that human rights principles—the concepts of morality underlying human rights law—provide ambitious moral aspiration that lawyers can look to for guidance in navigating ethical dilemmas. Part III explains both what human rights principles are and how human rights principles can be a good source of moral aspiration for attorneys and law students.

Part IV argues why human rights principles are an appropriate source of moral aspiration for lawyering. Part V of this Article discusses the idea of drafting and adopting a human rights code of conduct and provides sample human rights codes of conduct, as well as suggestions for leading efforts to adopt a human rights code of conduct at a law office or law clinic.

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adopting eleven principles to guide the ethical behavior of international human rights lawyers).

<sup>13</sup> See *infra* Part II.A.5.

<sup>14</sup> See Preston & Lawrence, *supra* note 2, at 707.

## I. A LACK OF MORAL ASPIRATION UNDERMINES THE LEGAL PROFESSION

The legal profession is in the midst of a “crisis of professionalism” and has been for some time.<sup>15</sup> Bar leaders, legal practitioners, and scholars have put forward various arguments as to how the profession got itself into such a mess and why the crisis persists.<sup>16</sup> Criticisms vary and include the widespread lack of morality among lawyers,<sup>17</sup> bad reputation of attorneys,<sup>18</sup> types of personalities attracted to the law,<sup>19</sup> need to amend the ethical rules and standards that currently govern the behavior of

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<sup>15</sup> See, e.g., Wald & Pearce, *supra* note 1, at 603 (“crisis of professionalism”); Nicola A. Boothe-Perry, *Standard Lawyer Behavior? Professionalism as an Essential Standard for ABA Accreditation*, 42 N.M. L. REV. 33, 36 (2012) (“crisis of professionalism”); Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1340 (1997) (discussing the “tripartite crisis” of professionalism, an increase in lawyer unprofessional behavior, the public opinion of lawyers dropping greatly, and lawyer dissatisfaction with careers); David Luban & Michael Millemann, *Good Judgment: Ethics Teaching in Dark Times*, 9 GEO. J. LEGAL ETHICS 31, 31 (1995) (discussing “how to teach legal ethics during the legal profession’s self-perceived crisis of professionalism”).

<sup>16</sup> See, e.g., Wolf, *supra* note 5; SIMON, *supra* note 5, at 15; Russell G. Pearce, *The Legal Profession as a Blue State: Reflections on Public Philosophy, Jurisprudence, and Legal Ethics*, 75 FORDHAM L. REV. 1339, 1341 (2006) [hereinafter Pearce, *Blue State*]; Heidi Li Feldman, *Codes and Virtues: Can Good Lawyers Be Good Ethical Deliberators?*, 69 S. CAL. L. REV. 885, 885 (1996); Maura Strassberg, *Taking Ethics Seriously: Beyond Positivist Jurisprudence in Legal Ethics*, 80 IOWA L. REV. 901, 904 (1995); Fred C. Zacharias, *Reconciling Professionalism and Client Interests*, 36 WM. & MARY L. REV. 1303, 1305–06 (1995); Geoffrey C. Hazard, Jr., Address, *Legal Ethics: Legal Rules and Professional Aspirations*, 30 CLEV. ST. L. REV. 571, 574 (1981) [hereinafter *Professional Aspirations*].

<sup>17</sup> See, e.g., Paula Schaefer, *Harming Business Clients with Zealous Advocacy: Rethinking the Attorney Advisor’s Touchstone*, 38 FLA. ST. U. L. REV. 251, 281 (2011); Pearce, *Blue State*, *supra* note 16, at 1342 (arguing that the dominating liberal public philosophy emphasizing individual freedom and self-interest over a commitment to the public good and other moral values has led to the current crisis of professionalism).

<sup>18</sup> See, e.g., Russell G. Pearce, *The Professionalism Paradigm Shift: Why Discarding Professional Ideology Will Improve the Conduct and Reputation of the Bar*, 70 N.Y.U. L. REV. 1229, 1260–61 (1995) [hereinafter Pearce, *The Professionalism Paradigm Shift*] (discussing complaints by commentators outside of the legal profession that lawyers undermine the public interest as they manipulate the legal system for their own advantage and that of their clients).

<sup>19</sup> Wolf, *supra* note 5, at 52 (“When a law is made, the cunning that finds loopholes goes to work. We cannot deny that there is a certain slyness . . . , a slyness which, when rules are written to prevent slyness, makes use of the rules themselves.”) (quoting Yasunari Kawabata).

lawyers,<sup>20</sup> failure of law schools to instill the proper values in their graduates,<sup>21</sup> and more.<sup>22</sup> There is agreement among attorneys and others outside of the law both that there is a low public perception of the morality of lawyers<sup>23</sup> and that the moral decisions made by lawyers during the course of legal representation are incredibly important.<sup>24</sup>

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<sup>20</sup> See, e.g., Martha F. Davis, *Human Rights and the Model Rules of Professional Conduct: Intersection and Integration*, 42 COLUM. HUM. RTS. L. REV. 157, 158 (2010) (arguing for the inclusion of human rights principles in the ABA Model Rules of Professional Conduct).

<sup>21</sup> See, e.g., Russell G. Pearce, *MacCrate's Missed Opportunity: The MacCrate Report's Failure to Advance Professional Values*, 23 PACE L. REV. 575, 593 (2003) [hereinafter Pearce, *MacCrate's Missed Opportunity*] (“[L]egal ethics is the dog of the law school [curriculum]—hard to teach, disappointing to take, and often presented to vacant seats or vacant minds.”) (internal quotations omitted); Roger C. Cramton & Susan P. Koniak, *Rule, Story, and the Commitment in the Teaching of Legal Ethics*, 38 WM. & MARY L. REV. 145, 146 (1996) (“[L]egal ethics remains an unloved orphan of legal education.”).

<sup>22</sup> See, e.g., DAVID LUBAN, *THE ETHICS OF LAWYERS* xii (1993) (“There are some things rats just won’t do.”); see also John Toulmin, *Ethical Rules and Professional Ideologies*, in *LAWYERS’ PRACTICE AND IDEALS: A COMPARATIVE VIEW* 379–80 (John J. Barceló III & Roger C. Cramton eds., 1999) (arguing that attorneys in other countries are not held in such low esteem morally as those in the United States and stating “[t]here can be no disguising the fear, particularly in civil law countries and Japan, that they will be overrun by the ‘Tendence Anglo-Saxon’ and that the low esteem in which lawyers are held in the United States will spread to other countries”); Aaron Blake, *Donald Trump’s Attack on Hillary Clinton for Defending an Accused Child Rapist, Explained*, WASH. POST (Oct. 10, 2016), [https://www.washingtonpost.com/news/the-fix/wp/2016/10/09/why-donald-trump-just-attacked-hillary-clinton-for-defending-an-accused-child-rapist-explained/?utm\\_term=.67b52beb6efd](https://www.washingtonpost.com/news/the-fix/wp/2016/10/09/why-donald-trump-just-attacked-hillary-clinton-for-defending-an-accused-child-rapist-explained/?utm_term=.67b52beb6efd) (discussing questions of morality and Hilary Clinton’s defense of a “child rapist” that came up during the 2016 presidential race in the United States).

<sup>23</sup> See, e.g., Wolf, *supra* note 5, at 39; *Public Perceptions of Lawyers Consumer Research Findings*, 2002 A.B.A. SECTION OF LITIG. 4 (2002), [http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/public\\_perception\\_of\\_lawyers\\_2002.pdf](http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/public_perception_of_lawyers_2002.pdf) (“Americans say that lawyers are greedy, manipulative and corrupt . . . . Americans also believe that lawyers do a poor job of policing themselves.”); Leonard E. Gross, *The Public Hates Lawyers: Why Should We Care?*, 29 SETON HALL L. REV. 1405, 1405–07 (1999) (discussing arguments for new regulations of attorney conduct in the context of the low public image of lawyers); see also Michele DeStefano Beardslee, *Advocacy in the Court of Public Opinion, Installment Two: How Far Should Corporate Attorneys Go?*, 23 GEO. J. LEGAL ETHICS 1119, 1135 (2010) (arguing that lawyers’ behavior must improve to improve the public perception of lawyers); Pearce, *Blue State*, *supra* note 16, at 1364–65; Pearce, *The Professionalism Paradigm Shift*, *supra* note 18, at 1260–61 (discussing complaints by commentators outside of the legal profession that lawyers undermine the public interest as they manipulate the legal system for their own advantage and that of their clients).

<sup>24</sup> See THOMAS L. SHAFFER & ROBERT F. COCHRAN, JR., *LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY* 1 (1994) (“Moral decisions during legal representation are

There is also agreement that, much like the priest or the doctor, the attorney as a *professional* must have moral aspiration.<sup>25</sup> This does not mean that all attorneys must be heroes or saints.<sup>26</sup> This would be, as Professor Monroe Freedman put it, “too easy to preach and too hard to practice.”<sup>27</sup> However, it is widely recognized that striving for integrity and to make highly ethical decisions is part and parcel of what it means to be a professional and a good lawyer.<sup>28</sup>

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important for several reasons.”); Pearce, *MacCrate’s Missed Opportunity*, *supra* note 21, at 575–77.

<sup>25</sup> For the purposes of this Article, moral aspiration is defined as ambitions for highly ethical behavior. See Bernard Williams, *Professional Morality and Its Dispositions*, in *THE GOOD LAWYER*, *supra* note 5, at 259, 259–69; SIMON, *supra* note 5, at 1–2.

<sup>26</sup> Jonathan A. Rapping, *It’s a Sin to Kill a Mockingbird: The Need for Idealism in the Legal Profession*, 114 MICH. L. REV. 847, 855–56 (2016) (“[T]hose truly admirable lawyers who, at great personal sacrifice, have dedicated their entire professional lives to fighting for social justice.”) (quoting Monroe Freedman, Opinion, *Atticus Finch, Esq., R.I.P.*, LEGAL TIMES, Feb. 24, 1992).

<sup>27</sup> See *id.* at 856.

<sup>28</sup> See Williams, *supra* note 25, at 259–69; Carle, *supra* note 1, at xiii–xv. It should also be noted that the study of legal ethics and professional responsibility takes up much space in both the law and philosophy academic worlds. There is a large biannual international legal ethics conference organized by the International Association of Legal Ethics and attended by both law scholars and philosophers, which was last held at Fordham University School of Law in 2016. See *ILEC Conferences*, INT’L ASS’N OF LEGAL ETHICS, <http://www.iaole.org/conferences> (last visited Feb. 24, 2018). There are also many centers on legal ethics housed at law schools across the country. See, e.g., *Jacob Burns Center for Ethics in the Practice of Law*, CARDOZO LAW, <https://cardozo.yu.edu/programs-centers/jacob-burns-center-ethics-practice-law> (last visited Feb. 24, 2018); *Center for Legal Ethics and Professionalism*, MERCER UNIV. SCH. OF LAW, <https://law.mercer.edu/academics/centers/clep> (last visited Feb. 24, 2018); *Stein Center for Law and Ethics*, FORDHAM UNIV. SCH. OF LAW, [https://www.fordham.edu/info/20698/stein\\_center\\_for\\_law\\_and\\_ethics](https://www.fordham.edu/info/20698/stein_center_for_law_and_ethics) (last visited Feb. 24, 2018); *Center for Law and Ethics*, UNIV. S.F. SCH. OF LAW, <https://www.usfca.edu/law/academics/centers/law-and-ethics> (last visited Feb. 24, 2018). In addition, there are a good number of law reviews and journals dedicated to publishing scholarship on legal ethics. See, e.g., *Georgetown Journal of Legal Ethics*, <http://www.law.georgetown.edu/academics/law-journals/gjle/index.cfm> (last visited Feb. 24, 2018); *Cardozo Public Law, Policy & Ethics Journal*, <https://cardozo.yu.edu/faculty-intellectual-life/journals/cardozo-public-law-policy-and-ethics-journal> (last visited Feb. 24, 2018); *Notre Dame Journal of Law, Ethics & Public Policy*, <http://scholarship.law.nd.edu/ndjlepp> (last visited Feb. 24, 2018); *St. Mary’s Law Journal on Legal Malpractice & Ethics*, <http://www.stmaryslawjournal.org/journal-legal-malpractice-ethics> (last visited Feb. 24, 2018).



In addition to the crisis of professionalism, the legal profession is also grappling with another crisis. Its members are experiencing high rates of depression, substance abuse,<sup>29</sup> and dissatisfaction.<sup>30</sup> Moreover, these crises are linked. Lawyers need moral aspiration to be happy, healthy, productive members of society.

A recent study has shown that without moral aspiration, attorneys and law students are less happy and less productive.<sup>31</sup> Specifically, attorney happiness is strongly linked to intrinsic values and internal purpose.<sup>32</sup> When attorneys place high priority on values such as integrity in their work, they are happier.<sup>33</sup> What is more, human happiness strongly correlates to health, and work performance.<sup>34</sup> The unhappy attorney is therefore less healthy and less productive.<sup>35</sup>

The current lack of moral aspiration is undermining the legal profession, perpetuating unhappiness and health problems that unhappy attorneys face.<sup>36</sup> If attorneys and law students do not find additional sources of moral aspiration, it is likely that the legal profession will continue to face major hurdles in trying to end both its mental health crisis and its crisis of professionalism.<sup>37</sup>

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<sup>29</sup> See Patrick R. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among Attorneys*, 10 J. ADDICTION MED. 46, 51 (2016) (finding high “rates of hazardous, harmful, and potentially alcohol dependent drinking”). See generally Jerome M. Organ et al., *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students To Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116 (2016).

<sup>30</sup> See, e.g., Jerome M. Organ, *What Do We Know About the Satisfaction/Dissatisfaction of Lawyers? A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being*, 8 U. ST. THOMAS L.J. 225, 268 (2011).

<sup>31</sup> See Krieger & Sheldon, *supra* note 4, at 581–82 (discussing the importance of intrinsic values for attorney well-being—also defined as happiness—and the significance of intrinsic values for professionalism and ethical behavior).

<sup>32</sup> See *id.* at 623.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 622.

<sup>35</sup> *Id.* at 622–23.

<sup>36</sup> See *id.* at 557–58 (discussing the disproportionate number of unhappy people in the legal profession, as well as the reported high levels of emotional distress, dissatisfaction, and drug and alcohol addiction).

<sup>37</sup> See *id.* at 623–25.

## II. EVIDENCE THAT MORAL ASPIRATION IS LACKING IN THE LEGAL PROFESSION

This Part of the Article analyzes the current ethical rules, standards, and guidelines that apply to lawyering in the United States, arguing that additional sources of moral aspiration are needed for the legal profession.

### A. *U.S. Ethical Rules, Standards, and Guidance for the Legal Profession*

#### 1. Lawyer's Oaths

A lawyer's oath of office is a formal promise to observe the ethical or other obligations of the profession.<sup>38</sup> Each lawyer in the United States must take an oath of office upon admission to the bar of a particular state.<sup>39</sup> The lawyer's oath of office was, at one time, the principal form of ethical regulation for lawyers.<sup>40</sup> However, the lawyer's oath is often overlooked among the various forms of ethics regulation available,<sup>41</sup> and lawyer's oaths are only sometimes subject to enforcement in the United States.<sup>42</sup> For the most part, lawyer's oaths are merely a "rite of passage," marking

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<sup>38</sup> GEOFFREY C. HAZARD, JR. & ANGELO DONDI, *LEGAL ETHICS: A COMPARATIVE STUDY* 60 (2004).

<sup>39</sup> Carol Rice Andrews, *The Lawyer's Oath: Both Ancient and Modern*, 22 *GEO. J. LEGAL ETHICS* 3, 4 (2009).

<sup>40</sup> *Id.* at 4–5.

<sup>41</sup> *Id.*

<sup>42</sup> California, Iowa, Ohio, Minnesota, Montana, South Carolina, and Wisconsin all provide for discipline of attorneys for violating the oath of office. See Amelia Craig Cramer et al., *Civility for Arizona Lawyers: Essential, Endangered, Enforceable*, 6 *PHX. L. REV.* 465, 476 (2013); RULES OF PROCEDURE OF THE STATE BAR OF CAL. tit. II, standard 2.12 (2017), [https://www.calbar.ca.gov/Portals/0/documents/rules/Rules\\_Title5\\_Procedure.pdf](https://www.calbar.ca.gov/Portals/0/documents/rules/Rules_Title5_Procedure.pdf); IOWA SUPREME COURT ATTORNEY DISCIPLINARY BD. RULES OF PROCEDURE ch. 35 (2016), <https://www.legis.iowa.gov/docs/ACO/CR/LINC/08-31-2016.chapter.35.pdf>; SUPREME COURT RULES FOR THE GOV'T OF THE BAR OF OHIO § 35(J) (2017), <http://www.supremecourt.ohio.gov/LegalResources/Rules/govbar/govbar.pdf> ("Misconduct" means any violation by a judicial officer or an attorney of any provision of the oath of office . . ."); MINN. STAT. ANN. § 481.15 (West 2017); MONT. CODE ANN. § 37–61–301(2)(b) (West 2009).

Alaska, Hawaii, and Missouri do not provide for discipline of attorneys for violations of the oath of office. See ALASKA BAR RULES r. 15 (2018), <http://www.courtrecords.alaska.gov/webdocs/rules/docs/bar.pdf>; HAW. SUP. CT. R. 2.2 (2017); MO. SUPREME COURT RULES, r. 4-8.4 (2012), <http://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/a51eedab3cdc362b86256ca6005211ec?OpenDocument>.

the transition to licensed attorney, and should not be considered meaningful beyond that or a source for ethical principles to guide the practice of law.<sup>43</sup>

In many states, the lawyer's oath is short and does not specifically reference ethical principles or the Rules of Professional Conduct.<sup>44</sup> These short oaths are very similar, if not identical, to the oaths of office taken by other public officials, including non-attorneys such as legislators and clerks of court.<sup>45</sup>

In a few states, the lawyers' oaths mention aspirational ethical principles.<sup>46</sup> For example, in Alaska, California, Hawaii, Missouri, and Ohio, the lawyer's oath specifically requires lawyers to conduct themselves with dignity at all times or toward all other persons.<sup>47</sup> The Colorado attorney's oath stands out by

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<sup>43</sup> See Andrews, *supra* note 39, at 4.

<sup>44</sup> See, e.g., WYO. CONST. art. VI, § 20; DEL. CODE ANN. tit. 10, § 1907 (West 2017); 705 ILL. COMP. STAT. ANN. 205/4 (West 2017); MISS. CODE ANN. § 73-3-35 (West 2017); MONT. CODE ANN. § 37-61-207 (West 2017); NEB. SUP. CT R. § 3-128(A) (amended Nov. 30, 2016); TENN. SUP. CT. R. 6; ATT'Y OATH OF OFFICE STATE OF AL., <https://www.alabar.org/assets/uploads/2015/03/WEBSITE-Oath-of-Office.pdf> (last visited Feb. 24, 2018); N.J. L. REVISION COMM'N, FINAL REPORT RELATING TO OATHS AND AFFIDAVITS 4 (Mar. 1999), <http://www.lawrev.state.nj.us/oaths/oaths0399-060513.pdf>; N.Y. STATE BAR ASS'N, THE PRACTICE OF LAW IN NEW YORK STATE 19 (Sept. 2015), <http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=51103>; *Oath of Office*, N.M. SEC'Y OF STATE, [http://www.sos.state.nm.us/Business\\_Services/Oath\\_of\\_Office.aspx](http://www.sos.state.nm.us/Business_Services/Oath_of_Office.aspx) (last visited Feb. 24, 2018); *Oath of Office*, N.D. STATE GOV'T, <http://www.nd.gov/eforms/Doc/sfn11501.pdf> (last visited Feb. 24, 2018); *Utah Oath of Office*, UTAH OFFICE OF THE ATT'Y GEN., <http://attorneygeneral.utah.gov/meet-sean/utah-oath> (last updated Sept. 26, 2017); *Oaths of Public Officials*, W. VA. SEC'Y OF STATE, [https://sos.wv.gov/public-services/execrecords/appointments/Pages/Oaths\\_of\\_PublicOfficials.aspx](https://sos.wv.gov/public-services/execrecords/appointments/Pages/Oaths_of_PublicOfficials.aspx) (last visited Feb. 24, 2018).

<sup>45</sup> Compare 28 U.S.C. § 951 (2012), with *Attorney-oath*, SUPREME COURT OF GA., <http://www.gasupreme.us/rules/amendments-to-rules/attorney-oath/> (last updated Apr. 22, 2002). See Tom Kranovich, *Upon Taking the Oath: More Than Magic Words*, OR. ST. B. BULL. (Nov. 2014), <https://www.osbar.org/publications/bulletin/14nov/president.html>.

<sup>46</sup> See, e.g., WIS. SUP. CT. R. 40.15 (2017); *Oath of Admission to the Florida Bar*, FLA. BAR, <https://www.floridabar.org/wp-content/uploads/2017/04/oath-of-admission-to-the-florida-bar-ada.pdf> (last visited Feb. 24, 2018); *Rules for Admission to the Bar and the Discipline of Attorneys*, INDIANA RULES OF COURT r. 22, [http://www.in.gov/judiciary/rules/ad\\_dis/#\\_Toc439239768](http://www.in.gov/judiciary/rules/ad_dis/#_Toc439239768) (last updated Jan. 1, 2018); *Rules of Admission to the Bar of the Vermont Supreme Court*, VT. SUPREME COURT [https://www.vermontjudiciary.org/sites/default/files/documents/900-00014.Rules\\_Admission.Bar\\_.pdf](https://www.vermontjudiciary.org/sites/default/files/documents/900-00014.Rules_Admission.Bar_.pdf) (last visited Feb. 24, 2018).

<sup>47</sup> CAL. BUS. & PROF. CODE § 6068 (West 2018); CAL. CT. R. 9.7 (2018) (amending the California Oath to include: "[a]s an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity"); HAW. SUP. CT. R. 1.5 (1984) ("I will conduct myself with dignity and civility towards judicial officers, court staff, and my fellow professionals."); MO. SUP. CT. R. 8.15 (2003) ("That

specifically requiring respect for “all persons whom I encounter through my practice of law.”<sup>48</sup> No other state’s lawyer’s oath requires respect for all persons.

## 2. Rules of Professional Conduct

The Rules of Professional Conduct are enforceable rules or black letter laws enacted state by state as mechanisms for implementing and enforcing the fundamental principles of morality in the legal profession.<sup>49</sup> It is through these Rules that the theories of legal ethics and the norms intended to govern the behavior of lawyers are put into enforceable law.<sup>50</sup> These Rules

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I will maintain the respect due courts of justice, judicial officers and members of my profession and will at all times conduct myself with dignity . . . .”); *Alaska Bar Rules: Rule 5*, ALASKA DEPT OF ADMIN., [http://doa.alaska.gov/opa/pdfs/20121010\\_conference\\_criminal/alaska-bar-rule-5-oath.pdf](http://doa.alaska.gov/opa/pdfs/20121010_conference_criminal/alaska-bar-rule-5-oath.pdf) (“I will uphold the honor and maintain the dignity of the profession, and will strive to improve both the law and the administration of justice.”); *Journalist Handbook*, OHIO ST. BAR ASS’N, [https://www.ohiobar.org/General%20Resources/pub/journalists/legalhandbook/osba\\_handbook\\_section\\_13\\_07.pdf](https://www.ohiobar.org/General%20Resources/pub/journalists/legalhandbook/osba_handbook_section_13_07.pdf) (last visited Feb. 24, 2018) (“I will conduct myself with dignity and civility and show respect toward judges, court staff, clients, fellow professionals, and all other persons.”); see also *The Supreme Court of South Carolina Order RE: Amendment to Rule 402, SCACR.*, S.C. JUDICIAL DEPT (Oct. 22, 2003), <http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2003-10-22-03> (“I will maintain the dignity of the legal system . . . .”).

<sup>48</sup> *Colorado Attorney Oath of Admission*, COLO. BAR ASS’N, <http://www.cobar.org/For-Members/Committees/Professionalism-Coordinating-Council#oath> (last visited Feb. 24, 2018). In addition, Colorado does not seem to include violations of the oath of office as grounds for discipline of attorneys.

<sup>49</sup> See Russell G. Pearce & Eli Wald, *Rethinking Lawyer Regulation: How a Relational Approach Would Improve Professional Rules and Roles*, 2012 MICH. ST. L. REV. 513, 515 n.10; Davis, *supra* note 20, at 159; Carle, *supra* note 1, at 19; Andrews, *supra* note 1, at 1451–53; see also Peter Geraghty, *ABA Adopts New Anti-discrimination Rule 8.4(g)*, ABA: EYE ON ETHICS (Sept. 2016), <http://www.americanbar.org/publications/youraba/2016/september-2016/aba-adopts-anti-discrimination-rule-8-4-g-at-annual-meeting-in.html>. But see, e.g., OHIO RULES OF PROF’L CONDUCT pml. ¶ 14 (“Some of the rules are imperatives, cast in the terms ‘shall’ or ‘shall not.’ These define proper conduct for purposes of professional discipline. Others, generally cast in the term ‘may,’ are permissive and define areas under the rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other rules define the nature of relationships between the lawyer and others. The rules are thus partly obligatory and disciplinary and partly constitutive and descriptive . . . .”). The same language can be found in the ABA Model Rules of Professional Conduct. See MODEL RULES OF PROF’L CONDUCT pml. ¶ 14 (AM. BAR ASS’N 2014).

<sup>50</sup> See MODEL RULES OF PROF’L CONDUCT pml. ¶ 19 (AM. BAR ASS’N 2014).

focus on providing a baseline for ethical lawyering,<sup>51</sup> and today, each state has adopted its own binding Rules of Professional Conduct.<sup>52</sup>

The Rules of Professional Conduct are enforced through a system of self-governance by the state's highest court, usually through an advisory board or committee consisting of licensed members of the bar of that state.<sup>53</sup> These rules are binding, and punitive measures are applied when lawyers fail to adhere to the Rules.<sup>54</sup> For example, lawyers that commit a transgression can be subject to license suspension, fines, and disbarment.<sup>55</sup> Disciplinary actions against lawyers are also made public, and the public shaming can have a bigger impact than any other action.<sup>56</sup>

In terms of moral aspiration, the Rules have little to offer. The development and adoption of the Rules has followed the efforts of the American Bar Association, as described further in Part II.A.3 below.<sup>57</sup> The states, or rather the colonies, started out with a mixture of binding and nonbinding ethical rules and codes

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<sup>51</sup> See Carle, *supra* note 1, at xiv.

<sup>52</sup> *Links of Interest*, ABA, [http://www.americanbar.org/groups/professional\\_responsibility/resources/links\\_of\\_interest.html#States](http://www.americanbar.org/groups/professional_responsibility/resources/links_of_interest.html#States) (providing a list of links to the Rules of Professional Conduct for each individual U.S. state).

<sup>53</sup> See DAVID LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* xxvii–xxviii (1988) [hereinafter *LAWYERS & JUSTICE*]; Debra Moss Curtis, *Attorney Discipline Nationwide: A Comparative Analysis of Process and Statistics*, 35 J. LEGAL PROF. 209, 209 (2011) (reviewing the rules, methods, and systems of attorney discipline used in each U.S. state); see also Alex B. Long, *Lawyers Intentionally Inflicting Emotional Distress*, 42 SETON HALL L. REV. 55, 110 (2012) (discussing potential sanctions for attorney misconduct, as well as systems for attorney discipline in the United States); Judith A. McMorrow et al., *Judicial Attitudes Toward Confronting Attorney Misconduct: A View from the Reported Decisions*, 32 HOFSTRA L. REV. 1425, 1465–66 (2004); Thomas D. Morgan, *Sanctions and Remedies for Attorney Misconduct*, 19 S. ILL. U. L.J. 343, 343–44 (1995); Sarah A. Hirsch, Note, *The Illusive Consistency: A Case for Adopting the ABA Standards for Imposing Lawyer Sanctions in In re Martin*, 40 S.D. L. REV. 300, 300 (1995) (discussing inconsistencies in sanctioning among jurisdictions for attorney misconduct and the need for adoption of ABA Standards for uniformity purposes).

<sup>54</sup> See sources cited *supra* note 53.

<sup>55</sup> See McMorrow et al., *supra* note 53, at 1465–66, 1469; Morgan, *supra* note 53, at 343–44; Hirsch, *supra* note 53, at 300, 314–15.

<sup>56</sup> See McMorrow et al., *supra* note 53, at 1426, 1465–66; see also Leslie C. Levin, *The Emperor's Clothes and Other Tales About the Standards for Imposing Lawyer Discipline Sanctions*, 48 AM. U. L. REV. 1, 4–6 (1998) (arguing for public sanctions for attorneys to promote “protection of the administration of justice and preservation of confidence in the legal profession”).

<sup>57</sup> See Andrews, *supra* note 1, at 1423.

for lawyers, much of which was “lofty in aspiration” and impractical.<sup>58</sup> Aspiration was then largely removed from the Rules in the 1960s and 1970s, leaving only the enforceable legal obligations.<sup>59</sup>

### 3. Model Rules of Professional Conduct

The ABA Model Rules of Professional Conduct (“ABA Model Rules”) are “professional standards that serve as models of the regulatory law governing the legal profession” in the United States.<sup>60</sup> The ABA Model Rules guide the development and adoption of the Rules of Professional Conduct state by state.<sup>61</sup> In turn, the development of the ABA Model Rules, as well as the prior Canons and the Model Rules of Professional Responsibility, has been guided by big ethics scandals, including Watergate and Enron.<sup>62</sup> Today, all fifty states have adopted some form of the ABA Model Rules.<sup>63</sup>

The ABA Model Rules were not always meant to be entirely enforceable through disciplinary proceedings.<sup>64</sup> The Model Rules originally included purposefully unenforceable aspirational standards,<sup>65</sup> and those aspirational standards were not unlike the human rights principles introduced in this Article. A brief look at the history of the legal ethics regulation in the United States provides some insight into how the aspiration was taken out of the Model Rules.

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<sup>58</sup> Geoffrey C. Hazard, Jr., *Rules of Legal Ethics: The Drafting Task*, 36 REC. ASS'N B. N.Y.C. 77, 80 (1981).

<sup>59</sup> See *id.*; Andrews, *supra* note 1, at 1443–46.

<sup>60</sup> *Model Rules of Professional Conduct: Preface*, ABA, [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_preface.html](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preface.html) (last visited Feb. 24, 2018).

<sup>61</sup> RHODE & HAZARD, *supra* note 8, at 9; see also Davis, *supra* note 20, at 159; Andrews, *supra* note 1, at 1439.

<sup>62</sup> See, e.g., SIMON, *supra* note 5, at 14 (“The contemporary prominence of professional responsibility issues dates from the Watergate scandal.”); Sean J. Griffith, *Afterward & Comment, Towards an Ethical Duty to Market Investors*, 35 CONN. L. REV. 1223, 1225–26 (2003) (discussing a reshaping of the lawyer’s role in light of the Enron and WorldCom scandals).

<sup>63</sup> See STATE ADOPTION OF THE ABA MODEL RULES OF PROFESSIONAL CONDUCT AND COMMENTS, ABA: CPR POLICY IMPLEMENTATION COMMITTEE (May 2011), [https://www.americanbar.org/content/dam/aba/events/labor\\_law/2013/03/ethics\\_professionalresponsibilitycommitteemidwintermeeting/14pro\\_conduct.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/events/labor_law/2013/03/ethics_professionalresponsibilitycommitteemidwintermeeting/14pro_conduct.authcheckdam.pdf).

<sup>64</sup> SIMON, *supra* note 5, at 14–15; LAWYERS & JUSTICE, *supra* note 53, at xxvii; *Professional Aspirations*, *supra* note 16, at 572.

<sup>65</sup> LAWYERS & JUSTICE, *supra* note 53, at xxvii; *Professional Aspirations*, *supra* note 16, at 572.

“The practice of law dates back over two millennia,”<sup>66</sup> yet the first comprehensive legal ethics code was not adopted in the United States until the late 1800s.<sup>67</sup> In 1908, the ABA approved the first national ethics code—the ABA Canons of Professional Ethics—and the Canons remained in force for over 60 years.<sup>68</sup> The Canons were a relatively short list of ethical pronouncements.<sup>69</sup>

In 1969, the ABA Model Code of Professional Responsibility was adopted.<sup>70</sup> The Code was more thorough than the Canons, and some said too long and confusing.<sup>71</sup> It had three parts: “Canons,” “Disciplinary Rules,” and “Ethical Considerations.”<sup>72</sup> The “Canons” and “Ethical Considerations” sections both contained broad statements of principle that were characterized as “aspirational”—guidelines for behavior that lawyers could strive to comply with, but would not be disciplined for failing to attain.<sup>73</sup>

After vigorous arguments from thoughtful practitioners and professors such as Geoffrey C. Hazard, Jr., who had valid concerns about the confusion of both obligatory provisions and aspirational provisions in the Code, the ABA mostly put aside aspiration in favor of a model of black letter law for ethical regulation.<sup>74</sup> This was an important development for the legal profession, and scholars noted the shift on the perception of legal ethics both by practicing attorneys and judges, disciplinary counsel, and at law schools.<sup>75</sup>

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<sup>66</sup> RHODE & HAZARD, *supra* note 8, at 13.

<sup>67</sup> See *Model Rules of Professional Conduct: Preface*, *supra* note 60 (noting that the American Bar Association’s original Canons of Professional Ethics were based on the Code of Ethics adopted by the Alabama Bar Association in 1887); see also Susan D. Carle, *Lawyers’ Duty To Do Justice: A New Look at the History of the 1908 Canons*, 24 LAW & SOC. INQUIRY 1, 8–10 (1999); Hazard, *supra* note 58, at 78–80. But see Andrews, *supra* note 1, at 1388 (discussing the ethics laws of the original thirteen colonies).

<sup>68</sup> CANONS OF PROF’L ETHICS (AM. BAR ASS’N 1908); *Model Rules of Professional Conduct: Preface*, *supra* note 60.

<sup>69</sup> See generally CANONS OF PROF’L ETHICS (AM. BAR ASS’N 1908).

<sup>70</sup> MODEL RULES OF PROF’L RESPONSIBILITY (AM. BAR ASS’N 1969).

<sup>71</sup> See *Professional Aspirations*, *supra* note 16, at 572–73.

<sup>72</sup> *Id.* at 572.

<sup>73</sup> See *id.*

<sup>74</sup> See *id.* at 574.

<sup>75</sup> See SIMON, *supra* note 5, at 15.

Then, in 1983, the ABA adopted a successor to the Model Code, the ABA Model Rules.<sup>76</sup> The Rules were derived from the “Disciplinary Rules” section of the Code and were meant to provide “rules of the lawyer’s legal obligations and not expressions of hope as to what a lawyer ought to do.”<sup>77</sup>

Since the adoption of the ABA Model Rules, the focus of the regulation of lawyering has been on the black letter rules and law, and little attention, overall, has been paid to broader consideration of ethical or moral aspiration in legal practice.<sup>78</sup> However, recently there have been some small exceptions to the focus on enforceable rules, at the state and local level, as discussed below.

#### 4. State and Local Civility Codes

In addition to the lawyers’ oaths, state regulations, and the ABA Model Rules discussed above, there are guiding principles adopted by state and local bar associations that are designed to influence civility and professionalism in the practice of law by legal professionals within that jurisdiction.<sup>79</sup> There are over 140 state and local bar associations that have adopted civility or professionalism codes or creeds since the mid-1980s.<sup>80</sup>

These civility codes each contain a set of nonbinding, voluntary, and aspirational principles that are meant to guide lawyers and judges towards high professional standards.<sup>81</sup> “The guidelines are intended to cover a lawyer’s professional dealings with clients, other counsel, third parties, the court and the public.”<sup>82</sup> For example, the Supreme Court of Ohio’s *Professional Ideals for Lawyers and Judges* states:

[I]t is not the Court’s intention to regulate or to provide additional bases for discipline, but rather to facilitate the promotion of professionalism among Ohio’s lawyers, judges and legal educators. It is the Court’s hope that these individuals,

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<sup>76</sup> *Model Rules of Professional Conduct: Preface*, *supra* note 60.

<sup>77</sup> *Professional Aspirations*, *supra* note 16, at 574.

<sup>78</sup> See SIMON, *supra* note 5, at 15.

<sup>79</sup> See Grenardo, *supra* note 2; Preston & Lawrence, *supra* note 2, at 707–08; ABA Professionalism Codes, *supra* note 2.

<sup>80</sup> See Grenardo *supra* note 2, at 242.

<sup>81</sup> See Preston & Lawrence, *supra* note 2, at 728.

<sup>82</sup> Scott B. Garner, *Attorney Civility: When Zealous Advocacy Crosses the Line*, ST. B. CAL. (May 2016), [http://apps.calbar.ca.gov/mcleselfstudy/mcle\\_home.aspx?testID=109](http://apps.calbar.ca.gov/mcleselfstudy/mcle_home.aspx?testID=109).



their professional associations, law firms and educational institutions will utilize the creed and the aspirational ideals as guidelines for this purpose.<sup>83</sup>

Ohio emphasizes here that it is trying to promote aspirational ideals as guidelines for lawyers, judges, and legal educators. This is not unlike the purpose of a human rights code of conduct, which are also meant to promote aspirational goals across the state.<sup>84</sup>

The contents of these civility codes vary widely, though they typically emphasize guidance for dealing with other attorneys and the courts, filling in where the Rules of Professional Conduct are silent.<sup>85</sup> The news related to the civility codes has largely dealt with attorneys mistreating each other,<sup>86</sup> as opposed to the human rights code of conduct's emphasis on civility between clients and attorneys.<sup>87</sup> Civility, or rather incivility, between attorneys, and attorneys and judges, has been the main impetus for these codes.<sup>88</sup> However, like the human rights codes of conduct, some of the civility codes specifically mention respect and nondiscrimination towards clients and other participants in the legal process.<sup>89</sup>

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<sup>83</sup> PROFESSIONAL IDEALS FOR LAWYERS AND JUDGES, SUP. CT. OHIO 3, <https://www.supremecourt.ohio.gov/Publications/AttySvcs/proIdeals.pdf> (last updated July 2017).

<sup>84</sup> See Justine Nolan, *Refining the Rules of the Game: The Corporate Responsibility To Respect Human Rights*, 30 UTRECHT J. INT'L & EUR. L. 7, 13 (2014) (stating that human rights initiatives are a compilation of aspirational goals whose strength depends on the support and enforcement of the people within the organization).

<sup>85</sup> See, e.g., *Civility Code of the San Bernardino County Bar Association and The Hon. Joseph B. Campbell American Inn of Court*, SAN BERNARDINO CTY. BAR ASS'N, <http://www.sbcbca.org/civility-code> (last visited Feb. 24, 2018); LA. SUP. CT. R. pt. G § 11; *Standards for Civility in Professional Conduct*, IDAHO STATE BAR 441-42 (2001), [https://isb.idaho.gov/wp-content/uploads/standards\\_for\\_civility.pdf](https://isb.idaho.gov/wp-content/uploads/standards_for_civility.pdf); *Professional Courtesy Code*, EVANSVILLE BAR ASS'N, <https://www.evvbar.org/members/professional-courtesy-code.aspx> (last updated Apr. 13, 2017); PROFESSIONAL IDEALS FOR LAWYERS AND JUDGES, *supra* note 83, at 5-8.

<sup>86</sup> See, e.g., Garner, *supra* note 82.

<sup>87</sup> See *infra* Part III.C.

<sup>88</sup> See, e.g., *Code of Civility Guidelines*, L.A. CTY. BAR ASS'N, <http://www.lacba.org/resources/tools-documents/civility-guidelines> ("[W]e must treat each other with courtesy, respect, dignity and professional integrity."). See also Preston & Lawrence, *supra* note 2, at 704-05.

<sup>89</sup> See, e.g., *Lawyer's Creed and Aspirational Statement on Professionalism*, ST. BAR GA., <https://www.gabar.org/aboutthebar/lawrelatedorganizations/cjcp/lawyers-creed.cfm> (last visited Feb. 24, 2018). *But see* LA. SUP. CT. R. (making no mention of clients or third parties).

These civility codes provide good models for the human rights codes of conduct proposed by this Article. A human rights code of conduct is meant to be aspirational, voluntary, and nonbinding. In addition, a human rights code of conduct is meant to promote high standards of professionalism, just as stated in Ohio's *Professional Ideals for Lawyers and Judges*.<sup>90</sup>

For the most part, the civility codes discussed herein have gotten little attention, and most attorneys are unaware of their state's civility code.<sup>91</sup> Unlike the lawyers' oath and the Rules of Professional Conduct, the civility codes were adopted many years ago, then shelved and largely forgotten.<sup>92</sup> Let this be a lesson for the human rights codes of conduct. If the human rights codes of conduct proposed in this Article are to be useful, they must not be shelved, but instead displayed prominently throughout the office, specifically mentioned during intake and supervision meetings, discussed with clients and coworkers on a daily basis, and not forgotten.

#### 5. Law Office Codes of Conduct

The last source of guiding ethical principles discussed in this Article can be found at the law-office level: law office codes of conduct. The idea of an office-level code of conduct, like the human rights code of conduct proposed by this Article, is not at all a new concept. Many legal employers have office policies that are meant to guide behavior of personnel, including mission statements, guiding principles, human resources protocols, training programs, and more.<sup>93</sup> Some law firms have internal

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<sup>90</sup> See PROFESSIONAL IDEALS FOR LAWYERS AND JUDGES, *supra* note 83.

<sup>91</sup> See Preston & Lawrence, *supra* note 2, at 714 ("We suspect that adopted professionalism creeds are not given much attention in a few jurisdictions.")

<sup>92</sup> See *id.* at 714 n.74.

<sup>93</sup> See generally, *The Fabric of Our Firm: Code of Conduct*, MCDERMOTT, WILL & EMERY (2014), <http://viewer.zmags.com/publication/f5aebb3c#/f5aebb3c/1>; *The People Who Make It Happen*, CABRINI GREEN LEGAL AID, [cgla.net/about](http://cgla.net/about) (last visited Feb. 24, 2018); *About NLADA*, NAT'L LEGAL AID & DEFENDER ASS'N, <http://www.nlada.org/about-nlada> (last visited Feb. 24, 2018). Law schools and undergraduate educational institutions also often have their own student codes of conduct, though these tend to focus solely on academic integrity. See, e.g., *Student Code of Conduct*, OHIO N. UNIV. PETTIT COLL. OF LAW 3-7 (last revised Nov. 18, 2013), [http://law.onu.edu/sites/default/files/student\\_code\\_of\\_conduct\\_rev\\_nov\\_18\\_2013.pdf](http://law.onu.edu/sites/default/files/student_code_of_conduct_rev_nov_18_2013.pdf); *Law School Code of Conduct*, TEMPLE UNIV. BEASLY SCH. OF LAW 4-6 (last updated Mar. 17, 2017), <http://www.law.temple.edu/site/wp-content/uploads/Temple-Law-Law-School-Code-of-Conduct.pdf>; *Honor Code for the Washington College of*

policies and programs related to diversity and inclusion, work-life balance, public service commitments, and more.<sup>94</sup> Other law firms have adopted their own codes of conduct to demonstrate and promote commitment to higher standards than those currently in the rules of ethical and professional responsibility.<sup>95</sup> These codes of conduct are not, however, based in human rights, with the exception of the law firms described below. Instead, most law firms' codes of conduct focus on reiterating the binding Rules of Professional Conduct, teamwork, and inclusion, as well as protecting employees against retaliation.<sup>96</sup>

Recently, a movement has started among law firms to adopt human rights codes of conduct.<sup>97</sup> This movement has been a long time in the making. Since the early 1990s, when NGOs and human rights organizations began pushing for corporate social responsibility, corporations across the world have adopted codes of conduct which include adherence to human-rights standards.<sup>98</sup>

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*Law*, AM. UNIV. 1, 3–9, <https://www.wcl.american.edu/here/student-life/studentaffairs/documents/honor-code> (last visited Feb. 24, 2018).

<sup>94</sup> See, e.g., *Diversity*, ROPES & GRAY, <https://www.ropesgray.com/firm/diversity.aspx> (last visited Feb. 24, 2018); *Vision and Values*, BAKER DONELSON, <https://www.bakerdonelson.com/Vision-and-Values> (last visited Feb. 24, 2018). See Noam Scheiber, *A Woman-Led Law Firm That Lets Partners Be Parents*, N.Y. TIMES (May 1, 2015), <https://www.nytimes.com/2015/05/03/business/a-woman-led-law-firm-that-lets-partners-be-parents.html> (discussing a law firm with internal policies that are centered around being “family-friendly”); David Lat, *The Best Law Firms for Diversity (2017)*, ABOVE THE LAW (July 20, 2016, 3:16 PM), <http://abovethelaw.com/2016/07/the-best-law-firms-for-diversity-2017> (providing a list of law firms that have internal policies promoting diversity); see also, *Find a B Corp*, B LAB, [https://www.bcorporation.net/community/find-a-b-corp?search=&field\\_industry=Legal&field\\_city=&field\\_state=&field\\_country](https://www.bcorporation.net/community/find-a-b-corp?search=&field_industry=Legal&field_city=&field_state=&field_country) (last visited Feb. 24, 2018) (providing a list of thirty-seven law firms and other legal entities that have become B Corps and thereby adopted corporate declarations of solidarity with environmental and social justice goals).

<sup>95</sup> *The Fabric of Our Firm*, *supra* note 93, at 4; see *Values and Code of Conduct*, THE HAGGARD LAW FIRM, <http://www.haggardlaw.com/values-and-code-of-conduct> (last visited Feb. 24, 2018); *Code of Conduct*, MAZZOLA LAW FIRM, <http://mazzola-lawfirm.com/code-of-conduct> (last visited Feb. 24, 2018). For a similar code in the accounting context, see *Living our Purpose and Values, PwC's Code of Conduct*, PRICEWATERHOUSECOOPERS, <http://www.pwc.com/gx/en/about/ethics-business-conduct/code-of-conduct.html> (last visited Feb. 24, 2018).

<sup>96</sup> See, e.g., *The Fabric of Our Firm*, *supra* note 93, at 4, 7, 14.

<sup>97</sup> LAW FIRM BUSINESS AND HUMAN RIGHTS PEER LEARNING PROCESS: EMERGING PRACTICE, INSIGHTS AND REFLECTIONS 4–5 (Nov. 2016), <http://www.allenoverly.com/SiteCollectionDocuments/Law%20Firm%20BHR%20Peer%20Learning%20Process%20Report.PDF> [hereinafter LAW FIRM BUSINESS].

<sup>98</sup> William Bradford, *Beyond Good and Evil: The Commensurability of Corporate Profits and Human Rights*, 26 NOTRE DAME J.L. ETHICS & PUB. POL'Y 141, 156–57

At this point, it is more likely than not that a major corporation will claim it adheres to human rights standards.<sup>99</sup> This in no way means that the corporations with human rights codes of conduct are honoring their commitments,<sup>100</sup> however, which is how law firms became involved—providing legal representation to corporations being sued for human rights violations.<sup>101</sup>

As corporate clients were increasingly pushed to demonstrate respect for human rights, law firms have also begun feeling pressure to implement policies as well.<sup>102</sup> The pressure on law firms to adopt human rights policies has recently increased further with the adoption of the United Nations Guiding Principles on Business and Human Rights, as well as the International Bar Association's new International Principles on Conduct for the Legal Profession, and other tools, described below.<sup>103</sup>

Top international law firms have taken steps to establish human rights codes of conducts and other programs<sup>104</sup> and more are likely to follow in their footsteps, especially given that many

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(2012); Sonia Gioseffi, Note, *Corporate Accountability: Achieving Internal Self-Governance Through Sustainability Reports*, 13 CORNELL J.L. & PUB. POL'Y 503, 503–04 (2004).

<sup>99</sup> Bradford, *supra* note 98, at 157; David Kinley & Junko Tadaki, *From Talk to Walk: The Emergence of Human Rights Responsibilities for Corporations at International Law*, 44 VA. J. INT'L L. 931, 953 (2004). For examples of Business Codes of Conduct, see OUR VALUES AND CODE OF CONDUCT, PROCTOR & GAMBLE 1, 15, [http://www.pg.com/content/pdf/01\\_about\\_pg/01\\_about\\_pg\\_homepage/about\\_pg\\_toolbar/download\\_report/values\\_and\\_code\\_of\\_conduct.pdf](http://www.pg.com/content/pdf/01_about_pg/01_about_pg_homepage/about_pg_toolbar/download_report/values_and_code_of_conduct.pdf) (last visited Feb. 24, 2018) (“P&G is committed to universal human rights, particularly those of employees, communities in which we operate, and parties with whom we do business.”); THE COCA-COLA HUMAN RIGHTS POLICY, COCA COLA (2017), <http://www.coca-colacompany.com/content/dam/journey/us/en/private/fileassets/pdf/2014/11/human-rights-policy-pdf-english.pdf> (“[I]n our Company and across our system, we are committed to ensuring that people are treated with dignity and respect.”); *Human Rights Statement*, PFIZER [http://www.pfizer.com/responsibility/workplace\\_responsibility/human\\_rights\\_statement](http://www.pfizer.com/responsibility/workplace_responsibility/human_rights_statement) (last visited Feb. 24, 2018) (“Pfizer fully supports the principles in United Nations Declaration on Human Rights and the International Labour Organization Declaration on Fundamental Principles and Rights at Work, and strives to uphold human rights in all our business activities.”).

<sup>100</sup> See Bradford, *supra* note 98, at 158 (“[F]ew scrupulously honor their commitment.”).

<sup>101</sup> Gioseffi, *supra* note 98, at 517 (discussing lawsuits filed against corporations for human rights violations).

<sup>102</sup> LAW FIRM BUSINESS, *supra* note 97, at 7.

<sup>103</sup> See *infra* Part II.B.

<sup>104</sup> For a list of top law firms that have publicly committed to working towards the U.N. sustainable development goals, see *Legal Partners*, ADVOCATES FOR INT'L DEV., <http://www.a4id.org/about-us/legal-partners> (last visited Feb. 24, 2018).

firms are incentivized to implement their commitments as they increasingly find themselves in the business of providing legal advice regarding corporate social responsibility.<sup>105</sup>

*B. International Ethical Rules, Standards, and Guidance for the Legal Profession*

In addition to the U.S.-based rules and guidance for lawyers described above, there have been several attempts at the international level to form “the ethical consensus of the legal community.”<sup>106</sup> With the exception of the code for lawyers of the European Union, each of the codes and guidelines discussed below is voluntary and nonbinding.

1. United Nations Guiding Principles on Business and Human Rights

In June 2011, the United Nations Human Rights Council endorsed The United Nations Guiding Principles on Business and Human Rights (“U.N. Guiding Principles”), thus establishing a global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activities.<sup>107</sup> Using a “Protect, Respect and Remedy” framework, the U.N. Guiding Principles call for business entities—including law firms, as a type of business entity—to respect human rights, avoid infringing on the rights of others, and address adverse impacts with which they are involved.<sup>108</sup>

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<sup>105</sup> See LAW FIRM BUSINESS, *supra* note 97, at 7 (“Demonstrating efforts to implement respect for human rights can also strengthen a firm’s advisory work in this area, enabling it to draw on its own experience and insights concerning the practical challenges of operationalising emerging expectations regarding business respect for human rights.”).

<sup>106</sup> Mark S. Ellis, *Developing a Global Program for Enhancing Accountability: Key Ethical Tenets for the Legal Profession in the 21st Century*, 54 S.C. L. REV. 1011, 1014 (2003) (discussing concepts that “form the ethical consensus of the legal community. They stipulate core principles governing the attorney/client relationship, an attorney’s obligations to the legal community, and society in general”).

<sup>107</sup> U.N. Human Rights Office of the High Commissioner, *Guiding Principles on Business and Human Rights* (2011), [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) [hereinafter U.N. Guiding Principles].

<sup>108</sup> See U.N. Human Rights Office of the High Commissioner, *Business and Human Rights*, <http://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx> (last visited Feb. 24, 2018).

The U.N. Guiding Principles specifically exhort lawyers to help provide access to justice and to effective remedies for victims whose human rights have been violated by business entities.<sup>109</sup> Overall, and important to the argument for human rights codes of conduct, the U.N. Guiding Principles direct law firms and other businesses to bring human rights considerations into their decision-making processes.<sup>110</sup> This reflects an international consensus that human rights principles should be part of a lawyer's decision-making process.

## 2. International Bar Association's International Principles on Conduct for the Legal Profession

In July 2011, just a month after the U.N. Guiding Principles were endorsed by the U.N. Human Rights Council, the International Bar Association ("IBA")<sup>111</sup> published its *International Principles on Conduct for the Legal Profession* ("IBA Principles").<sup>112</sup> The IBA describes the IBA Principles as "the 21st century version of a set of ethics for the legal profession."<sup>113</sup> The IBA's first set of principles was introduced in 1956 and the newer version reflects the "gathering pace of globalisation and increase in cross-border transactions"<sup>114</sup> and a "generally accepted framework to serve as a basis on which codes of conduct may be established by the appropriate authorities for lawyers in any part of the world."<sup>115</sup>

The IBA Principles focus on ten principles or core values, including: (1) independence; (2) honesty, integrity, and fairness; (3) conflicts of interest; (4) confidentiality and professional

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<sup>109</sup> See U.N. Guiding Principles, *supra* note 107, at 28–30.

<sup>110</sup> See *id.* at 14–15.

<sup>111</sup> See *About the IBA*, INT'L BAR ASS'N, [http://www.ibanet.org/About\\_the\\_IBA/About\\_the\\_IBA.aspx](http://www.ibanet.org/About_the_IBA/About_the_IBA.aspx) (last visited Feb. 24, 2018) ("The International Bar Association, established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world.")

<sup>112</sup> INTERNATIONAL PRINCIPLES ON CONDUCT FOR THE LEGAL PROFESSION, INT'L BAR ASS'N (2011) [hereinafter IBA PRINCIPLES]., <http://www.ibanet.org/Document/Default.aspx?DocumentUid=1730FC33-6D70-4469-9B9D-8A12C319468C>

<sup>113</sup> *IBA Publishes New Code of Conduct for the Global Legal Profession*, INT'L BAR ASS'N (July 21, 2011), <http://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=bc99fd2c-d253-4bfe-a3b9-c13f196d9e60>.

<sup>114</sup> *Id.*

<sup>115</sup> IBA PRINCIPLES, *supra* note 112, at 5.

secrecy; (5) clients' interest; (6) lawyers' undertaking; (7) clients' freedom; (8) property of clients and third parties; (9) competence; and (10) fees.<sup>116</sup> While the IBA Principles specifically state that they take into consideration the United Nations Declaration of Human Rights, there is a lack of human rights language included.<sup>117</sup>

The IBA Principles are no model for a human rights code of conduct, however. There are no mentions of "respect," "human dignity," "nondiscrimination," or other key human rights phrases.<sup>118</sup> The IBA Principles do mention honest, fair treatment of clients.<sup>119</sup> However, the IBA Principles are not a good model for a human rights code of conduct due to the lack of any other human rights language and human rights principles included.

### 3. United Nations Basic Principles on the Role of Lawyers

The United Nations Basic Principles on the Role of Lawyers ("U.N. Basic Principles") were adopted by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990.<sup>120</sup> The U.N. Basic Principles reflect "the broad consensus of the participants in the Eighth Congress"<sup>121</sup> and were developed "to assist Member States in their task of promoting and ensuring the proper role of lawyers . . ."<sup>122</sup> These principles require lawyers to uphold human rights, specifically stating:

Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to *uphold human rights and fundamental freedoms recognized by national and international law* and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.<sup>123</sup>

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<sup>116</sup> *Id.* at 5–7.

<sup>117</sup> *Id.* at 10–11.

<sup>118</sup> *See id.*

<sup>119</sup> *Id.* at 5.

<sup>120</sup> Eighth U.N. Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF.144/28/Rev.1 at 118–20 (Aug. 27–Sept. 7, 1990) [hereinafter U.N. Basic Principles]. The U.N. Basic Principles were adopted at a conference on criminal matters, but are worded broadly and can encompass lawyers' roles in civil matters as well. *See* Martha F. Davis, *In the Interests of Justice: Human Rights and the Right to Counsel in Civil Cases*, 25 TOURO L. REV. 147, 175 (2009) [hereinafter *The Interests of Justice*].

<sup>121</sup> *The Interests of Justice*, *supra* note 120, at 176.

<sup>122</sup> U.N. Basic Principles, *supra* note 120, at 119.

<sup>123</sup> *Id.* ¶ 14, at 121 (emphasis added).

In addition, the U.N. Basic Principles emphasize the importance of a code of conduct for lawyers that reflects both national law, and international standards and norms.<sup>124</sup> The U.N. Basic Principles recommend that nation states incorporate human rights into *national* codes of conduct,<sup>125</sup> and the same should apply to law office or law clinic codes of conduct.

The U.N. Basic Principles, while nonbinding, are important in that they reflect an international consensus that codes of conduct for lawyers should recognize and reflect human rights.<sup>126</sup> This is not unlike the international consensus achieved for the U.N. Guiding Principles, discussed above, suggesting that lawyers should take human rights law into account in decision making.<sup>127</sup>

#### 4. Foreign Codes of Conduct for Lawyers that Incorporate Human Rights

After a thorough examination of Japan's Basic Rules on the Duties of Practicing Attorneys,<sup>128</sup> the Canadian Bar Association Code of Professional Conduct,<sup>129</sup> and the European Bar's Code of Conduct for Lawyers in the European Community ("CCBE"),<sup>130</sup> Professor Martha F. Davis concluded that these codes invoke human rights law "as a framework to inform basic processes of ethical legal practice."<sup>131</sup> Professor Davis and other scholars have also noted that these codes are aspirational in character, as

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<sup>124</sup> *Id.* ¶ 26, at 123 ("Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.").

<sup>125</sup> *See id.*

<sup>126</sup> *See supra* Part II.B.1.

<sup>127</sup> *See supra* Part II.B.1.

<sup>128</sup> BASIC RULES ON THE DUTIES OF PRACTICING ATTORNEYS art. 1 (JAPAN FED'N OF BAR ASS'NS. 2004) [hereinafter BASIC RULES] ("An attorney shall be aware that his or her mission is to protect fundamental human rights and realize social justice, and shall strive to attain this mission.").

<sup>129</sup> CODE OF PROF'L CONDUCT ch. XX (CAN. BAR ASS'N rev. ed. 2009) [hereinafter CANADA CODE OF PROF'L CONDUCT] ("The lawyer shall respect the requirements of human rights and the constitutional laws in force in Canada . . .").

<sup>130</sup> CHARTER OF CORE PRINCIPLES OF THE EUROPEAN LEGAL PROFESSION AND CODE OF CONDUCT FOR EUROPEAN LAWYERS art. 1.1 (COUNCIL OF BARS & LAW SOCIETIES OF EUR. 2013) [hereinafter CHARTER OF CORE PRINCIPLES] ("A lawyer[] . . . is an essential means of safeguarding human rights in face of the power of the state and other interests in society.").

<sup>131</sup> Davis, *supra* note 20, at 178.



opposed to regulations meant to bind attorneys' behavior.<sup>132</sup> While these codes of conduct do not include human rights principles or language, such as respect for clients and human dignity, these codes instead specifically require attorneys to respect human rights law and safeguard the human rights of their clients.<sup>133</sup>

These codes, as well as the IBA Principles discussed above,<sup>134</sup> demonstrate another strategy for integrating human rights into ethical codes of conduct, which is to require attorneys to adhere to human rights principles, human rights law, or both, without specifically naming what that requirement means or the steps that a lawyer should take to try to comply.<sup>135</sup>

An attorney practicing in these countries has to do their own research and be very familiar with human rights law to know what implications human rights might have for the legal practice.<sup>136</sup> The human rights codes of conduct suggested by this Article would take much of that legwork away from the individual attorney and instead spell out specific guidance and what the implications of human rights are for decision making and the behavior of attorneys in daily law practice.<sup>137</sup>

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<sup>132</sup> *Id.* at 183. HAZARD & DONDI, *supra* note 38, at 109 (arguing that the Japanese code of professional ethics, like Japanese law generally, expresses ethical norms as ideas and objectives rather than precisely stated obligations). For direct evidence of the aspirational nature of these codes, see, e.g., CHARTER OF CORE PRINCIPLES 9, Principal (d) ("To be trusted by clients, third parties, the courts and the state, the lawyer must be shown to be worthy of that trust. That is achieved by membership of an honourable profession; the corollary is that the lawyer must do nothing to damage either his or her own reputation or the reputation of the profession as a whole and public confidence in the profession. This does not mean that the lawyer has to be a perfect individual, but it does mean that he or she must not engage in disgraceful conduct, whether in legal practice or in other business activities or even in private life, of a sort likely to dishonour the profession. Disgraceful conduct may lead to sanctions including, in the most serious cases, expulsion from the profession.").

<sup>133</sup> See BASIC RULES, *supra* note 128; CANADA CODE OF PROF'L CONDUCT, *supra* note 129; CHARTER OF CORE PRINCIPLES, *supra* note 130.

<sup>134</sup> See IBA Principles, *supra* note 112, ¶ 1, at 10.

<sup>135</sup> See *id.*

<sup>136</sup> See *id.*

<sup>137</sup> See *infra* Part V.

### III. HUMAN RIGHTS: A SOURCE OF AMBITIOUS MORAL ASPIRATION

Human rights can provide a source of ambitious moral aspiration that lawyers and law students can look to for guidance in navigating ethical dilemmas in daily law practice. Before discussing this theory further, this Article addresses some preliminary questions: First, Section A addresses the question of what are human rights; second, Section B addresses how human rights can provide moral aspiration for attorneys and law students; third, Section C compares and contrasts human rights principles with legal ethics.

#### A. *What Are Human Rights?*

Human rights are not only laws derived from treaties,<sup>138</sup> customary practices,<sup>139</sup> and foreign or state-based law.<sup>140</sup> They are also tools,<sup>141</sup> helping to build movements across cities, states,

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<sup>138</sup> See, e.g., U.N. Charter art. 1, ¶ 3; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 2(1), Dec. 10, 1984, 1465 U.N.T.S. 85, 114; International Convention on the Elimination of All Forms of Racial Discrimination, art. 1, Dec. 21, 1965, 660 U.N.T.S. 195, 216, *ratified by the United States* Nov. 20, 1994.

<sup>139</sup> U.S. courts have long recognized that customary international law is a part of U.S. law. See *The Paquete Habana*, 175 U.S. 677, 700 (1900) (“International law is part of our law, and must be ascertained and administered by the courts of justice . . . as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations . . .”). For an overview of customary international law, see, e.g., LOUIS HENKIN ET AL., *HUMAN RIGHTS* 193–97 (2d ed. 2009); Richard B. Lillich, *The Growing Importance of Customary International Human Rights Law*, 25 GA. J. INT’L & COMP. L. 1, 1 (1995/1996); Bruno Simma & Philip Alston, *The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles*, 12 AUSTL. Y.B. INT’L L. 82, 82–90, 107 (1988–1989).

<sup>140</sup> There is strong U.S. Supreme Court jurisprudence to support the use of foreign law, in appropriate circumstances, as a comparative perspective on U.S. legal questions. For example, in *Roper v. Simmons*, Justice Kennedy, in a majority opinion joined by Justices Stevens, Souter, Ginsburg and Breyer, observed that “[i]t does not lessen our fidelity to the Constitution or our pride in its origins to acknowledge that the express affirmation of certain fundamental rights by other nations and peoples simply underscores the centrality of those same rights within our own heritage of freedom.” 543 U.S. 551, 578 (2005). Many local municipalities and U.S. states have recently begun to pass human-rights-based regulations. See, e.g., *Freedom from Domestic Violence as a Fundamental Human Right Resolutions, Presidential Proclamations, and Other Statements of Principle*, CORNELL UNIV. SCH. OF LAW, <http://www.lawschool.cornell.edu/womenandjustice/DV-Resolutions.cfm>. (last updated May 2017).

<sup>141</sup> See, e.g., JAMES GRIFFIN, *ON HUMAN RIGHTS* 4 (2008) (describing the use of human rights to protect normative agency); Martha F. Davis, *Introduction to Volume*

continents, and cultures.<sup>142</sup> To that end, human rights represent a vision of the future world, a world in which one would want to live and work.<sup>143</sup>

Human rights are also associated with particular values.<sup>144</sup> Accordingly, “human rights concepts have many implications for, and connections to, legal ethics.”<sup>145</sup> For example, human rights

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*I*, in 1 BRINGING HUMAN RIGHTS HOME xv, xvi (Cynthia Soohoo et al. eds, 2008) (discussing the role of human rights in the Declaration of Independence, Roosevelt’s Four Freedoms speech, and the ratification of the International Covenant on Civil and Political Rights).

<sup>142</sup> See, e.g., *About Us*, AMNESTY INT’L, <http://www.amnestyusa.org/about-us> (last visited Feb. 24, 2018) (“Amnesty International is a global movement of millions of people demanding human rights for all people . . .”); *Mission*, U.S. HUMAN RIGHTS NETWORK, <http://www.ushrnetwork.org> (last visited Feb. 24, 2018) (“The US Human Rights Network is a national network of organizations and individuals working to build and strengthen a people-centered human rights movement in the United States, where leadership is centered on those most directly affected by human rights violations, and the full range of diversity within communities is respected and embraced.”); *The Bringing Human Rights Home Lawyers’ Network*, COLUMBIA LAW SCH. HUMAN RIGHTS INST., <http://www.law.columbia.edu/human-rights-institute/bhrh-lawyers-network> (last visited Feb. 24, 2018) (“The Human Rights Institute coordinates and builds the capacity of U.S. lawyers and other advocates to engage human rights standards and strategies.”); see also *About*, STAND, <http://standnow.org/about/> (last visited Feb. 24, 2018) (“Born out of the fight to stop the genocide in Darfur, Sudan, STAND is devoted to creating a sustainable student network that actively fights genocide and mass atrocities wherever they may occur.”); *Human Rights Resources*, NAT’L LAW CTR. ON HOMELESSNESS & POVERTY, [https://www.nlchp.org/human\\_rights\\_resources](https://www.nlchp.org/human_rights_resources) (last visited Feb. 24, 2018) (the national law center is leading a very successful national movement to end homelessness in the United States using the human rights framework).

<sup>143</sup> See, e.g., U.N. Secretary-General, *A Life of Dignity for All: Accelerating Progress Towards the Millennium Development Goals and Advancing the United Nations Development Agenda Beyond 2015*, ¶ 75, U.N. Doc. A/68/202 (July 26, 2013) (noting that for a “sustainable development agenda to take root,” the world must agree, among other things, upon “a far-reaching vision of the future firmly anchored in human rights and universally accepted values and principles, including those encapsulated in the Charter, the Universal Declaration of Human Rights and the Millennium Declaration”).

<sup>144</sup> See Beth Lyon, *Human Rights Aspirations, Professional Obligations: Practitioner Survey on the Ethics of Domestic Human Rights*, 1 NOTRE DAME J. INT’L, COMP., & HUM. RTS. L. 114, 134 (2011) (“Because international human rights law is associated with particular values, these advocates find ethical guidance in the substantive doctrine of their practice area.”); MICHAEL J. PERRY, *TOWARD A THEORY OF HUMAN RIGHTS: RELIGION, LAW, COURTS* xii–xiii (2007) (discussing the morality of human rights versus moral-rights); Davis, *supra* note 20, at 157 (stating human rights are a “mechanism[] for implementing moral principles”).

<sup>145</sup> Davis, *supra* note 20, at 157.

are centered on the core value of human dignity,<sup>146</sup> but also contain many additional values relevant to lawyering, such as respect, equality, self-determination, and accountability, as well as additional economic, social, environmental, cultural, civil, and political values.<sup>147</sup> These human rights values, or principles, are ambitious concepts of morality that can provide attorneys with the direction to navigate tricky ethical dilemmas.<sup>148</sup>

*B. Human Rights Can Provide Moral Aspiration to Attorneys and Law Students*

Fundamental principles of morality, or core values,<sup>149</sup> are both at the center of the study of human rights and legal ethics.<sup>150</sup> Both human rights and legal ethics share common ground as mechanisms for implementing fundamental principles of morality.<sup>151</sup> Human rights norms “recite fundamental principles of morality intended to govern behavior of governments as well as individuals,”<sup>152</sup> whereas legal ethics are fundamental principles of morality intended to govern individual

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<sup>146</sup> See Lyon, *supra* note 144, at 134; PERRY, *supra* note 144, at 3–6 (describing the philosophical theory of the morality of human rights); see also G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

<sup>147</sup> A full array of human rights is set forth in the Universal Declaration of Human Rights, which is the foundational human rights document adopted by the U.N. General Assembly in 1948. See Universal Declaration of Human Rights, *supra* note 146.

<sup>148</sup> Davis, *supra* note 20, at 178 (discussing ways in which human rights norms might inform and infuse attorney-client relationships, stating that the “incorporation of human rights norms would emphasize the means, or processes, of human rights and their relevance to the processes of legal representation. Human rights principles with substantial relevance to process include respect for human dignity, participation (and leadership) of those most affected in crafting solutions to their problems, and recognition of the interrelationships between the full range of human rights”); see also Lyon, *supra* note 144, at 134; RONALD DWORKIN, TAKING RIGHTS SERIOUSLY 198 (1977) (positing human dignity and political equality as the two most basic rights). See generally Jon Mahoney, *Liberalism and the Moral Basis for Human Rights*, 27 LAW & PHIL. 151 (2008).

<sup>149</sup> These fundamental principles of morality have also been referred to as “[b]asic ethical precepts,” “professional virtues,” and “core values.” See HAZARD & DONDI, *supra* note 38, at 109; see also Carle, *supra* note 1, at 3 (discussing “lawyers’ values and why they have come to have them”).

<sup>150</sup> See HAZARD & DONDI, *supra* note 38, at 109; Carle, *supra* note 1, at 3.

<sup>151</sup> See Davis, *supra* note 20, at 157; Louis Henkin, *The Universality of the Concept of Human Rights*, 506 ANNALS AM. ACAD. POL. SOC. SCI. 10, 11 (1989).

<sup>152</sup> Davis, *supra* note 20, at 157.

lawyers' ethical decision making.<sup>153</sup> The Rules of Professional Conduct are mechanisms for implementing and enforcing these fundamental principles of morality within the legal profession.<sup>154</sup>

The questions at the center of legal ethics have been: What are the core values of a "good lawyer," how do "good lawyers" come to adopt those values, and what should be done when lawyers are not acting consistently with those core values?<sup>155</sup> Very similarly, the questions at the center of human rights law have been: What are the core values of a "good government," how do "good governments" come to adopt those values, and what should be done when governments do not act consistently with those core values?<sup>156</sup> The behavior and decision making of a

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<sup>153</sup> *See id.*

<sup>154</sup> *See id.* at 169.

<sup>155</sup> *See* LUBAN, *supra* note 53, at xix–xx (pointing out that much of the philosophical discourse regarding these questions in legal ethics has turned on: the theory of role morality, the adversary system and its influences on legal ethics, and the standard conception of the lawyer); Carle, *supra* note 1, at 1 ("[T]he study of legal ethics is nothing more or less than the study of how to be a *good lawyer*.") (emphasis in original).

<sup>156</sup> John Locke, in discussing "natural rights" derived from "natural law," a precursor to human rights, said that all people are born with:

[A] title to perfect freedom, and an uncontrouled enjoyment of all the rights and privileges of the law of nature, equally with any other man, or number of men in the world, hath by nature a power, not only to preserve his property, that is, his life, liberty and estate, against the injuries and attempts of other men; but to judge of, and punish the breaches of that law in others. . . .

JOHN LOCKE, THE TWO TREATISES OF CIVIL GOVERNMENT § 87 (Thomas Hollis ed., 1764) (1689). *See* LOUIS HENKIN, THE AGE OF RIGHTS 8–10 (1990); Davis, *supra* note 20, at 157; CHARLES R. BEITZ, THE IDEA OF HUMAN RIGHTS 10–11 (2009); Angela R. Riley, *Good (Native) Governance*, 107 COLUM. L. REV. 1049, 1059 (2007) ("[T]he presence and adoption of human rights norms is considered a necessary component of achieving good governance, which is believed to have positive consequences for all people.") (footnotes omitted); Antony Anghie, *Civilization and Commerce: The Concept of Governance in Historical Perspective*, 45 VILL. L. REV. 887, 893–95 (2000) ("[G]ood governance involves the creation of a government that is, among other things, democratic, open, accountable and transparent, and which respects and fosters human rights. Thus good governance is linked, in international human rights law, with ideas relating to democratic governance and legitimate governance. Further, human rights lawyers focus on the ways in which human rights norms regarding political participation, free speech, and so forth, may be used to achieve the overarching goal of good governance.") (footnotes omitted); Jack Donnelly, *The Social Construction of International Human Rights*, in HUMAN RIGHTS IN GLOBAL POLITICS 71, 81 (Timothy Dunne et al. eds., 1999) ("The universality of human rights is a moral claim about the proper way to organize social and political relations in the contemporary world.").

“good lawyer” can be enhanced by looking at the values underlying human rights law; lawyers in the United States can draw ambitious moral aspiration from human rights principles.

In addition, while human rights norms recognize an inherent interrelationship and indivisibility among human rights,<sup>157</sup> Professor Martha Davis has pointed out that the “recognition of the interrelationships between the full range of human rights”<sup>158</sup> is substantially related to the processes of legal representation.<sup>159</sup> For example, a client should be advised that her right to an effective remedy is interconnected with and indivisible from her right to freedom from discrimination. Therefore, her right to an effective remedy for violation of her human rights never should come at the peril of her right to be treated equally and on par with others by the legal system.

Moreover, the fundamental principles of morality that are recited within human rights norms are meant to apply to everyone—human rights are universal.<sup>160</sup> Each and every person is entitled to the full range of human rights, regardless of citizenship status or whether one is an attorney, social worker, judge, or client.<sup>161</sup> This concept is very important, as applied to legal ethics. The human rights codes of conduct for law offices

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<sup>157</sup> See Universal Declaration of Human Rights, *supra* note 146, at art. 2 (“Everyone is entitled to all the rights and freedoms set forth in this Declaration . . .”); Jonathan Todres, *Rights Relationships and the Experience of Children Orphaned by AIDS*, 41 U.C. DAVIS L. REV. 417, 420 (2007); Craig Scott, *The Interdependence and Permeability of Human Rights Norms: Towards a Partial Fusion of the International Covenants on Human Rights*, 27 OSGOODE HALL L.J. 769, 779 (1989) (“The standard expression of the interrelationship among human rights in UN parlance takes the following form: ‘[A]ll human rights and fundamental freedoms are indivisible and interdependent.’”).

<sup>158</sup> Davis, *supra* note 20, at 178.

<sup>159</sup> See *id.*

<sup>160</sup> See *id.*; Henkin, *supra* note 151, at 13 (“Human rights has been accepted as the idea of our times; no other political idea . . . has received such universal acclaim.”).

<sup>161</sup> See Universal Declaration of Human Rights, *supra* note 146, at art. 2; Louis Henkin, *Introduction: The Human Rights Idea*, in 1 THE DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW 23, 24–25 (David Weissbrodt et al. eds., 2014) (“Human rights are universal: they belong to every human being in every human society. They do not differ with geography or history, culture or ideology, political or economic system, or stage of societal development. To call them ‘human’ implies that all human beings have them, equally and in equal measure, by virtue of their humanity—regardless of sex, race, age; regardless of high or low ‘birth,’ social class, national origin, ethnic or tribal affiliation; regardless of wealth or poverty, occupation, talent, merit, religion, ideology, or other commitment.”).

and law clinics are not meant to apply just to attorneys or student attorneys, but also to paralegals, organizers, social workers, administrative staff, information-technology staff, deans, and everyone else involved in the work of the law office or law clinic.<sup>162</sup> In this way, a human rights code of conduct goes above and beyond most legal ethics codes to reach everyone in the law office. Very rarely is there discussion with nonlegal staff in a law office about moral principles and values that should govern behavior. Human rights norms put everyone on the same page, as does a human rights code of conduct.

In addition to being universal, interconnected, and indivisible, human rights also tend to be phrased positively, such as the human rights to nondiscrimination and freedom from torture.<sup>163</sup> Conversely, the Rules of Professional Responsibility and other legal ethics standards tend to be phrased negatively.<sup>164</sup> The negative phrasing of the Rules of Professional Responsibility provides a baseline, a line that should not be crossed, but does not provide aspirational goals or ideals.<sup>165</sup> The positive phrasing of human rights norms is in line with moral aspiration, directing attorneys and law students to reach up and aspire to high moral and ethical integrity.

### C. *Human Rights Principles Compared with Legal Ethics*

Some of the core principles of legal ethics, such as those found in the ABA Model Rules, overlap with human rights principles, and some do not, as described below. The emphasis within human rights principles is on respect for clients' rights, as opposed to the legal ethics principles which focus on lawyers' responsibilities. This difference is subtle, but important.

The specific human rights principles that have been identified by human rights practitioners and scholars as relevant to the representation of clients, as well as attorney behavior and decision making, include the broad principle of respect for human

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<sup>162</sup> See MODEL RULES OF PROF'L CONDUCT r. 5.3 (AM. BAR ASS'N 2014).

<sup>163</sup> See, e.g., Universal Declaration of Human Rights, *supra* note 146, at art. 2 ("Everyone is entitled to all the rights and freedoms set forth in this Declaration . . ."); *id.* at art. 25(1) ("Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family . . .").

<sup>164</sup> See, e.g., OHIO RULES OF PROF'L CONDUCT r. 1.6 (2007) ("A lawyer shall not reveal information relating to the representation of a client . . .").

<sup>165</sup> See *supra* Part II.B.

dignity,<sup>166</sup> and the rights to: “participation . . . of those most affected in crafting solutions to their problems,”<sup>167</sup> self-determination,<sup>168</sup> privacy,<sup>169</sup> transparency, and nondiscrimination.<sup>170</sup> In addition, human rights norms related to law practice include: cultural sensitivity,<sup>171</sup> accountability for human rights violations,<sup>172</sup> and access to justice.<sup>173</sup> The human rights codes of conduct described in Part V below were drafted with these human rights principles in mind.

Legal ethicists have identified some of the core values guiding legal practice, including competence, independence, loyalty, confidentiality, candor, and honorable conduct, in professional and personal matters.<sup>174</sup> These core values are

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<sup>166</sup> See LUBAN, *supra* note 22, at 65–95.

<sup>167</sup> Davis, *supra* note 20, at 178.

<sup>168</sup> See International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3 1976) (“All peoples have the right of self-determination.”).

<sup>169</sup> Ellis, *supra* note 106, at 1021 (discussing the principle of confidentiality as a universal principle of ethical behavior in the legal profession both in the United States and abroad).

<sup>170</sup> See Davis, *supra* note 20, at 158; Risa E. Kaufman, “By Some Other Means”: *Considering the Executive’s Role in Fostering Subnational Human Rights Compliance*, 33 CARDOZO L. REV. 1971, 2007 (2012) [hereinafter Kaufman, “By Some Other Means”] (“A common set of standards comprise the concept of human rights: dignity, justice, fairness, and equality.”); see also, Universal Declaration of Human Rights, *supra* note 146, at art. 7.

<sup>171</sup> See Universal Declaration of Human Rights, *supra* note 146, at art. 27; International Covenant on Economic, Social and Cultural Rights, *supra* note 168, at pmb1.

<sup>172</sup> See Universal Declaration of Human Rights, *supra* note 146, at art. 8 (“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”); Organization of American States, American Convention on Human Rights, art. 25, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter American Convention on Human Rights] (“Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.”).

<sup>173</sup> American Convention on Human Rights, *supra* note 173, at art. 25; Risa E. Kaufman et al., *The Interdependence of Rights: Protecting the Human Right to Housing by Promoting the Right to Counsel*, 45 COLUM. HUM. RTS. L. REV. 772, 777 (2014) (discussing access to justice as a human right, specifically stating that “[l]egal representation is fundamental to safeguarding fair, equal, and meaningful access to the legal system as a whole, and is critical to safeguarding other human rights”).

<sup>174</sup> See, e.g., HAZARD & DONDI, *supra* note 38, at 109 (“The professional virtues of lawyers are: competence; independence; loyalty to client; maintaining the



thought to be fundamental and universal principles of morality necessary for the practice of law, and are codified in various ways in the Rules of Professional Conduct.<sup>175</sup>

This Article does not suggest that a human rights code of conduct for a law office or law clinic is meant to replace or compete with the binding Rules of Professional Conduct or other standards. Instead, the human rights principles compiled in a code of conduct are meant to supplement the binding ethical rules. In addition, the human rights code of conduct is meant to inspire attorneys to go above and beyond the low threshold established by the ABA Model Rules and the Rules of Professional Conduct.

To better understand the differences between the human rights principles and the core principles found in the ABA Model Rules, the Subsections below compares and contrasts a couple of the human rights principles related to law practice with the ABA Model Rules. There is much more analysis and comparison of legal ethics and human rights principles that could be done. However, for the sake of time and space, this Article examines solely human dignity and equality to provide an example of this comparison.

### 1. Human Dignity

With regard to the human rights principle of human dignity and its relationship to lawyering, respect, patience, understanding, empathy, honest communication, and privacy are key.<sup>176</sup> In terms of respect, Comment 2 to ABA Model Rule 1.14 specifically mentions the lawyer's obligation to "treat the client with attention and respect,"<sup>177</sup> but only in reference to clients with diminished capacity. This is the only mention of respect for

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confidentiality of client secrets; responsibility to the courts and to colleagues; and honorable conduct in professional and personal matters."); RHODE & HAZARD, *supra* note 8, at 45 ("The ethical rules governing American lawyers express several core values that guide legal practice. Those values and their corresponding obligations include independence, competence, loyalty, confidentiality, candor, and integrity in personal and professional conduct."); LAWYERS & JUSTICE, *supra* note 53, at 191–211 (discussing confidentiality); IBA Principles, *supra* note 112.

<sup>175</sup> See discussion *infra* Parts III.C.1, III.C.2.

<sup>176</sup> See LUBAN, *supra* note 22, at 65–95; Ellis, *supra* note 106, at 1021; Davis, *supra* note 20, at 158; Kaufman, "By Some Other Means," *supra* note 170, at 2007; see also Universal Declaration of Human Rights, *supra* note 146, at pmb., arts. 7, 12.

<sup>177</sup> MODEL RULES OF PROF'L CONDUCT r. 1.14 cmt. 2 (AM. BAR ASS'N 2014).

clients in the ABA Model Rules. The ABA Model Rules also require respect for the legal system, for those who serve it, and for the rights of third persons.<sup>178</sup> The Model Rules incorporate several other ideas which are related to respect, such as diligence and promptness,<sup>179</sup> but go no further than that.

In terms of patience and understanding, the Model Rules are silent. The ABA Model Rules do speak to communicating with “truthfulness,”<sup>180</sup> and also provide that lawyers “should further the public’s understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.”<sup>181</sup>

Client privacy, or the attorney’s duty of confidentiality, is addressed in great detail by the ABA Model Rules.<sup>182</sup> However, even the ABA Model Rules do not provide for such broad privacy rights as would human rights principles. For example, privacy in the human rights context would apply to non-attorney-client relationships as well as attorney-client relationships.<sup>183</sup>

## 2. Equality

Equality and nondiscrimination are also central principles of human rights.<sup>184</sup> While the ABA Model Rules put some emphasis on discrimination within the legal system, including discrimination against the poor and persons with disabilities, human rights principles would go further.

The ABA Model Rules emphasize that “a lawyer should seek improvement of . . . access to the legal system” and “[a] lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance.”<sup>185</sup> The ABA Model Rules also state that “[t]he fact that a client suffers a disability

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<sup>178</sup> *Id.* at pmb. ¶ 5, r. 4.4(a).

<sup>179</sup> *Id.* at r. 1.3, 1.4(a)(1).

<sup>180</sup> *Id.* at r. 4.1.

<sup>181</sup> *Id.* at pmb. ¶ 6.

<sup>182</sup> *Id.* at r. 1.6, 1.18(b).

<sup>183</sup> *See* Henkin, *supra* note 151, at 13.

<sup>184</sup> *See* Universal Declaration of Human Rights, *supra* note 146, at pmb., arts. 7, 10.

<sup>185</sup> MODEL RULES OF PROF’L CONDUCT pmb. ¶ 6 (AM. BAR ASS’N 2014).

does not diminish the lawyer's obligation to treat the client with attention and respect."<sup>186</sup> In addition, Rule 8.4 of the ABA Model Rules specifically mentions that it is misconduct for a lawyer to:

[E]ngage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.<sup>187</sup>

Human rights principles would require attorneys to go further, to prevent discriminatory conduct that would cause a disparate impact.<sup>188</sup> Human rights principles would also likely require taking affirmative steps to end the discriminatory behavior of others in the office and the legal system.<sup>189</sup>

Building on the arguments above, and connecting morality, legal ethics, and human rights, the following Part of the Article argues why human rights principles, as opposed to other potential sources of moral aspiration, should guide the legal profession through human rights codes of conduct.

#### IV. WHY A HUMAN RIGHTS CODE OF CONDUCT?

Human rights principles, as opposed to other sources of moral aspiration, such as religious or cultural norms, provide the basis for the human rights code of conduct. That human rights are a relevant source for moral aspiration for the legal profession was addressed in Part III above. This Part of the Article attempts to address the question of why human rights should be the basis of a public interest law office or law clinic code of conduct.

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<sup>186</sup> *Id.* at r. 1.14 cmt. 2.

<sup>187</sup> *Id.* at r. 8.4(g).

<sup>188</sup> *See, e.g.*, G.A. Res. 2106 (XX), International Convention on the Elimination of All Forms of Racial Discrimination, art. 2, Dec. 21, 1965, 660 U.N.T.S. 195, 212, *ratified by the U.S.* Nov. 20, 1994 (mandating States Parties to "amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists").

<sup>189</sup> *See, e.g.*, International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 188, art. 2(2).

A. *A Globalized World Calls for Globalized Professional Norms*

In this increasingly globalized world, a growing number of law students and lawyers are familiar with international law and human rights norms.<sup>190</sup> Moreover, so much of legal practice today is transnational.<sup>191</sup> In addition, domestic law in the United States is increasingly informed by international human rights norms.<sup>192</sup> Given the globalized shape of legal practice, legal ethics rules in the United States should not stand out as independent of international law. In this context, creating a “globalized” or human rights code of conduct, reflecting international human rights norms, makes tremendous sense.

There is a growing body of scholarship in support of this notion of globalized legal ethics. Professor Myres S. McDougal stated that “[t]oday any notion of a national law that is independent of international law is a joke,”<sup>193</sup> and Professor Hurwitz argued that “a language of global morality” already exists.<sup>194</sup> Other scholars have argued for the need for an

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<sup>190</sup> See Deena R. Hurwitz, *Lawyering for Justice and the Inevitability of International Human Rights Clinics*, 28 YALE J. INT’L L. 505, 507 (2003); Davis, *supra* note 20, at 174; Bettinger-Lopez, *supra* note 12, at 337. In the past, Georgetown Law even required that first year students take an international law course. See Farida Ali, *Globalizing the U.S. Law School Curriculum: How Should Legal Educators Respond?*, 41 INT’L J. LEGAL INFO. 249, 266 (2013).

<sup>191</sup> Transnational law was famously defined by Philip Jessup. PHILIP C. JESSUP, *TRANSNATIONAL LAW* 2 (1956) (“[A]ll law which regulates actions or events that transcend national frontiers.”). See Harold Hongju Koh, *Why Transnational Law Matters*, 24 PENN. ST. INT’L L. REV. 745, 750 (2006) (arguing that “transnational law will loom so large in our future”); STEPHEN BREYER, *THE COURT AND THE WORLD: AMERICAN LAW AND THE NEW GLOBAL REALITIES* (2015) (discussing cases before the Supreme Court of the United States that increasingly consider foreign activities and international law).

<sup>192</sup> See BREYER, *supra* note 191; see also I. INDIA THUSI & MARTHA F. DAVIS, *HUMAN RIGHTS IN STATE COURTS* 5–6, 47 (2016), <https://www.northeastern.edu/law/pdfs/academics/phrge/state-courts-2016.pdf> (reviewing U.S. state court decisions and Attorneys General opinions interpreting human rights treaties, laws, and standards); Martha F. Davis, *The Spirit of Our Times: State Constitutions and International Human Rights*, 30 N.Y.U. REV. L. & SOC. CHANGE 359, 366–67 (2006) (describing how some states adopt human rights norms through their constitutions’ supremacy clauses, which give precedence to ratified treaties).

<sup>193</sup> *Special Feature: The State of International Legal Education in the United States*, 29 HARV. INT’L L.J. 239, 269 (1988).

<sup>194</sup> Hurwitz, *supra* note 190, at 507–08 (“We have begun to speak a language of global morality. And whether or not one agrees that this morality is universal, the concern for justice inevitably implicates international human rights and international law. In view of this shifting landscape, lawyers today should be familiar, at the very least, with the components of international legal regimes and

international or universal legal ethics code to fill in where the Rules of Professional Conduct and other standards have left off.<sup>195</sup> While this Article does not specifically argue for an international legal ethics code, these scholars' arguments support applying international norms to legal ethics generally. In addition, these scholars' arguments help demonstrate that the concept of a human rights code of conduct is potentially a positive step toward improving the current legal ethics rules.

The idea of applying human rights at the local level in hopes of a "trickle up" effect is not new.<sup>196</sup> For almost twenty years, scholars, including Judith Resnik,<sup>197</sup> Catherine Powell,<sup>198</sup> Martha Davis,<sup>199</sup> Tara Melish,<sup>200</sup> and Risa Kaufman,<sup>201</sup> have been arguing that human rights law should be contemplated, adopted, and applied at the local level "as a means of influencing and contributing to national policy . . . ."<sup>202</sup>

What is more, the use of international law arguments by litigants in state court cases has increased in recent years,<sup>203</sup> and cities and counties are increasingly either passing resolutions and ordinances endorsing or incorporating human rights law, or both.<sup>204</sup> In addition, projects such as the Bringing Human Rights

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international human rights norms, if not the elements of a transnational legal ethic.") (footnotes omitted).

<sup>195</sup> See Ellis, *supra* note 106, at 1014; Lyon, *supra* note 144, at 135–38; Laurel S. Terry, *An Introduction to the European Community's Legal Ethics Code Part I: An Analysis of the CCBE Code of Conduct*, 7 GEO. J. LEGAL ETHICS 1, 59 (1993).

<sup>196</sup> Risa Kaufman, *The "Trickle Up" Effect*, HUMAN RIGHTS AT HOME BLOG (Apr. 9, 2015) [hereinafter Kaufman, *The "Trickle Up" Effect*], [http://lawprofessors.typepad.com/human\\_rights/2015/04/the-trickle-up-effect.html](http://lawprofessors.typepad.com/human_rights/2015/04/the-trickle-up-effect.html).

<sup>197</sup> See, e.g., Judith Resnik, *Law's Migration: American Exceptionalism, Silent Dialogues, and Federalism's Multiple Ports of Entry*, 115 YALE L.J. 1564, 1626–27 (2006).

<sup>198</sup> See, e.g., Catherine Powell, *Dialogic Federalism: Constitutional Possibilities for Incorporation of Human Rights Law in the United States*, 150 U. PA. L. REV. 245, 293 (2001).

<sup>199</sup> See, e.g., Martha F. Davis, *Thinking Globally, Acting Locally: State, Municipalities, and International Human Rights*, in 2 BRINGING HUMAN RIGHTS HOME 127, 127–28 (Cynthia Soohoo et al. eds, 2008).

<sup>200</sup> See, e.g., Tara J. Melish, *From Paradox to Subsidiarity: The United States and Human Rights Treaty Bodies*, 34 YALE J. INT'L L. 389, 456–61 (2009) (discussing the principle of subsidiarity and embracing the importance of local decision making and implementation).

<sup>201</sup> See, e.g., Kaufman, "By Some Other Means," *supra* note 170.

<sup>202</sup> Kaufman, *The "Trickle Up" Effect*, *supra* note 196.

<sup>203</sup> See THUSI & DAVIS, *supra* note 192, at 5–6.

<sup>204</sup> See COLUMBIA LAW SCH. HUMAN RIGHTS INST., BRINGING HUMAN RIGHTS HOME: HOW STATE AND LOCAL GOVERNMENTS CAN USE HUMAN RIGHTS TO

Home Lawyers' Network,<sup>205</sup> the Local Human Rights Lawyering Project, described in Part V.A. below, and the Pillar Project of Human Rights First,<sup>206</sup> have helped to promote, support, and train U.S. lawyers to use human rights law at the local and state level.

There are a couple of big differences between local implementation of human rights in the United States and the human rights codes of conduct discussed in this Article. First, the local implementation of human rights referred to above deals with municipal, county, and state law—cities, counties, or states adopt and enforce laws and mandates that reflect and incorporate human rights norms. Conversely, the human rights codes of conduct suggested by this Article are completely voluntary. Moreover, a human rights code of conduct should be drafted and adopted by a public interest law office or law clinic, without involvement of any government entity.

Second, the scholars arguing for implementation of human rights at the local level—at law offices or law clinics—did not focus on integrating human rights into legal ethics rules and regulations.<sup>207</sup> Despite Martha Davis' brilliant arguments to integrate human rights into the ABA Model Rules,<sup>208</sup> the ABA has not done so. Without guidance from the ABA, the individual states likely have no impetus to integrate human rights into the Rules of Professional conduct or lawyers' oaths. It may be up to law firms and individual attorneys to integrate human rights into codes of conduct at the most local level—the office level—with the hopes that the human rights inspired aspirational goals will eventually trickle up into legal ethics regulations at the state and national level.<sup>209</sup>

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ADVANCE LOCAL POLICY 1, 9 (2012); see also *Freedom from Domestic Violence as a Fundamental Human Right Resolutions, Presidential Proclamations, and Other Statements of Principle*, *supra* note 140.

<sup>205</sup> See *The Bringing Human Rights Home Lawyers' Network*, COLUMBIA LAW SCH. HUMAN RIGHTS INST., <http://www.law.columbia.edu/human-rights-institute/hrh-lawyers-network> (last visited Feb. 24, 2018).

<sup>206</sup> See *The Pillar Project: Advancing Human Rights in U.S. Courts*, HUMAN RIGHTS FIRST (2012), [https://www.humanrightsfirst.org/wp-content/uploads/pdf/pillar\\_project\\_announcement\\_2012.pdf](https://www.humanrightsfirst.org/wp-content/uploads/pdf/pillar_project_announcement_2012.pdf).

<sup>207</sup> See Hurwitz, *supra* note 190, at 509; Bettinger-Lopez, *supra* note 12, at 339; Ali, *supra* note 190, at 249.

<sup>208</sup> See Davis, *supra* note 20, at 158, 178–85.

<sup>209</sup> See Kaufman, *The "Trickle Up" Effect*, *supra* note 196.

### B. *The Common Ground of Human Rights*

Lawyers can use human rights as common ground to connect more deeply and purposefully with client communities and individuals already using human rights language and principles in their struggles for justice.<sup>210</sup> Human rights norms provide a common language, accepted and understood by both lawyers and laypersons.<sup>211</sup> Many communities have adopted human rights laws precisely because human rights are self-evident and commonly intuited.<sup>212</sup>

Human rights can provide common ground to set down rules between the client and lawyer concerning tactics and strategy, as well as communications, accountability, privacy concerns, and more. The human rights language can help the client understand and connect with the rules that the lawyers use to guide decision making, so that clients can get on board with those rules as well. In this way, a human rights code of conduct can help attorneys connect more deeply with clients and provide a clear demonstration of the rules that guide that connection and relationship.

### C. *Human Rights Can Help Teach Legal Ethics to Law Students*

In addition to the arguments above, there is one additional argument for a human rights code of conduct: Human rights codes of conduct can help law students learn and understand the Rules of Professional Conduct in a deep and meaningful way. By comparing and contrasting the Rules of Professional Conduct with the aspirational goals included in a human rights code of conduct, law students can begin to see the limitations, the

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<sup>210</sup> See *id.*

<sup>211</sup> See Cynthia Soohoo, *Introduction to Volume 3*, in 3 BRINGING HUMAN RIGHTS HOME xv, xix (Cynthia Soohoo et al. eds, 2008) (“The articulation of rights violations in human rights terms also helps marginalized groups connect their issues to a broader framework, linking to other struggles that may be more familiar and sympathetic to the public.”); Bettinger-Lopez, *supra* note 12, at 346–47 (“[S]ome of the most successful recent examples of domestic human rights advocacy have been led by grassroots coalitions and social movements, rather than by lawyers . . .”).

<sup>212</sup> See, e.g., Monique Harden et al., *Acting on Principle: Opportunities and Strategies for Achieving Environmental Justice through Human Rights Laws and Standards*, in 3 BRINGING HUMAN RIGHTS HOME, *supra* note 211, at 265, 265 (“According to Margie Richard, a community activist living in Louisiana’s Cancer Alley, ‘You know when your daughter struggles to breathe at night because of all the pollution that her human rights are being violated.’”) (footnotes omitted).

“contours,”<sup>213</sup> and the depths of the Rules of Professional Conduct. In addition, students in a law clinic with a human rights code of conduct can learn to become more comfortable and familiar with the Rules of Professional Conduct.

“[T]here is unavoidable tension between ethical aspiration and ethical obligation . . . just as there is unavoidable tension between religion-based morality<sup>[214]</sup> . . . and the norms that people exhibit in ordinary life.”<sup>215</sup> Critical analysis of this tension can help students better understand why the Rules of Professional Conduct are phrased the way they are, and can help students think through when and how to use the Rules, and when and how to go above and beyond the Rules when dealing with real-life ethical dilemmas.

At this point there is no widespread practice of comparing and contrasting the Rules of Professional Conduct with other countries’ codes of legal ethics, let alone teaching comparative legal ethics in law school.<sup>216</sup> Law students in a U.S.-based legal ethics class, such as Professional Responsibility, tend to study the ABA Model Rules, and read cases and treatises to interpret and clarify the rules.<sup>217</sup> A human rights code of conduct can provide important and outstanding points of contrast to the Rules of Professional Conduct which can help students learn and understand the Rules in a more meaningful way.

Any way to increase law student interest in practical applications of international law, legal ethics, or both, is in itself a worthwhile endeavor.<sup>218</sup> A way to combine both, such as using a human rights code of conduct described in this Article, is real winner for law teachers.

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<sup>213</sup> See Davis, *supra* note 20, at 176.

<sup>214</sup> For example, Christian principles provide religion-based morality. See HAZARD & DONDI, *supra* note 38, at 115.

<sup>215</sup> *Id.*

<sup>216</sup> A recent google search for “comparative legal ethics” & “.edu” turned up a single course taught by Dean Emeritus Lawrence Hellman at Oklahoma City University School of Law. That course is referenced in his bio. *Dean Emeritus Lawrence K. Hellman*, OKLA. CITY UNIV. SCH. OF LAW, <http://law.okcu.edu/?about=faculty/dean-emeritus-lawrence-k-hellman> (last visited Feb. 24, 2018).

<sup>217</sup> This is the way a typical legal profession textbook is set up. See, e.g., RHODE & HAZARD, *supra* note 8.

<sup>218</sup> See Kaufman, “*By Some Other Means*,” *supra* note 170, at 2011 (“Broad-based human rights education is an essential component of human rights implementation.”); Cramton & Koniak, *supra* note 21, at 146 (“[L]egal ethics remains an unloved orphan of legal education.”).



## V. CREATING A HUMAN RIGHTS CODE OF CONDUCT FOR A PUBLIC INTEREST LAW OFFICE OR LAW CLINIC

This Part provides three detailed illustrations of processes undertaken to draft and adopt a human rights code of conduct<sup>219</sup>: Maryland Legal Aid adopted a human rights code of conduct in 2014 (“The Maryland Legal Aid Guiding Principles for Staff-Client Relationships”);<sup>220</sup> The Center for Human Rights & Humanitarian Law at American University Washington College of Law adopted a human rights code of conduct in 2013 (“Human Rights Principles”);<sup>221</sup> and the Ohio Northern University Legal Clinic adopted a human rights code of conduct in 2015 (“Human Rights Principles for the ONU Legal Clinic”).<sup>222</sup> These individual stories are meant to provide step-by-step examples of how a public interest law office or law clinic might go about drafting and adopting a human rights code of conduct.

The process of creating a human rights code of conduct for a public interest law firm or law clinic might seem daunting at first. Yet, as demonstrated through the examples below, the process can be easy and streamlined. Drafting and adopting a human rights code of conduct is a very manageable task that can be accomplished within six months to a year for a small to mid-sized law office or law clinic.

It is also important to note upfront, and this is illustrated further in the examples below, that the drafting and adoption processes are just as important, in terms of effect, as the finished product. In other words, the main goal of the human rights code of conduct should not be to have a perfectly drafted, finally adopted code, but instead to create and implement an inclusive, education-filled drafting and adoption process for the human rights code of conduct.

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<sup>219</sup> For the purposes of full disclosure, the author of this Article was heavily involved in each of the drafting processes described in this Article.

<sup>220</sup> Lauren E. Bartlett, *A Human Rights Code of Conduct*, HUMAN RIGHTS AT HOME BLOG (Oct. 13, 2014), [http://lawprofessors.typepad.com/human\\_rights/2014/10/a-human-rights-code-of-conduct.html](http://lawprofessors.typepad.com/human_rights/2014/10/a-human-rights-code-of-conduct.html).

<sup>221</sup> *Id.*

<sup>222</sup> Lauren E. Bartlett, *Human Rights Code of Conduct II, the Sequel*, HUMAN RIGHTS AT HOME BLOG (Nov. 16, 2015), [http://lawprofessors.typepad.com/human\\_rights/2015/11/human-rights-code-of-conduct-ii-the-sequel.html](http://lawprofessors.typepad.com/human_rights/2015/11/human-rights-code-of-conduct-ii-the-sequel.html).

### A. *Maryland Legal Aid*

Maryland Legal Aid Bureau, Inc. (“MDLAB”)<sup>223</sup> adopted a human rights code of conduct in 2014. MDLAB began its process of adopting a human rights code of conduct because of a partnership with the Local Human Rights Lawyering Project, as described further below.

#### 1. Background: The Local Human Rights Lawyering Project and Partnership with Maryland Legal Aid

The Local Human Rights Lawyering Project was founded in 2011<sup>224</sup> by Hadar Harris<sup>225</sup> through a grant from the Ford Foundation.<sup>226</sup> The Local Human Rights Lawyering Project was housed at the Center for Human Rights and Humanitarian Law at American University Washington College of Law.<sup>227</sup> The core goal of Local Human Rights Project was to normalize human rights at the local level by integrating human rights into the daily work of legal aid attorneys in the United States.<sup>228</sup>

Particularly, the Project aimed to integrate human rights into three areas of legal-aid work: advocacy on behalf of clients in court and before policymakers, lawyering, and office systems.<sup>229</sup> In terms of the second area, lawyering, the Local Human Rights Lawyering Project encouraged its legal aid partners to think about ways to “talk the talk” and “walk the walk,”<sup>230</sup> and embody

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<sup>223</sup> ANNUAL REPORT, MD. LEGAL AID (2014), <https://www.mdlab.org/wp-content/uploads/2014-annual-report.pdf>.

<sup>224</sup> See *Local Human Rights Lawyering Project*, CTR. FOR HUMAN RIGHTS & HUMANTARIAN LAW, <https://www.wcl.american.edu/humright/center/locallawyering.cfm> (last visited Feb. 24, 2018).

<sup>225</sup> See *Hadar Harris’ Bio*, WMC SHESOURCE, <http://www.shesource.org/experts/profile/hadar-harris> (noting that Hadar Harris was the Executive Director of the Center for Human Rights and Humanitarian Law) (last visited Feb. 24, 2018); see also *Local Human Rights Lawyering Project*, *supra* note 224.

<sup>226</sup> The Ford Foundation provided funding to support the hiring of staff attorneys at two partner legal aid organizations dedicated to integrating human rights into daily practice for a period of two years. The grant also provided funding for an initial training in Washington, D.C., for five to six staff members from each partner legal aid organization, site visits by the partners to each other’s offices for shared learning opportunities, and a final public event in D.C., as well as for the salary for a Project Director based at the Center for Human Rights & Humanitarian Law. See *Local Human Rights Lawyering Project*, *supra* note 224.

<sup>227</sup> *Local Human Rights Lawyering Project*, *supra* note 224.

<sup>228</sup> See *id.*

<sup>229</sup> See *id.*

<sup>230</sup> See Robert H. Chaires et al., *Talking the Talk and Walking the Walk of Racial Profiling: A Study of Automobile Checkpoint Law in Three Nations*, 16 TEX.

the human rights they were to be promoting.<sup>231</sup> It was in this area of lawyering that the idea for a human rights code of conduct was developed.<sup>232</sup>

The Local Human Rights Lawyering Project's advisory board selected MDLAB and Texas RioGrande Legal Aid ("TRLA") as partners.<sup>233</sup> These legal aid organizations were selected as partners for the Project because of the similarities in size, including number of employees, number of offices, organizational budget, and population served.<sup>234</sup> Both project partners also received Legal Services Corporation ("LSC") funding, and thus were both bound by LSC restrictions imposed by Congress.<sup>235</sup> Importantly, both TRLA and MDLAB had also previously used international human rights law in court cases,<sup>236</sup> and had staff members with extensive backgrounds in human rights law.<sup>237</sup>

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HISP. J.L. & POL'Y 87, 89 (2010) ("He can talk the talk, can he walk the walk? Today, that line is often used as a claim, especially in politics, that one can and will do what he says he will do.") (quoting FULL METAL JACKET (Stanley Kubrick Productions 1987)).

<sup>231</sup> See *Local Human Rights Lawyering Project*, *supra* note 224.

<sup>232</sup> The integration of human rights into office systems will be implicated, but largely not covered in this analysis.

<sup>233</sup> *Human Rights in the U.S.: A Handbook for Legal Aid Attorneys*, LOCAL HUMAN RIGHTS LAWYERING PROJECT 7–8 (July 21, 2014) [hereinafter *Human Rights in the U.S.: A Handbook*], <https://www.wcl.american.edu/index.cfm?LinkServID=B1E62E62-A5A0-D585-2D87C971D50AAE18>.

<sup>234</sup> See *id.*

<sup>235</sup> See *id.* at 7 n.1; 42 U.S.C. § 2996b(b) (2012).

<sup>236</sup> Texas RioGrande Legal Aid has a great deal of experience applying the Hague Convention in international child abduction cases through its Bi-National Family Violence Project. See *Bi-National Project on Family Violence*, TEX. RIOGRANDE LEGAL AID, <http://www.trla.org/practice-area/bi-national-project-on-family-violence> (last visited Feb. 24, 2018). Maryland Legal Aid Bureau, Inc., before joining the Local Human Rights Lawyering Project in 2012, had cited international human rights law in an amicus brief before an appellate court in Maryland. See Brief of Legal Aid Bureau, Inc. et. al. as Amici Curiae Supporting Petitioner at \*iii–v, *Nickens v. Mount Vernon Realty Grp., LLC*, 54 A.3d 742 (Md. 2012) (No. 07), 2012 WL 3051601 (Md.).

<sup>237</sup> For example, Jennifer Harbury at TRLA is a lawyer, human rights activist, and author. See *Jennifer Harbury*, AMERICANS WHO TELL THE TRUTH, <https://www.americanswhotellthetruth.org/portraits/jennifer-harbury> (last visited Feb. 24, 2018). Wilhelm H. Joseph, Jr., Executive Director of MDLAB, is a longtime human rights activist. See *Mr. Wilhelm H. Joseph, Jr.*, 2014 INT'L FORUM ON LEGAL AID, [http://www.laf.org.tw/ifla2014/en/download/15\\_CV\\_USA.pdf](http://www.laf.org.tw/ifla2014/en/download/15_CV_USA.pdf) (last visited Feb. 24, 2018). He graduated from the University of Mississippi School of Law in 1972. *Id.* He then:

[S]erved as the National Director of the Law Students Civil Rights Research Council . . . from 1972 through 1974 after which he began working as a staff attorney and administrator at North Mississippi Rural

In addition, MDLAB had adopted a human rights framework in 2009 in response to a client needs survey.<sup>238</sup> Maryland also had at least one state court judge who had been trained at the Aspen Institute,<sup>239</sup> and other judges that were seemingly open to hearing human rights arguments.<sup>240</sup>

The legal aid partners were very excited about the prospect of using human rights as an additional advocacy tool.<sup>241</sup> Both partners were, however, less sure about what it meant to integrate human rights into lawyering and office systems. The Local Human Rights Lawyering Project hoped that the legal aid partners would include not only attorneys, but all persons within the universe of the legal aid partner organization, including administrative staff, information technology workers, managers, clients, board members, and more, in bringing human rights into lawyering and office systems. These latter goals for the Project were more difficult to navigate, to the point of being almost opaque for the partners.

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Legal Services (NMRLS) in Oxford, MS. In 1975, Mr. Joseph was promoted to the position of Executive Director for [NMRLS]. In 1982 he enrolled in the graduate program at Harvard before joining Legal Services for New York City (previously called Community Action for Legal Services) where he served as consultant and special assistant to the Executive Director from 1983 until 1990. He was later named Director of the Legal Support Unit, a department that was responsible for citywide litigation, training, legislative advocacy and other support services.

*Id.* In addition:

From 1996 to 1998, Mr. Joseph served as a volunteer for the National Director of the National Conference of Black Lawyers (NCBL), a non-governmental organization that is accredited at the United Nations. For several years, Mr. Joseph served as the representative of the National Conference of Black Lawyers at the United Nations.

*Id.*

<sup>238</sup> MD. LEGAL AID'S HUM. RTS. PROJECT, HUMAN RIGHTS IN MARYLAND'S RENT COURTS: A STATISTICAL STUDY 3 (Sept. 8, 2016), [https://www.mdlab.org/wp-content/uploads/MDLegalAid\\_RentCourtStudy\\_Release-Date-9-8-16.pdf](https://www.mdlab.org/wp-content/uploads/MDLegalAid_RentCourtStudy_Release-Date-9-8-16.pdf).

<sup>239</sup> The Aspen Institute has been holding judicial seminars on international law since the 1980s under the auspices of its Justice and Society Program. *See Justice & Society Program*, THE ASPEN INST., <https://www.aspeninstitute.org/programs/justice-and-society-program> (last visited Feb. 24, 2018). The Justice and Society Program has been led by international human rights attorney and director Emerita Alice Henkin. *See Alice H. Henkin*, NAT'L ECON. & SOC. RIGHTS INITIATIVE, <https://www.nesri.org/about/board-of-directors/alice-h-henkin> (last visited Feb. 24, 2018).

<sup>240</sup> *See, e.g., Cathy Hollenberg Serrette*, MD. MANUAL ON-LINE, <http://msa.maryland.gov/msa/mdmanual/31cc/html/msa14167.html> (last visited Feb. 24, 2018).

<sup>241</sup> *See* CTR. FOR HUMAN RIGHTS & HUMANITARIAN LAW, LOCAL HUMAN RIGHTS LAWYERING YEAR 2 REPORT TO THE FORD FOUNDATION (2013) [hereinafter REPORT TO THE FORD FOUNDATION] (on file with author).

During the initial training and discussions with the legal aid partners, it became clear that written resources would be needed to reach all of the various staff and other persons connected with the legal aid organizations. The partners requested a how-to guide that would bring together in one place all of the articles, briefs, and other relevant materials on integrating human rights into U.S. legal advocacy. In addition, the partners wanted clearly articulated goals, and again, a how-to guide for integrating human rights into lawyering and office systems.

In response, the *Human Rights in the U.S.: A Handbook for Legal Aid Attorneys*<sup>242</sup> was drafted with assistance from the Project's Advisory Board. The Handbook aimed to be a practical and useable vehicle for getting human rights information into the hands of legal aid staff members and other persons interested in integrating human rights advocacy into their everyday work.

Yet, at first, the Handbook did not include a section on lawyering and office systems. It was clear from the beginning of the Project that very little had yet been written in terms of practical directions on how to apply human rights to lawyering.<sup>243</sup> It also became clear that the Project would need to be able to explain to legal aid attorneys how these human rights principles related to legal ethics and Rules of Professional Conduct. The Advisory Board suggested that the Project Director<sup>244</sup> take some time to research and then articulate how the partners might apply human rights norms to lawyering.

## 2. The Human Rights Principles for Legal Aid

In late 2012, the Project Director drafted the *Human Rights Principles for Legal Aid*, below. This draft human rights code of conduct was meant to provide a model to the legal aid partners of what they might do towards fulfilling the Project's goal of integrating human rights into the client-attorney relationship and law office systems.

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<sup>242</sup> See also *Human Rights in the U.S.: A Handbook*, *supra* note 233.

<sup>243</sup> See *Local Human Rights Lawyering Project*, *supra* note 224; see also Davis, *supra* note 20, at 158.

<sup>244</sup> Lauren E. Bartlett, the author of this Article, served as the Local Human Rights Lawyering Project Director from 2011–2014.

THE HUMAN RIGHTS PRINCIPLES FOR LEGAL AID  
(DRAFTED 9/2012)<sup>245</sup>

**1. Human Dignity**

Treat all people with respect, not as a gesture of charity but as an act of justice. Respect the inherent worth of each individual, each family and their communities. Be patient, kind, and on time. Listen with empathy. Communicate with understanding and honesty. Keep private information private.

**2. Participation and Self-Determination**

Meaningfully involve clients in identifying problems, goals, planning and case strategy. Empower clients to tell their own story and advocate for themselves. Clearly and simply explain the law and process, clients' rights, the role of the law office, and the role of the client.

**3. Equality**

Respect all others as your equal. Recognize strength in diversity. Take responsibility for discrimination based on your own beliefs, including but not limited to discrimination based on mental health, sexual orientation, homelessness, education level, age, political opinion, culture, source of income, and place of origin. Work to end all discriminatory acts in your office, as well as in your community.

**4. Solidarity**

Foster teamwork among clients and staff. Constantly challenge the traditional power structure of the client-staff relationship. Recognize your strengths and your client's strengths and invest those strengths in shared responsibilities. Stand with your clients and fellow staff members to fight poverty and expand rights for the most vulnerable.

**5. Innovation**

Pursue creative remedies towards shared goals. Litigation is only one option among many. Ask what more you can do to counsel, educate, and advocate for your clients and their communities. Encourage your client to use other tools including community education, organizing, legislation and civic participation. Consider using international and regional mechanisms such as special rapporteurs, United Nations treaty-body monitoring committees and the Inter-American Commission on Human Rights.

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<sup>245</sup> *A Human Rights Code of Conduct*, *supra* note 220.

The drafting process for the *Human Rights Principles for Legal Aid* was simple but time consuming. The Project Director began by reviewing a number of social work codes of ethics that integrate human rights principles.<sup>246</sup> A written code of conduct seemed to be a practical method for explaining which human rights principles might apply to lawyering and how. In addition, legal aid attorneys could keep a written code of conduct on hand or post the code of conduct near their desks to reflect upon during interactions with clients by phone and in person. The social work codes of ethics were used as models,<sup>247</sup> and a lengthy process of comparing and contrasting the ABA Model Rules of Professional Responsibility and the Universal Declaration of Human Rights commenced. A lengthy treatise was drafted, which was eventually cut down to the five categories above.<sup>248</sup>

The *Human Rights Principles for Legal Aid* were then reviewed by more than fifty practitioners, and then distributed to the legal aid partners for comments.<sup>249</sup> Revisions were then made to simplify and clarify the language, to tighten parallels with the rules of professional responsibility, and to better reflect the experiences of legal aid staff who participated in the review.<sup>250</sup>

### 3. The Maryland Legal Aid Guiding Principles for Staff-Client Relationships

After MDLAB received the draft *Human Rights Principles for Legal Aid*, there were several discussions about the Principles and the accompanying treatise among the attorneys and other staff involved in the MDLAB Human Rights Workgroup, as well

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<sup>246</sup> See, e.g., *Social Work for Social Justice: Ten Principles*, UNIV. OF ST. THOMAS, <https://www.stthomas.edu/media/schoolsocialwork/pdffdocs/SWSJ-COLOR9-15-11.pdf> (last updated 2010); *The Code of Ethics for Social Work*, BRITISH ASS'N SOC. WORKERS, [http://cdn.basw.co.uk/upload/basw\\_95243-9.pdf](http://cdn.basw.co.uk/upload/basw_95243-9.pdf) (last updated Oct. 2014).

<sup>247</sup> See *Social Work for Social Justice: Ten Principles*, *supra* note 246; *The Code of Ethics for Social Work*, *supra* note 246.

<sup>248</sup> LAUREN E. BARTLETT, HUMAN RIGHTS PRINCIPLES FOR LEGAL AID (2012) (on file with author).

<sup>249</sup> Drafts of the Human Rights Principles of Legal Aid were reviewed by over fifty legal aid attorneys and human rights law practitioners, including the Local Human Rights Lawyering Partners and Advisory Board members, colleagues, and law students at American University Washington College of Law.

<sup>250</sup> Once the Human Rights Principles for Legal Aid were drafted, a new section, Section 3.6, was added to Handbook for Legal Aid Attorneys. See *Human Rights in the U.S.: A Handbook*, *supra* note 233, at 31–32.

as senior management. MDLAB decided that it would like to draft its own human rights code of conduct. In addition, the attorneys and senior management at MDLAB felt strongly that a human rights code of conduct should be developed by and apply to all staff, not just the legal professionals. MDLAB wanted as many staff members as possible to be involved in the development of the human rights code of conduct as both an educational and team-building experience. It also felt that the staff would be much more dedicated to a code of conduct that was developed internally through an inclusive process.

To that end, in 2012, MDLAB dedicated its annual, all-staff, human rights day trainings,<sup>251</sup> to the process of drafting a human rights code of conduct. Each of these trainings started with an introduction to human rights, as well as a brief lecture on the Universal Declaration of Human Rights, its history in the United States, and what the Universal Declaration of Human Rights has to say about how to treat colleagues, clients, and others.<sup>252</sup> Next, the participants were broken into small groups. Each group then went through the Universal Declaration of Human Rights to pull out key rights and language that they thought was most important in regards to the conduct of MDLAB staff members towards colleagues, clients, and others. The participants then wrote the relevant human rights words onto Post-it notes, and put the Post-it notes up on the walls. The participants then tried to organize the Post-it notes into categories, and discussed thoughts on inclusion of the various categories in a human rights code of conduct for MDLAB. This exercise took the entire day, including breaks and lunch time.

An organization-wide human rights code of conduct committee was later formed by MDLAB. That committee compiled all of the notes from the human rights day trainings and drafted a code of conduct which was circulated to all staff members at MDLAB for comments. Drafts were also shared with MDLAB clients for their input. The final version of the MDLAB human rights code of conduct, titled the *Maryland Legal Aid Guiding Principles for Staff-Client Relationships*, was adopted in

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<sup>251</sup> These are annual day-long trainings that Maryland Legal Aid organizes for all staff members on a topic related to human rights. The annual trainings are held separate Legal Aid offices across the State of Maryland.

<sup>252</sup> See REPORT TO THE FORD FOUNDATION, *supra* note 241 (discussing the human rights trainings held at Maryland Legal Aid offices in December 2012).



early 2014, more than two years after the process initially began.<sup>253</sup> MDLAB then turned the *Guiding Principles* document into posters, which were displayed in offices across the state.

*B. The Center for Human Rights & Humanitarian Law at American University Washington College of Law*

The Center for Human Rights & Humanitarian Law at American University Washington College of Law (the "Center") developed a human rights code of conduct in 2013, after receiving encouragement from its project partner, Maryland Legal Aid.<sup>254</sup> Considering the groundbreaking human rights work which the Center was doing at the time, it was seen as critical for the Center to adopt its own human rights code of conduct to guide its work and interactions of staff. As Hadar Harris, Executive Director of the Center, liked to point out, it was imperative for the Center to not only "talk the talk," but also "walk the walk."<sup>255</sup>

There were some major differences between the Center and Maryland Legal Aid, which lead to a much different drafting and adoption process for the Center's human rights code of conduct. In 2013, the Center's staff of five was tiny compared to Maryland Legal Aid's over 300 staff members. In addition, the Center's staff members were each very familiar with the human rights framework; there was little need for human rights education among the staff members.

In a single afternoon, the Center staff was able to sit down together, review the *Human Rights Principles for Legal Aid*<sup>256</sup> and the Universal Declaration of Human Rights, and put together a draft human rights code of conduct. That draft was then reviewed by the Center's Student Advisory Board,<sup>257</sup> as well as faculty and additional colleagues at American University Washington College of Law.<sup>258</sup>

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<sup>253</sup> MD. LEGAL AID, MARYLAND LEGAL AID GUIDING PRINCIPLES FOR STAFF-CLIENT RELATIONSHIPS (2014) (on file with author).

<sup>254</sup> *A Human Rights Code of Conduct*, *supra* note 220.

<sup>255</sup> See Chaires, *supra* note 230, at 89.

<sup>256</sup> See *supra* Part V.A.2.

<sup>257</sup> See *A Human Rights Code of Conduct*, *supra* note 220; *Student Advisory Board*, CTR. FOR HUMAN RIGHTS & HUMANITARIAN LAW, <https://www.wcl.american.edu/impact/initiatives-programs/center/our-students/board> (last visited Feb. 24, 2018).

<sup>258</sup> *A Human Rights Code of Conduct*, *supra* note 220.

The Center finalized its draft in late 2013, and the *Center's Human Rights Principles* were posted on its website.<sup>259</sup> The Center began periodically reviewing its Human Rights Principles at staff meetings on a regular basis. In addition, when facing big decisions or conflicts between staff, the *Center's Human Rights Principles* were reviewed to make sure that conduct was in line with the Principles. For the staff at the Center, the process of drafting and then periodically reviewing the Principles underlined the need for those working in human rights to intentionally practice applying human rights principles to daily decision making and interpersonal relationships.<sup>260</sup> The *Center's Human Rights Principles* underlined what it truly meant to be a human rights advocate.

### C. Ohio Northern University Legal Clinic

The author of this Article, as the new Director of Legal Clinics at Ohio Northern University Claude W. Pettit College of Law ("ONU"), helped clinic students develop a human rights code of conduct for the ONU in-house civil litigation and transactional clinics during the fall semester of 2015. This was quite a feat to accomplish in one semester, especially given that none of the fifteen participating clinic students had taken an international law or human rights course, and some students were just taking a legal ethics course that semester. Despite these hurdles, the students drafted and adopted a human rights code of conduct: *The Human Rights Principles for the ONU Legal Clinic*.<sup>261</sup>

The process used by the ONU Legal Clinic students to develop a human rights code of conduct was not overly time consuming. The time the students spent on the code was mainly confined to three weekly rounds sessions. Ideally the clinic students would have had more time to work on this, but that was not possible due to clinic time constraints.<sup>262</sup>

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<sup>259</sup> *Human Rights Principles*, CTR. FOR HUMAN RIGHTS & HUMANITARIAN LAW (Nov. 1, 2013) (on file with author).

<sup>260</sup> *A Human Rights Code of Conduct*, *supra* note 220.

<sup>261</sup> *Human Rights Code of Conduct II, the Sequel*, *supra* note 222.

<sup>262</sup> See *Law Clinics and Externship Programs*, OHIO N. UNIV. PETTIT COLL. OF LAW, <http://law.onu.edu/academics/clinical-programs> (last visited Feb. 24, 2018). The ONU Legal Clinic does not require a corresponding seminar. Instead, any teaching, as well as case rounds, are confined to weekly, mandatory, one-hour, rounds sessions. See *id.*

During the first session, the students were given a brief lecture on the human rights framework and human rights law, and copies of the Universal Declaration of Human Rights were distributed to each student. Next, the exercise of drafting a human rights code of conduct was introduced. The human rights code of conduct was explained as a set of principles to guide the students' interactions with each other, their professors, the courts, the public, and clinic clients. Together, the clinic students used the last ten minutes or so of class to brainstorm some descriptive terms for the ideal behavior of a student attorney in clinic.

The next session was designed to mirror the MDLAB drafting process. The students were broken up into four groups. The groups were told to pull out and discuss some of the major themes in the Universal Declaration of Human Rights that were applicable to the relationships between student and supervisor, student and student, and student and client. The students were then given Post-it notes and were directed to individually write on the Post-it what they each thought were the most important human rights principles relevant to lawyering. The students then stuck the Post-its on a wall and were told to try to organize the Post-its according to theme or principle. By the end of that session, the students had come up with the six headings or categories: "Openness," "Equality," "Integrity and Best Judgment," "Dignity and Respect," "Kindness," and "Empowerment."

During the third session, the students were divided into six groups based on the six headings, and each group was directed to brainstorm together and draft language to describe their category in detail using human rights terms. The students were directed to refer to their copies of the Universal Declaration of Human Rights. The groups drafted initial language during that session and spent a couple of additional outside hours outside of rounds editing. After a few more weeks of back-and-forth editing by email between the Clinic Director and the student groups, the *Human Rights Principles for the ONU Legal Clinic* was finalized.

Ideally, the *Human Rights Principles for the ONU Legal Clinic* would have been posted at student workstations, in the clinic lobby, and in supervisors' offices, as a reminder for both students and staff. The students did not actually post copies of the Principles in and around the law clinic that semester, for a

variety of outside reasons, including an imminent move by the clinic to a new location, though they did refer to the Principles during supervision, rounds, and clinic evaluation conversations. It would have also been a good idea to include the other clinic staff, including the clinic's staff attorney and paralegal, in the drafting process, but due to the timing of these sessions in fall of 2015, neither was able to participate.

The *Human Rights Principles for the ONU Legal Clinic* appear to have been more important and more meaningful for some students than others. Some students talked about the drafting process and the Principles on a weekly basis, and some never mentioned the Principles after drafting. For the clinical law teacher, this exercise was very important in terms of how concepts of professional identity, as well as professionalism and ethics, were introduced in the context of the live-client clinic, as well as how to integrate professionalism into rounds discussions.

This exercise was completed within the first few weeks of class, and the discussions that led up to drafting the Principles helped students compare and contrast human rights principles with the Rules of Professional Conduct. Students not only saw the limitations of the Rules of Professional Conduct, but also saw how the Rules and human rights principles interact with their own personal morals. This exercise moved discussions of professional identity to the forefront of class discussions and kept it there for most of the semester. Any fears that students who had not studied human rights or international law would not be able to easily participate in this exercise were waylaid.

As was the case with the *Maryland Legal Aid Guiding Principles* and the *Center's Human Rights Principles* drafting and adoption processes, reviewing the *Human Rights Principles for the ONU Legal Clinic* during rounds and supervision was a good reminder to the students, but it was the drafting process that really stuck with the students. The process of thinking critically about the limitations of the Rules of Professional Conduct, as well as thinking about the values that could be found in the human rights framework, stayed with the students throughout the semester, and was brought up over and over again.

## CONCLUSION

The lack of moral aspiration currently offered by ethical rules, standards, and guidance for lawyers and law students in the United States helps contribute to unhappiness in lawyers and undermines the legal profession. Human rights principles—the concepts of morality underlying human rights law—provide ambitious moral aspiration that lawyers can look to for guidance in navigating ethical dilemmas. A human rights code of conduct for the public interest law office or law clinic goes above and beyond the Rules of Professional Conduct and other standards that guide the decision making and behavior of lawyers in the United States. A human rights code of conduct provides examples of practical, consistent, and significant ways to reach for high ethical standards and integrity.

The detailed background above illustrates the conception of the human rights codes of conduct as applied to a public interest law office or law clinic and provides an important look into the forces and arguments behind the development of a human rights code of conduct. The individual stories are meant to provide step-by-step examples of how a public interest law office or law clinic might go about drafting and adopting a human rights code of conduct.

As a very important U.S. icon once said, “If you wanna make the world a better place take a look at yourself, and then make a change.”<sup>263</sup> Legal practitioners dedicated to high ethical integrity and human rights should consider adopting a human rights code of conduct for their public interest law office or law clinic using the guidance provided in this Article.

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<sup>263</sup> MICHAEL JACKSON, *Man in the Mirror*, on BAD (Epic Records 1987).