PROFESSIONAL IDENTITY FORMATION: WORKING BACKWARDS TO MOVE THE PROFESSION FORWARD

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I. INTRODUCTION

This Article seeks to identify core values necessary for future professionals and the need to ensure that legal education incorporates such learning objectives in order to foster this development. The traditional curriculum is not designed to analyze modern issues in our profession. Conversely, the curriculum instills habits and values antithetical to client representation and professionalism. The next generation of lawyers—the students in today’s classrooms—will profoundly impact the legal profession with their keen use of technology. Students of the millennial generation possess unique skills as digital natives, but may require opportunities in legal education to address a deficit in the social skills necessary for future professionals. Millennials may offer hope for the future based on their sense of community and ideals for success. As such, legal educators should respond to ensure we model behavior we want

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to ultimately see in future lawyers, address the needs of our current student body, and work backwards to cultivate core values in future professionals.

II. ARE PROFESSORS MODELING THE CHANGE THEY WANT TO SEE IN THE PROFESSION?

A legal educator's duty goes beyond teaching the law and shaping analytical minds; one additional responsibility is to model behavior desired in the profession. Despite good intentions, "hidden messages" are planted throughout the traditional curriculum like toxic seeds that eventually manifest as deeply rooted character traits strangling the profession.\(^1\) The first-year curriculum sends the message that practice is categorized into doctrines.\(^2\) One criticism in legal education is how subjects are taught in silos rather than showcasing the complexity of practice.\(^3\) Another message is that success is achieved through a ranking process based solely on exam-taking skills and that such skills are foundational to the profession.\(^4\) An alternative curriculum would highlight from day one that "lawyering is about people—interrelating with people through conversations and written documents, working with clients and other attorneys, support staff and judges."\(^5\) Hidden messages in the traditional curriculum are counterproductive to forming

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1. Leslie Bender, *Hidden Messages in the Required First-Year Law School Curriculum*, 40 CLEV. ST. L. REV. 387, 391-94 (1992) (contrasting a proposed curriculum that tells students from the first day "that issues of justice, truth, equality and freedom are important to all lawyers" with the traditional curriculum that "encourage[s] students to assign intellectual priority to doctrinal categories over processes of law, of change, and over practical skills; to privilege litigation and courts over other methods and places for the resolution of disputes; to learn specific rules rather than reasoning techniques; and that the core of what all lawyers should learn is mostly private common law regulating economic relationships"); WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 31-32 (2007) (describing how hidden messages in the curriculum encourage "single-minded focus on competitive achievement").

2. Bender, supra note 1, at 392 ("The traditional curriculum . . . stresses the importance of learning doctrine and the division of legal problems into seemingly fixed doctrinal categories.").

3. Deborah Maranville & Cynthia Batt, *Pathways, Integration, and Sequencing the Curriculum*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 52, 54 (Deborah Maranville et al. eds., 2015) (highlighting the importance of "integrating theory, doctrine, and practice" as a goal of legal education).

4. Bender, supra note 1, at 392.

5. Id. at 391.
ideals and habits necessary for the future of our profession.6

Designing a law school based on the desired ideals for future professionals requires realigning administrative structures and curricula, evaluating teaching skills, and modeling professionalism. The five principles of professionalism as outlined in Professor Neil Hamilton’s article Professionalism Clearly Defined articulate a way to begin working backwards toward a calculated curriculum that fosters professional formation.7

There is still some confusion between the terms “professional identity” and “professionalism”. Ultimately, “[p]rofessionalism describes the important elements of an ethical professional identity into which the profession should socialize both law students and practicing lawyers. This definition of professionalism connects the public purpose, core values, and ideals of the profession with the goal of fostering an ethical professional identity within each lawyer.”8 The historic movement from teaching professionalism to teaching professional identity is best described by Professor Daisy Hurst Floyd as a shift from a focus on teaching professionalism grounded in rule-based learning to a more modern conversation about fostering opportunities to help each student develop an ethical practice for long-term life satisfaction.9 From an educational standpoint, the

6. Bender, supra note 1, at 393.
7. Neil Hamilton, Professionalism Clearly Defined, 18 PROF. LAW., no. 4, 2008, at 4. Hamilton defines a professional lawyer as one who:
   (1) Continues to grow in personal conscience over his or her career;
   (2) Agrees to comply with the ethics of duty—the minimum standards for the lawyer’s professional skills and ethical conduct set by the Rules[;]
   (3) Strives to realize, over a career, the ethics of aspiration—the core values and ideals of the profession including internalizing the highest standards for the lawyer’s professional skills and ethical conduct;
   (4) Agrees both to hold other lawyers accountable for meeting the minimum standards set forth in the Rules and to encourage them to realize core values and ideals of the profession; and
   (5) Agrees to act as a fiduciary where his or her self-interest is overbalanced by devotion to serving the client and the public good in the profession’s area of responsibility: justice.
   a. Devotes professional time to serve the public good, particularly by representing pro bono clients; and
   b. Undertakes a continuing reflective engagement, over a career, on the relative importance of income and wealth in light of the other principles of professionalism.
7. Id. (footnotes omitted).
8. Id. at 4.
law school experience should continuously socialize law students beyond the minimal standards of ethical lawyering to “wider matters of professional morality.”10 Ideally, each class would incorporate an opportunity for professional formation above and beyond the minimal standards of ethical rule competency. Professionalism should not be assessed by a single required course covering the Model Rules of Professional Conduct in order to prepare for the MultiState Professional Responsibility Exam. Instead, opportunities for ethical formation and reflective discussion throughout the curriculum would provide time to absorb more messages about core values through a thoughtful formation process. The ideal curriculum would clearly communicate formation as a continuous and aspirational exercise in contrast to the hidden messages of the traditional curriculum. Such an ideal curriculum can be constructed by working backwards from this aspirational goal to achieve an evolving formation that focuses on core values that enrich the profession.

Unfortunately, the traditional first-year curriculum employed by many law schools promotes competitive, hypersensitive paranoia and breaks many students’ self-confidence.11 This unnecessarily competitive atmosphere could be avoided if the academy were to identify fundamental values and principles and work backwards to construct a curriculum; to achieve this, we must first identify core traits important to future professionals. One important trait is “personal conscience” as identified by Professor Hamilton.12 This trait requires self-awareness and self-scrutiny—the ability to receive feedback from others and appreciate how one’s conduct impacts others.13 Imagine if all law school courses set the development of personal

lawyer integrates the intellectual, practical, and ethical aspects of being a lawyer and also integrates personal and professional values. A lawyer with an ethical professional identity is able to exercise practical wisdom and to live a life of satisfaction and well-being.” (quoting John T. Berry et al., Legal Education and the Formation of Professional Identity: Past and Future, Address at the American Bar Association 38th National Conference on Professional Responsibility (June 2012)).


13. Id. at 9 (“These skills contribute particularly to growth in personal conscience in terms of awareness of impacts of conduct on others, the formation of first ethical principles, and a sense of obligation to live the law student’s or lawyer’s ethical principles.”).
conscience through self-reflection as a learning goal in order to endorse this trait as a core value for future professionals. In practical terms, a mid-semester assessment might include a collaborative drafting exercise with a fellow classmate. The teacher's evaluation could focus on the student's demonstration of interpersonal and collaborative skills. Students could critique each other and self-assess how they received feedback. Imagine the professor evaluating the interactions and providing formative feedback on how to improve such core skills to better facilitate future collaborative endeavors and further self-reflection.

Instilling introspective reflection requires teaching students how to be self-directed learners. Teaching students to become metacognitive learners provides a foundation for future practice in which improvement occurs through introspective analysis. Prompting students to perform through structured experiences provides an opportunity for them to actively learn self-reflection skills. Assessing students' ability to receive feedback or collaborate with others would provide a clear message that such values are important for practice. The straight-forward message that collaboration and self-reflection are valued learning goals in the course strips away hidden messages and instead communicates a direct message that the profession requires these traits. Equally important is modeling such behavior. Professors who collaborate on projects or co-teach further model such valued traits and instill the message.

To promote collaboration, podium professors might invite clinical faculty skilled in self-reflective pedagogy and collaborative teaching methods to guide a discussion in which students critique each other's work and then explore how they


16. Cf. Hannah R. Arterian, The Hidden Curriculum, 40 U. Tol. L. Rev. 279, 281 (2009) ("The primary institutional deliverers of professional standards and values are faculty members. Faculty members are the subject of endless scrutiny; whether beloved or detested, or both simultaneously, their behavior is the medium and the message.").
perceived this interaction. Fostering self-reflection is a key pedagogical goal of clinical education.\(^\text{17}\) Conversely, professors who specialize in a subject area should equally share their wisdom in a clinical setting. Essentially, a classroom shared by two professors models the idea that collaboration is an important and worthy goal in the profession.\(^\text{18}\) This type of thoughtful curricular design highlights core values essential to professional identity formation; however, such a design requires a substantial amount of planning and collaboration among colleagues who may have different viewpoints. Many professors may not have the time or patience to dedicate valuable class time to such a venture.

In this new era of experiential education, schools are studying various ways to “(i) integrate doctrine, theory, skills and legal ethics . . . ; (ii) develop the concepts underlying the professional skills being taught; (iii) provide multiple opportunities for performance; and (iv) provide opportunities for self-evaluation.”\(^\text{19}\) The time is ripe to design law school curricula with the future in mind in order to bolster the reputation of the profession and better serve clients.

This idea is not far-fetched; law schools have designed classes to foster formation, providing working prototypes for other schools to implement.\(^\text{20}\) The introspective period in legal education is now, and it is imperative to set an agenda that fully discusses goals for the profession and the modern challenge of technologically advanced students.

17. See generally Rebecca B. Rosenfeld, *The Examen Externship is Worth Doing: Critical Self-Reflection and Externship Pedagogy*, 21 CLINICAL L. REV. 127 (2014); see also STUCKEY ET AL., supra note 14, at 48-49 (advocating self-reflection as a critical skill to instill during the three years of law school).

18. See Richard H. Seamon & Stephen A. Spitz, *Joint Teaching With a Colleague, For Just a Week or Two*, 52 J. LEGAL EDUC. 258, 262 (describing the benefits to students of watching two faculty members with different personalities and backgrounds collaborate).


20. Maranville & Batt, *supra* note 3, at 54 (noting that some schools have “experimented with 'Contorts' or similar courses that integrate teaching and learning of multiple subjects”; see also Alliance for Experiential Learning in Law, *Creative Experience the Future: Papers from the Second National Symposium on Experiential Education in Law*, 7 ELON L. REV. 1, 63-73 (2015) (describing innovative simulation work with opportunities for self-reflection and labs or practicums providing hands-on experience, semester-in-practice programs, and project-based learning programs).
III. PROFESSORS MUST KNOW THEIR AUDIENCE AND ENGAGE THE FUTURE IN ORDER TO BRIDGE THE DIVIDE BY EMBRACING CULTURAL CHARACTERISTICS OF THE MILLENNIAL GENERATION

To construct an ideal curriculum, legal educators must know their audience. Like many generations before, the millennials must prove themselves and defeat the stereotypes held by older generations. Significant misunderstandings about the millennial generation continue to shake the foundation of legal education and create further challenges to fostering professional identity formation. Many students in our classrooms will forever change the profession in a manner not yet grasped by either the student or the professor. A study of millennials' strengths and challenges is necessary to be able to adapt the curriculum and prepare the next generation for the profession.

For instance, barriers between legal educators and millennial students develop from incorrect assumptions about millennials' career goals, notions of individual success, preference for learning methods, sense of entitlement, and mastery of social skills, as well as a lack of appreciation of millennials' higher level of stress and anxiety. Millennials are less strongly attached to career and professional aspirations than were previous generations. Nevertheless, the traditional law school curriculum continues to push archaic structures of rank and value based on individual success through exam performance. The ranking process is the proxy on which many employers rely to efficiently make hiring decisions. This structure in modern legal hiring places too much emphasis on grade point average.

21. The author recognizes that not all students in law school classrooms are from the millennial generation. This Article, however, focuses on the majority of students entering law schools today.

22. Kari Mercer Dalton, Bridging the Digital Divide and Guiding the Millennial Generation's Research and Analysis, 18 BARRY L. REV. 167, 169-76 (2012) (citing technology, family and cultural characteristics, the ability to multitask, and student learning traits as central differences between the student generation and the educator).


24. Dalton, supra note 22, at 173-76.

25. Id. at 173. (“The driving force behind many of their generational objectives seems not to be money or success in quite the same manner as older generations.”).
rather than a proper match or alignment of interests. Technology is changing the hiring structure to assist legal employers in hiring and advancement decisions.26

The law school structure continues to operate in a manner that implicitly assumes the only successful students are those who achieve a high grade point average and receive an offer from a prestigious law firm.27 This message is quickly deconstructed by many students who understand that such a position will dictate long hours away from family—an idea counterproductive to their sense of success. The millennials' idealistic nature focuses more on family, community, and civic duty.28 Legal educators were likely "taught to and anchored themselves in work" whereas "[m]illennials, on the other hand, anchor themselves in their life balance."29

One way to bridge the divide between millennials' notions of professional success and the demands of the profession is through a continuous reflective discussion on core values and expectations in this changing marketplace. Notably, the marketplace has not completely changed; therefore modern students must equip themselves as change-agents as well as showcase traditional notions. Each student may define his own sense of success on specific notions of individual well-being. Opportunities for students to reflect on the challenge of balancing personal values against the interest of employers, judges or clients are important throughout law school. Likewise, teaching students how to communicate personal choices in an effective and respectful manner is an important learning objective for the modern classrooms.

Another area ripe for discussion is the divide between millennials' status as digital natives who "prefer video, audio and

27. See Susan Sturm & Lani Guinier, The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity, 60 VAND. L. REV. 515, 523 (2007) ("The law school environment encourages students to form their sense of selves and their success in terms of how well they do in all of these rituals of performance and competition. The pressure to keep up and to do well, as measured by these common metrics of success, comes to define the law school atmosphere.").
29. Id. at 178.
interactive media to print material\textsuperscript{30} and the traditional casebook method, which expects completion of long reading assignments and engagement with in-class discussion. Frank discussion is needed as to whether students are actually reading the assigned material and are truly prepared for classroom discussion. More importantly, further discussion is necessary regarding whether a law school is prepared to make the tough decision to dismiss students who do not meet academic expectations. Millennials are “typically under-prepared . . . and they are less likely to engage in class participation.”\textsuperscript{31} “Professors are not a valued source of information” because students assume the same information can be found through the use of technology.\textsuperscript{32} Hence, the divide continues.

The most engaging teaching method is “experiment and discovery” because education is connected to entertainment for millennials.\textsuperscript{33} Therefore, “play pedagogy offers alternative ways to learn and approach topics.”\textsuperscript{34} Imagine a video game approach, where the student creates a professional lawyer avatar and several decision options unfold to pose challenging decisions based on values, morals, and ethical duties. This type of learning opens the dialogue in an upbeat and non-aggressive manner, rather than the Socratic classroom discussion with which they are less likely to engage.

Another divide includes the negative perception that “helicopter parents”\textsuperscript{35} have crippled the independence and self-autonomy of millennials by “nurtur[ing] them in an environment rich with encouragement and responsive guidance.”\textsuperscript{36} Many law schools assume a parental role but foster a “caustic, paranoid, and overly competitive” environment, which is likely to create

\begin{itemize}
\item \textsuperscript{30} Dalton, supra note 22, at 169.
\item \textsuperscript{31} Id. at 175.
\item \textsuperscript{32} Id. at 176.
\item \textsuperscript{33} Id. at 175.
\item \textsuperscript{34} Davida Finger, Introduction, \textit{Teaching in a Transformative Age: The Law School of the Future}, 10 SEATTLE J. FOR SOC. JUST. 1, 8-9 (2011) (citing Bryan Adamson et al., \textit{Can the Professor Come Out and Play?—Scholarship, Teaching and Theories of Play}, 58 J. LEGAL EDUC. 481, 498 & n.73 (2008), \textit{reprinted in} 10 SEATTLE J. FOR SOC. JUST. 273, 296 & n.73 (2011)) (describing a “web-based ‘treasure hunt’ exercise that is used in the classroom”).
\item \textsuperscript{36} Dalton, supra note 22, at 170.
\end{itemize}
instant barriers and disengagement.\textsuperscript{37} This learning environment contrasts starkly with the learning environments to which many students are accustomed. The dilemma for law schools is how to prepare such students for the harshness of practice while balancing the best methods to ensure development.

To better prompt student development, a variety of methods including the comfort of digital podcasts, videos, and short visuals might create an encouraging environment that can be rounded out with Socratic dialogue. Alternatively, legal educators can provide a space to create through an assignment that is ungraded but accompanied by formative feedback. Live-grading is another method to assess core values and deliver constructive critiques.\textsuperscript{38} Many legal writing professors use this guide-on-the-side approach, which provides another opportunity to assess social skills and interact with the professor.

The larger challenge facing legal educators is the deeply seated obstacle that millennials “feel more comfortable communicating through technology than in person.”\textsuperscript{39} Their interpersonal skills and ability to interview, build a client-centered trusting relationship, or collaborate with others is of paramount concern for our social profession.\textsuperscript{40} Legal education faces an immediate challenge—it must construct a curriculum that functions as a bridge for the digital natives to wander into the professional land of social interaction and ensure they feel comfortable and well-equipped.

Another challenge is battling the “increased level[] of stress and anxiety” experienced by most millennials.\textsuperscript{41} Many disorienting moments exist with new professional expectations, and millennials may experience higher rates of stress in response. To counteract such an occurrence, the nurturing environment of structured feedback is likely a better response to ensure

\textsuperscript{37} See Austin, \textit{supra} note 11, at 794 (quoting DOUGLAS LITOWITZ, THE DESTRUCTION OF YOUNG LAWYERS: BEYOND ONE L 10, 19 (2006)).

\textsuperscript{38} In live-grading, an instructor marks a rubric as the instructor and student read the student’s paper aloud together, allowing the student to gain valuable insight into an audience’s response to his or her writing. See Mary Beth Beazley, \textit{Better Writing, Better Thinking: Using Legal Writing Pedagogy in the “Casebook” Classroom (Without Grading Papers)}, 10 LEGAL WRITING 23, 55-56 (2004).

\textsuperscript{39} Dalton, \textit{supra} note 22, at 170.

\textsuperscript{40} Benfer & Shanahan, \textit{supra} note 15, at 33-34 (noting that oral and nonverbal communication are challenging for many millennials who are more comfortable utilizing technology to communicate).

\textsuperscript{41} Dalton, \textit{supra} note 22, at 175.
professional formation.  

On a positive note, millennials will renew the profession in a manner not yet realized. Their sense of optimism and idealistic nature may create pathways to heal the profession. They define success differently with an eagerness to become integral in their community and solve “long-standing global and historical challenges” with a sincere belief they can make a difference. This profession needs their new sense of vigor. Our duty as legal educators is to guide them to address the long-standing issues within the profession, such as the access to justice gap, the billable hour, and the difficulty in creating life-balance. Legal educators need to cease the negative commentary regarding the many challenges and instead create a nurturing environment to help them enrich the profession. Professors need to begin welcoming them into adulthood and cease any reference to adolescence. Overall, many challenges lie before both legal educators and those entering the profession, but utilizing the millennials' sense of optimism provides great opportunity to enrich the profession.

IV. CONCLUSION

Ultimately, the necessary steps going forward require more discussion about the character traits and values necessary for the modern professional. Ideally, legal educators should first identify these necessary values to enrich the future of the profession. This starting point will further assist in the development of learning objectives necessary to foster professional formation. Since all law schools are currently designing new curricular learning outcomes in addition to those dictated by the ABA, the time is ripe to articulate such outcomes and design backwards. The students in our classrooms are change-agents for the profession. The cultural change to reform the profession should include collaboration between all change-agents: students, professors, employers, and clients; only after such collaboration will a modern legal curriculum emerge.

43. See Dalton, supra note 22, at 173-74.
44. Id. at 174.
45. The author wishes that legal educators would cease to refer to students as “children” or “kids” and instead acknowledge that by the time students reach a law school campus, they have been legally recognized as adults for several years.