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# A Kantian Moral Cosmopolitan Approach to Teaching Professional Legal Ethics

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## Abstract

This article argues that given the globalization of legal education and legal services, professional legal ethics should incorporate not only a cosmopolitan dimension but also sentiments such as compassion, respect, and sensitivity for human suffering. Inspired by the philosophy of Immanuel Kant and his theory of education, this article seeks to address some of the limitations of the professional codes of conduct for barristers and solicitors, in England and Wales, by applying a moral cosmopolitan approach to the teaching of professional legal ethics. This normative approach is underscored by a commitment to moral duties to persons irrespective of their nationality, gender, religion, or any other defining characteristic. These duties include promoting client autonomy and engaging in law reform. This article also argues that Clinical Legal Education programs are an appropriate methodology for teaching moral cosmopolitan ethics.

**Keywords:** Autonomy; cosmopolitanism; Kantian ethics; professional legal ethics

## A. Introduction

Globalization has not only witnessed the growth of international trade, but also a rise in immigration, the proliferation of the legal market,<sup>1</sup> pro bono services,<sup>2</sup> and legal education.<sup>3</sup> One of the effects of globalization is that lawyers, regardless of their geographical location, are likely to be dealing with clients from different parts of the world. The teaching of professional legal ethics should, therefore, prepare future lawyers for cosmopolitan legal practice.<sup>4</sup> Ethics may be defined

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<sup>1</sup>ALBERTO ALEMANNINO & LAMIN KHADAR, *Introduction*, in REINVENTING LEGAL EDUCATION: HOW CLINICAL EDUCATION IS REFORMING THE TEACHING AND PRACTICE OF LAW IN EUROPE 1,1 (2018).

<sup>2</sup>GLOBAL PRO BONO: CAUSES, CONTEXT, AND CONTESTATION (Scott L. Cummings ed., 2021).

<sup>3</sup>Simon Chesterman, *The Globalisation of Legal Education*, 58 SINGAPORE J. LEGAL EDUC. (2008); LEGAL EDUCATION IN THE GLOBAL CONTEXT: OPPORTUNITIES AND CHALLENGES (Christopher Gane & Robin Hui Huang eds., 2017); Joan Squelch & Duncan Bentley, *Preparing Law Graduates for a Globalised World*, 51 L. TCHR. 2 (2017).

<sup>4</sup>John Flood, *Legal Education in the Global Context: Challenges from Globalization, Technology and Changes in Government Regulation* (Jan. 27, 2022) [http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/pdf/lbs\\_legal\\_education\\_report\\_flood.pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/lbs_legal_education_report_flood.pdf); John Flood & Peter D Lederer, *Becoming a Cosmopolitan Lawyer*, 80 FORDHAM L. REV. 2513 (2012); Antonios E. Platsas, *A Cosmopolitan Ethos for Our Future Lawyers*, 1 L. J. HIGHER SCH. ECON. 150 (2015).

as the application of moral philosophy to addressing questions of right and wrong.<sup>5</sup> Inspired by deontological ethics, this article seeks to equip law students to deal with an interconnected and globalized world by incorporating Kantian moral cosmopolitanism (KMC) to the teaching of professional legal ethics for barristers and solicitors in England and Wales.

In general terms, cosmopolitanism is the idea that moral obligations are owed to all human beings, irrespective of race, gender, nationality, or any other defining characteristics.<sup>6</sup> Nussbaum, in her influential essay on cosmopolitan education, asserts that moral ideals of justice and equality are best served by a commitment to cosmopolitanism which holds that a person's "allegiance is to the worldwide community of human beings."<sup>7</sup> Consequently, future barristers and solicitors should be taught to be cognizant of moral duties owed to third parties. It will be argued that KMC is a useful conceptual tool for interpreting and expanding the duties contained in the codes of professional conduct for barristers and solicitors. This article also contends that Clinical Legal Education (CLE) programs are an appropriate methodology for teaching KMC.

This article will proceed as follows: After the introduction, Part B provides a brief outline of the main elements of Kant's philosophy and theory of education. Part C discusses the professional codes of conduct for barristers and solicitors and highlights their limitations in relation to moral cosmopolitan education. Part D examines the teaching of professional legal education at both undergraduate and postgraduate levels. Parts E and F examine Kant's theory of ethics in order to construct a moral cosmopolitan framework to supplement the professional codes of conduct. Part G argues that CLE is an appropriate methodology for teaching KMC values.

## B. Kant and Cosmopolitan Moral Education

There are three broad themes which render Kant's philosophy compatible with the teaching of professional legal ethics: Autonomy, moral education, and duty. The concept of autonomy underpins Kant's moral theory. Prior to Kant, autonomy had been strictly a political term. He was, thus, the first philosopher to import this concept into ethics.<sup>8</sup> For Kant, morality can only arise from freedom.<sup>9</sup> Complete freedom is only possible where it is not influenced by "non-self-determined causes" such as external pressures, for example lawyer coercion, or internal causes, such as a person's personal preferences or inclinations.<sup>10</sup> Freedom, in this strong sense, is autonomy of the will, as opposed to heteronomy, which is the subjection to any determination from either external or internal sources.<sup>11</sup> Thus, on Kant's account and drawing on Rousseau,<sup>12</sup> subjection even to the will of God is heteronomy, not freedom.<sup>13</sup> The concept of autonomy can play an important role in legal ethics by reminding lawyers to treat clients as autonomous individuals and allowing them to reach their own decisions.<sup>14</sup> Heteronomy can also be a useful conceptual tool as it can direct lawyers to be cognizant of pressures affecting a client's ability to make autonomous decisions, such as undue influence from a family member.

<sup>5</sup>Derek Sellman, *Why Teach Ethics to Nurses?*, 16(1) NURSE EDUC. TODAY 44, 44 (1996).

<sup>6</sup>Garrett Wallace Brown & David Held, *Editor's Introduction*, in THE COSMOPOLITANISM READER 1, 1 (Garrett Wallace Brown & David Held eds., 2010).

<sup>7</sup>Martha C. Nussbaum, *Patriotism and Cosmopolitanism*, in FOR LOVE OF COUNTRY: DEBATING THE LIMITS OF PATRIOTISM 4, 4 (Joshua Cohen ed., 1996).

<sup>8</sup>IMMANUEL KANT, GROUNDWORK OF THE METAPHYSICS OF MORALS 4:432 (HJ Patton trans., 1969) (1785); MICHAEL FREEMAN, LLOYD'S INTRODUCTION TO JURISPRUDENCE 103, 103 (9th ed., 2016).

<sup>9</sup>KANT, *supra* note 8, at 4:447.

<sup>10</sup>*Id.* at 4:452 (explaining that "Inclination" refers to impulses, including instincts and appetites). See ROBERT B. LOUDEN, KANT'S IMPURE ETHICS: FROM RATIONAL BEINGS TO HUMAN BEINGS (2002).

<sup>11</sup>KANT, *supra* note 8, at 4:441.

<sup>12</sup>JEAN-JACQUES ROUSSEAU, THE SOCIAL CONTRACT, A DISCOURSE ON THE ORIGIN OF INEQUALITY, AND A DISCOURSE ON POLITICAL ECONOMY (Classic Books International 2010).

<sup>13</sup>LLOYD L. WEINREB, NATURAL LAW AND NATURAL JUSTICE 95 (1987).

<sup>14</sup>ANDREW BOON & JENNIFER LEVIN, THE ETHICS AND CONDUCT OF LAWYERS IN ENGLAND AND WALES 183 (2008).

Moral education relates to Kant's question: "How then, are we to seek [moral] perfection, and from whence is it to be hoped for?" His answer is: "From nowhere else but education."<sup>15</sup> Although Kant's educational theory is primarily aimed at children, its main tenets are applicable to legal education by virtue of the fact that his objective was to develop moral character:

One must also pay attention to *moralization*. The human being should not merely be skilled for all sorts of ends, but should also acquire the disposition to choose nothing but good ends. Good ends are those which are necessarily approved by everyone and which can be the simultaneous ends of everyone.<sup>16</sup>

Kant's theory of education contains not only a cosmopolitan dimension but also shares a similar aim with professional legal ethics: The cultivation of ethical/moral character.<sup>17</sup> For Kant, education is either physical or practical.<sup>18</sup> The latter, which is relevant for present purposes, is concerned with cultivating personality,<sup>19</sup> and consists of skill, worldly prudence, and morality.<sup>20</sup> Skill, which is necessary for the cultivation of talent, must be "thorough and not superficial."<sup>21</sup> Kant, however, does not define "skill." According to Pring, skill is "the generic term for knowledge, understanding, mental capacity, practical competency, and interpersonal sensitivity, thereby blurring important distinctions."<sup>22</sup> Adopting Pring's definition, it can be argued that a thorough, as opposed to superficial, understanding of legal ethics requires studying law in a practical context. Worldly prudence and morality both relate to developing a "good character."<sup>23</sup> The former, "consists in the art of using our skillfulness effectively, that is, of how to use human beings for one's purposes."<sup>24</sup> However, to engage in worldly prudence, self-control is necessary in order to avoid using others as mere means. In the context of clinical programs, it is almost impossible for students to develop into reflective practitioners without using the experiences of their clients/patients for their deliberations.<sup>25</sup> Some students might elect to take part in clinical education out of self-interest. There is, therefore, a risk that such students may use clients as mere means rather than ends in themselves. To militate against the mere use of others, Kant's second formula—discussed in part F.3—can act as a moral constraint to prevent using others as mere means, and thereby facilitating self-control.

To develop one's moral character, Kant writes, "[o]ne should give children some pocket money with which they could help the needy, and then one would see whether they are compassionate or not."<sup>26</sup> Moral education, therefore, involves fostering compassion in students. Kant's advice regarding giving children pocket money to nurture compassion may be interpreted to mean that he supports the idea of providing students with opportunities, grounded in practical experience, to develop their sense of compassion. Compassion, for present purposes, is defined as "the feeling

<sup>15</sup>IMMANUEL KANT, LECTURES ON ETHICS 27: 271 (Peter Heath & Jerome B. Schneewind eds., 1997).

<sup>16</sup>Immanuel Kant, *Lectures on Pedagogy*, in ANTHROPOLOGY, HISTORY, AND EDUCATION 9:450 (Robert B. Louden ed., 2007).

<sup>17</sup>Gerald J. Postema, *Moral Responsibility in Professional Ethics*, 55 N.Y.U. L. REV. 63 (1980); Kathleen S. Bean, *A Proposal for the Moral Practice of Law*, 12 J. L. PRO. 49 (1987); Donald Nicolson, *Making lawyers moral? Ethical Codes and Moral Character*, 25(4) L. STUD. 601 (2005).

<sup>18</sup>KANT, *supra* note 16, at 9:455.

<sup>19</sup>*Id.*

<sup>20</sup>*Id.* at 9:486.

<sup>21</sup>*Id.*

<sup>22</sup>Richard Pring, *Reclaiming Philosophy for Educational Research*, 59(3) EDUC. REV. 315, 329 (2007).

<sup>23</sup>KANT, *supra* note 16, at 9:486.

<sup>24</sup>*Id.*

<sup>25</sup>Janet Hargreaves, *Using Patients: Exploring the Ethical Dimension of Reflective Practice in Nurse Education*, 25 J. ADVANCED NURSING 223, 225 (1997).

<sup>26</sup>KANT, *supra* note 16, at 9:486–87.

that arises in witnessing another's suffering and that motivates a subsequent desire to help."<sup>27</sup> Compassion, therefore, promotes positive obligations to assist those who are suffering.

The concept of duty underscores the professional codes of conduct for barristers and solicitors, for example, duty of confidentiality, duty to avoid conflict of interest, and the duty to act in the best interest of the client. Kant's educational theory involves instilling students with a sense of duty, which is divided into duty to oneself and duty towards others. The latter requires "[r]everence and respect for the rights of human beings."<sup>28</sup> Kant argues that it is essential that students are given the opportunity to "put [reverence and respect] into practice."<sup>29</sup> Thus, practice-oriented education is an essential element of Kant's theory of moral education. The next section will examine the professional codes of conduct and highlights some of their limitations in relation to moral development.

### C. The Professional Codes of Conduct for Barristers and Solicitors

The legal profession in England and Wales is divided into two main branches: Barristers and solicitors. Barristers are regulated by the Bar Standards Board (BSB),<sup>30</sup> while the Solicitors Regulation Authority (SRA) is responsible for the regulation and education of solicitors.<sup>31</sup> The BSB's role includes setting out the education and training requirements for becoming a barrister and setting the standards for professional conduct in the BSB's Handbook.<sup>32</sup> The Handbook includes the Code of Conduct, which contains the ten core duties (CDs) that underpin the BSB's regulatory framework, and the conduct rules (rCs), which are designed to supplement the CDs. The codes of professional conduct for solicitors are in the SRA's Standards and Regulations. These provide two codes of professional conduct: A code for law firms and a code for solicitors.<sup>33</sup> The Standards and Regulations also stipulate the seven Principles, which are "the fundamental tenets of ethical behaviour" which solicitors must uphold.<sup>34</sup> In the event of a conflict between the Principles, those that safeguard the wider public interest—Principles 1 and 2—take precedence over an individual client's interest —Principle 7.<sup>35</sup>

In its 2018 report, entitled *Balancing duties in litigation*, the SRA warned solicitors that they are not "hired guns" whose only duty is to their client.<sup>36</sup> Solicitors also owe duties to the courts, third parties, and to the public interest.<sup>37</sup> The report highlights incidents where solicitors have engaged in improper or abusive litigation such as taking unfair advantage of unrepresented parties, misleading the court, or acting for clients whose cases are weak or unwinnable. The report also found that some solicitors pursued their own interests at the expense of their clients. KMC, with its commitment to autonomy and dignity, can address some of the concerns raised in the SRA's report.

<sup>27</sup>Jennifer L. Goetz, Dacher Keltner & Emiliana Simon-Thomas, *Compassion: An Evolutionary Analysis and Empirical Review*, 136(3) PSYCH. BULL. 351, 351 (2010).

<sup>28</sup>KANT, *supra* note 16, at 9:489.

<sup>29</sup>*Id.*

<sup>30</sup>*Welcome to the BSB*, BAR STANDARDS BOARD (Jan. 27, 2022), <https://www.barstandardsboard.org.uk/>.

<sup>31</sup>Formed by the Legal Services Act 2007.

<sup>32</sup>*The BSB Handbook*, BAR STANDARDS BOARD (Jan. 27, 2022), <https://www.barstandardsboard.org.uk/for-barristers/bsb-handbook-and-code-guidance/the-bsb-handbook.html>.

<sup>33</sup>SRA *Principals*, SOLICITORS REGUL. AUTH., <https://www.sra.org.uk/solicitors/standards-regulations/principles/> (last accessed Sept. 26, 2022)

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

<sup>35</sup>*Id.*

<sup>36</sup>Monroe H. Freedman, *The Lawyer as a Hired Gun*, in *LAWYERS' ETHICS: CONTEMPORARY DILEMMAS* 63 (Allan Gerson ed. 1980); Ted Schneyer, *Some Sympathy for the Hired Gun*, 41(1) J. L. EDUC. 11 (1991).

<sup>37</sup>*Balancing duties in litigation*, SOLICITORS REGUL. AUTH. (2018), <https://www.sra.org.uk/risk/risk-resources/balancing-duties-litigation/>.

Although the Handbook and the Standards and Regulations provide guidance on ethical behavior, they suffer from various limitations.

### I. The Limitations of the Professional Codes of Conduct

The teaching of professional legal ethics is intended to prepare future lawyers to address ethical dilemmas such as conflict of interest,<sup>38</sup> acting with integrity.<sup>39</sup> Although these dilemmas can be resolved by following the professional codes, there are various limitations associated with the sole reliance on the professional codes of conduct. First, they “will only help develop the sensitivity and judgment to recognize possible breaches of the rules and how to apply them.”<sup>40</sup> Second, a common aim of professional codes is to outline the norms of professional practice. They outline, inter alia, the obligations owed to clients, general ethical principles, and advice on how these principles may apply in a practical context.<sup>41</sup> Thus, breach of the SRA’s Principles and/or duties owed to clients, such as the duty of confidentiality, can result in disciplinary action brought against the law firm and the lawyer. The professional codes are, therefore, primarily concerned with censure and maintaining the public’s trust, rather than promoting moral reasoning. Third, professional codes are drafted to protect the “ideal of the lawyer as an adversarial advocate.”<sup>42</sup> However, the adversarial approach not only encourages moral neutrality but also privileges the interest of the client.<sup>43</sup> A possible consequence of privileging client’s interest is that students may be trained to adopt a “hired-gun” approach. However, as stated in *Balancing duties in litigation*, solicitors also owe duties to the courts, third parties and to the public interest.<sup>44</sup> Fourth, using the codes of conduct to teach professional ethics, without a “coherent theme or explicit moral philosophy”<sup>45</sup> limits the resolution of ethical problems to the application of the rules contained in the codes. Professional codes are, therefore, limited in their application to “easy cases.” Moral philosophy can enhance the scope of the codes of conduct by promoting ethical decision-making and a cosmopolitan ethos.

Fifth, professional codes generally set out the minimum requirements of ethical behavior.<sup>46</sup> However, prescribing a set of norms is not the same as providing a framework for guiding the lawyer’s conduct. Promoting professional legal ethics among students and lawyers should require more than simply positing a set of minimum standards of behavior. Lawyers ought to be taught to address situations which are either not included in the codes of ethics or included but are ambiguous. An example of the latter is the duty to act in the best interest of the client.<sup>47</sup> Lawyers, for example, must decide whether to act in a manner that promotes client autonomy or adopt a paternalistic approach. This may contribute to inconsistent behaviour on the part of the lawyer. Moreover, owing to the fact that autonomy and paternalism are complex philosophical terms, students should be given guidance in relation to interpreting these concepts. Finally, given the globalization of the legal profession, it is debatable whether the codes of conduct can address

<sup>38</sup>Core Duties, BAR STANDARDS BOARD, at CD6 <https://www.barstandardsboard.org.uk/the-bsb-handbook.html?part=E3FF76D3-9538-4B97-94C02111664E5709&audience=&q=core+duties> (last accessed Sept. 26, 2022); *Code of Conduct for Solicitors, RELs and FLs*, SOLICITORS REGUL. AUTH., [sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/](http://sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/) (last accessed Sept. 26, 2022).

<sup>39</sup>Core Duties, *supra* note 38, at CD2, CD3; *SRA Principals*, *supra* note 33, principals 5,7.

<sup>40</sup>Donald Nicolson, *Teaching and Learning Legal Ethics: What, How and Why?*, in RE-THINKING LEGAL EDUCATION UNDER THE CIVIL AND COMMON LAW: A ROAD MAP FOR CONSTRUCTIVE CHANGE 88 (Richard Grimes ed., 2017).

<sup>41</sup>JONATHAN HERRING, *LEGAL ETHICS* 40–41 (2nd ed. 2016).

<sup>42</sup>Scott R. Peppet, *Lawyers’ Bargaining Ethics, Contract, and Collaboration: The End of the Legal Profession and the Beginning of Professional Pluralism*, 90 IOWA L. REV. 475, 479 (2005).

<sup>43</sup>César Arjona, *Amorality Explained: Analysing the Reasons That Explain the Standard Conception of Legal Ethics*, 4 RAMÓN LLULL J. APPLIED ETHICS 51, 59 (2014).

<sup>44</sup>*SRA Principals*, *supra* note 33.

<sup>45</sup>Seow Hon Tab, *Teaching Legal Ideals Through Jurisprudence*, 43(1) L. TCHR. 14, 20 (2009).

<sup>46</sup>HERRING, *supra* note 41, at 7.

<sup>47</sup>Core Duties, *supra* note 38, at CD2; *SRA Principals*, *supra* note 33, principals 7.

ethical issues in the international arena, such as local customs and the values and expectations of clients in different jurisdictions.<sup>48</sup> One approach to addressing the limitations of the Handbook and the Standards and Regulations is to incorporate KMC into the teaching of legal ethics.

#### D. Teaching Professional Legal Ethics in England and Wales

At the time of writing, students who wish to qualify as barristers or solicitors must successfully complete three stages. The first involves the completion of either a law degree or the Graduate Diploma in Law (GDL).<sup>49</sup> This is then followed by a vocational programme: The Bar Professional Training Course (BPTC) for barristers, or the Legal Practice Course (LPC) for solicitors. The final stage is the apprenticeship: A one-year pupillage for barristers or working as a trainee-solicitor for two years.

Despite Economides and Roger's recommendation to the Law Society that legal ethics should be mandatory in undergraduate law degrees, the teaching of legal ethics is not a compulsory part of the law degree or the GDL.<sup>50</sup> It is, however, included as part of the BPTC and the LPC, albeit in a limited way.<sup>51</sup> The teaching of ethics on the vocational courses is predominantly concerned with the application of the professional codes to hypothetical scenarios. Students, during the vocational courses, are assessed on whether their response to an ethical issue is one which is within the codes of conduct. Nicolson argues that teaching ethics at this stage is "too late" because students would have already been exposed to ethics, legal practice, and professional roles, albeit in an unstructured way.<sup>52</sup> Nicolson concedes that in the absence empirical research, it is difficult to buttress this claim.<sup>53</sup>

The separation between the teaching of law and ethics can be attributed to the pervasive influence of legal positivism, where students are taught to view law in technical terms and its analysis is carried out in a value-neutral manner.<sup>54</sup> In other words, students are taught that the law's moral content is irrelevant.<sup>55</sup> This echoes Austin's formulation of legal positivism: "The existence of law is one thing; its merit and demerit another. Whether it be or be not is one enquiry; whether it be or be not conformable to an assumed standard, is a different enquiry."<sup>56</sup> Thornton refers to the teaching of law as a value-neutral autonomous discipline as "technocentrism." She criticizes this pedagogic practice on the ground that it "focuses primarily on legal rules [and] creates a law school environment in which the technocratic is normalized."<sup>57</sup> Despite modules which include sociological theories of law and feminist critique, legal formalism remains a dominant approach in undergraduate legal education and the vocational courses. Students are, therefore, taught that "thinking like a lawyer" entails "learning how to separate 'legal' issues from other types of issue (moral, political, or social)."<sup>58</sup> However, while moral values are seen as significant to moral

<sup>48</sup>Laurence Etherington & Robert Lee, *Ethical Codes and Cultural Context: Ensuring Legal Ethics in the Global Law Firm*, 14(1) IND. J. GLOB. L. STUD. 95, 97 (2007).

<sup>49</sup>The GDL is a stepping-stone for non-law graduates who wish to qualify as either barristers or solicitors.

<sup>50</sup>Law Society, *Preparatory Ethics Training for Future Solicitors*, L SOC'Y 3 (2009) <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.476.5117&rep=rep1&type=pdf>.

<sup>51</sup>Lisa Webley, *Legal Ethics in the Curriculum: Correspondent's Report from the United Kingdom*, 14 L. ETHICS 132 (2011).

<sup>52</sup>Donald Nicolson, *Education, Education, Education: Legal, Moral and Clinical*, 42 L. TCHR. 145, 148 (2008); Irene Antonopoulos & Omar Madhloom, *Promoting International Human Rights Values Through Reflective Practice in Clinical Legal Education: A Perspective from England and Wales*, in INTERNATIONAL PERSPECTIVES IN SOCIAL JUSTICE PROGRAMS AT THE INSTITUTIONAL AND COMMUNITY LEVELS 109, 110 (Enakshi Sengupta & Patrick Blessinger eds., 2021).

<sup>53</sup>Nicholson, *supra* note 52, at 149.

<sup>54</sup>DONALD NICOLSON & JULIAN WEBB, PROFESSIONAL LEGAL ETHICS: CRITICAL INTERROGATIONS 67 (1999); Fiona Cownie, *Alternative Values in Legal Education*, 6(2) L. ETHICS 159, 159 (2003).

<sup>55</sup>Cownie, *supra* note 54, at 159.

<sup>56</sup>JOHN AUSTIN, AUSTIN: THE PROVINCE OF JURISPRUDENCE DETERMINED 157 (Wilfrid E. Rumble ed., 1995) (1832).

<sup>57</sup>Margaret Thornton, *Technocentrism in the Law School: Why the Gender and Colour of Law Remain the Same*, 36(2) OSGOODE HALL L. J. 369, 373 (1998).

<sup>58</sup>Cownie, *supra* note 54, at 159.



decision-making, students may be led to believe that there is no necessary connection between law and morality.<sup>59</sup> Thus, absent from the teaching of legal ethics on the vocational stages are important concepts, which inform legal practice, such as autonomy, as well as academic critique of the dominant professional norms and the moral responsibility of lawyers. Crucially, the codes fail to effectively promote ethical sensitivity. The limitations of the formalist approach to legal education is highlighted by Sarat, who writes that law students “have learned little about encountering people in situations of stress and fashioning solutions to their problems in ways that are responsive to the human as well as legal dimensions of the problems.”<sup>60</sup> There is, therefore, scope for the teaching of legal ethics to be enhanced by engaging students with a philosophical framework that promotes moral decision-making through experiential learning. The next section examines key elements of Kant’s philosophy and theory of pedagogy and their significance to legal ethics.

### E. Kant’s Deontological Ethics

Kant’s commitment to the concept of duty, irrespective of the consequences, makes him the quintessential deontologist.<sup>61</sup> Actions, for Kant, have moral worth when they are performed from a duty to the moral law. To illustrate this point, he provides the example of a grocer not overcharging his customers.<sup>62</sup> If the grocer’s honest actions were done out of self-interest and not out of a sense of duty to the moral law, then such actions are not truly moral in the Kantian sense. This strict test for determining moral actions can be seen in a second example provided by Kant: That of a person who is not inclined to help those in distress.<sup>63</sup> If this person performs an action benefitting those facing hardships out of duty to the moral law, then their action has moral worth. Conversely, one might help others because “they find an inner pleasure in spreading happiness . . . and can take delight in the contentment of others.”<sup>64</sup> Such actions are described as not possessing “genuinely moral worth.”<sup>65</sup> Although this might appear peculiar at first, on closer examination, why should a person’s moral worth be dependent on what nature or circumstances have endowed them with accidentally? Take for example a client with limited financial means who is being threatened with a notice of eviction. A lawyer may desire to help such a client because of subjective reasons, rather than out of duty to the moral law, such as a commitment to access to justice. This can be contrasted with a client charged with various criminal offenses and who is rude and aggressive towards their lawyer. One may be less sympathetic towards the criminal/aggressive client than the client being threatened with eviction. However, if out of duty to the moral law, the lawyer displays care and respect towards the criminal client, then their actions are said to have moral worth.

In his *Metaphysics of Morals*, Kant presents a taxonomy of duties which he divides into juridical duties and ethical duties.<sup>66</sup> The former can be coercively enforced by external means such as civil and criminal law. Juridical duties are not relevant for present purposes because the focus of this article is on the moral conduct of the individual as opposed to enforcing ethical behavior through external mechanisms. Ethical duties, on the other hand, must not be externally enforced, as this would violate the rights of the person coerced.<sup>67</sup> Certain moral endowments, such as the feelings of

<sup>59</sup>*Id.* at 160.

<sup>60</sup>Austin Sarat, *Lawyers and Clients: Putting Professional Service on the Agenda of Legal Education*, 41 J. L. EDUC. 43, 43 (1991).

<sup>61</sup>Norman Bowie, *A Kantian Approach to Business Ethics*, in *ETHICAL ISSUES IN BUSINESS: A PHILOSOPHICAL APPROACH* 62, 62 (Thomas Donaldson, Patricia H. Wehane & Margaret Cording eds., 7th ed., 2002).

<sup>62</sup>KANT, *supra* note 8, at 4:397.

<sup>63</sup>*Id.* at 4:398.

<sup>64</sup>*Id.*

<sup>65</sup>*Id.*

<sup>66</sup>Allen Wood, *Duties to Oneself, Duties of Respect to Others*, in *THE BLACKWELL GUIDE TO KANT’S ETHICS* 229, 229–251 (Thomas E Hill ed., 2009).

<sup>67</sup>*Id.*

respect, self-esteem, and love for other human beings, are the “*subjective conditions*” of morality.<sup>68</sup> A person must constrain themselves to follow these obligations through their own reason and motives, established a priori from rational capacities.<sup>69</sup> Kant distinguishes between two types of ethical duties: Perfect and imperfect. Perfect duties, on the one hand, prescribe a specific type of prohibition/omission and do not permit discretion. Imperfect duties, on the other hand, stipulate only a general objective, they do not dictate the specific type of action by which that objective is realized.<sup>70</sup> Unlike perfect duties, imperfect duties permit discretion in their implementation. Kant provides four examples in relation to perfect and imperfect duties: (1) the duty to refrain from suicide; (2) the duty to abstain from making false promises; (3) the duty to develop our talents; and (4) a duty to help those facing hardships.<sup>71</sup> Duties (1) and (2) are perfect duties because they do not permit discretion. Duties (1) and (2) are also negative duties because they prohibit the stipulated actions. Duties (3) and (4) are imperfect positive duties, and unlike perfect duties allow for discretion in their implementation. For example, lawyers are able to fulfill their duty of beneficence (4) by taking part in pro bono activities. In relation to the duty of beneficence, Kant states, “[t]his is, however, merely to agree negatively and not positively with *humanity as an end in itself* unless every one endeavors also, so far as in him, to further the ends of others.”<sup>72</sup> A general duty of beneficence should be understood as a duty to engage in pro bono work to assist individuals and marginalized groups in the realization of particular ends they have freely set for themselves.

Kant’s duty to others is not confined to the imperfect duty of beneficence. He divides our duties to others “as human beings” into two categories, the duties of “love” and the duties of “respect.”<sup>73</sup> Although he calls them “duties of love,” Kant does not mean that they are duties to have specific feelings towards others. Instead, these should be thought of as duties to act towards others in certain ways.<sup>74</sup> Failure to fulfil duties of love amounts to “lack of virtue.”<sup>75</sup> Thus, lawyers have a general duty towards clients regardless of how they may feel about them. This abstraction of specific sentiments towards others does not mean that students and lawyers should be discouraged from nurturing certain feelings:

It is therefore a duty not to avoid the places where the poor who lack the most basic necessities are to be found but rather to seek them out, and not to shun sickrooms or debtors’ prisons and so forth in order to avoid sharing painful feelings one may not be able to resist.<sup>76</sup>

Thus, students should participate in programs such as pro bono services and CLE to develop emotions such as sympathy and, as stated previously, compassion. Kant’s ethics, therefore, require students and lawyers to seek places where people are suffering and in need of help, not only to develop a sense of sympathy, but also to fulfil the duty of benevolence. The purpose of acquiring such attitudes is not “a duty to share the sufferings” of others; it is “a duty to sympathize actively in their fate.”<sup>77</sup> According to Kant, a person has a duty to “cultivate the compassionate natural (aesthetic) feelings in [themselves]” in order to “make use of them as so many means to sympathy based on moral principles and the feeling appropriate to them.”<sup>78</sup> Kant classifies “sympathy” into two categories. The first, “*humanitas practica*,” the capacity to share the feelings of others, is useful

<sup>68</sup>IMMANUEL KANT, THE METAPHYSICS OF MORALS 6:399–403 (Mary Gregor ed., 1996) (1797).

<sup>69</sup>Wood, *supra* note 66, at 229.

<sup>70</sup>KANT, *supra* note 8, at 4:421.

<sup>71</sup>*Id.* at 4:42–423.

<sup>72</sup>*Id.* at 4:430 (Emphasis in the original).

<sup>73</sup>KANT, *supra* note 68, at 6:448.

<sup>74</sup>*Id.* at 6:449.

<sup>75</sup>*Id.* at 6:464.

<sup>76</sup>*Id.* at 6:457; see also NANCY SHERMAN, MAKING A NECESSITY OF VIRTUE ARISTOTLE AND KANT ON VIRTUE 145 (1997).

<sup>77</sup>KANT, *supra* note 68, at 6:448.

<sup>78</sup>*Id.*



in terms of promoting the happiness of others.<sup>79</sup> The second type of sympathy, “*humanitas aesthetica*,” involves the sharing of other’s feelings but does not necessarily give rise to practical actions.<sup>80</sup> Thus, the former should be cultivated to promote the duty of beneficence in legal ethics. Sympathy is “one of the impulses that nature has implanted in us to do what the representation of duty alone would not accomplish.”<sup>81</sup> This can be interpreted to mean that sympathy can strengthen a lawyer’s duty towards others. Alternatively, Guyer suggests that what Kant has in mind is that individuals’ natural inclination to sympathy can act as a conceptual tool to direct what actions need to be taken to fulfill one’s “imperfect” duty of benevolence.<sup>82</sup> Wispé defines sympathy as “the heightened awareness of another’s plight as something to be alleviated.”<sup>83</sup> Thus, sympathy can serve as a mechanism for relating to others by giving rise to an affinity between two parties.<sup>84</sup> Developing a sense of affinity involves students imagining themselves to be affected by the same hardships as those affecting their clients and/or marginalized groups. Emotions, such as sympathy, can function as a “pair of moral eyes” that permit lawyers to see where their moral obligations arise.<sup>85</sup> However, Kant warns that sympathy can give rise to:

[Individuals] flattering themselves with a spontaneous goodness of heart that needs neither spur nor bridle and for which not even a command is necessary and thereby forgetting their obligation, which they ought to think of rather than merit.<sup>86</sup>

Those who are in a self-congratulatory state of mind may imagine themselves as so good-hearted that they do not require the “yoke’ of duty.”<sup>87</sup> In relation to duties of respect, namely those “duties to one’s fellow human beings arising from the respect due to them,” Kant has in mind obligations not to be arrogant towards others and not to defame or ridicule them.<sup>88</sup> The Kantian lawyer must be modest, dignified, and humane.<sup>89</sup> Even to clients who have been charged with or are guilty of serious criminal offenses.<sup>90</sup> Kant’s justification for imposing a duty of respect is that arrogance, defamation, and ridicule are “contrary to the respect owed to humanity as such.”<sup>91</sup> Failure to show respect owed to “every human being as such is a vice.”<sup>92</sup> According to Guyer, duties of respect are perfect rather than imperfect duties.<sup>93</sup> They are not only expressed as negative duties, in the sense they must be avoided, but also allow no room for “judgement or latitude.”<sup>94</sup>

Professional legal ethics can also be enhanced by drawing on Kant’s philosophy regarding the duty to engage in law reform. This duty is absent from the professional codes of conduct. According to Kant, citizens have the right to inform their governments of unjust practices that

<sup>79</sup>*Id.* at 6:456.

<sup>80</sup>*Id.*

<sup>81</sup>*Id.*

<sup>82</sup>*Id.* at 6:457.

<sup>83</sup>Lauren Wispé, *The Distinction Between Sympathy and Empathy: To Call Forth a Concept, a Word Is Needed* 50(2) J. PERSONALITY & SOC. PSYCH. 314, 314 (1986).

<sup>84</sup>Anthony Kronman, *Practical Wisdom and Professional Character*, 4(1) SOC. PHIL. & POL’Y 203, 213–16 (1986).

<sup>85</sup>PAUL GUYER, KANT AND THE EXPERIENCE OF FREEDOM 389 (1993).

<sup>86</sup>IMMANUEL KANT, CRITIQUE OF PRACTICAL REASON 5:85 (Mary Gregor trans., 2d ed. 2015).

<sup>87</sup>*Id.*

<sup>88</sup>KANT, *supra* note 68, at 6:456–458.

<sup>89</sup>*Id.* at 6:462.

<sup>90</sup>*Id.* at 6:463.

<sup>91</sup>*Id.* at 6:466.

<sup>92</sup>*Id.* at 6:464.

<sup>93</sup>PAUL GUYER, KANT 256 (2006).

<sup>94</sup>*Id.*

require reform.<sup>95</sup> This right suggests that states have a correlative duty to promote this right.<sup>96</sup> However, he does not explicitly argue that citizens have a duty to exercise their right to inform their governments of injustices and petition for redress.<sup>97</sup> This oversight on Kant's part is immaterial because it is implicit in his theory of beneficence that a person has an imperfect duty to assist others. Moreover, given Kant's cosmopolitan ethics, it can be argued that an English or Welsh lawyer's moral right to inform a government of injustices is not restricted to the United Kingdom.

Kant's commitment to duty to the moral law led him to reject consequentialist theories such as utilitarianism. This raises the question of "How do we determine our duties to the moral law?" To answer this question, we need to examine Kant's supreme principle of morality.

## F. Kant's Supreme Principle of Morality

Kant formulated the categorical imperative (CI) as the supreme principle of morality: "All *imperatives* command either *hypothetically* or *categorically*."<sup>98</sup> The CI can be distinguished from a hypothetical imperative (HI). A HI can be expressed as follows: "If a person wills an end and certain means are necessary to achieve that end and are within his power, then he ought to will those means."<sup>99</sup> A HI typically begins with an "If . . ." or contains an "if:" "If you want to do well in your law degree, then attend all your lectures." On the one hand, the obligation to attend one's lectures is dependent on the objective to do well in the exams and, hopefully, secure employment in a law firm. A CI, on the other hand, is an unconditional and binding command irrespective of whether it confers, directly or indirectly, any benefits. The CI is not tainted by any conditional desires. Instead, it simply commands "Do X and let the consequences be what they may."<sup>100</sup> Although there is one CI, also known as "the imperative of morality,"<sup>101</sup> Kant puts forward various versions of it. The most common formulations are:

1. "Act only on that maxim through which you can at the same time will that it should become a universal law"<sup>102</sup>
2. Act in such a way that you always treat humanity, whether in your own person or in the person of another, never simply as a means, but always at the same time as an end.<sup>103</sup>
3. A rational being belongs to the kingdom of ends as a *member*, when, although he makes its universal laws, he is also himself subject to these laws.<sup>104</sup>

Each of these formulae will be examined in the relation to the teaching of legal ethics.

## F. Three Most Common Formulae

### I. The First Formula

When examining the first formula, which concerns the form of the CI, it is important to focus on the term "maxim." There is an assumption that whenever a person acts, they have a reason or an

<sup>95</sup>KANT, *supra* note 68, at 6:321.

<sup>96</sup>IMMANUEL KANT, AN ANSWER TO THE QUESTION: WHAT IS ENLIGHTENMENT? (2009) (1784); IMMANUEL KANT, THE CONFLICT OF THE FACULTIES: DER STREIT DER FAKULTÄTEN (Mary J. Gregor trans., 1979) (1789).

<sup>97</sup>GUYER, *supra* note 93, at 290.

<sup>98</sup>KANT, *supra* note 8, at 4:414 (Emphasis in the original).

<sup>99</sup>Thomas E. Hill, *The Hypothetical Imperative*, 82(4) PHIL. REV. 429, 429 (1973).

<sup>100</sup>KANT, *supra* note 8, at 4:416.

<sup>101</sup>*Id.*

<sup>102</sup>*Id.* at 4:421 (Emphasis in the original).

<sup>103</sup>*Id.* at 4:429 (Emphasis in the original).

<sup>104</sup>*Id.* at 4:433 (Emphasis in the original).

intention for the action,<sup>105</sup> for example, a student decides that volunteering in a pro bono center will increase their employment prospects. The student's reason for volunteering is subjective and conditional on their desire to secure a job in a law firm. This example falls under the definition of a HI. The first formula, however, requires individuals not to act on maxims other than those that could at the same time become universal law. This ensures that subjective principles of action (maxims) comply with the demands of duty. Unlike the HI, the CI does not depend on an "if;" the volunteering in this example is done for its own sake and not for the sake of some self-interested end. Similarly, complying with the duty of confidentiality should be done out of a sense of duty to the client rather than simply because it is stated in the codes of conduct.<sup>106</sup> What the first formula does not address, however, is what makes an action right. It simply informs individuals of what may happen if everyone, including themselves, acted according to their maxims. The first formula allows students to reflect on their proposed actions by asking: "What if everyone acted this way?" It asks them to imagine a world where their decisions were a law for everyone to follow and whether they would be willing to live in such a world.<sup>107</sup> The emphasis is not on what an individual would want or find acceptable but on what they can will or intend "as a universal law." Intuitively speaking, universalizing one's maxims reveals cases of unfairness, deception, and cheating.<sup>108</sup> The first formula raises the following question: Why should individuals be concerned about making exceptions for themselves? The answer is to be found in Kant's second formula.

## II. The Second Formula

Kant's second formula is concerned with the content of the CI and, as a result, provides the standard of what amounts to a morally right action.<sup>109</sup> For this standard, consider the common definition of "Humanity."<sup>110</sup> Humanity refers not just to humankind in the biological sense.<sup>111</sup> Humanity also alludes to an individual's capacity to freely set their own ends.<sup>112</sup> An important consequence of placing a special value on a client's capacity to set and rationally pursue their own values, is that it allows them to freely "pursue their own life plans subject only to the constraint that others be allowed a similar freedom."<sup>113</sup> A rational person, in the Kantian sense, is one who can set their own ends and can autonomously act on them.<sup>114</sup> When advising clients, lawyers are not only to respect the client's capacity to make plans but also respect—within legal limits—the plans they make.<sup>115</sup> This entails a client's decision being free from manipulation and coercion. It is because an individual can set their ends and autonomously follow those ends that they have worth and should be respected.<sup>116</sup> According to Kant, an individual's free will is what gives them dignity and unconditional worth.<sup>117</sup> A person's dignity has an "unconditional and incomparable worth."<sup>118</sup> Kantian ethics possess an important feature which can enhance the teaching of legal

<sup>105</sup>KATRIN A FLIKSCHUH, *Kant, in* POLITICAL THINKERS FROM SOCRATES TO THE PRESENT 451, 456 (David Boucher & Paul Kelly eds., 3rd ed. 2017).

<sup>106</sup>*Core Duties, supra* note 38, at CD6; *Standards and Regulations, supra* note 38, at ¶ 6.3.

<sup>107</sup>KANT, *supra* note 8, at 4:424.

<sup>108</sup>CHRISTINE M. KORSGAARD, *CREATING THE KINGDOM OF ENDS* 92 (1996).

<sup>109</sup>DAVID DAICHES RAPHAEL, *MORAL PHILOSOPHY* 56 (1981).

<sup>110</sup>Kant often uses "rational being" and "humanity" interchangeably.

<sup>111</sup>GUYER, *supra* note 93, at 186.

<sup>112</sup>KANT, *supra* note 68, at 6:392.

<sup>113</sup>Thomas E. Hill Jr., *Humanity as an End in Itself*, 90(1) *ETHICS* 84, 96 (1980).

<sup>114</sup>KANT, *supra* note 8, at 4:428.

<sup>115</sup>William Nelson, *Kant's Formula of Humanity*, 117(465) *MIND* 85, 96 (2008); *Core Duties, supra* note 38, at CD2; *SRA Principals, supra* note 33, principal 7.

<sup>116</sup>Christine Korsgaard, *Kant's Formula of Humanity*, 77(1-4) *KANT STUDIEN* 183, 122–23 (1986).

<sup>117</sup>KANT, *supra* note 8, at 4:435 (Emphasis in the original).

<sup>118</sup>*Id.* at 4:436.

ethics, namely, all clients are ends in themselves and deserving of respect, because any person “can measure [themselves] with every other being of this kind and value [themselves] on a footing of equality with them.”<sup>119</sup> This obligation can direct lawyers to be attentive to the principle that they “cannot deny all respect to even a vicious man . . . even though by his deeds he makes himself unworthy of it.”<sup>120</sup> Kantian ethics can enhance the professional codes of conduct in relation to acting with independence,<sup>121</sup> acting in ways that encourage diversity,<sup>122</sup> and acting in the best interest of the client.<sup>123</sup> Focusing on client autonomy and dignity can also play a role in assisting lawyers to address heuristic bias.<sup>124</sup>

Kant’s moral theory has been described as an “Appeal to Autonomy.”<sup>125</sup> Actions, according to Kant, that are carried out from duty to the moral law demonstrate the autonomy of the person. He claims that “*Autonomy* is . . . the ground of the dignity of human nature and every rational nature.”<sup>126</sup> Kant’s idea of autonomy does not refer to self-determination in the juridical sense.<sup>127</sup> An autonomous action is a free action because it is directed by reason and not by desire or inclinations.<sup>128</sup> Freedom, for Kant, is displayed when a person acts according to the duty to the moral law, the CI. For Kant, “a free will and a will under moral laws are one and the same thing.”<sup>129</sup> In other words, freedom is exercised when an individual acts according to duty to the moral law and not according to their desires. These moral duties are determined by reference to the CI.

Autonomy for Kant is grounded in both dignity and respect.<sup>130</sup> O’Neill describes Kant’s conception of autonomy as, “a matter of adopting law-like principles that are independent of extraneous assumptions that can hold only for some and not for other agents.”<sup>131</sup> This notion of autonomy is based on reason rather than on what the individual desires. In the context of professional legal ethics, O’Neill’s principled autonomy approach rejects lawyer behavior such as coercion, deception, and manipulation. The value of this form of autonomy is that it must be based on principles to which everyone could consent.<sup>132</sup> An autonomous lawyer, in the Kantian sense, is one whose actions are free from emotions and inclinations. This can aid a lawyer in reflecting on whether their advice to their client is, for example, tainted by emotions towards their client, such as bias. Following Kant’s concept of autonomy, there is no obligation on a lawyer to follow a client’s instructions if such instructions are based on desires or inclinations. However, a lawyer’s role is not to impose their morality on their clients. Lawyers should enable their clients to achieve their ends, within legal limits.<sup>133</sup> An alternative conception of autonomy is put forward by Beauchamp and Childers:

<sup>119</sup>KANT, *supra* note 68, at 6:435.

<sup>120</sup>*Id.* at 6:463.

<sup>121</sup>*Core Duties*, *supra* note 38, at CD4; *SRA Principals*, *supra* note 33, principal 3.

<sup>122</sup>*Core Duties*, *supra* note 38, at CD8; *SRA Principals*, *supra* note 33, principal 6.

<sup>123</sup>*Core Duties*, *supra* note 38, at CD2; *SRA Principals*, *supra* note 33, principal 7.

<sup>124</sup>Concerning the issue of lawyer bias, see Ian Weinstein, *Don’t Believe Everything You Think: Cognitive Bias in Legal Decision Making*, 9 CLINICAL L. REV. 783 (2002); Laura A. Kaster, *Improving Lawyer Judgment by Reducing the Impact of “Client-Think,”* 67(1) DISP. RESOL. J. 56 (2012); Debra Chopp, *Addressing Cultural Bias in the Legal Profession*, 41 N.Y.U. REV. L. & SOC. CHANGE 364 (2017).

<sup>125</sup>CHRISTINE KORSGAARD, *The Normative Question*, in THE SOURCES OF NORMATIVITY 19, 19 (Christine M. Korsgaard ed., 1996).

<sup>126</sup>KANT, *supra* note 8, at 4:436 (Emphasis in the original).

<sup>127</sup>*Id.* at 4:440.

<sup>128</sup>Alan J. Kearns, *A Duty-Based Approach for Nursing Ethics & Practice*, in KEY CONCEPTS AND ISSUES IN NURSING ETHICS 18, 18 (P. Anne Scott ed., 2017).

<sup>129</sup>KANT, *supra* note 8, at 4:447.

<sup>130</sup>J.B. Schneewind, *Autonomy for Kant*, in KANT ON MORAL AUTONOMY 158 (Oliver Sense ed., 2013).

<sup>131</sup>Onora O’Neill, *Autonomy: The Emperor’s New Clothes*, 77(1) PROC. ARISTOTELIAN SOC’Y, SUPPLEMENTARY VOLUMES 1, 16 (2003).

<sup>132</sup>ONORA O’NEILL, *AUTONOMY AND TRUST IN BIOETHICS*, 73–95 (2002).

<sup>133</sup>Thomas L. Shaffer & Robert F. Cochran Jr., *Four Approaches to Moral Choices in Legal Representation*, in LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY 16, 16 (Thomas L. Shaffer & Robert F. Cochran Jr. eds., 2002).

To respect an autonomous agent is, at a minimum, to acknowledge that person's right to hold views, to make choices, and to take actions based on personal values and beliefs. Such respect involves respectful *action*, not merely a respectful *attitude*. . . It includes, at least in some contexts, obligations to build up or maintain others' capacities for autonomous choice while helping to allay fears and other conditions that destroy or disrupt their autonomous actions. Respect, on this account, involves acknowledging decision-making rights and enabling persons to act autonomously, whereas disrespect for autonomy involves attitudes and actions that ignore, insult, or demean others' rights of autonomy.<sup>134</sup>

Respecting a client's autonomy should not equate to a lawyer acting as a "hired-gun." A client-centric model also entails respecting a person's dignity. According to Freedman:

One of the essential values of a just society is respect for the dignity of each member of that society. Essential to each individual's dignity is the free exercise of his autonomy. Toward that end, each person is entitled to know his rights with respect to society and other individuals, and to decide whether to seek fulfilment of those rights through the due process of law.<sup>135</sup>

Freedman's client-centric model can be expanded to include the client's rights as well as any moral or legal duties the client might have towards others. This requires being mindful of Mill's account of liberty: "[T]he only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant."<sup>136</sup> This principle, also known as the "harm principle,"<sup>137</sup> can be applied to the lawyer-client relationship to protect the wider public interest and third parties.<sup>138</sup> For example, where it transpires that the intention of a vexatious client is to cause emotional or financial harm to the other party, the harm principle can help inform the lawyer to provide the client with additional options such as alternative dispute resolution. However, the harm principle does not mean that the lawyer should behave in a paternalistic manner. KMC rejects lawyer dominance and paternalistic behavior. Dworkin defines paternalism as "the interference with a person's liberty of action justified by reasons referring exclusively to the welfare, good happiness, needs, interests or values of the person being coerced."<sup>139</sup> A paternalistic lawyer is one who assumes the role of primary decision-maker in the belief that they are acting in their client's best interest.<sup>140</sup> Although Kant did not define paternalism, anti-paternalist sentiments are implied in his second formula as well as his absolute prohibition on conduct such as lying. Further evidence of his negative view on paternalism can be found in his political writings where he states that a "paternalistic government" treats its citizens "like minor children who cannot distinguish between what is truly useful or harmful to them."<sup>141</sup> Paternalism interferes with the client's rational autonomy and reduces the client to a "means to ends of the paternalist's making, rather than being recognized as the source of his or her own ends."<sup>142</sup> Kantian ethics can avoid situations where the lawyer becomes the primary decision maker.<sup>143</sup> Respecting client autonomy

<sup>134</sup>TOM L. BEAUCHAMP & JAMES F. CHILDRESS, *PRINCIPLES OF BIOMEDICAL ETHICS* 63 (5th ed. 2001).

<sup>135</sup>MONROE H. FREEDMAN, *UNDERSTANDING LAWYERS' ETHICS* 57 (1990).

<sup>136</sup>JOHN STUART MILL, *ON LIBERTY* 22 (2012) (1859).

<sup>137</sup>Nils Holtug, *The Harm Principle*, 5(4) *ETHICAL THEORY & MORAL PRAC.* 357 (2002).

<sup>138</sup>*Balancing Duties in Litigation*, *supra* note 37.

<sup>139</sup>Gerald Dworkin, *Paternalism*, 1 *THE MONIST* 64, 65 (1972).

<sup>140</sup>*Core Duties*, *supra* note 38, at CD2; *SRA Principals*, *supra* note 33, principal 7.

<sup>141</sup>Immanuel Kant, *On the Common Saying: That May be Correct in Theory, But It Is of No Use in Practice*, in *MARY PRACTICAL PHILOSOPHY* 8:291 (Mary J. Gregor ed., 1996).

<sup>142</sup>JOHN KLEINIG, *PATERNALISM* 38 (1986).

<sup>143</sup>Marcy Strauss, *Toward a Revised Model of Attorney-Client Relationship: The Argument for Autonomy*, 65(2) *N. CAROLINA L. REV.* 315 (1987).

entails avoiding using clients as mere means, for example lying or deceiving clients for economic gain.<sup>144</sup>

### III. The Third Formula

Kant's third formula, which connects the first two formulae of the CI, holds that individuals should act as if they were members of an ideal kingdom of ends in which they were both subject and sovereign at the same time. Persons within this moral community ("kingdom") are members of a possible social order,<sup>145</sup> whereby each member makes moral decisions. Freedom of each person is acknowledged and consistently respected by all the members of this community.<sup>146</sup> This denotes reciprocal relationships between persons.<sup>147</sup> Morality, therefore, includes one's commitment to others.<sup>148</sup> Moral behavior conceived in this way highlights the idea of interdependence and may prevent future lawyers from acting only as "hired guns" who zealously pursue their clients' ends, irrespective of the consequences on third parties. By accepting that every person has the ability to make choices and decisions, the third formula provides a form of equality for all.<sup>149</sup> By asking individuals to imagine themselves to be equal members of a moral community, Kant's theory of ethics is described as "ethics of democracy" because "[i]t requires liberty (allowing everyone to decide for himself), equality . . . , and fraternity (think of yourself as a member of a moral community)."<sup>150</sup>

For Kant, the kingdom of ends acts as a nexus to his cosmopolitan political community.<sup>151</sup> According to Fine, Kant's conception of cosmopolitanism is "widely viewed as the philosophical origin of modern cosmopolitan thought."<sup>152</sup> Kant defines cosmopolitanism as "as the womb in which all original predispositions of the human species will be developed."<sup>153</sup> Kant's cosmopolitanism deals with the cultivation of a global community within which every person can develop their human capacities.<sup>154</sup> Although influenced by the Stoics,<sup>155</sup> Kant's conception of moral cosmopolitanism was in response to a world which he believed had become interconnected to the point where "the violation of right at any one place on the earth is felt in all places."<sup>156</sup> For present purposes, moral cosmopolitanism is applied to the teaching of professional legal ethics to foster a sense of moral obligations to the universal human community.<sup>157</sup>

Kant's conception of cosmopolitanism, however, is "limited to conditions of universal hospitality," a right not to be treated with hostility when visiting foreign lands.<sup>158</sup> This notion of

<sup>144</sup>Carrie Menkel-Meadow, *Lying to Clients for Economic Gain or Paternalistic Judgment: A Proposal for a Golden Rule of Candor*, 138(3) U. PA. L. REV. 761 (1990).

<sup>145</sup>Barbara Herman, *A Cosmopolitan Kingdom of Ends*, in RECLAIMING THE HISTORY OF ETHICS: ESSAYS FOR JOHN RAWLS 187, 187–213 (Andrews Reath, Barbara Herman & Christine M. Korsgaard eds., 1997).

<sup>146</sup>KANT, *supra* note 8, at 4:433.

<sup>147</sup>CHRISTINE M. KORSGAARD, CREATING THE KINGDOM OF ENDS 188–222 (1996).

<sup>148</sup>John Paley, *Virtues of Autonomy: Kantian Ethics of Care*, 3 NURSING PHIL. 113, 135 (2002).

<sup>149</sup>DAVID DAICHES RAPHAEL, MORAL PHILOSOPHY 57 (1981); *Core Duties*, *supra* note 38, at CD8; *SRA Principals*, *supra* note 33, principal 6.

<sup>150</sup>*Id.*

<sup>151</sup>Immanuel Kant, *Toward Perpetual Peace*, in PRACTICAL PHILOSOPHY 8:341–386 (Mary J. Gregor ed., 1996).

<sup>152</sup>Robert Fine, *Kant's Theory of Cosmopolitanism and Hegel's Critique*, 29(6) PHIL. & SOC. CRITICISM 609, 609 (2003).

<sup>153</sup>Immanuel Kant, *The Idea of a Universal History with a Cosmopolitan Aim*, in ANTHROPOLOGY, HISTORY, AND EDUCATION 8:28 (Robert B. Loudon ed., 2007).

<sup>154</sup>*Id.* at 8:22.

<sup>155</sup>Olav Eikeland, *Cosmópolis or Koinópolis?*, in COSMOPOLITANISM: EDUCATIONAL, PHILOSOPHICAL AND HISTORICAL PERSPECTIVES 26 (Marianna Papastephanou ed., 2016).

<sup>156</sup>Immanuel Kant, *Toward Perpetual Peace: A Philosophical Sketch*, in TOWARD PERPETUAL PEACE AND OTHER WRITINGS ON POLITICS, PEACE, AND HISTORY 8:360 (Pauline Kleingeld, ed., David L. Colclasure, trans., 2006).

<sup>157</sup>Flood & Lederer, *supra* note 4, at 2514.

<sup>158</sup>Kant, *supra* note 153, at 8:357–358. For an application of Kant's right to hospitality in CLE, see Omar Madhlom, *Unregulated Immigration Law Clinics and Kant's Cosmopolitan Right: Challenging the Political Status Quo*, 28(1) INT'L J. CLINICAL L. EDUC. 195 (2021).



cosmopolitanism is essentially a combination of Kant's second and third formulae. Kant's moral community can be extended to include obligations towards others in the global community.<sup>159</sup> Within this ethical community, human beings are "ultimate units of concern" entitled to equal consideration regardless of their citizenship, nationality, or any other characteristic.<sup>160</sup> According to Appiah, cosmopolitanism also requires a second limb: Individuals should be mindful of each other's differences and "there is much to learn from these differences."<sup>161</sup> Recognizing cultural, religious, or language differences can act as a reminder to students and lawyers that they ought to take seriously the values and beliefs of their clients. Cosmopolitanism conceived of these two limbs provides an avenue for lawyers to be conscious of their clients' values and "lived experience."<sup>162</sup> Awareness of such differences can be beneficial to various aspects of the lawyering process such as interviewing, negotiating, and strategizing.<sup>163</sup>

This section has outlined key concepts, in Kant's philosophy, concerning the cultivation of a cosmopolitan moral character. The next section argues that CLE is an appropriate methodology for teaching KMC.

## G. KMC and CLE

Unlike professional codes of conduct, CLE can act as a methodology<sup>164</sup> for bridging the gap between theory and practice.<sup>165</sup> CLE includes, but is not limited to, pro bono legal activities.<sup>166</sup> For present purposes, CLE incorporates a variety of experiential methods such as live-client clinics, Street Law, mooting, and client interviewing and counselling.<sup>167</sup> In general terms, experiential education involves connecting real-life to learning through the process of reflection.<sup>168</sup> Nicolson contends that live-client clinics are "an excellent and viable means of assisting in the process of moral character development."<sup>169</sup> Although live-client clinics have an advantage over other forms of experiential learning, by virtue of the fact that students are dealing with "live" cases, KMC can be taught using any form of experiential learning because it is concerned with applying moral

<sup>159</sup>Nussbaum, *supra* note 7, at 4.

<sup>160</sup>Thomas Pogge, *Cosmopolitanism and Sovereignty*, 103(1) ETHICS 48, 48 (1992).

<sup>161</sup>KWAME ANTHONY APPIAH, *COSMOPOLITANISM: ETHICS IN A WORLD OF STRANGERS* XVIIIX (2007); Carole Silver, *Getting Real About Globalization and Legal Education: Potential and Perspectives for the U.S. Symposium: The Future of the Legal Profession*, 24 STAN. L. & POL'Y REV. 460 (2013).

<sup>162</sup>Rhonda V. Magee, *Legal Education and the Formation of Professional Identity: A Critical Spirituo-humanistic - Humanity Consciousness—Perspective*, 31(3) N.Y.U. REV. L. & SOC. CHANGE 467 (2007).

<sup>163</sup>Andrea A. Curcio, Teresa Ward & Nisha Dogra, *Educating Culturally Sensible Lawyers: A Study of Student Attitudes About the Role Culture Plays in The Lawyering Process*, 16(1) U W. SYDNEY L. REV. 100, 105 (2012).

<sup>164</sup>Gary Bellow, *On Teaching Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, CLINICAL EDUC. FOR L. STUDENT 375 (1975); Neil Gold, *Why Not an International Journal of Clinical Legal Education?*, 1 INT'L J. CLINICAL LEGAL EDUC. 1, 12 (2000).

<sup>165</sup>Rachel Dunn, Victoria Roper & Vinny Kennedy, *Clinical Legal Education as Qualifying Work Experience for Solicitors*, 52(4) L. TCHR. 439, 444 (2018).

<sup>166</sup>See *The LawWorks Law School Pro Bono and Clinics Report 2020* LAWWORKS (2020) [www.lawworks.org.uk/solicitors-and-volunteers/resources/lawworks-law-school-pro-bono-and-clinics-report-2020](http://www.lawworks.org.uk/solicitors-and-volunteers/resources/lawworks-law-school-pro-bono-and-clinics-report-2020) (Stating that "pro bono has now become a mainstream part of legal education, as well as law schools' wider community engagement.")

<sup>167</sup>See, e.g., REIMAGINING CLINICAL LEGAL EDUCATION (Linden Thomas, Steven Vaughan, Bharat Malkani & Theresa Lynch, eds., 2018); Richard Grimes, David McQuoid-Mason, Ed O'Brien & Judy Zimmer, *Street Law and Social Justice Education, in THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE* 225, 225–40 (Frank S. Bloch ed., 2010); Andrew Lynch, *Why Do We Moot—Exploring the Role of Mooting in Legal Education*, 7 LEGAL EDUC. REV. 67 (1996); Alisdair A. Gillespie, *Mooting for Learning*, 5(1) J. COMMONWEALTH L. & LEGAL EDUC. 19 (2007); DAVID A. BINDER & SUSAN C. PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* (1977); Laurie Shanks, *Whose Story Is It, Anyway—Guiding Students to Client-Centered Interviewing through Storytelling*, 14 CLINICAL L. REV. 509 (2008).

<sup>168</sup>DAVID A. KOLB, *EXPERIENTIAL LEARNING: EXPERIENCE AS THE SOURCE OF LEARNING AND DEVELOPMENT* (2015).

<sup>169</sup>*Id.* at 145. See also Steven Hartwell, *Moral Development, Ethical Conduct and Clinical Education*, 35 N.Y. L. SCH. L. REV. 131 (1990); Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 FORDHAM L. REV. 1929 (2002).

education in a practical context. In addition to promoting social justice<sup>170</sup> and developing reflective practice,<sup>171</sup> CLE can foster empathy and compassion because it “puts the emotional content back into law.”<sup>172</sup> The BSB’s Professional Statement for Barristers stipulates the need to demonstrate emphatic behavior.<sup>173</sup> A 2016 study demonstrated that formal training can increase empathy in adults.<sup>174</sup> The teaching of empathy can be incorporated into CLE programs by including the following four experiential elements: Classroom-based role play, self-reflection, situated learning, and acting in a manner that is responsive to the situation and the client.<sup>175</sup> Similarly, Kant’s duty of respect, compassion, and sympathy can be taught through CLE programs using the same four elements. Pence raised the issue of whether compassion can be taught in medical ethics in his widely cited article.<sup>176</sup> He concluded that compassion can be taught provided this virtue is taught alongside other medical virtues. The teaching of compassion can be incorporated into CLE programs, such as live-client clinics, where students are encouraged to develop their communication skills, self-reflection, and to take action, where feasible, to assist those who are suffering injustices.

CLE has also been said to act as a vehicle for ethics-focused learning,<sup>177</sup> inculcating students with human rights-based values,<sup>178</sup> and promoting moral decision-making.<sup>179</sup> CLE is, therefore, an appropriate vehicle for developing the values espoused by KMC. In the context of medical education, moral reasoning:

[P]romotes a consideration of patients on an individual level and the adoption of a holistic approach to their care. The resultant concordance of doctor and patient may increase the likelihood of mutually satisfactory decisions, patient compliance and beneficial clinical outcomes.<sup>180</sup>

<sup>170</sup>Wizner, *supra* note 169; Ibijoke Patricia Byron, *The Relationship Between Social Justice and Clinical Legal Education: A Case Study of The Women’s Law Clinic, Faculty of Law, University of Ibadan, Nigeria*, 20(4) INT’L J. CLINICAL LEGAL EDUC. 563 (2014); Donald Nicolson, “Our roots began in (South) Africa:” *Modelling Law Clinics to Maximise Social Justice Ends*, 23(3) INT’L J. CLINICAL LEGAL EDUC. 87 (2016); SOCIAL JUSTICE AND LEGAL EDUCATION (Chris Ashford & Paul McKeown eds., 2018); Anna Cody, *Reflection and Clinical Legal Education: How Do Students Learn About Their Ethical Duty to Contribute Towards Justice*, 23(1-2) LEGAL ETHICS 13 (2020).

<sup>171</sup>Michele Leering, *Conceptualizing Reflective Practice for Legal Professionals*, 23(5) J. L. & SOC. POL’Y 83 (2014); Cecilia Blengino, Susan L. Brooks, Marie Deramat & Silvia Mondino, *Reflective Practice: Connecting Assessment and Socio-Legal Research in Clinical Legal Education*, 26(3) INT’L J. CLINICAL LEGAL EDUC. 54 (2019).

<sup>172</sup>Philip Plowden, *Clinical Legal Education: Theory, Practice and Possibilities*, UK CENTRE FOR LEGAL EDUC. (2004) <https://ials.sas.ac.uk/ukcle/78.158.56.101/archive/law/resources/teaching-and-learning-practices/plowden/index.html>. See also Ann Juergens, *Practicing What We Teach: The Importance of Emotion and Community Connection in Law Work and Law Teaching*, 11 CLINICAL L. REV. 413 (2005); Sarah Buhler, *Painful Injustices: Encountering Social Suffering in Clinical Legal Education*, 19(2) CLINICAL L. REV. 405 (2013); Sarah Buhler, *Troubled Feelings: Moral Anger and Clinical Legal Education*, 37(1) DALHOUSIE L. J. 397 (2014).

<sup>173</sup>*Professional Statement for Barristers: Incorporating the Threshold Standard and Competences*, BAR STANDARDS BOARD, (Apr. 2019) <https://www.barstandardsboard.org.uk/training-qualification/the-professional-statement.html>.

<sup>174</sup>Emily Teding van Berkhout & John M Malouff, *The Efficacy of Empathy Training: A Meta-analysis of Randomized Controlled Trials*, 63(1) J. COUNSELING PSYCH. 32 (2016).

<sup>175</sup>Kwo-Chen Lee, Chin-Ching Yu, Pei-Ling Hsieh, Chin-Ching Li & Yann-Fen C. Chao, *Situated Teaching Improves Empathy Learning of the Students in a BSN Program: A Quasi-experimental Study*, 64 NURSE EDUC. TODAY 138 (2018).

<sup>176</sup>Gregory E. Pence, *Can Compassion Be Taught?*, 9 J. MED. ETHICS 189 (1983).

<sup>177</sup>Donald Nicolson, *Legal Education, Ethics and Access to Justice: Forging Warriors for Justice in a Neo-liberal World*, 22(1) INT’L J. LEGAL PRO. 51 (2015); María L. Torres-Villarreal & Diana R. Bernal-Camargo, *Learning Legal Ethics in the Law Clinics: “one hundred thousand housing law” for Offences Against Minors*, 22(1) LEGAL ETHICS 1 (2015).

<sup>178</sup>Mohammad Mahdi Meghdadia & Ahmad Erfani Nasabb, *The Role of Legal Clinics of Law Schools in Human Rights Education; Mofid University Legal Clinic Experience*, 31 PROCEDIA – SOC. & BEHAV. SCI. 275 (2012); Antonopoulos & Madhloom, *supra* note 52, at 109–127.

<sup>179</sup>Norman Redlich, *The Moral Value of Clinical Legal Education: A Reply*, 33(4) J. LEGAL EDUC. 613 (1983); Nicolson, *supra* note 40; Anna Cody, *Reflection and Clinical Legal Education: How Do Students Learn About Their Ethical Duty to Contribute Towards Justice*, 23(1–2) LEGAL ETHICS 13 (2020).

<sup>180</sup>Sebastian Sheehan, Andrew Robbins, Thomas Porter, & John Manley, *Why Does Moral Reasoning Not Improve in Medical Students?*, 6 INT’L J. MED. EDUC. 101, 101 (2015).

The benefits of moral reasoning can also apply to CLE and legal practice, as both the medical and the legal profession value, *inter alia*, the concept of patient/client care. However, professionals should not impose their personal opinions about a given situation.<sup>181</sup> Instead, they ought to depart from their personal frames of reference to achieve a better empathic understanding of their clients.<sup>182</sup> KMC, which rejects paternalism, can contribute to moral education by directing students to be attentive to any inclinations that may affect their decision-making.

In addition to rejecting paternalistic behavior, KMC also places a moral constraint on activities which use clients as mere means. In a CLE setting, KMC rejects treating persons, natural and legal, purely instrumentally for the purposes of achieving one's own ends. In relation to law firms, as profit-making entities, there is a risk that some organizational practices may lead to clients being used as mere means, such as where lawyers receive cases they know little or nothing about.<sup>183</sup> Newman and Walsh warn that:

Such practices undermine the ability of clients to act as autonomous decision makers in relation to their case; they are simply being processed without necessarily being able to truly express their wishes about how a case proceeds. As a result, many clients failed to develop rapport with their representative, engendering anxieties that their lawyer did not know them or their case.<sup>184</sup>

The above practices echo Hobbes' remark that "the value, or worth of a man is, his price."<sup>185</sup> KMC can serve as a rejoinder to Hobbes' claim, regarding the worth of an individual, and can address neo-liberal practices that treat lawyers and clients as commodities with little regard for their autonomy. KMC also involves being cognizant of the client's values and characteristics. The value of using experiential learning as a vehicle for teaching KMC is due to it being "universally effective as a structure and philosophy of teaching and learning."<sup>186</sup> Although Kant's work predated CLE, his philosophy and theory of pedagogy are relevant for present purposes due to his commitment to experiential learning and moral education.<sup>187</sup>

KMC can enhance CLE at both the local and global levels. Integrating KMC at the local level involves analyzing and interpreting the content of rules, such as the codes of professional conduct, through a KMC lens, which promotes compassion, respect, and highlights one's moral commitment towards others. In the context of live-client clinics, KMC encourages students to place themselves "in the shoes of others"<sup>188</sup> and to take an interest in their culture.<sup>189</sup> This approach is based on a contextualized understanding of the client, which can prevent students and lawyers from viewing clients as "abstract people with predetermined traits."<sup>190</sup> Instead, KMC draws attention to the fact that persons are "unique individuals with particular characteristics situated within a real

<sup>181</sup>Miguel Ricou & Silvia Marina, *Ethical Issues and Challenges in Psychological Practice and Research*, 13(1) PSYCH. RUSS.: STATE ART 2, 6 (2020).

<sup>182</sup>*Id.*

<sup>183</sup>Daniel Newman & Lucy Welsh, *The Practices of Modern Criminal Defence Lawyers: Alienation and its Implications for Access to Justice*, 48(1-2) COMMON L. WORLD REV. 64, 80 (2019).

<sup>184</sup>*Id.*

<sup>185</sup>THOMAS HOBBS, *LEVIATHAN* 78 (1985) (1651).

<sup>186</sup>Richard J. Wilson, *Theory and Clinical Legal Education*, in *THE GLOBAL EVOLUTION OF CLINICAL LEGAL EDUCATION MORE THAN A METHOD* 137 (Richard J. Wilson ed., 2017).

<sup>187</sup>The earliest reference to CLE in the United States is William V. Rowe, *Legal Clinics and Better Trained Lawyers-A Necessity*, 11 ILL. L. REV. 591 (1917). Jerome Frank, *Why Not a Clinical Lawyer-School?* is widely cited in terms of the conceptual origins of CLE in the United States. 81(8) U. PA. L. REV. 907 (1933). Outside the United States, a Russian professor, Alexander Lyublinsky, proposed a law clinic component modelled on the medical training. Alexander Lyublinsky, *About Legal Clinics*, J. MINISTRY JUST. (ROSJA) 175 (1901). See also Richard J. Wilson, *Training for Justice: The Global Reach of Clinical Legal Education*, 22(3) PENN STATE INT'L L. REV. 421, 421 (2004).

<sup>188</sup>MARTHA C. NUSSBAUM, *POETIC JUSTICE: THE LITERARY IMAGINATION AND PUBLIC LIFE* (1995).

<sup>189</sup>Ulf Hannerz, *Cosmopolitans and Locals in World Culture*, 7(2) THEORY, CULTURE & SOC'Y 237 (1990).

<sup>190</sup>Ann Shalleck, *Constructions of the Client Within Legal Education*, 45(6) STAN. L. REV. 1731, 1740 (1993).

world.”<sup>191</sup> Thus, when acting for a client, regardless of whether they fall within any of the protected characteristics found in the Equality Act 2010,<sup>192</sup> KMC requires the student/lawyer to enter into a dialogue with their client in order to “overcome the otherness in the other.”<sup>193</sup> This holistic approach allows the advisor to engage in a fact finding exercise to determine their client’s values and aims. At the global level, KMC’s cosmopolitan underpinnings create a moral responsibility towards persons in other jurisdictions.<sup>194</sup> KMC can be used as a framework for transnational collaborations<sup>195</sup> between clinics and non-governmental organizations. The pedagogic advantages of transnational collaboration include developing an awareness of injustices in other parts of the world and engaging in the law of other jurisdictions. An example of applying KMC to transnational collaboration is through law reform. There is currently an emerging body of literature which advocates for policy clinics.<sup>196</sup> KMC can be incorporated into policy clinics due to its commitment to law reform.

KMC, which views organizations as moral communities, can also develop professional legal ethics within a business entity. KMC requires law firms to be mindful of the fact that persons—this includes clients and employees—are ends in themselves and deserving of respect. Consequently, each member in an organization has a moral relationship to others. KMC can, therefore, act as a moral constraint against hierarchal organizational behavior, such as bonuses awarded to the partners only. The significance of a business entity being viewed as a moral community is that it involves democratization of the organization. This entails a reciprocal relationship between those in authority and employees. Consequently, a KMC framework involves critique and endorsement of the rules that govern employees in an organization.

## H. Conclusion

This article has argued that the teaching of professional legal ethics can be enriched by adopting a holistic approach informed by KMC. The juxtaposition of the professional codes of conduct with the suggested KMC model can direct students to possess more self-awareness of their actions and to ensure that client autonomy is not undermined. Respecting client autonomy, under KMC, entails the lawyer ascertaining the client’s values, cultural background, and any other material information relevant to the client. KMC also provides moral duties, namely obligations towards individuals outside one’s immediate community or jurisdiction. This allows students to engage and reflect on global issues such as the social and economic turmoil caused by the Covid-19 pandemic. Thus, KMC provides cosmopolitan obligations to distant suffering and injustices. Although Kantian ethics involves the abstraction of inclinations from one’s moral deliberations, KMC incorporates sentiments, such as sympathy and compassion, because they can foster “cosmopolitan emotions” and increase sensitivity for human suffering.<sup>197</sup>

<sup>191</sup>*Id.*

<sup>192</sup>These are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

<sup>193</sup>Ulrich Beck, *The Cosmopolitan Society and Its Enemies*, 19(1–2) THEORY, CULTURE & SOC’Y 17, 18 (2002).

<sup>194</sup>Deborah Burand, Susan R. Jones, Jonathan Ng & Alicia E. Plerhoples, *Clinical Collaborations: Going Global to Advance Social Entrepreneurship*, 20 INT’L J. CLINICAL LEGAL EDUC. 499 (2014).

<sup>195</sup>For examples of transnational law clinics, see CENTER FOR HUMAN RIGHTS & GLOBAL JUSTICE, GLOBAL JUSTICE CLINIC <https://chrgj.org/focus-areas/global-justice-clinic/> (last visited Jan. 27, 2022); CORNELL LAW SCHOOL, GENDER JUSTICE CLINIC, <https://www.lawschool.cornell.edu/Clinical-Programs/global-gender-justice/index.cfm> (last visited 27 Jan. 2022).

<sup>196</sup>Liz Curran, *University Law Clinics and Their Value in Undertaking Client-Centered Law Reform to Provide a Voice for Clients’ Experiences*, 12 INT’L J. CLINICAL LEGAL EDUC. 105 (2007); Rachel Dunn, Lyndsey Bengtsson & Siobhan McConnell, *Building a Policy Clinic Network—CLEO Workshop 13th May 2021*, 28(1) INT’L J. CLINICAL LEGAL EDUC. 244 (2021); Omar Madhlom & Irene Antonopoulos, *Clinical Legal Education and Human Rights Values: A Universal Pro Forma for Law Clinics*, 9(1) ASIAN J. LEGAL EDUC. 23 (2021).

<sup>197</sup>Andrew Linklater, *Distant Suffering and Cosmopolitan Obligations*, 44 INT’L POL. 19, 27 (2007) (citing Andrew Linklater, *Emotions and World Politics*, 2 ABERYSTWYTH J. WORLD AFFS. 71 (2004)).

Beyond legal education, KMC can be applied to legal ethics on three levels. First, law practices can be viewed as moral communities consisting of staff, clients, and other stakeholders, whereby each person in this community has a moral relationship to everyone else.<sup>198</sup> With regards to duties towards clients, a lawyer who views this moral community as merely a means to achieving their own ends is acting contrary to the second formula. The second level concerns duties owed to the moral community within a law practice's geographical location and/or jurisdiction. The third level provides a moral justification for lawyers to engage in the provision of pro bono services to clients outside their legal jurisdictions.

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<sup>198</sup>NORMAN BOWIE, BUSINESS ETHICS: A KANTIAN PERSPECTIVE 82–129 (2nd ed., 2017).