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Reframing "Professionalism:" An Integral View of Lawyering's Lofty Ideals

Brooks A. Suttle

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REFRAMING “PROFESSIONALISM”: AN INTEGRAL VIEW OF LAWYERING’S LOFTY IDEALS[†]

ABSTRACT

Whereas legal ethics defines what every lawyer must do, legal professionalism takes on the more difficult task of defining the core values that the very best lawyers should aspire to in their practice. The legal profession is granted a certain amount of autonomy and independence by American society, and the continuing legitimacy of this social contract depends on the notion that the profession will take care to regulate itself and maintain standards of conduct commensurate with its essential function. In the past several decades, however, an increasing number of judges, lawyers, and professors have opined that the legal profession is facing a “professionalism crisis,” arguing that civility has declined and that the public image of the profession has fallen into disrepute. Many have called for a renewed emphasis on defining and upholding the profession’s foundational principles, but few have been able to agree on what those principles actually are.

In an effort to add some theoretical clarity to this discussion, this Comment will utilize an abstract framework provided by an emerging discipline known as Integral Theory. It will evaluate the professionalism “crisis” based on four fundamental perspectives—the interior and exterior of individuals and collectives—and then situate some of the current approaches to professionalism within these dimensions. This method is useful because it provides a set of stable and universal perspectives with which to engage the dynamic and often-fragmented academic literature on this topic in a coherent and comprehensive way. It helps to reveal the strengths of some models while also providing insight into how they can be expanded. While this Comment will not attempt to provide any final answers to this ongoing debate, it will hopefully contribute to it nonetheless by enabling divergent approaches to find some common theoretical ground. Ultimately, it will be argued that no final solution to the professionalism “problem” is likely ever to be found, and instead, professionalism should be conceptualized as an ongoing process of self-evaluation and development that is inherent to the practice of law.

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INTRODUCTION

In recent decades, professionalism has come to occupy a controversial and somewhat ambiguous place within the legal profession. Unlike ethics codes, which establish minimum rules of conduct for practicing members of the bar, professionalism aims considerably higher in seeking to embody those “lofty standards”¹ and “aspirational principles”² that represent the very best of what lawyers have to offer. Complicating matters significantly is the fact that most professionalism theories go beyond merely advocating for certain types of behavior and venture instead into the murky waters of intention, motivation, and morality. Yet in attempting to define a set of normative principles that should inform and give rise to behavior from the inside—professional behavior that is self-motivated, undertaken for its own sake, and seen as its own reward, rather than behavior that is compelled or imposed from without by external

¹ Thomas E. Richard, *Professionalism: What Rules Do We Play By?*, 30 S.U. L. REV. 15, 18 (2002).

² Timothy P. Terrell & James H. Wildman, *Rethinking “Professionalism,”* 41 EMORY L.J. 403, 422 (1992).

rules followed primarily out of a fear of punishment for noncompliance—the professionalism debate has often suffered from a lack of theoretical clarity. Indeed, while the topic has garnered much attention in the past few decades,³ there has nonetheless been relatively little consensus as to what professionalism actually entails.⁴

This is not surprising. Professional values are subject to myriad interpretations dependent upon the particular moral, philosophical, cultural, social, historical, and political worldviews of the person seeking to define them. As such, the diversity of opinions on the nature and scope of lawyers’ highest values has expanded in the past century to reflect the increasing diversity within the legal profession itself.⁵ These demographic changes, in addition to broader changes in the overall business of law and the emergence of postmodernism in American culture, have combined to make the task of defining professionalism today much more challenging than it has been in the

³ See Dane S. Ciolino, *Redefining Professionalism as Seeking*, 49 LOY. L. REV. 229, 230 (2003) (“[T]he profession has waged a multi-frontal crusade to improve professionalism in the practice of law. In addition to forming innumerable committees, the organized bar has conducted symposia, adopted civility creeds, offered continuing legal education programs, and called upon American law schools to teach professionalism to law students.” (footnotes omitted)).

⁴ Neil Hamilton, *Assessing Professionalism: Measuring Progress in the Formation of an Ethical Professional Identity*, 5 U. ST. THOMAS L.J. 470, 480 (2008) (“[L]egal scholars have so far been unable to construct and agree on a widely-accepted, clear and succinct definition of ‘professionalism.’”). One commentator has even opined that, amidst all the talk about professionalism, “[n]o term in the legal lexicon has been more abused.” Fred C. Zacharias, *Reconciling Professionalism and Client Interests*, 36 WM. & MARY L. REV. 1303, 1307 (1995).

⁵ See Terrell & Wildman, *supra* note 2, at 408–13 (describing the bar’s “changing ‘tradition’” and the “breakdown of the ‘club’” as the profession has ceased to be dominated by wealthy, white males).

past.⁶ Given that many of these changes are irreversible, a general consensus on the meaning of professionalism may very well be unreachable today.⁷

The Sisyphean nature of the task notwithstanding, however, the pursuit of professional ideals is a noble one. Lawyers are afforded a certain degree of autonomy in American society, but such independence comes with an equal degree of responsibility for members of the profession to ensure that it serves its purpose well.⁸ For this “social contract” to function, then, “[t]he public must trust that the profession will renew the social contract in each generation . . . by socializing each new entrant into the important elements of an ethical professional identity.”⁹ These elements represent “a set of essential, timeless principles that impose important restraints and create special expectations separating the attorney from others,”¹⁰ and it is only through adherence to these principles that lawyering becomes something more than an ordinary career. To wit, it becomes a *profession*.¹¹

⁶ See Robert F. Cochran, Jr., *Professionalism in the Postmodern Age: Its Death, Attempts at Resuscitation, and Alternate Sources of Virtue*, 14 NOTRE DAME J.L. ETHICS & PUB. POL’Y 305, 310 (2000) (arguing that in rejecting “[e]lite status,” postmodernism “recognized that moral thought is based on pre-rational assumptions that emerge from communities, and that those assumptions can vary from community to community,” and thus, “[p]ostmodern nihilism left no place for a common social agenda”). Indeed, the very concept of normative shared values itself has been attacked and deconstructed by some postmodern academics who see it as a vehicle for domination and class discrimination. See, e.g., Amy R. Mashburn, *Professionalism as Class Ideology: Civility Codes and Bar Hierarchy*, 28 VAL. U. L. REV. 657, 663–64 (1994) (objecting to the idea of a set of shared values within the legal profession as “the privileged minority’s desire to avoid confronting directly the economic difficulties and moral ambiguities of rendering essential legal services in a capitalistic society where the majority of people are poor, working class, and middle class,” and criticizing professionalism codes seeking to enforce certain standards of behavior as being the “skewed perceptions of a privileged few” that “express flawed values, promote a false community, and constitute potentially dangerous exercises of hierarchical power”).

⁷ See Terrell & Wildman, *supra* note 2, at 406 (“[T]hese principles have proven very difficult for us to identify. The debate is a deep one: we disagree not only about what the essential elements of a professional tradition might be, but also whether any such elements exist at all.”).

⁸ *Id.* at 423 (“[T]his independence has come with a price. The lawyer’s professional latitude, because it is justified by the importance of the law rather than the importance of lawyers themselves, is granted by society in exchange for the implicit promise by lawyers that their autonomy will be used to enhance the social function of the law.”). Underscoring the almost-sacred nature of this social compact, Terrell and Wildman thus argue that “[this] promise is the true essence and foundation of the concept of professionalism.” *Id.*

⁹ Neil Hamilton, *Professionalism Clearly Defined*, 18 PROF. LAW., no. 4, 2008, at 4, 5. Hamilton observes that “[h]igh degrees of professionalism build confidence in the social contract. Failures of professionalism undermine the social contract.” *Id.*

¹⁰ Terrell & Wildman, *supra* note 2, at 406.

¹¹ As famously defined by Roscoe Pound, a “profession” consists of “a group . . . pursuing a learned art as a common calling in the spirit of public service—no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of a public service is the primary purpose.” ROSCOE POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES* 5 (1953). Pound’s formulation was noted with approval by the ABA’s Commission on Professionalism. See COMM’N ON PROFESSIONALISM, AM. BAR ASS’N,

In an attempt to add structure to the debate and to help resolve some of the tensions apparent in the academic literature, this Comment will utilize an orienting framework provided by an emerging discipline known as Integral Theory. The Integral framework is a unique map that combines observations from numerous academic fields into a coherent system for analyzing complex issues. By utilizing a multidisciplinary approach based on four fundamental perspectives—the interior and exterior of the individual and the collective—the Integral model enables a view of any subject from all sides, thereby helping to honor, include, and yet transcend any particular theoretical angle to gain a broader appreciation of the whole. The primary strength of the Integral model is its ability to simultaneously handle both interior and exterior approaches without reducing one to the other.¹² It can then further distinguish these two perspectives by differentiating between the individual and communal dimensions. It has been said that “the concept of professionalism has become confused and disjointed because it has been diagnosed too hastily,”¹³ and that “lawyers have sought a cure for a disease before agreeing on its nature, symptoms, and causes.”¹⁴ As such, Integral Theory offers a novel approach to fitting any given “diagnosis” of this “disease” onto a single theoretical map. Similarly, it allows for various proposed “cures” to be organized and evaluated for their relative strengths as well as the areas where they might be expanded to include additional dimensions.

This Comment will proceed in four parts. Part I will present an overview of the Integral model to set the stage for reframing the topic at hand. In Part II, the Integral framework will be used to “diagnose” the professionalism problem in four dimensions, paying particular attention to the historical context from which the current “crisis” emerged. Part III will then proceed to evaluate some of the existing approaches to professionalism and orient their values within the Integral framework. Finally, Part IV will offer some conclusions on what lessons can be learned from this approach and advocate for the view that professionalism is best conceptualized as a *process*, not a destination. This conception makes clear the value of establishing a stable meta-perspective,

“ . . . IN THE SPIRIT OF PUBLIC SERVICE:” A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM 10 (1986) [hereinafter ABA, BLUEPRINT].

¹² For example, reducing professional values to the singular goal of encouraging civil behavior (i.e., reducing interior values to exterior behavior). Conversely, professionalism might be viewed solely as an adherence to certain moral principles, such as the obligation to provide pro bono work irrespective of one’s actual expertise in the area of assistance (i.e., reducing exterior ability to interior moral considerations).

¹³ Terrell & Wildman, *supra* note 2, at 404.

¹⁴ *Id.* at 403.

such as the one offered by the Integral model, to create a static framework within which the development of professionalism can be understood.

I. AN OVERVIEW OF INTEGRAL THEORY

In a nutshell, Integral Theory is a framework for dealing with complexity wherever it is to be found.¹⁵ It was originally conceived more than thirty years ago in the pioneering work of Ken Wilber, through his relatively modest attempt to synthesize the full history of the world's knowledge traditions.¹⁶ Although Integral Theory draws upon the abstract world of metaphysics, it is fundamentally an empirical approach to reality, and as such the Integral model has found its way into a wide variety of practical applications in recent years.¹⁷

¹⁵ See Sean Esbjörn-Hargens, *An Overview of Integral Theory: An All-Inclusive Framework for the 21st Century*, INTEGRAL INST., 1 (Mar. 2009), http://integrallife.com/files/Integral_Theory_3-2-2009.pdf (noting that Integral Theory is "suitable to virtually any context and can be used at any scale" because "it organizes all existing approaches to and disciplines of analysis and action, and it allows a practitioner to select the most relevant and important tools, techniques, and insights").

¹⁶ In a recent work, Wilber explained his approach in this way:

During the last 30 years, we have witnessed a historical first: all of the world's cultures are now available to us. In the past, if you were born, say, a Chinese, you likely spent your entire life in one culture, often in one province, sometimes in one house, living and loving and dying on one small plot of land. But today, not only are people geographically mobile, but we can study, and have studied, virtually every known culture on the planet. In the global village, all cultures are exposed to each other.

Knowledge itself is now global. This means that, also for the first time, the sum total of human knowledge is available to us—the knowledge, experience, wisdom, and reflection of all major human civilizations—premodern, modern, and postmodern—are open to study by anyone.

What if we took literally everything that all the various cultures have to tell us about human potential—about spiritual growth, psychological growth, social growth—and put it all on the table? What if we attempted to find the critically essential keys to human growth, based on the sum total of human knowledge now open to us? What if we attempted, based on extensive cross-cultural study, to use all of the world's great traditions to create a composite map, a comprehensive map, an all-inclusive or *integral* map that included the best elements from all of them?

KEN WILBER, INTEGRAL SPIRITUALITY 1 (2006).

¹⁷ Esbjörn-Hargens, *supra* note 15, at 2 ("[I]ntegral theory is being used successfully in a wide range of contexts such as the intimate setting of one-on-one psychotherapy as well as in the United Nations 'Leadership for Results' program, which is a global response to HIV/AIDS used in over 30 countries."). A brief scan of the academic journal dedicated to the study and application of Integral Theory also reveals applications in such areas as ecology, religion, leadership, coaching, business, politics, education, medicine, and more. See *The Journal of Integral Theory and Practice*, INTEGRAL INST., <http://aqaljournal.integralinstitute.org> (last visited Sept. 13, 2011). In addition, the Integral Research Center was recently established to support and catalogue the growing use of Integral Theory in real-world applications through grant funding and institutional support. See *Supporting the Global Community of Integral Scholar-Practitioners*, INTEGRAL RES. CENTER, <http://www.integralresearchcenter.org> (last visited Sept. 13, 2011).

Like Einstein’s famous formula, $E = mc^2$, the Integral model can be described as an *elegant* theory in that it captures and conveys an enormous amount of observation and insight in a surprisingly simple form (the “four quadrants”). Also like the theory of relativity, however, this simplicity of presentation hides a sophisticated and powerful approach to comprehending the world. Indeed, a full exposition of the Integral model is neither necessary nor feasible here,¹⁸ and what follows instead is meant only as an overview of the broad contours of the theory. As a warning, the explanation that follows may seem at times to be more than a little distant from the concept of professionalism, but it is important to grasp the underlying theory behind the Integral model before applying it to the problem at hand.¹⁹

A. *The Four Quadrants*

The four quadrants are the foundation of the Integral framework. They represent the “system of perspectives or stances that can be taken up, including first-person, second-person, and third-person perspectives.”²⁰ Reflecting on these three perspectives, one can see that they represent two broad, but fundamental, divisions that exist within the world. The first is that between the “subjective” (i.e., interior) and “objective” (i.e., exterior) dimensions. The second is that between the categories of “individual” and “collective” phenomena. When these perspectives are laid out in two dimensions, then, a simple four-part box emerges depicting the *interiors and exteriors of individuals and collectives*.

¹⁸ Wilber himself has written over two dozen books, which have been translated into around thirty languages, providing some idea of the breadth and scope of his work. *Writings*, KENWILBER.COM, <http://www.kenwilber.com/professional/writings/index.html> (last visited Sept. 13, 2011). This is in addition to countless articles, symposia, and other contributions from scholars working in the field, as well as a three-year, fully-accredited Master’s degree program in Integral Theory recently established at John F. Kennedy University in San Francisco. See *Master of Arts in Integral Theory*, JOHN F. KENNEDY U., <http://www.jfku.edu/Programs-and-Courses/College-of-Graduate-Professional-Studies/Integral-Studies/Programs/MA-Integral-Theory.html> (last visited Sept. 13, 2011).

¹⁹ The Integral model contains five foundational elements—quadrants, levels, lines, states, and types. WILBER, *supra* note 16, at 2. However, to limit what could otherwise become an overly ambitious and lengthy discussion, only the first three will be utilized for the purposes of this Comment.

²⁰ Zachary Stein & Katie Heikkinen, *On Operationalizing Aspects of Altitude: An Introduction to the Lectical Assessment System for Integral Researchers*, J. INTEGRAL THEORY & PRAC., Spring 2008, at 105, 107. As the authors note, these three perspectives are so fundamental to human experience that they are implicit in the basic pronouns used in every language—“I” (first person), “we/you” (second person), and “it” (third person). *Id.*

	Interior	Exterior
Individual	UPPER LEFT (UL) Individual–Interior <i>Beliefs & Experience</i> “I”	UPPER RIGHT (UR) Individual–Exterior <i>Biology & Behavior</i> “It”
Collective	LOWER LEFT (LL) Collective–Interior <i>Shared Meanings</i> “We”	LOWER RIGHT (LR) Collective–Exterior <i>Complex Systems</i> “Its”

Figure 1: The Four Quadrants²¹

These four perspectives comprise the four irreducible worlds of experience. Any issue, event, or phenomenon that occurs is thus knowable only by virtue of these perspectives and can be mapped out accordingly in all four quadrants. Moreover, because the quadrants represent ways of viewing the world, the quadrants themselves are *content free* and can be applied to virtually any discipline or endeavor.

Each of the four quadrants discloses a distinct approach to, and perspective on, experience. The UL includes all the interior, individual elements described in the psychological literature—including, in part, one’s emotional experiences, thinking processes, moral values, phenomenological perceptions, and so on.²² These are the invisible, qualitative aspects of the human experience that can only be known from the inside, like what you see when you imagine the color blue. By contrast, the UR includes all the exterior, observable, and quantifiable aspects of that same experience that can be seen through empirical observation, like the wavelength pattern that corresponds with blue in the visible spectrum or the neuronal patterns that fire when you look at the midday sky.²³ UR perspectives describe the physical/biological correlates of interior phenomena, such as physical characteristics and behavior,

²¹ Esbjörn-Hargens, *supra* note 15, at 3, 6.

²² *Id.* at 3–7.

²³ *Id.* at 4–5.

genetic inheritance, neuronal networks, heart rate, and so on.²⁴ Both views are valid ways of approaching a single phenomenon, but each one discloses a different aspect of the whole.²⁵

In the collective dimensions, the LL represents the interpersonal or intersubjective domain—relationships between individuals, shared values, and cultural contexts—as disclosed by disciplines such as cultural anthropology, hermeneutics, or simple conversation.²⁶ Methodologies addressing this quadrant capture the ways that a phrase like “to be blue” has a common meaning within our culture wholly distinct from its literal definition as either a visual perception or a wavelength measured by a machine. Finally, the LR encompasses the exterior forms that LL phenomena take on when they manifest in the physical world—patterns of collective interaction within vast social²⁷ and economic systems, technological networks that connect people and things to one another, and indeed the legal system itself.²⁸ To continue with our

²⁴ *Id.*

²⁵ See 6 KEN WILBER, *Sex, Ecology, Spirituality: The Spirit of Evolution*, in THE COLLECTED WORKS OF KEN WILBER 1, 141 (2d ed. 2000) (“[I]t’s not that one is right and the other wrong; it’s that both are extremely important.”). To further illustrate these two dimensions, consider a phenomenon that is surely familiar to anyone who has ever taken a law school exam—the concept of anxiety. To fully describe such a phenomenon, it is necessary to distinguish its interior and exterior components. In the UL dimension, the student’s experience usually manifests as an interior sensation of uncertainty, fear, restlessness, and clouded thinking. From a UR perspective, however, it is equally valid to define anxiety by its physical correlates, such as an increase in heart rate, respiration, and perspiration accompanied by physical jitters, furtive glances, and an excessive amount of adrenaline flooding the brain. While both descriptions are true, they are each nonetheless partial in and of themselves.

²⁶ WILBER, *supra* note 16, at 22–23, 25.

²⁷ Although the terms *cultural* and *social* are often used interchangeably, in Integral Theory they each have a distinct meaning. The former refers to LL interior aspects of collective groups, while the latter refers specifically to the LR quadrant. See 7 KEN WILBER, *A Brief History of Everything*, in THE COLLECTED WORKS OF KEN WILBER 45, 122–23 (2000).

²⁸ Strictly speaking, the law resides in the LR quadrant, at least to the extent that it is defined by statutes and constitutions. These represent concrete, written codifications of agreed-upon cultural values—the LR exterior forms of LL interior cultural norms—that can be passed down as precedent to succeeding generations. In the words of Justice Holmes, “The law is the witness and external deposit of our moral life. Its history is the history of the moral development of the race.” O. W. Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 459 (1897).

This is not to say, however, that in practice other quadrants do not come into play. A strictly LR perspective on the law leads inevitably to the “myth of the judge-as-oracle,” William J. Brennan, Jr., *Reason, Passion, and “The Progress of the Law,”* 10 CARDOZO L. REV. 3, 5 (1988), or an impersonal, purely objective interpreter of an established legal code who decides cases wholly unaffected by personal (UL) and cultural (LL) influences. A more accurate indication of how the law really works might be found in the words of Justice Cardozo, as he described his own personal approach to judging:

What is it that I do when I decide a case? . . . If a precedent is applicable, when do I refuse to follow it? If no precedent is applicable, how do I reach the rule that will make a precedent for the

“colorful” example, the LR perspective reveals how shared cultural values in Durham, North Carolina, can show up in a stadium full of strangers who all have painted their faces blue.²⁹

It is essential to note, however, that while each dimension is in some sense distinct and independent, all four perspectives nonetheless coexist and co-arise (or, really, *tetra*-arise), and each exerts an influence upon all the others.³⁰ Developing moral values in the UL causes changes in UR behavior. Conversely, chemical antidepressants acting on the exterior UR structures of the brain can influence one’s interior mood in the UL. Collectively, new transportation networks in the LR dimensions of society (e.g., the Silk Road) can lead to a blending of once-distant cultures. At the same time, cultural revolutions in the LL can lead to changes in society’s exterior, written legal codes in the LR. Those legal codes, in turn, channel UR behavior in new ways, just as changing LL cultural contexts influence the UL values of individuals

future? . . . At what point shall the quest [for logical consistency] be halted by some discrepant custom, by some consideration of the social welfare, by my own or the common standards of justice and morals?

BENJAMIN N. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 10 (1921). In what might, from an Integral perspective, be viewed as an acknowledgement of the all-quadrant nature of the law, Justice Cardozo thus

rejected the prevailing myth that a judge’s personal values were irrelevant to the decision process, because a judge’s role was presumably limited to application of the existing law, a process governed by external, objective norms. Cardozo acknowledged that judges, like common mortals, cannot divorce themselves completely from their personal, subjective vision. Cardozo observed that judges undoubtedly possess “subconscious loyalties” to the groups “in which the accidents of birth or education or occupation or fellowship have given us a place.”

Brennan, *supra*, at 4–5. More succinctly, Justice Cardozo seems to have captured this notion in perhaps its most eloquent formulation when he wrote that “[t]he great tides and currents which engulf the rest of men do not turn aside in their course and pass the judges by.” CARDOZO, *supra*, at 168.

²⁹ Consider again our anxious student sitting down for his first law school exam. To complete the picture disclosed by the UL and UR perspectives, we must also consider the collective dimensions. That is, the interior experience of anxiety by our student, correlating with exterior physiological symptoms, did not develop in a vacuum. Rather, his anxiety is embedded within an LL cultural context (e.g., parental pressure to succeed, a desire to “fit in” with his law school peers, a shared belief among large law firms that grades are a measure of potential for success, and so on). Indeed, the word *anxiety* itself derives meaning only from the shared interior understanding of English-speaking individuals (i.e., the understanding of what that particular sequence of sounds refers to, where the same sounds would have no referent for someone who does not know the language). In addition, the student’s anxiety might also be attributed to LR factors, such as time limitations on the exam, a strictly curved grading system, his laptop’s ability to properly interface with the school’s wireless network, and even unfortunate patterns in the city’s traffic system that may cause him to be late.

³⁰ For example, excessive pressure to succeed in the LL (e.g., “you know your sister aced her first-year exams”) causes an increased feeling of anxiety in the UL, corresponding with adrenaline surges and insomnia in the UR, which, in turn, leads our student to miss his bus in the morning (i.e., a failure in the LR)—all adding up to a terrible exam performance.

living within them. Thus, while each quadrant can be viewed separately in abstraction, it is essential to understand that, in reality, they exist as a unified whole.

To return to our primary topic, we can now begin to see how an Integral approach might be useful in dealing with a complex issue like professionalism simply by distinguishing between its manifestations in each of the four quadrants. Doing so allows us not only to get a better view of the problem itself but also to see which methodologies might be most appropriate for seeking solutions in their respective dimensions. This means recognizing that the professionalism problem implicates not only the UL interior values of individual lawyers and the UR behaviors they exhibit, but also the LL shared values of their practice group, their firm, the legal profession as a whole, and the collective value that society itself places on the law and those who serve as its agents. By considering all these dimensions, we can then get a better idea of how concrete changes in the LR dimension (e.g., intrafirm mentoring and training programs, interfirm professionalism associations, advertising campaigns, pro bono requirements, revised written professionalism standards, and the like) might help to foster professionalism in all four quadrants on both a micro and macro scale.

B. Levels of Development

The four quadrants represent a content-free framework through which the distinct, but interrelated, facets of a particular issue may be viewed. As such, however, the quadrants do not account for changes over time—what might be thought of as the *historical context* in which any given phenomenon is embedded. This is an essential component to understanding professionalism,³¹ which has emerged from its own unique historical tradition that ultimately began in the religious orders of the Middle Ages.³² To describe this development over time, then, the Integral model utilizes the concept of “levels,” or “stages,” of development.³³

³¹ See Terrell & Wildman, *supra* note 2, at 408 (“[A]nalyzing the changes in the [legal] profession gives us an appropriate and very important historical perspective on the present struggle to define professionalism.”).

³² See Cochran, *supra* note 6, at 306–07 (“To be a professional was originally *to profess* something, a commitment to one’s religious order. Some of the religious orders developed expertise in special disciplines: divinity, law, and medicine. The term ‘professional’ came to describe those with special expertise in these areas.” (footnote omitted)).

³³ WILBER, *supra* note 16, at 4–6.

An understanding of levels begins with the empirical observation that everything evolves in all four quadrants. For example, over the course of a lifetime (or a career), an individual continually learns new concepts through experience and then proceeds to combine these concepts into increasingly complex UL mental structures that are used to guide and interpret interaction with the world. In the UR dimension, this mental development correlates with physical development in the form of new neuronal networks, refined motor skills, more complex patterns of behavior, and the relatively predictable stages of development commonly known as aging.³⁴

On a collective scale, cultures evolve too, and in myriad ways. Human beings' relationships with one another have changed through various cultural revolutions, as our collective understanding of concepts like freedom, equality, and justice has developed over time. Humankind's relationship with the world at large has also been refined through philosophical, religious, and academic discourses that go back centuries, occasionally overturning universally accepted worldviews (e.g., the Copernican Revolution).

Similarly, the LR history of humankind's social evolution tells a story of emergence from primitive foraging societies, through horticultural and agrarian revolutions that brought with them the first feudal empires, through the Industrial Revolution that enabled the growth of modern nation-states, and now into an informational society with a corresponding emergence of a globally interconnected, transnational world.³⁵ As a real-world example of how LR development takes place in the legal profession, the renewed emphasis on professionalism in the LL has given rise to global networks of individual law firms that share a high regard for excellence in their practices, such as the Lex Mundi project.³⁶ The firms that take part in these associations are connected not only by mutually held values in the LL but also by LR networks that

³⁴ Stepping back a bit further, one can observe the long-term evolution of physical systems themselves from single-celled to multicelled organisms, followed by development of the reptilian brain, limbic systems, the neocortex, and so on. See WILBER, *supra* note 27, at 119 fig.5-2. Each of these, in turn, correlates with emergent interior structures in the UL, from pre-conscious sensations to basic impulses to emotions to the capacity for symbolic mental constructions, which can then be combined into abstract concepts, and can then be operated upon and manipulated through rational thinking. *Id.*

³⁵ See WILBER, *supra* note 27, at 26, 32.

³⁶ See Timothy P. Terrell, *Professionalism on an International Scale: The Lex Mundi Project to Identify the Fundamental Shared Values of Law Practice*, 23 EMORY INT'L L. REV. 469, 472 (2009) (describing the Lex Mundi project as an "ambitious effort by an association of law firms, whose members are drawn from the entire globe and have both international and domestic law practices, to develop, announce, and implement a set of shared fundamental professional values").

channel resources and clients between them to give external support to their shared internal goals.³⁷

In addition to the observation that all things develop over time, another tenet of the Integral model is that development, in any of the quadrants, is not random but rather directional. Broadly speaking, structures and systems evolve through a predictable series of discrete stages from simpler forms toward increasing complexity and depth. Moreover, the higher, or more developed, structures do not simply supersede lower levels but *transcend and include*³⁸ them as constituent parts.³⁹ To describe this phenomenon, “Arthur Koestler coined the term ‘holon’ to refer to an entity that is itself a *whole* and simultaneously a *part* of some other whole.”⁴⁰ Thus, each discrete holon is itself a collection of parts, yet at the same time it is something *more* than their sum.⁴¹ Because each holon includes its predecessors, but not vice versa (i.e., cells contain molecules, but molecules do not contain cells), this development gives rise to an implicit hierarchy, or “holarchy,” of development.⁴²

While this pattern of development is relatively easy to recognize in the exterior dimensions (for example, atoms to molecules to cells, a single circuit to a microprocessor to a laptop computer, or a few houses to a village to a bustling metropolis), levels of holarchical development have been observed in the interior dimensions as well. Although LL cultural evolution is a fascinating subject, however, the UL individual–interior dimension is most relevant to the topic of professionalism. Specifically, the work of developmental psychologists such as Lawrence Kohlberg, Carol Gilligan, Robert Kegan, and many others has revealed that interior development proceeds hierarchically through levels of increasing complexity in much the same way as exterior

³⁷ *Id.* at 472–76.

³⁸ See WILBER, *supra* note 27, at 79.

³⁹ In the UR, for example, atoms do not turn into molecules, which then turn into cells, and so on all the way up. Rather, each level both transcends the previous level while at the same time enfolding it within itself. A molecule is not simply a heap of atoms but a distinct structure of a higher order complexity, even though it is composed of lower level structures and is in that sense dependent upon them. *Id.*

⁴⁰ *Id.* at 69.

⁴¹ An excellent example of this is the modern corporation, which is seen not merely as a collection of individual employees and managers, but as a distinct entity (or “person”) in and of itself (even possessing its own “personal” rights) that exists independently of its particular membership at any given time. See 1 U.S.C. § 1 (2006) (“In determining the meaning of any Act of Congress, unless the context indicates otherwise[,] . . . the words ‘person’ and ‘whoever’ include corporations . . . as well as individuals . . .”); see also *Citizens United v. FEC*, 130 S. Ct. 876, 913 (2010) (holding that corporations have a First Amendment right to fund independent broadcasts in political elections).

⁴² See 7 KEN WILBER, *An Integral Theory of Consciousness*, in THE COLLECTED WORKS OF KEN WILBER, *supra* note 27, at 367, 373.

evolution does.⁴³ While there is much disagreement as to how many of these stages there are, where particular levels begin or end, what labels they should be given, and how best to measure individual development, there are nonetheless some useful insights from these disciplines that have a direct bearing on the professionalism problem.

C. *Lines of Development*

Integral researchers Zachary Stein and Katie Heikkinen at the Harvard Graduate School of Education describe lines this way:

Lines are relatively independent forms of psychological functioning—reflecting both different ways of thinking and the different things we think about. . . . As Wilber's extensive scholarship revealed, researchers have proposed upwards of a dozen distinct lines of development. Consider the differences between moral reasoning and reasoning about the physical world. It is easy to imagine, and research has confirmed, that someone advanced in their thinking about physics would not necessarily be advanced regarding issues of morality. These are distinct domains, different lines along which thought, action, and behavior develop.⁴⁴

Currently there are at least two dozen distinct lines that have found support in empirical research.⁴⁵ These account for a wide spectrum of human ability and experience, including "ego strength,"⁴⁶ moral development, self-identity, cognition, role taking, creativity, altruism, empathy and care, interpersonal relationship skills, emotional awareness, and kinesthetic skills, to name only a few.⁴⁷ Because lines develop independently of one another, a person can be

⁴³ KEN WILBER, INTEGRAL PSYCHOLOGY 29 (2000). Clearly, the idea of a hierarchy of mental structures, and in particular those related to moral values, can be a controversial proposal in today's postmodern society. Nonetheless, the overwhelming evidence from developmental psychology supports the conclusion that there are at least some broad stages through which interior development evolves in a predictable, directional pattern. *Id.* Importantly, these conclusions are based on almost a century's worth of empirical data, and not mere "theoretical speculations." *Id.* at 29. For a discussion of Kohlberg's six "objective and universal" stages of moral reasoning and the "invariant sequence" in which they develop, see Elliott M. Abramson, *Puncturing the Myth of the Moral Intractability of Law Students: The Suggestiveness of the Work of Psychologist Lawrence Kohlberg for Ethical Training in Legal Education*, 7 NOTRE DAME J.L. ETHICS & PUB. POL'Y 223, 223–24 (1993).

⁴⁴ Stein & Heikkinen, *supra* note 20, at 109 (endnote omitted).

⁴⁵ WILBER, *supra* note 43, at 28.

⁴⁶ See Susan Daicoff, *Asking Leopards to Change Their Spots: Should Lawyers Change? A Critique of Solutions to Problems with Professionalism by Reference to Empirically-Derived Attorney Personality Attributes*, 11 GEO. J. LEGAL ETHICS 547, 565 (1998) (referencing "ego strength" as a potential determinant of a person's ability to behave in accordance with their moral intentions).

⁴⁷ WILBER, *supra* note 43, at 28; WILBER, *supra* note 16, at 58–59.

highly evolved in, say, the cognitive line, but express a lesser or even pathological degree of development in another line, such as moral reasoning or empathy.⁴⁸ Lines thus expand the concept of levels described above by charting development in more detail.⁴⁹

However, it is important to remember that, in a practical sense, the boundaries dividing various levels and distinguishing between lines are far more diffuse than they might appear from a purely theoretical perspective.⁵⁰ A person’s cognitive, interpersonal, emotional, or moral reasoning skills represent “mutually interacting patterns”⁵¹ that collectively influence overall behavior and awareness. Nonetheless, thinking of the personality in terms of distinct lines could be useful for diagnosing problems related to professionalism by zeroing in on the specific strengths or deficiencies of a particular individual.

In the legal context, professionalism itself might be appropriately thought of as its own line of development existing alongside, but independent of, other abilities specific to the legal profession (e.g., logical reasoning, writing, and

⁴⁸ This helps to explain why an *individual’s* overall development (i.e., the sum total of one’s development along various lines) often does not appear to proceed in a linear fashion, even though empirical evidence collected from *many* individuals supports the idea of sequential stages of development in a broad sense. WILBER, *supra* note 43, at 28. For example, while it might seem reasonable to assume that a generally intelligent and mature person would make intelligent, rational moral decisions, history has proven time and again that this is not always the case. Otherwise-mature, responsible adults can exhibit extremely irrational, immature, or even infantile behavior at times because of repressed or pathological development in a particular line. See WILBER, *supra* note 27, at 188 (discussing dissociation and repression in the context of Kohlberg’s stages of moral development); WILBER, *supra* note 43, at 91–98 (discussing pathologies that can occur at various stages of development). Importantly, however, “the bulk of research has continued to find that *each developmental line itself* tends to unfold in a sequential, holarchical fashion: higher stages in each line tend to build upon or incorporate the earlier stages, no stages can be skipped, and the stages emerge in an order that cannot be altered by environmental conditioning or social reinforcement.” WILBER, *supra* note 43, at 28–29.

⁴⁹ As a loose analogy, levels might be thought of as a way to describe the broad differences in temperature, geology, vegetation, and animal life that are found at various altitudes on a mountain. Lines, then, would be more akin to different pathways that a climber of that mountain might take. Levels thus describe the overall characteristics of particular stages of development *as measured along* one or more lines, and therefore, “[a] ‘level of development’ is always a ‘level in a particular line.’” WILBER, *supra* note 16, at 61.

⁵⁰ *Id.* (“[D]evelopmental lines are not really lines in any strict sense. At most, they represent probabilities of behavior—and thus are something like probability clouds more than ruler-straight lines.”). In terms of levels, the mountain analogy described above is also useful for emphasizing the fact that development is not rigid and ladder-like, with clear boundaries dividing one stage from the next. That is, changes in one’s surroundings occur gradually and are usually not apparent when one is actually climbing up the mountain. Yet there are undeniable differences between the environment at the peak and that found on the valley floor.

⁵¹ WILBER, *supra* note 43, at 31.

oratory skills).⁵² Doing so would help to emphasize the importance of teaching and developing professionalism explicitly alongside practical knowledge as a foundation of legal education. Those using this way of thinking about professionalism in the UL dimension would consider it more of a *skill* to be continually developed over the course of a career than as a type of *content* to be learned. That is, the substantive *meaning* of professionalism lies in the collective LL and LR dimensions, where individual behavior takes on significance and value in the context of relationships with other professionals and the legal system itself. The capacity to understand and appreciate this meaning, then, would be determined by one's level of development in the professionalism line.

This development could be measured in terms of cognitive ability, moral-stage development, interpersonal skills, etc.,⁵³ and broadly described as one's adeptness at thinking about, relating to, and managing the inevitable moral and ethical conflicts that arise in legal practice. Focusing in on the moral and ego-strength lines as a subset of professionalism could also help to assess one's capacity to align UR behavior to actually reflect this interior understanding (i.e., one's integrity, or the tendency to walk the walk rather than simply talk the talk).⁵⁴ Obviously, there is much more to be said about this particular idea, but it is not necessary here to develop the concept fully. It will suffice instead to suggest that utilizing the lines concept could be a useful tool in both assessing and instilling professionalism in individual attorneys.

II. AN INTEGRAL "DIAGNOSIS" OF THE PROFESSIONALISM PROBLEM

A. *Lower Quadrants: The Consequences of Cultural and Social Evolution*

Although the problems that seem to plague the legal profession today have distinct manifestations in the individual dimensions, many of these can be viewed as the result of certain large-scale changes in both the profession and American society as a whole. Some of these changes have been structural (i.e., in the LR quadrant), such as the increasing number of law schools, the impact of new technologies on the legal profession, and the changes in the business of legal practice. But to a large extent, the professionalism problem has been

⁵² More accurately, it could be considered as a particular grouping of several interrelated lines (cognitive, moral, interpersonal, ethical, and so on).

⁵³ See Stein & Heikkinen, *supra* note 20, at 105 (using the Lectual Assessment System to measure development within any line).

⁵⁴ See Daicoff, *supra* note 46, at 565; Hamilton, *supra* note 9, at 9–10.

argued to have primarily resulted from *interior* shifts in LL cultural values, such as the breakdown of a unified sense of “community” within a legal profession that is no longer the highly segregated and insulated “club” that it once was.⁵⁵ Accordingly, this interior shift in values will be addressed first.

Before looking at the current state of the legal profession, one should note that concerns about the integrity and public image of lawyers are nothing new. In 1895, *The American Lawyer* lamented that the bar “has allowed itself to lose . . . the lofty independence . . . [and] fine sense of professional dignity and honor” by becoming “increasingly contaminated with the spirit of commerce.”⁵⁶ In 1929, Karl Llewellyn remarked that “it is clear that the activity of most skillful lawyers will be upon the side of the Haves and not upon the side of the Have-nots” and stated that he “do[es] not think the lawyer popular, and that his unpopularity appears . . . as natural as whiskers on a cat.”⁵⁷ Yet despite the historical presence of these concerns, the perceived lack of professionalism among modern lawyers is often characterized as a “loss”⁵⁸ or “decline”⁵⁹ in certain qualities and values that were once central to the practice of law. A persistent narrative has emerged that lawyers in the past were engaged in a more noble form of public service than the self-serving, greedy, win-at-all-costs style of practice that many argue is prevalent today.⁶⁰

This longing for the “good old days,”⁶¹ however, seems contrary to the notion that cultures, organizations, and people themselves evolve and develop

⁵⁵ Terrell & Wildman, *supra* note 2, at 408–13.

⁵⁶ *The Commercializing of the Profession*, 3 AM. LAW. 84, 84 (1895).

⁵⁷ KARL N. LLEWELLYN, *THE BRAMBLE BUSH: THE CLASSIC LECTURES ON THE LAW AND LAW SCHOOL* 160 (11th prtg. 2008).

⁵⁸ Hamilton, *supra* note 9, at 4.

⁵⁹ Deborah L. Rhode, *The Professionalism Problem*, 39 WM. & MARY L. REV. 283, 283 (1998); accord John C. Buchanan, *The Demise of Legal Professionalism: Accepting Responsibility and Implementing Change*, 28 VAL. U. L. REV. 563, 563 (1994) (“[T]he public perception problems lawyers face today are deeper and more widespread than any the profession has ever faced before.”); Warren E. Burger, *The Decline of Professionalism*, 61 TENN. L. REV. 1, 3 (1993) (“[T]he standing of the legal profession is at its lowest ebb in the history of our country . . .”); Daicoff, *supra* note 46, at 552 (citing the results of a 1993 ABA poll reporting a “majority view . . . that, compared to lawyers in the past, today’s attorney is less caring and compassionate”); Allen K. Harris, *The Professionalism Crisis—The ‘z’ Words and Other Rambo Tactics: The Conference of Chief Justices’ Solution*, 53 S.C. L. REV. 549, 551–52 (2002) (discussing the loss of professionalism as a result of “Rambo tactics” justified as “zealous” representation, which “continue to harm the legal profession and denigrate its once positive image to the public”).

⁶⁰ Hamilton, *supra* note 9, at 4 (citing “[a]rguments by generations of lawyers who graduated prior to the 1980s that ethics were higher and lawyer conduct more civil earlier in their careers”).

⁶¹ Terrell & Wildman, *supra* note 2, at 405. The authors distinguish between what might be called “healthy” and “unhealthy” historical perspectives. On the one hand, “tradition” is “a positive and useful social force. It is an appreciation of one’s cultural heritage that provides a perspective from which to connect current

into more complex and sophisticated forms over time. That is, the individual (UL) and organizational (LL) values that functioned effectively in a previous era are inapposite to a social and cultural context that is vastly different now than in the past. Indeed, for a person who was not born wealthy, white, and male in nineteenth- and early-twentieth-century America, the “old days” might not be considered particularly “good” at all.⁶²

This is not to say that the past should be ignored entirely. To the contrary, “analyzing the changes in the profession gives us an appropriate and very important historical perspective on the present struggle to define professionalism.”⁶³ But ironically, such a historical analysis tends to undermine the concept of an “ethical golden age”⁶⁴ or a “hypothesized happier era”⁶⁵ by revealing that the legal profession of old suffered from its own set of prejudicial limitations that seem reprehensible today.⁶⁶ In other words, even if there is some truth to the notion that lawyers in the past were more civil toward one another and were held in higher esteem (both by themselves and the public), it is equally valid to argue that the *reasons* for this civility are not

circumstances to the past, and hence improve the understanding of both.” *Id.* On the other hand, mere “traditionalism” is characterized by “a superficial and simplistic appreciation of one’s heritage that provides no meaningful sense of perspective and judgment. It is a reverence of the past for its own sake—a nostalgia for the ‘good old days.’” *Id.*

⁶² In his introduction to Llewellyn’s famous lectures on the law, aptly titled *The Bramble Bush*, Steve Sheppard writes:

In 1929, law schools had only recently become the elite preparation for the practice of law, replacing . . . the older system of apprenticeships in lawyers’ offices. Llewellyn’s students, by and large, were clever and wealthy young white men. There were only a few women, the first women students having been admitted to Columbia’s Law School only two years before. The price of tuition and the recently instituted aptitude tests for admissions ensured the other conditions.

Today, there are many more law schools, and law schools are much more aware of their roles in developing leadership for a diverse and globalized community. Although cost is still a barrier, loans and scholarships have opened the doors much wider than they were then.

Steve Sheppard, *Introduction to LLEWELLYN*, *supra* note 57, at xiii–xiv.

⁶³ Terrell & Wildman, *supra* note 2, at 408.

⁶⁴ Hamilton, *supra* note 9, at 4.

⁶⁵ Rhode, *supra* note 59, at 284.

⁶⁶ Terrell & Wildman, *supra* note 2, at 409 (“The heritage of Bar associations, like that of all trade organizations, rests initially in self-interest and protectionism rather than any noble spirit of public service.”). The authors further point out that bar associations in the past often exhibited “all the classic ‘negative’ features of a closed club,” including high barriers to entry based on race, class, religion, and other social and personal factors; slow growth and low competition among members resulting from tight controls over advertising and admission; and a belief that explicit, written professional standards were unnecessary for a profession characterized by cultural homogeneity, where bar members shared an implicit understanding of behavioral norms based on their common social heritage. *Id.* at 410–11.

something we could or should want to replicate today—namely, the closed-off, “elite” status of a bar lacking in diversity and replete with racial, cultural, and class discrimination.

Although it is to be welcomed, the increased LL diversity within the bar has nonetheless made the shared values that should define the profession “hard to pin down.”⁶⁷ Because lawyers now come from a wide variety of backgrounds, “[w]hat was once understood or assumed concerning appropriate behavior no longer pertains generally. Instead, the standards that supposedly characterize the practice of law are vague, lack serious moral force, and are constantly being challenged or rethought.”⁶⁸

The conflict arising from the different value systems now represented in the bar has both micro and macro components. As an example of the former, an individual lawyer’s family history, socioeconomic background, or self-identification with a particular racial, ethnic, or political group might help shape her beliefs about the proper role of lawyers and the values they should represent. At a macro level, broad cultural beliefs about justice, rights, liberty, and the rule of law shift over time and influence both how lawyers behave and how society as a whole views the legal profession and the interests it serves.⁶⁹ Some argue that “recent trends in legal education and scholarship reflect a shift from valuing justice to viewing law as simply an instrument to achieve certain political, social, and economic ends of others regardless of the means.”⁷⁰

⁶⁷ ABA, *BLUEPRINT*, *supra* note 11, at 10.

⁶⁸ Terrell & Wildman, *supra* note 2, at 412.

⁶⁹ For example, Terrell and Wildman note that the rise of the “can do” lawyer (i.e., one willing to be as “creative” with the law as possible to achieve a client’s lawful ends) has been influenced by the emergence of “[r]ights-[c]onsciousness” in the public mind. *Id.* at 415. That is, the “law is no longer viewed as a conservative social institution that reveres the past and is suspicious of change,” but rather “the popular image of the law today is that of a dynamic social force that can, and should, vindicate the ‘rights’ of citizens.” *Id.*; accord Daicoff, *supra* note 46, at 564 (noting that in the 1950s and 1960s, “lawyers were celebrated heroes when they acted as instruments to vindicate clients’ rights regardless of the morality of the clients’ goals” and that this client-based orientation “became mainstream” during the 1970s through its incorporation into the ABA’s *Model Code of Professional Responsibility*).

Note also that, at both micro and macro levels, value systems are *subjective* constructs in the interior dimension of either an individual or a group. Although concepts like rights, liberty, and justice are reflected throughout American history and explicitly represented in the United States Constitution, the manifestations of these values in the exterior world are not the source of the values themselves. The Bill of Rights, objectively speaking, is nothing more than a collection of lines and shapes scratched onto a piece of parchment. The *meaning* of the Bill of Rights, then, only exists in, emerges from, and evolves through the interior LL dimension in the form of shared values that develop over time and form the cultural background of individuals living within it.

⁷⁰ Daicoff, *supra* note 46, at 560.

In addition to cultural changes, LR structural changes and broad economic trends have further eroded incentives to adhere to high professional standards.⁷¹ Reduced barriers to entry in the legal market and readily available student loans have led to a steady increase in the number of American law schools (now totaling 201,⁷² with more being accredited each year) despite rising tuitions.⁷³ As a result, approximately 45,000 new lawyers graduate each year to compete for an estimated 30,000 available positions, many of which will not pay enough to even cover the interest on their student loans.⁷⁴ Meanwhile, globalization and advances in communication technology are causing some firms to consider cutting costs by exporting traditional first-year associate work overseas.⁷⁵

From an LR perspective, the objective fact that more lawyers are competing for clients increases the economic incentive to cut corners, fight dirty, or otherwise ignore professional standards to get the job done by any lawful means. Clients confronted with an attorney who refuses to compromise her values (i.e., tells the client “no”) will have ample opportunity to seek out another one who feels less constrained. In an economic environment characterized by reduced employment opportunities and uncertain job security, this might be a risk that many young lawyers are unwilling to take. Finally, the existing LR mechanisms that supposedly enable the legal profession to self-regulate (i.e., bar association disciplinary procedures and judicial sanctions) have arguably failed due to lack of enforcement and inadequate incentives for reporting one’s peers.⁷⁶

⁷¹ See Rhode, *supra* note 59, at 284 (“Discontent with legal practice is increasingly pervasive and is driven by structural factors that are widening the distance between professional ideals and professional work.”).

⁷² *ABA-Approved Law Schools*, AM. BAR ASS’N, <http://www.abanet.org/legaled/approvedlawschools/approved.html> (last visited Sept. 13, 2011).

⁷³ Mark Greenbaum, *No More Room at the Bench*, L.A. TIMES (Jan. 8, 2010), <http://articles.latimes.com/2010/jan/08/opinion/la-oe-greenbaum8-2010jan08>.

⁷⁴ *Id.*

⁷⁵ See Heather Timmons, *Outsourcing to India Draws Western Lawyers*, N.Y. TIMES, Aug. 5, 2010, at B1 (“India’s legal outsourcing industry has grown in recent years from an experimental endeavor to a small but mainstream part of the global business of law.”).

⁷⁶ Daicoff, *supra* note 46, at 559. The failure to adequately self-police may also be due to the “false premise that a collegium will supervise itself” rather than remain silent in the face of misconduct by peers so as to preserve the maximum amount of professional autonomy for each individual. Hamilton, *supra* note 9, at 12.

B. *Upper Quadrants: Individual Symptoms*

Although concerns about professionalism among lawyers have been present for some time, the sheer breadth and scope of the LL/LR changes that have taken place over the last half century or so appear to have brought many of these festering problems to a head. These problems, however, are not limited to large-scale, broad trends within the profession. Rather, they manifest in the UL/UR dimensions as well—in the psychological and physiological well-being of individual lawyers. Although it can be argued that such matters are not directly relevant to the concept of professionalism, from an Integral perspective it is essential to take individual interiors and exteriors into account.

Using an empirical approach, Susan Daicoff has compiled a large amount of evidence attesting to the fact that the decline in professionalism has accelerated in recent decades.⁷⁷ In addition to diagnosing the broader social and cultural trends discussed above, however, she devotes a considerable amount of time to “internal, psychological” causes and cures.⁷⁸ Daicoff argues that the profession is now facing a “tripartite crisis” consisting of (1) the decline of professionalism among lawyers (i.e., a decline in UR quadrant behavior); (2) the decline in public opinion about lawyers and the legal profession in general (i.e., a decline in LL community opinion about the law); and (3) the growing dissatisfaction of lawyers themselves in their chosen profession (i.e., a decline in personal satisfaction and self-esteem in the UL quadrant).⁷⁹ Citing a variety of statistics, surveys, and psychological studies, Daicoff argues that these three interdependent phenomena have created a vicious cycle—described here with the addition of Integral terminology:

As professionalism declines and lawyers become increasingly competitive, crass, commercial, discourteous, and rude [in their UR behavior], public opinion [in the LL] likely deteriorates. As public opinion deteriorates, [it affects the UL dimension as] lawyer satisfaction, morale, and pride in the profession are likely to decrease. As lawyers become less satisfied, they are likely to exhibit depression, anxiety, and hostility [as their UL interiors are reflected

⁷⁷ Daicoff, *supra* note 46, at 549–57.

⁷⁸ *See id.* Although Daicoff makes a distinction between “internal” and “external” factors, *id.* at 557, her analysis of certain factors differs somewhat from where these would be located on the Integral map. This seems to be due in part to the fact that she does not differentiate between the individual and collective dimensions. That is, in Daicoff’s formulation, “internal” refers specifically to the UL dimension, with all other factors (including cultural values) being external. For this reason, her internal/external terminology will not be used here.

⁷⁹ *Id.* at 549.

in their UR behavioral patterns]. Lawyers have been shown to cope with such psychological discomfort and tension [UL psychological pathologies] by abusing alcohol and drugs, by becoming socially isolated, and by becoming more ambitious and aggressive [pathological UR behavior]. In turn, alcohol and drug abuse can result in unethical behavior and increased hostility, [and] social isolation can encourage unprincipled behavior, . . . if not outright ethical violations. The resulting attorney behavior is likely to further erode professionalism.⁸⁰

In addition, some of the most alarming evidence regarding the state of the legal profession today demonstrates that rates of alcoholism,⁸¹ substance abuse,⁸² and depression⁸³ have steadily risen among lawyers and law students in recent years.

The influence and importance of the UL quadrant is underrepresented in the professionalism literature. Yet the fields of moral, cognitive, and behavioral psychology could have a meaningful impact on the ways that professionalism is assessed and taught, and an Integral approach should include them all. Doing so would allow for a more realistic appraisal of what the professionalism movement can hope to accomplish and would help in the design of more effective methodologies to achieve its goals. For example, “empirical data collected over the last forty years about attorneys and law students, including personality characteristics, demographics, values, goals, motives, decision-making styles, and moral development has provided evidence that, in many cases, attorneys differ from the general population.”⁸⁴ In other words, lawyers are a unique breed, and these unique psychological traits are exactly what make them good at what they do. However, the same traits may be to blame for what some perceive to be a lack of professionalism in lawyers’ behavior. Thus, Daicoff argues that many of the proposed “solutions” to the professionalism problem “are likely to fail without an understanding and respect for these inherent lawyer attributes.”⁸⁵

⁸⁰ *Id.* at 549–50 (footnotes omitted).

⁸¹ *Id.* at 555–56 (“About nine to ten percent of the general population in the United States is alcoholic, while empirical studies consistently show that about eighteen percent of lawyers and law students is alcoholic.” (footnote omitted)).

⁸² *Id.* at 555 (“Estimates of the frequency of substance abuse problems, including alcoholism, among lawyers range from three to thirty times that of the general population.”).

⁸³ Nineteen to twenty percent of practicing lawyers are clinically depressed, compared to only three to nine percent of the general population. *Id.* at 556.

⁸⁴ *Id.* at 548.

⁸⁵ *Id.*

This Integral diagnosis of the professionalism problem can be summarized in the following diagram:

	Interior	Exterior
Individual	UPPER LEFT (UL)	UPPER RIGHT (UR)
	<ul style="list-style-type: none"> • Disagreement over morals • Win-at-all-costs mentality • Loss of job satisfaction • Depression/addiction • Attorney-specific psychological traits (e.g., Myers–Briggs typology) 	<ul style="list-style-type: none"> • Incivility/“Rambo tactics” • Poor treatment of clients • Alcohol/substance abuse
Collective	LOWER LEFT (LL)	LOWER RIGHT (LR)
	<ul style="list-style-type: none"> • Breakdown of club • Postmodern moral relativism • Lack of community values • Increased litigiousness • Emphasis on money • Public opinion of lawyers 	<ul style="list-style-type: none"> • More law schools = more lawyers = more competition for clients • Economic crisis • Layoffs/outsourcing • Failure of profession’s self-policing system

Figure 2: Causes and Symptoms of the Professionalism Crisis

The inherent characteristics of the legal profession, as well as the changes that have led to the current status quo, can thus be viewed both in the interior dimensions (i.e., individual and group psychology and value systems) and the exterior dimensions (i.e., changes in UR conduct and in LR social institutions, market conditions, technology, and so on). The result of these changes has been an “unbearable level of competition and pressure in today’s legal practice” that is “often blamed for a perceived ‘shocking’ increase in poor behavior . . . by American lawyers.”⁸⁶ However, while developments in recent decades may have exacerbated underlying problems and brought latent issues

⁸⁶ *Id.* at 558–59.

to the fore, concern about lawyer professionalism has been long-lived and persistent within the profession. Indeed, no matter how many articles are written or symposia held on professionalism, it seems unlikely that the issue will go away any time soon.

III. AN INTEGRAL PERSPECTIVE ON PROFESSIONAL VALUES

With the four quadrants as a reference point, some of the values and practices that have been identified as representing professionalism can be mapped out in terms of their particular operational domains. In some areas, the concepts of levels and lines can also help flesh out a more complete understanding of how professionalism might be both assessed and conveyed to practicing attorneys. To that end, the six-part model of professionalism developed by Timothy Terrell and James Wildman provides a useful starting point for mapping professionalism onto the four quadrants of the Integral model.⁸⁷ As compared to more simplistic formulations of professionalism as mere civil behavior, or consisting solely of work for an elusive common good, Terrell and Wildman's model is a good place to begin because it already addresses a wide range of issues in both the interiors and exteriors of individuals and groups. An Integral analysis, however, can make these six dimensions of professionalism (and the tensions that often exist between them) more explicit by expanding the definition of each to include its operation in all four quadrants. In doing so, moreover, this approach can indicate whether some dimensions are underrepresented and suggest where it might be worthwhile to include additional considerations found in the professionalism literature.

A. *Six Foundational Elements: The Terrell–Wildman Model*

To summarize, Terrell and Wildman suggest that professionalism can be characterized by six distinct but interrelated elements, which together form the substantive “essence” of the term.⁸⁸ These are (1) respect for the system and the rule of law;⁸⁹ (2) respect for other lawyers;⁹⁰ (3) an ethic of excellence;⁹¹

⁸⁷ See Terrell & Wildman, *supra* note 2, at 424–31.

⁸⁸ *Id.* at 424. In the same way that each of the four quadrants are both distinct dimensions of reality and an interrelated whole, the six elements identified as the foundation of professionalism are “individually necessary and jointly sufficient,” and “all six must be combined together and given their proper weights to form the full meaning of the term.” *Id.*

⁸⁹ An extension of the ethic of integrity, respect for the legal system implies a duty to explain to clients *why* a chosen course of action either supports or degrades the rule of law in society. *Id.* at 426–27. This is a

(4) an ethic of integrity;⁹² (5) accountability;⁹³ and (6) responsibility for the adequate distribution of legal services.⁹⁴ Although each of these components is necessary, Terrell asserts that respect for the system and the rule of law is "the key value in the constellation that comprises professionalism."⁹⁵ This is because *all* of these values, and indeed the whole concept of legal professionalism itself (as distinguished from, say, medical professionalism), are justified by and founded upon the rule of law as a universal American value.⁹⁶ As such, this element seems an appropriate place to begin an Integral analysis.

1. Respect for the System and the Rule of Law as First Principle

One reason that respect for the legal system and the rule of law (an LL cultural value supporting an LR system) can form a sturdy foundation on which to construct a model of professionalism is that it anchors this value to something tangible—the exterior—collective (LR) dimension. Here, the exterior forms and functioning of the legal system—the written codes and statutes, the volumes of case law, the established rules and procedures for addressing grievances and settling disputes, and even the physical networks of courtrooms, prisons, and law firms that exist throughout the United States—establish the basis for defining professional values while themselves remaining independent of those values (because values are an *interior* phenomenon) and thus somewhat insulated from shifting political and cultural winds.⁹⁷ By

broader interest serving the cohesiveness and stability of American society as a whole. Therefore, it trumps any individual interest a particular client may have in subverting professional values for personal gain.

⁹⁰ This element can be described as "resisting the urge to blame unfavorable circumstances or results on other lawyers or on judges." Terrell, *supra* note 36, at 479.

⁹¹ This element can be described as "the effort consistently to provide the client the best possible legal assistance." *Id.*

⁹² This element can be described as "a responsibility to say 'no' to a client that asks for assistance that is inconsistent with basic professional values, and a corresponding courage to say 'yes' to a client that seeks appropriate, but controversial, legal assistance." *Id.*

⁹³ Accountability is a commitment to both clients and the public to be "forthright in explaining and justifying the fees charged for professional services." *Id.* at 480.

⁹⁴ This is defined in Terrell and Wildman's model as the responsibility either to personally engage in pro bono legal assistance or to support the delivery of such assistance through other means (e.g., monetary contributions to a legal-aid fund). *Id.*

⁹⁵ *Id.* at 528.

⁹⁶ Terrell & Wildman, *supra* note 2, at 422 ("The traditions, heritage, and perspectives of Americans are now so disparate and isolated within ever smaller subcommunities that no common purpose, direction, or moral values connect us fundamentally. Except our system of law.")

⁹⁷ To say that the legal system is independent of cultural values is of course not entirely accurate, as the system itself is informed and shaped by the values of those who put it into place. Again, all of the quadrants

orienting professionalism toward the goal of maintaining the proper LR *functioning* of the legal system, this view thereby manages to sidestep many of the difficult issues that arise when professionalism's tenets are initially derived from interior *moral* principles.⁹⁸

The utility of this LR-centered approach is apparent when it is contrasted with professionalism models that originate in the interior dimensions. A definition articulated by Neil Hamilton, for example, begins with the individual–interior (UL) dimension and draws upon concepts from moral psychology to establish “personal conscience in a professional context as the foundation of professionalism.”⁹⁹ In addition, Hamilton argues that every lawyer has a duty to “engage in a continuing reflective engagement, over a career, on the relative importance of income and wealth in light of the other principles of professionalism.”¹⁰⁰ Indeed, personal conscience and the duty to reflect on one’s personal goals in light of one’s professional role are important elements for developing professionalism as an individual and will be discussed more thoroughly below. But the problem with a primarily UL-oriented approach is that it provides no fixed, objective, generally-agreed-upon reference point for broad principles that can be applied across a wide range of individuals in a highly diverse legal profession.¹⁰¹

Similarly, attempts to derive principles of professionalism from the notion of the common good lack an objective basis for determining to whom *common* refers or how the *good* is to be defined.¹⁰² In Integral terminology, these approaches begin with the interior–collective (LL) quadrant and then derive guiding principles for the other quadrants based on the values shared by a

are interdependent and do not operate in isolation. Still, a shift in values does not magically change the law as it is written, but rather this interior shift only becomes the law through concrete exterior manifestation in new legislation. Even where a particular judge interprets the law according to his or her own interior values, if such a ruling is contrary to the overall system, it will likely be corrected for in other rulings. Thus, the exterior, LR form of the law does maintain a separate existence from the LL system of values on which it is based.

⁹⁸ For example, the assertion that lawyers should strive to be good people. This is not to say that morality has no part in a definition of professionalism, and certainly not to suggest that striving to be a good person should not be encouraged, but only that it is problematic as a *starting point* or overall *foundation* for a broadly applicable definition of professionalism.

⁹⁹ Hamilton, *supra* note 9, at 4.

¹⁰⁰ *Id.*

¹⁰¹ Particularly troubling in a postmodern society is the component of “personal conscience” described as “a sense of obligation to be and to do what is morally good.” *Id.* at 8–9. If we consider, for example, the possible disparity between the personal moral consciences of a federal prosecutor and a public defender, we would have an exceptionally difficult time objectively justifying which system of values is more or less in line with the duties of professionalism.

¹⁰² See Terrell, *supra* note 36, at 528.

particular group (e.g., how the legal system should operate, what kind of fees should be charged, how lawyers should behave, what individual moral values are “right”). Because American society is not a singular community but rather a multitude of overlapping smaller communities—including the tired, the poor, the wealthy, the environmentalists, the corporations, the left, the right, and everyone in between—there will inevitably be conflicts between the perceived common good that lawyers representing those groups seek to serve. By what criteria, then, do we choose what groups’ values should prevail?

Although the UL-, LL-, or UR-centered¹⁰³ approaches to professionalism are not sufficiently tethered to the exterior legal system itself, the scope of the definition should also not be limited to the LR quadrant.¹⁰⁴ An Integral approach stresses the need to honor and include *all* quadrants, and thus an adequate conception of professionalism must address interior values and individual behavior even where it uses the LR quadrant as a reference point for exploring the other dimensions.

In Terrell and Wildman’s formulation, then, the shared LL value which supports the legal system in the LR is the common respect for and acceptance of this system within the mind of the American public. Among the multitude of diverse communities that make up modern society, this “ingrained expectation of official non-arbitrariness” in the LR functioning of the legal system—or what we might call equal justice—represents a common LL denominator for establishing professional values.¹⁰⁵ However divergent various beliefs about

¹⁰³ An example of an exterior-individual approach would be one that focuses more or less exclusively on individual *behavior* as the foundation of professionalism. These approaches tend to advocate mere “civility,” or what might be thought of as lawyers’ “bedside manner,” as being synonymous with professionalism. See Terrell & Wildman, *supra* note 2, at 419–20. Although such approaches do deal with concrete, exterior actions, they do not really address the professionalism issue in regard to the *legal* profession. “[U]nder this approach, a lawyer is no more entitled to the label of ‘professional’ than is, say, a prostitute or a plumber.” *Id.*

¹⁰⁴ The problem with a purely exterior LR approach is illuminated by the case of the hypothetical citizen in Nazi Germany who “illegally” refuses to turn in the Jewish family living next door. See Terrell, *supra* note 36, at 533. A conception of professionalism that does not accept the legal (as distinct from moral) validity of interior, normative moral principles (fundamental rights) would hold that a lawyer who refuses to prosecute the offender is in fact violating his professional duties. *Id.* Although this is admittedly an extreme example, it nonetheless suggests that in at least some cases, the professional duty of fealty to the letter of the law should give way to the individual moral obligation of an attorney “to take a more active role in assessing the moral and political values that are reflected not only in the relatively narrow and specific rules that comprise the legal system, but also in its deeper normative substance as well.” *Id.* at 534. This line is, obviously, very hard to draw, and that effort will have to be left for another day. The point for the purposes of this Comment is simply that an Integral view of professionalism requires acknowledging that it functions in all four dimensions, even where one dimension is more appropriate as a foundation for the analysis.

¹⁰⁵ Terrell & Wildman, *supra* note 2, at 423.

the moral or political substance of the law might be, the LL value of respecting the system itself is virtually universal to American society simply because every citizen is subject to it. Therefore, the LL value of the rule of law is the most appropriate foundation for defining the other values that should bind the profession in charge of maintaining the legal system itself.¹⁰⁶

2. *Respect for Other Legal Professionals*

It is a short logical step from the value of respecting the system and the rule of law to the principle that lawyers should respect other professionals who serve as its agents. This second value thus prescribes that lawyers regulate their own individual behavior (UR) so as not to denigrate others in the legal community or otherwise undermine mutual respect for the legal system. Here, then, is where civility fits into the professionalism discussion. Although this is admittedly a difficult concept to define in any concrete way, linking civility to the social function of the lawyer as an agent of the legal system at least provides some guidance beyond the vague admonishment that lawyers should simply be polite to one another. That is:

Because that function is based on the principle of the rule of law and its critical importance to our culture, our duty to that principle demands concomitantly that we respect the law's practitioners as well. This means not only that lawyers should treat each other with a certain courteousness in order to permit the legal system to function without unnecessary interference, but in addition it means that lawyers have a particular responsibility in conversations with clients to avoid holding judges and other lawyers in disrepute.¹⁰⁷

Lawyering inevitably involves conflict, usually between opposing parties but also sometimes between the interests of the attorney and her client. Advocating forcefully for a position, however, should nonetheless be constrained by this allegiance to the legal system as a whole. Thus, civility's place among the professional values arises not from morality but from the legal system itself. It is lawyers' LR social function as agents of the law that should guide and constrain their UR conduct and LL mutual respect for one another, irrespective of their UL personal values and opinions about their fellow practitioners.

¹⁰⁶ There are, of course, arguments to the contrary. *See, e.g.*, Kenneth L. Penegar, *The Professional Project: A Response to Terrell and Wildman*, 41 EMORY L.J. 473, 481–84 (1992) (critiquing Terrell and Wildman's use of "functional structuralism" to justify their professional values).

¹⁰⁷ Terrell & Wildman, *supra* note 2, at 427.

3. *Excellence in Four Quadrants*

Respect for the system and the rule of law, and its correlative duty to act respectfully toward other members of the legal community, provides the basic foundation for Terrell and Wildman’s definition of professionalism. But the remaining four elements are no less essential, and the authors assert that the “most central” of these, in a practical sense, is the “dedication to excellence in the services rendered to a client.”¹⁰⁸ Regardless of the type of client being served, such excellence encompasses more than mere competence as required by the Model Rules of Professional Conduct¹⁰⁹ and might be thought of instead as the duty to exceed expectations. Adapting this concept to the Integral framework, at least four distinct facets of excellence can be found by viewing it from the perspective of each quadrant.

The most obvious dimension of excellence is that found in the UR quadrant, as here it pertains to individual behavior. Components of professional excellence in the UR would include being diligent, performing disciplined and efficient work, responding timely to clients and other attorneys, meeting deadlines, proofreading documents, conducting thorough research, and observing all the other behaviors that clients should expect whether they are paying a fee or receiving pro bono services.¹¹⁰ In the UR, excellence is thus a narrow concept meaning that one effectively gets the job done. The challenge here is then to maintain this standard of excellence in the face of time pressures and other commitments inside and outside of one’s life at work.

In the UL quadrant, excellence consists of more than a style of behavior. It is instead an interior value—an *ethic* or “more pervasive *attitude*.”¹¹¹ Here the ethic of excellence consists of a long-term personal *commitment* to performing at the highest level that one’s knowledge and skills will allow. “It is a deeper sense of direction concerning how to conduct oneself as a professional and what to expect from one’s colleagues.”¹¹² We might also include as part of this commitment the duty to continue to advance one’s knowledge and improve on one’s skills throughout a career. To that end, the concepts of levels and lines can be useful in assessing one’s development in the UL dimension. The practice of law involves a number of distinct skill sets or lines of development

¹⁰⁸ *Id.* at 424.

¹⁰⁹ MODEL RULES OF PROF’L CONDUCT, R. 1.1 (2009).

¹¹⁰ These may be considered the *procedural* measures of excellence, as opposed to the *substantive* ones that give rise to these behaviors in the first place. Terrell, *supra* note 36, at 486.

¹¹¹ *Id.* at 485.

¹¹² *Id.* at 485–86.

(e.g., research, writing, editing, communication skills, oratory skills). The foundation for these skills is generally established in law school, but through continued study and practical experience the core concepts in each area can be combined and built upon to advance one's overall abilities.¹¹³

Moving into the collective dimensions, the ethic of excellence takes on a particularly important role. In the LL, this value is better described as a culture of excellence—an explicit, pervasive, shared commitment to excellence within the corporate culture of a firm or other organization: “Within these entities, this aspect of professionalism means a responsibility of the group to create internally an ‘environment’ of excellence. That is, the group must develop a commitment of its own that its members will be the best lawyers they can be.”¹¹⁴ These collective cultural backgrounds exert a powerful gravitational influence on the individuals who operate within them. They serve as a hidden force that can help to both bring out the best in individuals whose own development is below the group standard and discourage individual conduct that exceeds collective expectations (e.g., through peer pressure or the fear of being labeled a “Goody Two-shoes”). For this reason, it is essential that firms make the commitment to excellence an explicit and frequently emphasized element of their organizational culture.

Although empirical research on the topic is relatively sparse, at least some studies have shown that one of the most effective means for instilling professional values such as an ethic of excellence is through mentoring programs, both formal and informal.¹¹⁵ The intersubjective LL relationship

¹¹³ Thus, in terms of both assessing and developing excellence in individual attorneys, levels and lines can serve as a guideline for firms in establishing benchmarks for their associates and partners, with different expectations for performance depending on the attorney's level of experience.

¹¹⁴ Terrell & Wildman, *supra* note 2, at 425. In an international context, this becomes significantly more challenging when cultural differences in LL values are taken into account. Different cultural beliefs and expectations among *nations* present the difficult question of “whether the value of professional ‘excellence’ is the same everywhere or whether understandings of its practical meaning vary from one part of the world to another.” Terrell, *supra* note 36, at 486. Accordingly, it may be necessary for firms working in an international context to develop different guidelines informed by an LL analysis of a particular cultural or social context.

¹¹⁵ See, e.g., Neil Hamilton & Lisa Montpetit Brabbit, *Fostering Professionalism Through Mentoring*, 57 J. LEGAL EDUC. 102, 113–14 (2007). Hamilton and Brabbit note that while professionalism mentoring in the legal context has received little attention in empirical research, at least one study in the medical field found that “clinically oriented learning approaches . . . were the ‘most effective’ means of fostering professionalism, with role modeling by faculty rated as the ‘most effective’ of these approaches.” *Id.* at 113. Another study on senior medical residents' views on professionalism reported that “[t]he large majority of the residents listed contact with, and observation of, positive role models as their preferred method of learning . . . professionalism virtues and skills [such as competence, respect, and empathy].” *Id.* This makes sense because mentoring and role-modeling programs operate in the same LL dimension as the shared values they seek to instill. To the

between mentor and mentee is rewarding for the mentor and can have a powerful formative effect on the mentee in socializing them into a firm's professional culture.¹¹⁶ This suggests that firms seeking to establish a strong LL culture of excellence would do well to set up formal LR programs for mentoring young associates that specifically address professionalism. Firms should be willing to back up their dedication to core professional values by providing external support in the LR for developing those values in the UL and LL dimensions. "This means that the group, as a matter of its understanding of its place in our general professional heritage, must be willing to invest . . . in appropriate support services and resources to enable its lawyers to flourish professionally"¹¹⁷

Currently, "[t]he scholarly literature on mentoring . . . does not define mentoring to include the principles of professionalism."¹¹⁸ Instead, the role of mentoring is viewed more in terms of professional development as it relates to career advancement, "technical knowledge[,] and [the] relationship skills necessary for the professional role."¹¹⁹ Yet a firm seeking to create an LL ethic of excellence, and to instill other core values of the legal profession in young associates, would benefit from making professionalism a more prominent part of its LR training programs. Having exterior support for developing interior values is essential to ensuring that those values are transmitted as an important part of a firm's professional culture. Separating the professionalism function from the technical or career-oriented mentoring functions would thus help to emphasize the importance of professionalism as a distinct component of attorney development.¹²⁰ This is a "unique additional obligation" for peer-review professions like the law, which are granted a certain level of autonomy

extent such programs are formally established, they necessarily involve LR logistics and structural support, but it is the interpersonal LL relationship that is created between the mentor and mentee that has a formative influence on the mentee's individual values.

¹¹⁶ In one of the few studies done in a legal context, participants in a two-year pilot project for the State Bar of Georgia's Transition into Law Practice Program reported that "the mentoring functions most strongly realized 'were the handling of ethical aspects of law practice and dealing with other lawyers.'" *Id.* at 114 (quoting *Transition into Law Practice Program Pilot Project*, STATE BAR OF GA. 15–16, <http://gabar.org/public/pdf/tilpp/7-C.pdf> (last visited Sept. 13, 2011)).

¹¹⁷ Terrell & Wildman, *supra* note 2, at 425. Again, for firms that take part in international networks dedicated to fostering professionalism, such as Lex Mundi, this means devoting adequate technological and economic resources to enable the creation of shared LL values, such as conferences and symposia dealing with topics related to professionalism.

¹¹⁸ Hamilton & Brabbit, *supra* note 115, at 106.

¹¹⁹ *Id.* at 109.

¹²⁰ *Id.*

and independence by society with the expectation that they will self-regulate to maintain high standards in line with their critical social function.¹²¹

To summarize, then, excellence is indeed an important value to professionalism, and it has a distinct meaning within each of the four quadrants. At the individual level, excellence is both a personal attitude of doing one's best (UL) and a behavior that reflects that commitment (UR). In the collective dimensions, excellence entails the conscious and intentional development of a *culture* of excellence within a firm or interfirm organization (LL), as well as the necessary investment in structural support systems for enabling the development of professionalism to take place (LR). Formal mentoring programs are a key part of this process. Finally, the commitment to excellence overall can be justified as necessary to maintaining both the structural integrity of the legal system (LR) and the public confidence that the system is working properly (LL).

4. *Integrity as Harmony Between Quadrants*

At least one commentator has argued that integrity is the “most important element” of professionalism.¹²² In many ways it is also the most difficult to define. Generally speaking, the term refers to the notion that, “[a]t a minimum, persons of integrity are individuals whose practices are consistent with their principles, even in the face of strong countervailing pressures.”¹²³ Indeed, it seems useless to go about defining values like the commitment to excellence and respect for other lawyers if those values are not reflected in actual behavior. In Integral terms, then, personal integrity can be broadly defined as a consistent harmony between a person's UL values and UR behavior—practicing what one preaches or “walking the talk.” This is all well and good, but as Deborah Rhode points out: “Fanatics may be loyal to their values, but we do not praise them for integrity.”¹²⁴ Rather, when we speak of integrity we tend to be looking for “a willingness to adhere to values that reflect some reasoned deliberation, based on logical assessment of relevant evidence and

¹²¹ *Id.*

¹²² Burnele V. Powell, *The Limits of Integrity or Why Cabinets Have Locks*, 72 *FORDHAM L. REV.* 311, 312 (2003).

¹²³ Deborah L. Rhode, *If Integrity is the Answer, What is the Question?*, 72 *FORDHAM L. REV.* 333, 335 (2003).

¹²⁴ *Id.* Thus, while integrity can be conceived of as separate from morality as “simply . . . a matter of being true to one's commitments,” the term nonetheless seems to connote some indication that those values or commitments to which one adheres are in themselves “good” or desirable. Nancy Schaubert, *Integrity, Commitment and the Concept of a Person*, 33 *AM. PHIL. Q.* 119, 120 (1996).

competing views.”¹²⁵ In other words, to say that professional integrity demands that a lawyer act consistently in accordance with their values is not useful if we do not also say something about what those values should be. As Hamlet might say, “[A]y, there’s the rub.”¹²⁶

The difficulty in defining integrity for the legal profession stems from the fact that lawyers are in the business of serving clients’ interests. The question thus arises whether—and if so, to what extent—a lawyer’s own personal values (or broad societal values) should factor into their decisions regarding the nature, scope, and method of client representation. From an Integral perspective, this dilemma reveals a tension between the interior and exterior quadrants. An attorney is both a *person*, with her own interior values and beliefs, and a functional *agent* within the exterior legal system, operating somewhat like a cog in the machine of justice. In taking on the interests of a client, however, the lawyer’s own interior values may conflict with her exterior social role, and she may be required to advocate for causes with which she personally disagrees. In such cases, the attorney’s commitment to integrity raises the difficult question of *whose* values she should be standing up for.

One way for an attorney to resolve this dilemma is to adopt the “amoral professional role.”¹²⁷ In this view, the lawyer’s own interior dimensions become irrelevant as her role is defined solely in terms of her capacity to effectively operate within the exterior legal system. This “allows lawyers to avoid conflicts between their own personal values and client’s wishes and instead rationalize any lawful behavior as long as they are acting to achieve the client’s stated goals.”¹²⁸ In the extreme, the lawyer adopting this role is nothing more than a hired gun—a tool that the client can utilize to further his own ends. But when the attorney’s professional role is reduced entirely to the exterior quadrants, there is little room for professional values over and above the bare minimum ethics rules. The hired gun does anything legally permissible to further her client’s goals, whatever those goals might be and regardless of how the lawyer (or society) feels about them.

Practically speaking, it is worth noting that the amoral professional role is not entirely amoral when viewed from an Integral perspective, at least to the extent that the term is meant to convey a complete abandonment of the

¹²⁵ Rhode, *supra* note 123, at 335–36.

¹²⁶ WILLIAM SHAKESPEARE, *HAMLET* act 3, sc. 1, l. 64 (Ann Thompson & Neil Taylor eds., 2008).

¹²⁷ Daicoff, *supra* note 46, at 562.

¹²⁸ *Id.* at 563 (footnote omitted).

lawyer's own interior values. Because all four quadrants *co-arise* as an interrelated whole, it is really impossible for an individual attorney to fully divorce her UL values (and the underlying LL cultural values that helped shape them) from her exterior social role.¹²⁹ Even the decision that "I will not consider my own values in representing my client's interests" is itself a value judgment reflecting one's beliefs about the proper role of lawyers in society. Therefore, the amoral, or client-centered, role in which the lawyer adopts her client's interests as her own is not necessarily "an empty rationalization but instead a rationally chosen value in and of itself."¹³⁰ Even so, "[t]he amoral professional role has been blamed for fostering unprofessional tactics and actions by lawyers in the name of zealous advocacy."¹³¹ Such tactics undermine the respectability and basic integrity of the legal system as a means for producing just results and contribute to a public perception of lawyers as "amoral or evil."¹³²

Acknowledging this, Terrell and Wildman argue that lawyers have a responsibility to exercise at least *some* level of independent professional judgment and occasionally say "no" to a client: "[P]roviding excellent service to a client does not include being the client's slave."¹³³ However, as a matter of lawyer *professionalism*—broad principles that are as applicable to plaintiff's attorneys as they are to corporate defense lawyers—it is problematic to draw this line by referring to individual morality or "a particular set of conventional community values."¹³⁴ On one hand, the concept of integrity is meaningful for professionalism only if it includes some substantive value in its definition. If integrity is to mean something more than merely acting in accordance with

¹²⁹ Indeed, attempting to do so may have destructive implications for the attorney's own mental health and well-being. *See id.* at 574–75 ("[O]ne's personal or professional actions and identity cannot be independent from one's personal morality. This approach is consistent with the theory that one's professional and personal self-esteem similarly are dependent on one's actual behavior. Therefore, lawyers cannot possibly be comfortable, happy, or fulfilled when they engage in behavior that conflicts with their values." (footnotes omitted)); *see also* David Luban, *Integrity: Its Causes and Cures*, 72 *FORDHAM L. REV.* 279, 279 (2003) ("When our conduct and principles clash with each other, the result . . . is *cognitive dissonance*."). Luban further argues that humans have an inherent drive to reduce such dissonance—either by altering conduct to reflect principles or altering principles to justify one's conduct—and that lawyers overwhelmingly take the latter course, or what Luban calls "the low road." *Id.* at 280. For a critique of Luban's condemnation of the legal profession, *see* Terrell, *supra* note 36, at 504–08.

¹³⁰ Terrell, *supra* note 36, at 507. Taking this idea even further, Professor Terrell argues that this "rational substitution" of the client's interests for the lawyer's is actually both an important skill and one of the lawyer's "central values." *Id.*

¹³¹ Daicoff, *supra* note 46, at 563.

¹³² *Id.* at 564.

¹³³ Terrell & Wildman, *supra* note 2, at 426.

¹³⁴ Terrell, *supra* note 36, at 510.

one’s values, then professionalism should have something to say about what those values are and not leave it entirely up to individual moral choices. On the other hand, defining those principles according to some notion of the common good requires a further definition of what is *common* to everyone in American society and can be universally agreed upon to be *good*. As previously discussed, then, the only apparent value that meets this requirement today is the shared respect for our system of laws.¹³⁵ Thus, “we should infuse into ‘integrity’ the substance provided by the *legal system itself*—the very idea of the ‘rule of law’—rather than any particular piece of that system.”¹³⁶

On some level, it is unavoidable that a lawyer’s personal values will play a role in determining how she goes about the practice of law—what sort of clients she represents, what causes she champions, and where she chooses to work. These are fundamental components of the person’s UL/UR dimensions—her beliefs and behaviors—and will always play a formative role in her individual choices. Indeed, there are many reasons why both attorney and client might benefit from “open, honest discussions of morality . . . in which the attorneys freely disclose and honor their own personal beliefs and work with the client to decide the best course of action.”¹³⁷ But to *require* this as something a lawyer *should* do as a matter of professionalism perhaps goes one step too far. A lawyer may choose to bring her personal values to her representation of a client, but it is hard to objectively justify why those who choose not to should be attacked as *unprofessional* or lacking in integrity because they advocate for an unpopular client or one with whom they personally disagree.¹³⁸

For professionalism, then, integrity should be defined broadly enough to include the consistent adherence to a “principled substitution” of a client’s own values and goals in place of the lawyer’s own, so long as those goals are not inconsistent with the other principles of professionalism and do not undermine the legal system itself.¹³⁹ As Terrell writes:

¹³⁵ See *supra* Part III.A.1.

¹³⁶ Terrell, *supra* note 36, at 510.

¹³⁷ Daicoff, *supra* note 46, at 574.

¹³⁸ For a contrary view, see Robert E. Rodes, Jr., *Professionalism and Community: A Response to Terrell and Wildman*, 41 EMORY L.J. 485, 485 (1992) (attacking Terrell and Wildman’s position as “the privatization of morality,” which “plac[es] altruism at the service of self-interest . . . [and] the whole professional enterprise at the service of wealth and power”).

¹³⁹ Terrell, *supra* note 36, at 507–08.

While the limits that a lawyer places on his or her zeal in representing a client can certainly come from personal sources—one’s religious principles, philosophical, and/or political values—all lawyers should respect the limits demanded by the legal system. . . . Integrity, as an aspect of professionalism, would require a lawyer to say “no” to a client *not* because the lawyer disliked the client’s interests or objectives (although the lawyer certainly could decline to represent someone on this basis if he or she wanted) but because the lawyer believed those interests or objectives would harm or otherwise be inconsistent with our professional value of upholding the “rule of law” in society.¹⁴⁰

From this perspective, it is thus inaccurate to say that the client-centered lawyer acts merely as a “technician whose role is to advance the client’s interests zealously without regard to the lawyer’s personal morals or values, society’s needs or morals.”¹⁴¹ Rather, the principled substitution of a client’s interests for one’s own is in fact a personal value, and one that can be tied to both a shared communal respect for the rule of law and society’s need to maintain a functioning legal system in which everyone can find representation.¹⁴²

To return to the Integral model, integrity can be conceptualized as a consistent harmony between all four quadrants. It requires one’s UR behavior to reflect one’s UL values, but that can include the value of adopting the interests of one’s client as one’s own for the purpose of the representation. This UL value, then, accords with the shared respect for the rule of law in the LL, as well as the value of the attorney–client relationship. One’s UR behavior, moreover, must also be in harmony with the LR legal system, and a line should be drawn any time a client’s wishes would require acting in a way that is disrespectful toward the law and its agents.

Finally, the LL and LR quadrants must be harmonized as well, which can manifest in at least two different contexts. First, the LR legal system must legitimately reflect and enact our LL communal goals of promoting fairness,

¹⁴⁰ *Id.* at 510–11.

¹⁴¹ Daicoff, *supra* note 46, at 563 (footnote omitted).

¹⁴² The concept of lines may be useful here for differentiating between personal and professional integrity for lawyers. Neil Hamilton essentially takes this approach, arguing that the separation of “personal conscience” from “personal conscience in a professional context” avoids “the fear that a lawyer’s personal conscience will limit client autonomy and client equal access to justice.” Hamilton, *supra* note 9, at 11. Thus, “[t]he central point of ‘personal conscience in a professional context’ is that the lawyer’s personal conscience is now informed and guided also by the role morality of the lawyer’s function in the justice system.” *Id.*

justice, and equal access to the law. The system must *work*, in other words, to achieve the purposes for which it was established. Second, integrity in the context of law firms requires that an LL commitment to professionalism should be matched by LR systems and policies to help develop and promote core values. These could include formal mentoring programs emphasizing professionalism, pro bono credits for attorneys and contributions to legal aid funds, and effective policies for punishing unprofessional behavior.

To conclude the discussion on integrity, it should be said, oddly enough, that the discussion is far from concluded. It is one thing to say that professional integrity requires attorneys to draw the line in representing a client’s interests only where those interests conflict with the rule of law and not necessarily when they conflict with the lawyer’s own moral belief.¹⁴³ It is another thing entirely to attempt to define what specific behaviors violate this principle or what types of client goals should be refused. Some examples are obvious: frivolous litigation, excessive dilatory tactics, and interference with the discovery process. Other issues are less clear, such as the line between zealous advocacy and unprofessional “Rambo” behavior. A full treatment of these questions, however, is beyond the scope of this Comment. The limited purpose here is only to point out that the Integral model can be useful for framing the discussion.

5. *Accountability and the Duty of Peer Review*

Terrell and Wildman’s definition of accountability is fairly straightforward, encompassing the need for lawyers to be transparent regarding the work they do for their clients and up-front about their fees. “[C]lients (and by extension, society as a whole) are entitled to understand the services that the lawyer renders, and moreover to have the sense that the fees charged for those services are fair.”¹⁴⁴ This somewhat narrow conception of accountability to one’s clients (and more abstractly, to the public) is undoubtedly an important professional value. It is central to the legitimacy of the social contract that grants lawyers their professional independence¹⁴⁵ and is closely tied to the

¹⁴³ Again, it should be stressed that this is not to discourage attorneys from following their own moral convictions in choosing clients or to argue that this has no place in the practice of law. It is instead simply to say that, as a matter of what professionalism *demand*s from attorneys, the client-centered approach does not inherently conflict with the idea of integrity when that approach is supported by a reasoned dedication to the lawyer’s social function as an agent of the legal system.

¹⁴⁴ Terrell & Wildman, *supra* note 2, at 428 (footnote omitted).

¹⁴⁵ *Id.* (“This accountability is the cornerstone of the professional independence lawyers enjoy: people generally accept the idea that lawyers need independence in order to provide their full value to society, but the

other values of excellence and integrity.¹⁴⁶ Yet this definition is a limited one and could be expanded significantly to include more than billing concerns.

An additional facet of accountability that is not found in Terrell and Wildman's formulation is the responsibility to be accountable to one's peers and to the legal system itself. This includes not only a commitment to maintain high professional standards in one's own behavior but also to take at least some responsibility for discouraging unprofessional conduct by other lawyers. Neil Hamilton includes this "duty of peer review" in his definition of professionalism, describing it as a responsibility "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."¹⁴⁷

In the LL dimension, this duty is closely related to the culture of excellence, or what Hamilton refers to as the need to create "strong ethical cultures emphasizing excellence at the skills, core values, and ideals of the profession."¹⁴⁸ In the LR dimension, this duty is also important to the self-regulating function of the legal profession. Without viable exterior avenues for peer review (e.g., formal channels for reporting unprofessional behavior within one's firm and a corresponding intrafirm culture that encourages one to do so), the incentive to confront unprofessional lawyers decreases, and the profession may risk becoming a "delinquent community" that cannot adequately supervise itself.¹⁴⁹

Admittedly, this duty of accountability and peer review becomes much more difficult to define in the context of professionalism as opposed to ethics.

public will continue to believe this only if lawyers respect the reciprocal social demand that they be accountable for their services.").

¹⁴⁶ It seems more or less apparent that these three values together comprise a basic duty to consistently provide services of high value to clients and to explain them fully and honestly. Terrell, however, follows this connection to the relatively controversial conclusion that

[t]he combined values of excellence and accountability *in the context of a market of legal services not supplied as a government service* mean that lawyers in private practice owe a primary professional responsibility to fee-paying clients (or salary-paying employers) and only a secondary responsibility to society as a whole or to indigents in need of legal assistance.

Terrell, *supra* note 36, at 544. Although the responsibility to provide indigent service will be addressed in the next subsection, the question of whether a lawyer's primary responsibility is to his fee-paying client or society as a whole is a bit too complicated to address here. This aspect of accountability will instead be foregone in favor of expanding the value in a different direction.

¹⁴⁷ Hamilton, *supra* note 9, at 8.

¹⁴⁸ *Id.* at 12.

¹⁴⁹ *Id.*

It is easy enough to say that lawyers have a duty to report conduct that violates the Model Rules. But even setting aside the potential stigma of being considered a “tattle tale,” it is extremely difficult to say when the best lawyers have a duty to confront or report another attorney who is acting unprofessionally but still within the law. Even if formal channels existed for this purpose, the only real sanctions that could be implemented would be informal ones—a loss of reputation within the community, a lack of clients being recommended your way, or perhaps a loss of opportunity for an appointment or promotion. Still, these can be “unofficial but nonetheless powerful interdictions” and might go a long way in discouraging unprofessional conduct.¹⁵⁰ Again, however, this would largely depend on the overall LL ethical culture of the firm (or the profession as a whole) and how such peer reporting is viewed by others in the community. In any event, the concept of professionalism, and specifically the value of accountability, should include *some* notion that one must be accountable to one’s fellow professionals and hold them accountable as well.

6. *Ensuring the Adequate Distribution of Legal Services*

The final value in Terrell and Wildman’s model of professionalism, “a lawyer’s special responsibility to assist in the effort to distribute legal services widely in our society,”¹⁵¹ is by far the most controversial.¹⁵² This is not because of any question regarding the responsibility itself—indeed, the value of public service through pro bono work or other means is included in virtually all discussions of professionalism to some degree—but rather because of the justifications the authors provide for it and the type of “assistance” they would permit. Specifically, they argue that while this duty applies to the entire legal profession and is tied to the importance of law in American society, it “is *not* a personal, individual duty to distribute oneself as widely as possible.”¹⁵³ Rather, the decision to personally serve pro bono clients is “an individual moral choice not forced by the concept of professionalism.”¹⁵⁴ To hold otherwise, the authors assert, would turn professionalism into a form of “indentured servanthood.”¹⁵⁵

¹⁵⁰ *Id.* (quoting CHARLES W. WOLFRAM, *MODERN LEGAL ETHICS* 22 (1986)).

¹⁵¹ Terrell & Wildman, *supra* note 2, at 428.

¹⁵² See, e.g., Richard C. Baldwin, “*Rethinking Professionalism—And Then Living It!*,” 41 *EMORY L.J.* 433, 439 (1992); Jennifer Gerarda Brown, *Rethinking “The Practice of Law,”* 41 *EMORY L.J.* 451, 452 (1992).

¹⁵³ Terrell & Wildman, *supra* note 2, at 430.

¹⁵⁴ *Id.* at 431.

¹⁵⁵ *Id.*

Because of the complexity of the law, Terrell and Wildman argue that requiring personal, direct service by individual attorneys for indigent clients in areas with which they might be personally unfamiliar would “inappropriately compromise the ethic of excellence.”¹⁵⁶ Instead, the responsibility to ensure the adequate distribution of legal services is an “enabling” one requiring lawyers “to see that the Bar *as an entity* assists and enables those in the profession *who desire to do so* to distribute legal services widely in society.”¹⁵⁷ This includes the responsibility for law firms to allow for sufficient time and incentives for pro bono service in their internal policies and procedures.¹⁵⁸ Perhaps more troubling for some, it would also include the possibility that individual attorneys could choose to participate in this enabling by paying a “special tax or fee . . . that would be used to subsidize the efforts of those Bar members interested in providing legal services to indigents.”¹⁵⁹ In other words, a lawyer could either personally perform the public service required of the profession as a whole or simply pay someone to do it for him.

The enabling approach to pro bono service advocated by Terrell and Wildman is consistent with the LR-centered, functionalist approach to professionalism underlying their overall model. It seeks to avoid moral justifications or prescriptions for providing such service and instead rests on the notion that the legal system (and the society that depends on it) will be best served if every lawyer is committed to making legal services as widely available as possible, but the actual carrying out of that service is done only by those who have the time, the expertise, or the inner conviction to dedicate themselves to it at the highest level.¹⁶⁰ Rather than arguing that those lawyers who do not feel a moral calling to pro bono work either *should* feel it, or else should be required to do it anyway, this view instead suggests that these individuals should just go about doing what they want to do—work for fee-paying clients—but be forced to at least subsidize the efforts of others who work for free. In this way, the profession *as a whole* would fulfill its

¹⁵⁶ *Id.* at 430. This is also tied to the argument that the ethic of excellence, combined with that of accountability, means that a lawyer’s *primary* responsibility is to fee-paying clients. *See supra* note 146. Again, there is much room for debate on this subject that is outside the purposes of this Comment.

¹⁵⁷ Terrell & Wildman, *supra* note 2, at 430.

¹⁵⁸ *Id.* at 431.

¹⁵⁹ *Id.*

¹⁶⁰ Terrell, *supra* note 36, at 553 (“[W]ide distribution is not the *only* feature critical to professionalism: Whatever legal services are being ‘distributed,’ they must also meet the criteria of ‘excellence,’ ‘integrity,’ ‘independence,’ and ‘accountability’ that professionalism also demands. Thus, widespread but shoddy and haphazard legal services are inconsistent with professionalism.”).

responsibility of ensuring the wide distribution of pro bono service while also ensuring that the service provided lived up to the other professional values.

Turning to the Integral model, it is apparent that one dimension notably lacking from Terrell and Wildman’s discussion of this issue (and really of professionalism as a whole) is the individual–interior quadrant. This is primarily due to a desire to justify the principles of professionalism by reference to the legal system itself—a functional, structural, LR-centered model that achieves a certain level of objectivity and theoretical clarity in bypassing discussion of subjective, individual or community morality. For the most part, this formulation works well for defining the values of excellence, integrity, accountability, and respect for the law and its agents. But dismissing messy interiors in favor of more orderly, exterior dimensions is somewhat less satisfying where pro bono service is concerned, if only because of how strongly the topic implicates moral values like compassion, altruism, fairness, and equality. Somewhat ironically, however, including the interior dimensions in an Integral analysis of this issue may actually strengthen Terrell and Wildman’s argument while expanding it significantly.

As will be discussed immediately below, an Integral view of this topic suggests first that ensuring the widespread distribution of indigent legal service and equal access to the justice system is a fundamental responsibility of the legal profession. Second, the interior desire to serve others reflects a certain stage or level of moral development that is not necessarily present in all attorneys, and forcing them to embody such a desire by *requiring* personal service may be counterproductive. Third, individual attorneys should nonetheless be required to contribute to the profession’s responsibility either through personal service that meets the other requirements of professionalism or through contributions to attorneys who specialize in indigent service or to legal funds which do the same.¹⁶¹ And finally, regardless of how she chooses to contribute, every lawyer has a continuing responsibility to reflect on her own interior moral values and to consider these in light of her role as a professional and an agent of the legal system.

As Terrell points out, the first of these principles flows directly from the value that American society places on the rule of law and the nature of the legal profession’s social contract. “*Everyone* should have a sense that the legal system is available to him or her for redress, vindication, protection, whatever.

¹⁶¹ To really stir the pot, the amount of this contribution might even be tied to a percentage of annual income.

For law to serve its function as the social glue that helps hold a society together, it cannot be the special province of a select few.”¹⁶² Few, if any, commentators would likely dispute this principle, even though some would base it on more than functional grounds.¹⁶³

The second principle—that the calling to serve others reflects a certain level of moral development that is not universal to attorneys and that *requiring* personal service may be counterproductive—is less easily derived. Here is where the Integral model’s conception of developmental levels and UL-centered approaches to moral development can help shed some light. For example, the work of Lawrence Kohlberg “postulates six stages of moral reasoning” that “develop in an invariant sequence; in any person the second level evolves after the first, the third after the second, etc.”¹⁶⁴ This development can broadly be characterized as moving from preconventional amoral egocentrism (what is right and good is defined only by self-interest), to conventional/sociocentric perspectives (the good is defined in relation to one’s family, tribe, nation, or other social group), and finally to postconventional worldcentrism (the good is defined in relation to humanity as a whole, regardless of individual differences).¹⁶⁵

In the context of professionalism, then, this research helps demonstrate how “a professional’s conception of the self in relation to other people changes over time as the individual matures.”¹⁶⁶ Over the course of a career, an individual

move[s] from self-centered conceptions of identity through a number of transitions, to a moral identity characterized by the expectations of a profession—to put the interests of others before the self, or to subordinate one’s own ambitions to the service of society or the nation. [But t]he fully integrated moral self (one whose personal and professional values are fully integrated and consistently applied) *tends not to develop until mid-life—if it develops at all.*¹⁶⁷

¹⁶² Terrell, *supra* note 36, at 552.

¹⁶³ See Baldwin, *supra* note 152, at 437–38 (“Our social commitment to establishing justice and making the machinery of justice available to all members of society . . . represents values fundamental to our [democratic] system of government.”).

¹⁶⁴ Abramson, *supra* note 43, at 224.

¹⁶⁵ WILBER, *supra* note 43, at 45.

¹⁶⁶ Hamilton, *supra* note 9, at 9.

¹⁶⁷ *Id.* (emphasis added). In addition to moral development, other lines may have implications for professionalism. For example:

[T]he relationship between moral intentions and moral behavior may depend on the presence of other variables [besides good intentions], such as ego strength. There are at least two empirical

The important insight to take from this research is that the very capacity to care about the broader interests of society, as opposed to one’s self-interest or the interests of one’s particular client or firm, is not innate but rather the product of a lifelong, complex, and dynamic developmental process within the individual psyche.¹⁶⁸ Accordingly, it is unrealistic to hold a young associate just out of law school to the same moral standard of a senior partner, particularly in the professional context where this moral development occurs alongside numerous other lines of development unique to the practice of law.

Therefore, imposing exterior requirements for pro bono work on individual attorneys whose interior levels of development do not yet allow them to fully appreciate the value of such service carries with it the risk of producing substandard work. While excellence, integrity, and the other professional values are rooted in the exterior legal system, they nonetheless require an interior *commitment* to upholding them in one’s practice. But for an individual oriented more toward the self-interest side of moral development, this commitment may be hard to maintain.¹⁶⁹ This possibility then threatens the paramount value in a functional model of professionalism—the integrity of the legal system itself—because it demands pro bono service even at the expense of the other professional values.

The first two principles—that the legal profession has an obligation to provide widespread public service and that the inner motivation to perform

studies of law students suggesting that ego strength might be impaired, which might explain why attorneys report ethical intentions, but these intentions may not be translating into ethical behavior.

Daicoff, *supra* note 46, at 565 (footnotes omitted).

¹⁶⁸ Whether this development should be an explicit part of legal training is a matter for further debate, but there are certainly good arguments in favor of such programs. See Abramson, *supra* note 43, at 223 (“[C]ertain types of (direct) teaching can promote and accelerate this development in a quite productive fashion.”).

¹⁶⁹ It should be noted that there are many reasons why pro bono work might be beneficial to one’s self-interest. Few would likely disagree that service to others can be inherently self-rewarding or that “pro bono activity can enrich every lawyer’s professional life.” Brown, *supra* note 152, at 461. Some commentators have even argued that mandatory pro bono service could be a way of alleviating the depression, isolation, and job dissatisfaction plaguing many lawyers today. See Donald Patrick Harris, *Let’s Make Lawyers Happy: Advocating Mandatory Pro Bono*, 19 N. ILL. U. L. REV. 287, 288–89 (1999). Certainly, this Comment is not intended to devalue pro bono work or to suggest it is not inherently worthwhile. The basic point here is that *not everyone will experience it as such* and that an appreciation for selfless service cannot be imposed or created by mandating it through exterior requirements (indeed, this might even delay its development). Those who labor selflessly for the interests of others should be celebrated and encouraged, but it seems contrary to our notions of freedom and self-determination to try to force such behavior on every individual attorney or label them unprofessional because they do not share a similar commitment (so long as they are willing to contribute in other regards).

such service may not develop in individual attorneys until later in life (if at all)—combine to produce the third. Whatever an individual lawyer’s level of UL moral development, the responsibility for public legal service is firmly a part of the LL cultural values of the legal profession (and American society). Accordingly, anyone entering into the bar should accept this obligation as a necessary aspect of their chosen profession. While it may be undesirable or counterproductive to mandate morality through requirements for UR individual behavior, the profession can still honor its duty by establishing LR programs for subsidizing pro bono work done by those capable of performing it with excellence and integrity. The imposition of mandatory service through either personal performance or a fee required for bar membership would thus honor both the individual’s right to act in accordance with her own moral values and the professional obligation to ensure the accessibility of legal services. Moreover, such a solution would acknowledge and include all four quadrants, in addition to levels and lines, thus making it a truly integral approach to resolving a variety of conflicting interests. For the purposes of legal professionalism, then, every attorney should be able to say that they support and encourage, in a tangible and quantifiable way, the distribution of legal services throughout American society.

The final principle noted above—that lawyers have a continuing responsibility to reflect on their interior values and consider these in light of their professional role—should also have a place in the discussion of professionalism as a component of its UL dimension.¹⁷⁰ This includes both self-scrutiny as well as feedback through moral dialogue with others, which together “help a lawyer to learn from mistakes and to improve professional skills generally.”¹⁷¹ At any level of development, professionalism in the UL would seem to demand that lawyers pay attention to their personal conscience and be able to defend their decisions in accordance with their own interior values.

Drawing on the moral psychology literature, Neil Hamilton defines personal conscience as a constellation of elements, including an “awareness of

¹⁷⁰ Importantly, this obligation does not attempt to dictate what those moral values should be, at least to the extent that they serve purposes other than upholding the rule of law. Obviously, this assertion comes with a caveat. Certain basic moral values like honesty and trustworthiness are necessary for the integrity of the legal system. However, these are largely captured by the ethics rules and are in that sense already assumed for the purposes of professionalism. What is not assumed, and what should not be dictated by a functional approach to professionalism, is the extent to which higher moral principles and behaviors like compassion, empathy, altruism, and dedication to selfless service might play a role in an individual’s legal practice.

¹⁷¹ Hamilton, *supra* note 9, at 9.

a moral issue, a reasoning process to determine the moral goodness or blameworthiness of alternative courses of conduct, and a sense of obligation to do what is morally good.”¹⁷² This formulation of the UL moral dimension of professionalism seems appropriate for a primarily LR-oriented, functional approach. That is, it does not prescribe a particular normative set of moral values but still emphasizes the need for individuals to engage their moral development in the context of their professional lives. In combination with ongoing reflection about their professional and societal role, then, this type of honest self-reflection would hopefully lead many lawyers to seek out public service on their own.¹⁷³

IV. PROFESSIONALISM AS PROCESS

At the end of this discussion, two general insights stand out. First, professionalism is a complicated subject. Defining core values that can apply across a diverse profession is a difficult endeavor that leaves much room for argument and debate in virtually every dimension. Much of this discussion takes place in the abstract, but theoretical clarity is important for defining the broad contours of the landscape and can lead to more effective practical applications. This Comment is thus intended to contribute to the discussion in that regard—to use the Integral framework to add some theoretical structure to the often mushy and ambiguous professionalism debate.

Second, professionalism is dynamic. Society is constantly changing, as is culture, as is every individual. The current professionalism crisis has resulted from large-scale developments in American society in general, and in the practice of law in particular, of which many are irreversible. In this sense, the professionalism problem does not lend itself well to a final and permanent solution. It is not something to fix so that we can get back to the “real” business of law. Perhaps, then, it is better to view the tensions surrounding professionalism not as a crisis so much as an inherent symptom of continuing social progress—something to be acknowledged, reflected upon, thoughtfully

¹⁷² *Id.* Hamilton further defines these factors in terms of a “Four-Component Model” for moral behavior—consisting of (1) moral sensitivity; (2) moral reasoning and judgment; (3) moral motivation, commitment, and professional identity; and (4) moral character and implementation skills—with each component being necessary for moral action to take place and each one also capable of independent development. *Id.* at 9–10; Hamilton & Brabbit, *supra* note 115, at 115–16. In addition, he argues that the development of personal conscience through these four components is “synergistic” in its relationship with other professional values and that growth in personal conscience itself fosters the development of professionalism in a more general sense. Hamilton, *supra* note 9, at 10.

¹⁷³ Until such a time, however, they can fulfill their professional obligations by paying the fee.

managed, and even welcomed as part of the broader evolution of the law and society as a whole. In this way, we can contextualize the goal of establishing professionalism's values by emphasizing the inherent value of the search itself.

As one scholar has observed, it may be that this very act of *seeking* is ultimately more meaningful and important than achieving some tidy end result.¹⁷⁴ From this perspective, professionalism is not a problem to be solved but rather a perpetual process of inquiry and aspiration—one that reforms and refines itself with each passing generation. Just as one might argue that “lawyering as a profession exists largely *because of* moral ambiguity, not to resolve it,”¹⁷⁵ so too might professionalism be characterized not as a desired resolution but as an *ongoing engagement* with the various tensions, ambiguities, and conflicts that are inevitably present in the practice of law, and indeed in life itself.

Here, then, it seems equally valid to say of both professionalism and lawyering in general that the “work reflects, even at times celebrates, the diversity and disagreements characteristic of real life.”¹⁷⁶ Each recognizes, in the words of Karl Llewellyn, the simple fact that “society is honeycombed with disputes,”¹⁷⁷ and that the fundamental task of lawyering is to find the most reasonable and effective means for dealing with this axiom of human existence. However tarnished the image of lawyers might be in today's world, it is undeniable that they serve an essential role in our society. For this reason alone, it is worthwhile to seek the highest forms the calling can take.

As Dane Ciolino writes, “We must acknowledge that professionalism is not a destination, but rather, a journey during which we all must critically evaluate the effects of our conduct—not just on our clients and on our income—but also on our profession, on our society, and on our relationships with one another.”¹⁷⁸ Such a view offers a way to *embrace* the professionalism problem rather than to lament it. From this perspective, the legal profession is faced not with a crisis but with a continuing opportunity to reevaluate itself in the context of today's world, honoring both its long history and tradition as well as the inevitability of continuing social and cultural change. To pursue such a

¹⁷⁴ Ciolino, *supra* note 3, at 239 (“[W]e should come to view ‘professionalism’ as a process and not as a place.”).

¹⁷⁵ Terrell & Wildman, *supra* note 2, at 407.

¹⁷⁶ *Id.*

¹⁷⁷ LLEWELLYN, *supra* note 57, at 5 (“Actual disputes call for somebody to do something about them. . . . This doing of something about disputes, this doing of it reasonably, is the business of law.”).

¹⁷⁸ Ciolino, *supra* note 3, at 239.

goal, then, it would seem essential to seek out and utilize the most comprehensive, inclusive, and forward-looking theoretical models that we now have at our disposal. As this Comment has hopefully demonstrated, Integral theory can serve such a function.

Professionalism-as-process implies that the professionalism problem must be accepted as a constant and perpetual element of legal practice. At all times, the bar must remain vigilant in ensuring not only that new lawyers are adequately instructed in and dedicated to contemporary aspirational values but also that the values themselves remain relevant as society and the legal profession continue to evolve. This is yet another reason why the Integral model can be a useful tool; it provides a content-free framework in which such changes can be tracked and understood in multiple dimensions. An Integral perspective enables one to focus not only on the values themselves but also on the way that those values interact within individuals and society from a metaperspective. By tethering the discussion about professionalism to a framework outside of the law itself, a stable platform can be created for analyzing, interpreting, and making modest normative judgments about what sorts of beliefs and behaviors are most appropriate.

CONCLUSION

As implied by the concept of professionalism-as-process, this is a discussion without end. However, an Integral approach can help to facilitate the ongoing endeavor to uncover the core values of the legal profession. Again, professionalism is a complex issue, requiring a variety of approaches focused on a variety of components within the individual, behavioral, social, and cultural dimensions. Together this would constitute a truly comprehensive and Integral response to the issue, but only when each of these dimensions is acknowledged and included within the discussion. The value of an Integral perspective, then, lies in orienting these different approaches within the context of a larger map so that each one can be assessed for its particular strengths and applied where it will be most effective. Such an approach can also help to provide a common language of perspectives through which to further evaluate

our professional ideals. With that framework in place, our understanding of professionalism can continue to evolve in new directions while still honoring the traditions of the past.

BROOKS A. SUTTLE*

* Executive Symposium Editor, *Emory Law Journal*; J.D. candidate, Emory University School of Law (2012); Integral Theory M.A. program participant, John F. Kennedy University (2006–2008); B.A. in Intellectual History, University of Pennsylvania (2002). I would like to express my sincerest gratitude to Professor Timothy Terrell, whose passion for wrestling with the seemingly irreconcilable aspects of professionalism provoked me to explore this topic in the first place, and whose work and insight provided the backbone for this Comment. I would also like to thank Sean Esbjörn-Hargens, David Zeitler, Gail Hochachka, Katie Heikkinen, and all the other Integral scholar-practitioners at J.F.K. University and the Integral Institute whose work has inspired me to think more deeply about life, the universe, and everything over the years. Of course, I would also like to thank Ken Wilber for putting this whole project into motion. It is not an exaggeration to say that Wilber's work changed the course of my life, and for that I will be forever in his debt. Finally, I would like to thank the whole editorial staff of the *Emory Law Journal*, particularly Daniel Reach, James Spung, Andrew McKinley, and Amy Dehnel. Your keen editorial eye has been invaluable in helping me turn an unpolished manuscript into a work that I am truly proud of. This has been a long, sometimes grueling, but ultimately rewarding and unforgettable experience, and I could never have done it on my own.