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

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

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INTRODUCTION

Incivility and unethical behavior in the legal profession have long been topics of concern in the United States.¹ In recent years, many state and local bar associations, as well as the American Bar Association (“ABA”), have taken steps to address incivility, including adopting professional rules, amending lawyers’ oaths of office, and more.² Yet current events continue to test limits of tolerance for incivility and unethical behavior.³ What is more, too many lawyers are unhappy and

¹ Director of Legal Clinics and Assistant Professor of Law at Ohio Northern University Claude W. Pettit College of Law. Thank you to Hadar Harris, Melissa Del Aguila, Reena Shah, Nelson Mock, Karen Powell, Warren Binford, Patience Crowder, Martha Davis, and Risa Kaufman, for comments on earlier drafts of this Article. Thank you also to Dan Kimmons, Desirae Bedford, Christopher Calpin, Shelby Core, Elizabeth Davenport, David Savage, and Heidi Weatherly, for research assistance.


unhealthy in the legal profession, which has been tied to ethics and integrity.\textsuperscript{4} In these difficult times for the legal profession, moral aspiration,\textsuperscript{5} or the hope or ambition for high ethical integrity, is incredibly important.\textsuperscript{6}

Lawyers seek moral aspiration from a variety of sources, including other lawyers,\textsuperscript{7} religion, and cultural norms.\textsuperscript{8} They also seek the rules, standards, and guidance applicable to lawyers in the United States.\textsuperscript{9} This Article offers an alternative source for moral aspiration for lawyering—
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human rights—and suggests establishing a human rights code of conduct in a public interest law office or law clinic to create a dignified, respectful, and safe space, and to hold colleagues, students, and others, to high ethical standards. The idea of a human rights code of conduct for a law office or law clinic builds on recent scholarship applying human rights principles to lawyering.12 In addition, this idea follows the recent proliferation of corporations choosing to adopt social justice and human rights related codes of conduct.13

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

Part I of this Article argues that the lack of moral aspiration in legal ethics rules helps contribute to unhappy and unhealthy law students and

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

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

13 See infra Part II.A.5.

14 See Preston & Lawrence, supra note 2, at 707.
lawyers, undermining the legal profession. Part II reviews the existing rules and standards that guide the ethical behavior of lawyers in the United States, arguing that all too often the binding rules focus on providing guideposts, signaling where behavior is unacceptable and disciplinary action is possible, instead of providing moral aspiration and options or next steps to describe what a lawyer should do to deal with an ethical dilemma.

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

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

I. A LACK OF MORAL ASPIRATION UNDERMINES THE LEGAL PROFESSION

The legal profession is in the midst of a “crisis of professionalism” and has been for some time.15 Bar leaders, legal practitioners, and scholars have put forward various arguments as to how the profession got itself into such a mess and why the crisis persists.16 Criticisms vary and include the

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widespread lack of morality among lawyers,\textsuperscript{17} bad reputation of attorneys,\textsuperscript{18} types of personalities attracted to the law,\textsuperscript{19} need to amend the ethical rules and standards that currently govern the behavior of lawyers,\textsuperscript{20} failure of law schools to instill the proper values in their graduates,\textsuperscript{21} and more.\textsuperscript{22} There is agreement among attorneys and others outside of the law both that there is a low public perception of the morality of lawyers\textsuperscript{23} and

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

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

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


\textsuperscript{22} See, e.g., LUBAN, supra note 5, at xii (“There are some things rats just won’t do”) (quoting Macaulay); see also John Toulmin, Ethical Rules and Professional Ideologies, in LAWYERS’ PRACTICE AND IDEALS: A COMPARATIVE VIEW 379–80 (John J. Barceló III & Roger C. Cramton eds., 1999) (arguing that attorneys in other countries are not held in such low esteem morally as those in the United States and stating “[t]here can be no disguising the fear, particularly in civil law countries and Japan, that they will be overrun by the ‘Tendence Anglo-Saxon’ and that the low esteem in which lawyers are held in the United States will spread to other countries”); Aaron Blake, Donald Trump’s Attack on Hillary Clinton for Defending an Accused Child Rapist, Explained, WASH. POST (Oct. 10, 2016), https://www.washingtonpost.com/news/the-fix/wp/2016/10/09/why-donald-trump-just-attacked-hillary-clinton-for-defending-an-accused-child-rapist-explained/?utm_term=.67b52beb6efd (discussing questions of morality and Hillary Clinton’s defense of a “child rapist” that came up during the 2016 presidential race in the United States).

that the moral decisions made by lawyers during the course of legal representation are incredibly important.24

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

24 See THOMAS L. SHAFFER & ROBERT F. COCHRAN, JR., LAWYERS, CLIENTS, AND MORAAL RESPONSIBILITY 1 (1994) (“Moral decisions during legal representation are important for several reasons.”); Pearce, MacCrate’s Missed Opportunity, supra note 21, at 575–77.
25 For the purposes of this Article, moral aspiration is defined as ambitions for highly ethical behavior. See LUBAN, supra note 5, at 259–69; SIMON, supra note 5, at 1–2.
27 See id. at 856.
In addition to the crisis of professionalism, the legal profession is also grappling with another crisis. Its members are experiencing high rates of depression, substance abuse, and dissatisfaction. Moreover, these crises are linked. Lawyers need moral aspiration to be happy, healthy, productive members of society.

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

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

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

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

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31 See Krieger & Sheldon, supra note 4, at 581–82 (discussing the importance of intrinsic values for attorney well-being—also defined as happiness—and the significance of intrinsic values for professionalism and ethical behavior).
32 See id. at 623.
33 Id.
34 Id. at 622.
35 Id. at 622–23.
36 See id. at 557–58 (discussing the disproportionate number of unhappy people in the legal profession, as well as the reported high levels of emotional distress, dissatisfaction, and drug and alcohol addiction).
37 See id. at 623–25.
A. U.S. Ethical Rules, Standards, and Guidance for the Legal Profession

1. Lawyer’s Oaths

A lawyer’s oath of office is a formal promise to observe the ethical or other obligations of the profession. Each lawyer in the United States must take an oath of office upon admission to the bar of a particular state. The lawyer’s oath of office was, at one time, the principal form of ethical regulation for lawyers. However, the lawyer’s oath is often overlooked among the various forms of ethics regulation available, and lawyer’s oaths are only sometimes subject to enforcement in the United States. For the most part, lawyer’s oaths are merely a “rite of passage,” marking the transition to licensed attorney, and should not be considered meaningful beyond that or a source for ethical principles to guide the practice of law.

In many states, the lawyer’s oath is short and does not specifically reference ethical principles or the Rules of Professional Conduct. These

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40 Id. at 4–5.
41 Id.
short oaths are very similar, if not identical, to the oaths of office taken by other public officials, including non-attorneys such as legislators and clerks of court.45

In a few states, the lawyers’ oaths mention aspirational ethical principles.46 For example, in Alaska, California, Hawaii, Missouri, and Ohio, the lawyer’s oath specifically requires lawyers to conduct themselves with dignity at all times or toward all other persons.47 The Colorado attorney’s oath stands out by specifically requiring respect for “all persons
whom I encounter through my practice of law.”48 No other state’s lawyer’s oath requires respect for all persons.

2. Rules of Professional Conduct

The Rules of Professional Conduct are enforceable rules or black letter laws enacted state by state as mechanisms for implementing and enforcing the fundamental principles of morality in the legal profession.49 It is through these Rules that the theories of legal ethics and the norms intended to govern the behavior of lawyers are put into enforceable law.50 These Rules focus on providing a baseline for ethical lawyering,51 and today, each state has adopted its own binding Rules of Professional Conduct.52

The Rules of Professional Conduct are enforced through a system of self-governance by the state’s highest court, usually through an advisory board or committee consisting of licensed members of the bar of that state.53 These rules are binding, and punitive measures are applied when

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

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

50 See MODEL RULES OF PROF’L CONDUCT pmbl. ¶ 19 (AM. BAR ASS’N 2014).

51 See Carle, supra note 1, at xiv.

52 Links of Interest, ABA, http://www.americanbar.org/groups/professional_responsibility/resources/links_of_interest.html#States (providing a list of links to the Rules of Professional Conduct for each individual U.S. state).

lawyers fail to adhere to the Rules. For example, lawyers that commit a transgression can be subject to license suspension, fines, and disbarment. Disciplinary actions against lawyers are also made public, and the public shaming can have a bigger impact can do more harm—or good—than any other action.

In terms of moral aspiration, the Rules have little to offer. The development and adoption of the Rules has followed the efforts of the American Bar Association, as described further in Part II.A.3 below. The states, or rather the colonies, started out with a mixture of binding and nonbinding ethical rules and codes for lawyers, much of which was “lofty in aspiration” and impractical. Aspiration was then largely removed from the Rules in the 1960s and 1970s, leaving only the enforceable legal obligations.

3. Model Rules of Professional Conduct


See sources cited supra note 53.


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

See Andrews, supra note 1, at 1423.


See id.; Andrews, supra note 1, at 1443–46.


See id.; Andrews, supra note 1, at 1439.
Professional Responsibility, has been guided by big ethics scandals, including Watergate and Enron.\textsuperscript{62} Today, all fifty states have adopted some form of the ABA Model Rules.\textsuperscript{63}

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

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

In 1969, the ABA Model Code of Professional Responsibility was adopted.\textsuperscript{70} The Code was more thorough than the Canons, and some said too long and confusing.\textsuperscript{71} It had three parts: “Canons,” “Disciplinary Rules,” and “Ethical Considerations.”\textsuperscript{72} The “Canons” and “Ethical


\textsuperscript{63} See STATE ADOPTION OF THE ABA MODEL RULES OF PROFESSIONAL CONDUCT AND COMMENTS, ABA: CPR POLICY IMPLEMENTATION COMMITTEE (May 2011), https://www.americanbar.org/content/dam/aba/events/labor_law/2013/03/ethics_professionalresponsibilitycommittee.midwintermeeting/14pro_conduct.authcheckdam.pdf.

\textsuperscript{64} SIMON, supra note 5, at 14–15; LAWYERS & JUSTICE, supra note 53, at xxvii; Professional Aspirations, supra note 16, at 572.

\textsuperscript{65} LAWYERS & JUSTICE, supra note 53, at xxvii; Professional Aspirations, supra note 16, at 572.

\textsuperscript{66} RHODE & HAZARD, supra note 8, at 13.

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

\textsuperscript{68} CANONS OF PROF’L ETHICS (AM. BAR ASS’N 1908); Model Rules of Professional Conduct: Preface, supra note 60.

\textsuperscript{69} See generally CANONS OF PROF’L ETHICS (AM. BAR ASS’N 1908).

\textsuperscript{70} MODEL RULES OF PROF’L RESPONSIBILITY (AM. BAR ASS’N 1969).

\textsuperscript{71} See Professional Aspirations, supra note 16, at 572–73.

\textsuperscript{72} Id. at 572.
Considerations” sections both contained broad statements of principle that were characterized as “aspirational”—guidelines for behavior that lawyers could strive to comply with, but would not be disciplined for failing to attain.73

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

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

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

4. State and Local Civility Codes

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

These civility codes each contain a set of nonbinding, voluntary, and aspirational principles that are meant to guide lawyers and judges towards

73 See id.
74 See id. at 574.
75 See SIMON, supra note 5, at 15.
76 Model Rules of Professional Conduct: Preface, supra note 60.
77 Professional Aspirations, supra note 16, at 574.
78 See SIMON, supra note 5, at 15.
79 See Grenardo, supra note 2; Preston & Lawrence, supra note 2, at 707–08; ABA Professionalism Codes, supra note 2.
80 See Grenardo supra note 2, at 242.
high professional standards.\textsuperscript{81} “The guidelines are intended to cover a lawyer’s professional dealings with clients, other counsel, third parties, the court and the public.”\textsuperscript{82} For example, the Supreme Court of Ohio’s Professional Ideals for Lawyers and Judges states:

\begin{quote}
It is not the Court’s intention to regulate or to provide additional bases for discipline, but rather to facilitate the promotion of professionalism among Ohio’s lawyers, judges and legal educators. It is the Court’s hope that these individuals, their professional associations, law firms and educational institutions will utilize the creed and the aspirational ideals as guidelines for this purpose.
\end{quote}

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

The contents of these civility codes vary widely, though they typically emphasize guidance for dealing with other attorneys and the courts, filling in where the Rules of Professional Conduct are silent.\textsuperscript{85} The news related to the civility codes has largely dealt with attorneys mistreating each other,\textsuperscript{86} as opposed to the human rights code of conduct’s emphasis on civility between clients and attorneys.\textsuperscript{87} Civility, or rather incivility, between attorneys, and attorneys and judges, has been the main impetus for these codes.\textsuperscript{88} However, like the human rights codes of conduct, some of

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\textsuperscript{81} See Preston & Lawrence, supra note 2, at 728.
\textsuperscript{84} See Justine Nolan, Refining the Rules of the Game: The Corporate Responsibility To Respect Human Rights, 30 Utrecht J. Int’l & Eur. L. 7, 13 (2014) (stating that human rights initiatives are a compilation of aspirational goals whose strength depends on the support and enforcement of the people within the organization).
\textsuperscript{86} See, e.g., Garner, supra note 82.
\textsuperscript{87} See infra Part III.C.
\textsuperscript{88} See, e.g., Code of Civility Guidelines, L.A. CTY. BAR ASS’N, http://www.lacba.org/resources/tools-documents/civility-guidelines (“We must treat each other with courtesy, respect, dignity and professional integrity.”). See also Preston & Lawrence, supra note 2, at 704–05.
\end{flushleft}
the civility codes specifically mention respect and nondiscrimination towards clients and other participants in the legal process.89

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

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

5. Law Office Codes of Conduct

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

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90 See PROFESSIONAL IDEALS FOR LAWYERS AND JUDGES, supra note 83.
91 See Preston & Lawrence, supra note 2, at 714 (“We suspect that adopted professionalism creeds are not given much attention in a few jurisdictions.”).
92 See id. at 714 n.74.
policies and programs related to diversity and inclusion, work-life balance, public service commitments, and more. Other law firms have adopted their own codes of conduct to demonstrate and promote commitment to higher standards than those currently in the rules of ethical and professional responsibility. These codes of conduct are not, however, based in human rights, with the exception of the law firms described below. Instead, most law firms’ codes of conduct focus on reiterating the binding Rules of Professional Conduct, teamwork, and inclusion, as well as protecting employees against retaliation.

Recently, a movement has started among law firms to adopt human rights codes of conduct. This movement has been a long time in the making. Since the early 1990s, when NGOs and human rights organizations began pushing for corporate social responsibility, corporations across the world have adopted codes of conduct which include adherence to human-rights standards. At this point, it is more likely than not that...
not that a major corporation will claim it adheres to human rights standards. 99 This in no way means that the corporations with human rights codes of conduct are honoring their commitments, 100 however, which is how law firms became involved—providing legal representation to corporations being sued for human rights violations. 101 As corporate clients were increasingly pushed to demonstrate respect for human rights, law firms have also begun feeling pressure to implement policies as well. 102

The pressure on law firms to adopt human rights policies has recently increased further with the adoption of the United Nations Guiding Principles on Business and Human Rights, as well as the International Bar Association’s new International Principles on Conduct for the Legal Profession, and other tools, described below. 103

Top international law firms have taken steps to establish human rights codes of conducts and other programs 104 and more are likely to follow in their footsteps, especially given that many firms are incentivized to implement their commitments as they increasingly find themselves in the business of providing legal advice regarding corporate social responsibility. 105


100 See Bradford, supra note 98, at 158 (“few scrupulously honor their commitment”).

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

102 LAW FIRM BUSINESS, supra note 97, at 7.

103 See infra Part II.B.

104 For a list of top law firms that have publicly committed to working towards the U.N. sustainable development goals, see Legal Partners, Advocates for Int’l. Dev., http://www.a4id.org/about-us/legal-partners (last visited Feb. 24, 2018)

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

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

1. United Nations Guiding Principles on Business and Human Rights

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

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

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


110 See id. at 14–15.
2. International Bar Association’s International Principles on Conduct for the Legal Profession

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

The IBA Principles focus on ten principles or core values, including: (1) independence; (2) honesty, integrity, and fairness; (3) conflicts of interest; (4) confidentiality and professional secrecy; (5) clients’ interest; (6) lawyers’ undertaking; (7) clients’ freedom; (8) property of clients and third parties; (9) competence; and (10) fees.

While the IBA Principles specifically state that they take into consideration the United Nations Declaration of Human Rights, there is a lack of human rights language included. The IBA Principles are no model for a human rights code of conduct, however. There are no mentions of “respect,” “human dignity,” “nondiscrimination,” or other key human rights phrases. The IBA Principles do mention honest, fair treatment of clients. However, the IBA Principles are not a good model for a human rights code of conduct.
due to the lack of any other human rights language and human rights principles included.

3. United Nations Basic Principles on the Role of Lawyers

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

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

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

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

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121 The Interests of Justice, supra note 120, at 176.

122 U.N. Basic Principles, supra note 120, at 119.

123 Id. ¶ 14, at 121 (emphasis added).

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

125 See id.

126 See supra Part II.B.1.

127 See Part II.B.1.
4. Foreign Codes of Conduct for Lawyers that Incorporate Human Rights

After a thorough examination of Japan’s Basic Rules on the Duties of Practicing Attorneys,128 the Canadian Bar Association Code of Professional Conduct,129 and the European Bar’s Code of Conduct for Lawyers in the European Community (“CCBE”),130 Professor Martha F. Davis concluded that these codes invoke human rights law “as a framework to inform basic processes of ethical legal practice.”131 Professor Davis and other scholars have also noted that these codes are aspirational in character, as opposed to regulations meant to bind attorneys’ behavior.132 While these codes of conduct do not include human rights principles or language, such as respect for clients and human dignity, these codes instead specifically require attorneys to respect human rights law and safeguard the human rights of their clients.133

These codes, as well as the IBA Principles discussed above,134 demonstrate another strategy for integrating human rights into ethical codes of conduct, which is to require attorneys to adhere to human rights principles, human rights law, or both, without specifically naming what that

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128 BASIC RULES ON THE DUTIES OF PRACTICING ATTORNEYS art. 1 (JAPAN FED’N OF BAR ASS’NS. 2004) [hereinafter BASIC RULES] (“An attorney shall be aware that his or her mission is to protect fundamental human rights and realize social justice, and shall strive to attain this mission.”).
130 CHARTER OF CORE PRINCIPLES OF THE EUROPEAN LEGAL PROFESSION AND CODE OF CONDUCT FOR EUROPEAN LAWYERS art. 1.1 (COUNCIL OF BARS & LAW SOCIETIES OF EUR. 2013) [hereinafter CHARTER OF CORE PRINCIPLES] (“A lawyer[. . . .] is an essential means of safeguarding human rights in face of the power of the state and other interests in society.”).
131 Davis, supra note 20, at 178.
132 Id. at 183. HAZARD & DONDI, supra note 38, at 109 (arguing that the Japanese code of professional ethics, like Japanese law generally, expresses ethical norms as ideas and objectives rather than precisely stated obligations). For direct evidence of the aspirational nature of these codes, see, e.g., CHARTER OF CORE PRINCIPLES 9, Principal (d) (“To be trusted by clients, third parties, the courts and the state, the lawyer must be shown to be worthy of that trust. That is achieved by membership of an honourable profession; the corollary is that the lawyer must do nothing to damage either his or her own reputation or the reputation of the profession as a whole and public confidence in the profession. This does not mean that the lawyer has to be a perfect individual, but it does mean that he or she must not engage in disgraceful conduct, whether in legal practice or in other business activities or even in private life, of a sort likely to dishonour the profession. Disgraceful conduct may lead to sanctions including, in the most serious cases, expulsion from the profession.”).
133 See BASIC RULES, supra note 128; CANADA CODE OF PROF’L CONDUCT, supra note 129; CHARTER OF CORE PRINCIPLES, supra note 130.
134 See IBA Principles, supra note 112, ¶ 1, at 10.
requirement means or the steps that a lawyer should take to try to comply. 135

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

III. HUMAN RIGHTS: A SOURCE OF AMBITIOUS MORAL ASPIRATION

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

A. What Are Human Rights?

Human rights are not only laws derived from treaties, 138 customary practices, 139 and foreign or state-based law. 140 They are also tools, 141
helping to build movements across cities, states, continents, and cultures. To that end, human rights represent a vision of the future world, a world in which one would want to live and work.


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

See Beth Lyon, Human Rights Aspirations, Professional Obligations: Practitioner Survey on the Ethics of Domestic Human Rights, 1 NOTRE DAME J. INT’L, COMP., & HUM. RTS. L. 114, 134 (2011) (“Because international human rights law is associated with particular values, these advocates find ethical guidance in the substantive doctrine of their practice area.”); MICHAEL J. PERRY, TOWARD A THEORY OF HUMAN RIGHTS: RELIGION, LAW, COURTS xii-xiii (2007) (discussing the morality of human rights versus moral-rights); Davis, supra note 20, at 157 (stating human rights are a “mechanism[,] for implementing moral principles”).
connections to, legal ethics. For example, human rights are centered on the core value of human dignity, but also contain many additional values relevant to lawyering, such as respect, equality, self-determination, and accountability, as well as additional economic, social, environmental, cultural, civil, and political values. These human rights values, or principles, are ambitious concepts of morality that can provide attorneys with the direction to navigate tricky ethical dilemmas.

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

Fundamental principles of morality, or core values, are both at the center of the study of human rights and legal ethics. Both human rights and legal ethics share common ground as mechanisms for implementing fundamental principles of morality. Human rights norms “recite fundamental principles of morality intended to govern behavior of governments as well as individuals,” whereas legal ethics are fundamental principles of morality intended to govern individual lawyers’ ethical decision making. The Rules of Professional Conduct are

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145 Davis, supra note 20, at 157.
146 See Lyon, supra note 144, at 134; Perry, supra note 144, at 3-6 (describing the philosophical theory of the morality of human rights); see also G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).
147 A full array of human rights is set forth in the University Declaration of Human Rights, which is the foundational human rights document adopted by the U.N. General Assembly in 1948. See Universal Declaration of Human Rights, supra note 146.
148 Davis, supra note 20, at 178 (discussing ways in which human rights norms might inform and infuse attorney-client relationships, stating that the “incorporation of human rights norms would emphasize the means, or processes, of human rights and their relevance to the processes of legal representation. Human rights principles with substantial relevance to process include respect for human dignity, participation (and leadership) of those most affected in crafting solutions to their problems, and recognition of the interrelationships between the full range of human rights”); see also Lyon, supra note 144, at 134; Ronald Dworkin, Taking Rights Seriously 198 (1977) (positing human dignity and political equality as the two most basic rights). See generally Jon Mahoney, Liberalism and the Moral Basis for Human Rights, 27 Law & Phil. 151 (2008).
149 These fundamental principles of morality have also been referred to as “[b]asic ethical precepts,” “professional virtues,” and “core values.” See Hazard & Dondi, supra note 38, at 109; see also Carle, supra note 1, at 3 (discussing “lawyers’ values and why they have come to have them”).
150 See Hazard & Dondi, supra note 38, at 109; Carle, supra note 1, at 3.
152 Davis, supra note 20, at 157.
153 See id.
mechanisms for implementing and enforcing these fundamental principles of morality within the legal profession.  

The questions at the center of legal ethics have been: What are the core values of a “good lawyer,” how do “good lawyers” come to adopt those values, and what should be done when lawyers are not acting consistently with those core values? Very similarly, the questions at the center of human rights law have been: What are the core values of a “good government,” how do “good governments” come to adopt those values, and what should be done when governments do not act consistently with those core values? The behavior and decision making of a “good lawyer” can be enhanced by looking at the values underlying human rights law; lawyers in the United States can draw ambitious moral aspiration from human rights principles.

In addition, while human rights norms recognize an inherent interrelationship and indivisibility among human rights, Professor

154 See id. at 169.
155 See LUBAN, supra note 5, at xix–xx (pointing out that much of the philosophical discourse regarding these questions in legal ethics has turned on: the theory of role morality, the adversary system and its influences on legal ethics, and the standard conception of the lawyer); Carle, supra note 1, at 1 (“[T]he study of legal ethics is nothing more or less than the study of how to be a good lawyer.”) (emphasis in original).
156 John Locke, in discussing “natural rights” derived from “natural law,” a precursor to human rights, said that all people are born with:

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

JOHN LOCKE, THE TWO TREASIES OF CIVIL GOVERNMENT § 87 (Thomas Hollis ed., 1764) (1689). See LOUIS HENKIN, THE AGE OF RIGHTS 8–10 (1990); Davis, supra note 20, at 157; CHARLES R. BEITZ, THE IDEA OF HUMAN RIGHTS 10–11 (2011); Angela R. Riley, Good (Native) Governance, 107 COLUM. L. REV. 1049, 1059 (2007) (“[T]he presence and adoption of human rights norms is considered a necessary component of achieving good governance, which is believed to have positive consequences for all people.”) (footnotes omitted); Antony Anghie, Civilization and Commerce: The Concept of Governance in Historical Perspective, 45 VILL. L. REV. 887, 893–95 (2000) (“[G]ood governance involves the creation of a government that is, among other things, democratic, open, accountable and transparent, and which respects and fosters human rights. Thus good governance is linked, in international human rights law, with ideas relating to democratic governance and legitimate governance. Further, human rights lawyers focus on the ways in which human rights norms regarding political participation, free speech, and so forth, may be used to achieve the overarching goal of good governance.”) (footnotes omitted); Jack Donnelly, The Social Construction of International Human Rights, in HUMAN RIGHTS IN GLOBAL POLITICS 71, 81 (Timothy Dunne et al. eds., 1999) (“The universality of human rights is a moral claim about the proper way to organize social and political relations in the contemporary world.”).

157 See Universal Declaration of Human Rights, supra note 146, at art. 2 (“Everyone is entitled to all the rights and freedoms set forth in this Declaration . . . .”); Jonathan Todres, Rights Relationships and the Experience of Children Orphaned by AIDS, 41 U.C. DAVIS L. REV. 417,
Martha Davis has pointed out that the “recognition of the interrelationships between the full range of human rights”\(^{158}\) is substantially related to the processes of legal representation.\(^{159}\) For example, a client should be advised that her right to an effective remedy is interconnected with and indivisible from her right to freedom from discrimination. Therefore, her right to an effective remedy for violation of her human rights never should come at the peril of her right to be treated equally and on par with others by the legal system.

Moreover, the fundamental principles of morality that are recited within human rights norms are meant to apply to everyone—human rights are universal.\(^{160}\) Each and every person is entitled to the full range of human rights, regardless of citizenship status or whether one is an attorney, social worker, judge, or client.\(^{161}\) This concept is very important, as applied to legal ethics. The human rights codes of conduct for law offices and law clinics are not meant to apply just to attorneys or student attorneys, but also to paralegals, organizers, social workers, administrative staff, information-technology staff, deans, and everyone else involved in the work of the law office or law clinic.\(^{162}\) In this way, a human rights code of conduct goes above and beyond most legal ethics codes to reach everyone in the law office. Very rarely is there discussion with nonlegal staff in a law office about moral principles and values that should govern behavior. Human rights norms put everyone on the same page, as does a human rights code of conduct.

In addition to being universal, interconnected, and indivisible, human rights also tend to be phrased positively, such as the human rights to

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\(^{158}\) Davis, supra note 20, at 178.

\(^{159}\) See id.

\(^{160}\) See id.; Henkin, supra note 151, at 13 (“Human rights has been accepted as the idea of our times; no other political idea . . . has received such universal acclaim.”).

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

\(^{162}\) See MODEL RULES OF PROF’L CONDUCT r. 5.3 (AM. BAR ASS’N 2014).
nondiscrimination and freedom from torture. Conversely, the Rules of Professional Responsibility and other legal ethics standards tend to be phrased negatively. The negative phrasing of the Rules of Professional Responsibility provides a baseline, a line that should not be crossed, but does not provide aspirational goals or ideals. The positive phrasing of human rights norms is in line with moral aspiration, directing attorneys and law students to reach up and aspire to high moral and ethical integrity.

C. Human Rights Principles Compared with Legal Ethics

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

The specific human rights principles that have been identified by human rights practitioners and scholars as relevant to the representation of clients, as well as attorney behavior and decision making, include the broad principle of respect for human dignity, and the rights to: “participation . . . of those most affected in crafting solutions to their problems,” self-determination, privacy, transparency, and nondiscrimination. In addition, human rights norms related to law practice include: cultural sensitivity, accountability for human rights

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

164 See, e.g., OHIO RULES OF PROF’L CONDUCT r. 1.6 (2007) (“A lawyer shall not reveal information relating to the representation of a client . . . .”).

165 See supra Part II.B.

166 See LUBAN, supra note 5, at 65–95.

167 Davis, supra note 20, at 178.


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


violations;172 and access to justice.173 The human rights codes of conduct described in Part V below were drafted with these human rights principles in mind.

Legal ethicists have identified some of the core values guiding legal practice, including competence, independence, loyalty, confidentiality, candor, and honorable conduct, in professional and personal matters.174 These core values are thought to be fundamental and universal principles of morality necessary for the practice of law, and are codified in various ways in the Rules of Professional Conduct.175

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

To better understand the differences between the human rights principles and the core principles found in the ABA Model Rules, the Subsection below compares and contrasts a couple of the human rights principles related to law practice with the ABA Model Rules. There is much more analysis and comparison of legal ethics and human rights

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

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

174 See, e.g., HAZARD & DONDI, supra note 38, at 109 (“The professional virtues of lawyers are: competence; independence; loyalty to client; maintaining the confidentiality of client secrets; responsibility to the courts and to colleagues; and honorable conduct in professional and personal matters.”); RHODE & HAZARD, supra note 8, at 45 (“The ethical rules governing American lawyers express several core values that guide legal practice. Those values and their corresponding obligations include independence, competence, loyalty, confidentiality, candor, and integrity in personal and professional conduct.”); LAWYERS & JUSTICE, supra note 53, at 191–211 (discussing confidentiality); IBA Principles, supra note 112.

175 See discussion infra Parts III.C.1, III.C.2.
principles that could be done. However, for the sake of time and space, this Article examines solely human dignity and equality to provide an example of this comparison.

1. Human Dignity

With regard to the human rights principle of human dignity and its relationship to lawyering, respect, patience, understanding, empathy, honest communication, and privacy are key.\textsuperscript{176} In terms of respect, Comment 2 to ABA Model Rule 1.14 specifically mentions the lawyer’s obligation to “treat the client with attention and respect,”\textsuperscript{177} but only in reference to clients with diminished capacity. This is the only mention of respect for clients in the ABA Model Rules. The ABA Model Rules also require respect for the legal system, for those who serve it, and for the rights of third persons.\textsuperscript{178} The Model Rules incorporate several other ideas which are related to respect, such as diligence and promptness,\textsuperscript{179} but go no further than that.

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

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

\textsuperscript{176} See LUBAN, supra note 5, at 65–95; Ellis, supra note 106, at 1021; Davis, supra note 20, at 158; Kaufman, “By Some Other Means,” supra note 170, at 2007; see also Universal Declaration of Human Rights, supra note 146, at pmbl., arts. 7, 12.
\textsuperscript{177} MODEL RULES OF PROF’L CONDUCT r. 1.14 cmt. 2 (AM. BAR ASS’N 2014).
\textsuperscript{178} Id. at pmbl. ¶ 5, r. 4.4(a).
\textsuperscript{179} Id. at r. 1.3, 1.4(a)(1).
\textsuperscript{180} Id. at r. 4.1.
\textsuperscript{181} Id. at pmbl. ¶ 6.
\textsuperscript{182} Id. at r. 1.6, 1.18(b).
\textsuperscript{183} See Henkin, supra note 151, at 13.
2. Equality

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

The ABA Model Rules emphasize that “a lawyer should seek improvement of . . . access to the legal system” and “[a] lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance.” The ABA Model Rules also state that “[t]he fact that a client suffers a disability does not diminish the lawyer’s obligation to treat the client with attention and respect.” In addition, Rule 8.4 of the ABA Model Rules specifically mentions that it is misconduct for a lawyer to:

- Engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.

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

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

IV. WHY A HUMAN RIGHTS CODE OF CONDUCT?

Human rights principles, as opposed to other sources of moral aspiration, such as religious or cultural norms, provide the basis for the

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184 See Universal Declaration of Human Rights, supra note 146, at pmbl., arts. 7, 10.
185 MODEL RULES OF PROF’L CONDUCT pmbl. ¶ 6 (AM. BAR ASS’N 2014).
186 Id. at r. 1.14 cmt. 2.
187 Id. at r. 8.4(g).
189 See, e.g., International Convention on the Elimination of All Forms of Racial Discrimination, supra note 188, art. 2(2).
human rights code of conduct. That human rights are a relevant source for moral aspiration for the legal profession was addressed in Part III above. This Part of the Article attempts to address the question of why human rights should be the basis of a public interest law office or law clinic code of conduct.

A. A Globalized World Calls for Globalized Professional Norms

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

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

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191 Transnational law was famously defined by Philip Jessup. PHILIP C. JESSUP, TRANSNATIONAL LAW 2 (1956) (“[A]ll law which regulates actions or events that transcend national frontiers.”). See Harold Hongju Koh, Why Transnational Law Matters, 24 PENN. ST. INT’L L. REV. 745, 750 (2006) (arguing that “transnational law will loom so large in our future”);
194 Hurwitz, supra note 190, at 507–08 (“We have begun to speak a language of global morality. And whether or not one agrees that this morality is universal, the concern for justice inevitably implicates international human rights and international law. In view of this shifting
international or universal legal ethics code to fill in where the Rules of Professional Conduct and other standards have left off.\(^{195}\) While this Article does not specifically argue for an international legal ethics code, these scholars’ arguments support applying international norms to legal ethics generally. In addition, these scholars’ arguments help demonstrate that the concept of a human rights code of conduct is potentially a positive step toward improving the current legal ethics rules.

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

What is more, the use of international law arguments by litigants in state court cases has increased in recent years,\(^{203}\) and cities and counties are increasingly either passing resolutions and ordinances endorsing or incorporating human rights law, or both.\(^{204}\) In addition, projects such as the Bringing Human Rights Home Lawyers’ Network,\(^{205}\) the Local Human

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


\(^{201}\) See, e.g., Kaufman, “By Some Other Means,” supra note 170.


\(^{203}\) See THUSI & DAVIS, supra note 192, at 5–6.

\(^{204}\) See COLUMBIA LAW SCH. HUMAN RIGHTS INST., BRINGING HUMAN RIGHTS HOME: HOW STATE AND LOCAL GOVERNMENTS CAN USE HUMAN RIGHTS TO ADVANCE LOCAL POLICY 1, 9 (2012); see also Freedom from Domestic Violence as a Fundamental Human Right Resolutions, Presidential Proclamations, and Other Statements of Principle, supra note 140.

A HUMAN RIGHTS CODE OF CONDUCT

Rights Lawyering Project, described in Part V.A. below, and the Pillar Project of Human Rights First,\(^{206}\) have helped to promote, support, and train U.S. lawyers to use human rights law at the local and state level.

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

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

B. The Common Ground of Human Rights

Lawyers can use human rights as common ground to connect more deeply and purposefully with client communities and individuals already using human rights language and principles in their struggles for justice.\(^{210}\) Human rights norms provide a common language, accepted and understood by both lawyers and laypersons.\(^{211}\) Many communities have adopted


\(^{207}\) See Hurwitz, supra note 190, at 509; Bettinger-Lopez, supra note 12, at 339; Ali, supra note 190, at 249.

\(^{208}\) See Davis, supra note 20, at 158, 178–85.

\(^{209}\) See Kaufman, The “Trickle Up” Effect, supra note 196.

\(^{210}\) See id.

\(^{211}\) See Cynthia Soohoo, Introduction to Volume 3, in 3 BRINGING HUMAN RIGHTS HOME xv, xix (Cynthia Soohoo et al. eds, 2008) (“The articulation of rights violations in human rights terms also helps marginalized groups connect their issues to a broader framework, linking to other struggles that may be more familiar and sympathetic to the public.”); Bettinger-Lopez,
human rights laws precisely because human rights are self-evident and commonly intuited.\textsuperscript{212}

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

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

In addition to the arguments above, there is one additional argument for a human rights code of conduct: Human rights codes of conduct can help law students learn and understand the Rules of Professional Conduct in a deep and meaningful way. By comparing and contrasting the Rules of Professional Conduct with the aspirational goals included in a human rights code of conduct, law students can begin to see the limitations, the “contours,”\textsuperscript{213} and the depths of the Rules of Professional Conduct. In addition, students in a law clinic with a human rights code of conduct can learn to become more comfortable and familiar with the Rules of Professional Conduct.

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

\textsuperscript{12} See, e.g., Monique Harden et al., \textit{Acting on Principle: Opportunities and Strategies for Achieving Environmental Justice through Human Rights Laws and Standards}, in \textit{3 BRINGING HUMAN RIGHTS HOME}, supra note 211, at 265, 265 (“According to Margie Richard, a community activist living in Louisiana’s Cancer Alley, ‘You know when your daughter struggles to breathe at night because of all the pollution that her human rights are being violated.’") (footnotes omitted).

\textsuperscript{212} See supra note 12, at 346–47 (“[S]ome of the most successful recent examples of domestic human rights advocacy have been led by grassroots coalitions and social movements, rather than by lawyers . . . .”).

\textsuperscript{213} See Davis, supra note 20, at 176.

\textsuperscript{214} For example, Christian principles provide religion-based morality. See HAZARD & DONDI, supra note 38, at 115.

\textsuperscript{215} Id.
At this point there is no widespread practice of comparing and contrasting the Rules of Professional Conduct with other countries codes of legal ethics, let alone teaching comparative legal ethics in law school. Law students in a U.S.-based legal ethics class, such as Professional Responsibility, tend to study the ABA Model Rules, and read cases and treatises to interpret and clarify the rules. A human rights code of conduct can provide important and outstanding points of contrast to the Rules of Professional Conduct which can help students learn and understand the Rules in a more meaningful way.

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

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

This Part provides three detailed illustrations of processes undertaken to draft and adopt a human rights code of conduct: Maryland Legal Aid adopted a human rights code of conduct in 2014 (“The Maryland Legal Aid Guiding Principles for Staff-Client Relationships”); The Center for Human Rights & Humanitarian Law at American University Washington College of Law adopted a human rights code of conduct in 2013 (“Human Rights Principles”); and the Ohio Northern University Legal Clinic adopted a human rights code of conduct in 2015 (“Human Rights Principles for the ONU Legal Clinic”). These individual stories are meant to

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

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


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


221 Id.

provide step-by-step examples of how a public interest law office or law clinic might go about drafting and adopting a human rights code of conduct.

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

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

A. Maryland Legal Aid

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

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

The Local Human Rights Lawyering Project was founded in 2011 by Hadar Harris through a grant from the Ford Foundation. The Local

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225 See Hadar Harris’ Bio, WMC SHESOURCE, http://www.shesource.org/experts/profile/hadar-harris (noting that Hadar Harris was the Executive Director of the Center for Human Rights and Humanitarian Law) (last visited Feb. 24, 2018); see also Local Human Rights Lawyering Project, supra note 224.
226 The Ford Foundation provided funding to support the hiring of staff attorneys at two partner legal aid organizations dedicated to integrating human rights into daily practice for a period of two years. The grant also provided funding for an initial training in Washington, D.C., for five to six staff members from each partner legal aid organization, site visits by the partners to each other’s offices for shared learning opportunities, and a final public event in D.C., as well as for the salary for a Project Director based at the Center for Human Rights & Humanitarian Law. See Local Human Rights Lawyering Project, supra note 224.
Human Rights Lawyering Project was housed at the Center for Human Rights and Humanitarian Law at American University Washington College of Law.227 The core goal of Local Human Rights Project was to normalize human rights at the local level by integrating human rights into the daily work of legal aid attorneys in the United States.228

Particularly, the Project aimed to integrate human rights into three areas of legal-aid work: advocacy on behalf of clients in court and before policymakers, lawyering, and office systems.229 In terms of the second area, lawyering, the Local Human Rights Lawyering Project encouraged its legal aid partners to think about ways to “talk the talk” and “walk the walk,”230 and embody the human rights they were to be promoting.231 It was in this area of lawyering that the idea for a human rights code of conduct was developed.232

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

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227 Local Human Rights Lawyering Project, supra note 224.
228 See id.
229 See id.
230 See Robert H. Chaires et al., Talking the Talk and Walking the Walk of Racial Profiling: A Study of Automobile Checkpoint Law in Three Nations, 16 TEX. HISP. J.L. & POL’Y 87, 89 (2010) (“He can talk the talk, can he walk the walk? Today, that line is often used as a claim, especially in politics, that one can and will do what he says he will do.”) (quoting FULL METAL JACKET (Stanley Kubrick Productions 1987)).
231 See Local Human Rights Lawyering Project, supra note 224.
232 The integration of human rights into office systems will be implicated, but largely not covered in this analysis.
234 See id.
235 See id. at 7 n.1; 42 U.S.C. § 2996b(b) (2012).
236 Texas RioGrande Legal Aid has a great deal of experience applying the Hague Convention in international child abduction cases through its Bi-National Family Violence Project. See Bi-National Project on Family Violence, TEX. RIOGRANDE LEGAL AID, http://www.trla.org/practice-area/bi-national-project-on-family-violence (last visited Feb. 24, 2018). Maryland Legal Aid Bureau, Inc., before joining the Local Human Rights Lawyering
In addition, MDLAB had adopted a human rights framework in 2009 in response to a client needs survey.\textsuperscript{238} Maryland also had at least one state court judge who had been trained at the Aspen Institute,\textsuperscript{239} and other judges that were seemingly open to hearing human rights arguments.\textsuperscript{240}

The legal aid partners were very excited about the prospect of using human rights as an additional advocacy tool.\textsuperscript{241} Both partners were, however, less sure about what it meant to integrate human rights into lawyering and office systems. The Local Human Rights Lawyering Project in 2012, had cited international human rights law in an amicus brief before an appellate court in Maryland. See Brief of Legal Aid Bureau, Inc. et. al. as Amici Curiae Supporting Petitioner at *iii–v, Nickens v. Mount Vernon Realty Grp., LLC, 54 A.3d 742 (Md. 2012) (No. 07), 2012 WL 3051601 (Md.).

\textsuperscript{237} For example, Jennifer Harbury at TRLA is a lawyer, human rights activist, and author. See 

[S]erved as the National Director of the Law Students Civil Rights Research Council . . . from 1972 through 1974 after which he began working as a staff attorney and administrator at North Mississippi Rural Legal Services (NMRLS) in Oxford, MS. In 1975, Mr. Joseph was promoted to the position of Executive Director for [NMRLS]. In 1982 he enrolled in the graduate program at Harvard before joining Legal Services for New York City (previously called Community Action for Legal Services) where he served as consultant and special assistant to the Executive Director from 1983 until 1990. He was later named Director of the Legal Support Unit, a department that was responsible for citywide litigation, training, legislative advocacy and other support services.

\textit{Id.} In addition:

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

\textit{Id.}


\textsuperscript{241} See CTR. FOR HUMAN RIGHTS & HUMANITARIAN LAW, LOCAL HUMAN RIGHTS LAWYERING YEAR 2 REPORT TO THE FORD FOUNDATION (2013) [hereinafter REPORT TO THE FORD FOUNDATION] (on file with author).
hoped that the legal aid partners would include not only attorneys, but all persons within the universe of the legal aid partner organization, including administrative staff, information technology workers, managers, clients, board members, and more, in bringing human rights into lawyering and office systems. These latter goals for the Project were more difficult to navigate, to the point of being almost opaque for the partners.

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

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

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

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242 In response to these requests, the Project drafted the *Human Rights in the U.S.: A Handbook for Legal Aid Attorneys* with assistance from the Project’s Advisory Board. *Local Human Rights Lawyering Project, supra* note 224. The Handbook aimed to be a practical and useable vehicle for getting human rights information into the hands of legal aid staff members and other persons interested in integrating human rights into their everyday work. *Id.; see also Human Rights in the U.S.: A Handbook, supra* note 233.

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

244 Lauren E. Bartlett, the author of this Article, served as the Local Human Rights Lawyering Project Director from 2011–2014.
2. The Human Rights Principles for Legal Aid

In late 2012, the Project Director drafted the *Human Rights Principles for Legal Aid*, below. This draft human rights code of conduct was meant to provide a model to the legal aid partners of what they might do towards fulfilling the Project’s goal of integrating human rights into the client-attorney relationship and law office systems.
THE HUMAN RIGHTS PRINCIPLES FOR LEGAL AID (DRAFTED 9/2012)\textsuperscript{245}

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

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

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

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

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

\textsuperscript{245} A Human Rights Code of Conduct, supra note 220.
The drafting process for the *Human Rights Principles for Legal Aid* was simple but time consuming. The Project Director began by reviewing a number of social work codes of ethics that integrate human rights principles.246 A written code of conduct seemed to be a practical method for explaining which human rights principles might apply to lawyering and how. In addition, legal aid attorneys could keep a written code of conduct on hand or post the code of conduct near their desks to reflect upon during interactions with clients by phone and in person. The social work codes of ethics were used as models,247 and a lengthy process of comparing and contrasting the ABA Model Rules of Professional Responsibility and the Universal Declaration of Human Rights commenced. A lengthy treatise was drafted, which was eventually cut down to the five categories above.248

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

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

After MDLAB received the draft *Human Rights Principles for Legal Aid*, there were several discussions about the Principles and the accompanying treatise among the attorneys and other staff involved in the MDLAB Human Rights Workgroup, as well as senior management. MDLAB decided that it would like to draft its own human rights code of conduct. In addition, the attorneys and senior management at MDLAB felt strongly that a human rights code of conduct should be developed by and

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248 LAUREN E. BARTLETT, HUMAN RIGHTS PRINCIPLES FOR LEGAL AID (2012) (on file with author). See also infra Part V.A.2.
249 Drafts of the Human Rights Principles of Legal Aid were reviewed by over 50 legal aid attorneys and human rights law practitioners, including the Local Human Rights Lawyering Partners and Advisory Board members, colleagues, and law students at American University Washington College of Law.
250 Once the Human Rights Principles for Legal Aid were drafted, a new section, Section 3.6, was added to Handbook for Legal Aid Attorneys. See *Human Rights in the U.S.: A Handbook*, supra note 233, at 31–32.
apply to all staff, not just the legal professionals. MDLAB wanted as many staff members as possible to be involved in the development of the human rights code of conduct as both an educational and team-building experience. It also felt that the staff would be much more dedicated to a code of conduct that was developed internally through an inclusive process.

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

An organization-wide human rights code of conduct committee was later formed by MDLAB. That committee compiled all of the notes from the human rights day trainings and drafted a code of conduct which was circulated to all staff members at MDLAB for comments. Drafts were also shared with MDLAB clients for their input. The final version of the MDLAB human rights code of conduct, titled the *Maryland Legal Aid Guiding Principles for Staff-Client Relationships*, was adopted in early 2014, more than two years after the process initially began. MDLAB then turned the *Guiding Principles* document into posters, which were displayed in offices across the state.

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

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

253 MD. LEGAL AID, MARYLAND LEGAL AID GUIDING PRINCIPLES FOR STAFF-CLIENT RELATIONSHIPS (2014) (on file with author).
B. The Center for Human Rights & Humanitarian Law at American University Washington College of Law

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

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

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

The Center finalized its draft in late 2013 and the *Center’s Human Rights Principles* were posted on its website.\(^\text{259}\) The Center began periodically reviewing its Human Rights Principles at staff meetings on a regular basis. In addition, when facing big decisions made or conflicts between staff, the *Center’s Human Rights Principles* were reviewed to make sure that conduct was in line with the Principles. For the staff at the Center, the process of drafting and then periodically reviewing the Principles underlined the need for those working in human rights to intentionally practice applying human rights principles to daily decision

\(^{254}\) *A Human Rights Code of Conduct*, supra note 220.

\(^{255}\) See Chaires, supra note 230, at 89.

\(^{256}\) See supra Part V.A.2.


\(^{258}\) *A Human Rights Code of Conduct*, supra note 220.

making and interpersonal relationships. The Center’s Human Rights Principles underlined what it truly meant to be a human rights advocate.

C. Ohio Northern University Legal Clinic

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

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

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

The next session was designed to mirror the MDLAB drafting process. The students were broken up into four groups. The groups were told to pull out and discuss some of the major themes in the Universal Declaration of Human Rights that were applicable to the relationships between student and supervisor, student and student, and student and client. The students were then given Post-It notes and were directed to individually write on the Post-It what they each thought were the most important human rights


\[261\] Human Rights Code of Conduct II, the Sequel, supra note 222.

\[262\] See Law Clinics and Externship Programs, OHIO N. UNIV. PETTIT COLL. OF LAW, http://law.onu.edu/academics/clinical-programs (last visited Feb. 24, 2018). The ONU Legal Clinic does not require a corresponding seminar. Instead, any teaching, as well as case rounds, are confined to weekly, mandatory, one-hour, rounds sessions. See id.
principles relevant to lawyering. The students then stuck the Post-Its on a wall and were told to try to organize the Post-Its according to theme or principle. By the end of that session, the students had come up with the six headings or categories: “Openness,” “Equality,” “Integrity and Best Judgment,” “Dignity and Respect,” “Kindness,” and “Empowerment.”

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

Ideally, the Human Rights Principles for the ONU Legal Clinic would have been posted at student workstations, in the clinic lobby, and in supervisors’ offices, as a reminder for both students and staff. The students did not actually post copies of the Principles in and around the law clinic that semester, for a variety of outside reasons, including an imminent move by the clinic to a new location, though they did refer to the Principles during supervision, rounds, and clinic evaluation conversations. It would have also been a good idea to include the other clinic staff, including the clinic’s staff attorney and paralegal, in the drafting process, but due to the timing of these sessions in fall of 2015, neither was able to participate.

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

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

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

CONCLUSION

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

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

As a very important U.S. icon once said, “if you wanna make the world a better place take a look at yourself, and then make a change.”

Legal practitioners dedicated to high ethical integrity and human rights should consider adopting a human rights code of conduct for their public interest law office or law clinic using the guidance provided in this Article.

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