Saint Louis University Law Journal

Volume 67
Number 1 *The Symposium Issue (Fall 2022)*

Article 3

2022

A Taxonomy of Professional Identity Formation

Harmony Decosimo
Suffolk University Law School, hdecosimo@suffolk.edu

Follow this and additional works at: https://scholarship.law.slu.edu/lj

 Part of the Law Commons

Recommended Citation

Harmony Decosimo, *A Taxonomy of Professional Identity Formation*, 67 St. Louis U. L.J. (2022).
Available at: https://scholarship.law.slu.edu/lj/vol67/iss1/3

This The Symposium Issue is brought to you for free and open access by Scholarship Commons. It has been accepted for inclusion in Saint Louis University Law Journal by an authorized editor of Scholarship Commons. For more information, please contact Susie Lee.

A TAXONOMY OF PROFESSIONAL IDENTITY FORMATION

HARMONY DECOSIMO*

ABSTRACT

Following the ABA's mandate requiring law schools provide students with opportunities for "professional identity formation," this article seeks to clarify and loosely taxonomize the field of professional identity formation as it is being advanced by scholars and employed in U.S. law schools. By organizing this varied and somewhat muddled field into three dominant types or approaches and examining the primary and sometimes hidden goals of each, this article raises for review the potential pitfalls in this project, including the possibility of coercion, impotence, or waste. Ultimately, this article aims to pave the way for more constructive, transparent, and fruitful dialogue and debate as law schools strategically plan how best to engage in the professional identity formation of future lawyers.

* Assistant Professor of Legal Practice Skills, Suffolk University Law School. JD, University of Pennsylvania Law School. I am grateful to Dyane O'Leary, David Decosimo, and Stephen Cody, for their thoughtful comments and conversation, and to Suffolk Law for providing a faculty research grant to support work on this article. Thanks also to the Southeastern Association of Law Schools for the opportunity to workshop this article at its conference and to the very fine participants who offered generous and helpful feedback. Finally, I am indebted to my extraordinary research assistant, Rachel Record, for her invaluable contributions and sustained commitment, and to Sam Alen and Matthew Wolfe for citation and research support.

Both legal education and the legal profession have been under pressure to reform for many years, from a multiplicity of voices, for a host of sometimes intersecting, sometimes conflicting, reasons. Increasingly, "professional identity formation" has been identified in legal education as the vehicle for that reform, as a salvific path toward something better, truer, more holistic, for students and professionals alike.

Yet "professional identity formation" is an infinitely open-ended concept, being pioneered and defined simultaneously by a diverse array of stakeholders with a variety of goals that range from the mundane to the controversial. Indeed, what formation of lawyers should aim at or concern seems to largely depend on the specific issue or ill that one cares about most and brings most vividly into view. Consider three:

First, in 2016, a study funded by the American Bar Association and the Hazelden Betty Ford Foundation surveyed nearly 13,000 lawyers and found "[s]ubstantial rates of behavioral health problems," including alcohol dependency, depression, and anxiety.[1] In response, the ABA, in partnership with the National Organization of Bar Counsel and the Association of Professional Responsibility Lawyers, created a National Task Force on Lawyer Well-Being that, in 2017, issued a set of recommendations on how to improve well-being in the legal profession.[2] Unsurprisingly, the report identified law schools as key players in improving not only law student but lawyer well-being, and recommended that the ABA "require law schools to create well-being education as a criterion for ABA accreditation."[3]

Second, in early 2021, deans from 171 U.S. law schools signed an open letter recognizing "with dismay and sorrow" the role that lawyers played in bringing about the January 6th attack on the United States capitol building.[4] That role, according to the letter, involved bad faith legal challenges to the outcome of the presidential election spearheaded by lawyers acting in a traditional, representative, capacity.[5] But, it also involved lawyers in high profile but nonrepresentative positions willingly participating in electoral disinformation campaigns, including blatantly lying about the nature of the country's "bedrock

1. Patrick R. Krill, Ryan Johnson, & Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, J. ADDICTION MED., Jan.-Feb. 2016, at 46, 46.

2. *See generally* Nat'l Task Force on Lawyer Well-Being, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* 11 (2017), https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportFINAL.pdf [https://perma.cc/2ELF-5GYL] [hereinafter ABA Task Force Report].

3. *Id.* at 27.

4. Law Deans Joint Statement on the 2020 Election and Events at the Capitol (Jan. 12, 2021), https://law.yale.edu/sites/default/files/documents/pdf/law_deans_joint_statement_1.12.21_final.pdf [https://perma.cc/EE7Q-RBRF].

5. *See id*.

political institutions."[6] Because this nonrepresentative behavior occurred outside of the bounds of the lawyer-client relationship and the rules of professional conduct, it was largely unregulatable by official legal licensing associations. As such, this crisis in American political life turned a spotlight yet again on law schools, and on whether they were recognizing and fulfilling their duty to produce not only competent practitioners, but moral public citizen-leaders who could regulate themselves.[7]

Finally, in May of 2020, an unarmed Black man named George Floyd was murdered by a white police officer.[8] Within days, thousands of people across the United States took to the streets to express their sorrow and anger and to more generally protest police brutality and racially-motivated violence.[9] The following month, in response to these events and in partnership with the Association of American Law Schools, five law school deans launched the Law Deans Antiracist Clearinghouse Project, to help law schools "develop remedies for these and other complex issues."[10] At the same time, an overlapping group of deans began to "push for an ABA requirement on anti-bias and antiracism education and training" for law students.[11] As of February 2022, a version of that requirement has been adopted by the ABA, and is widely considered to form one of the values that professional identity formation is meant to inculcate.[12]

6. *See* Andrew Perlman, *The Legal Ethics of Lying About American Democracy*, *in* BEYOND IMAGINATION? THE JANUARY 6 INSURRECTION 3, 3 (West Acad. Publ'g ed. 2022).

7. *See, e.g.*, Deborah L. Rhode, *Lawyers as Citizens*, 50 WM. & MARY L. REV. 1323, 1323–24 (2009) ("The centrality of law and lawyers in American culture has inspired a vast literature on the civic obligations of the profession. Although this nation may not have the world's most developed sense of attorneys' public responsibilities, it undoubtedly has the most extensive commentary on the subject.").

8. Christine Hauser, Derrick Bryson Taylor & Neil Vigdor, '*I Can't Breathe': 4 Minneapolis Officers Fired After Black Man Dies in Custody*, N.Y. TIMES (Aug. 11, 2022), https://www.nytimes.com/2020/05/26/us/minneapolis-police-man-died.html [https://perma.cc/S5CH-WQ86].

9. *See* Derrick Bryson Taylor, *George Floyd Protests: A Timeline*, N.Y. TIMES (Nov. 5, 2021), https://www.nytimes.com/article/george-floyd-protests-timeline.html [https://perma.cc/Q86N-BEKR].

10. *Law School Deans Create Antiracist Clearinghouse*, ASS'N AM. L. SCHS., https://www.aals.org/about/publications/newsletters/aals-news-summer-2020/law-deans-create-new-resource-to-help-law-schools-address-systemic-racism/ [https://perma.cc/URF2-QJZL] (last visited Oct. 7, 2022).

11. *Id.*

12. *See* Memorandum from the ABA Council of the Section of Legal Educ. & Admissions to the Bar to the A.B.A. Standards Comm. (Aug. 16, 2021) (on file with the Am. Bar Ass'n) (outlining proposed change to Interpretation 303–06) [hereinafter ABA Memorandum on Standard 303]; *see also* Neil W. Hamilton & Louis D. Bilionis, *Revised ABA Standards 303(b) and (c) and the Formation of a Lawyer's Professional Identity, Part 1: Understanding the New Requirements*, NALP (May 2022), https://www.nalp.org/revised-aba-standards-part-1 [https://perma.cc/AP23-S3HN].

These are but three examples of where, for many stakeholders, in very practical and real-world ways, legal education is still coming up short, and professional identity formation initiatives may help bridge the gap. There are more. And, while good intentions abound, so too do possibilities for coercion, confusion, or simply bad curricular decisions.

Indeed, professional identity formation is now not only encouraged, but required by the American Bar Association. Its accreditation standards - specifically, Standard 303, which governs the law school curriculum - have now been formally revised to that effect. As a result, many schools will opt to create and mandate courses or programs to meet this requirement.

Yet that intentional work will involve significant value-judgments relative to ends and strategic choices relative to means. It will potentially implicate *other* values, such as academic freedom, inclusion, and choice. It will not necessarily be neutral.

Students and faculty alike deserve clarity and transparency about what their institutions are doing in this regard, and why. What do they mean when they use the term, "professional identity formation"? What are their goals? What *should* they be? Who gets to decide, and what interests or agenda will guide them?

This article aims to provide some of that clarity and transparency by providing the first-of-its-kind taxonomy of professional identity formation, categorizing it into three dominant approaches. It examines each approach to reveal its lineage, priorities, and pitfalls, and, in doing so, identifies key questions and considerations law schools should engage as they determine how to incorporate various modes of professional identity formation into their curriculum or culture.

The purpose of this article is not to resolve tensions between competing goods, make decisions about how to prioritize them, or evaluate the way specific programs have done so. It is instead to provide a clearer and more tangible way of discussing the options in play, a vocabulary and framework from which values can be weighed and choices made.

This article proceeds in four parts. Part I traces the history and relevance of professional identity formation in legal education, beginning with the publication of the highly influential MacCrate Report in 1992, and the Carnegie Foundation Report on Legal Education in 2007. Part II discusses the complexity of defining "professional identity formation," a task that has assumed significantly more import since the ABA revised its curricular standards to mandate it in law school. Part III steps into the definitional haze by taxonomizing professional identity formation into three dominant approaches, each characterized by its distinctive focus and end: value, well-being, and competency. One at a time, it examines each approach, tracing its lineage and revealing its pitfalls. Finally, before concluding, Part IV lays out the questions and concerns that the implementation of each or all of these approaches should raise for stakeholders.

I. THE RISE OF PROFESSIONAL IDENTITY FORMATION IN LEGAL EDUCATION

Since Christopher Langdell introduced Harvard Law students to the casebook method near the beginning of the twentieth century,[13] American law schools have largely educated in lockstep. Professors who, as critics observe, have in many cases "never been on the bench or at the bar,"[14] teach their students to "think like lawyers" primarily by way of a dialectical conversation that is meant to develop analytical reasoning and problem-solving skills.[15] While approaches vary across faculty and schools, the general shape of legal education in America has been recognizable and consistent since the turn of the century.

Yet the primary methods by which law schools shape both individual lawyers and the profession itself have been under scrutiny nearly as long they have been in practice. For critics, the Langdellian model of legal education is overly focused on the cognitive and theoretical, inappropriately detached from the ethical and political, and blithely unresponsive to the practical demands of every day professional life.[16] Various reforms have been suggested and some implemented over the last thirty years in response to these critiques, the most significant up to this point the addition of substantial practical skills-based or experiential education to the law school curriculum.

Specifically, in 1992, the American Bar Association Task Force on Law Schools and the Profession issued a report that has been described as "the greatest proposed paradigm shift in legal education since Langdell envisioned legal education as the pursuit of legal science through the case method in the late 19th century."[17] That report, commonly known after its author as the MacCrate Report, called on law schools to rethink and reorient their educational aims to the practical, everyday demands of the legal profession and the values of professional lawyering.[18] The report's publication ushered in significant discussion around the role of practical skills training and clinical education in

13. *See* ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S 52, 63 (1983).

14. ARTHUR SUTHERLAND, THE LAW AT HARVARD 184 (1967).

15. Elizabeth Garrett, *Becoming Lawyers: The Role of the Socratic Method in Modern Law Schools*, 1 GREEN BAG 199, 201 (1998) ("The goal [of the Socratic Method] is to learn how to analyze legal problems, to reason by analogy, to think critically about one's own arguments and those put forth by others, and to understand the effect of the law on those subject to it.").

16. *See, e.g.*, Jerome Frank, *Both Ends Against the Middle*, 100 U. PA. L. REV. 20, 29–31 (1951) (arguing that the Langdellian model of legal education fails to prepare students for the practical work of lawyering, particularly at the trial level, and proposing a clinical model of education instead).

17. Wallace Loh, *The MacCrate Report—Heuristic or Prescriptive?*, 69 WASH. L. REV. 505, 505 (1994).

18. *See* ROBERT MACCRATE ET AL., LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM 5, 8, 261–62 (1992) [hereinafter MacCrate Report] (urging changes to the ABA Standards such that law schools not only prepare graduates for the bar, but "to participate effectively in the legal profession").

law schools.[19] Ultimately, in response to the report and the reflection on legal education that it generated, the ABA amended its curricular requirements to ensure that all law schools provide students with "substantial instruction" in the professional skills "necessary for effective and responsible participation in the legal profession."[20] For Robert MacCrate himself, these amendments demonstrated a growing consensus that "education in lawyering skills and professional values is central to the mission of law schools."[21]

Whether or not MacCrate's consensus existed then or does now, his report's legacy was to significantly enhance the place of clinical work and bolster the role of clinical and legal skills faculty within legal academia.[22] While this reform was responsive to the generalized complaint that legal education ignored the development of practical lawyerly competency, it did little to address calls for increased inculcation in virtue or values.[23] A subsequent report seems poised to have an even greater impact on legal education reform in that regard.[24]

Indeed, in 2007, the Carnegie Foundation issued what continues to be a highly influential report on the status of legal education.[25] The report contended that because law school "provides the single experience that virtually all legal professionals share," and is "where the profession puts its defining values and exemplars on display," it is law schools that must take responsibility for not only teaching students the law, but for intentionally and appropriately forming students into good lawyers, and by extension, forming the legal profession to be good itself.[26]

Yet, after engaging in an extensive field study of 16 law schools, the report concluded that law schools were largely failing at this task. Specifically, the report conceded that law schools were succeeding at teaching students to "think like a lawyer," insofar as that involved "seeing both sides of legal arguments, … sifting through facts and precedent, and … understanding the applications and

19. *See, e.g.*, Peter A. Joy, *The Uneasy History of Experiential Education in U.S. Law Schools*, 122 DICK. L. REV. 551, 570–74 (2018).

20. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, A.B.A., ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS 18–19 (AM. BAR ASS'N, 2005-2006 ed.).

21. Robert MacCrate, *Yesterday, Today and Tomorrow: Building the Continuum of Legal Education and Professional Development*, 10 CLINICAL L. REV. 805, 819 (2004).

22. Bryant G. Garth, *From MacCrate to Carnegie: Very Different Movements for Curricular Reform*, 17 LEGAL WRITING: J. LEGAL WRITING INST. 261, 262 (2011).

23. *See, e.g.*, Russell G. Pearce, *MacCrate's Missed Opportunity: The MacCrate Report's Failure to Advance Professional Values*, 23 PACE L. REV. 575, 575–76 (2003) (noting that the MacCrate Report significantly impacted lawyering skills but not values, which it made a "low priority").

24. *See* Garth, *supra* note 22, at 262.

25. *See generally* WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 15–16 (2007) [hereinafter *Carnegie Report*].

26. *Id.* at 2, 4.

conflicts of legal rules."[27] But, it argued that the traditional mode of case-dialogue teaching not only minimized attention to "social needs or matters of justice," but essentially extinguished students' "moral concerns."[28] In essence, the report concluded that law students were learning how to do legal analysis, but not how to serve clients well or, perhaps more importantly, to lawyer from a solid ethical grounding. In sum, according to the report, the legal profession, "fundamental to the flourishing of American democracy,"[29] is "suffering from varying degrees of confusion and demoralization."[30]

The report concluded by urging law schools to adopt an integrated three-part curriculum that focuses not only on teaching the cognitive—espoused by Langdell—and the practical—urged by MacCrate—but the "ethical-social."[31] This third piece, according to the report, was all but missing from legal education, and it involved "emphasis on inculcation of the identity, values and dispositions consonant with the fundamental purposes of the legal profession."[32] In other words, the Carnegie Report called for law schools to engage in professional identity formation. While this call was drenched in the language of values, of educating "toward a central moral tradition of lawyering,"[33] it left much of the detail up to interpretation, and the implementation up to debate.

II. DEFINITIONAL HAZE

In the fifteen years since the Carnegie Report landed at the feet of U.S. law schools, the call for the incorporation of professional identity formation into legal education has blossomed into something like a legal education movement with adherents supporting any number of curricular reforms.[34] What was once perhaps a minority concern in the law school curriculum has birthed multiple AALS sections, administrative positions, symposiums, and, increasingly, significant scholarship.[35]

27. *Id.* at 186.

28. *Id.* at 187.

29. William M. Sullivan et al., *Summary: Educating Lawyers: Preparation for the Profession of Law*, CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING 2 (2017), http://archive.carnegiefoundation.org/publications/pdfs/elibrary/elibrary_pdf_632.pdf [https://perma.cc/65YR-FW4J].

30. *Carnegie Report*, *supra* note 25, at 19.

31. *Id.* at 182–83.

32. *Id.* at 194.

33. *Id.* at 140.

34. William M. Sullivan, *Professional Formation as Social Movement*, 23 PROF. LAW. 26, 27 (2015).

35. For an overview of some of that scholarship, *see, e.g.*, Susan L. Brooks, *Fostering Wholehearted Lawyers: Practical Guidance for Supporting Law Students' Professional Identity Formation*, 14 U. ST. THOMAS L.J. 412, 416 (2018). Representative symposia include Symposium, *Professional Identity Formation and its Pedagogy*, UMKC L. REV. 487 (2021) and Symposium, *Educational Interventions to Cultivate Professional Identity in Law Students*, MERCER L. REV. 579

In February of 2022, the ABA officially threw their support behind this movement by requiring law schools to incorporate "substantial opportunities to students for … the development of a professional identity" into the curriculum.[36] For many, this requirement was long overdue. In their eyes, it promises a future where law schools will pursue professional identity formation with "the intentionality and drive for excellence" that it is due.[37] Others, as we will see, have been less enthusiastic, worrying that in its vagueness and open-endedness,[38] the concept of professional identity formation could become a means to coerce, or simply a redundant or unnecessary waste of students' energy and time.

Either way, requiring professional identity formation opportunities will likely mean an increase in many things – not only institutional intentionality, but allocation of resources, class time, scholarship, and innovations in pedagogy, to name a few. Yet, what the actual work of "professional identity formation" in legal education actually is, should encompass, or should prioritize, is difficult to discern, or at least, to readily agree upon.[39]

In fact, the Carnegie Report itself does not define "professional identity formation," leaving open many questions about how to pursue it. When it does use the term, it tends toward ambiguity, referring both to the specific, moral-

(2016); Robert Corrada & David Thomson, *Educating Tomorrow's Lawyers: Report on the 2012 Conference and Introduction to the 2013 Conference*, IIALS (2012).

36. ABA Memorandum on Standard 303, *supra* note 12, at 3.

37. *See, e.g.*, Louis D. Bilionis, *Bringing Purposefulness to the American Law School's Support of Professional Identity Formation*, 14 U. ST. THOMAS L.J. 480, 480–82 (2018).

38. The ABA's new interpretation to 303-05 broadly defines professional identity and formation as follows:

> [W]hat it means to be a lawyer and the special obligations lawyers have to their clients and society. The development of a professional identity should involve an intentional exploration of the values, guiding principles, and well-being practices considered foundational to successful legal practice. Because developing a professional identity requires reflection and growth over time, students should have frequent opportunities for such development during each year of law school and in a variety of courses and co-curricular and professional development activities.

ABA Memorandum on Standard 303, *supra* note 12, at 3.

39. *See, e.g.*, Daisy Hurst Floyd, *Practical Wisdom: Reimagining Legal Education*, 10 U. ST. THOMAS L.J. 195, 202 (2012) (noting that while many legal educators agree on the need to assist students in developing their professional identities, "we have not yet settled on finding the right adjective for the kind of professional identity we seek…. Is our goal a *healthy* professional identity, a *strong* or *positive* or *ethical* one, or, to borrow from the professionalism movement, are we seeking a *professional* professional identity?") (emphasis in original); Benjamin V. Madison, III, & Larry O. Natt Gantt, II, *The Emperor Has No Clothes, but Does Anyone Really Care? How Law Schools Are Failing to Develop Students' Professional Identity and Practical Judgment*, 27 REGENT U. L. REV. 339, 344 (2015) ("Scholars have already had difficulty agreeing on a definition of 'professionalism.' It should be no surprise, then, that 'professional identity' has required clarification. The phrase is not clearly defined even within the seminal reports introducing the concept.").

ethical education of law students, and to the general "desired outcome of a sound legal education," which, according to the Carnegie Report, is measured by the degree to which it integrates "the cognitive, practical, and normative…."[40]

Further, the Carnegie Report seems to conflate, in at least some ways, professional identity formation and "professionalism." Yet some scholars of professional identity formation have insisted that these two concepts are not the same—that professional identity formation runs much deeper, concerned not only with professional rule-following or behavior, but with the internal motivation from which professional behavior emanates.[41] At the same time, other scholars have indicated that professional identity formation should or could at least *include* providing new lawyers with the "soft skills of the law,"[42] an "understanding of professional culture," and "the ability to fit in with that culture."[43]

But digging deeper into what it means to properly teach students to "fit in" or assimilate to professional legal culture further reveals the expansiveness and slipperiness of the professional identity formation concept, and the simmering debates about what values it should prize or prioritize. "Fitting in," some scholars emphasize, should never be at the expense of or in conflict with one's "inner you," or "moral compass," and developing that compass should be at the heart of the formation project.[44] For other scholars, the idea of fitting in is itself suspect, as the formation of a professional identity should be most significantly informed by and consonant with one's personal identity—including one's lived experience as a person of, among other things, a particular race, gender, or socioeconomic class.[45] Relatedly and for still others, fitting in is the antithesis of what formation in professional identity should be about. Instead, it should be

40. Floyd, *supra* note 39, at 201–02.

41. Madison & Gantt, *supra* note 39, at 344 ("One thing, however, is clear: professionalism and professional identity formation are not the same thing.").

42. Susan Swaim Daicoff, *Lawyer, Form Thyself: Professional Identity Formation Strategies in Legal Education Through "Soft Skills" Training, Ethics, and Experiential Courses*, 27 REGENT U. L. REV. 205, 207 (2015) (internal quotation marks omitted).

43. Laura A. Webb, *Speaking the Truth: Supporting Authentic Advocacy with Professional Identity Formation*, 20 NEV. L.J. 1079, 1131 (2020).

44. E. SCOTT FRUEHWALD, DEVELOPING YOUR PROFESSIONAL IDENTITY: CREATING YOUR INNER LAWYER vii-viii (2d ed. 2020).

45. CARRIE YANG COSTELLO, PROFESSIONAL IDENTITY CRISIS: RACE, CLASS, GENDER, AND SUCCESS AT PROFESSIONAL SCHOOLS 25–26 (1st ed. 2005).

conceived of as a path toward remaking or reforming the legal profession,[46] or, perhaps in the meantime, assisting students in coping with its inherent toxicity.[47]

In other words, what it means to form a lawyerly professional identity and to form it well is debatable and so expansive by some accounts as to be almost entirely in the eye of the beholder. It is a curricular requirement actively in search of a definition—with many competing voices ready to stipulate what the definition ought to be. Yet pedagogical choices simply must be made at the law school level about what goals to prioritize and why.

But who will make those choices? How, at a given institution, will professional identity formation be manageably defined and assessed? Which goals of formation will it prioritize? As Daisy Hurst Floyd put it, "[i]s our goal a *healthy* professional identity, a *strong* or *positive* or *ethical* one, or, to borrow from the professionalism movement, are we seeking a *professional* professional identity?"[48] Further, how will the selection of these goals impact student agency and academic freedom?

To be clear, this is not simply an academic question. Some students may jump at the chance to take a course in law school that teaches mindfulness techniques, stress management, and general wellness practices. But should such a course be required? What if a professor believes law should not be approached primarily through the lens of race. Will they be required to engage in formation efforts that prioritize the development of students' racial identities and critical racial consciousnesses? When professional identity formation efforts are folded into required course work, much is at stake. But even when they are not, they will certainly draw on significant institutional resources and, domino-like, impact much else, including course options, hiring decisions, and institutional culture and expectations.

As both resources and intention are funneled towards professional identity formation work, clarity, honesty, and specificity about the goals pursued and the values prioritized will be critical for maintaining institutional integrity, faculty agency, and student buy-in.[49]

46. *See, e.g.*, L. Danielle Tully, *Professional Identity Formation as a Power Skill*, 1 PROC. 19, 20 (2020) (arguing for the use of professional identity formation pedagogical practices as part of a project of "[c]hallenging the White-normative professional identity framework," which is "essential to rebuilding the legal profession").

47. *See, e.g.*, SHAILINI JANDIAL GEORGE, THE LAW STUDENT'S GUIDE TO DOING WELL AND BEING WELL 6–7 (2021).

48. Floyd, *supra* note 39, at 202 (emphasis in original).

49. *See* Bilionis, *supra* note 37, at 486 ("From the standpoint of ensuring purposefulness, the choices made matter less than the reasons for them. Let those reasons be clear and honest, and open and accountable to the interests of all concerned, including students and the external stakeholders that entrust law schools with the responsibility for legal education.").

III. A TAXONOMY OF PROFESSIONAL IDENTITY FORMATION

Because "professional identity formation" is such an expansive concept, critically and thoughtfully examining and assessing it will first require taxonomizing it.[50] This section provides that taxonomy, laying out the three dominant approaches to professional identity formation, named for their primary area of concern: value, well-being, and competency. This section does not attempt to catalog every iteration of professional identity formation occurring or envisioned in legal education, but rather to provide a framework for thinking about the dominant approaches.

Further, this article does not argue that these approaches occur or are subscribed to in a stand-alone fashion or that they are mutually exclusive. In fact, much professional identity formation work tends to involve mixing, choosing from, and sometimes conflating each approach. But it is useful, in forming an intentional program or system, to take these approaches and their substantive goals apart and consider them on their own terms before choosing from or mixing them back together.

By examining each approach's primary qualities, commitments, and pitfalls, this section aims not to render judgment on any one, but to provide a more helpful framework for consideration of whether and where each fit in an intentional program of professional identity formation, and where each might fall short.

a. Prioritizing Values: Ethics, Ideals, and Meaning

The first dominant approach to professional identity formation in legal education is the most ideologically freighted, at least where it builds and attempts to inculcate certain debated and substantive values. It is focused on forming lawyers with a specific worldview and related set of values who,

50. Legal scholarship and legal scholars are obviously not the same as the animal kingdom or a table of elements and are clearly not "taxonomizable" in the same way. Human thought and theory bear all the ambiguities of human behavior generally. Nevertheless, sufficiently clear patterns can be detected in scholarship and practice in many areas of human inquiry, and this one is no exception. The approach I use here, in examining those patterns, is an inductive one, employing what the sociologist Max Weber calls the method of ideal types. *See, e.g.*, Sung Ho Kim, *Max Weber*, STAN. ENCYC. PHIL. (Sept. 21, 2022), https://plato.stanford.edu/entries/weber/#:~:text=According%20to%20Weber%27s%20definition%2C%20"an,"utopia%20%5Bthat%5D%20cannot%20be [http://perma.cc/6S4F-H9W7] (explaining Weber's methodology). My goal and the goal of this kind of approach is not to provide an exhaustive listing of every theory or approach to professional identity formation. It is not to give equal time and representation to every person engaged in thinking about or writing in this field. It is not to present the history and definition of professional identity formation that each interested party would articulate as their own. Instead, it is to step back and offer as accurate and even-handed analysis as I can of what the field looks like now, and where it is headed. It is to identify and organize the patterns, commitments, motives, and trends in the field into categories or types that can, by that organization, be more readily studied, assessed, and engaged.

consequently, do a specific kind of lawyering. This approach cares most about who lawyers are deep down—what they believe and how they see the world. Examples of this approach include efforts to train students in virtue ethics or practical wisdom, to identify and integrate explicitly religious values into professional identity formation, or to inculcate critical race consciousness in students to help them develop an explicitly antiracist professional identity.

Of all the dominant approaches, the value-centric approach arguably hews most closely to the Carnegie Report's call for a "third apprenticeship"[51] of meaning and purpose and to the interpretation to Standard 303 that explicitly names the exploration of values as at the heart of professional identity formation.[52]

There are a wide range of sub-approaches that could fit under the broader value-centric rubric. At one end of the spectrum might be approaches that are entirely about helping students simply get clear on what their own values are—however diverse and even objectionable they may be—and encouraging them to lawyer in accord with them, incorporating them into their career plans and practice. This might be called the value-clarification approach. At the other end are approaches that refer to and seek to integrate an external set of substantive values. This might be called the value-inculcation approach. Whether students initially and internally recognize or affirm those substantive values is of less concern than that they come through the formation process inculcated in them, possessing a particular politico-ethical vision for themselves and the profession they will soon join.

In theory, the value-clarification approach has, as its goal, the formation of lawyers who are self-reflectively in touch with their own value system or moral compass, and who are able to act with reference to that compass in their professional lives.[53] In other words, the goal is forming lawyers who have a kind of self-aware and deliberate integrity—that is, they know with clarity what their fundamental priorities and values are, and are able to call on them in a variety of circumstances, leading ultimately to harmony between their beliefs and actions across both their personal and professional lives. This approach may be

51. *See Carnegie Report*, *supra* note 25, at 28 (outlining third apprenticeship).

52. *See* ABA Memorandum on Standard 303, *supra* note 12, at 7; Michelle Weyenberg, *ABA passes revisions to accreditation standards*, NAT'L JURIST (Apr. 5, 2022, 10:00 AM), https://nationaljurist.com/national-jurist/news/aba-passes-revisions-to-accreditation-standards/ [https://perma.cc/N3LG-MEZZ] (noting passage of revisions to ABA standards).

53. *See, e.g.*, E. Scott Fruehwald, *Developing Law Students' Professional Identities*, 37 U. LA VERNE L. REV. 1, 18–22 (2015) (emphasizing how important it is for students to "develop their own values and views," and learn to understand their "personal morality and how they would react in [a] particular situation" as part of effective professional identity formation).

attractive to some, as it avoids any worries about indoctrination or violation of the ethical or moral autonomy of students.[54]

However, increasingly more common than value clarification are those substantive value approaches that seek to identify and inculcate a particular set of norms. Indeed, in practice, even the value-clarification approach can easily gravitate towards value inculcation rather than simple reflection.[55] And this makes sense. "Integrity" without more merely means formal or perhaps reasoned agreement between belief and action.[56] It does not specify the content of those beliefs. As professors encounter student values they judge to be wrongheaded and destructive—profit maximization at all costs, for example—they almost inevitably will offer correctives.

The value-inculcation approach to formation seeks not mere integrity or non-hypocrisy in professional identity, but *righteous* professional identity. Scholars of the virtue ethics approach to formation have been very open about this, noting that "not all professional identities are created equal," that some are actually "corrosive," and that their goal is for students to "develop professional

54. This approach is also likely to have overlap with, or collapse into, those that are primarily about career satisfaction or fit, rather than values per se. These approaches, detailed to some extent in Part III (c), are more focused on helping students identify and hone their own strengths, values, or interests, in order to have satisfying professional lives. One example might be Wake Forest's Fall 2019 Professional Development course, taught by Wake Forest Law's career counseling staff, which uses various tools to help students discover their "individual values, strengths, and interests," in order to "pursue employment on your chosen path." *See* Syllabus for Wake Forest University Law School LAW 122: Professional Development 1 (2020) (on file with the Holloran Center at St. Thomas University).

55. Within the literature, there are some protestations that value-centric formation is not about teaching external values, but about helping students identify their own. Yet, it seems clear that law students would need to learn exactly what those values are that are foundational to the successful practice of law—as required by ABA Interpretation 303-05—and that, as this section goes on to argue, not all of them would be native to a given law student or agreed upon by all law students (or faculty). *See* ABA Memorandum on Standard 303, *supra* note 12, at 7 (outlining proposed change to Interpretation 303-05).

56. *See, e.g.*, Deborah L. Rhode, *If Integrity Is the Answer, What Is the Question*?, 72 FORDHAM L. REV. 333, 335–36 (2003):

> At a minimum, persons of integrity are individuals whose practices are consistent with their principles, even in the face of strong countervailing pressures. Yet the term also implies something more than steadfastness. Fanatics may be loyal to their values, but we do not praise them for integrity. What earns our praise is a willingness to adhere to values that reflect some reasoned deliberation, based on logical assessment of relevant evidence and competing views.

For a discussion of the substantive vision Rhode—and others—have in mind when they laud "integrity," *see* Sharon Dolovich, *Ethical Lawyering and the Possibility of Integrity*, 70 FORDHAM L. REV. 1629, 1629–30 (2002).

identities that will enable them to be *good* lawyers, help others, and find fulfillment in their vocation."[57]

Yet, just as we can identify a spectrum running from value-clarification to value-inculcation, we can identify a further, quite significant spectrum within the value-inculcation approach itself. This spectrum runs the gamut from the inculcation of values that are relatively uncontroversial, universal, or endorsed by people across a wide range of belief systems, to those that are more individualistic, novel, or controversial—such as particular religious commitments or contested ideological approaches to race, social justice, or other complex social issues. We will consider these in turn.

Some versions of the value-inculcation approach may identify and teach values and practices that are relatively uncontroversial and universalizable in the sense that they are broad enough that they can largely be endorsed by people who have otherwise deeply divergent political, religious, ethical, and social views.[58] Examples of this approach might include those that seek to form students into virtuous professionals or leaders who are able to work in the world and the legal profession towards a variety of goals, but from a place of foundationally good character and with what virtue ethicists call "practical wisdom."[59]

57. Patrick Emery Longan et. al., *A Virtue Ethics Approach to Professional Identity: Lessons for the First Year and Beyond*, 89 UMKC L. REV. 645, 647 (2021) (emphasis added).

58. *See, e.g.*, *id.* at 647 (noting "remarkable consensus within the legal profession" about the virtues lawyers should possess); *see also* Alli Gerkman & Logan Cornett, *Foundations for Practice: The Whole Lawyer and the Character Quotient*, UNIV. OF DENV. INST. FOR ADVANCEMENT AM. LEGAL SYS. (July 2016), https://iaals.du.edu/sites/default/files/documents/publications/foundations_for_practice_whole_lawyer_character_quotient.pdf [https://perma.cc/KQQ8-TQSZ] (presenting virtues from survey of 24,000 legal employers). According to the Foundations for Practice survey, the characteristics of integrity, work ethic, common sense, and resilience, among others, are widely considered imperative to professional success. *See id.*

59. An example of a law school pursuing something like this approach is Mercer University Law School, which mandates a three-credit course that seeks to inculcate in students the six virtues that "all lawyers ideally should cultivate[,]" including "professional competence, fidelity to the client, fidelity to the law, public-spiritedness, civility, and practical wisdom." *See First Year Course on Professional Identity*, MERCER U. SCH. L. (2022), https://law.mercer.edu/academics/centers/clep/education.cfm [https://perma.cc/6FWF-23P3]**.** Wake Forest University School of Law is also preliminarily exploring formation efforts in this vein and with a leadership focus, in partnership with the university's Program for Leadership and Character and with the support of an $8.6 million grant from the Kearns Family Foundation to study character in the professions. *See* Cheryl Walker, *$8.6M Kern Family Foundation Grant Puts Character First*, WAKE FOREST NEWS (Dec. 16, 2021), https://news.wfu.edu/2021/12/16/8-6m-kern-family-foundation-grant-puts-character-first/ [https://perma.cc/L3F8-P8W7] (describing grant); *Professional Schools*, WAKE FOREST U.: THE PROGRAM FOR LEADERSHIP & CHARACTER, https://leadershipandcharacter.wfu.edu/what-we-do/professional-schools [https://perma.cc/T2JH-45W5] (last visited July 31, 2022) (describing Program for Leadership and Character).

Generally speaking, this particular value-inculcating approach to professional identity formation is closely related to and consonant with the work of legal ethics and professional responsibility.[60] Its sights are set on the failure of lawyers to properly inhabit their role as morally mature public citizens and leaders who are committed to the public good.[61] Yet it is the scope of this approach that arguably differentiates it from the aims of a traditional professional responsibility course,[62] as its goal is much more ambitious: to develop in students not simply knowledge of their ethical duties in the narrow sense of complying with official rules, but strength of character or moral maturity itself.[63] Recognizing that the profession has, to some extent, failed to adequately oversee and ensure the ethical behavior of individual lawyers, this approach seeks to create in those lawyers an internal mechanism of ethical oversight to guide their professional decision-making.[64] At its most ambitious, its aims are not merely to make good lawyers, but good people and good public citizens.

60. Some have even argued that, as far as professional identity formation is mainly concerned with this approach, it is redundant because of its similarity to the work of professional responsibility and ethics. *See, e.g.*, Letter from Yale Law Sch. Faculty, to the ABA Council of the Section of Legal Educ. and Admissions to the Bar 3–4 (June 23, 2021), https://www.americanbar.org/groups/legal_education/resources/notice_and_comment/ [https://perma.cc/XD9X-V5JY] [hereinafter Yale Faculty Letter].

61. *See, e.g.*, MODEL RULES OF PRO. CONDUCT PREAMBLE 1 (AM. BAR ASS'N 2020) (declaring a lawyer "a public citizen having special responsibility for the quality of justice"); Benjamin V. Madison, III & Larry O. Natt Gantt, II, *Morals and Mentors: What the First American Law Schools Can Teach Us About Developing Law Students' Professional Identity*, 31 REGENT U. L. REV. 161, 206 (2019) ("Current legal educators must rediscover this prioritization of the professional value of developing civic-minded lawyers committed to the public good.").

62. Professional responsibility courses have been widely criticized for failing to teach reflective ethics, focusing instead almost exclusively on disciplinary rules and MPRE test prep. *See, e.g.*, Rhode, *supra* note 56, at 340 ("In most law schools, [ethics] is relegated to a single required course that ranks low on the academic pecking order. Many of these courses, which focus primarily (and uncritically) on bar disciplinary rules, constitute the functional equivalent of 'legal ethics without the ethics,' and leave future practitioners without the foundations for reflective judgment."); Timothy W. Floyd, *Moral Vision, Moral Courage, and the Formation of the Lawyer's Professional Identity*, 28 MISS. C. L. REV. 339, 340 (2009) (noting the substantive focus of most legal ethics courses "is overwhelmingly on knowledge and analysis of rules" applied to hypothetical problems, and that "[b]oth the substance … and the method … fail to capture all that is necessary to cultivate vision, courage, and wisdom in law students").

63. *See, e.g.*, Dolovich, *supra* note 56, at 1657–60 (connecting integrity and moral maturity to lawyering); Longan et. al., *supra* note 57, at 648 (emphasizing importance of practical wisdom in practicing different values).

64. *See, e.g.*, Dolovich, *supra* note 56, at 1664 ("[I]t is precisely the absence of any conceivable enforcement mechanism, or even any effective external check, that makes individual character so important to the possibility of ethical lawyering.").

SAINT LOUIS UNIVERSITY SCHOOL OF LAW

Because, for proponents of this approach, the stakes involved are no less than the "soul of the legal profession,"[65] it makes senses that, practically speaking, it would involve significant curricular coordination and effort. It is unlikely that a cursory review of the character qualities important to competent lawyering or even a short "module" on virtue or ethical formation in a class on legal skills or professional responsibility would go far in actually inculcating ethical, practical, wisdom and good character. This is particularly the case when there is still significant skepticism about whether character or virtue can even be effectively taught.[66]

If the development of good character or virtuous leaders is at one end of the value-inculcation spectrum, the exploration of and formation in more specific and often contested values is at the other. This value-specific approach identifies external norms or ideals that are less obviously intrinsic to the practice of law and lawyering, but to which lawyering should be subordinate or, at the very least, by which it should be significantly informed.

This kind of ideologically-specific formation is most clearly identifiable and at home in sectarian law schools.[67] At a Catholic law school for instance, this

65. Benjamin V. Madison, III, *Professional Identity and Professionalism*, 24 PRO. LAW., NO. 3, at 16 (2017).

66. *See, e.g.*, Richard A. Posner, *The Deprofessionalization of Legal Teaching and Scholarship*, 91 MICH. L. REV. 1921, 1924 (1993) ("As for the task of instilling legal ethics in law students … I can think of few things more futile than attempting to teach people to be good. 'We learn how to behave as lawyers, soldiers, merchants, or what not by being them. Life, not the parson, teaches conduct.'") (quoting Letter from Oliver Wendell Holmes to Frederick Pollock (Apr. 2, 1926), *in* 2 HOLMES-POLLOCK LETTERS: THE CORRESPONDENCE OF MR. JUSTICE HOLMES AND SIR FREDERICK POLLOCK 1874-1932, at 128 (Mark D. Howe ed., 1941)); Heather D. Baum, *Inward Bound: An Exploration of Character Development in Law School*, 39 U. ARK. LITTLE ROCK L. REV. 25, 44 (2016) (presenting data from a survey of practitioners and Legal Writing Institute members that indicated general disagreement over whether character qualities such as honesty, integrity, determination, or grit, could be learned). *But see* Deborah L. Rhode, *The Professional Ethics of Professors*, 56 J. LEGAL EDUC. 70, 80 (2006) ("Yet while the role of higher education [in character development] should not be overstated, neither should it be undervalued. A wide range of research finds that moral views change significantly during early adulthood, and that well-designed courses can increase capacities for ethical reasoning.").

67. *See, e.g.*, Dallin H. Oaks, President, BYU, Dedicatory Address and Prayer of the J. Reuben Clark Law Building: Ethics, Morality, and Professional Responsibility (Sept. 5, 1975), https://law.byu.edu/wp-content/uploads/2021/10/oaksethicsmoralityresponsibility.pdf [https://perma.cc/8FXR-ESVE] ("Religious commitment, religious values, and concern with ethics and morality are part of the reason for this school's existence, and will be in the atmosphere of its study . . . . [T]his law school was established to provide an institution in which students could 'obtain a knowledge of the laws of man in the light of the laws of God'"); *About Us*, REGENT UNIV. SCH. L., CTR. FOR ETHICAL FORMATION & LEGAL EDUC. REFORM, https://www.cefler.org/about/ (last visited Oct. 9, 2022) ("Every class [at Regent Law] includes an extra period of reflection designed to explore the dynamics of moral formation and ethical legal practice in the context of biblical principles, virtue ethics, and natural law."); *Academics*, LIBERTY UNIV. SCH. LAW, https://www.liberty.edu/law/academics/ [https://perma.cc/W64Y-5EXK] (last visited Aug. 28,

might involve formation with attention to the connections between explicitly Catholic faith commitments and justice.[68] At an evangelical Christian law school, students might be required to participate in formation efforts grounded in and contextualized by "biblical principles," or be tasked with developing, as a lawyer, a specifically Christian "worldview."[69]

And that this kind of formation happens in these spaces should come as no surprise. The language of "formation" has long been used in religious communities to reference an individual's journey through theological education and personal spiritual development.[70] In fact, the use of this term in a religious context significantly predates its use in legal education. The authors of the Carnegie Report noted this themselves, observing at the time that it was only in *clergy* education that the "formative aspect of professional education" was a "major topic in its own right."[71]

Indeed, while the "religious lawyering" movement precedes that of professional identity formation in legal education, the connections and overlap between the two are striking. Much of the literature of the religious lawyering movement is essentially (and sometimes explicitly) that of professional identity formation, exploring issues of personal and professional value integration, ethics, the role of law schools in inculcating meaning, and the purpose of lawyerly work.[72] Further, many of the early approaches to and discussion of

2022) which explicitly provides students with "a solid legal foundation uniquely taught from a Christian worldview," and "rooted in the truth of Scripture."); Neil W. Hamilton et al., *Empirical Evidence That Legal Education Can Foster Student Professionalism/Professional Formation to Become an Effective Lawyer*, 10 U. ST. THOMAS L.J. 11, 29–30 (2012) (indicating that at St. Thomas, they want all graduates to "form an integrative understanding of professional identity in which who the graduate is becoming as a lawyer is integrated with who the graduate is as a person, particularly as a person of faith").

68. *See, e.g.*, Amelia J. Uelmen, *An Explicit Connection Between Faith and Justice in Catholic Legal Education: Why Rock the Boat?*, 81 U. DET. MERCY L. REV. 921, 929–30 (2004).

69. *See About Us*, *supra* note 67; *Academics*, *supra* note 67.

70. The concept of "formation" in religious communities can be traced at least as early as the sixth century to Gregory the Great's Book of Pastoral Rule. It has been extensively employed since for the vocational development of priests and pastors, *see, e.g.*, MARCIAL MACIEL, INTEGRAL FORMATION OF CATHOLIC PRIESTS 19 (1992), as well as individuals, *see, e.g.*, RICHARD J. FOSTER, CELEBRATION OF DISCIPLINE: THE PATH TO SPIRITUAL GROWTH 222 (1983); DALLAS WILLARD, THE GREAT OMISSION: RECLAIMING JESUS'S ESSENTIAL TEACHINGS ON DISCIPLESHIP xiii (2006).

71. *Carnegie Report*, *supra* note 25, at 85.

72. *See, e.g.*, Robert K. Vischer, *Heretics in the Temple of Law: The Promise and Peril of the Religious Lawyering Movement*, 19 J.L. & RELIGION 427, 431–32 (2004) (noting that the religious lawyering movement's central inquiry has been "whether and to what degree an individual lawyer should allow her faith to influence her practice of law," and that the "practice-world" context involves lawyers grappling "with the integration of their religious and professional identities"); Thomas L. Shaffer, *The Practice of Law as Moral Discourse*, 55 NOTRE DAME L. 231, 252 (1979) (exploring whether it is "possible to be a Christian and a lawyer," and concluding that it is insofar as the practice of law is conducted as a "moral conversation," and lawyerly skill as "the virtue of

professional identity formation, even outside of sectarian schools, has a distinctly religious tone, borrowing in some cases from religious figures or theologians.[73] And, many of the prominent professional identity scholars of the last several decades self-identify as religious, or teach at religious schools.[74]

But value-specific inculcation approaches are not limited to the explicitly religious, nor to the formation of lawyers with explicitly religious commitments. Increasingly, secular versions of this approach that presuppose commitment to contested political, ethical, and social values, about which reasonable people of good will may disagree, are taking their place alongside religious approaches to formation in both the scholarly literature and law school lecture halls. The clearest case of this is the move to make antiracist or critical race-conscious lawyering a fundamental aspect of professional identity formation efforts.[75]

And this move is likely to be increasingly replicated, given the drafting of the ABA requirements. Because, while the ABA has separately amended its curricular requirements to require that all law schools "provide education to law

hope"); Howard Lesnick, *No Other Gods: Answering the Call of Faith in the Practice of Law*, 18 J.L. & RELIGION 459, 459–60 (2003) (inquiring into "what it might mean" to "think of our taking up legal work as being 'called out of' our differing religious traditions, and to think of our work as lawyers as 'religiously important'"); Sanford Levinson, *Identifying the Jewish Lawyer: Reflections on the Construction of Professional Identity*, 14 CARDOZO L. REV. 1577, 1577 (1993) ("I am interested in precisely what it might mean for one to adopt a 'professional' identity as part of one's self-conception," and "on the implications that membership in the legal profession has for one's identity as a Jew."); Bruce A. Green, *The Role of Personal Values in Professional Decisionmaking*, 11 GEO. J. LEGAL ETHICS 19, 29 (1997) (exploring whether there are "situations in which the applicable professional norms would foreclose lawyers from making decisions based on their personal religious or moral beliefs"); Uelmen, *supra* note 68, at 923 (arguing that "Catholic law schools should aim to provide students with at least the opportunity to reflect on how faith traditions might provide a robust and profound intellectual and cultural resource which can inform commitments to justice while working in any career").

73. *See, e.g.*, Robert C. Cramton, *The Ordinary Religion of the Law School Classroom*, 29 J. LEGAL EDUC. 247, 263 (1978) (criticizing legal education for its morally relativistic approach and arguing that it must concern itself with values: "[T]here is room for at least a few prophets to call the legal profession … back to a covenant faith and moral commitment that it has forsaken. The New Testament, Paul Tillich reminds us, speaks of 'doing the truth.' 'Truth,' he says, 'is hidden and must be discovered.'").

74. Examples include Benjamin V. Madison, III, and Larry O. Natt Gantt, at Regent University Law School (Gantt was at Regent for many years but recently moved to Harvard Law to direct its Program on Biblical Law and Christian Legal Studies); Neil Hamilton and Jerome Organ at St. Thomas Law; and Timothy W. Floyd, (who self-identifies as a person of faith and has been active in the religious lawyering movement). *See, e.g.*, Thomas E. Baker & Timothy W. Floyd, *A Symposium Precis*, 27 TEX. TECH L. REV. 911, 911 (1996); Longan et. al., *supra* note 57, at 645 (noting that Tim Floyd came to virtue ethics approach to professional identity formation through its convergence with the religious lawyering movement).

75. *See, e.g.*, Eduardo R.C. Capulong et al., *Antiracism, Reflection, and Professional Identity*, 18 HASTINGS RACE & POVERTY L.J. 3, 4 (2021) (arguing that law schools must make antiracism "a core aspect of legal professional identity").

students on bias, cross-cultural competency, and racism,"[76] those topics are closely linked to professional identity formation by the ABA's own interpretations. Indeed, the ABA expressly indicates that the "values and responsibilities of the legal profession," which professional identity formation is meant to impart, include "cross-cultural competency," and the "obligation of lawyers to promote a justice system that provides equal access and eliminates bias, discrimination, and racism."[77] In addition, institutions seeking to meet the demands of both 303(b) and 303(c) will have a strong efficiency incentive to group these endeavors together, and potentially to mandate their teaching as part of required 1L courses, orientation sessions, or other similar activities.

The problem (for some) is that not all approaches to or definitions of cultural competency, racial justice, or even racism, as they relate to education in general or the practice of law and one's professional identity as a lawyer in particular, are universally accepted or shared.[78] Some, in fact, are deeply contested and have caused significant division in American public life, particularly in the context of education.[79]

For example, most reasonable people would likely agree that "cultural competency" is both a practically important and morally praiseworthy quality for a lawyer, insofar as it is comprised of a commitment to humility, empathy, and self-examination in the quest to understand and respect the diverse

76. *See* ABA Memorandum on Standard 303, *supra* note 12, at 3, 7 (outlining revision to Standard 303(c)).

77. *Id.* at 3; *see also* Hamilton & Bilionis, *supra* note 12.

78. *See, e.g.*, Letter from the Found. for Individual Rts. in Educ. ("FIRE"), to the Honorable Scott Bales, Council Chair of the ABA Section of Legal Educ. and Admissions to the Bar 2 (June 28, 2021) (on file with the Am. Bar Ass'n) [hereinafter FIRE Letter] (expressing concern about the vagueness of proposed Standard 303(c), and noting that "terms like 'bias,' 'cross-cultural competency,' and 'racism' are the subject of lively discussion among lawyers and the general public alike, both with regard to their application to training and their role in society."); Capulong et al., *supra* note 75, at 6–7.

79. *See, e.g.*, in relation to higher education, Adrienne Lu, *Should Colleges Make Anti-Racism Part of Their Mission? Proposal at UMass-Boston Alarms Critics*, CHRON. HIGHER EDUC. (Mar. 11, 2022), https://www.chronicle.com/article/should-colleges-make-anti-racism-part-their-mission-proposal-at-umass-boston-alarms-critics [https://perma.cc/7T65-2YGL] (detailing how at least 75 faculty members at Umass Boston signed a letter opposing a proposed mission statement that would commit the university to becoming an antiracist institution driven in research, pedagogy, and resources, by antiracist values, and argued that "the fundamental role of the public university can neither be political nor ideological activism") (internal quotation marks omitted); Tom Bartlett, *The Antiracist College*, CHRON. HIGHER EDUC. (Feb. 15, 2021), https://www.chronicle.com/article/the-antiracist-college [https://perma.cc/NSV8-HRUP] (detailing both the trend, since the summer of 2020, for leaders in higher education to "declare that their institutions will strive to become antiracist," and the response from some academics "suspicious of the ideological underpinnings of antiracist training programs and proposed curricular reforms"). In relation to secondary education and generally, *see, e.g.*, *"Critical Race Theory" is Being Weaponized. What's the Fuss About?*, ECONOMIST (July 14, 2022), https://www.economist.com/interactive/united-states/2022/07/14/critical-race-theory-is-being-weaponised-whats-the-fuss-about [https://perma.cc/GDT8-EGHG].

experiences, outlooks, and needs of other human beings and, particularly, of one's clients. However, some legal scholars and practitioners would argue that cultural competency is much more expansive a concept than this, or insist that, so understood, it simply "does not go far enough," and that a specifically antiracist ideology must be adopted as central to professional identity formation instead.[80]

Yet the beliefs, political positions, and formative practices likely to be included in antiracist professional identity formation—including implicit bias or privilege testing, acknowledgement of white fragility, affirmation that the legal system largely operates to create and protect white supremacy, or that any racial inequity is evidence of inherent racism, or that affirmative action is just and necessary—are deeply contested in terms of their validity, in some cases, and educational effectiveness in others.[81]

80. Capulong, *supra* note 75, at 4; *see also* Letter from the Clinical Legal Educ. Ass'n ("CLEA"), to the ABA Council of the Section of Legal Educ. and Admissions to the Bar 2–3 (June 28, 2021) (on file with the Am. Bar Ass'n) (urging the ABA to draft an interpretation of professional identity that includes "antiracism" as a concrete example of the values foundational to the legal practice). For a further discussion of how the traditional aims of diversity, equity, and inclusion programs are increasingly considered different from antiracism, *see* Sarah Brown, *Race on Campus: DEI or Antiracism?*, CHRON. HIGHER EDUC. (Aug. 31, 2021), https://www.chronicle.com/newsletter/race-on-campus/2021-08-31 [https://perma.cc/5ZY2-5F82].

81. For a description of how some of these antiracist practices and positions are employed in the classroom, *see, e.g.*, Eduardo R.C. Capulong et al., *'Race, Racism, and American Law': A Seminar from the Indigenous, Black, and Immigrant Legal Perspectives*, 21 SCHOLAR: ST. MARY'S L. REV. RACE & SOC. JUST. 1, 29–30 (2019) (describing the use of implicit bias testing in the classroom, among other things). For insight into the aims of antiracist education in law schools more generally, *see Law Deans Antiracist Clearinghouse Project*, *supra* note 10, which details some of the actions law schools should take to deliver an antiracist program of education, including teaching students to "challenge and reshape the rule of law and institutional practices when they do not yield equity for people of color," and engaging in self-imposed institutional audits to determine whether the demographics of students and faculty are achieving representation, whether faculty are prepared to teach antiracist pedagogy, whether promotion, tenure, and appointments processes account for bias in evaluations and citation counts, whether law review merit is defined in a way equitable to students of color, and whether students "who have engaged in conduct demonstrating racial animus during law school" are (or are not) recommended to the bar. *See id.* For evidence of the controversy surrounding some of these practices or positions, *see, e.g.*, Letter from Scott E. Fruehwald, to the Honorable Scott Bales, Chair of the Council, ABA Section of Legal Educ. And Admissions to the Bar 2 (June 15, 2021) (on file with Am. Bar Ass'n) (citing Oswald et al., *Predicting Ethnic and Racial Discrimination: A Meta-Analysis of IAT Criterion Studies*, 105 J. PERSONALITY & SOC. PSYCH., NO. 2, at 171 (2013) (finding that implicit bias tests "were poor predictors of every criterion category other than brain activity")); John McWhorter, *The Dehumanizing Condescension of* White Fragility, ATLANTIC (July 15, 2020), https://www.theatlantic.com/ideas/archive/2020/07/dehumanizing-condescension-white-fragility/614146/ [https://perma.cc/65GL-JQ4Y] ("One might ask just how [white people] can be poised for making change when they have been taught that pretty much anything they say or think is racist and thus antithetical to the good. What end does all this self-mortification serve?"); Mitchell R. Campbell & Markus Brauer, *Is Discrimination Widespread? Testing Assumptions About Bias on a University*

This became clear, if it was not already, during the comment period prior to the ABA's adoption of the revisions to Standard 303, when numerous law professors, free speech organizations, and practitioners objected to the revisions, citing concerns over "institutionalized dogma," "intrusion" into the rights of professors on what and how to teach, and the potential coercion of students who might feel compelled to "voice certain political or ideological views in order to graduate."[82]

And herein lies a significant potential pitfall to value-centric professional identity formation initiatives: under at least some models, someone gets to decide the specific values into which students will be formed and, in some cases, that faculty will be required (or assumed) to espouse.

At an institution that is explicitly and obviously ideological—like a sectarian law school—this concern is muted (although certainly not nonexistent). At the very least, there, faculty and students are put on notice, prior to their voluntary association with the school, of the value-specific vision for human flourishing the school has and expects community members to share.[83] They are put on notice of the ways in which both faculty and students will be required to support, engage in, or be formed by that vision—sometimes in deeply personal ways. In other words, there is no pretense of ideological neutrality in these spaces, and thus less possibility of veiled indoctrination, coercion, or exclusion.

At institutions that are not sectarian, requiring faculty and students to enthusiastically engage in a formative process that imposes substantive and contested values is deeply problematic. And even more so when there is a claim of neutrality under the guise of vague concepts like "professionalism." Rather than bring particular ideologies or interpretations into the light of vigorous debate and rigorous evidentiary standards, it presents them as the accepted and essential premises of a larger syllogism on what it means to be a good lawyer and even a good person.

Campus, 150 J. EXPERIMENTAL PSYCH.: GEN., NO. 4, at 756, 773 (2021) ("The claim that most individuals engage in subtle or overt forms of discrimination not only lacks empirical basis in many settings, it also may deteriorate rather than improve relationships between members of different social groups.").

82. *See, e.g.*, Yale Faculty Letter, *supra* note 60, at 3 (arguing that the revisions requiring teaching in cross-cultural competency and racism are vague, overbroad, and would "institutionalize dogma, mandating instruction in matters that are unrelated to any distinctively legal skill, hence intruding on the right and obligation of every professor to determine what to teach in a class and how to teach it."); FIRE Letter, *supra* note 78, at 2 (expressing concern that incorporating contested topics into required courses under standard 303, will "increase[] the likelihood of mandatory trainings that require students to voice certain political or ideological views in order to graduate").

83. *See* David I. C. Thomson, *"Teaching" Formation of Professional Identity*, 27 REGENT U. L. REV. 303, 324–25 (2015) (noting that at religious schools, "discussions around faith and morality are connected to their missions and … part of their cultures," and that many "students self-select to these institutions because they already have a personal identity that is formed, at least in part, by the belief system that is consonant with the school's mission").

That professional identity formation is, by its very terms, so much more personal and intentionally formative a project than, say, learning the federal rules of civil procedure, intensifies this concern. When the goal is formation, there should arguably be heightened sensitivity to indoctrination, heightened sensitivity to the privileging of some substantive views over others, and heightened sensitivity to imposing orthodoxy in a community in a way that might marginalize or exclude minority perspectives, stifle open inquiry, or alienate those who disagree.[84]

This is not to say that rich, deeply substantive formation is off limits or should not occur. Indeed, the strength of the value-centric approach is in the fertile soil it provides for the development of meaning, motive, and purpose. But the historical institutional posture of law schools towards the religious lawyering movement is instructive here. Scholars within that movement have been doing the work of value-centric professional identity formation for decades.[85] And during that time, students have had the opportunity, *if they wish*, to engage in that formative work, through classes with those scholars. The same model should apply to other value-specific realms of identity exploration and formation as well.

b. Prioritizing Well-Being: Health, Balance, and Happiness

The second dominant approach to or emphasis in the professional identity formation movement, which will only receive heightened attention in the aftermath of the COVID-19 pandemic, is that which prioritizes the personal satisfaction, health, and wellness of individual lawyers. While the primary objective in the value-centric approach is creating lawyers who are ethical, purposeful, and by some lights, righteous, the well-being-centric approach has as its goal lawyers who are mentally and physically healthy, happy, and balanced.

Two entwined crises animate and motivate the prioritization of well-being in not just professional identity formation work, but legal education generally. Both are widely acknowledged and the subject of a multiplicity of initiatives and

84. This concern is particularly an issue where the professional identity initiative is mandatory or is piggy-backed onto a mandatory course—particularly one taught by a faculty member with minimal institutional power. Increasingly, skills-based classes are used to meet the requirements of 303(b) and (c), and yet skills faculty are often non-tenure track or untenured, and thus in a less comfortable position to object to mandates handed down from above.

85. *See, e.g.*, Vischer, *supra* note 72, at 454–55.

> For religious lawyers, connecting the motivational force of faith with the practice of law gives them reason to transcend the profession's murky, unambitious vision of profit-oriented lawyering. Such integration not only brings coherence to the lawyer's professional and personal identities, but stands to benefit the profession by raising the bar as to what it means to be a good lawyer.

Id.

think pieces: the crisis of well-being in the legal profession, and the crisis of well-being in law students.

The crisis of well-being in the legal profession has been well documented and widely publicized. Specifically, several influential empirical studies over the past 30 years seem to decisively show that lawyers suffer in alarming numbers and at much higher rates than either the general population or other similar professions from mental illness, addiction, and suicide.[86] Unsurprisingly given this data, lawyers are also said to be deeply unsatisfied with their careers.[87] Studies report that they are struggling, in large numbers, with "social alienation, work addiction, sleep deprivation, [and] job dissatisfaction," among other ills.[88]

In 2017, the ABA's National Task Force on Lawyer Well-Being responded to this data by urging the stakeholders of the profession to "get serious about the substance use and mental health" of lawyers and to act accordingly.[89] While many state bar associations and legal employers responded by initiating a variety of well-being task forces and programs,[90] advocates insist that there is "still a long way for the profession to go to enact meaningful and lasting change."[91]

The law student well-being crisis, which was also highlighted in the ABA's 2017 Report,[92] has also been the subject of scholarship, studies, theories, and

86. *See, e.g.*, G. Andrew H. Benjamin et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*, 13 INT'L J.L. & PSYCHIATRY 233, 233 (1990); Krill et al., *supra* note 1, at 52; Patrick Krill, *Why Lawyers Are Prone to Suicide*, CNN (Jan. 21, 2014, 10:15 AM), https://www.cnn.com/2014/01/20/opinion/krill-lawyers-suicide/index.html [https://perma.cc/5EX5-L6FB]; William W. Eaton et al., *Occupations and the Prevalence of Major Depressive Disorder*, 32 J. OCCUPATIONAL MED. 1079, 1085 tbl.3 (1990).

87. *See, e.g.*, Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 881–84 (1999).

88. ABA Task Force Report, *supra* note 2, at 7.

89. *Id.* at 10.

90. *See, e.g.*, *State Bar Lawyer Assistance Programs*, AM. BAR ASS'N, https://www.americanbar.org/groups/litigation/committees/professional-liability/lawyer-assistance-programs/ [https://perma.cc/XP5B-E5FS] (last visited Oct. 12, 2022); Anne M. Bradford, *What's Working Well In Law Firm Well-Being Programs?*, INST. FOR WELL-BEING IN LAW 1 (May 2021), https://lawyerwellbeing.net/wp-content/uploads/2021/05/Well-Being-Firm-Profiles_4-2021.pdf [https://perma.cc/KMG4-KYHY]; Jarrod F. Reich, *Capitalizing on Healthy Lawyers: The Business Case for Law Firms to Promote and Prioritize Lawyer Well-Being*, 65 VILL. L. REV. 361, 400–03 (2020) (outlining the "incremental steps" law firms and legal employers have taken since 2017, including "acknowledging" the problem, signing an ABA pledge to increase lawyer well-being, and in some cases, initiating well-being programs.).

91. Reich, *supra* note 90, at 401.

92. ABA Task Force Report, *supra* note 2, at 35 (citing Abigail A. Patthoff, *This is Your Brain on Law School: The Impact of Fear-Based Narratives on Law Students*, 2015 UTAH L. REV. 391, 424 (2015) ("Law students regularly top the charts as among the most dissatisfied, demoralized, and depressed of graduate student populations.")).

even a few literary and cinematic dramatizations, for over fifty years.[93] Looking more closely at a handful is instructive.

One of the most widely-cited studies on this topic was published by the American Bar Foundation in the late 80s, which indicated that up to 40% of law students suffered symptoms of depression.[94] In the 90s, various studies reported that law students suffered from psychological distress and alcohol and substance abuse at levels much higher than the general population.[95] And, in the mid-2000s, Lawrence Krieger and Kennon Sheldon's rigorous empirical study of students at two law schools concluded that, over the course of the first year of law school, law students experience "precipitous" declines in "positive affect and life satisfaction," and "large increases in negative affect" and depression.[96] This malaise did not abate at the end of the first year, but extended into the second and third, and was the case even though the students were "relatively 'normal' at the outset" of law school.[97]

Finally, in 2014, the ABA sponsored a survey of law student well-being that solicited responses from students at 15 law schools.[98] Amongst the respondents, "roughly one-quarter to one-third … reported frequent binge drinking or misuse of drugs,"[99] 17% "screen[ed] positive for depression," and 23% "screened positive … for mild to moderate anxiety."[100] This 2014 study was extensively cited by the ABA in its 2017 report and series of recommendations.[101]

93. One of the first law review articles discussing mental health issues amongst law students was published in 1968. *See* Lawrence Silver, Comment, *Anxiety and the First Semester of Law School,* 4 WIS. L. REV. 1201, 1201 (1968).

94. G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 11 AM. BAR FOUND. RSCH. J. 225, 227–28, 236 (1986).

95. *See, e.g.*, *Report of the AALS Special Committee on Problems of Substance Abuse in the Law Schools*, 44 J. LEGAL EDUC. 35, 42 (1994); Matthew M. Dammeyer & Narina Nunez, *Anxiety and Depression Among Law Students: Current Knowledge and Future Directions*, 23 L. & HUM. BEHAV. 55, 67 (1999) (concluding that reported levels of anxiety and depression in law students is higher than the general population or that of medical students and is "not limited to first-year students, as symptom measures were as high or higher for third-year students").

96. Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & THE L. 261, 265, 280 (2004).

97. *See id.* at 280–82.

98. Jerome M. Organ et al., *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116, 116, 118 n.5 (2016).

99. *Id.* at 116.

100. *Id.* at 136–37; *see also Survey of Law Student Well-Being*, AM. BAR ASS'N (Mar. 30, 2020), https://www.americanbar.org/groups/lawyer_assistance/research/law_student_survey/ [https://perma.cc/HX3U-3HWY].

101. ABA Task Force Report, *supra* note 2, at 35–37.

Because the legal profession appears to suffer from such a significant lack of well-being, because well-being is widely considered critical to lawyer competency,[102] and because well-being seems to begin to erode for lawyers while they are still in law school, it makes sense that law schools would be interested in, and in some ways considered responsible for, addressing these issues. But the degree to which they can and should do so as part of specifically lawyerly professional identity-related initiatives and mandated academic courses in particular[103] is less clear. And this is *especially* the case given how "well-being" and "well-being practices" seem to be most commonly understood and pursued at many law schools.

Crucially, "well-being" is or can be an infinitely broad concept. By some lights, "well-being" extends to and involves every aspect of who a person is and how they function, including their moral and ethical life and their professional skillset.[104] Understood as this expansive and complex, the aims and substantive practices of well-being-centric professional identity formation may certainly overlap with approaches that prioritize value or competency.

However, a survey of the legal education landscape indicates that for a considerable number of law schools, the "well-being practices"[105] they have prioritized and implemented are more simplistic, somatic, and individualistic, concerned primarily with physical health, personal habits, and outlook. These practices tend to be remedial or reactive in nature, and take the shape of mindfulness training, yoga classes, instruction in nutrition, exercise, proper sleep habits, and time management, and proposed personality growth along the lines of how to become more resilient, gritty, or optimistic.[106]

102. *See id.* at 8.

103. There are some distinctions between the goals of different well-being initiatives in law schools, in that some may be focused simply on increasing general well-being amongst students, and others on helping law students specifically learn how to gain and then maintain well-being as *lawyers*. This article is less concerned with the former, and more with the latter, but notes that the two are often conflated, which can be problematic when the goals of the latter are used to justify changes to academic content or course load.

104. Indeed, some scholars situated in the world of well-being and the law have indicated as much in their work, expanding what "well-being" means or looks like far beyond the modalities engaged in most law schools and corporate spaces. *See generally* HEIDI K. BROWN, THE FLOURISHING LAWYER: A MULTI-DIMENSIONAL APPROACH TO PERFORMANCE AND WELL-BEING (2022) (with chapters that cover everything from physical and emotional health to character and moral/ethical development).

105. *See* ABA Memorandum on Standard 303, *supra* note 12, at 7 ("The development of professional identity should involve an intentional exploration of the values, guiding principles, and well-being practices considered foundational to successful legal practice.").

106. This holds true for both one-off programs, and well-being-centric curricula. *See, e.g.*, Jordana Alter Confino, *Where Are We on the Path to Law Student Well-Being?: Report on the ABA CoLAP Law Student Assistance Committee Law School Wellness Survey*, 68 J. LEGAL EDUC. 650, 662, 666, 668 (2019).

It is not surprising that many of the well-being techniques actually introduced and utilized in law schools would be those that are the most tangible and individualistic, as they are relatively easy to package, deliver, and teach, en masse. But insofar as these wellness modalities are being heavily centered or mandated in the specifically lawyerly professional identity formation context, they may need to be reexamined or reconsidered for a few reasons.

First, despite the conventional wisdom, the true scope and source of the well-being crisis in the legal profession, which the well-being crisis in law school is said to significantly tee up or even partially cause, is not clear. Indeed, some scholars have questioned the empirical basis for the claims that lawyers are, as a group, more professionally unsatisfied and personally unwell than other members of the population.[107] These scholars have noted, among other things, that the majority of studies frequently cited to support these well-being-related claims are faulty because: (1) they rely on volunteer respondents rather than random samples, (2) they have low response rates, contributing to a potential non-response bias, (3) they survey *only* lawyers, yet compare lawyers to the general population or other professions surveyed differently and by different instruments, and (4) they survey lawyers at one point in time.[108] It is worth noting that, with the exception of Krieger and Sheldon's empirical analysis of two law schools, many of the surveys of law student well-being suffer from the same issues.[109]

In fact, when using data from the National Health Interview Survey that avoids these issues, Yair Listokin and Raymond Noonan of Yale Law School concluded that, while abuse of alcohol is higher for lawyers than other populations, "incidence of mental illness is much lower."[110] Listokin and Noonan are careful to say that their findings do not "mean that mental illness is not a problem in the legal profession," but only that it is not obviously *unique*

107. *See, e.g.*, Yair Listokin and Raymond Noonan, *Measuring Lawyer Well-Being Systematically: Evidence from the National Health Interview Survey*, 18 J. EMPIRICAL LEGAL STUD. 4, 32 (2021); Kathleen E. Hull, *Cross-Examining the Myth of Lawyers' Misery*, 52 VAND. L. REV. 971, 983 (1999).

108. *See* Listokin & Noonan, *supra* note 107, at 4–5, 11–12. Listokin also notes in his critique that some of the most influential studies are simply out of date—over 20 years old in some cases. *Id.* at 11–12; *see also* Hull, *supra* note 107, at 971–77.

109. For example, the authors of the 2014 Survey of Law Student Well-Being ("SLSWB") themselves note that "[r]ecruiting law schools to participate in the SLSWB was a challenge," and that those challenges "precluded the possibility of having a truly random set of representative law schools participate in the survey." Organ et al., *supra* note 98, at 123. The 15 law schools that did participate were identified by drawing "on a network of law faculty and administrators known to have particular interest in these topics." *Id.* at 123–24. Students at those schools "were invited by email to complete the online survey," and "[t]he overall response rate was just under 30%." *Id.* at 124.

110. Listokin & Noonan, *supra* note 107, at 6.

compared to the general population.[111] Yet, whether or the degree to which lawyers suffer in an unusual or exceptional way seems critical in rightly determining how traditional wellness modalities focused on increasing health fit into lawyerly professional identity formation. In other words, if there is a wellness crisis amongst lawyers or law students but it is not because of or peculiar to being a lawyer or law student, that would tend to support the idea of providing wellness resources to lawyers and students in a supportive or adjacent way, but not as part of the specific task of forming lawyerly professional identity.

But second, it is far from clear that popular health and wellness modalities of the type commonly used in law schools—whether in professional identity formation initiatives or otherwise—work, or at least work to substantively address the cumulative anxiety and chronic burnout experienced in or at the hands of an institutional or corporate entity. In fact, these approaches are strikingly similar to those found in corporate (including law firm) wellness

111. *Id.* It is worth noting that mental illness and wellness complaints that are *not* specific to lawyers or law students are considered quite high across the general population and are, in the general population of young adults, increasing. *See, e.g.*, Jean M. Twenge et al., *Age, Period, and Cohort Trends in Mood Disorder Indicators and Suicide-Related Outcomes in a Nationally Representative Dataset, 2005–2017*, 128 J. ABNORMAL PSYCH. 185, 194–97 (2019) (reporting that rates of mood disorders and suicide-related events have significantly increased in the last decade amongst young adults, especially females and the wealthy); Press Release, *Mental Health Issues Increased Significantly in Young Adults Over Last Decade*, AM. PSYCH. ASS'N (Mar. 14, 2019), https://www.apa.org/news/press/releases/2019/03/mental-health-adults [https://perma.cc/6Z3R-32AQ] (where the study's lead author hypothesized that, "[c]ultural trends in the last 10 years," including "increased use of electronic communication and digital media," "may have had a larger effect on mood disorders and suicide-related outcomes among younger generations compared with older generations"); Maddy Reinert et al., *2022 The State of Mental Health in America*, MENTAL HEALTH AM. 19–20 (Oct. 2021), https://mhanational.org/sites/default/files/2022%20State%20of%20Mental%20Health%20in%20America.pdf [https://perma.cc/5SQM-XJLZ] (finding that in 2019, just prior to the COVID-19 pandemic, 19.86% of adults experienced a mental illness, equivalent to nearly 50 million Americans).

programs[112] that, despite surging popularity[113] and with spending expected to exceed $94 billion worldwide by 2026,[114] have been unsuccessful at measurably improving health.[115]

Specifically, multiple recent studies have confirmed that while this kind of well-being programming can be appreciated by or attractive to employees, it does nothing to actually improve any clinical measure of health or workplace performance, nor does it reduce health care costs or workplace absenteeism.[116] Further, and even more relevant to the work of legal educators, studies also indicate that these programs do little to nothing to address employee burnout, which is highly correlated with anxiety and depression.[117] The data also indicates that the people who tend to benefit most from corporate well-being programs are the ones who are already high functioning or healthy.[118] For people who are not—whose lives are complicated due to, among other things, poverty, chronic illness, or comorbidities—"the idea of adding more routines is really, really difficult."[119]

Indeed, prioritizing well-being approaches that focus on what individual students or lawyers can do, how they can grow, or what they can change, to cope

112. *See, e.g.*, *Addressing Employee Burnout: Are You Solving the Right Problem?*, MCKINSEY HEALTH INST. (May 27, 2022), https://www.mckinsey.com/mhi/our-insights/addressing-employee-burnout-are-you-solving-the-right-problem [https://perma.cc/E88H-R4DP] (noting that the wellness benefits included in many company's programs include things like "yoga, meditation app subscriptions, well-being days, and trainings on time management and productivity"); Reich, *supra* note 90, at 403 (noting that the wellness programming many firms have adopted includes, for example, "continuing education courses, visiting speakers, online resources, and social opportunities promoting healthy lifestyles, as well as employee assistance programs and direct access to professional services"); Anne M. Brafford, *Well-Being Toolkit for Lawyers and Legal Employers*, AM. BAR ASS'N 17 (Aug. 2018), https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_well-being_toolkit_for_lawyers_legal_employers.pdf [https://perma.cc/G9G8-XB3Z] (detailing wellness programming initiated at law firms, including wellness committees focused on health-related programming and access to psychological and physical fitness resources).

113. According to the Kaiser Family Foundation, "more than 80% of large employers have a wellness program." Iwan Barankay, *Why Employee Wellness Programs Don't Work*, KNOWLEDGE AT WHARTON (Mar. 7, 2022), https://knowledge.wharton.upenn.edu/article/why-employee-wellness-programs-dont-work/ [https://perma.cc/SDZ3-T95X]; *see also Addressing Employee Burnout: Are you solving the right problem?*, *supra* note 112, at 2 (noting that nine out of ten organizations around the world offer some kind of employee wellness program).

114. *See* Stephen Miller, *Study Stokes Fresh Scrutiny of Wellness Programs' Value*, SHRM (June 23, 2021), https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/study-stokes-fresh-scrutiny-of-wellness-programs-value.aspx [https://perma.cc/65VD-XNQ9].

115. *See id.*; Damon Jones et al., *What do Workplace Wellness Programs do? Evidence from the Illinois Workplace Wellness Study*, 134 Q.J. ECONS. 1747, 1788 (2019).

116. *See* Jones, *supra* note 115, at 1788.

117. *See Addressing Employee Burnout: Are you solving the right problem?*, *supra* note 112.

118. *See* Barankay, *supra* note 113.

119. *Id.*

with or remediate structural ills is arguably counterproductive, as it shifts responsibility and accountability from the system that actually creates the ills to the individual that is forced to bear them.. Here it is useful to consider the many hypothesized reasons for lawyer and law student unhealth. Most of them involve structural critiques. Some take aim at complex and intransigent issues in the legal system itself, including its adversarial and antisocial nature.[120] Others point to the structural forces that make both legal practice and law school fundamentally negative and draining. In legal practice, this critique has focused on everything from the loss of the values of professional competence and civility,[121] to the rise of the billable hour.[122] In education, it has included the way students are graded, the use of the Socratic method, and the emphasis on abstract legal theory over practical skills, among other things.[123]

If it *is* the case that the well-being crisis in both the profession and law schools is largely the result of endemic, structural, issues—issues far outside the control of individual law students or lawyers—then it is highly unlikely that emphasizing individual well-being practices as part of professional identity formation is either effective or, importantly, *just* in the long-term. This move of onus onto the individual can, and in some cases does, prolong systemic institutional ills, obscuring the need for meaningful change by way of

120. Indeed, there is a large body of scholarship promoting a transformation of law into a more relational, therapeutic, and care-oriented profession to get to the root of some of these ills. *See, e.g.*, Marjorie A. Silver, *Lawyering and Its Discontents: Reclaiming Meaning in the Practice of Law*, 19 TOURO L. REV. 773, 774 (2004) ("The Comprehensive Law Movement includes therapeutic jurisprudence, collaborative lawyering, transformative mediation, and other approaches which aim to transform the practice of law into a humanistic and healing force rather than a confrontational and hurtful process.").

121. *See, e.g.*, Cheryl Ann Krause & Jane Chong, *Lawyer Wellbeing as a Crisis of the Profession*, 71 S.C. L. REV. 203, 231–32 (2019) ("Though we are certainly not the first to point to the overlap between civility in the profession and lawyer wellbeing, we note that real benefits may come of explicitly recognizing the connection between what are conventionally treated as two distinct realms.").

122. *See, e.g.*, Eli Wald, *The Contextual Problem of Law Schools*, 32 NOTRE DAME J.L., ETHICS & PUB. POL'Y 281, 289 (2018) (noting that the legal profession was once about public service, and is now "increasingly a business with a singular focus on client service and profit maximization"); Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy?: A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554, 574 (2015) (discussing how lawyers may be inhibited from satisfying well-being needs by, among other things, "training in legal analysis, habituation to adversarial tactics, demands to adopt imposed client goals and values, personal conflict on many levels, the need to prevail in zero-sum proceedings against other aggressive lawyers, billable hour requirements and other controlling supervision methods").

123. *See, e.g.*, Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 YALE J. HEALTH POL'Y, L., & ETHICS 357, 360–61 (2009).

SAINT LOUIS UNIVERSITY SCHOOL OF LAW

superficially responsive, and sometimes superficially successful, solutions.[124] In the case of law students, these remedial, individual-focused interventions have the potential to compound issues of stress and burnout by adding even more obligations or "routines" to students who are already experiencing feelings of overwhelm, inadequacy, or failure.[125]

So, when it comes to well-being in the context of professional identity formation, what way forward? First, it seems clear that at least some law students and lawyers do experience high levels of stress, anxiety, and general lack of well-being. It also seems clear that young people in general are experiencing declining mental health. It certainly makes sense then, for law school administrators to continue to creatively explore, invest in, and provide robust, generalized, mental health support services and programming to their students.

But when it comes to lawyerly professional identity formation efforts initiated under the banner of well-being and increasingly imported into the classroom, there may be reason to be skeptical of the tendency to lean heavily on generalized and remedial health focused modalities over solutions that are grounded in reliable data and specific to the issues—and the sources of the

124. *See, e.g.*, *Addressing Employee Burnout: Are You Solving the Right Problem?*, *supra* note 112 (finding that though nine out of ten organizations around the world offer some kind of employee wellness program, employee burnout is still sky high and rising). The authors of the report argue that this is because the mostly individual-level wellness interventions offered by these organizations, like yoga, meditation, and training in time management and productivity, merely remediate symptoms, if anything, rather than get at the systemic causes of employee burnout. *See id.* Further, "[e]mploying these types of interventions may lead employers to overestimate the impact of their wellness programs and benefits." *Id. See also* Al Lewis & Vik Khanna, *The Cure for the Common Corporate Wellness Program*, HARV. BUS. REV. (Jan. 30, 2014), https://hbr.org/2014/01/the-cure-for-the-common-corporate-wellness-program [https://perma.cc/XZ9B-784W] (noting the discrepancy between individual wellness resources and structural solutions to address employee health, and pointing out, by way of example, that the leading pro-wellness group in Washington, the Business Roundtable, "claims to want to help people and 'create a culture of health,' … [yet] opposed the minimum wage increase and the Affordable Care Act"); *see also*, for an example of a distinct but related and increasingly raised abolitionist-based critique of personality-focused rather than structural educational interventions, BETTINA L. LOVE, WE WANT TO DO MORE THAN SURVIVE 73 (2019) ("Yes, [grit] is needed, but to insist that dark children need, do not have, and can function on … [it] alone is misleading, naïve, and dangerous. Measuring dark students' grit while removing no institutional barriers is education's version of *The Hunger Games*.").

125. *See, e.g.*, Confino, *supra* note 106, at 665–66 (detailing student feedback on mandatory wellness programming at Penn, including that "'some students don't enjoy mandatory programs on stress—at least not in November when finals are approaching,'" and, that while some students thought the stress-focused wellness programming was great, others "'were not pleased about being forced to sit in a room to talk about stress when they were already stressed out and could be studying'") (quoting Jennifer Leonard, Associate Dean for Professional Engagement and Director of the Penn Law Center on Professionalism).

issues—facing law students and lawyers.[126] When data and specificity become more significant touchstones in the quest to address law student and lawyer well-being, an understanding of "wellness" as vocational autonomy, self-direction, and clarity of personal values and strengths comes more clearly into view than increased physical and mental health as a path towards productive change.

Indeed, it is helpful to return to Krieger and Sheldon's 2004 study, as it was both empirically reliable and specific to law students and the formation of lawyers. Relying heavily on the psychological framework of Self Determination Theory, it persuasively demonstrated that when law students' fundamental need for autonomy, competence, and relatedness—the pillars of self-determination—are shaken, their well-being diminishes.[127] Further, Krieger and Sheldon found that this diminishment occurred for law students simultaneous with shifts in their values and motivation.[128] Specifically, many students come into law school with "helping and community-oriented values" and then shift in the first year to more "extrinsic, rewards-based values" such as grades, class rank, academic honors, and earning power.[129] Similarly, many students' motivation to pursue a legal education seems to shift over the first year from internal reasons such as "interest, enjoyment, [or] meaning," to more "superficial" reasons such as "financial rewards, recognition, or to impress or please others."[130] A similar study in 2015 of lawyers reached the same conclusions.[131]

Understanding the well-being of lawyers and law students primarily through the lens of self-determination theory and specifically, the role of values and motivations, provides a useful path forward. First, it highlights the need to provide enhanced opportunities for students to clarify their values, explore and refine their strengths, and increase their agency in designing a more meaningful and fulfilling career and life.[132] But in doing so, it also necessarily keeps central

126. Well-being practices that are specific to a particular legal job or experience and (typically) learned in a clinical setting are of an arguably different case. They would be more targeted to a specific student/future lawyer who will have need of a specific skill set or competency for their practice. Per the interpretation of data from corporate wellness programs, *supra* note 124, these initiatives would be more likely to meet the specific well-being needs of the individuals that need them. For an example of this model, *see* Ronald Tyler, *The First Thing We Do, Let's Heal All the Law Students: Incorporating Self-Care into A Criminal Defense Clinic*, 21 BERKELEY J. CRIM. L. 1, 12 (2016). Tyler is an experienced practitioner who runs a criminal defense clinic at Stanford. In his article, he outlines how, as a part of the specific package of legal skills he aims to teach his students and alongside their work representing criminal defendants, he introduces tools and coping mechanism that will help them care for themselves while also caring for their clients. *See id.*

127. Krieger & Sheldon, *supra* note 122, at 567–68.

128. *See id.* at 566–67; *see* Sheldon & Krieger, *supra* note 96, at 275–76.

129. Krieger & Sheldon, *supra* note 122, at 566.

130. *Id.*

131. *Id.* at 567.

132. A promising example of this, in addition to those generally described in sections III(a) and (c), might be Bridgette Carr and Vivek Sankaran's class at University of Michigan Law School,

transparent evaluation and critique of the institutions and systems that make self-direction and personal satisfaction unattainable for so many lawyers. Whether, for instance, an individual lawyer can ever achieve a robust sense of well-being if they choose to work in a highly-competitive industry driven by the demands of profit maximization is an important question to pose and to engage. That doing so is potentially complicated, uncomfortable, or even in some contexts, verboten, should not make it any less the focus of well-being initiatives than building personal skills to cope with stress.

c. Prioritizing Competence: Professional Knowledge, Skills, and Fit

The final dominant approach to professional identity formation prioritizes the development of a practical, professional skillset that enables students to proactively identify, acquire, and succeed in the legal career to which they aspire. This approach might be called "*professional* professional identity"[133] formation, and it is all about practice fit, readiness, and professional success. Its origins and underlying motivation are also at least connected in part to a desire for increased access—whether to law school itself, the bar, or an excellent employment outcome.

It is not hard to see the strong connections between and overlap in this approach and the goals of the experiential movement in legal education, generally. Indeed, proponents of experiential education have long emphasized the need for law schools to graduate "practice-ready" lawyers.[134] For example, in the early 70s, Chief Justice Warren Burger observed that nearly half of lawyers in "serious cases" were not adequately qualified, and called on law schools to do more to prepare them for practice.[135] This call, which had gone out long before Burger, was echoed by the MacCrate Report in 1992, which recommended that law schools expand their professional skills offerings in order that students might be able to "participate effectively in the legal profession" upon graduation.[136] In 2014, after a series of related revisions to curricular standards that were in the view of many, largely ineffective, the ABA revised standard 303 to require all law students to complete at least six credit hours of experiential education by way of a "simulation course, a law clinic, or a field

Designing a Fulfilling Life in the Law. *See* How I Lawyer Podcast with Jonah Perlin, *Bridgette Carr and Vivek Sankaran - Designing a Fulfilling Life as a Lawyer (Mental Health Month Collaboration with Personal Jurisdiction Podcast)* (May 10, 2022), https://www.howilawyer.com/065-bridgette-carr-and-vivek-sankaran-designing-a-fulfilling-life-as-a-lawyer-mental-health-month-collaboration-with-personal-jurisdiction-podcast/ [https://perma.cc/G4WC-G5AQ].

133. Floyd, *supra* note 39, at 202 (emphasis in original).

134. Gerkman & Cornett, *supra* note 58, at 36.

135. Warren E. Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 FORDHAM L. REV. 227, 232, 234 (1973) ("The medical profession does not try to teach surgery simply with books[.]").

136. MacCrate Report, *supra* note 18, at 330, 332.

placement."[137] While experiential education is now required by the ABA, there is a sense among many proponents of further reform that such a requirement alone is still not enough to graduate competent practitioners who meet the demands of the marketplace and of justice.[138] The competency-based approach to professional identity formation is positioned to be part of narrowing that gap.

Competency-based professional identity formation has been energized and enabled by several influential empirical studies that seem to indicate what factors, competencies, or "soft skills" are necessary for professional success.[139] Interestingly, the motivations for the development of these studies varies, and has not been, at least as an initial or foundational matter, about improving the substance of legal education.[140]

For example, two of the more recent[141] competency-based studies to gain traction in the professional identity formation movement were initiated in order to explore and promote alternative bases for law school admissions in one

137. STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2021-2022 18 (AM. BAR ASS'N, 2021-2022 ed.).

138. *See, e.g.*, Sarah Valentine, *Flourish or Founder: The New Regulatory Regime in Legal Education*, 44 J. L. & EDUC. 473, 482 (2015) (noting that the "toolbox of skills" students need to develop be professional problem solvers will continue to expand and change as "technological and market forces continue to alter the world in which our students will be working and seeking employment").

139. *See, e.g.*, Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 LAW & SOC. INQUIRY 620, 621–22 (2011); Gerkman, *supra* note 58, at 5; Deborah Jones Merritt & Logan Cornett, *Building a Better Bar: The Twelve Building Blocks of Minimum Competence*, INST. FOR ADVANCEMENT AM. LEGAL SYS. 3 (Dec. 2020), https://iaals.du.edu/sites/default/files/documents/publications/building_a_better_bar.pdf [https://perma.cc/XA6T-NFSX]; NEIL W. HAMILTON, ROADMAP: THE LAW STUDENT'S GUIDE TO PREPARING AND IMPLEMENTING A SUCCESSFUL PLAN FOR MEANINGFUL EMPLOYMENT 35 (2nd ed. 2018).

140. *See, e.g.*, Merrit & Logan, *supra* note 139, at 5 (describing their national study aimed to "provide a more nuanced and comprehensive view of minimum competence").

141. For earlier studies of lawyer competency, *see, e.g.*, Leonard L. Baird, *A Survey of the Relevance of Legal Training to Law School Graduates*, 29 J. LEGAL EDUC. 264, 264 (1978); Robert A. D. Schwartz, *The Relative Importance of Skills Used by Attorneys*, 3 GOLDEN GATE L. REV. 321, 321 (1973); Deedra Benthall-Nietzel, *An Empirical Investigation of the Relationship Between Lawyering Skills and Legal Education*, 63 KY. L.J. 373, 377 (1974).

case,[142] and admittance to the bar in the other.[143] The first, authored by Marjorie Shultz and Sheldon Zedeck, argued that standardized test scores and undergraduate grades are "excessively" focused on predicting academic rather than professional effectiveness, and prioritizing them in the admissions process can have a "significant adverse impact on minority group applicant's chances of admission."[144] The study sought to address these issues by developing a series of nonacademic predictors of professional performance that could be tested and used instead of or alongside traditional admissions standards.[145] The result is a series of "Effectiveness Factors" divided into eight categories ranging from "Intellectual and Cognitive," (e.g., analysis, problem solving, judgment), to "Character," (e.g., passion, stress management, self-development).[146]

Similarly, the 2020 "Building a Better Bar" project grew out of a project to, as the name implies, reform the bar exam.[147] While there are many motivations for such reform, the project's author pointed to two in particular: the desire to "protect the public from … incompetent legal representation," while also "sever[ing] the current system from its undeniably racist and protectionist roots."[148] The result of the project, which involved running 50 focus groups with lawyers across the nation, was to identify twelve "building blocks of minimum

142. Shultz & Zedeck, *supra* note 139, at 621 (arguing that the standard bases for admissions, test scores and grades, "have proven to be valuable predictors of first-year law school grades [but] do not account for success in the legal profession or for law school outcomes [otherwise]"); *see also* Jonathan D. Glater, *Study Offers a New Test of Potential Lawyers*, N.Y. TIMES (Mar. 10, 2009), https://www.nytimes.com/2009/03/11/education/11lsat.html [https://perma.cc/6847-8AP4] (relating how for Shultz, California voters' approval of Proposition 209, banning consideration of race in admission, "'prompted [her] to think hard about what constitutes merit for purposes of law school admission, and to decide LSAT was much too narrow, as well as having big adverse impact'").

143. Merritt & Cornett, *supra* note 139, at 5.

144. Shultz & Zedeck, *supra* note 139, at 632–33.

145. *Id.* at 633. For a criticism of the methods used and the test produced by Schultz and Zedeck, *see, e.g.*, Adam Lamparello, *Legal Education at A Crossroads: A Response to Measuring Merit: The Shultz-Zedeck Research on Law School Admissions*, 61 LOY. L. REV. 235, 248–50 (2015).

146. Shultz & Zedeck, *supra* note 139, at 632 n.5. The full list of 26 Effectiveness Factors is as follows:

> Analysis and Reasoning; Creativity/Innovation; Problem Solving; Practical Judgment; Researching the Law; Fact Finding; Questioning and Interviewing; Influencing and Advocating; Writing; Speaking; Listening; Strategic Planning; Organizing and Managing One's Own Work; Organizing and Managing Others; Negotiation Skills; Able to See the World Through the Eyes of Others; Networking and Business Development; Providing Advice & Counsel & Building Relationships with Clients; Developing Relationships within the Legal Profession; Evaluation, Development, and Mentoring; Passion and Engagement; Diligence; Integrity/Honesty; Stress Management; Community Involvement and Service; Self-Development.

Id. at 630.

147. Merritt & Cornett, *supra* note 139, at 6.

148. *Id.* at 3, 5.

competence" for first-year lawyers, and specific recommendations as to how those competencies could and should be assessed as part of or in place of the bar exam.[149] While it is unclear (and beyond the scope of this article) how pervasively the competency factors developed across these two studies have influenced admissions committees in the one case, or bar examiners in the other, they have made their way back into law schools as key benchmarks for professional identity formation and professional development.[150]

The other two competency-based studies that have been influential in the professional formation movement seem specifically connected to or catalyzed by the problem of poor employment outcomes. The first, published in 2016 by the Institute for the Advancement of the American Legal System ("IAALS"), was explicitly responsive to a job market in which almost 40% of law graduates did not secure full-time jobs requiring a law license.[151] The study sought to address this "employment gap" by surveying lawyers across the country to determine what skills new lawyers need, (and that, presumably, law schools should teach to make students more marketable).[152] The results of the study are, similar to those already outlined, a mix of characteristics and competencies such as conscientiousness, common sense, speaking and writing skills, and timeliness.[153]

A smaller-scale but very similar study was completed by Neil Hamilton and formed the basis of his well-respected and widely-used manual for professional development, *Roadmap*.[154] *Roadmap* is exemplary of the how the competency-based approach to professional identity formation can look in practice. In the opening chapter of the book, Hamilton is clear that the primary purpose for professional development is very practical: "to gain meaningful, long-term JD-

149. *Id.* at 3, 23, 70. The "building block" competencies are:

> The ability to act professionally and in accordance with the rules of professional conduct; [a]n understanding of legal processes and sources of law; [a]n understanding of threshold concepts in many subjects; [t]he ability to interpret legal materials; [t]he ability to interact effectively with clients; the ability to identify legal issues; [t]he ability to conduct research; [t]he ability to communicate as a lawyer; [t]he ability to see the "big picture" of client matters; [t]he ability to manage a law-related workload responsibly; [t]he ability to cope with the stresses of legal practice; [and] [t]he ability to pursue self-directed learning.

Id. at 3. The author of the project admits that "[s]ome of the 12 building blocks are difficult, or impossible, to test effectively through written exams." *Id*. at 67. She suggests, among other things, that practice experiences including those occurring during clinical courses or externships during law schools, could be used to assess these competencies, instead of a traditional exam. *Id*.

150. Examples include Albany, UT, Pitt, Georgetown, and Utah.

151. Gerkman & Cornett, *supra* note 58, at 1 (citing *Section of Legal Ed. – Employment Summary Report*, AM. BAR ASS'N, http://employmentsummary.abaquestionnaire.org/ [https://perma.cc/XE5Q-P6S3] (select 2015 class under "Compilation-All Schools Data")).

152. *Id.*

153. *Id.* at 3.

154. HAMILTON, *supra* note 139, at 31.

required or JD-preferred employment."[155] The way to secure that employment—in a sea of similar law students—is to clarify one's strengths and interests, identify the "competencies" clients and employers in that area of interest require, and then strategically develop and learn to communicate those competencies in order to land that coveted job.[156] According to Hamilton's surveys, those "competencies" vary, but generally are similar to the ones already outlined, and include good judgment and integrity, oral and written communication skills, analytical skills, teamwork, client responsiveness, project management, and initiative.[157]

Schools that tend to pursue a competency-based approach to formation are likely to lean heavily on their skills faculty and career counseling offices. Indeed, this approach is so consonant with skills-based and experiential curricula that it is hard, at times, to see where the one ends and the other begins; that is, whether they are simply two ways of talking about the same thing. While scholars of professional identity formation take pains to note that professionalism and professional identity formation are not the same thing,[158] they look very similar under an approach that so strongly emphasizes the development of professional competencies and skills.[159]

In theory, what makes the competency-based approach a form of professional identity formation as opposed to straight professionalism or skill acquisition is its emphasis on self-reflection, intrinsic motivation, and internalization of professional norms.[160] The purported goal is not *simply* to be practice-ready or professionally competent, but to generate internal self-direction "toward excellence" to achieve a satisfying and meaningful professional life.[161]

Yet the similarity between and overlap in these two projects presents at least two potential areas of concern. First, while the competency-based approach to formation is not *unconcerned* with ethics or morality, in practice, it will generally be more practical, ideologically neutral, and individualistic in that its ultimate end is the alignment of personal strengths to professional

155. *Id.* at 2.

156. *Id.*

157. *Id.* at 31–32.

158. *See, e.g.*, Webb, *supra* note 43, at 1131 (noting distinctions between professionalism and professional identity formation); Thomson, *supra* note 83, at 315–16 (distinguishing between professionalism as compliance with ethical rules, and professional identity formation as one's own decisions about professional behaviors "above the line").

159. This might not be a bad thing, depending on your particular vision for formation. In fact, it is worth noting that the Carnegie Foundation study itself "used synonymously the terms professional formation, formation of a professional identity, professionalism, professionalism and ethics, and ethical comportment." Hamilton et al., *supra* note 67, at 13.

160. *Id.* at 15–16.

161. *Id.* at 12.

opportunities.[162] This is part of what makes the competency-based approach attractive: it is practical for most students,[163] marketable to employers, inclusive, and relatively uncontroversial. But this is also what can tend to make it less ethically rich, less personally formative, and less, at the end of the day, responsive to the original goals of the professional identity formation movement itself.[164]

Second, this approach is likely to inordinately impact legal skills faculty, potentially requiring them to add and assess even more content in already packed 1L classes. And this, when skills faculty are typically paid less than doctrinal faculty, enjoy fewer opportunities for advancement and scholarly development, and teach first year classes that are significantly more time-intensive and pedagogically demanding.[165] Though many skills faculty may be delighted to engage in intentional professional identity formation, carting it into their classes by fiat as a way to meet the ABA's mandate, without providing either additional credits, pay, or recognition for the increased workload and expertise it requires, would be problematic in multiple ways, not least of which in increasing already fraught issues of faculty inequality.

IV. REFLECTIONS AND RECOMMENDATIONS

Each of the three dominant approaches to professional identity formation responds to a distinct set of concerns about legal education or the legal profession with a corresponding vision and prescription for repair. Ultimately, each seeks nothing less than to remake legal education and by extension, the

162. Schools that favor the competency-based approach particularly as it emphasizes the connection between student strengths and job opportunities are likely to lean heavily on career services professionals to engage in this work. *See, e.g.*, Syllabus for Wake Forest University Law School LAW 122: Professional Development, *supra* note 54.

163. It is worth noting that some students, particularly those at elite schools, may not plan on practicing law and will therefore find mandated formation courses that are skills-focused to be unhelpful. *See, e.g.*, Yale Faculty Letter, *supra* note 60 at 3, (criticizing the proposed revisions to 303 because their diverse student body includes students "who do not intend to maintain 'a successful legal practice," and because "[l]aw schools do not ordinarily command expertise about the practicalities of law practice and should not be pressured to develop such a field").

164. *See, e.g.*, Eli Wald, *Formation Without Identity: Avoiding a Wrong Turn in the Professionalism Movement*, 89 UMKC L. REV. 685, 702 (2021), (critiquing "traditional" modes of professional identity formation that are "amoral" and focused largely on competence, but noting that one reason this mode continues to be employed, primarily at elite law schools, is because, "[i]n our seemingly increasingly polarized society, talk of values, justice, and equality breeds disagreement and discord, which law schools and their faculties tend to avoid."); Madison & Gantt, *supra* note 61, at 206 (warning that "[t]his latest movement [of professional identity formation] will encounter the same struggles as the professionalism movement unless it focuses on fostering internal change in law students and lawyers").

165. *See, e.g.*, Mary Beth Beazley, *Shouting into the Wind: How the ABA Standards Promote Inequality in Legal Education, and What Law Students and Faculty Should Do About It*, 65 VILL. L. REV. 1037, 1041–44 (2020).

legal profession. As such, this article contends that the premises that underlie each approach must be subject to rigorous and ongoing examination and supported by sound evidence. Further, the vision each supports, and that each actively seeks to form law students under, should be free from the kind of political or ideological bias that demands conformity and discourages nuanced discussion, disagreement, or debate.

This article has sought to model some of that examination and inquiry, bringing into light the origins and aspects of each approach that most set it up for corruption, exclusion, impotence, or waste. While it is not the aim of this article to prescribe an ideal way to do professional identity formation, it is its goal to provide a more helpful and transparent vocabulary for discussions about formation, and to highlight both the potential for missteps, and the problems those missteps may exacerbate.

Specifically, and to summarize, institutions moving forward with strategic planning for ABA 303(b) should be aware of and willing to grapple with the following realities, among others:

First, professional identity formation efforts that are driven by a substantive vision of what it means to be a good lawyer and how to create a just society can easily become ideologically specific and doctrinaire. Yet outside of explicitly religious settings, law schools have a duty to honor the religious, ethical, and political diversity of their faculty and students. This is a function of academic freedom and open inquiry to which these institutions are committed. It is also a function of a commitment to diversity itself. While it makes sense to provide ideologically specific formation *options* for students, *mandated* formation initiatives in non-sectarian law schools should be informed by the principles of pluralism and open inquiry that their institutions espouse. This will be more likely the closer the initiative sticks to formation in universalizable ethical principles than to specific political or social positions or projects.

Indeed, it is particularly dishonest and coercive to make professional identity formation a vehicle for establishing a particular ideology as orthodoxy within the law school. Aside from any violation of academic freedom it may represent, it smuggles in ideology without requiring it to pay its way. That is, rather than presenting a particular ideological position in an ordinary academic setting or through acceptable scholarly channels where it is explicitly placed in competition with other ideas and subject to rigorous examination and debate, it bakes it into a project of formation in which it is assumed to be an essential part of what it means to be a good lawyer and even a good person.

Second, professional identity formation efforts that are ideologically substantive are likely to converge with institutional efforts to address and foster diversity, equity, and inclusion—to the likely detriment of both. In fact, there may be a strong efficiency incentive for institutions to address both the ABA's 303 (b) and (c) requirements in one fell swoop. Whether this mingling of efforts is appropriate is less the point than that the one could easily subsume, supplant,

or replicate, the other. This possibility should be thoughtfully analyzed and engaged in strategic planning.

Third, to date, most well-being-focused professional identity formation efforts tend to mimic, albeit with much less funding, those of a corporate well-being industry that has been almost entirely unsuccessful in increasing the wellness of employees or in addressing the structural issues that are the most likely causes of burnout. This reality should be confronted with non-defensive curiosity and scholarly nuance as wellness practices and theory are increasingly integrated into legal education and specifically into the concept of professional identity formation.

Fourth, where formation initiatives are driven by the acquisition of professional competencies, they may be less likely to engage in the meaningful ethical formation that the authors of the Carnegie Report envisioned. Instead, they may largely serve to enhance and expand a school's experiential education offerings, in many cases injecting a dose of business school-style executive skills training into the 1L curriculum. Two further concerns are relevant to this approach. First, particularly where the purportedly essential competencies originated in projects aimed at redefining merit or remediating certain groups of students, transparent consideration of whether they are actually necessary for the entire student body and should be mandated as such is needed. Second, schools must take care to ensure skills faculty, already often paid less than their doctrinal colleagues, do not inordinately bear the burden of curricular expansion and change under this, or other, approaches.

Finally, the values of academic freedom for faculty and agency for students should be of paramount importance in implementing the ABA's professional identity formation requirements. This is particularly the case because of the deeply personal and individualistic nature of identity formation itself, and the degree to which it could easily become coercive.

V. CONCLUSION

For many stakeholders, the ABA's decision to mandate opportunities for professional identity formation provides the open path that has been so desperately sought and needed to change legal education and the profession for the better. But one person's vision of the good is not always the same as another's. How to craft and engage in a project that will be at once deeply personal, meaningful, and transformative, while at the same time inclusive, pluralistic, and noncoercive, will be challenging to say the least. This article contends that the best way to start is with transparent examination of the goals of formation, the means to achieving those goals, and the values that are implicated in the process.