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### **THE ROLE OF ETHICS IN LEGAL EDUCATION OF POST-SOVIET COUNTRIES**

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#### **ABSTRACT**

The neglect of lawyer ethics in legal education, including in continuing legal education for lawyers and judges, is an enduring Soviet legacy in post-Soviet countries. Partially because of this neglect, many people in post-soviet countries do not trust lawyers. Their mistrust often is for good reason—too many lawyers are unethical. Yet, unethical lawyers do more than alienate others and cast the legal profession in disrepute. Unethical lawyers waste

resources by unnecessarily prolonging disputes and inflaming antagonisms by provoking unjustifiable confrontations. Worse, they corrupt the legal system by bribing judges, suborning perjury, and using other illegal means to achieve their ends. Thus, they contribute to an all-too-common failure in post-Soviet countries—the failure to achieve the rule of law.

The academic literature is replete with commentary about the place of ethics in legal education. Some argue that ethics instruction is unnecessary. They claim that allusions to ethics in other courses, the law school culture, and the ethics learned earlier in life is sufficient. Others posit that ethics are too important to omit from the law school curriculum. They often add, however, that legal ethics instruction in law school commonly involves little more than demanding that law students memorize rules or codes of conduct.

This article discusses whether the ethics education of future lawyers in post-Soviet countries is adequate. Concluding that it is not, this article proposes suggestions for the content of an Eastern European legal ethics course and methods for teaching law students to internalize ethical norms as a part of their legal education.

#### **KEYWORDS**

Post-Soviet countries, legal education, legal ethics, professional morals

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## INTRODUCTION

While he was a Harvard Law School professor, United States Supreme Court Justice Felix Frankfurter wrote, “in the last analysis, the law is what the lawyers are.”<sup>1</sup> In other words, the law is more than an expression of rules, standards, and the like. Instead, lawyers shape, if not wholly define what the law is because the law exists within a social structure in which lawyers have a pivotal role. As the law’s fulcrum within this structure, how lawyers apply the law and the methods by which they apply it affect how others perceive the law. What lawyers do and the norms and values their actions manifest—when considered across time and cultures—create and reflect different socio-political, moral, and cultural perspectives about lawyers and their roles.<sup>2</sup> So too will their actions, norms, and values create and reflect different perspectives about the law. Thus, those who seek fair and just laws would do well to insist—and ensure—that lawyers have attributes appropriate to their pivotal roles in the legal system.

One of these attributes is professionalism. The level of a lawyer’s professionalism either serves or disservices the law. A lawyer who bribes a judge, for instance, disservices the law. Thus, at the minimum, lawyers should comply with the law and any formal rules of ethical conduct. Yet, because “the law is what the lawyers are,” they should do more: they should internalize a commitment to the profession’s core norms and values. One question this article addresses is whether lawyers in Eastern Europe have done this sufficiently. We think not. In Eastern Europe, the teaching of legal ethics is still transitioning from the Soviet era. We believe that the failure of many Eastern European nations to become places where the rule of law prevails is substantially a failure of legal ethics.

The evidence of lawyer misconduct in the former Soviet countries, including those in Eastern Europe, is abundant and disturbing. For instance, a worldwide 2010 survey conducted by the International Bar Association found that over 70 percent of lawyers within the Commonwealth of Independent States (CIS) stated that corruption was an issue in their respective jurisdiction. No other region had a higher percentage. In some countries, Ukraine, for example, the percentage was even higher<sup>3</sup>. The survey also found that about 28 percent of the respondents from CIS countries “believed that more than half of lawyers in their jurisdiction would

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<sup>1</sup> Letter from Frankfurter to a Mr. Rosenbaum (May 13, 1927) cited by Rand Jack and Dana Crowley Jack, *Moral vision and professional decisions: The changing values of women and men lawyers* (Cambridge University Press, 1989), 156.

<sup>2</sup> Maya Goldstein Bolocan, *Professional legal ethics: a comparative perspective* (Central European and Eurasian Law Initiative, 2002), 1.

<sup>3</sup> International Bar Association, Organization of Economic Cooperation and Development, United Nations Office on Drugs and Crime, *Risks and Threats of Corruption and the Legal Profession: Survey* (2010), 9-10.

knowingly engage in transactions that could be corrupt.”<sup>4</sup> This survey, probably the most ambitious of its kind, paints a bleak picture of lawyer ethics and prospects for the rule of law in most of the former Soviet countries. At the very least, it reveals a connection between the Soviet-era legal system in those countries and their slow transition to a legal system not infused with corruption. Within this connection is a residual “Soviet mindset” or “Soviet way of thinking.”

Eastern European countries regained their independence more than twenty years ago. Yet, while this revolutionary change had a breathtaking, almost miraculous quality, the Soviet legacy has endured. In part, it has endured because the then-extant political and intellectual leadership lacked the practical capacity to substitute old ideas with new ideas. As a prominent Lithuanian scholar has noted, “neither the dominating communist nomenclature elite nor the nonconformist intelligentsia had any practical experience in independent political, social and economic life”<sup>5</sup>. Thus, the task of reforming these nations’ respective legal systems and reconstructing their respective legal professions was, in the first instance, in the hands of those without experience in independent legal systems. Not long thereafter, those post-Soviet countries admitted to the European Community had to adjust again, this time for their accession to the European Union.<sup>6</sup> This adjustment again tested, and sometimes outpaced, these countries’ capacity for displacing the old for the new.

Lithuania was one of these countries. As Lithuania transitioned from a socialistic, totalitarian state within the Soviet Union to a democratic, pluralistic state within the European Union, legislative reforms to its legal system represented 14% of all of its legislative changes.<sup>7</sup>

How Lithuania reformed its legal system resembled how other post-Soviet countries that are now EU members—such as Estonia, Latvia, Poland, the Czech Republic, Slovakia, Romania, and Bulgaria—changed their legal systems. It differs, however, from changes made in other post-Soviet countries that have not entered the EU, such as Ukraine, Georgia, and Belarus. Still, bearing in mind these differences, looking at how Lithuania reformed its legal system can reveal trends specific to Eastern Europe as a region.

Throughout the region, the most fundamental reality is that change comes slowly. For Lithuania and other post-Soviet countries lucky enough to catch the

<sup>4</sup> Maya Goldstein Bolocan, *supra* note 2, 156.

<sup>5</sup> Egidijus Aleksandravičius, *Išblukęs Žodynas* (Vilnius: Versus aureus, 2010), 323. Professor Egidijus Aleksandravičius is a prominent historian, philosopher and political analyst and commentator in Lithuania, author of more than 20 books, more than 80 scientific articles and many articles in the mass media.

<sup>6</sup> Helle Blomquist, “Legal Education, Profession and Society Transition: Reform of Lithuanian Legal Education,” *Review of Central and East European Law* 29(1) (2004): 36.

<sup>7</sup> *Ibid.*: 40.

European train, "the EU accession process overtook the restoration of the state."<sup>8</sup> Yet, even the countries that metaphorically rode this train discovered that systems, including legal systems, and the individuals within them change reluctantly. When a country's system of government changes, the same is not always the case with its people's way of thinking.<sup>9</sup> The inescapable reality is that "physical barriers fall more readily than ingrained patterns of thought and action,"<sup>10</sup> especially in the context of legal systems. For legal systems to change, lawyers must change. After all, "the law is what the lawyers are."<sup>11</sup>

Eastern European lawyers during the Soviet era had a constrained perspective. As Professor Meyers notes, "the legal science is not one of many startling discoveries but instead is an accumulation of wisdom, honed by error and experience ... . Lawyers in countries emerging from Soviet domination were familiar with one precedent: a legal profession controlled by a Communist regime."<sup>12</sup>

This constrained perspective has been slow to give ground. The 20 years of independence now enjoyed by Eastern European countries is short when compared to the 50 years of Soviet occupation. In Lithuania, more than half of now practicing judges were educated in Soviet times.<sup>13</sup> Since then, the ingrained patterns of the Soviet legal education system have persisted.<sup>14</sup>

Consequently, almost all lawyers in the new post-Soviet countries were educated at law faculties or institutes bound tightly to socialist and Soviet views of the world.<sup>15</sup> Their professors' Soviet-influenced attitudes moved from one generation to the next.<sup>16</sup> Even in those countries whose development was accelerated by accession to the EU, the accession process moved faster than the processes of transforming society's mentality. Thus, today, with the transition from totalitarianism to democratization still ongoing, legal educators must closely scrutinize the values and perspectives they are transmitting. Where these values and perspectives are inappropriate for a pluralistic, democratic society, only discarding them will produce real change.<sup>17</sup>

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<sup>8</sup> *Ibid.*: 47.

<sup>9</sup> A "change laws is not enough": Jacques DeLisle, "Lex Americana: United States Legal Assistance, American Legal Models, and Legal Change in the Post-Communist World and Beyond," *U. Pa. J. Int'l Econ. L.* 20 (1999): 307-308.

<sup>10</sup> William D. Meyer, "Facing the Post-Communist Reality: Lawyers in Private Practice in Central and Eastern Europe and the Republics of the Former Soviet Union," *Law & Pol'y Int'l Bus.* 26 (1994): 1046.

<sup>11</sup> Letter from Frankfurter to a Mr. Rosenbaum (May 13, 1927) cited by Rand Jack & Dana Crowley Jack, *supra* note 2, 156.

<sup>12</sup> William D. Meyer, *supra* note 10: 1019, 1028.

<sup>13</sup> Simona Selionytė-Drukteinienė, Vaidas Jurkevičius, & Thomas Kadner Graziano, "The Impact of the Comparative Method on Lithuanian Private Law," *European Review of Private Law* 21 (4) (2013).

<sup>14</sup> This is true because in most universities traditionally providing legal education in post-Soviet countries old nomenclatura remained in place.

<sup>15</sup> William D. Meyer, *supra* note 10: 1030.

<sup>16</sup> Helle Blomquist, *supra* note 6: 89.

<sup>17</sup> *Ibid.*: 46; Peter J. Sahlas and Carl Chastenay, "Russian Legal Education: Post-Communist Stagnation or Revival," *J. Legal Educ.* 48 (1998): 194; Lisa A. Granik, "Legal Education in Post-Soviet Russia and Ukraine," *Or. L. Rev.* 72 (1993): 963; and others.

In light of this need to scrutinize and, if appropriate, to discard the values and attitudes being taught directly and indirectly in Eastern European law schools today, the question examined in this article is whether legal ethics education in post-Soviet countries is adequate to this task. Concluding that it is not, this article recommends methods to help law students to internalize ethics through a course or courses designed to do this and in other ways.

This article starts by examining the values, traits, and perspectives of “homo sovieticus,” specifically those of the Soviet lawyer. It traces these values, traits, and perspectives into Eastern European legal education today and compares the teaching methods that resulted from them with the methods used to teach legal ethics elsewhere, especially in the United States. The article concludes with a call for more reform—the time has come for values-based legal education in Lithuania and elsewhere in Eastern Europe. In so concluding, the article offers suggestions for the content of an Eastern European legal ethics course.

## 1. THE SOVIET LAWYER’S MENTALITY

Like others in the Soviet Union, Soviet lawyers fit the caricature of “homo sovieticus.”<sup>18</sup> According to popular culture as reported in the mass media, “homo sovieticus” is an obedient person with a higher education diploma but with a narrow understanding of the world—a person who the Soviet system had bolted tightly to a system from which there was no escape.<sup>19</sup>

This person mistrusts the state and its authorities and trusts only his “own guys,” his relatives, and his friends. He does not feel he is part of the state; thus, he can cheat the state and steal state property.<sup>20</sup> He also can violate the rules of the state without risking social disapproval. Indeed, he is seen as a hero if he avoids responsibility.<sup>21</sup>

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<sup>18</sup> Homo Sovieticus is a sarcastic description of average person in Soviet Union and satellite countries of Eastern Europe. Homo Sovieticus is the object of literature, movies and arts. The term was used by prominent Soviet sociologist Aleksandr Zinoviev. His book has the same title: Aleksandr Zinoviev & Charles Janson, *Homo Sovieticus* (London: V. Gollancz, 1985).

<sup>19</sup> Egidijus Aleksandravičius, *supra* note 5, 292. Jurists were viewed simply as workers in the centrally-planned economy (William D. Meyer, *supra* note 10: 1030).

<sup>20</sup> This problem probably emanates from the fact that during Soviet times there existed almost no private property, no private contracts and no private enterprises. As a result, understanding developed that state property belongs to everybody, an understanding that was vital in Soviet times. This led to a belief that every person owns some part of state property, so they can take from it anything if the opportunity arises. It grew into massive stealing of state property.

<sup>21</sup> In Lithuania there was the case of a millionaire who applied for state allowances, stating that he was unemployed. Meanwhile all his property was on the name of relatives (“fntt išaiškino mokesčių nemokantį milijonierių, kuris neatsakė ir socialinės pašalpos,” *Alfa.lt* (2014) // <http://www.alfa.lt/straipsnis/15060843/>).

He is a pragmatic conformist; he lacks initiative.<sup>22</sup> He has a disintegrated mentality—he can think, say, and do three different and inconsistent things, understanding declarations and reality as unrelated. Therefore, as he and his type have evolved today, “too often, these men and women use the language of reform for the Western audience, but resist meaningful reform within their own institutions.”<sup>23</sup>

Perceptions of Soviet lawyers based on these attributes continue today. Recent surveys reveal that most residents of Eastern European countries do not trust lawyers and associate lawyers with legal nihilism, clannish behavior, and protectionism.<sup>24</sup> Lawyers, survey respondents say, form a closed community, they lack integrity,<sup>25</sup> and they are overly pleased with themselves. The Fall 2013 Euro Barometer public opinion survey conducted by the European Commission in the European Union<sup>26</sup>, for instance, showed little trust in the national justice systems in post-Soviet, EU countries such as Lithuania. The survey showed only 31% of

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<sup>22</sup> This may be explained by such historical facts as deportation of intelligentsia (teachers, lawyers, professors, farmers (except probably doctors), the so called “bourgeoisie” to Siberia with all families), where most of them died. So any source of progressive thought was neutralized. As prof. Meyers notes: “Echoing the treatment of professionals and intelligencia considered to be dangerous to the state, the various Communist governments executed, imprisoned, or shipped off them to internal exile” (William D. Meyer, *supra* note 10: 1028). The forced deportation of intelligentsia and business entrepreneurs of core ethnic groups tended to weaken the original national structures. The intelligentsia, for example in Lithuania at that time, was totally ravaged. How this tragic history of genocide of intelligentsia changed gene pools of the country is difficult to evaluate.

<sup>23</sup> *Ibid.*: 1047.

<sup>24</sup> During soviet period “rules, laws, and ethics all were routinely disregarded. Significant decisions were not based on legality but on the dictates of party leaders who controlled the system. Sometimes these commands were given directly in phone calls or face-to-face meetings” (*ibid.*: 1042).

“As arriving Western officials began to replace Soviet delegations, ‘showing the advantages of socialist law’ was no longer the thing to do ... Most of them rewrote their resumes, casting themselves as lifelong reformers oppressed by the Communist system” (William D. Meyer, “Remnants of Eastern Europe’s Totalitarian Past: The Example of Legal Education in Bulgaria,” *J. Legal Educ.* 43 (1993): 234–235).

<sup>26</sup> Respondents were asked whether, overall, they tend to trust or tend not to trust the justice system in their country (“Justice in EU Report 2013” (2014): 3 // [http://ec.europa.eu/public\\_opinion/flash/fl\\_385\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_385_en.pdf)).

respondents trusted the justice system. This was significantly lower than the 28 EU member states' average that showed a 53% trust level.<sup>27</sup>

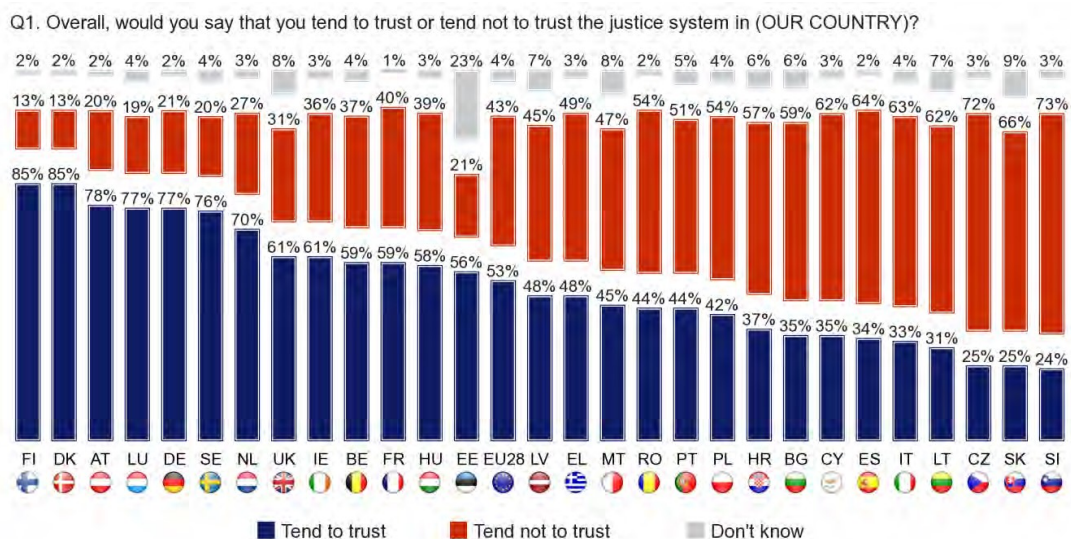
In other words, these surveys show that lawyers in post-Soviet countries do not meet society's expectations. Academics, clients, consumer groups, and state institutions in these countries harshly criticize lawyers. They accuse lawyers of legal nihilism, non-observance of the law, ignorance of ethical and moral norms, and the manipulation of law and the entire legal system. As Blomquist notes, when coupled with lawyers' resistance to change in response to this criticism, the resulting legal culture "could be close to a vicious circle of the petrifying of previous structures and practices."<sup>28</sup> In sum, the legal community's self-satisfied and defensive attitude limits the growth of a rule of law culture, lessens the sensitivity of the legal system, and antagonizes different groups within the society.

## 2. THE CHALLENGE OF CREATING A NEW LEGAL CULTURE

As the Soviet lawyer's mentality and culture was carried forward into the transition from totalitarian to democratic regimes, it interacted with another dimension of the transition: the restoration of a sovereign state with independent institutions. Most post-Soviet countries fully embraced this form of "nation building." The creation of new political and legal structures, however, depends on the mutual understandings of the nation's people. Therefore, in terms of mentality,

[the] state will stand closer to the position of the previous republic in the Soviet Union . . . . Expanding this line of thought on the application of legal thinking

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Source: *ibid.*: 12–13.

<sup>28</sup> Helle Blomquist, *supra* note 6: 73.

means that . . . the profession will more readily be able to draw on experiences and legal systemic thinking from the recent Soviet past.<sup>29</sup>

During Soviet times, notions of justice and morality reflected the official ideology;<sup>30</sup> that is, justice meant positive law.<sup>31</sup> The lawyers' role was not to serve their clients but was, as Lenin observed, "to serve the state."<sup>32</sup> Lawyers were "not to promote justice or to defend private interests, but to build communism."<sup>33</sup>

In post-Soviet countries, therefore, legal expressions of the public interest are highly influenced by a positivistic way of thinking or a "dictatorship" of the law. Moreover, the prevailing legal culture views the law as "owned" by lawyers; that is, the law and its interpretation are the lawyers' prerogative exclusively.<sup>34</sup> These deeply ingrained patterns of thinking mean that educational reform is critical because "people tend to form their values foundation when they are young and stick to this throughout their lifetime."<sup>35</sup>

Not surprisingly, therefore, scholars commenting on the legal profession's transition in post-Soviet countries agree that the greatest challenge is creating a new legal culture, starting with a new legal consciousness among lawyers.<sup>36</sup> Although legal education is a logical place to introduce this new consciousness, post-Soviet legal education has not always been able to rise to the challenge:

initial expectations of a rapid transition from totalitarianism to Western-style institutions have been tempered by the realities of bureaucratic inertia, lack of resources, and ideological intransigence. From curricula to personnel to course materials: the educational structures in many countries are built on the remains of a system influenced by the crosscurrents of Communist ideology and Soviet-style authoritarianism. Throughout Central and Eastern Europe, remnants of the totalitarian past haunt law faculties and legal education.<sup>37</sup>

<sup>29</sup> *Ibid.*: 49.

<sup>30</sup> Under Marxist doctrine, law would wither away as the ideal communist society developed, because law was seen as only a tool of ruling classes seeking to reinforce and perpetuate dominance of capitalists. So, "throughout the Soviet era law was completely devoted to the achievement of communism: ideology set the objectives and guided the evolution of law. It is no wonder that in higher education one of the first consequences of the Bolshevik Revolution was the abolition of the faculties of law in 1919" (Peter J. Sahlas and Carl Chastenay, *supra* note 17: 196).

<sup>31</sup> For example such a concept enshrined in the 1964 Lithuanian Civil Code (which was in essence the same in all Soviet republics) Article 5: "Exercising their rights and performing their duties citizens and organizations must abide by the law and respect the rules of socialist common life and moral principles of society employed in communism building". After restoration of independence of Lithuania, Civil Code of 1964 was amended in 1994. Of course, all references to communism building were eliminated. Notion of morality of communism builders was substituted with the notion of public morality.

<sup>32</sup> William D. Meyer, *supra* note 10: 1042.

<sup>33</sup> Peter J. Sahlas and Carl Chastenay, *supra* note 17: 196.

<sup>34</sup> More about it in the presentation of prof. E. Aleksandravičius "Ownership of the Law: Between Society, State and Lawyer" (Egidijus Aleksandravičius, "Teisės 'nuosavybė': tarp visuomenės, valstybės ir teisininkų" (2014) // [http://www.tvdu.lt/?q=video/e\\_aleksandravičius\\_teis\\_s\\_nuosavyb\\_tarp\\_visuomen\\_s\\_valstyb\\_s\\_ir\\_teisinink](http://www.tvdu.lt/?q=video/e_aleksandravičius_teis_s_nuosavyb_tarp_visuomen_s_valstyb_s_ir_teisinink)).

<sup>35</sup> Helle Blomquist, *supra* note 6: 89.

<sup>36</sup> Lisa A. Granik, *supra* note 17: 974.

<sup>37</sup> William D. Meyer, *supra* note 24: 227.

These “remnants of the totalitarian past” include post-Soviet legal education’s neglect of lawyer ethics and professionalism. Economic changes deriving from the rise of a free-market economy and the consequent liberalization of the legal marketplace<sup>38</sup> accentuate this neglect; and the lack of awareness of what constitutes unethical behavior highlights it. Strikingly, “[c]oncepts such as ‘conflict of interest’ have neither linguistic nor theoretical equivalents in many languages in the region.”<sup>39</sup>

This said, “the state of legal education presents a paradox: there is both more change, and less change, than meets the eye.”<sup>40</sup> For instance, the Soviet courses of Atheism, Scientific Communism, and the History of the Communist Party have been replaced by courses like philosophy, history, and political science.<sup>41</sup>

Though the curriculum has changed, legal education remains almost purely theoretical. For example, Romanian as well as Polish colleagues admit that “a law graduate who enters an apprenticeship program is immediately dropped into the deep waters of real legal problems and purely theoretical preparation is of no use in the very nontheoretical situations.”<sup>42</sup> If professional internships exist, they too are often formal.<sup>43</sup>

More problematic, however, is the near-total absence of legal ethics courses in post-Soviet countries,<sup>44</sup> either because of, or despite, the government’s heavy regulation of legal education in these countries. In Lithuania, for instance, a course in legal ethics is neither required by the judicial qualification statute nor by the 2008 February 20<sup>th</sup> Constitutional Court ruling regarding the legal education of prospective judges. The description of legal study programs mentions legal ethics only among the social studies subjects as an elective, non-law subject.<sup>45</sup> Although

<sup>38</sup> For instance, in Russia and most other post-Soviet countries, with the exception of litigation, almost anyone can sell legal services, from writing simple contracts to assisting in much more complicated affairs (Peter J. Sahlas & Carl Chastenay, *supra* note 17: 200).

<sup>39</sup> William D. Meyer, *supra* note 10: 1058.

<sup>40</sup> Lisa A. Granik, *supra* note 17: 963.

<sup>41</sup> *Ibid.*: 966.

<sup>42</sup> Izabela Krasnicka, “Polish Legal Education in the Light of the Recent Higher Education Reform,” *Mich. St. L. Rev.* (2012): 698–699.

<sup>43</sup> Brindusa Camelia Gorea, *et al.*, “Educating Law Students as Good Citizens Is the Romanian Legal Education System Ready to Fulfill Its Social Mission?” *Procedia-Social and Behavioral Sciences* 2(2) (2010): 2928–2929.

<sup>44</sup> For example, there is neither obligatory nor optional courses related to legal ethics in legal education curricula in Moscow or Saint Petersburg (Peter J. Sahlas and Carl Chastenay, *supra* note 17: 205–209). The same with Poland (Izabela Krasnicka, *supra* note 42: 700), Ukraine (Lisa A. Granik, *supra* note 17), Bulgaria (William D. Meyer, *supra* note 24), Lithuania and other countries in the region.

<sup>45</sup> Legal education programs in Lithuania are regulated mostly by a descriptor for legal education prepared by the Ministry of Education and Science of the Republic of Lithuania and a Constitutional Court decision. Namely, on February 20<sup>th</sup>, 2008 the Constitutional Court issued an important decision concerning the requirements of legal education. The Constitutional Court held that the state must ensure that legal education provided in any institution should have equal standards of higher legal education and that certain subjects should be included in the curriculum of every legal education program. Most of the subjects on the list include specific law branches and legal norms, such as theory of law, constitutional law, civil law and other legal subjects (*Lietuvos Respublikos švietimo ir mokslo ministro 2010 m. rugpjūčio 19 d įsakymas Nr. V-1385 'Dėl teisės studijų krypties aprašo patvirtinimo'*, Official Gazette, 2010, no. 102-5306; *Lietuvos Respublikos Konstitucinio Teismo 2008 m. vasario 20 d.*

legal ethics is a compulsory course in other countries,<sup>46</sup> it is neither obligatory nor optional in Lithuania except at one university.<sup>47</sup>

The neglect of ethics instruction in post-Soviet legal education creates the erroneous impression that legal ethics is of secondary importance to lawyers. Regional scholars' insufficient attention to legal ethics and professionalism reinforces this. Still, recognition is growing that a "lawyer ought to be much more than a law technician who deals with the machine of justice,"<sup>48</sup> as is recognition that elective clinical programs in which students are taught professional responsibility should be encouraged.<sup>49</sup>

Of course, curricula is not everything; teaching and studying matter, too. Yet, unfortunately, Soviet teaching methods are still common. For instance, teachers commonly teach from codes and laws.<sup>50</sup> Neither case analysis nor the Socratic method are popular.<sup>51</sup> Therefore, faced with sitting passively through lectures, students often are indifferent to their studies and lack creativity, initiative, and critical thinking.<sup>52</sup> They are largely taught "to learn, not to think."<sup>53</sup>

Student-centered approaches are rare in post-Soviet countries. Professors usually earn little and have little time for their students because they engage in numerous activities apart from teaching.<sup>54</sup> Fortunately, over time, as Soviet-era

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*nutarimas 'Dėl Lietuvos Respublikos Vyriausybės 2002 m. spalio 4 d. nutarimu Nr. 1568 'Dėl Kvalifikacinių aukštojo teisinio išsilavinimo reikalavimų asmenims, norintiems įstatymų nustatyta tvarka eiti teisėjo pareigas, patvirtinimo' patvirtintų Kvalifikacinių aukštojo teisinio išsilavinimo reikalavimų asmenims, norintiems įstatymų nustatyta tvarka eiti teisėjo pareigas, atitikties Lietuvos Respublikos teismų įstatymo 51 straipsnio 1 daliai (2002 m. sausio 24 d., 2004 m. gegužės 18 d., 2006 m. birželio 1 d. redakcijos), Lietuvos Respublikos teismų įstatymo pakeitimo įstatymo įsigaliojimo ir įgyvendinimo įstatymo 5 straipsnio 1 daliai, Official Gazette, 2008, no. 23-852; Lietuvos Respublikos Vyriausybės 2002 m. spalio 4 d. nutarimas Nr. 1568 'Dėl kvalifikacinių aukštojo teisinio išsilavinimo reikalavimų asmenims, norintiems įstatymų nustatyta tvarka eiti teisėjo pareigas, patvirtinimo', Official Gazette, 2002, no. 97-4288).*

<sup>46</sup> For example, in U.S., since 1974, Legal ethics course is the only obligatory course in legal education program determined by ABA (Brick E. Barry & Matthew W. Ohland, "Applied ethics in the engineering, health, business, and law professions: A comparison," *Journal of Engineering Education* 98(4) (2009): 379). It should be noted, that legal ethics as required course as a part of legal education at the university is not common not only in post-Soviet countries, but in old European democracies like Germany or France either (Kim Economides & Christine Parker, "Roundtable on Legal Ethics in Legal Education: Should It Be a Required Course?" *Legal Ethics* 14(1) (2011): 109–124). One of explanations is that legal education is undergraduate in many countries and many graduates may not become practising lawyers (Russell G. Pearce, Daniel J. Capra, Bruce A. Green, Renee N. Knake, & Laurel S. Terry, *Professional Responsibility A Contemporary Approach* (West Academic, 2013), 17).

<sup>47</sup> Legal education is provided in five Lithuanian universities (Vilnius University, Mykolas Riomeris University, Vytautas Magnus University, European Humanities University, which is in fact Belarusian university in exile, and Kazimieras Simonavicius University). Law program at Vytautas Magnus University is an exception in this regard.

<sup>48</sup> Brindusa Camelia Gorea, et al, *supra* note 43: 2930.

<sup>49</sup> Izabela Krasnicka, *supra* note 42: 700.

<sup>50</sup> Course work is usually very pedantic rewriting of conveyed information, which as a rule can be found in course books. Grades, as a rule, depend on the ability to regurgitate previously conveyed information on particular topics (William D. Meyer, *supra* note 24: 240).

<sup>51</sup> Izabela Krasnicka, *supra* note 42: 699. "Indeed, one professor criticized the Socratic method as "primitive" (Peter J. Sahlas and Carl Chastenay, *supra* note 17: 209).

<sup>52</sup> *Ibid.*: 200.

<sup>53</sup> William D. Meyer, *supra* note 26: 242.

<sup>54</sup> Lisa A. Granik, *supra* note 17: 967–968.

professors retire and are replaced with teachers with new perspectives<sup>55</sup> and the confidence to transform the old system,<sup>56</sup> this probably will change.

Another common problem is academic dishonesty. As a survey conducted by a Lithuanian students association showed, cheating is common during exams and in preparing research papers and final theses.<sup>57</sup> Cheating often is regarded as "a symbol of student solidarity and a common battle against the instructors."<sup>58</sup> In Lithuania, students can easily purchase essays, final theses, or other written assignments. Some students do not even understand that they are acting unethically when they purchase written assignments.<sup>59</sup>

When students graduate, they typically face a long and complicated process before they can practice as a judge, prosecutor, advocate, notary public, or debt collector in post-Soviet countries. As a rule, this process requires several years of apprenticeship and examination. In Poland, for example, the examination consists of multiple-choice questions and drafting assignments, including specific pleadings and different types of contracts.<sup>60</sup>

This process pays little attention to legal ethics, although in Lithuania the examination of applicants to different professions of lawyers' (judges, advocates, notaries, bailiffs) bar associations and candidates for judges and prosecutors includes questions about recently adopted codes of ethics. The most common justification for this lack of attention to ethical training is that the professional training of lawyers and legal traditions ensure that lawyers are ethical. According to this view, during their legal studies, law students learn ethical standards without attention being specially directed to those standards.<sup>61</sup>

All legal cultures struggle with the question of how to educate students and lawyers to be ethical professionals.<sup>62</sup> This question is complex because, according to the famous philosopher, social psychologist, and psychoanalyst Erich Fromm, ethics is an interdisciplinary issue that cannot be divorced from the sciences of psychology, philosophy, sociology, and economics.<sup>63</sup> Indeed, these sciences have

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<sup>55</sup> *Ibid.*: 974.

<sup>56</sup> William D. Meyer, *supra* note 24: 245.

<sup>57</sup> "Lietuvos Studentų Sąjunga" (2014) // <http://www.old.lss.lt/dokumentai/leidiniai-tyrimai-94/lt/>.

<sup>58</sup> Izabela Krasnicka, *supra* note 42: 700.

<sup>59</sup> More about corruption in high education and in Lithuania: Julija Kiršienė & Saulė Milčiuvienė, "Definitions and General Information About Higher Education: Lithuanian Profile" (2013) // [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2347956](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2347956).

<sup>60</sup> Izabela Krasnicka, *supra* note 42: 703.

<sup>61</sup> In most European jurisdictions different legal professions, like the judiciary, attorneys, prosecutors, notary publics or debt collectors (bailiffs) are individually governed by distinct statutes, codes of conduct, and regulatory bodies. There is no single organization within each European country comparable to the American Bar Association that would represent the entire legal profession. Consequently, "members of the different legal professions view one another as professionals in related disciplines, not as members of a single profession" (Maya Goldstein Bolocan, *supra* note 2, 5).

<sup>62</sup> Philip M. Genty, "The Challenges of Developing Cross-Cultural Legal Ethics Education, Professional Development, and Guidance for the Legal Professions," *J. Prof. Law.* (2011).

<sup>63</sup> Eric Fromm, *Man for Himself: An Inquiry into the Psychology of Ethics* (Macmillan, 1990), ix.

taught us that our values and the “strength of [our] striving for happiness and health” drive us. If we violate the norms derived from our inherent qualities as humans, therefore, we risk mental and emotional disintegration.<sup>64</sup>

Ethics education recognizes that “significant changes occur during early adulthood in individuals’ basic strategies for dealing with moral issues.”<sup>65</sup> Guiding these changes from a social-ethical perspective helps future lawyers to gain more trust in their professional identity and the correctness of their professional work.<sup>66</sup> Moreover, the internalization of personal and professional morals is highly related to general emotional<sup>67</sup> and social intelligence.<sup>68</sup>

In contrast to legal education in post-Soviet countries, legal education in common law countries such as the United States and the United Kingdom devotes substantial attention to lawyers’ ethics. Law students are required to take a legal ethics course, and practicing lawyers are often required to attend continuing legal education seminars on legal ethics.<sup>69</sup> The former requirement is supported by empirical surveys showing that adequate education may significantly contribute to students’ development of moral values.<sup>70</sup> On the other hand, as Rhode notes, the relegation of legal ethics to a single required course typically focusing on the rules of professional conduct that are tested on a multiple-choice bar exam results in “legal ethics without the ethics.”<sup>71</sup>

An alternative is a pervasive approach to ethics that introduces ethics at the start of law studies and integrates ethics into all law school subjects.<sup>72</sup> This, arguably, is better than legal ethics courses taught in isolation and by topics, such as conflicts of interest and confidentiality, because in practice ethical issues never come without a context and with warning labels. Thus, teaching ethics in the contexts of role-playing, moot proceedings, clinical settings, and other less traditional ways of teaching is more likely to prepare students adequately than stand-alone, topic- and rule-based courses.

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<sup>64</sup> *Ibid.*, 6–7.

<sup>65</sup> Deborah L. Rhode, “The Lawyer Of The Future: Legal Education: Rethinking the Problem, Reimagining the Reforms,” *Pepp. L. Rev.* 40 (2013): 451.

<sup>66</sup> Lawrence K. Hellman, “At the Intersection of Curricular and Pedagogical Choices in Legal Education: Collision or Harmonious Merger?” *IALS Conference on Teaching, Legal Education and Strategic Planning*, (April 2011): 1 // <http://www.ialsnet.org/meetings/teaching/papers.html>.

<sup>67</sup> Daniel Goleman, *Working with emotional intelligence* (New York: Bantam Books), 2000.

<sup>68</sup> Daniel Goleman, *Social intelligence: the new science of human relationships* (New York: Bantam Books, 2007).

<sup>69</sup> Brick E. Barry, & Matthew W. Ohland, *supra* note 47: 379; Joanna Harrington, “The New National Standard for the Canadian Common Law Degree: What place for internationalization in our Strategic Planning?” *IALS Conference on Teaching, Legal Education and Strategic Planning* (April 2011): 5 // <http://www.ialsnet.org/meetings/teaching/papers.html>.

<sup>70</sup> Russell G. Pearce, “Teaching Ethics Seriously: Legal Ethics as the Most Important Subject in Law School,” *Loyola University Chicago Law Journal* 29 (1998): 732–735.

<sup>71</sup> Deborah L. Rhode, *supra* note 65: 450.

<sup>72</sup> Edmund B Spaeth, Janet G. Perry, & Peggy B. Wachs, “Teaching legal ethics: Exploring the continuum,” *Law and Contemporary Problems* (1995).

Of course, ethics instruction can be pervasive throughout the curriculum even when a separate course is devoted to it. In a separate ethics course, the teacher can focus on helping her students create their ethical identity consistent with professional norms. This means helping them to recognize, think through, and resolve the full range of ethical issues that can arise in law practice, including those for which there are not easy or indisputably correct answers.<sup>73</sup> A separate ethics course, as opposed to a course dominated by another subject, is more likely to have the time to cover lawyers' various roles, changes in law practice, and to encourage students to reflect on these roles and changes from values-based perspective.

An ethics course should be a thoughtful and reflective experience for teacher and students alike. Unfortunately, this does not always happen, thereby fueling doubts about the benefits of teaching legal ethics. Legal ethics teachers often are new teachers, which can reflect the reluctance of experienced teachers to teach ethics. Their reluctance might stem from the top-down history of legal ethics. Ethics often is taught because accrediting authorities require it to be taught or because bar examiners test for knowledge of the jurisdiction's formal ethical rules. Thus, ethics courses can easily devolve into rule-based courses in which the students do little more than memorize the rules so they can pass the bar exam.<sup>74</sup> Rules-focused teaching also is encouraged by changing student attitudes toward their education. Students are increasingly becoming consumers of education rather than participants in it. Too often, they are seeking only enough knowledge to pass a bar exam and start practicing law.

Law schools should not be complicit in teaching ethics to prepare students for the bar exam instead of for law practice. To avoid this complicity, experienced legal ethics professors from the University of Pennsylvania Center on Professionalism have identified several fundamental premises for teaching legal ethics.<sup>75</sup> Most fundamental is that an ethics course should not focus primarily on the ethics rules. Instead, the primary focus should be on ensuring that the students understand that professional behavior means compliance with the rules plus decision-making compatible with moral consciousness.

Teaching morally conscious decision-making means doing more than requiring the students to read and discuss cases. Although the case-method is the most common method for teaching ethics,<sup>76</sup> cases and the norms they apply are insufficient sources for a full understanding of legal ethics. Codes of professional

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<sup>73</sup> *Ibid.*

<sup>74</sup> Deborah L. Rhode, "Teaching Legal Ethics," *St. Louis U. L.J.* 51 (2007): 1043, 1048.

<sup>75</sup> Edmund B. Spaeth, Janet G. Perry, & Peggy B. Wachs, *supra* note 72.

<sup>76</sup> Brick E. Barry & Matthew W. Ohland, *supra* note 46: 381

conduct—ethical codes—play an important role in promoting ethical conduct by lawyers. Yet, they are incomplete sources for morally conscious decision-making. Even a vast menu of ethical rules and norms would not solve all the moral problems that legal professionals encounter in their everyday practice.

Moreover, the detailed regulation found in extensive ethical codes can encourage the formalization of legal ethics instead of what is needed, which is for lawyers to internalize ethical norms and the reasons for them. When students read cases in legal ethics courses, they know the outcome before they discuss the case in class. The cases often present their facts in an overly simplistic and superficial way, thus denying the students the opportunity to confront the facts' nuances. Because students tend to focus on the cases' key legal issues, they tend to overlook considerations that may be as significant, if not more significant, to a morally appropriate outcome. Finally, students accustomed to the case method used in their other courses sometimes assume the role of "devil's advocate," which generally is inappropriate for analyzing ethical dilemmas.<sup>77</sup> Experienced legal ethics professors believe a much more effective way of instruction in a legal ethics course is to use video simulations integrated with readings, thus combining experiential and analytical methods of teaching.<sup>78</sup> A considerable body of research on teaching ethical analysis points to the value of experiential, interactive, and problem-oriented approaches, as, for instance, is inherent in law clinic settings.<sup>79</sup> Students tend to be most engaged when they are dealing with real people facing real problems.<sup>80</sup> The same is true about students in pro bono service.<sup>81</sup>

Though experienced ethics teachers often learn the best ways to teach ethics through trial and error, teaching ethics does not have deep traditions, even in United States.<sup>82</sup> Only since 1974, following the Watergate scandal did United States law school accreditors require law schools to teach professional responsibility or ethics.<sup>83</sup>

Perhaps, then, laments over the deep-seated skepticism about the importance of professional ethics in professional education should not be surprising.<sup>84</sup> According to Roger C. Cramton and Susan P. Koniak, "legal ethics remains an unloved orphan of legal education." Their study shows that even many law professors believe

<sup>77</sup> Deborah L. Rhode, *supra* note 74: 1043, 1048.

<sup>78</sup> Edmund B. Spaeth, Janet G. Perry, & Peggy B. Wachs, *supra* note 72.

<sup>79</sup> Although clinical courses necessarily address ethical issues that arise during the semester, not all clinicians have the time, interest, or expertise to provide comprehensive coverage of professional responsibility (Deborah L. Rhode, *supra* note 65: 458).

<sup>80</sup> *Ibid.*: 457.

<sup>81</sup> Although the vast majority of schools have pro bono programs, only a minority of students participate (*ibid.*: 451).

<sup>82</sup> Russell G. Pearce, *supra* note 70: 722-725.

<sup>83</sup> The Watergate scandal of the early 1970s resulted in increased attention to the regulation of the legal profession (John W. Dean & James Robenalt, "The Legacy of Watergate," *Litigation* 38 (2011): 19).

<sup>84</sup> Deborah L. Rhode, *supra* note 65: 450.

teaching legal ethics is not worthwhile.<sup>85</sup> These critics typically believe that most moral values are essentially static and usually were already formed before the students entered a university.<sup>86</sup>

A more nuanced account of moral development, however, is offered by John Mixon and Robert Schuwerk. By their account, while family, society, and religion have formed law students' morals before they begin law school, entering law students usually have only a vague understanding of what it means to be a "good lawyer"<sup>87</sup>. Moreover, studies in the United States reveal that students change in law school because their legal studies emphasize how to manipulate the law and its application, causing them to develop a cynical, nihilistic attitude.<sup>88</sup> At the beginning of their studies, most students are driven by the desire to be useful to society and to grow personally, but, as they study, these goals are replaced by the desire to make an impression and to have a prestigious position and its privileges.<sup>89</sup>

Such data also helps us to understand why the cynicism, nihilism, dissatisfaction with legal work, and the level of depression among lawyers are a common cause for concern in the legal profession. For example, a study by Munteer has shown that lawyers suffer from depression four times more often than non-lawyers suffer.<sup>90</sup> Offering a source for these causes of concern, Rhode observes that law school culture tends to reinforce narrow views of professional fulfillment and to favor objective measures of achievement at the expense of intrinsic measures of self-worth. This normative climate contributes to a decline in student mental health and to disproportionate levels of substance abuse, stress, depression, and other disorders.<sup>91</sup> No wonder, therefore, that law schools are advised to have strategies that help to cope "with the stress and competition of law school life."<sup>92</sup>

Despite all else it does, law study focuses on cognitive abilities.<sup>93</sup> Four separate studies have found that lawyers disproportionately represent the "thinking"

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<sup>85</sup> Roger C. Cramton and Susan P. Koniak, "Rule, story, and commitment in the teaching of legal ethics," *Wm. & Mary L. Rev.* 38 (1996): 145-147.

<sup>86</sup> Russell G. Pearce, *supra* note 70: 720.

<sup>87</sup> John Mixon and Robert P. Schuwerk, "The Personal Dimension of Professional Responsibility," *Law and Contemporary Problems* (1995): 98.

<sup>88</sup> Jess M. Krannich, James R. Holbrook, & Julie J. McAdams, "Beyond thinking like a lawyer and the traditional legal paradigm: Toward a comprehensive view of legal education," *Denv. UL Rev.* 86 (2008): 381.

<sup>89</sup> Kennon M. Sheldon & Lawrence S. Krieger, "Understanding the negative effects of legal education on law students: A longitudinal test of self-determination theory," *Personality and Social Psychology Bulletin* 33(6) (2007): 888-895.

<sup>90</sup> Joan E. Munteer, "Depression among Lawyers," *Colo. Law.* 33 (2004): 36.

<sup>91</sup> Deborah L. Rhode, *supra* note 65: 453.

<sup>92</sup> *Ibid.*: 459.

<sup>93</sup> Legal education courses generally fall into three competency categories: (a) special competences (e.g., knowledge of different substantive law subjects such as civil, penal law, etc.); general competences (e.g., such as knowledge of foreign languages, teamwork, communication skills, etc.); and (c) skills of professional behavior and knowledge of the requirements for professional ethics. Usually the greatest attention is devoted to special competences because law practice is increasingly becoming more

personality type; that is, lawyers prefer thinking and judging more than other people do. Though this might be helpful and desirable professionally, it can be detrimental personally. Moreover, certain personality traits of lawyers, including pessimism and vulnerability to anxiety and depression, appear to take root in law school.<sup>94</sup> Fortunately, developing emotional and social intelligence and the morals of adults is easier than developing cognitive intelligence.<sup>95</sup>

A final commonly encountered argument against legal ethics courses is that morality and decency are not legal matters.<sup>96</sup> This argument posits that the teaching of ethics is mostly moralizing.<sup>97</sup> Perhaps reflecting students' perceptions of a distinction between morality and the law, surveys of students have shown that they treat their ethics course as one of their easiest courses, requiring less of their time and effort and contributing less value to their education than their other courses.<sup>98</sup>

This argument is buttressed by the scientific approach to legal education, which posits that science should be based on facts, not on moral values. In other words, if there is no room for morality in physics, the oldest and the most advanced science, then the science of law also has no room for morality.<sup>99</sup> The positivistic tradition of legal thinking also leads to a limited consideration of moral issues because its analytical approach focuses on how the facts match the law and excludes other aspects of the legal issue potentially worthy of consideration, including the moral aspects.<sup>100</sup> Today, however, the argument that ethics is a not part of scientific discourse and study is anachronistic.<sup>101</sup> Values-based reasoning is now recognized and appreciated in academic discourse and study.<sup>102</sup> The scientific community recognizes that science and ethics are inseparable and that scientists must research and report their research responsibly.<sup>103</sup>

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specialized. A downside of specialization, however, is that it can result in a narrowing of perspectives. This, when combined with the commercialization of law practice and legal education, present the challenge of how to balance the three competency categories, especially in post-Soviet countries.

<sup>94</sup> Michelle Sharpe, "The Problem of Mental Ill-Health in the Profession and a Suggested Solution": 273-275; in: Reid Mortensen, Francesca Bartlett, & Kieran Tranter, eds., *Alternative perspectives on lawyers and legal ethics: reimagining the profession* (New York: Routledge, 2011).

<sup>95</sup> Daniel Goleman, *supra* note 67.

<sup>96</sup> Russell G. Pearce, *supra* note 70: 720.

<sup>97</sup> Deborah L. Rhode, "Ethics by the pervasive method," *J. Legal Educ.* 42 (1992): 48-49.

<sup>98</sup> Russell G. Pearce, *supra* note 70: 722-723.

<sup>99</sup> Felix S. Cohen, "Modern Ethics and the Law," *Brook. L. Rev.* 4 (1934): 35.

<sup>100</sup> David B. Wilkins, "Redefining the professional" in professional ethics: An interdisciplinary approach to teaching professionalism," *Law and contemporary problems* (1995): 241.

<sup>101</sup> Russell G. Pearce, *supra* note 70: 731.

<sup>102</sup> Elliott M. Abramson, "Puncturing the Myth of the Moral Intractability of Law Students: The Suggestiveness of the Work of Psychologist Lawrence Kohlberg for Ethical Training in Legal Education," *Notre Dame JL Ethics & Pub. Pol'y* 7 (1993): 223.

<sup>103</sup> National Academy of Sciences, *On being a scientist: a guide to responsible conduct in research* (National Academies Press, 2009).

## IN LIEU OF A CONCLUSION: A PROPOSAL FOR MEETING THE CHALLENGE OF CREATING A NEW LEGAL CULTURE IN POST-SOVIET COUNTRIES

For post-Soviet legal education, the asymmetry of the political, economic, and social changes in the transition from totalitarian to democratic regimes, along with the changes in thinking that accompanied this transition underscore the fact that the gains from legal education transcend the legal profession.<sup>104</sup> Lawyers usually have leadership roles in emerging democracies; therefore, "legal education is an imperative for the stability of the new world order."<sup>105</sup>

This stability, however, is not the only worthwhile goal. Consider again lawyers' mental health, a problem that extends beyond developed countries like the United States and Australia.<sup>106</sup> Although research on the mental health of lawyers in post-Soviet countries is not as comprehensive as it is in the United States, no one doubts that alcohol abuse is common in post-Soviet countries.<sup>107</sup> This brings us back to Fromm's teaching that our values drive us, and, when we violate we violate our moral norms, we risk mental and emotional disintegration.<sup>108</sup>

Fromm's teaching offers a foundation for a post-Soviet approach to teaching legal ethics.<sup>109</sup> For the framework based on that foundation, the two-pronged values-based approach often used in the United States offers a partial blueprint. This blueprint couples a required course in legal ethics with pervasive attention to ethical issues throughout the curriculum, especially in clinical courses. Law schools in the United States now have forty years of experience teaching legal ethics, and the best practices have emerged from this experience. By drawing on these best practices, legal educators in post-Soviet countries can avoid the time and expense of "reinventing the wheel." In covering basic concepts such as conflicts of interest, the duty of confidentiality, and the like, these educators can consult the American Bar Association's model rules of professional conduct and the many commentaries,

<sup>104</sup> William D. Meyer, *supra* note 24: 245

<sup>105</sup> *Ibid.*: 250.

<sup>106</sup> As discussed in section III.

<sup>107</sup> Andrew Stickley, *et al.*, "Alcohol poisoning in Russia and the countries in the European part of the former Soviet Union, 1970–2002," *The European Journal of Public Health* 17(5) (2007).

<sup>108</sup> Eric Fromm, *supra* note 63, 6–7.

<sup>109</sup> Research shows that people respond to ethical dilemma based on the level of their moral awareness. Professor Lawrence Kohlberg has developed a hierarchy of moral development. His hierarchy has three levels of moral development, each of which is divided into two stages. Development occurs stage by stage, but only limited number of individuals reach the final, sixth stage. According to Professor Kohlberg, two-thirds of the adult population are in the fourth stage of moral evolution (Lawrence Kohlberg, *The philosophy of moral development: Moral stages and the idea of justice. Essays on moral development, Volume 1.* (San Francisco: Harper & Row, 1981)). Introduced in 1969, Kohlberg's hierarchy influenced other methods of evaluating moral understanding and reasoning, such as the Moral Judgment Interview (MJI), the Defining Issue Test (DIT) or the Sociomoral Reflection Measure (SRM). Moreover, a significant number of studies based on Kohlberg's model were conducted to determine the dependence of moral development on age, sex, education, culture or religion. Interestingly, a definite link was found between the level of development of moral awareness and personal education in general (Brick E. Barry, & Matthew W. Ohland, *supra* note 46, 384).

cases, and course books that discuss these rules and the variants of them adopted by the fifty states. Collectively, this material is vast when compared to similar resources currently available in post-Soviet countries. Using this material, teachers can compare and contrast local rules and practices with those in the United States and discuss with their students ways for filling gaps in either country's rules by adopting, hypothetically, the other country's rules.

Law students in post-Soviet countries, however, need more than instruction on ethical rules. The Soviet mentality still permeates much of legal education and the legal profession, as can be seen, for instance, in the rampant problem of academic dishonesty in the higher education institutions of post-Soviet countries. A survey conducted by Transparency International shows that students who cheat during their university education are more susceptible to corruption later in their lives.<sup>110</sup> Therefore, students in post-Soviet countries must be aware of how their country's historical experience influences their country's legal system and, especially, the mentality and thinking patterns of its lawyers and judges. These influences and thinking patterns persist and are difficult to change. They can create systematic biases and dysfunctional patterns for making decisions and judgments. Recent psychological discoveries show how people are susceptible to those biases, patterns, and thinking errors without even noticing them.<sup>111</sup> Therefore, the Soviet era's legacy must be an integral part of today's teachings about ethics.

Part of that legacy extends well beyond academic dishonesty. In some post-Soviet countries, corruption is systemic. Ukraine is a fitting example. A major impetus for Ukraine's 2013-2014 EuroMaidan demonstrations was anger over corruption and its corrosive effects throughout Ukrainian society.<sup>112</sup> While not ordinarily covered in American legal ethics courses, corruption and its causes and consequences belong in a post-Soviet legal ethics course because corruption is a part of everyday life in Ukraine and other post-Soviet countries.

A good place to start is by examining the typology of post-Soviet corruption.<sup>113</sup> Of course, readings can inform the students' thoughts. However, most, if not all, students in post-Soviet countries have an extensive trove of personal or familial encounters with corruption from which to draw. Therefore, they and their professors are likely to gain more from a discussion drawn from their experiences with corruption than from academic writings. Their professors can steer

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<sup>110</sup> "TILS tyrimai ir analizės – 'Transparency International' Lietuvos skyrius" (2014) // <http://transparency.lt/research/tilc-research-and-analysis/>.

<sup>111</sup> Daniel Kahneman, *Thinking, Fast and Slow* (London: Penguin Books, 2012).

<sup>112</sup> Nadia Diuk, "Euromaidan: Ukraine's Self-Organizing Revolution," *World Affairs Journal* 176(6) (2014): 9-16.

<sup>113</sup> Rasma Karklins, "Typology of Post-Communist Corruption," *Problems of Post Communism* 49(4) (2002): 22-23.

this discussion in various directions, including how their country's current corruption is traceable to attitudes developed during the Soviet era.

Corruption is not unique to post-Soviet countries, of course. Another way to open a discussion of corruption, therefore, is to talk about corruption outside of post-Soviet countries. For instance, studies of particular Asian country may offer the opportunity to draw on the excellent discussion of corruption and its causes, consequences, and cures by U Myint<sup>114</sup>, a Burmese economist, and study of a recent report on corruption in everyday life in Cambodia would provide another excellent example.<sup>115</sup> By starting the discussion this way, the students will be able to draw comparisons to their own and their families' experiences, and thus move into such discussions indirectly instead of directly. This approach has the advantage of allowing students to talk about experiences of others before opening up and talking about their own experiences.

Wherever the discussion starts, the goal should be to encourage the students to discuss corruption and its effect on them, either directly or indirectly. Within this broad goal are specific goals, such as helping students to understand that corruption is not victimless. If a person assaults another person, the cause and effect is immediate and visible. Yet, the link between public corruption and inadequate social services to the poor, for example, is not so immediately obvious. Because the corruption's corrosive influence can be attenuated and subtle is even more reason for encouraging law students to think about corruption's victims, including a society's moral culture and possibly and possibly the nation's very existence, if its military and other institutions are weakened by corruption.

Yet, even when corruption falls short of destroying a nation's very existence, corruption offends basic notions of fairness. Though law students quickly learn that the law often struggles to achieve outcomes that all affected parties perceive as fair, inviting students to explain the difference between good faith, conscientious line-drawing and corrupt decision making is one way to turn the discussion to how a corrupt legal system victimizes its participants and society at large. For examples of the latter, Russia is a good place to start.

Russia's legal system is rife with various degrees of corruption, as Kathryn Hendley and others have ably chronicled.<sup>116</sup> This literature vividly describes the ingenuity and brazenness of the corruption in Russia's legal system. Russia's legal system offers a competing reality to the ideal that judicial processes should be fair.

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<sup>114</sup> U. Myint, "Corruption: Causes, consequences and cures," *Asia pacific development journal* 7(2) (2000).

<sup>115</sup> Christine J. Nissen, *Living under the rule of corruption* (Phnom Penh, Cambodia: Centre for Social Development, 2005).

<sup>116</sup> Kathryn Hendley, "'Telephone law' and the 'rule of law': The Russian Case," *Hague Journal on the Rule of Law* 1(02) (2009).

Asking students to compare the processes and results of Russia's legal system, as chronicled in this literature, with the processes and results of a legal system untainted by corruption gives them the opportunity to discuss what fairness means to them and why a fair legal system matters to them and to the social fabric of their nation.

After discussing what it means to be fair both outside of and within a legal system, the stage is set for discussing empathy. Empathy is a check on corruption. To act corruptly is to act unempathetically. Conversely, a truly empathetic person is likely to be an ethical person. As Daniel Goleman explains, "empathy—sensing another's emotions—seems to be as physiological as it is mental, built on sharing the inner state of the other person."<sup>117</sup> Moreover, "the more similar the physiological state of two people at a given moment, the more easily they can sense each other's feelings."<sup>118</sup>

In other words, empathy's bond internalizes the effect of one person's conduct on another person. This consciousness of the other's feelings means that a truly empathetic person must take into account the cost to the other person and to his or her relationship with the other person of acting unfairly, of victimizing the other person. Thus, having already led the students through discussions about how and why corruption has victims and offends basic notions of fairness, students can be engaged to understand empathy's value as a check on corruption and a promoter of fairness to others.

Of course, empathy's merits extend well beyond these two roles. Empathy is a building block in moving the students to a role they seek to achieve: being a trusted adviser. If asked, law students will say they want to be their respective clients' trusted adviser. In this sense, a "trusted adviser" means "the person the client turns to when an issue first arises, often in times of great urgency: a crisis, a change, a triumph, or a defeat."<sup>119</sup>

Students also will say they want to be successful—they want to earn an income, and they want to gain intangibles, such as respect and influence. Empathy is one of the foundations for building relationships, including business relationships, because empathy builds trust. Influence comes with trust. Thus, empathy has a "business value" and drives influence.<sup>120</sup> Emphasizing empathy, therefore, has "practical" content for students, in addition to being a quality that counteracts corruption and other unethical behavior.

This is not to say, however, that being ethical is not "practical;" it is. Law

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<sup>117</sup> Daniel Goleman, *supra* note 68, 25.

<sup>118</sup> *Ibid.*

<sup>119</sup> David H. Maister, *The Trusted Advisor* (New York: Free Press, 2000), 8.

<sup>120</sup> Charles H. Green, *The Trusted Advisor Fieldbook: A Comprehensive Toolkit for Leading with Trust* (John Wiley & Sons, 2012), 16–18.

students understand this. Their legal education has taught them or will teach them—in an ethics course or otherwise—the consequences the law provides for unethical conduct.

This article advocates yet another teaching—a guided self-teaching in which the students explicitly confront the norms and mentality they and those around them inherited when the Soviet Union collapsed and their nation arose from that collapse. By guided, we mean that the teacher's role is that of a guide, a co-explorer, of what it means for everyone in the classroom to be in a post-Soviet society.

By self-teaching, this article means the teacher must center the course on a question directed to each student: "what does it mean to you to be ethical?" This question is not rhetorical. Instead, it invites, if not instructs, the students to consider how they gain from being ethical and, as important, how they will acquire the skills to be ethical. These skills, in turn, should be part of the course. That is, the course should teach empathy, social intelligence, and related skills, all of which are teachable, including through readings, role-playing, discussion, and reflection.

By self-teaching, this article also means that the students should internalize what they have learned. Their "self" should be ethical in the sense of being both committed to acting consistently with the broad norm of being a good person and committed to acting consistently with the specific standards of conduct that govern the legal profession.

In sum, just as their respective countries are still transitioning from Soviet republics to independent states, law students in post-Soviet countries are transitioning. They are learning the law. They are also learning, or should be learning, that "the law is what the lawyers are." This learning should strive to internalize in each of them a commitment to the profession's core norms and values.

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