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A Kantian moral cosmopolitan approach to teaching professional legal ethics

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A Kantian moral cosmopolitan approach to teaching professional legal ethics

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Abstract

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

Keywords: Autonomy; Cosmopolitanism; Kantian ethics; Professional legal ethics.

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1. Introduction

Globalisation has not only witnessed the growth of international trade, but also a rise in immigration, the proliferation of the legal market,[1] pro bono services,[2] and legal education.[3] One of the effects of globalisation is that lawyers, regardless of their geographical location, are likely to be dealing with clients from different parts of the world. The teaching of professional legal ethics should, therefore, prepare future lawyers for cosmopolitan legal practice.[4] Ethics may be defined as the application of moral philosophy to addressing questions of right and wrong.[5] Inspired by deontological ethics, this article seeks to equip law students to deal with an interconnected and globalised world by incorporating Kantian moral cosmopolitanism (KMC) to the teaching of professional legal ethics for barristers and solicitors, in England and Wales.

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

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[1] Alberto Alemanno and Lamin Khadar, 'Introduction' in Alberto Alemanno and Lamin Khadar (eds), *Reinventing legal education: how clinical education is reforming the teaching and practice of law in Europe* (Cambridge University Press, 2018), 1.
[2] Scott L Cummings et el (eds), *Global Pro Bono: Causes, Context, and Contestation* (Cambridge, 2021).
[3] Simon Chesterman, 'The Globalisation of Legal Education' [2008] Singapore Journal of Legal Education 58; Christopher Gane and Robin Hui Huang (eds), *Legal Education in the Global Context: Opportunities and Challenges* (Routledge, 2017); Joan Squelch and Duncan Bentley, 'Preparing law graduates for a globalised world' (2017) 51(2) The Law Teacher 2.
[4] John Flood, 'Legal Education in the Global Context: Challenges from Globalization, Technology and Changes in Government Regulation' (Legal Services Board, 2011) < http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/lsb_legal_education_report_flood.pdf > (accessed 15 July 2021).
John Flood and Peter D Lederer, 'Becoming a Cosmopolitan Lawyer' (2012) 80 Fordham Law Review 2513; Antonios E Platsas, 'A Cosmopolitan Ethos for our Future Lawyers' (2015) 1 Law Journal of the Higher School of Economics150.
[5] Derek Sellman, 'Why teach ethics to nurses?' (1996) 16(1) Nurse Education Today 44, 44.
[6] Garrett Wallace Brown and David Held, 'Editor's Introduction' in Garrett Wallace Brown and David Held (eds), *The Cosmopolitanism Reader* (Polity Press, 2010), 1.
[7] Martha C Nussbaum, 'Patriotism and Cosmopolitanism' in Joshua Cohen (ed), *For Love of Country: Debating the Limits of Patriotism* (Beacon Press, 1996), 4.

contends that Clinical Legal Education (CLE) programmes are an appropriate methodology for teaching KMC.

This article will proceed as follows: after the introduction, part 2 provides a brief outline of the main elements of Kant's philosophy and theory of education. Part 3 discusses the professional codes of conduct for barristers and solicitors and highlights their limitations in relation to moral cosmopolitan education. Part 4 examines the teaching of professional legal education at both the undergraduate and postgraduate level. Parts 5 and 6 examine Kant's theory of ethics in order to construct a moral cosmopolitan framework to supplement the professional condes of conduct. Part 7 argues that CLE are an appropriate methodology for teaching KMC values.

2. Kant and cosmopolitan moral education

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

[8] Immanuel Kant, *Groundwork of the Metaphysics of Moral* (first published 1785, HJ Patton tr, Hutchinson & Co 1969) [4: 432]; Michael Freeman, *Lloyd's Introduction to Jurisprudence* (Sweet & Maxwell, 9th edn 2016), 103.
[9] Ibid, [4: 447]
[10] Ibid, [4: 452]. 'Inclination' refers to impulses, including instincts and appetites. See, Robert B Louden, *Kant's Impure Ethics: From Rational Beings to Human Beings* (Oxford University Press, 2002).
[11] Ibid, [4: 441]
[12] Jean-Jacques Rousseau, *The Social Contract, A Discourse on the Origin of Inequality, and A Discourse on Political Economy* (Classic Books International, 2010).
[13] Lloyd L Weinreb, *Natural Law and Natural Justice* (Harvard University Press, 1987), 95.
[14] Andrew Boon and Jennifer Levin, *The Ethics and Conduct of Lawyers in England and Wales* (Hart, 2008), 183.

conceptual tool as it can direct lawyers to be cognizant of pressures impacting on a client's ability to make autonomous decisions.

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

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

Kant's theory of education contains not only a cosmopolitan dimension but also shares a similar aim with professional legal ethics: the cultivation of ethical/moral character.[17] For Kant, pedagogy is either physical or practical.[18] The latter, which is concerned with cultivating personality,[19] consists of: skill, discretion, and morality.[20] Skill, is a necessary for the cultivation of talent. Discretion and morality both relate to developing a 'good character'.[21] Discretion requires self-control because it involves using others for one's own ends. This constraint is necessary to avoid using others as mere means. To develop one's moral character, Kant writes, '[o]ne should give children some pocket money with which they could help the needy, and then one would see whether they are compassionate or not'.[22] Moral education involves fostering compassion in students. Kant's advice regarding giving children pocket money to nurture compassion may be interpreted to mean that he supports the idea of providing students with opportunities, grounded in practical experience, to develop their sense of compassion. Third, the concept of duty underscores the professional codes of conduct for

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[15] Immanuel Kant, *Lectures on Ethics* (Peter Heath and Jerome B Schneewind eds, Cambridge University Press, 1997), [27:471].
[16] Immanuel Kant, 'Lectures on pedagogy' in Robert B Louden (ed), *Anthropology, History, and Education* (Cambridge University Press, 2007), [9: 450].
[17] Gerald J Postema, 'Moral Responsibility in Professional Ethics' (1980) 55 New York University Law Review 63; Kathleen S Bean, 'A Proposal for the Moral Practice of Law' (1987) 12 Journal of the Legal Profession 49; Donald Nicolson, 'Making lawyers moral? Ethical codes and moral character' (2005) 25(4) Legal Studies 601.
[18] Kant (n 16) [9: 455].
[19] Ibid.
[20] Ibid, [9: 486].
[21] Ibid.
[22] Ibid, [9: 486 - 487].

barristers and solicitors, for example duty of confidentiality, duty to avoid conflict of interest, and the duty to act in the best interest of the client. Kant's educational theory involves instilling students with a sense of duty, which is divided into duty to oneself and duty towards others. The latter requires '[r]everence and respect for the rights of human beings'.[23] Kant argues that it is essential that students are given the opportunity to 'put [reverence and respect] into practice'.[24] Thus, practice-oriented education is an essential element of Kant's theory of moral education. The next section will examine the professional codes of conduct and highlights some of their limitations in relation to moral development.

3. The professional codes of conduct for barristers and solicitors

The legal profession, in England and Wales, is divided into two main branches: barristers and solicitors. Barristers are regulated by the Bar Standards Board's (BSB),[25] while the Solicitors Regulation Authority (SRA)[26] is responsible for the regulation and education of solicitors. The BSB's role includes setting out the education and training requirements for becoming a barrister and setting the standards for professional conduct in the BSB's Handbook.[27] The Handbook includes the Code of Conduct, which contains the ten core duties (CDs) that underpin the BSB's regulatory framework, and the conduct rules (rCs), which are designed to supplement the CDs. The codes of professional conduct for solicitors are in The SRA's Standards and Regulations. These provide two codes of professional conduct: a code for law firms and a code for solicitors.[28] The Standards and Regulations also stipulate the seven Principles, which are 'the fundamental tenets of ethical behaviour' which solicitors must uphold.[29] In the event of a conflict between the Principles, those that safeguard the wider public interest (Principles 1 and 2), take precedence over an individual client's interest (Principle 7).[30]

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[23] Kant (n 16) [9: 489].
[24] Ibid.
[25] Bar Standards Board, 'Welcome to the BSB' < https://www.barstandardsboard.org.uk/ > (accessed 15 July 2021).
[26] Formed by the Legal Services Act 2007.
[27] Bar Standards Board, 'The BSB Handbook' < https://www.barstandardsboard.org.uk/for-barristers/bsb-handbook-and-code-guidance/the-bsb-handbook.html > (accessed 15 July 2021).
[28] Solicitors Regulation Authority, *SRA Standards and Regulations 2019* (The Law Society 2020). Also available online: Solicitors Regulation Authority, *SRA Standards and Regulations* < https://www.sra.org.uk/solicitors/standards-regulations/ > (accessed 15 July 2021).
[29] Solicitors Regulation Authority (n 28).
[30] Ibid.

In its 2018 report entitled *Balancing duties in litigation*, the SRA warned solicitors they are not 'hired guns'[31] whose only duty is to their client; solicitors also owe duties to the courts, third parties and to the public interest.[32] The report highlights incidents where solicitors have engaged in improper or abusive litigation such as taking unfair advantage of unrepresented parties, misleading the court, or acting for clients whose cases are weak or unwinnable. The report also found that some solicitors pursued their own interests at the expense of their clients. KMC, with its commitment to autonomy and dignity, can address some of the concerns raised in the SRA's report. Although the Handbook and the Standards and Regulations provide guidance on ethical behaviour, they suffer from various limitations.

2.1 The limitations of the professional codes of conduct

The teaching of professional legal ethics is intended to prepare future lawyers to address ethical dilemmas such as conflict of interest (CD6; paragraphs 6.1 – 6.2 of the Standards and Regulations), acting with integrity (CD 3; Principle 5), and acting in the best interest of their client (CD2; Principle 7). Although these dilemmas can be resolved by following the professional codes, there are various limitations associated with the sole reliance on the professional codes of conduct. First, they 'will only help develop the sensitivity and judgment to recognise possible breaches of the rules and how to apply them'.[33] Second, a common aim of professional codes is to outline the norms of professional practice. They outline, inter alia, the obligations owed to clients, general ethical principles, and advice on how these principles may apply in a practical context.[34] Thus, breach of the SRA's Principles and/or duties owed to clients, such as the duty of confidentiality, can result in disciplinary action brought against the law firm and the lawyer. The professional codes are, therefore, primarily concerned with censure and maintaining the public's trust, rather than promoting moral reasoning. Third, professional codes are drafted to protect the 'ideal of the lawyer as an adversarial advocate'.[35] However, the adversarial approach not only encourages moral neutrality but also privileges the

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[31] Monroe H Freedman, 'The Lawyer as a Hired Gun' in Allan Gerson (ed), *Lawyers' Ethics: Contemporary Dilemmas* (Transaction Inc, 1980), 63; Ted Schneyer, 'Some Sympathy for the Hired Gun' (1991) 41(1) Journal of Legal Education 11.

[32] Solicitors Regulation Authority, *Balancing duties in litigation* (2018) < https://www.sra.org.uk/risk/risk-resources/balancing-duties-litigation/ > (accessed 15 July 2021).

[33] Donald Nicolson, 'Teaching and learning legal ethics: what, how and why?' in Richard Grimes (ed), *Re-thinking Legal Education Under the Civil and Common Law: A Road Map for Constructive Change* (Routledge, 2017), 88.

[34] Jonathan Herring, *Legal Ethics* (2nd edn, Oxford University Press, 2016), 40 – 41.

[35] Scott R Peppet, 'Lawyers' Bargaining Ethics, Contract, and Collaboration: The End of the Legal Profession and the Beginning of Professional Pluralism' (2005) 90 Iowa Law Review 475, 479.

interest of the client.[36] A possible consequence of privileging client's interest is that students may be trained to adopt a 'hired-gun' approach. However, as stated in *Balanacing duties in litigation*, solicitors also owe duties to the courts, third parties and to the public interest.[37] Fourth, using the codes of conduct to teach professional ethics, without a 'coherent theme or explicit moral philosophy',[38] limits the resolution of ethical problems to the application of the rules contained in the codes. Professional codes are, therefore, limited in their application to 'easy cases'. Moral philosophy can enhance the scope of the codes of conduct by promoting ethical decision-making and a cosmopolitan ethos.

Fifth, professional codes generally set out the minimum requirements of ethical behaviour.[39] However, prescribing a set of norms is not the same as providing a framework for guiding the lawyer's conduct. Promoting professional legal ethics among students and lawyers should require more than simply positing a set of minimum standards of behaviour. Lawyers ought to be taught to address situations which are either not included in the codes of ethics or included but are ambiguous. An example of the latter is the duty to act in the best interest of the client (CD2; Principle 7). Lawyers, for example, must decide whether to act in a manner that promotes client autonomy or adopt a paternalistic approach. This may contribute to inconsistent behaviour on the part of the lawyer. Moreover, owing to the fact that autonomy and paternalism are complex philosophical terms, students should be given guidance in relation to interpreting these concepts. Finally, given the globalisation of the legal profession, it is debatable whether the codes of conduct can address ethical issues in the international arena, such as local customs and the values and expectations of clients in different jurisdictions.[40] One approach to addressing the limitations of the Handbook and the Standards and Regulations is to incorporate KMC into the teaching of legal ethics.

4. Teaching professional legal ethics in England and Wales

Currently, students who wish to qualify as barristers or solicitors must successfully complete three stages. The first involves the completion of either a law degree or the Graduate Diploma

[36] César Arjona, 'Amorality explained: Analysing the reasons that explain the standard conception of legal ethics' (2014) 4 Ramón Llull Journal of Applied Ethics 51, 59.
[37] Solicitors Regulation Authority (n 32).
[38] Seow Hon Tab, 'Teaching legal ideals through jurisprudence' (2009) 43(1) The Law Teacher 14, 20.
[39] Jonathan Herring (n 34) 7.
[40] Laurence Etherington and Robert Lee, 'Ethical Codes and Cultural Context: Ensuring Legal Ethics in the Global Law Firm' (2007) 14(1) Indiana Journal of Global Legal Studies 95, 97.

in Law (GDL).[41] This is then followed by a vocational programme: the Bar Professional Training Course (BPTC) for barristers, or the Legal Practice Course (LPC) for solicitors. The final stage is the apprenticeship: a one-year pupillage for barristers or working as a trainee-solicitor for two years.

Despite Economides and Roger's recommendation to the Law Society that legal ethics should be mandatory in undergraduate law degrees, the teaching of legal ethics is not a compulsory part of the law degree or the GDL.[42] It is, however, included as part of the BPTC and the LPC, albeit in a limited way.[43] The teaching of ethics on the vocational courses is predominantly concerned with the application of the professional codes to hypothetical scenarios. There is, therefore, scope for the teaching of legal ethics to be enhanced by engaging students with a philosophical framework that promotes moral decision-making through experiential learning. Absent from the teaching of legal ethics on the vocational stages are important concepts, which inform legal practice, such as autonomy, as well as academic critique of the dominant professional norms and the moral responsibility of lawyers. Students, during the vocational courses, are assessed on whether their response to an ethical issue is one which is within the codes of conduct. Nicolson argues that teaching ethics at this stage is 'too late' because students would have already been exposed to ethics, legal practice, and professional roles, albeit in an unstructured way.[44] Nicolson concedes that in the absence empirical research, it is difficult to buttress this claim.[45] The next section examines key elements of Kant's philosophy and theory of pedagogy and their significance to legal ethics.

5. Kant's deontological ethics

Kant's commitment to the concept of duty, irrespective of the consequences, makes him the quintessential deontologist.[46] Actions, for Kant, have moral worth when they are performed from a duty to the moral law. To illustrate this point, he provides the example of a grocer not overcharging his customers.[47] If the grocer's honest actions were done out of self-interest and

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[41] The GDL is a stepping-stone for non-law graduates who wish to qualify as either barristers or solicitors.
[42] Law Society, *Preparatory Ethics Training for Future Solicitors* (Law Society, 2009), 3.
[43] Lisa Webley, 'Legal ethics in the curriculum: Correspondent's report from the United Kingdom' (2011) 14 *Legal Ethics* 132.
[44] Donald Nicolson, 'Education, education, education: Legal, moral and clinical' (2008) 42 The Law Teacher 145, 148.
[45] Ibid, 149.
[46] Norman Bowie, 'A Kantian Approach to Business Ethics' in Thomas Donaldson, Patricia H Wehane and Margaret Cording (eds), *Ethical Issues in Business: A Philosophical Approach* (Prentice Hall, 7th edn 2002), 62.
[47] Kant (n 8) [4: 397].

not out of a sense of duty to the moral law, then such actions are not truly moral in the Kantian sense. This strict test for determining moral actions can be seen in a second example provided by Kant: that of a person who is not inclined to help those in distress.[48] If this person performs an action benefitting those facing hardships out of duty to the moral law, then their action has moral worth. Conversely, one might help others because 'they find an inner pleasure in spreading happiness…and can take delight in the contentment of others'.[49] Such actions are described as not possessing 'genuinely moral worth'.[50] Although this might appear peculiar at first, on closer examination, why should a person's moral worth be dependent on what nature or circumstances have endowed them with accidentally? Take for example a client with limited financial means who is being threatened with a notice of eviction. A lawyer may desire to help such a client because of subjective reasons, rather than out of duty to the moral law, such as a commitment to access to justice. This can be contrasted with a client charged with various criminal offences and who is rude and aggressive towards their lawyer. One may be less sympathetic towards the criminal/aggressive client than the client being threatened with eviction. However, if out of duty to the moral law, the lawyer displays care and respect towards the criminal client, then their actions are said to have moral worth.

In his *Metaphysics of Morals*, Kant presents a taxonomy of duties which he divides into juridical duties and ethical duties.[51] The former can be coercively enforced by external means such as civil and criminal law. Juridical duties are not relevant for present purposes because the focus of this article is on the moral conduct of the individual as opposed to enforcing ethical behaviour through external mechanisms. Ethical duties, on the other hand, must not be externally enforced, as this would violate the rights of the person coerced.[52] Certain moral endowments, such as the feelings of respect, self-esteem, and love for other human beings, are the '*subjective* conditions' of morality.[53] A person must constrain themselves to follow these obligations through their own reason and motives, established a priori from rational capacities.[54] Kant distinguishes between two types of ethical duties: perfect and imperfect.

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[48] Ibid, [4: 398].
[49] Ibid, [4: 398].
[50] Ibid, [4: 398].
[51] Allen Wood, 'Duties to Oneself, Duties of Respect to Others' in Thomas E Hill (ed), *The Blackwell Guide to Kant's Ethics* (Wiley-Blackwell, 2009), 229.
[52] Ibid
[53] Immanuel Kant, *The Metaphysics of Morals* (first published 1797, Mary Gregor ed, Cambridge University Press, 1996), [6: 399 – 6: 403].
[54] Wood (n 51) 229.

Perfect duties prescribe a specific type of prohibition/omission and do not permit discretion. Imperfect duties, on the other hand, stipulate only a general objective, they do not dictate the specific type of action by which that objective is realised.[55] Unlike perfect duties, imperfect duties permit discretion in their implementation. Kant provides four examples in relation to perfect and imperfect duties: (1) the duty to refrain from suicide; (2) the duty to abstain from making false promises; (3) the duty to develop our talents; and (4) a duty to help those facing hardships.[56] Duties (1) and (2) are perfect duties because they do no permit discretion. Duties (1) and (2) are also negative duties because they prohibit the stipulated actions. Duties (3) and (4) are imperfect positive duties, and unlike perfect duties allow for discretion in their implementation. For example, lawyers are able to fulfil their duty of beneficence (4) by taking part in pro bono activities. In relation to the duty of beneficence, Kant states, '[t]his is, however, merely to agree negatively and not positively with *humanity as an end in itself* unless every one endeavours also, so far as in him, to further the ends of others'.[57] A general duty of beneficence should be understood as a duty to engage in pro bono work to assist individuals and marginalised groups in the realisation of particular ends they have freely set for themselves.

Kant's duty to others is not confined to the imperfect duty of beneficence. He divides our duties to others 'as human beings' into two categories, the duties of 'love' and the duties of 'respect'.[58] Although he calls them 'duties of love', Kant does not mean that they are duties to have specific feelings towards others. Instead, these should be thought of as duties to act towards others in certain ways.[59] Failure to fulfil duties of love amounts to 'lack of virtue'.[60] Thus, lawyers have a general duty towards clients regardless of how they may feel about them. This abstraction of specific sentiments towards others does not mean that students and lawyers should be discouraged from nurturing certain feelings:

> It is therefore a duty not to avoid the places where the poor who lack the most basic necessities are to be found but rather to seek them out, and not to shun

[55] Kant (n 8) [4:421].
[56] Ibid, [4:42 - 423]
[57] Ibid, [4:430]. Emphasis in the original.
[58] Kant (n 53) [6:448].
[59] Ibid, [6:449].
[60] Ibid, [6:464].

> sickrooms or debtors' prisons and so forth in order to avoid sharing painful feelings one may not be able to resist.[61]

Thus, students should participate in programmes such as pro bono services and CLE to develop emotions such as sympathy and, as stated previously, compassion. Kant's ethics, therefore, require students and lawyers to seek places where people are suffering and in need of help, not only to develop a sense of sympathy, but also to fulfil the duty of benevolence. The purpose of acquiring such attitudes is not 'a duty to share the sufferings' of others; it is 'a duty to sympathize actively in their fate'.[62] According to Kant, a person has a duty to 'cultivate the compassionate natural (aesthetic) feelings in [themselves]' in order to 'make use of them as so many means to sympathy based on moral principles and the feeling appropriate to them'.[63] Kant classifies 'sympathy' into two categories. The first, '*humanitas practica*', the capacity to share the feelings of others, is useful in terms of promoting the happiness of others.[64] The second type of sympathy, 'humanitas aesthetica', involves the sharing of other's feelings but does not necessarily give rise to practical actions.[65] Thus, the former should be cultivated to promote the duty of beneficence in legal ethics. Sympathy is 'one of the impulses that nature has implanted in us to do what the representation of duty alone would not accomplish'.[66] This can be interpreted to mean that sympathy can strengthen a lawyer's duty towards others. Alternatively, Guyer suggests that what Kant has in mind is that individuals' natural inclination to sympathy can act as a conceptual tool to direct what actions need to be taken to fulfil one's 'imperfect' duty of benevolence.[67] Wispé defines sympathy as 'the heightened awareness of another's plight as something to be alleviated'.[68] Thus, sympathy can serve as a mechanism for relating to others by giving rise to an affinity between two parties.[69] Developing a sense of affinity involves students imagining themselves to be affected by the same hardships as those affecting their clients and/or marginalised groups. Emotions, such as sympathy, can function

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[61] Ibid, [6:457]. See also Sherman, Nancy, *Making a Necessity of Virtue Aristotle and Kant on Virtue* (Cambridge University Press, 1997), 145.
[62] Kant (n 53) [6:457].
[63] Ibid.
[64] Ibid, [6:456]
[65] Ibid.
[66] Ibid.
[67] Ibid, [6:457].
[68] Lauren Wispé, *'The distinction between sympathy and empathy: to call forth a concept, a word is needed' (1986) 50(2) Journal of Personality and Social Psychology* 314, 314.
[69] Anthony Kronman, 'Practical Wisdom and Professional Character' (1986) 4(1) Social Philosophy and Policy 203, 213–16.

as a 'pair of moral eyes'[70] that permit lawyers to see where their moral obligations arise. However, Kant warns that sympathy can give rise to:

> [Individuals] flattering themselves with a spontaneous goodness of heart that needs neither spur nor bridle and for which not even a command is necessary and thereby forgetting their obligation, which they ought to think of rather than merit'.[71]

Those who are in a self-congratulatory state of mind may imagine themselves as so good-hearted that they do not require the 'yoke' of duty.[72] In relation to duties of respect, namely those 'duties to one's fellow human beings arising from the respect due to them', Kant has in mind obligations not to be arrogant towards others and not to defame or ridicule them.[73] The Kantian lawyer must be modest, dignified, and humane,[74] even to clients who have been charged with or are guilty of serious criminal offences. [75] Kant's justification for imposing a duty of respect is that arrogance, defamation, and ridicule are 'contrary to the respect owed to humanity as such'.[76] Failure to show respect owed to 'every human being as such is a vice'.[77] According to Guyer, duties of respect are perfect rather than imperfect duties. [78] They are not only expressed as negative duties, in the sense they must be avoided, but also allow no room for 'judgement or latitude'.[79]

Professional legal ethics can also be enhanced by drawing on Kant's philosophy regarding the duty to engage in law reform. According to Kant, citizens have the right to inform their governments of unjust practices that require reform.[80] This right suggests that states have a correlative duty to promote this right.[81] However, he does

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[70] Paul Guyer, *Kant and the Experience of Freedom* (Cambridge University 1993), 389.
[71] Immanuel Kant, *Critique of Practical Reason* (Mary Gregor tr, Cambridge University Press, 2nd edn 2015), [5:85].
[72] Ibid.
[73] Kant (n 53) [6:456 - 458].
[74] Ibid, [6:462].
[75] Ibid, [6:463].
[76] Ibid, [6:466].
[77] Ibid, [6:464].
[78] Paul Guyer (n 95) 256.
[79] Ibid.
[80] Kant (n 53) [6:321].
[81] Immanuel Kant, 'An Answer to the Question: What is Enlightenment?' (first published 1784, Penguin, 2009); Immanuel Kant, *The Conflict of the Faculties: Der Streit Der Fakultäten* (first published 1798, Mary J Gregor trans, University of Nebraska Press, 1979).

not explicitly argue that citizens have a duty to exercise their right to inform their governments of injustices and petition for redress.[82] This oversight on Kant's part is immaterial because it is implicit in his theory of beneficence that a person has an imperfect duty to assist others. Moreover, given Kant's cosmopolitan ethics, it can be argued that an English or Welsh lawyer's moral right to inform a government of injustices is not restricted to the United Kingdom.

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

6. Kant's supreme principle of morality

Kant formulated the categorical imperative (CI) as the supreme principle of morality: 'All *imperatives* command either *hypothetically* or *categorically*'.[83] The CI can be distinguished from a hypothetical imperative (HI). A HI can be expressed as follows: 'If a person wills an end and certain means are necessary to achieve that end and are within his power, then he ought to will those means'.[84] A HI typically begins with an 'If…' or contains an 'if': 'If you want to do well in your law degree, then attend all your lectures'. The obligation to attend one's lectures is dependent on the objective to do well in the exams and, hopefully, secure employment in a law firm. A CI, on the other hand, is an unconditional and binding command irrespective of whether it confers, directly or indirectly, any benefits. The CI is not tainted by any conditional desires. Instead, it simply commands 'Do X and let the consequences be what they may'.[85] Although there is one CI, also known as 'the imperative of morality',[86] Kant puts forward various versions of it. The most common formulations are:

1. 'Act only on that maxim through which you can at the same time will that it should become a universal law'[87]

[82] Guyer (n 70) 290.
[83] Kant (n 8) [4: 414]. Emphasis in the original.
[84] Thomas E Hill, 'The Hypothetical Imperative' (1973) 82(4) The Philosophical Review 429, 429.
[85] Kant (n 8) [4: 416].
[86] Ibid.
[87] Ibid, [4: 421]. Emphasis in the original.

2. Act in such a way that you always treat humanity, whether in your own person or in the person of another, never simply as a means, but always at the same time as an end.[88]
3. A rational being belongs to the kingdom of ends as a *member*, when, although he makes its universal laws, he is also himself subject to these laws.[89]

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

6.1 The first formula

When examining the first formula, which concerns the form of the CI, it is important to focus on the term 'maxim'. There is an assumption that whenever a person acts, they have a reason or an intention for the action;[90] for example, a student decides that volunteering in a pro bono centre will increase their employment prospects. The student's reason for volunteering is subjective and conditional on their desire to secure a job in a law firm. This example falls under the definition of a HI. The first formula, however, requires individuals not to act on maxims other than those that could at the same time become universal law. This ensures that subjective principles of action (maxims) comply with the demands of duty. Unlike the HI, the CI does not depend on an 'if'; the volunteering in this example is done for its own sake and not for the sake of some further (subject or self-interested) end. Similarly, complying with the duty of confidentially (CD 6; Paragraph 6.3 of the Standards and Regulations) should be done out of a sense of duty to the client rather than simply because it is stated in the codes of conduct. What the first formula does not address, however, is what makes an action right. It simply informs individuals of what may happen if everyone, including themselves, acted according to their maxims. The first formula allows students to reflect on their proposed actions by asking: 'What if everyone acted this way?'. It asks them to imagine a world where their decisions were a law for everyone to follow and whether they would be willing to live in such a world.[91] The emphasis is not on what an individual would want or find acceptable but what they can will or intend 'as a universal law'. Intuitively speaking, universalising one's maxims reveals cases of unfairness, deception, and cheating.[92] The first formula raises the following question: why

[88] Ibid, [4: 429]. Emphasis in the original.
[89] Ibid, [4: 433]. Emphasis in the original.
[90] Katrin A Flikschuh, 'Kant' in David Boucher and Paul Kelly (eds), *Political Thinkers from Socrates to the Present* (Oxford University Press, 3rd edn 2017), 456.
[91] Kant (n 8) [4:424].
[92] Christine M Korsgaard, *Creating the Kingdom of Ends* (Cambridge University Press, 1996), 92.

should individuals be concerned about making exceptions for themselves? The answer is to be found in Kant's second formula.

6.2 The second formula

Kant's second formula is concerned with the content of the CI and, as a result, provides the standard of what amounts to a morally right action.[93] 'Humanity'[94] refers not just to humankind in the biological sense[95] but also to an individual's capacity to freely set their own ends.[96] An important consequence of placing a special value on a client's capacity to set and rationally pursue their own values, is that it allows them to freely 'pursue their own life plans subject only to the constraint that others be allowed a similar freedom'.[97] A rational person, in the Kantian sense, is one who can set their own ends and can autonomously act on them.[98] When advising clients, lawyers are not only to respect the client's capacity to make plans but also respect (within legal limits) the plans they make (CD 2; Principle 7).[99] This entails a client's decision being free from manipulation and coercion. It is because an individual can set their ends and autonomously follow those ends that they have worth and should be respected.[100] According to Kant, an individual's free will is what gives them dignity and unconditional worth.[101] A person's dignity has an 'unconditional and incomparable worth'.[102] Kantian ethics possess an important feature which can enhance the teaching of legal ethics, namely, all clients are ends in themselves and deserving of respect, because any person 'can measure [themselves] with every other being of this kind and value [themselves] on a footing of equality with them'.[103] This obligation can direct lawyers to be attentive to the principle that they 'cannot deny all respect to even a vicious man…even though by his deeds he makes himself unworthy of it'.[104] Kantian ethics can enhance the professional codes of conduct in relation to acting with independence (CD4; P3), acting in ways that encourage diversity (CD8; P6), and acting in the

[93] David Daiches Raphael, *Moral Philosophy* (Oxford University Press,1981), 56.
[94] Kant often uses 'rational being' and 'humanity' interchangeably.
[95] Paul Guyer, *Kant* (Routledge, 2006), 186.
[96] Kant (n 53) [6:392].
[97] Thomas E Hill Jr, 'Humanity as an End in Itself' (1980) 90(1) Ethics 84, 96.
[98] Kant (n 8) [4:428].
[99] William Nelson, 'Kant's formula of humanity' (2008) 117(465) Mind 85, 96.
[100] Christine Korsgaard, 'Kant's formula of humanity' (1986) 77(1-4) Kant Studien 183, 122-123.
[101] Kant (n 8) [4: 435]. Emphasis in the original.
[102] Ibid, [4:436].
[103] Kant (n 53) [6:435].
[104] Ibid, [6:463].

best interest of the client (CD2: P7). Focusing on client autonomy and dignity can also play a role in assisting lawyers to address heuristic bias.[105]

6.2.1 Client autonomy

Kant's moral theory has been described as an 'Appeal to Autonomy'.[106] Actions, according to Kant, that are carried out from duty to the moral law demonstrate the autonomy of the person. He claims that '*Autonomy* is…the ground of the dignity of human nature and every rational nature'.[107] Kant's idea of autonomy does not refer to self-determination in the juridical sense.[108] An autonomous action is a free action because it is directed by reason and not by desire or inclinations.[109] Freedom, for Kant, is displayed when a person acts according to the duty to the moral law, the CI. For Kant, 'a free will and a will under moral laws are one and the same thing'.[110] In other words, freedom is exercised when an individual acts according to duty to the moral law and not according to their desires. These moral duties are determined by reference to the CI.

Autonomy for Kant is grounded in both dignity and respect.[111] O'Neill describes Kant's conception of autonomy as, 'a matter of adopting law-like principles that are independent of extraneous assumptions that can hold only for some and not for other agents'.[112] This notion of autonomy is based on reason rather than on what the individual desires. In the context of professional legal ethics, O'Neill's principled autonomy approach rejects lawyer behaviour such as coercion, deception, and manipulation. The value of this form of autonomy is that it must be based on principles to which everyone could consent.[113] An autonomous lawyer, in the Kantian sense, is one whose actions are free from emotions and inclinations. This can aid a lawyer in reflecting on whether their advice to their client is, for example, tainted by emotions

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[105] Concerning the issue of lawyer bias, see Ian Weinstein, 'Don't believe everything you think: Cognitive bias in legal decision making' (2002) 9 Clinical Law Review 783; Laura A Kaster, 'Improving Lawyer Judgment by Reducing the Impact of "Client-Think"' (2012) 67(1) Dispute Resolution Journal 56; Debra Chopp, 'Addressing cultural bias in the legal profession' (2017) 41 New York University Review of Law & Societia Change 364.
[106] Christine Korsgaard, 'The normative question' in Christine M Korsgaard (ed), *The Sources of Normativity* (Cambridge University Press, 1996), 19.
[107] Kant (n 8) [4:436]. Emphasis in original.
[108] Ibid, [4:440].
[109] Alan J Kearns, 'A Duty-Based Approach for Nursing Ethics & Practice' in P Anne Scott (ed), *Key Concepts and Issues in Nursing Ethics* (Springer, 2017), 18.
[110] Kant (n 8) [4: 447].
[111] J B Schneewind, 'Autonomy for Kant' in Oliver Sense (ed), *Kant on Moral Autonomy* (Cambridge University Press, 2013), 158.
[112] Onora O'Neill, 'Autonomy: The Emperor's New Clothes' (2003) 77(1) Proceedings of the Aristotelian Society, Supplementary Volumes 1, 16.
[113] Onora O'Neill, *Autonomy and Trust in Bioethics (*Cambridge University Press, 2002), 73 – 95.

towards their client. Following Kant's concept of autonomy, there is no obligation on a lawyer to follow a client's instructions if such instructions are based on desires or inclination. However, a lawyer's role is not to impose their morality on their clients. Lawyers should enable their clients to achieve their ends, within legal limits.[114] An alternative conception of autonomy is put forward by Beauchamp and Childers:

> To respect an autonomous agent is, at a minimum, to acknowledge that person's right to hold views, to make choices, and to take actions based on personal values and beliefs. Such respect involves respectful *action*, not merely a respectful *attitude*…It includes, at least in some contexts, obligations to build up or maintain others' capacities for autonomous choice while helping to allay fears and other conditions that destroy or disrupt their autonomous actions. Respect, on this account, involves acknowledging decision-making rights and enabling persons to act autonomously, whereas disrespect for autonomy involves attitudes and actions that ignore, insult, or demean others' rights of autonomy.[115]

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

> One of the essential values of a just society is respect for the dignity of each member of that society. Essential to each individual's dignity is the free exercise of his autonomy. Toward that end, each person is entitled to know his rights with respect to society and other individuals, and to decide whether to seek fulfilment of those rights through the due process of law.[116]

Freedman's client-centric model can be expanded to include the client's rights as well as any moral or legal duties the client might have towards others. This requires being mindful of Mill's account of liberty: 'the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good,

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[114] Thomas L Shaffer and Robert F Cochran Jr, 'Four Approaches to Moral Choices in Legal Representation' in Thomas L Shaffer and Robert F Cochran Jr (eds), *Lawyers, Clients, and Moral Responsibility* (West Publishing Co, 2002), 16.
[115] Tom L Beauchamp and James F Childress, *Principles of Biomedical Ethics* (Oxford University Press, 5th edn 2001), 63. Emphasis in original.
[116] Monroe H Freedman, *Understanding Lawyers' Ethics* (Matthew Bender, 1990), 57.

either physical or moral, is not a sufficient warrant'.[117] This principle, also known as the 'harm principle',[118] can be applied to the lawyer-client relationship to protect the wider public interest[119] and third parties. For example, where it transpires that the intention of a vexatious client is to cause emotional or financial harm to the other party, the harm principle can help inform the lawyer to provide the client with additional options such as alternative dispute resolution. However, the harm principle does not mean that the lawyer should behave in a paternalistic manner. KMC, therefore, rejects lawyer dominance and paternalistic behaviour.

6.3 The third formula

Kant's third formula, which connects the first two formulae of the CI, holds that individuals should act as if they were members of an ideal kingdom of ends in which they were both subject and sovereign at the same time. Persons within this moral community ('kingdom') are members of a possible social order,[120] whereby each member makes moral decisions. freedom of each person acknowledged and consistently respected by all the members of this community.[121] This denotes reciprocal relationships between persons.[122] Morality, therefore, includes one's commitment to others.[123] Moral behaviour conceived in this way highlights the idea of interdependence and may prevent future lawyers from acting only as 'hired guns' who zealously pursue their clients ends, irrespective of the consequences on third parties. By accepting that every person has the ability to make choices and decisions, the third formula provides a form of equality for all (CD 8; Principle 6).[124] By asking individuals to imagine themselves to be equal members of a moral community, Kant's theory of ethics is described as 'ethics of democracy' because '[i]t requires liberty (allowing everyone to decide for himself), equality…, and fraternity (think of yourself as a member of a moral community)'.[125]

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[117] John Stuart Mill, *On Liberty* (first published 1859, Cambridge University Press, 2012), 22.
[118] Nils Holtug, 'The Harm Principle' (2002) 5 (4) Ethical Theory and Moral Practice 357.
[119] Solicitors Regulation Authority (n 32).
[120] Barbara Herman, 'A Cosmopolitan Kingdom of Ends' in Andrews Reath, Barbara Herman and Christine M Korsgaard (eds) *Reclaiming the History of Ethics: Essays for John Rawls* (Cambridge University Press, 1997), 187 – 213.
[121] Kant (n 8) [4: 433].
[122] Christine M Korsgaard, *Creating the Kingdom of Ends* (Cambridge University Press, 1996), 188 – 222.
[123] John Paley, 'Virtues of autonomy: Kantian ethics of care' (2002) 3 *Nursing Philosophy* 113, 135.
[124] David Daiches Raphael, *Moral Philosophy* (Oxford University Press, 1981), 57.
[125] Ibid

6.3.1 A moral cosmopolitan approach to legal ethics

For Kant, the kingdom of ends acts as a nexus to his cosmopolitan political community.[126] According to Fine, Kant's conception of cosmopolitanism right is 'widely viewed as the philosophical origin of modern cosmopolitan thought'.[127] Kant defines cosmopolitanism as 'as the womb in which all original predispositions of the human species will be developed'.[128] Kant's cosmopolitanism deals with the cultivation of a global community within which every person can develop their human capacities.[129] Although influenced by the Stoics,[130] Kant's conception of moral cosmopolitanism was in response to a world which he believed had become interconnected to the point where 'the violation of right at any one place on the earth is felt in all places'.[131] For present purposes, moral cosmopolitanism is applied to the teaching of professional legal ethics to foster a sense of moral obligations to the universal human community.[132]

Kant's conception of cosmopolitanism, however, is 'limited to conditions of universal hospitality', a right not to be treated with hostility when visiting foreign lands.[133] This notion of cosmopolitanism is essentially a combination of Kant's second and third formulae. Kant's moral community can be extended to include obligations towards others in the global community.[134] Within this ethical community, human beings are 'ultimate units of concern' entitled to equal consideration regardless of their citizenship, nationality, or any other characteristic.[135] According to Appiah, cosmopolitanism also requires a second limb: individuals should be mindful of each other's differences and 'there is much to learn from these

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[126] Immanuel Kant, 'Toward Perpetual Peace' in Mary J Gregor (ed), *Practical Philosophy* (Cambridge University Press 1996), [8: 341 – 386].
[127] Robert Fine, 'Kant's theory of cosmopolitanism and Hegel's critique' (2003) 29(6) Philosophy & Social Criticism 609, 609.
[128] Immanuel Kant, 'The idea of a universal history with a cosmopolitan aim' in Robert B Louden (ed), Anthropology, History, and Education (Cambridge University Press, 2007), [8: 28].
[129] Ibid, [8: 22]
[130] Olav Eikeland, 'Cosmópolis or Koinópolis?' in Marianna Papastephanou (ed), *Cosmopolitanism: Educational, Philosophical and Historical Perspectives* (Springer, 2016), 26.
[131] Immanuel Kant, 'Toward Perpetual Peace: A Philosophical Sketch' in Pauline Kleingeld et al (eds), *Toward Perpetual Peace and Other Writings on Politics, Peace, and History* (Yale University Press, 2006), [8: 360].
[132] Flood and Lederer (n 4) 2514.
[133] Ibid, [8: 357 - 358]. For an application of Kant's right to hospitality in CLE, see Omar Madhloom, 'Unregulated Immigration Law Clinics and Kant's Cosmopolitan Right: Challenging the Political Status Quo' (2021) 28(1) International Journal of Clinical Legal Education 195.
[134] Nussbaum (n 7) 4.
[135] Thomas Pogge, 'Cosmopolitanism and Sovereignty' (1992) 103(1) Ethics 48, 48.

differences'.[136] Recognising cultural, religious, or language differences can act as a reminder to students and lawyers that they ought to take seriously the values and beliefs of their clients. Cosmopolitanism conceived of these two limbs provides an avenue for lawyers to be conscious of their clients' values and 'lived experience'.[137] Awareness of such differences can be beneficial to various aspects of the lawyering process such as interviewing, negotiating, and strategizing.[138]

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

7. KMC and CLE

Unlike professional codes of conduct, CLE can act as a methodology[139] for bridging the gap between theory and practice.[140] CLE includes, but is not limited to, pro bono legal activities.[141] For present purposes, CLE incorporates a variety of experiential methods such as live-client clinics,[142] Street Law,[143] mooting,[144] and client interviewing and counselling.[145] In general terms, experiential education involves connecting real-life to learning through the

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[136] Kwame Anthony Appiah, *Cosmopolitanism: Ethics in A World of Strangers* (Penguin Books, 2007), xiii; Carole Silver, 'Getting Real about Globalization and Legal Education: Potential and Perspectives for the U.S. Symposium: The Future of the Legal Profession' (2013) 24 Stanford Law and Policy Review 460.
[137] Rhonda V Magee, 'Legal Education and the Formation of Professional Identity: A Critical Spirituohumanistic - Humanity Consciousness – Perspective' (2007) 31(3) New York University Review of Law & Social Change 467.
[138] Andrea A Curcio et al, 'Educating Culturally Sensible Lawyers: A Study of Student Attitudes About the Role Culture Plays in The Lawyering Process' (2012) 16(1) University of Western Sydney Law Review 100, 105.
[139] Gary Bellow, 'On Teaching Teachers: Some Preliminary Reflections on Clinical Education as Methodology' (1973) Clinical Education for the Law Student 375; Neil Gold, 'Why not an International Journal of Clinical Legal Education?' (2000) 1 International Journal of Clinical Legal Education 1, 12.
[140] Rachel Dunn, Victoria Roper and Vinny Kennedy, 'Clinical legal education as qualifying work experience for solicitors' (2018) 52(4) The Law Teacher 439, 444.
[141] See LawWorks, *The LawWorks Law School Pro Bono and Clinics Report 2020* (LawWorks, 2020) < www.lawworks.org.uk/solicitors-and-volunteers/resources/lawworks-law-school-pro-bono-and-clinics-report-2020 > (accessed 15 July 2021). According to LawWorks, 'pro bono has now become a mainstream part of legal education, as well as law schools' wider community engagement'.
[142] Linden Thomas et al, *Reimagining clinical legal education* (Hart Publishing, 2018).
[143] Richard Grimes, David McQouid-Mason, Ed O'brien and Judy Zimmer, 'Street Law and Social Justice Education' in Frank S Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press, 2010) 225–40.
[144] Andrew Lynch, 'Why Do We Moot - Exploring the Role of Mooting in Legal Education' (1996) 7 Legal Education Review 67; Alisdair A Gillespie, 'Mooting for Learning' (2007) 5(1) Journal of Commonwealth Law and Legal Education 19.
[145] David A Binder and Susan C Price, *Legal Interviewing and Counseling: A Client-Centered Approach* (West Academic, 1977); Laurie Shanks, 'Whose Story Is It, Anyway - Guiding Students to Client-Centered Interviewing through Storytelling' (2008) 14 Clinical Law Review 509.

process of reflection.[146] Nicolson contends that live-client clinics are 'an excellent and viable means of assisting in the process of moral character development'.[147] Although live-client clinics have an advantage over other forms of experiential learning, by virtue of the fact that students are dealing with 'live' cases, KMC can be taught using any form of experiential learning because it is concerned with applying moral education in a practical context. In addition to promoting social justice[148] and developing reflective practice,[149] CLE can foster empathy and compassion because it 'puts the emotional content back into law'.[150] Thus, Kant's duty of respect, compassion, and sympathy can be taught through CLE programmes. CLE has also been said to act as a vehicle for ethics-focused learning,[151] inculcating students with human rights-based values,[152] and promoting moral decision-making.[153] CLE is, therefore, an appropriate vehicle for promoting the values espoused by KMC. In the context of medical education, moral reasoning:

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[146] David A Kolb, *Experiential Learning: Experience as the Source of Learning and Development* (Pearson Education, 2015).

[147] Ibid, 145. See also Steven Hartwell, 'Moral Development, Ethical Conduct and Clinical Education' (1990) 35 New York Law School Law Review 131; Stephen Wizner, 'The Law School Clinic: Legal Education in the Interests of Justice' (2002) 70 Fordham Law Review 1929.

[148] Wizner (n 147); Ibijoke Patricia Byron, 'The Relationship Between Social Justice and Clinical Legal Education: A Case Study of The Women's Law Clinic, Faculty of Law, University of Ibadan, Nigeria' (2014) 20(4) International Journal of Clinical Legal Education 563; Donald Nicolson, '"Our roots began in (South) Africa": modelling law clinics to maximise social justice ends' (2016) 23(3) International Journal of Clinical Legal Education 87; Chris Ashford and Paul McKeown (eds), *Social Justice and Legal Education* (Cambridge Scholars, 2018); Anna Cody, 'Reflection and clinical legal education: how do students learn about their ethical duty to contribute towards justice' (2020) 23(1-2) Legal Ethics 13.

[149] Michele Leering, 'Conceptualizing Reflective Practice for Legal Professionals' (2014) 23(5) Journal of Law and Social Policy 83; Cecilia Blengino et al, 'Reflective Practice: Connecting Assessment and Socio-Legal Research in Clinical Legal Education' (2019) 26(3) International Journal of Clinical Legal Education 54.

[150] Philip Plowden, 'Clinical legal education: theory, practice and possibilities' (2004) online: UK Centre for Legal Education < https://ials.sas.ac.uk/ukcle/78.158.56.101/archive/law/resources/teaching-and-learning-practices/plowden/index.html > (accessed 15 July 2021). See also Ann Juergens, 'Practicing what We Teach: The Importance of Emotion and Community Connection in Law Work and Law Teaching" (2005) 11 Clinical Law Review 413; Sarah Buhler, 'Painful Injustices: Encountering Social Suffering in Clinical Legal Education' (2013) 19(2) Clinical Law Review 405, Sarah Buhler, 'Troubled Feelings: Moral Anger and Clinical Legal Education' (2014) 37(1) Dalhousie Law Journal 397.

[151] Donald Nicolson, 'Legal education, ethics and access to justice: forging warriors for justice in a neo-liberal world' (2015) 22(1) International Journal of the Legal Profession 51; María L Torres-Villarreal and Diana R Bernal-Camargo, 'Learning legal ethics in the law clinics: "one hundred thousand housing law" for offences against minors' (2019) 22(1) Legal Ethics 1.

[152] Mohammad Mahdi Meghdadia and Ahmad Erfani Nasabb, 'The role of legal clinics of law schools in human rights education; Mofid University legal clinic experience' (2012) 31 Procedia - Social and Behavioral Sciences 275; Irene Antonopoulos and Omar Madhloom. 'Promoting international human rights values through reflective practice in clinical legal education: a perspective from England and Wales' in Enakshi Sengupta and Patrick Blessinger (eds) *International Perspectives in Social Justice Programs at the Institutional and Community Levels* (Emerald Publishing, 2021), 109 – 127.

[153] Norman Redlich, 'The Moral Value of Clinical Legal Education: A Reply' (1983) 33 (4) Journal of Legal Education 613; Nicolson (n 44); Anna Cody, 'Reflection and clinical legal education: how do students learn about their ethical duty to contribute towards justice' (2020) 23 (1 – 2) Legal Ethics 13.

> [P]romotes a consideration of patients on an individual level and the adoption of a holistic approach to their care. The resultant concordance of doctor and patient may increase the likelihood of mutually satisfactory decisions, patient compliance and beneficial clinical outcomes.[154]

The benefits of moral reasoning can also apply to CLE and legal practice, as both the medical and the legal profession value, inter alia, the concept of patient/client care. However, professionals should not impose their personal opinions about a given situation.[155] Instead, they ought to depart from their personal frames of reference to achieve a better empathic understanding of their clients.[156] KMC, which rejects paternalism, can contribute to the moral education by directing students to be attentive to any inclinations that may impact on their decision-making. KMC also involves being cognizant of the client's values and characteristics. The value of using experiential learning as a vehicle for teaching KMC is due to it being 'universally effective as a structure and philosophy of teaching and learning'.[157] Although Kant's work predated CLE,[158] his philosophy and theory of pedagogy are relevant for present purposes due to his commitment to experiential learning and moral education.

8. Conclusion

This article has argued that the teaching of professional legal ethics can be enriched by adopting a holistic approach informed by KMC. The juxtaposition of the professional codes of conduct with the suggested KMC model can direct students to possess more self-awareness of their actions and to ensure that client autonomy is not undermined. Respecting client autonomy, under KMC, entails the lawyer ascertaining the client's values, cultural background, and any other material information relevant to client. KMC also provides moral duties, namely obligations towards individuals outside one's immediate community or jurisdiction. This

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[154] Sebastian Sheehan et al, 'Why does moral reasoning not improve in medical students?' (2015) 6 International Journal of Medical Education 101, 101.
[155] Miguel Ricou and Sílvia Marina, 'Ethical Issues and Challenges in Psychological Practice and Research' (2020) 13(1) Psychology in Russia: State of the Art 2, 6.
[156] Ibid.
[157] Richard J Wilson, 'Theory and Clinical Legal Education' in Richard J Wilson (ed), *The Global Evolution of Clinical Legal Education More than a Method* (Cambridge University Press, 2017), 137.
[158] The earliest reference to CLE in the United States is William V Rowe, 'Legal Clinics and Better Trained Lawyers-A Necessity' (1917) 11 Illinois Law Review 591. Jerome Frank, 'Why Not a Clinical Lawyer-School?' (1933) 81(8) University of Pennsylvania Law Review 907 is widely cited in terms of the conceptual origins of CLE in the United Stated. Outside the United States, a Russian professor, Alexander Lyublinsky, proposed a law clinic component modelled on the medical training, Alexander Lyublinsky, 'About Legal Clinics' [1901] Journal of Ministry of Justice (Rosja) 175. See also Richard J Wilson, 'Training for Justice: The Global Reach of Clinical Legal Education' (2004) 22(3) Penn State International Law Review 421, 421.

allows students to engage and reflect on global issues such as the social and economic turmoil caused by the Covid-19 pandemic. Thus, KMC provides cosmopolitan obligations to distant suffering and injustices. Although Kantian ethics involves the abstraction of inclinations from one's moral deliberations, KMC incorporates sentiments, such as sympathy and compassion, because they can foster 'cosmopolitan emotions' and increase sensitivity for human suffering.[159]

Beyond legal education, KMC can be applied to legal ethics on three levels. First, law practices can be viewed as moral communities consisting of staff, clients, and other stakeholders, whereby each person in this community has a moral relationship to everyone else.[160] With regards to duties towards clients, a lawyer who views this moral community as merely a means to achieving their own ends, is acting contrary to the second formula. The second level concerns duties owed to the moral community within a law practice's geographical location and/or jurisdiction. The third level provides a moral justification for lawyers to engage in the provision of pro bono services to clients outside their legal jurisdictions.

[159] Andrew Linklater, 'Distant Suffering and Cosmopolitan Obligations' (2007) 44 International Politics 19, 27 citing Andrew Linklater, 'Emotions and World Politics' (2004) 2 Aberystwyth Journal of World Affairs 71.
[160] Norman Bowie, *Business Ethics: A Kantian Perspective* (Cambridge University Press, 2nd edn 2017), 82-129.