The Case for the Four Component Model vs. Moral Foundations Theory: A Perspective from Moral Psychology

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The 2016 Mercer Law Review Symposium asked speakers to address some aspect of three organizing questions about educational interventions designed to cultivate professional identity in law students. The Symposium's first proposed question of whether it is worthwhile to establish such interventions seemed largely rhetorical. The third question asked about appropriate assessment of such interventions and will be addressed in this issue by leaders in the field of legal ethics and professional program assessment. Hence, as a teacher and psychologist whose primary role in the field has been to synthesize theory and research, I chose to question the second guiding question with its assumption that, if a decision was made to attempt an educational intervention, then James Rest and colleagues' Four Component Model of Morality (FCM)[1] should guide curricular goals.

Accordingly, this Article aims to provide a brief overview of the rich and varied landscape of the field of moral psychology with a specific focus on the current debate about how much of a role actual conscious reasoning and deliberation plays in moral decisions and consequent actions. The

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1. James R. Rest, *Morality, in* 3 HANDBOOK OF CHILD PSYCHOLOGY: COGNITIVE DEVELOPMENT 556 (Paul H. Mussen, John H. Flavell & Ellen M. Markman eds., 4th ed. 1983). The Four Component Model was updated in 1999 to better reflect the authors' current thinking about schema theory. *See* JAMES R. REST, DARCIA NARVAEZ, MURIEL J. BEBEAU & STEPHEN THOMA, POSTCONVENTIONAL MORAL THINKING: A NEO-KOHLBERGIAN APPROACH (1999).

FCM, while acknowledging the role of the intuitive and emotional reactions central to the new theory on the block, Jonathan Haidt's Moral Foundations Theory (MFT),[2] still privileges the kind of thoughtful moral deliberation that Haidt argues rarely actually occurs. I will argue that given the goals of legal education and practice, such privileging makes a great deal of sense. Secondly, however, I argue that while encouraging ethical professional identity through the lens of the FCM may be an excellent fit for a law school curriculum, we do students a real disservice if we do not also help them to understand both our evolutionarily pre-attuned propensity to make rapid, intuitive evaluations heavily influenced by cultural norms and our dark and dangerous capacity for moral disengagement.

My interest in exploring MFT's potential challenge to the FCM as an emerging dominant moral paradigm arose this summer while serving on the dissertation committee for a young Psy.D candidate. He asked for input on good measures for his key dependent variable, moral reasoning. I gave him several options with a strong recommendation to consider the Defining Issues Test (DIT),[3] a widely used, reliable, and valid instrument for measuring moral reasoning complexity that was developed and revised by the same team that developed and updated the FCM. To my surprise, the young man instead decided to use the Moral Foundations Questionnaire (MFQ)[4] underlying Haidt's work as he believed it better captured the kind of intuitive moral reasoning prevalent among his sample of emerging adult participants in a somewhat impetuous and relatively non-reflective stage of life.

To explore whether the young scholar's decision represented an anomaly or a trend, I worked with a reference librarian to see just how widespread the move from the field's reliance on the FCM and the DIT to the

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2. *See* Jonathan Haidt, *The Emotional Dog and its Rational Tail: A Social Intuitionist Approach to Moral Judgment,* 108 PSYCHOL. REV. 814 (2001); JONATHAN HAIDT, THE RIGHTEOUS MIND: WHY GOOD PEOPLE ARE DIVIDED BY POLITICS AND RELIGION (2012); Jesse Graham, Jonathan Haidt, Sena Koleva, Matty Motyl, Ravi Iyer, Sean P. Wojcik & Peter H. Ditto, *Moral Foundations Theory: The Pragmatic Validity of Moral Pluralism, in* ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY 47, 55-130 (2012).

3. One of the best resources for information on the DIT is the website of the Center for the Study of Ethical Development at the University of Alabama which describes the test and gives information on ordering as well as providing links to Bebeau's materials on assessment materials for other components of the FCM. THE UNIV. OF ALA. CTR. FOR THE STUDY OF ETHICAL DEV., http://ethicaldevelopment.ua.edu (last visited Nov. 29, 2016).

4. The Moral Foundations website provides a brief background on MFT as well as links to the Moral Foundations Questionnaire (MFQ) and relevant articles and videos, MORAL FOUNDATIONS THEORY, http://www.moralfoundations.org (last visited Nov. 29, 2016). Students can take the online MFQ survey and immediately see their profile of preferences for the six moral foundations.

new MFT and MFQ model. In our brief survey of Google Scholar citations from 2010-2016, we found 345 citations for the FCM, 285 for the DIT and 12,000 (many heavily cited) for the MFT. Might law schools wanting to develop psychologically informed curricula be looking at instituting dial up when the world has moved on to high-speed wireless?

I will answer that question by first providing context about relevant key ideas shaping contemporary developmental and moral psychology. The next section of the paper reviews insights gleaned from a review of recent psychologically informed articles about teaching legal ethics and professional identity formation. The penultimate section provides a comparative analysis of the case for the FCM versus MFT before ending with thoughts on practical applications of moral development theory to educational interventions that might best cultivate professional identity in law students.

I. Relevant Contemporary Concepts in Moral Psychology

Currently, the field of moral development sits somewhat uneasily in a time between paradigms. A core of experienced researchers still sees great value in the cognitive developmental model inherent in the FCM, but most scholars acknowledge the need to accommodate the model to new findings from fields such as evolutionary and biological psychology, personality psychology, cultural psychology, and social psychology. To be overly simplistic, developmental and personality psychologists, like FCM theorist James Rest, have tended to focus on peoples' individual traits and abilities and changes across time and experience. In contrast, social psychologists like Jonathan Haidt focus on the influence of other people and situations on thoughts, attitudes, and behavior. I will summarize several key concepts influencing theory and research in the field before turning to the case for integrating both the FCM and MFT models into law school education interventions.

A. Biological/Evolutionary Perspectives on Morality

Exploration of the influence of evolutionary pre-attunement and the biological underpinnings of psychological phenomena constitutes a major trend in psychology today.

Of particular relevance to the question of rational versus intuitive reasoning, Daniel Kahneman[5] profoundly influenced psychological science

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5. Kahneman's work on thinking fast and thinking slow not only informs Haidt's theory but also provides a rationale for bridging the potential tensions between the FCM and

with his concept of two distinct modes of thinking. System 1 thinking developed "earlier in evolutionary time and provided our ancestors with an automatic, fast, and unconscious process for making quick decisions and taking decisive actions."[6] Despite its advantages for physical survival, the heuristics developed to simplify decision-making can also lead to biased thinking. In contrast, System 2 thinking "developed later in human history and . . . tends to be controlled, slow, and conscious."[7] System 2 is "rational, analytic, explicit, and rule based"[8] and allows us to consider possibilities, and to monitor and, if necessary, override quick emotional decisions made using System 1. As part of teaching students to "think like a lawyer," law schools put strong emphasis on honing System 2's analytical thinking skills.

Time and space limitations preclude an in-depth review of the prolific scholarship into the neurological and evolutionary underpinnings of morality. However, it is important to note that in addition to Kahneman's work on two systems of thinking and Jonathan Haidt's MFT, Franz De Waal's work with primate reciprocity,[9] and Darcia Narvaez's theory of Triune Ethics[10] have broadened our understanding of morality and moral reasoning.

B. Personality Psychology—Moral Self/Personality/Identity

Many theorists and researchers see the concept of moral self, or the extent to which moral values and ideals are central to one's identity, as providing important explanatory insights into both moral behavior and moral motivation. In short, you will be motivated to do the right thing if

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MFT. *See* DANIEL KAHNEMAN, THINKING, FAST AND SLOW (2011); Daniel Kahneman, *A Perspective on Judgment and Choice: Mapping Bounded Rationality,* 58(9) AM. PSYCHOL. 697 (2003).

6. ELIZABETH VOZZOLA, MORAL DEVELOPMENT: THEORY AND APPLICATIONS 61 (2014). Kahneman's work is set in the context of the rise of new theories from neuroscience and evolutionary perspectives. *Id.* at 61-62.

7. *Id.* at 62.

8. *Id.*

9. *See* FRANS DE WAAL, GOOD NATURED: THE ORIGINS OF RIGHT AND WRONG IN HUMANS AND OTHER ANIMALS (1996); Frans de Waal, *Moral Behavior in Animals,* TED (Nov. 2011), www.ted.com/talks/frans_de_waal_do_animals_have_morals.html.

10. For a comprehensive and interdisciplinary treatment of the relationship between neurobiology and human morality as well as an in-depth explanation of her Triune Ethics Theory, see DARCIA NARVAEZ, NEUROBIOLOGY AND THE DEVELOPMENT OF HUMAN MORALITY: EVOLUTION, CULTURE, AND WISDOM (2014).

not doing so threatens your view of yourself as a good, ethical person.[11] I will return to this concept in the discussion of the FCM.

C. Cultural Psychology –WEIRD

Although the overwhelming majority of psychology publications are still generated in Western countries, often on convenience samples of 18-22 year old college students, the past decades have brought increasing attention to the need to integrate cross-cultural findings into our understanding of human behavior, especially morality.[12] Although people raised in Western cultures make up only 12% of the world's population, they make up 96% of the participants in top psychology journals.[13] That discrepancy is highlighted in the acronym WEIRD (Western, Educated, Industrial, Rich, Democratic) introduced in the influential 2010 article "The Weirdest People in the World."[14] Recent research suggests that many findings long presumed to be universal (for example, such as categorization, motivation, and moral reasoning) show significant cultural differences.

D. Moral Disengagement

Albert Bandura believes people use numerous psychological mechanisms selectively to disengage from inhumane unethical conduct.[15] Briefly, to disengage from reprehensible conduct, we use (1) moral justification (linking actions to socially worthy purposes or moral causes such as preserving democracy); (2) advantageous or palliative comparison (comparing the temporary terror of water boarding prisoners to the agony of World Trade Center victims who burned alive); and (3) euphemistic

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11. For an excellent introduction to the work of major researchers in the field of moral personality, see PERSONALITY, IDENTITY, AND CHARACTER: EXPLORATIONS IN MORAL PSYCHOLOGY (Darcia Narvaez & Daniel K. Lapsley eds., 2009), noting especially Augustus Blasi, *The Moral Functioning of Mature Adults and the Possibility of Fair Moral Reasoning*, *in* PERSONALITY, IDENTITY, AND CHARACTER: EXPLORATIONS IN MORAL PSYCHOLOGY 396-440 (Darcia Narvaez & Daniel K. Lapsley eds., 2009).

12. Haidt's MFT relies heavily on the theory and research of cultural anthropologist Richard Shweder. *See* RICHARD A. SHWEDER, THINKING THROUGH CULTURES: EXPEDITIONS IN CULTURAL PSYCHOLOGY (1991). For a fine collection of more recent work that attempts to bridge concepts of cultural and developmental psychology, see BRIDGING CULTURAL AND DEVELOPMENTAL APPROACHES TO PSYCHOLOGY: NEW SYNTHESIS IN THEORY, RESEARCH AND POLICY (Lene Arnett Jensen ed., 2011).

13. Joseph Heinrich, Steven Heine, Ara Norenzayan, *The Weirdest People in the World?* 33 BEHAVIORAL & BRAIN SCI. 63 (2010).

14. *Id.* at 61-83.

15. Albert Bandura, *Selective Moral Disengagement in the Exercise of Moral Agency*, 31(2) J. MORAL EDUC. 101 (2002).

labeling ("collateral damage" rather than dead women and children).[16] To morally disengage from the detrimental effects of actions, people use minimizing, ignoring, disregarding, distorting, or misconstruing.[17] Finally, to morally disengage from our victims, we use dehumanization (labeling others as "gooks," "losers," or "cockroaches") and attributions of blame ("I was driven to lying about the evidence because so many criminals walk on a technicality.").[18]

E. Social Psychology

As Haidt's MFT relies heavily on social psychology research on implicit/intuitive versus explicit/rational thinking to support the existence of the posited moral foundations; I will leave further discussion of this trend to the analysis of that theory. But first, I would like to turn from the major ideas of moral psychology to relevant ones in legal ethics.

II. MORAL PSYCHOLOGY AND LEGAL ETHICS/ PROFESSIONAL IDENTITY FORMATION

The invitation to participate in this conference sent me on a crash course to learn about the big ideas in the field of legal ethics and professional identity formation. Several thinkers provided useful perspectives for this Article's argument for integrating theoretical models.

As evidenced by the numerous citations of her work and ideas I came across in my literature review, Mickey Bebeau's outstanding work in moral development theory and research, coupled with her expertise in professional ethics education and the assessment of ethics curricula has made her a leading expert on the FCM's application to ethics education.[19] Bebeau and Monson's[20] work on the importance of guiding practice by theory and grounding interventions in evidence holds particular relevance for the guiding questions of this conference and as well as for anyone designing courses and environments that promote and support ethical development and professionalism.

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16. *Id.* at 102-06.

17. *Id.* at 108.

18. *Id.* at 108-10.

19. Among many useful articles, see especially a recent update to prior descriptions of assessment strategies and teaching techniques to promote FCM abilities: Muriel J. Bebeau, *An Evidence-Based Guide for Ethics Instruction,* 15(12) J. MICROBIOLOGY & BIOLOGY EDUC. 124 (2014).

20. Muriel J. Bebeau & Verna E. Monson, *Guided by Theory, Grounded in Evidence: A Way Forward to Professional Ethics Education,* 557-82 *in* HANDBOOK OF MORAL AND CHARACTER EDUCATION (Larry Nucci & Darcis Narvaez eds., 2008).

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Moving more specifically to the field of legal ethics, Alice Woolley[21] provides an excellent analysis of how theories of legal ethics can be understood in terms of three broad categories based on their stance on the relationship between morality and the law. The standard form "understand[s] the lawyer's ethical duties in terms of . . . entitlements of citizens relative to a system of law."[22] In short, within the constraints of professional ethics, lawyers' primary duty is to maximize clients' chances of winning their case. Another category of theories critiques the standard role conception and argues that lawyers are ethically bound by the law's morality. The third perspective believes we must judge lawyers' actions "against the requirements of ordinary morality." [23] As a consequence of this theoretical diversity, law students may legitimately wonder whether to approach ethical dilemmas through the "lens of loyalty to clients, fidelity to law or with an emphasis on the overarching claims of ordinary morality."[24]

Woolley's article led me to David Luban's influential 2007 work, *Legal Ethics and Human Dignity*.[25] Although Woolley holds that all three categories of legal ethics theories represent the highest form of moral reasoning, post-conventional thinking, and are thus "equivalent as forms of moral reasoning,"[26] reading Luban's work suggested that only theories of ordinary morality that allow lawyers to use the rule of law to promote and protect human dignity actually represent the conception of post conventional thinking used in moral development.

Other relevant articles that evidenced both psychological sophistication and practical usefulness include those by Neil Hamilton, Jerome Organ, and Verna Monson[27] on ethical professionalism formation and Alice

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21. Alice Woolley, *The Problem of Disagreement in Legal Ethics Theory,* 26 CANADIAN J. L. & JURIS. 181 (2013).

22. *Id.* at 181.

23. *Id.*

24. *Id.* at 182.

25. DAVID LUBAN, LEGAL ETHICS AND HUMAN DIGNITY (2007). For David Luban, the standard conception of lawyer's roles or neutral partisanship can lead to rationalizing violations of common morality. Many of his examples could also be understood in terms of Bandura's concept of moral disengagement. *See id.*

26. Woolley, *supra* note 21, at 183.

27. *See, e.g.,* Neil Hamilton & Verna Monson, *The Positive Empirical Relationship of Professionalism to Effectiveness in the Practice of Law,* 24 GEO. J. LEGAL ETHICS 137 (2010); Neil W. Hamilton & Verna E. Monson, *Ethical Professionalism (Trans) Formation: Themes from Interviews with Lawyers about Professionalism and Exemplary Lawyers,* 52(3) SANTA CLARA L. REV. 921 (2012); Neil W. Hamilton, Verna E. Monson & Jerome M. Organ, *Empirical Evidence that Legal Education Can Foster Student Professionalism/Professional Formation to Become an Effective Lawyer,* 10 UNIV. ST. THOMAS L.J. 11 (2012).

Woolley on intuition and theory in teaching legal ethics.[28] Given that so many of these thinkers make a compelling case for using the FCM to shape and assess professional ethics course, we come to a logical segue into the theory itself.

III. THE CASE FOR THE FOUR-COMPONENT MODEL

As a relatively young science, Psychology is not only theoretically diverse but also constantly evolving, with new paradigms challenging and often replacing older ones. In Developmental Psychology we have watched the grand stage theories of giants like Freud, Piaget, Erikson and Kohlberg challenged by perspectives from feminist, cultural, and evolutionary psychology. In the sub-field of moral psychology, many of the senior researchers came out of a cognitive developmental perspective rooted in ideas of Jean Piaget and Lawrence Kohlberg. Kohlberg described six stages of increasingly logical and adequate moral reasoning that develop across the lifespan. A relatively small number of people achieve the pinnacle of moral reasoning, the ability to make post-conventional judgments that balance the rights and responsibilities of all concerned parties in any moral dilemma and evidence an attitude of mutual respect and commitment to universal principles.[29]

Kohlberg's theory revolutionized the field and led to an explosion of research and interventions but, ultimately, also to problems we call the judgment/action gap. The possibility that one could attain Kohlberg's highest stage of moral reasoning but "remain a bastard"[30] led James Rest to posit that moral behavior could not be understood by moral reasoning alone. Rather it was influenced by four separate components, all of which play important roles when we face ethical dilemmas.[31] Law professors interested in designing professional ethics courses around the goals of the FCM will find Hamilton and Monson's overview of the current Neo-Kohlbergian Four Component Model in relation to professional development particularly well-articulated.[32]

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28. Alice Woolley, *Intuition and Theory in Legal Ethics Teaching,* 9 UNIV. ST. THOMAS L.J. 285 (2011).

29. For an overview and evaluation of Kohlberg's theory, see VOZZOLA, MORAL DEVELOPMENT, *supra* note 6, at 26-34.

30. Roger Straughan, *Why Act on Kohlberg's Moral Judgments? (Or How to Reach Stage 6 and Remain a Bastard), in* 4 MORAL DEVELOPMENT: A COMPENDIUM 169-77 (Bill Puka ed., 1994).

31. JAMES R. REST, MORAL DEVELOPMENT: ADVANCES IN RESEARCH AND THEORY (1986).

32. Hamilton & Monson, *Professionalism (Trans) Formation, supra* note 27.

1. **Component 1/Moral Sensitivity** involves an awareness of how an individual is affecting others and the ability to code a situation as involving moral issues. Since effective practice of the law requires both perspective taking and empathy, in legal contexts, Hamilton and Monson suggest referring "to moral sensitivity as *Perceptual Clarity and Empathy*."[33]

2. **Component 2/Moral Judgment** requires "the ability to provide a sound rationale for one's decision about a moral problem."[34] As Hamilton notes, Rest and his colleagues "reconceptualized moral judgment as moral schemas, or mental maps, that shape how we perceive moral problems and reason about how to resolve [them]."[35] Neo-Kolbergian theory thus moved away from Kohlberg's 6-stage theory to posit three increasingly complex schemas of moral reasoning relying on implicit processes and tacit knowledge:[36]

a. *personal interests*, meaning reasoning dominated by self-interest, fear of authority, and lack of autonomy or personal responsibility;

b. *maintaining norms*, or reasoning focused on existing norms, rules, codes, and laws; and

c. *post conventional*, or reasoning involving concepts of justice, fairness, duty, and the evolutionary nature of morality in society.[37]

3. **Component 3/Moral Motivation and Commitment/Identity Formation** has often been defined as prioritizing moral values over other considerations, but more recent definitions stress such prioritization as dependent on the formation of the moral self. Thus, the moral self plays a key role in closing the judgment action gap between knowing the right thing to do and actually doing it. "Professional identity formation also involves weighing the obligation of the profession to society against one's self-interest."[38]

4. **Component 4/Moral Character/Moral Implementation** (Conscience in Action—Interpersonal Abilities) rests on a person's moral character and actual competence to carry out a moral decision. Hamilton and Monson quote Rest's explanation of implementation as involving the abil-

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33. *Id.* at 146.

34. *Id.* at 147.

35. *Id.* at 147-48.

36. See VOZZOLA, MORAL DEVELOPMENT, *supra* note 6, at 34-40, for an overview of the field of moral development's movement from stages to schemas.

37. Hamilton & Monson, *Professionalism (Trans) Formation, supra* note 27, at 148.

38. *Id.* at 149.

ity to keep sight of a moral goal while figuring out specific necessary actions, working around potential impediments, and overcoming distractions and frustrations. [39]

For decades, this model has been widely used in moral development research despite the fact that only Component 2, Moral Judgment has a widely used measure, the Defining Issues Test (DIT). The FCM fits three major criteria for effective theories: comprehensiveness (applicable to many diverse situations), parsimony (describing phenomena in the simplest way possible), and heuristic value (inspiring new research). In addition, it can claim decades of solid research findings supporting the existence of development in cognitive complexity across age and education. In terms of addressing contemporary psychological challenges, the FCM has been revised to incorporate new research on tacit rather than explicit schemas; recognizes that the need to maintain a good image of the self contributes to moral motivation; and explains cultural differences by noting, while cultures influence the content of moral reasoning, structures measured by the DIT are universal.[40]

Although widely respected in the field of moral development, the FCM has also been challenged for its privileging of moral reasoning; an emphasis due in part to a lack of reliable and valid, widely accepted measures of the other three components. In addition, the theoretical ideas rely heavily on DIT research which some criticize as rooted in a Western rather than universal conception of morality. However, in the specific context of professional ethical education and identity formation, the critique should be modified to acknowledge the presence of Bebeau and associates' strong and promising assessment models for ethical sensitivity and motivation.[41]

Yet, I remain concerned about the difficulty of assessment given the complexity of the evolving definitions of the components.[42] Although most conceptions of ethical sensitivity mention the importance of cultivating

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39. *Id.* at 150.

40. *See* THE UNIVERSITY OF ALABAMA CENTER FOR THE STUDY OF ETHICAL DEVELOPMENT, *supra* note 3.

41. Excellent materials are available at, *Links to Bebeau's Materials*, THE UNIV. OF ALA. CTR. FOR THE STUDY OF ETHICAL DEV., http://ethicaldevelopment.ua.edu/bebeau-materials.html (last visited Nov.; 29, 2016).

42. An ambitious attempt to present current approaches and research about "what drives, urges and impels humans to moral judging and acting" surveyed work of many prominent researchers on moral motivation but failed to identify any genuine consensus on its definition and assessment. Most relevant to this symposium's key questions is the fine analysis by Stephen J. Thoma & Muriel J. Bebeau, *Moral Motivation and the Four Component Model, in* HANDBOOK OF MORAL MOTIVATION: THEORIES, MODELS, APPLICATIONS 49-68 (Karin Heinrichs, Fritz Oser & Terence Lovat eds., 2013).

empathy, I believe we also need to examine empathy's role in moral motivation. I have always found Component 3 to be so cognitive that it moves away from our ordinary language conceptions of motivation as something that causes us to act. I would argue that two of the most powerful moral motivators that move us from perceiving a moral issue to action are not cognitive privileging but rather empathy and faith.

I would also like to suggest a possible extension of our understanding of ethical sensitivity in the context of law school education. In addition to helping students understand the importance of empathy and role-taking ability, it seems to me that ethical sensitivity for lawyers also rests on the cultivation of moral habits rooted in the profession's ethical codes. Ideally, law school training in formal ethical guidelines sensitizes students such that they more easily perceive (to use Hamilton's term) the presence of a moral issue because they now have readily accessible ethical schemas.

However, if lawyers' training prioritizes the standard role for ethical practice, there may be great potential for moral disengagement. Luban has critiqued the standard role's use of zealous advocacy regardless of possible harm or suffering to people other than a client[43]—a position that seems quite relevant to efforts to cultivate (and assess) moral sensitivity. For example, a highly principled attorney friend, a former public defender in a major city, is now dedicated to promoting the cause of restorative justice. However, she was perplexed when asked if it did not concern her that when she defended someone who had just told her "Yeah, I raped her," the person might go out and rape again. She answered, "No, it's my job to defend my client to the best of my ability, beyond that, I trust in the legal process." Her response fits well with Woolley's second category of being bound by the law's morality[44] but might be viewed as quite problematic from the standpoint of ordinary morality.

IV. The Case for Moral Foundations Theory

With his popular TED talks, website, book and articles, social psychologist Jonathan Haidt has emerged as the public voice of a group of social and cultural psychologists[45] who challenge the Neo-Kohlbergians'

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43. Luban, *supra* note 25.

44. Woolley, *supra* note 21.

45. In addition to the Moral Foundations website and books and article previously mentioned, see also Haidt's popular TED talks: Jonathan Haidt, *The Moral Roots of Liberals and Conservatives*, TED (Feb. 2008), http://www.ted.com/talks/jonathan_haidt_on_the_moral_mind?language=en; Jonathan Haidt, *Religion, Evolution, and the Ecstasy of Self-transcendence*, TED (Feb. 2012), https://www.ted.com/talks/jonathan_haidt_humanity_s_stairway_to_self_transcendence.

belief that cognition is the best way to understand how people make sense of the world. Instead, Moral Foundations Theory (MFT) proposes that humans possess six, possibly more, innate psychological systems that constitute intuitive ethical foundations.

In his widely reviewed and discussed book *The Righteous Mind: Why Good People Are Divided by Politics and Religion*,[46] Haidt makes a series of bold assertions about morality.

1. Intuition, not reason drives our moral judgments.

2. Morality both binds us and blinds us.

3. Evolution has etched into our brains a set of psychological foundations that underlie the virtues seen in cultures around the world.

4. Although all humans are prewired with the same six foundations, cultures teach us which ones to prioritize and prize.

5. Liberals in the Western world respond strongly only to care/harm and fairness/cheating but their WEIRD perspective (Western/Educated/Industrial/Rich/Democratic) is at odds with not only conservatives but also with most of the rest of the world.

6. Conservatives and people in more traditional societies feel the pull of all six foundations with the specific strength of the tug of each ultimately set by learning and culture.[47]

Haidt and colleagues believe the six foundations of morality arose because they met specific adaptive challenges for early humans. Accordingly, humans come into the world with a moral mind in which genes have "writ[ten] the first draft into neural tissue, beginning in utero"[48] but that is later revised by experience and culture.[49] The foundations of morality or "functionally specialized mechanisms which work together to solve recurrent adaptive problems quickly and efficiently,"[50] describe what we cognitive developmentalists call schema or generalized knowledge structures. To all too briefly summarize a complex and compelling theory, the six foundations include:

1. **Care/harm**: The ability to feel the pain of others and be distressed by it is rooted in mammalian attachment systems and responsible for empathy, compassion, caring, and kindness.

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46. JONATHAN HAIDT, THE RIGHTEOUS MIND: WHY GOOD PEOPLE ARE DIVIDED BY POLITICS AND RELIGION (First Vintage Books ed. 2013).

47. Summarized by VOZZOLA, MORAL DEVELOPMENT, *supra* note 6, at 67.

48. Graham et al., *supra* note 2, at 8.

49. *Id.*

50. *Id.* (emphasis omitted).

2. **Fairness/cheating**: The tendency to notice and appreciate fair dealings and be outraged by cheating lies at the root of our contemporary ideas of trustworthiness, rights, and justice.

3. **Liberty/oppression**: Haidt and colleagues describe peoples' deep-seated resentment towards anyone who tries to dominate them or restrict their freedom. Such animosity towards tyrants and bullies motivates people to band together to resist them.

4. **Loyalty/betrayal**: The feeling of oneness with our group or tribe, arising from our ancestors' need to form coalitions, is now manifested in religious ceremonies, sporting events, and war.

5. **Authority/subversion:** According to Haidt, obedience to authority rose out of the long primate history of hierarchical societal interactions such as dominant alpha males and submission gestures. He also sees it contributing to human's deference to legitimate authority and respect for traditions.

6. **Sanctity/degradation:** This most problematic foundation for many liberals was originally shaped by our highly adaptive innate disgust towards things that might sicken, kill, or contaminate us (for example, dead bodies, ulcerating rashes, rotted food). Haidt argues that this intuitive response to pathogens in our physical world now underlies religious (as well as secular humanist) ideals of living in nobler, less carnal ways.[51]

In sum, Haidt holds that the first principle of moral psychology should read: "Intuitions come first, strategic reasoning second."[52] Woolley suggests this finding implies that lawyers will prefer one ethical theory over another largely due to individual prioritizations of the moral foundations set by family, culture, and life experiences.[53]

In terms of the big ideas of psychology, MFT clearly rides the crest of the need to incorporate evolutionary and biological explanations, to widen the domain to cross-cultural findings, and to explain the ease with which humans morally disengage. Although siding with those critics who believe Haidt overstates his case for the primacy of intuition, I find his argument for evolutionarily pre-attuned moral foundations and their evolutionary roots a compelling one. If law students wish to understand the moral beliefs and behavior of themselves, their clients, and their adversaries, it seems important to be aware of how often people respond to situations with intuitions rather than reason.

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51. Adapted from Vozzola's synopsis of material from Haidt's website, books and articles. *See* VOZZOLA, MORAL DEVELOPMENT, *supra* note 6, at 66-71.

52. *Id.* (quoting Haidt, *supra* note 2, at 315).

53. Woolley, *supra* note 21, at 181.

Although Haidt and colleagues present a convincing argument, many critics believe the emphasis on intuitionism overlooks the important role of reason in everyday life.[54] They charge that Haidt overreaches his laboratory data and ignores the large body of research on ways in which both intuition and reasoning inform mature moral functioning, a point argued especially cogently by Darcia Narvaez.[55] Ideally, legal education trains students to identify emotional and intuitive responses or ideas that cannot stand up to the light of reasoned argument. Professors, especially in professional responsibility courses, attempt to inculcate the habit of mature moral reflection—for example, catching oneself when reacting to clients with disgust without understanding the circumstances that brought them to this place in their lives.

Thus, a major limitation of MFT for professional ethical formation centers on the fact that it does a fine job describing System 1 thinking, but fails to acknowledge that education and maturity, as well as the demands of professional ethics, call for the cultivation of System 2 reasoning. In contrast, Hamilton and Monson argue that although the Four Component Model can encompass moral intuitions, its thrust remains in "developing capacities to make sense of complex moral situations."[56] A law student may respond to a moral problem with an intuitive resistance or conflict but that initial response can then be explored through developmentally appropriate discussions and assignments. Ultimately, as Hamilton and Monson note, "if the resulting tension prompts reflection, deliberation, or more full taking into account the emotions surrounding the conflict, the outcome may improve, morally."[57]

V. CONCLUSION: PRACTICAL IMPLICATIONS FOR PROFESSIONAL TRAINING

What conclusions might we now reach about how much of a role actual conscious reasoning and deliberation plays in moral decisions and consequent actions and whether Rest's FCM can stand up to the challenge of Haidt's MFT? The major argument against replacing the FCM with the

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54. An entire special issue of the flagship journal of moral development presented Haidt's 2012 Kohlberg Memorial Lecture followed by responses (mostly taking a critical stance) from prominent moral psychologists and philosophers. *See* Bruce Maxwell, *Moral Foundations Theory and Moral Development and Education*, 42 J. MORAL EDUC. (SPECIAL ISSUE) 271 (2013). Other thoughtful critiques include: T. Jacobs, *My Morals are Better than Yours*, MILLER-MCCLUNE 68-70 (Mar./Apr. 2012); Darcia Narvaez, *Moral Complexity: The Fatal Attraction of Truthiness and the Importance of Mature Moral Functioning,* 5 PERSP. ON PSYCHOL. SCI. 163 (2010).

55. *See* Narvaez, *Moral Complexity, supra* note 54.

56. Hamilton & Monson, *supra* note 27, at 148.

57. *Id.*

MFT rests on the charge that Haidt overreaches his evidence. He is correct in his contention that humans often rely on fast, fallible, and often emotional System 1 thinking or intuition. However, a central goal of both undergraduate liberal arts education and professional graduate education is to learn how to cultivate the habits of System 2's more deliberative and rational thinking.

Thus, despite the on-going conceptual problems with the moral motivation component, it seems entirely appropriate to base a professional educational intervention on the Four Component Model (FCM) precisely because the goal of legal education is to turn out students who "think like lawyers" and lawyerly thinking would be a sad phenomenon indeed if it were largely emotional rather than primarily rational. Additionally, there is already a rich and rigorous body of work on curricular design and assessment that could be modified to best fit a law school's mission and goals.[58]

But the second part of this Article's argument proposed that we would do students a real disservice if we do not also help them to understand both the evolutionarily pre-attuned propensity to make rapid, intuitive evaluations heavily influenced by cultural norms described by Haidt and colleagues and our dark and dangerous capacity for moral disengagement described by Bandura. Ideally then, legal ethics courses would not only provide knowledge and practice in formal ethical guidelines but also a rich immersion in the theories and applications of moral development.

> What then should be the ultimate goal of moral development? I think it needs to be something much more than Kohlberg's concept of complexity in reasoning, or Hoffman's of mature empathy, or Haidt's of tolerance for multiple worldviews and moral foundations. I believe the goal should be one that is rarely mentioned in the literature and equally rarely reached without a great deal of life experience and the inevitable suffering that is part of all lives. My hope . . . is that the goal [we] strive towards is wisdom—human goodness/care/empathy filtered through complex moral thinking.[59]

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58. *See* Hamilton, Monson & Organ, *Empirical Evidence, supra* note 27; Bebeau & Monson, *Guided by Theory, supra* note 20.

59. VOZZOLA, MORAL DEVELOPMENT, *supra* note 6, at 158.