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# LAWYERS AND GRATITUDE

REED ELIZABETH LODER\*

## INTRODUCTION

Gratitude might be a curious topic at a time that the public maligns, even demonizes, lawyers. Asking lawyers to endure social scorn and yet feel thankful seems a double insult. Yet, I make the case in this article that every lawyer should cultivate, feel, and act upon a special type of gratitude—call it legal gratitude.

This discussion properly belongs to a larger, under-emphasized effort to consider the meaning and relationship of various traits of character and how they apply to lawyers.<sup>1</sup> Even those legal ethicists who helpfully venture beyond codified ethics rules and laws governing lawyers' ethics tend to take a predominantly action-oriented approach to legal ethics. They focus on how lawyers should behave in specific situations and identify the moral principles that should govern lawyer conduct.<sup>2</sup> While such non-positivist guidance on conduct is indispensable, it does not represent a complete or nourishing ethical picture. Situation-oriented legal ethics yields a haphazard picture of lawyer behavior, and principle-based ethics of action supply at best a fragmented sense of a lawyer's moral identity. Combining action ethics with an examination of character traits and their inter-relationship provides a more holistic perspective. This approach also invites a more sustaining source of ethical inspiration to lawyers themselves. The most meaningful context of ethics is not codified rules applied to stark dilemmas, but the daily gestures of legal practice that reflect lawyers' intuitions and character. Gratitude is a vital strand of that web.

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1. I am writing a book, *Lawyers and Virtue*, which will examine lawyer character more comprehensively, considering besides gratitude the virtues of integrity, humility, courage, generosity, and just temperament.

2. Legal ethics casebooks take a problem or case approach that poses situations for students to analyze according to ethics codes and other sources of law that address ethical conduct. Exceptions to the prevailing approach are Professors Thomas Shaffer and Robert Cochran. See, e.g., THOMAS L. SHAFFER & ROBERT F. COCHRAN, JR., *LAWYERS, CLIENTS AND MORAL RESPONSIBILITY* (1994).

Why study gratitude in particular? One substantive reason is the centrality of the virtue to good character overall. A meta-ethical reason is the heavily emotive nature of gratitude among the virtues, which facilitates a shift in ethical perspective to the inward lives of lawyers. Some virtuous traits unfold almost entirely in action although they also have an emotive component. For example, a generous person gives to improve the welfare of others, and someone courageous puts herself in harm's way to accomplish ends. Without the accompanying acts, feelings of generosity and courage are not very meaningful, or for that matter virtuous. In contrast, feelings and attitudes centrally define gratitude. Even if a recipient never has an occasion to reciprocate benefits received, virtue resides in her emotional state of thankfulness and her readiness to return her bounty should an opportunity arise. If she does manage to reciprocate, of course, her action has higher moral worth than her feelings alone and is a more reliable test of the sincerity and stability of her thankful state of mind. Yet a grateful attitude shapes her character even without direct responsive action. Gratitude is a virtue with peculiar power. It affects how a person conceives the world and expects others to behave. Gratitude increases interpersonal receptivity. It seeps into one's being and affects all dispositions pervasively.

I also argue that people can control their gratitude perhaps more than other virtuous emotions. They can induce and encourage the feeling consciously and apply it outside of the context of receiving some specific benefit. Cultivating gratitude is an important way to improve overall moral sensibility. Risking lawyer umbrage, I claim that gratitude is a particularly apt response to being a lawyer.

I first consider the meaning of gratitude generally, not as applied to lawyers. I discuss features of gratitude that some writers have identified and present my ideas on the virtue itself. Then I relate gratitude to my own theory of moral development and what I take to be the morally overarching trait of integrity. Although individual instances of feeling grateful have episodic value, I concentrate more on gratitude as an enduring tendency or disposition.

By identifying gratitude as a moral virtue, I mean a characteristic that is both intrinsically worthy and tends to promote the welfare of others. The teleological dimensions of gratitude subject gratitude in particular circumstances to evaluation on the basis of consequences despite the overall worth of the response. Thus I consider gratitude's potential for moral harm or excess as well as virtuosity. I discuss distortions and misapplications of

gratitude in everyday life, and I argue that its relationship to other virtues in part determines its worth in particular contexts.

Initially I consider the narrowest sense of gratitude as a response to a specific benefit received and explore a recipient's duty to reciprocate. Seeing that notion as overly restricted, I focus on gratitude as broader and more diffuse. I am especially interested in whether a grateful person owes anything to others who have not bestowed favors and in gratitude as free-floating, rather than attached to particular subjects and objects. In analyzing gratitude, I draw primarily on works in philosophy and some in psychology and religion.

In the second part of the paper, I turn to lawyers and gratitude, applying specific insights from the general inquiry and developing a specialized concept of legal gratitude. I consider the objects of lawyer gratitude—the things for which lawyers might be grateful. I argue that lawyers should feel gratitude and should consciously nurture the feeling. Part of this ethical sense of gratitude includes a duty to reflect on ways the individual lawyer can translate the emotion into a legal virtue that guides professional life. Legal gratitude carries an obligation to scrutinize the legal institutions that produce the conditions for which the lawyer is grateful. Finally, I consider how lawyers and legal institutions might collectively cultivate and display gratitude.

## I. WHAT GRATITUDE IS

Most who have considered gratitude see it as a response to specific benefits bestowed by willing benefactors having a purpose, at least in part, to improve the lot of selected recipients.<sup>3</sup> The emotion involves a three-way relationship, no matter how transitory, between a giver, taker, and an object that is a benefit or service.<sup>4</sup> Although gratitude is sometimes treated as a function of etiquette,<sup>5</sup> those who have thought seriously about the

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3. See, e.g., TERRANCE MCCONNELL, *GRATITUDE* 6, 8, 42 (1993); A.J. SIMONS, *MORAL PRINCIPLES AND POLITICAL OBLIGATIONS* 168 (1979); Claudia Card, *Gratitude and Obligation*, 25 *AM. PHIL. Q.* 115, 117 (1988); Michael E. McCullough et al., *Is Gratitude a Moral Affect?*, 27 *PSYCHOL. BULL.* 249, 257 (2001); A.D.M. Walker, *Gratefulness and Gratitude*, in 81 *PROC. OF THE ARISTOTELIAN Soc'y* 39, 48 (1981).

4. The thing or service provided does not necessarily have tangible value.

5. MCCONNELL, *supra* note 3, at 4 (mentioning common tendency to confuse gratitude with etiquette); see also Roy F. Baumeister & Stacey A. Ilko, *Shallow Gratitude: Public and Private Acknowledgement of External Help in Accounts of Success*, 16 *BASIC & APPLIED SOC. PSYCHOL.* 191, 191–92 (1995) (describing performant public displays of thanks).

idea consider it also to have moral content.<sup>6</sup>

Gratitude carries a moral obligation to repay a debt, although the giver cannot demand repayment,<sup>7</sup> and the law cannot require it. This is because gratitude is fundamentally an emotive state, which cannot be coerced even though a person lacking the feeling can carry out pretended acts *as if* he experiences the emotion.<sup>8</sup> Your mother reminds you on your eighth birthday to thank Aunt Bea for the gift of a sweater. You think the sweater hideous but dutifully comply. Over time you may come to appreciate Aunt Bea's effort and generosity, but your thanks did not reflect your attitude at the time.

A recipient in gratitude should attempt to return a favor if circumstances provide an opportunity and he is in a position to reciprocate.<sup>9</sup> Although the beneficiary owes something in return, he is not obligated to match the original gift precisely.<sup>10</sup> He can and should conceive repayment in flexible terms, considering the giver's interests and needs.<sup>11</sup> Nor must the debt be paid promptly, if at all.<sup>12</sup> Some have gone so far to say that a hasty return is insulting and diminishes the original gift.<sup>13</sup> Thus, the prevailing view is that gratitude is an action-oriented virtue, charging a recipient to acknowledge a specific benefit with a "thank you" at least<sup>14</sup> and to reciprocate further, if appropriate and feasible, in the right manner to the right person.

6. McCONNELL, *supra* note 3, at 4, 7.

7. See, e.g., Fred R. Berger, *Gratitude*, 85 ETHICS 300, 306 (1975); Patrick Fitzgerald, *Gratitude and Justice*, 109 ETHICS 119, 138 (1998).

8. Fitzgerald, *supra* note 7, at 138.

9. E.g., McCONNELL, *supra* note 3, at 69 (suggesting that benefactors should be repaid if the chance arises).

10. See, e.g., Berger, *supra* note 7, at 302, 306 (suggesting that returning equal benefit is not necessary).

11. See, e.g., Paul F. Camenisch, *Gift and Gratitude in Ethics*, 9 J. RELIGIOUS ETHICS 1, 11 (2001) (suggesting that repayment involving latitude should be chosen); Alvin W. Gouldner, *The Norm of Reciprocity: A Preliminary Statement*, in THE GIFT: AN INTERDISCIPLINARY PERSPECTIVE 49, 58, 59 (Aafke E. Komter ed., 1996).

12. See, e.g., Camenisch, *supra* note 11, at 11.

13. Aafke Elisabeth Komter, *Gratitude and Gift Exchange*, in THE PSYCHOLOGY OF GRATITUDE 195, 208 (Robert A. Emmons & Michael E. McCullough eds., 2004); Robert C. Roberts, *Mental Health and the Virtues of Community: Christian Reflections on Contextual Therapy*, 19 J. PSYCHOL. & THEOLOGY 319, 330 (1991). But see ALBERT SCHWEITZER, A PLACE FOR REVELATION: SERMONS ON REVERENCE FOR LIFE 122, 124 (David Larrimore Holland trans., 1988) (1919) (advising against delaying gratitude).

14. Gratitude is more necessary for a large gift, especially one costly to the giver. See, e.g., Abraham Tesser et al., *Some Determinants of Gratitude*, 9 J. PERSONALITY & SOC. PSYCHOL. 233, 233 (1968).

Few American philosophers have contested this essentially quid pro quo feature of gratitude even as they have acknowledged the indirection of giving back in terms of recipient, timing, and content. A notable exception is Patrick Fitzgerald, an American philosopher who appeals to Buddhist ethics in arguing that one can be grateful even for actions done not for one's welfare but with the intention to harm or abuse.<sup>15</sup> Fitzgerald reasons that the harmful consequences to the recipient of such negatively motivated acts provide opportunities to learn and occasions for compassion and moral growth—important steps on a path toward Buddhist enlightenment.<sup>16</sup> Thus, gratitude is due.

This Buddhist-like view reminds us, first, that gratitude should be approached multi-culturally and suggests, second, that the virtue is broader than a tripartite relation among giver, receiver, and benefit. Conceiving gratitude as an appropriate response, even to malevolent acts, shifts attention from an exchange relationship of indebtedness to the feelings and moral development of the recipient quite independent of an initiating actor. This shift helps to explain why gratitude is more a virtue than a single act or obligation, since the heart and beliefs of a responsive person matter more than the acts and intentions of a benefactor.

Although I do not accept Fitzgerald's stark severance of the recipient's feeling from the original doer's emotions, his focus on the receiving person is helpful in plumbing gratitude as a virtue, rather than a social and cultural response. Indeed, once properly liberated from a relationship of exchange, I think the concept of gratitude should expand and disperse into a kind of free-floating disposition that is unattached to any particular gift or giver. Many religions conceive of gratitude as due to God for the whole of creation.<sup>17</sup> Although that expansion permits thankfulness for an extremely large and abstract array of gifts, indeed, everything there is, it is still tied to particular relations between a person and her God. I would further divest some types of gratitude from any giver at all and consider diffuse thankfulness

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15. Fitzgerald, *supra* note 7, at 119–20.

16. *Id.* at 124–25. See also Robert A. Emmons & Cheryl A. Crumpler, *Gratitude as a Human Strength: Appraising the Evidence*, 19 J. SOC. & CLINICAL PSYCHOL. 56, 66–67 (2000) (discussing gratefulness as a tool for learning to deal with adversity).

17. See, e.g., K.L. Seshagiri Rao, *Bhakti and the Spirit of Thanksgiving*, in SPOKEN AND UNSPOKEN THANKS: SOME COMPARATIVE SOUNDINGS 36 (John B. Carman & Frederick J. Streng eds., 1989) (discussing Hindu gratitude); Muzammil H. Siddiqi, *Thanksgiving in Islamic Thought*, in SPOKEN AND UNSPOKEN THANKS, *supra*, at 146 (discussing gratitude in Islam).

appropriate for no being or thing in particular. Although one might object that such an expansive notion is vacuous, I do not believe such diffusion dilutes gratitude or divests it of meaning. On the contrary, I contend that pervasive and unattached gratitude is the highest form of the virtue—its apex. At this point, gratitude saturates all of one's attitudes and activities and becomes deeply infused in one's overall character.<sup>18</sup>

An implication of this idea of diffuse or free-floating gratitude is that the emotion can apply to abstractions like groups, ideas, and processes. Those who confine gratitude to a particular reciprocal relation will not accept the possibility of collective gratitude, nor easily accept gratitude *toward* collectives, let alone gratitude for abstractions like ideas or experiences such as appreciating the natural world. They will reject the view that a group, like a profession, has a special duty of gratitude *as* a collective that is independent of individual professional duties conglomerated. They also will resist the idea of thankfulness *to* groups, arguing that gratitude to a group is simply a shorthand way of expressing gratefulness to individuals taken in the aggregate.<sup>19</sup> I maintain that people can be grateful even to a loosely organized group itself, say a political party, without being able to identify changing members distinctly, or without even feeling especially indebted to particular, prominent individuals who compose the group.<sup>20</sup> The total experience of affiliation and belonging in that setting may prompt the emotion and sustain the party members' loyalty through some disappointing times. The duties of reflection that I claim properly accompany gratitude mean, however, that gratitude does not have a permanent grace period.

I also contend that a group *itself*, as a loose and dynamic collective, may owe gratitude to a particular benefactor or, more expansively, to those constituencies who make possible the institution's existence. A political party in disrepute must not treat casually the loyalty of its constituents. Collective gratitude is only metaphorically analogous to personal gratitude because an institution is incapable of feeling and emoting, and direct reciprocity

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18. Religious views of gratitude sometimes express such pervasive gratitude. See, e.g., Ronald Goetz, *Gratitude for Everything*, 114 CHRISTIAN CENTURY 689, 689 (1997).

19. See, e.g., A.D.M. Walker, *Political Obligation and the Argument from Gratitude*, 17 PHIL. & PUB. AFF. 191, 196–97 (1988).

20. See, e.g., A. JOHN SIMMONS, MORAL PRINCIPLES AND POLITICAL OBLIGATIONS 187–89 (1979).

is not possible. Yet, in my view, these features do not remove gratitude as a feature of collective character.<sup>21</sup>

What I have called free-floating gratitude may originate in particular acts of beneficence, but it more aptly applies to a series or complex of events that themselves seem insignificant, but over time accumulate into a generalized, indivisible sense of gratitude. As these moments become a stream, memory and the ability to trace thanks to particular persons and occasions fade. This holistic response is an important component of gratitude as a virtue rather than an episodic emotional response. It permits the object and content of grateful expressions to be as open-ended as the feeling.

No precise reciprocity can be demanded of a person so diffusely disposed to feel gratitude. Seeing gratitude as a specific response actually may detract from its sustaining power as a virtue. Psychological experiments have shown that positive self-perceptions of character ebb when one perceives external explanations for behavior.<sup>22</sup> A person tends to attribute his motivations to external causes like incentives or sanctions rather than to inward sources like generosity or gratitude.<sup>23</sup> This outward expectation actually diminishes motivation in future instances that involve no outside reward or sanction.<sup>24</sup> If gratitude must link to specific beneficial actions, it may be shallow and fleeting in its particularity and thus less than virtuous. An exclusively egoistic view of gratitude, and for that matter human nature, reaps its own prophecy in self-interest.

Before considering the full dimensions of gratitude as an enduring character trait, it is important to probe the common understanding that even sporadic gratitude is a feeling of moral significance.<sup>25</sup> People regularly condemn someone who has received a gift for failing to express thanks and demonstrate gratitude.<sup>26</sup> Exceeding the mother's admonitions to be grateful to Aunt Bea for the sweater are the lamentations of parents to their

21. I will develop this view more fully in *The Moral Personalities of Legal Groups*, a work currently in progress.

22. See, e.g., Mark R. Lepper et al., *Undermining Children's Interest with Extrinsic Reward: A Test of the "Overjustification" Hypothesis*, 28 J. PERSONALITY & SOC. PSYCHOL. 129, 129 (1973).

23. See *id.*

24. *Id.* at 130.

25. E.g., Berger, *supra* note 7, at 298 (describing gratitude as a moral feeling despite its lack of attention in philosophy).

26. See DAVID HUME, A TREATISE OF HUMAN NATURE 518 (Ernest C. Mosser ed., 1985) (1740) (calling ingratitude "the most horrid" human crime); IMMANUEL KANT, LECTURES ON ETHICS 218 (Lewis Infield trans., 1930) (calling ingratitude "vileness"); SCHWEITZER, *supra* note 13, at 114 (calling ingratitude "evil").



child, "You don't appreciate the sacrifices we have made to send you to college." Although such statements are familiar, they seem paradoxical upon analysis. People normally ascribe moral responsibility only to events within a person's control, and feelings are not typically thought to be in that category.<sup>27</sup> It is not uncommon, for example, to hear someone say, "He can't help how he feels." Even more familiar and accepted would be the comment, "You can't expect to change the way he feels." In contrast, people regularly hold others accountable for their actions, sometimes justifying even severe social sanctions such as imprisonment. We do not punish people for their thoughts, short of action, no matter how malevolent. "Ought implies can" is the moral philosopher's expression capturing the policy notion that it is inappropriate to make moral judgments about matters beyond a person's capacity.<sup>28</sup>

Applying these ideas to gratitude, we might frown on someone who fails to appreciate gifts and expect that person to pretend thankfulness to spare the feelings of the giver. We would view the recipient's lack of gratitude as an emotional deficit more like a sickness than a subject for rational persuasion. While a person can decide to take action in response to a benefit, the argument would go, that person cannot force the feeling of gratitude itself and thus cannot be accountable for the affective void.

This separation of feeling and action presents a significant ethical obstacle to my view that people (and lawyers) should feel gratitude, so I must make the case that people are responsible for their feelings and emotions as well as their actions.<sup>29</sup> Responsibility for emotional responses is a hurdle not just for gratitude, but for all moral emotions. One might say, for example, that a spiteful person is not accountable for the sentiment of spite but only for actions taken to express the sentiment in harmful ways. Confining one's spite to a private sphere and refraining from spiteful redress is all one can expect morally, according to this view.

Although I grant that acting spitefully is more reprehensible than feeling spite, I believe one can evaluate the feeling itself and, more importantly for morality, that a person can identify,

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27. See, e.g., Berger, *supra* note 7, at 306 (describing the traditional view that feelings are not part of moral duty); Camenisch, *supra* note 11, at 8 (discussing problems with imposing duties to feel a certain way).

28. See OWEN FLANAGAN, VARIETIES OF MORAL PERSONALITY: ETHICS AND PSYCHOLOGICAL REALISM 33-35, 43, 46 (1991) (arguing for realistic moral theory acknowledging psychological constraints).

29. I use the term "feeling" to refer to a sporadic response, whereas an "emotion" is a set of feelings shaped by background attitudes and beliefs.

scrutinize, and successfully attempt to alter such feelings in herself. The spiteful person first must be able to recognize the trait of spite in others and assess the weakness and potential for harm in that emotion. Such judgments occur frequently and fairly easily. The more difficult hurdle is confronting spite in oneself. This means overcoming powerful tendencies toward self-deception and evasion of personal frailties. Once acknowledged, a reflective person must consciously decide not to act on her spiteful feelings, which requires self-discipline. Harder still is the effort to resist the feeling itself. Mere suppression will not do since the goal is to reconstitute the affective responses themselves. This involves such measures as identifying and reconsidering specific beliefs that support spiteful responses, avoiding situations likely to precipitate spite, and learning ways to reject or at least suppress the feeling when it does arise.<sup>30</sup>

Given entrenched behavioral habits and webs of familiar relations, a person cannot expect to eradicate such feelings easily or even completely. Because of these difficulties, she is less responsible for lingering negative emotions than for acting on her spite. Yet, she is not absolved altogether for persisting emotional predilections. She has duties to identify her emotions, to examine the influences that led to her affective dispositions, to consider harms to herself and others from harboring such feelings, and finally to approach susceptible situations with these reflections as guides.

## II. *A Theory of Moral Integrity*

I contend that at least some of a person's feelings are subject to moral assessment despite the undeniable effect that culture and personal background have on personal makeup. I acknowledge that shaping forces are difficult to identify and evaluate without employing standards that are themselves embedded in a social framework, thus limiting self-reinvention.<sup>31</sup> Yet, my comfort with the notion that feelings are subject to moral appraisal builds on my larger view of moral development and integrity.

A moral person, in my view, is essentially reflective.<sup>32</sup> Sometimes he must wrestle with moral conflicts in a world short of

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30. Cognitive therapy and spiritual practices are two methods to alter beliefs and responses that accompany negative emotions.

31. LARRY MAY, *THE SOCIALLY RESPONSIVE SELF: SOCIAL THEORY AND PROFESSIONAL ETHICS* 15–18 (1996) (questioning choice free of social influence).

32. This does not mean that being moral implies being deliberative at all times, or that moral people have thought consciously about the foundations of morality. Perhaps moral exemplars are most admired because doing the right thing comes reflexively, without temptation. Indeed, a character-based

information and predictability, even if the majority of his moral decisions are made intuitively and with relative ease. At times of doubt, the best justified moral path is frequently a close question rather than bell-ringing truth. This moral predicament is essentially "epistemic," involving a problem of knowledge and justification. Because of such ambivalent but defining moments, the moral person perpetually teeters between moral commitment and uncertainty, suspended epistemically between moral truths and nagging skepticism about moral judgments and principles.<sup>33</sup> I conceive moral integrity as an overarching state of dynamic equilibrium between these epistemic poles.

A person reaches this fragile state of integral equipoise in part through refining moral reasoning, but also by developing affective skills like empathy and moral imagination that enable her to invite and scrutinize diverse perspectives. Suspended between moral confidence and skepticism, she employs these capacities to test her own ideas and attitudes. She approaches others receptively and applies her imagination to glimpse moral insights and feelings that challenge her own. Pressing her imagination tends to swell her tolerance and understanding of foreign perspectives, even if she emerges from challenge without accepting the other's novel ideas and with reinforced moral commitments of her own. She recognizes that her faculties of personal expansion are ever imperfect, however, and part of her epistemic predicament is to avoid merely projecting her own values onto another while pretending to understand the other.<sup>34</sup> She realizes she is caught inside of her own perspective even as she consciously tries to enter other worlds and to enlarge her own. This struggle is endemic to morality, and although epistemic anguish subsides in the person of integrity, it never disappears altogether.

Integrity requires supporting virtues of care, courage, gratitude, and humility to achieve its characteristic state of balance. Only a courageous and humble person, who cares *for* others and their insights and cares *about* the state of her own moral person-

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approach suggests that moral habits and dispositions are more valuable than isolated decisions. The philosopher Owen Flanagan makes a similar point about some "godly peasant" characters in Dostoevsky's novels. FLANAGAN, *supra* note 28, at 143-44.

33. See Reed Elizabeth Loder, *Integrity and Epistemic Passion*, 77 NOTRE DAME L. REV. 841, 853-54 (2002); Reed Elizabeth Loder, *Out From Uncertainty: A Model of the Lawyer-Client Relationship*, 2 S. CAL. INTERDISC. L.J. 89, 117-19 (1993).

34. See Richard Delgado, *Rodrigo's Eleventh Chronicle: Empathy and False Empathy*, 84 CAL. L. REV. 61, 70-71 (1996) (describing how lawyers project their own values onto clients).

ality, will invite self-assessment and change. A grateful person will appreciate the rewards of this challenge and will tap the incentive to expand even further despite some discomfort.

Does this path to moral development imply that a person is obligated to improve her own character? Philosophical literature considers the issue of duties to oneself, with some authors proclaiming the confusion in such a view<sup>35</sup> and others embracing the notion.<sup>36</sup> My view of moral integrity implies that deliberate attention to assessing and building one's own character is intrinsically valuable, if not a moral requirement. I link integrity to the moral motivation to conceive and cultivate a better self. While such motivation does not drive everyone, I believe that it can be encouraged deliberately and marks a particularly worthy self.

Gratitude both emerges from and supports an integral state. It links the self to others who make growth possible, but it also infuses the process itself that enables the person to become someone better than the character she happens to be.<sup>37</sup> The person of integrity recognizes great fortune in having this human ability to aspire to a better self, and she is grateful for this precious opportunity. In defining a character ideal, the person adopts an emotional and attitudinal template at least as much as she decides upon patterns of conduct. She sets out to define and nurture an idealized emotive disposition which, over time, will evolve. As socially embedded, she inevitably meets mixed success, but she feels empowered to change not only how she acts, but how she emotes and develops as a moral personality. That identity has gratitude as a significant motivator and trait.

For all of these reasons, I maintain that holding a person responsible for moral emotions does not violate the "ought implies can" principle. Although resistant feelings may linger, a person is responsible for assessing and trying to improve her own moral affect, the moral identities of the communities to which she belongs involuntarily, and those to which she subscribes by choice. She can employ reflective resources of imagination and

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35. See, e.g., KURT BAIER, *THE MORAL POINT OF VIEW: A RATIONAL BASIS OF ETHICS* 215, 231 (1958); Marcus G. Singer, *On Duties to Oneself*, 69 *ETHICS* 202, 203 (1959) (arguing no duty without correlative right).

36. See, e.g., Lara Denis, *Kant's Ethics and Duties to Oneself*, 78 *PAC. PHIL. Q.* 321, 338–43 (supporting Kantian duties to oneself as involving respect for human rationality); William Neblett, *Morality, Prudence, and Obligations to Oneself*, 80 *ETHICS* 70, 70–71 (arguing that morality involves duties to all humans, including oneself).

37. See Frederick J. Streng, *Gratitude and Thankful Joy in Indian Buddhism*, in *SPOKEN AND UNSPOKEN THANKS*, *supra* note 17, at 43, 51–52 (cherishing the path by which one reached enlightenment).

empathy, clumsily at first but eventually with greater ease and regularity, to expand and refine her moral sensibilities. Over a lifetime, a person can recalibrate her emotive patterns, as well as her deeds, and actively foster those social circumstances that will be more likely to produce the emotional responses that she concludes have moral worth.

Gratitude becomes part of character in a person who is disposed to appreciate experience and feel thankful on regular occasions.<sup>38</sup> This inclination emerges both spontaneously and from the conscious moral development process I have described. The closer one progresses toward integrity, the more this deliberative process becomes habitual and reflexive as the person acquires a reflective and integral character. The wise person consciously explores the perspectives of others out of respect for human potentiality. He then feels grateful for the novel input that enables him to stretch his moral framework on the way to perfecting his own moral personality. Ideally, this receptivity becomes second nature over time, and the person at least initially approaches all interpersonal encounters with thankful expectation. At this point, gratitude has become a virtue rather than a sporadic response to events.

This is not the culmination of gratitude, however. The integral person ultimately adopts a grateful attitude that pervades her life. She feels generalized gratitude for the possibility of moral development itself and for all of the gifts of daily experience, encompassing even more distant connections with the non-human natural world and abstract ideas.

It may appear so far that gratitude is an instrumental idea, a means to greater ends.<sup>39</sup> That is, a person seeks to attract grateful feelings *because* she hopes to expand her moral horizons. The people with whom she interacts, and her responses to them, thus seem to serve indulgent moral ambitions. Although this kind of moral egoism does imbue the moral development process, egoism is hardly a pure or exclusive motivation. A person seeks out others in imagination and empathy out of respect for them intrinsically as humans. Otherwise, their input would not be attractive or valuable. Her purest gratitude is a response to their value perceived as inherent rather than a means.

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38. Social psychologists corroborate the moral disposition. See Michael E. McCullough et al., *The Grateful Disposition: A Conceptual and Empirical Topography*, 82 J. PERSONALITY & SOC. PSYCHOL. 112, 112 (2002) (describing a disposition to respond with gratitude).

39. At first sight, thanksgiving also has instrumental value in some Buddhist thought. "Thankful joy" is a blessing one earns on a path to enlightenment or spiritual achievement. Streng, *supra* note 37, at 51–52.

### III. MISPLACED GRATITUDE

Despite the general virtuosity of gratitude, gratitude sometimes has moral flaws. Aristotle insisted that virtues be exercised in the right circumstances and the right degree.<sup>40</sup> Virtues depend upon practical, or contextual, judgment to guard against excesses or deficiencies in particular applications.<sup>41</sup> Hitting Aristotle's "golden mean" is not an average of extremes, but a matter of concrete and particular judgment that improves with experience.<sup>42</sup> This idea of the mean is relevant to gratitude, even though Aristotle himself considered gratitude as more of a weakness than a virtue.<sup>43</sup>

Gratitude is sometimes an inappropriate response to particular events. The political loyalty discussed earlier can outlive grace if troubled times yield to a pattern of unjustified policies and action. In the extreme, a person can be grateful for injustice and social evil. Charles M. Shelton uses the example of white Southerners' appreciation for their cultural traditions, including slave-based plantation life and later segregation.<sup>44</sup> An extreme contemporary analogue is a suicide bomber's deep gratitude for the heavenly rewards of violent sacrifice. On a more abstract plane, non-psychopathic extremists sometimes appeal gratefully to principles or causes to justify radical acts. An ecosaboteur, for example, can inflict harm to property or persons in thankful devotion to preserving biodiversity. Although appreciating the diversity of life is a positive emotion, the conduct expressing that attitude is morally questionable. Misplaced gratitude in part motivates such examples of extremism. Victims of violence and aggression sometimes also experience gratitude either qualitatively misplaced or present in the wrong degree. The "Stockholm syndrome" phenomenon refers to crime victims, often hostages or prisoners, who acquire sympathy and gratitude for their captors.<sup>45</sup> Abuse victims also may feel inappropriate emo-

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40. ARISTOTLE, *THE NICOMACHEAN ETHICS* 33 (David Ross trans., Oxford Univ. Press 1980).

41. *Id.*

42. *Id.*

43. See Robert C. Roberts, *Character Ethics and Moral Wisdom*, 15 *FAITH & PHIL.* 478, 495 (1998) (describing Aristotle's insistence on self-sufficiency).

44. Charles M. Shelton, *Gratitude: Considerations from a Moral Perspective*, in *THE PSYCHOLOGY OF GRATITUDE* 259, 271 (Robert A. Emmons & Michael E. McCullough eds., 2004).

45. For example, Patty Hearst experienced such a shift. See FLO CONWAY & JIM SIEGELMAN, *SNAPPING: AMERICA'S EPIDEMIC OF SUDDEN PERSONALITY CHANGE* 206–10 (2d ed. 2005).

tions toward their victimizers, which can include thanks for the cruel discipline exerted.<sup>46</sup>

Milder grateful responses also can be misplaced. For example, one might sincerely thank a person who bestows favors or gifts without recognizing the giver's malevolent motive to manipulate and control the recipient. Gratitude for unwanted gifts can also be inappropriate. Forcing Grandmother's wedding dress on a young bride who has expressed her preference to choose her own garment is one example. Presenting a known vegetarian with a Thanksgiving turkey is another. Of course, sometimes well-intended but unwanted gifts properly precipitate gratitude. The guest who brings meat to dinner deserves thanks if he delivers the food without being aware of the host's vegetarianism. On the other hand, such a guest is remiss if he deliberately ignores clues about his host's eating habits to indicate scorn for a vegetarian lifestyle. A gift presented contemptuously, carelessly, or with reckless ignorance does not bind the recipient to grateful feelings or actions.

In short, gratitude is not an absolute virtue despite its generally valuable features. The particular genesis and consequences of gratitude are morally relevant. It is not positive for an obsequious, naïve, or victimized recipient to feel thankful for gifts designed to manipulate, dominate, or ultimately harm. Determining the appropriate responses to offerings requires contextual moral judgment, which can err. Despite this, a recipient can perfect her judgment over time and learn from experiences of misplaced gratitude. She can examine a giver's motives more accurately the next time around and be more sensitive to the context of giving. This refined judgment can change behavior as well, as it frees one from accepting certain offers that raise qualms, and from reciprocating for tainted gifts. The person disposed to feel grateful learns to recognize faulty expressions of beneficence based on motives like mockery, dominance, or humiliation.<sup>47</sup> Moral principle and virtue unite in the assessment and reform of gratitude.

Deficiencies of gratitude in a recipient's response are probably more prominent than excessive gratitude for ill-motivated gifts. Tellingly, people across diverse cultures and religions condemn lack of gratitude harshly, which surely suggests that the

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46. See Fitzgerald, *supra* note 7, at 145 (describing several inappropriate responses to abusers).

47. On the other hand, a Buddhist-like response would be finding value in the test a malicious giver provides. See Fitzgerald, *supra* note 7, at 119–20.

meaning of gratitude reaches far beyond politeness.<sup>48</sup> Some thinkers link common insufficiencies of gratitude to human fears of dependency and vulnerability.<sup>49</sup> They attribute widespread reticence about feeling and giving thanks to apprehension about the loss of freedom from indebtedness and dependence. Others tie cultural deficiencies in gratitude more benignly to mere oversights and delayed expressions of the emotion.<sup>50</sup> At the same time, some insist that expressions of gratitude are somehow unseemly if they occur *too* rapidly after a generous act.<sup>51</sup> This suggests that the timing of a grateful response is morally relevant and delicate.

Harsh responses to ingratitude reflect its importance in most moral schemes. Varied traditions agree on the central role gratitude plays in social and religious relations. Sociologist George Simmel called gratitude, "the moral memory of mankind."<sup>52</sup> Adam Smith said that gratitude is "the sentiment which most immediately and directly prompts us to reward . . ."<sup>53</sup> Relations of debt and reciprocity are the glue of society, according to some.<sup>54</sup> They suggest that social relations rely essentially on basic gratitude.<sup>55</sup> Because of this centrality, regular ingratitude is a vice in both individuals and cultures. The virtue has personal as well as collective dimensions.

This judgment of moral import is sound. The emotion is a core motivator for moral development resembling the process I have sketched. Respect is a somewhat cool response to others. While it partly drives the moral person's search for interpersonal encounters that challenge moral assumptions, respect does not completely explain the attachment and affection that cement many moral relations. Gratitude better accomplishes this direct, emotional connection. It also helps to explain why feeling thankful for non-human nature involves a sense of deep relationship with foreign worlds. Similarly, although more abstractly, grati-

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48. See McConnell, *supra* note 3, at 4.

49. See, e.g., Camenisch, *supra* note 11, at 5–6; Roberts, *supra* note 43, at 494.

50. See SCHWEITZER, *supra* note 13, at 120–22.

51. See Roberts, *supra* note 13; Komter, *supra* note 13, at 208.

52. George Simmel, *Faithfulness and Gratitude*, in *THE GIFT: AN INTERDISCIPLINARY PERSPECTIVE*, *supra* note 11, at 39, 45.

53. ADAM SMITH, *THE THEORY OF THE MORAL SENTIMENTS* 68 (D.D. Raphael & A.L. Macfie eds., 1976) (1759).

54. See Gouldner, *supra* note 11, at 49–66 (discussing reciprocity as a stabilizing force); Simmel, *supra* note 52, at 40, 44 (claiming gratitude is necessary for social cohesion).

55. See Gouldner, *supra* note 11, at 49–66.



tude for concepts and principles manifests in deeply committed beliefs and attitudes that directly govern behavior.

Gratitude is also closely related to moral risk. Questioning moral attitudes and beliefs invites upheaval and puts one's current moral personality on the line. Because gratitude acknowledges dependence on others and personal fragility, it facilitates the moral openness, humility, and courage that are necessary for personal growth despite some anguish related to struggle. Gratitude fosters a reflective temperament and fights a settled, dogmatic disposition. Thus it nurtures the epistemic suspension between moral truth and skepticism that I have treated as a mark of integrity. Gratitude feeds other virtues that also involve risks. It spurs the courage necessary to challenge oneself, the humility required to try, and the care that solidifies moral relations.

#### IV. LAWYERS AND GRATITUDE

##### A. *The Issues*

Assessing the meaning of gratitude for lawyers raises many questions. For what should lawyers as a group feel grateful, if anything? If gratitude is appropriate, do countervailing circumstances ever overpower or cancel it? Is misplaced gratitude possible for lawyers, and if so, how does a lawyer gauge appropriate gratitude? How, if at all, should lawyers express their thanks? Should professional institutions foster gratitude, and if so, what specific measures would be useful?

##### B. *The Everyday Objects of Gratitude and Ingratitude*

Lawyers do not have it easy in these times. They are disparaged perhaps more than ever before,<sup>56</sup> even to the point of violence against particular lawyers.<sup>57</sup> On the public policy level, politicians blame lawyers for everything from high medical (and other consumer) costs and physician attrition to a general culture of non-accountability for conduct, and some earnestly seek to eviscerate legal efficacy through the guise of specific remedies like tort reform.<sup>58</sup> Economically, lawyers face increasing competition to find employment and increasing pressure to retain

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56. See Thomas W. Overton, Comment, *Lawyers, Light Bulbs, and Dead Snakes: The Lawyer Joke as Societal Text*, 42 UCLA L. REV. 1069, 1091-92 (1995) (discussing special modern disdain for lawyers despite perennial complaints).

57. See Stephen Kelson, *Violence Against Lawyers*, 23 J. LEGAL PROF. 197, 198-200 (1998).

58. Such discussions of caps on malpractice judgments and reductions in class action litigation polarize society and turn the public against lawyers and their clients.

employment—even at the partnership or other high level of stature.<sup>59</sup> Younger lawyers feel constrained by tight employment markets and growing educational debt.<sup>60</sup> They also are morally pinched. Workplace conditions are disheartening for lawyers despite sometimes plush surroundings. Colleagues receive and bestow little loyalty as they change positions ever more frequently in a career.<sup>61</sup> Long hours under pressure are commonplace,<sup>62</sup> and the work ethic of the profession interferes with human flourishing at the basic level of childrearing and certainly in avocations.<sup>63</sup> Younger lawyers feel constrained by the hierarchical structure of many legal workplaces and the fragmented client assignments that are not conducive to building significant client relationships.<sup>64</sup> More than ever, lawyers are at least somewhat dissatisfied with their work, and a troubling many regret their choice of profession, some to the point of fleeing the law.<sup>65</sup> This bleak picture hardly warrants gratitude, some would assert with plausibility.

So why *should* lawyers feel thankful? In the classic, narrow view of gratitude as a sense of obligation for a beneficent act, some direct benefits justify acts in return. Even before graduation, law students may feel indebted to particular teachers who have been particularly helpful, influential, or inspiring. Honoring one's teachers is a vital component of gratitude in many cultures.<sup>66</sup> Some law graduates are fortunate to become law clerks for judges for a year or several, and that experience frequently leaves the former clerk with enduring appreciation for the lessons, care, and guidance of a particular judge. Once in practice,

59. See ANTHONY KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 274, 277–78, 284–85, 304, 314 (1993) (discussing economic pressures).

60. See Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 *VAND. L. REV.* 871, 898, 935–36 (1999).

61. KRONMAN, *supra* note 59, at 277, 279; Schiltz, *supra* note 60, at 903.

62. See, e.g., KRONMAN, *supra* note 59, at 281, 302–07.

63. See generally Stephen Gillers, *The Case of Jane Loring-Kraft: Parent, Lawyer*, 4 *GEO. J. LEGAL ETHICS* 115 (1990).

64. See KRONMAN, *supra* note 59, at 2–3, 288–89 (discussing diminished fulfillment in the legal profession and diminished opportunity to view client's problem as a whole).

65. See, e.g., AM. BAR ASS'N, *YOUNG LAWYERS DIV., THE STATE OF THE LEGAL PROFESSION 1990*, at 81 (1991) (reporting dissatisfaction “by lawyers in all positions . . . in firms of all sizes.”); Schiltz, *supra* note 60, at 881–82 (discussing lawyer studies revealing unhappiness).

66. See, e.g., Aaron Levine, *Hakkarot Hatov (Gratitude) and the Moral Personality*, 25 *TRADITION* 42, 46–47 (1990) (discussing gratitude toward parents and educators).

mentorship continues in many workplaces.<sup>67</sup> Despite competition, social and professional support is accessible formally and informally in various group affiliations and relationships.<sup>68</sup>

Small courtesies matter much in the stressful atmosphere of practice. The Clerk of Court who reminds a lawyer of a deadline, the colleague who lends expertise and insight to a case, the lawyer whose brief provides a model of excellence, the intern or paralegal who discovers the recent unreported case, the secretary who corrects the overlooked misspelling, the client willing to ignore a few unreturned phone calls, and even the opponent who is flexible about scheduling court dates to permit a much needed vacation all deserve at least a "thank you." Without such small kindnesses, otherwise unrelieved competition and daily pressure might be unbearable.

### C. Core Legal Gratitude

Although these moments are meaningful to a lawyer, they are not the core of professional gratitude. Such events may be more welcome in the life of a lawyer than in less demanding employment, but they are the kind of niceties that anyone might expect. For gratitude to emanate from the essence of being a lawyer, something broader and deeper must be involved. Here is where diffuse gratitude matters. I have argued that gratitude as a response to small acts of beneficence can accumulate over time into a complex, overarching response irreducible to particular components. Thankfulness to the law teacher, judge, or other mentor may merge into a general feeling of gratitude for the mentoring process, for example. This convergence does not diminish gratitude toward the individuals themselves, but generalized gratitude does acquire a life of its own through the accumulated contributions mentoring has made to one's skills and proficiencies as a lawyer. The lawyer becomes a "steward" of knowledge and skill and acquires obligations to use and not waste those bounties.<sup>69</sup> Similarly, casual and daily support from legal groups or individuals generates a broad sense of thankfulness for social exchange and camaraderie despite fierce economic competition.

Besides the peers who bestow benefits, more abstract advantages privilege lawyers in society despite cultural disparagement

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67. See Schiltz, *supra* note 60, at 918, 927.

68. For example, local and state Bar Associations include support groups, and the popular Inns of Court programs provide relaxed and collaborative settings for lawyers to communicate outside of the work context.

69. See Camenisch, *supra* note 11, at 9-10.

of the profession. The clichés about lawyers and gatekeepers holding “keys to the courthouse” are relevant here.<sup>70</sup> At a minimum, lawyers acquire knowledge and skills that enable them to “work” complex systems both with craft and cultural ease.<sup>71</sup> This serves them first of all as individuals who may need to avail themselves of law at times.

This proficiency also grants lawyers influence over lay clients who do not possess the magic words or skills to maneuver legally, and who often come to a lawyer reluctantly and out of pressing need.<sup>72</sup> Combining this resource asymmetry with the central importance of law in society, a formula for advantage emerges. Lawyers enjoy at least a theoretical power imbalance, enabling them to guide and sometimes control and manipulate lay persons, especially those most needy.<sup>73</sup> Here an objector could mention demographic conditions that disserve lawyers and slash their power, such as intense economic competition, increasing career mobility, the trend toward one-shot lawyer-client relationships, and increasing specialization.<sup>74</sup> The objector also could insist that the many lawyers who work for organizations like corporations do not tend to form the kind of personal client relationships that are most conducive to professional dominance, and that such lawyers lack autonomy within hierarchical workplaces.<sup>75</sup>

Although such factors do dilute the powers of lawyers, they do not counteract the fundamentally asymmetric lawyer and client relationship. Lawyers possess insider knowledge and skill that increase their control over all clients, including sophisticated individuals who compose client organizations. Legal knowledge also can improve lawyers’ own lives and create many opportunities to progress in society. Not to recognize these privileges is an example of professional ingratitude that can be

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70. See RAND JACK & DANA CROWLEY JACK, *MORAL VISION AND PROFESSIONAL DECISIONS: THE CHANGING VALUES OF WOMEN AND MEN LAWYERS* 28 (1989).

71. See, e.g., Stephen L. Pepper, *The Lawyer’s Amoral Ethical Role: A Defense, a Problem, and Some Possibilities*, 1986 AM. B. FOUND. RES. J. 613, 615–16; Richard Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 HUM. RTS. 1, 1 n.1 (1975).

72. See Pepper, *supra* note 71, at 615–16.

73. See Wasserstrom, *supra* note 71, at 22.

74. See KRONMAN, *supra* note 59; Robert W. Gordon, *The Independence of Lawyers*, 68 B.U. L. REV. 1, 30–68 (1988) (examining institutional factors limiting lawyer independence).

75. See Robert L. Nelson, *Ideology, Practice, and Professional Autonomy: Social Values and Client Relationships in the Large Law Firm*, 37 STAN. L. REV. 503, 509–21 (1985) (examining large Chicago law firms).

judged and condemned. To recognize these gifts, on the other hand, properly results in thankfulness for one's social and personal privileges, analogous to, and greater than, the gratitude that some have argued a citizen should feel toward a generally just state.<sup>76</sup> Whereas citizens owe gratitude to their government for general belonging and public benefits, the lawyer owes special gratitude for a legal heritage that bestows greater than normal benefits. It is no objection to say that the lawyer earned these privileges through hard work and high economic investment. While true, and while lawyers do deserve personal credit for hard work and study, such recognition does not alter the advantage of opportunity. For this aura surrounding a life in the law, the lawyer *should* feel grateful.

Far more important than the concrete social advantages of law are the possibilities a lawyer acquires for a meaningful professional and personal life. The law is a worthy profession because it serves the intrinsic good of justice. This does not mean that a lawyer's institutional roles are all justified, but it does mean that the legal profession follows guiding norms. Unlike many forms of work, legal work has an overarching purpose as its measure. All of the particulars of legal life can be assessed accordingly. Measured in the context of integrity, the law contains a contingent promise of moral progress within itself. Of course, the skeptical end of the epistemic polarity is also pronounced in the law because lawyers effectuate the diverse ends of others, which restrains their moral liberty of judgment to some degree. Thus, law operates at the extremes of truth and uncertainty, making integral balance more challenging than it even is ordinarily. The value of justice needs content that the profession supplies collectively, but justice must ultimately enlist the reflective judgments of every lawyer. Yet, it is a privilege to have some standard of goodness by which to calibrate the epistemic equilibrium of legal integrity.

Besides having more opportunities than most to achieve professional integrity, lawyers also wield more ability to shape collective moral identity. Because law is so central in a contemporary society that has few other shared cultural moorings, the lawyer is privileged to effectuate social changes that few have the power even to touch. With this rare capacity, lawyers can influence, to small or large extent, legal reform and justice in particular cases. While contemporary conditions, including shrinking public resources for legal work and a narrowing sense of judicial roles, have diminished opportunities for changing society through law,

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76. See Walker, *supra* note 19, at 192, 204, 210.

lawyers far more than most participate in a heritage of empowerment. For this they should feel both pride and responsibility.

Even today's lawyer encounters more opportunities to serve people and causes with significant need than most ever experience. Every argument and interaction determines whether the law will be read according to its letter, or more expansively, for improvement of the community. The lawyer can do much in counseling, as well as in court, to shape the reach of the law, even when the language of the law is constraining.

There is never a shortage of satisfying work for those lawyers who can make time to donate their expertise to represent otherwise voiceless clients or causes. This chance to serve offers ways to build the lawyer's generosity and caring character, and it brings meaning to the lawyer's everyday and overall professional life. Thus, the lawyer should feel grateful *to* those she serves and *for* her fortune in encountering moments for giving.<sup>77</sup> These rare opportunities have the potential to enhance professional esteem, self-respect, and spiritual satisfaction. The lawyer's mind remains active and engaged with important matters that can "make a difference" in the community. Few experience such empowerment in their work lives, and this a reflective lawyer should recognize and appreciate.

Such appreciation has abstract ideas like justice as its object, perhaps the best example of legal gratitude unattached to specific objects. Justice is a good example of something received but not owned or retained completely, a condition some also have attributed to gratitude.<sup>78</sup> It makes no sense to possess something like justice, which only has meaning in relation to others. Whether the lawyer views justice as substantive or distributive, natural or a function of positive law, he must recognize the centrality of the idea to relations both among humans and between them and the non-human world. The lawyer has special connection with this ubiquitous and powerful idea as its steward. The lawyer holds such an abstract gift without ownership and has some unusual power to pass it back as a partially realized ideal.<sup>79</sup>

This translates into policy influence beyond that of the average political citizen and special opportunities to improve society that lawyers should not squander. Citizen potential straddles lawyers' professional and personal lives. Authentic caring for justice forces its way into extra-legal activities. Grateful for special

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77. See Fitzgerald, *supra* note 7, at 152.

78. See Camenisch, *supra* note 11, at 9, 12 (describing never complete gratitude for gifts not possessed).

79. See *id.*

responsibilities for justice, the lawyer is inherently motivated toward political and other community work.

#### D. *Gratitude and Adversary Practice*

Given the wide berth lawyer gratitude fills, the question arises whether the Buddhist-like view of thankfulness to enemies may be relevant to legal life where lawyers regularly engage in adversarial and sometimes hostile interactions. Patrick Fitzgerald might say that lawyers should thank their opponents for the challenges that competitive practice poses that spawn pathways to enlightened growth.<sup>80</sup> While I accept that lawyers should be grateful for learning opportunities and tests of fortitude, I do not believe that the adversaries themselves are typically the appropriate subject. Rather, the legal experiences that spur lawyers to perfect their craft and cultivate personal traits like patience and fortitude are the sources of gratitude. This notion of gratefulness for circumstances and events is not overly abstract and makes great sense once gratitude is released from particular benefactors.

Sometimes, however, the persons themselves who test the lawyer's wits and character can be the subject of direct gratitude. When adversaries execute their duties without malice in high performance of their role, the recipient may admire and respect opponents for their craft, persistence, and forbearance.<sup>81</sup> The lawyer might absorb such modeling and feel grateful even though the adversary intends no personal benefit. Or, lawyers who maintain cordiality throughout antagonistic circumstances can thank the opponent who retains dignity and respectfulness.

A case that challenges a lawyer's moral sensibilities also can afford moral growth. An associate who pursued environmentalist values into law school and practice might feel constrained by educational debt, family responsibilities, and a competitive job market to represent corporations in environmental defense. The disappointed associate might discover, however, opportunities to advise clients compellingly on the relationship between compliance and enlightened corporate self-interest. He or she might persuade company representatives that their reputation with environmental regulators and the community is more valuable than short-term cost savings. The associate might even convince the client to innovate beyond compliance to promote good will.

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80. See Fitzgerald, *supra* note 7.

81. See Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705, 738 (1998) (discussing complimenting the opponent's lawyer).

He or she might gradually soften some stereotypes about corporate leaders' singular dedication to the "bottom line" and acquire respect for them as moral beings trying to do their best for society. While only a naïve lawyer might expect such progress at every turn, a lawyer mired in cynicism might miss opportunities for moral nourishment altogether. Generalized gratitude will not dissolve moral distress, but can illuminate crevices leading from the cave.

#### E. *How To Manifest Gratitude*

To whom, and how, should the lawyer express the many components of legal gratitude, direct and diffuse? Of course, the individuals who facilitate the lawyer's meaningful work deserve special appreciation and reciprocity. It is not always possible, however, to trace opportunities to particular benefactors. Even if the grateful lawyer can single out such influential people, it might not be possible or useful to reciprocate. How a lawyer could bestow similar benefits on a benefactor is not always obvious. The person who provided such gifts as mentoring might already possess analogous or greater chances to effect social changes, which is what placed him in a position to give in the first place. Indeed, the benefactor's gratitude for his own legal blessings might be the very thing that motivated him to assist someone else.

Thus, even a lawyer seeking to give back something specific like knowledge or skill has more flexible parameters for moral reciprocity than a strictly *quid pro quo* pattern suggests. The most suitable return might be to someone besides the benefactor, if even the giver is an identifiable individual. The best form of return also might be open-ended. For a gift of meaningful influence, the ideal return might be the thoughtful exercise of that influence in every moment, so not to waste what was bestowed. The lawyer who can contribute to justice has a duty to reflect on the meaning of justice and how best to implement it in particular circumstances. That lawyer will assess each significant course of action for its just or unjust tendencies and muster the courage to reject means and ends that clearly do not satisfy this overarching professional purpose. These duties are ongoing and through regular reflection should become reflective habits ingrained in the lawyer's character—should become a temperament for justice that transcends professional boundaries.



While legal gratitude carries obligations, no one can command a morally appropriate emotional response.<sup>82</sup> Creativity and thought should guide the thankful lawyer in discharging obligations in the right time, place, and manner. This is one reason why mandatory service programs may not be desirable for attorneys despite a strong moral obligation to provide pro bono work and facilitate access to justice.<sup>83</sup> A just temperament will be sustainable only if moral emotions are permitted to thrive and are not suppressed through coercion or perceptions of external incentives.<sup>84</sup> A lawyer's gratitude is perhaps the most powerful internal stimulant to service.

George Klosko has objected that gratitude is a weak motivator because it yields no distinct, concrete obligation to act.<sup>85</sup> Klosko claims that political gratitude can not insure obedience to law, for example, precisely because it creates open-ended obligations that can be satisfied in flexible ways only if opportunities arise.<sup>86</sup> It may be that gratitude is mismatched with a command to obey anything. In philosophical terms, gratitude generates "imperfect" duties that can be implemented flexibly, as opposed to "perfect duties" that have clear objects.<sup>87</sup>

In contrast to Klosko, I believe that latitude and diffusion render gratitude far from feeble, but a particularly valuable and potent moral response. The elasticity forces the grateful person into sensitive reflection about how to repay debts that can never be entirely discharged.<sup>88</sup> Gratitude is a self-replenishing emotion, like love, that revives each time a person gratefully assists others for simply having this opportunity for meaningful life. This sustainable emotion has energy that manifests in diverse and creative ways, at unexpected times when gratitude is not tied to immediate events or particular persons.

Such a revitalizing response is an invaluable resource for lawyers who operate in a codified, rule-bound ethical world.<sup>89</sup>

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82. One can expect generosity and condemn the person who does not show it, but ordering it would be counter-productive and diminish positive moral emotion and consequent action.

83. See Reed Elizabeth Loder, *Tending the Generous Heart: Mandatory Pro Bono and Moral Development*, 14 GEO. J. LEGAL ETHICS 459 (2001).

84. See Lepper et al., *supra* note 22.

85. George Klosko, *Political Obligation and Gratitude*, 18 PHIL. & PUB. AFF. 352, 355 (1989).

86. *Id.* at 355-56.

87. See IMMANUEL KANT, *FUNDAMENTAL PRINCIPLES OF THE METAPHYSIC OF MORALS* 39 n.9 (Thomas K. Abbot trans., Liberal Arts Press 1949) (1785).

88. See Camenisch, *supra* note 11, at 9, 12.

89. See Reed Elizabeth Loder, *Tighter Rules of Professional Conduct: Saltwater for Thirst?*, 1 GEO. J. LEGAL ETHICS 311 (1987).

Their training in parsing statutes tilts them inexorably toward reading statute-like ethical codes in a similar vein. The trend away from aspiration toward rules aggravates a burrowing attitude and actually suppresses ethical reflection.<sup>90</sup> When lawyers look to the “law of ethics” for guidance, they tend to lament the sham of illusory answers or languish in the comfort of pat direction. Imperfect duties are an antidote to over-reliance on rules. Open moral terrain nurtures aspiration in lawyers and a searching posture of reflection. Generalized gratitude fosters the epistemic suspension between moral certainty and doubt that I have identified with moral integrity. It preserves space to translate the virtue into thoughtful conduct.

#### F. *Misplaced Legal Gratitude*

Lauding diffuse lawyer gratitude does not cancel its risks, however. While absence of the virtue is more serious, excessive gratitude is also problematic. The “happy-go-lucky” lawyer would be a rare aberration of the grateful temperament, but such a lawyer would suffer from critical blindness to the moral perils of an adversarial profession and be overly vulnerable to hostile turns. Many lawyers worry about underestimating danger from the opposition and failing to advocate effectively for clients’ legitimate interests. In their zeal to avoid this plight, they become a caricature. The more familiar and perilous lawyer—the amoral lawyer—is deficient in gratitude and loses the ability to “see” or care about moral problems.

Quid pro quo gratitude also can be misplaced. Feeling indebted to one’s professional colleagues can lead to casual obedience and conformist thinking within a legal organization, for example.<sup>91</sup> A patronage system of relations can germinate from institutional factors like personal debts to co-workers, especially superiors. This can cause even good lawyers to overlook wrongs or prefer benign explanations in the face of serious misconduct or harmful inaction.<sup>92</sup> Over-partisanship in the lawyer-client relationship is a well-discussed phenomenon of excess.<sup>93</sup> Gratitude toward clients and their business can slide into general

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90. See *id.* at 336–37.

91. See, e.g., JOHN P. SABINI & MAURY SILVER, *MORALITIES OF EVERYDAY LIFE* 84–85 (1982).

92. See DEBORAH L. RHODE & DAVID LUBAN, *LEGAL ETHICS* 369 (3d ed. 2001) (describing associate overlooking clear misconduct by partner and mentor).

93. See, e.g., SHAFFER & COCHRAN, *supra* note 2, at 3–39; Charles Fried, *The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation*, 85 *YALE L.J.* 1060 (1976); William H. Simon, *The Ideology of Advocacy: Procedural Justice and*

moral blindness and suppress harms to other people and the legal system.

Gratitude for one's profession can create an insular and static, yet pervasive, mentality. Lawyers communicate with peers in a private, often exclusive, language. This can distance lawyers from those they serve, contributing at least to deficiencies in client communication and at worst to smothering client autonomy. A lawyer so distant can lose the ability to interpret ordinary social terrain and muster the moral and human resources necessary to solve problems creatively and ethically. A lawyer so dissociated thus loses some competence and humanity that comes from care and tending in everyday relationships. As positive as professional gratitude can be, it can lapse into the vice of over-gratitude without monitoring and active moral calibration.

Problems also arise because gratitude is not a complete virtue. It needs to be balanced with other traits that temper it in certain contexts. For example, the lawyer who feels indebted to a regular business client must summon courage to resist actions that, although legal, perpetrate harm to the environment. An associate grateful to workplace mentors must not lose motivation to spread generosity beyond the firm despite the insular demands and rewards of daily employment. That associate should recognize that good mentoring is a fortunate act, not always evenly available to women and lawyers of color who suffer from a shortage of role models in positions of power.<sup>94</sup> More pressing virtues like courage and humility should overpower facile gratitude that will wreak harm or promote passivity about broad, systemic reforms.

Individual virtues balance each other through careful practical judgment about their proper configuration in various situations. A virtue approach should not be severed from a principle-based ethic that hones contextual judgment and perfects it over time. Epistemic integrity merges the two approaches. One habit of an integrally virtuous person is daily reflection and equilibration of epistemic tensions. With time and practice, this process becomes more reflexive and almost spontaneous for a person of virtue.<sup>95</sup>

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*Professional Ethics*, 1978 Wis. L. Rev. 29, 29; Wasserstrom, *supra* note 71, at 11-12.

94. See, e.g., Schiltz, *supra* note 81, at n.144.

95. Aristotle insisted that people learn to be good by behaving well over time, similar to the harpist who learns to play the instrument well through practice. ARISTOTLE, *supra* note 40, at 28-29.

## V. ENCOURAGING GRATITUDE

### A. *The Legal Workplace*

Today's legal practice is not conducive to developing gratitude in the broader and diffuse dimensions that promote cooperation, generosity, and devotion to justice. First, the pace of typical work is a problem. Private law firms, particularly, expect slavish billable hours that leave little time for family life, let alone avocations or even moments to reflect.<sup>96</sup> Judges also, whose decisions could benefit from free-floating gratitude that spawns empathy and compassion, are tied to crowded dockets.<sup>97</sup> Those who work for legal services, public defense, and other public interest programs are underpaid and burdened with caseloads that do not encourage meticulous attention or sustained relationships.<sup>98</sup> Such conditions are antithetical to the reflective atmosphere that nourishes a lawyer's gratitude and its proper exercise.

This unreflective, some would say amoral, environment even drives lawyers out of the profession altogether. The departed are perhaps the very lawyers who most need pervasive moral emotions like gratitude to provide sustenance in professional life. There is irony, to be sure, in claiming that these sensitive lawyers could contribute most to creating a grateful profession, since they are disgruntled and even despairing. But many who are dissatisfied lament the lack of meaning and reward in the profession.<sup>99</sup> They are perhaps the seekers who could convert their disenchantment into significant reform and their yearnings into improved collective character.

Still more pernicious is the idea that morally engaged lawyers actually threaten the profession. While complying with professional codes does maintain institutional reputations by avoiding disciplinary sanctions, the deeply reflective atmosphere advocated here could disrupt a lawyer's ability to act within role constraints, which, in private practice at least, would impede the profit-making goal of legal corporations. Thus, one must wonder whether amoral lawyers fare best in the modern legal work-

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96. KRONMAN, *supra* note 59, at 281; Gillers, *supra* note 63, at 117-28; Schiltz, *supra* note 81, at 725-26.

97. Schiltz, *supra* note 81, at 745 (lamenting the loss of judicial mentors).

98. See Charles J. Ogeltree, Jr., *Beyond Justifications: Seeking Motivations to Sustain Public Defenders*, 106 HARV. L. REV. 1239, 1240 (1993) (discussing heavy public defender caseloads).

99. See e.g., Schiltz, *supra* note 81, at 725-26.

place.<sup>100</sup> After all, they are freer to accept assignments without experiencing value conflicts, and they are better able to concentrate on technical proficiency without moral distractions. They scrupulously avoid ethical troubles through shunning probing questions about their work that could gnaw at motivation and efficiency. They are content to accept an ethical universe defined by professional bodies like the American Bar Association and, if anything, clamor for clearer rules that make compliance easier.<sup>101</sup> Their gratitude encompasses the existing professional and legal template and the rewards it offers to those who operate within given frameworks.<sup>102</sup> Such gratitude is more targeted than diffuse, more self-interested than generous, and ultimately more constraining than creative. Perhaps this is a portrait of the highly effective lawyer.

Let us resist that conclusion. On the level of collective self-interest alone, more diffusely grateful lawyers may perform best. Expansive human resources contribute to successful lawyering. An effective lawyer aims to facilitate client autonomy, which summons ambitious skills like listening with care, fusing technical expertise with clients' expressed needs and interests, and pursuing constructive dialogue with opponents. Free-floating gratitude pushes a lawyer's perspective outward, making him more perceptive and finely attuned to the human dramas unfolding. An authentically thankful lawyer cares about case outcomes for all of the people deeply affected, and he seeks to leave situations improved over his entry onto the scene. He leaves a gentler imprint that does not foment resentment of lawyers.

A grateful lawyer is also a more effective member of the legal workplace. She is motivated to return accolades to the employing group with whom she shares a moral fate and to leave a positive mark on the profession as a whole. Importantly, she recognizes that her moral identity is inseparable from the collectives of which she is part. This is so even for newcomers who lack executive authority or are scant participants in organizational history. All of her affiliations change who she is as a person, and joining a group and remaining within its fold are morally significant decisions that only she can make. "Generativity," or the con-

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100. A former student who tried practicing in a well-reputed Wall Street firm arrived at this conclusion.

101. See Loder, *supra* note 89, at 311, 319–21.

102. My students tend to view the legal system as an impermeable "container" forcing them to operate within rigid professional constraints. They believe that lawyers lack the power to change things much.

cern with leaving a positive legacy for successors,<sup>103</sup> becomes part of the personality of a deeply grateful person. A lawyer's moral personality is bound to the collective destiny of the workplace. Such a lawyer is loyal to the group character with which her identity is intertwined.

Gratitude spurs a sense of ever falling short in obligations and prompts an ongoing search for opportunities to return thanks by improving collective character. Faithfulness cements relations that may have begun on the basis of self-interest and sustains those relations for their inherent worth.<sup>104</sup> Properly tuned loyalty is a factor that increases productivity, creativity, and ethics in the workplace.<sup>105</sup> In short, work satisfaction improves both the business and moral "bottom line" in most cases.

Law organizations thus have strong reasons to re-examine some of the work conditions that contribute to lawyer dissatisfaction and bitter ingratitude. While short-term benefits may accrue to private firms from long hours, peer competition, and emphasis on "rainmaking," the costs in morale over time diminish the potential for practice at the highest, most creative level. This impedes organizational competitiveness. Public organizations such as courts and government agencies can also suffer from inhumane conditions even though profits are not their paramount concern. Disgruntled employees, and those suffering malaise, do not perform at their best and are more prone to drift into ethically thoughtless behavior, or worse, diminished care and attention.

The profession itself has a collective self-interest in altering professional requirements and expectations to facilitate self-conscious gratitude. Lawyers who feel diffusely grateful for their chosen work are naturally motivated to greater compassion and generosity. Collectively, these changes in affect and behavior can only bolster the profession's reputation and temper people's reluctance to seek legal advice. Social and professional support through bar associations, Inns of Court, and substance abuse groups already serve lawyers, but the profession should attempt to widen the sphere of organizations dedicated to lawyers' moral lives and qualms. Increasing public education about law is another way to improve understanding about the inherent clashes of role with societal moral consensus. Already, some

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103. Dan P. McAdams et al., *Stories of Commitment: The Psychosocial Construction of Generative Lives*, 72 J. PERSONALITY & SOC. PSYCHOL. 678, 678 (1997).

104. *Id.*

105. See Schiltz, *supra* note 81, at 744-45 (lamenting the loss of loyalty and friendships in modern law firms).

courts take live proceedings to various public settings and invite observation.<sup>106</sup> Some law schools provide legal education outreach to local public schools.

### B. *Law Schools*

It is extremely important to instill early habits of moral reflection in law students. Law schools vary in this effort. Although all schools offer courses in regulatory legal ethics, this is decidedly insufficient and, indeed, may actually suppress moral deliberation through over-reliance on rules. A positivist emphasis on the content of codes and other forms of ethical regulation encourages students to see their ethical responsibilities in a legalistic way. This is particularly so because codes increasingly resemble statutes, and legal training prepares students to traverse the outer boundaries of coverage.

Although regulatory ethics training is clearly necessary, a better approach also involves interdisciplinary education in moral analysis, not attached to regulatory questions.<sup>107</sup> Students benefit from identifying and examining the philosophical, psychological, and cultural foundations of ethical issues. They learn from comparing ethical issues facing professionals, not limited to lawyers.<sup>108</sup> Such cross-disciplinary discussions prompt deeper thinking about the ethical complexities and responsibilities endemic to professional life. The application of social science methodologies can also improve students' grasp of their profession in cultural terms. The tools of ethics and social sciences can apply to legal analysis generally, prompting students to think about the ethical underpinnings of law and its social contexts. Besides expanding thought processes through the insights of other disciplines, such perspectives education encourages habits of reflection, curiosity, and refined reasoning that can survive in the workplace. The pressures of daily work may ultimately dampen these reflexes and curiosities, but effective resistance to that outcome minimally requires positive experience with a different model.

Beyond its intellectual value, interdisciplinary education is normative. Examining diverse perspectives on law, especially in a small class setting, exposes students to viewpoints they might oth-

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106. For example, the Supreme Courts of Vermont and New Hampshire periodically conduct actual proceedings at law schools and other public places.

107. For example, I teach a seminar in comparative professional ethics at my law school and also have taught it in a liberal arts graduate program.

108. My seminar, *Moral Philosophy for Professionals*, covers such issues as the professional relationship, confidentiality, paternalism, deception, and professional generosity.

erwise shun or scorn. Dialogue can foster empathic listening and promote respect for others whose ideas are foreign. Ultimately, the participant on a path toward integrity may apply this input to challenge and perhaps modify his own formerly entrenched ideas. Greater appreciation of diverse perspectives prepares the student to question law and, ideally, motivates her to reform it. Such exposure crucially prepares students to work with lawyers and clients who do not share their cultural outlook. Law teachers suffer from their own version of short-sighted vice in their headstrong dedication to academic advancement through scholarship that minimizes teaching and mentoring of future lawyers.<sup>109</sup>

In teaching, professors are too glib about the permeable boundaries of law and too eager to judge positions by persuasiveness, not merit. This orientation alienates students from their normative bearings and creates anxiety and depression.<sup>110</sup> Teachers tend to dismiss such reactions, striving to startle their charges from innocence into the “grown up” world of lawyers.

A classroom experience that deflects emotion, and which reserves questions about justice to students’ private musings, takes a hidden toll on the moral future of lawyers. A sense of powerlessness facilitates a positivist attitude toward the legal system as a rigid and impermeable “container.” This obscures the extent to which every lawyer, every day, *shapes* the framework within which he or she functions. Instead of promoting critical reflection on law and legal institutions, suppressing normative discussion in instruction releases students from ethical responsibility and victimizes them to outside forces. A morally passive stance conceals opportunities for gratitude that provide meaning and motivation. It dampens legal integrity as epistemic struggle.

Advising is another missed opportunity in law school. Directing students exclusively to “core” bar courses is one misstep in moral aspiration. So is shifting the emotional toll of legal education to professionals and resources outside of the student and teacher relationship. Although a teacher is not equipped to provide psychological counseling, a teacher is uniquely situated to address the moral ennui that too often germinates in the study of law. Who, after all, is better positioned to provide such professional moral guidance?

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109. See Schiltz, *supra* note 81, at 753, 773–76.

110. See, e.g., JACK & JACK, *supra* note 70, at 45–46 (explaining how law training breaks down patterns of perception and valuation).



### C. *Specific Measures To Promote Gratitude*

Professional institutions can assist in inculcating and perpetuating reflective habits. Law schools can do much to bring broad ideals of law into the classroom, the faculty office, and the career planning department. Continuing legal education programs also can incorporate broader discussions than is typical in the practice-oriented study of topical issues in legal specialties. Recent work on law and religious faith is only one type of expanded perspective. Many practitioners crave the kind of intellectual and moral discussions that led them to the law initially, and the Bar should cherish this interest, not let it atrophy. The skills and values that emerge from such expansive reflection can keep motivation and meaning alive, which might reduce professional flight of those ethically disaffected lawyers who might most inspire professional activism.

The workplace itself needs deep change, however, if these efforts are to have sustaining force. Every legal employee shares responsibility to press for a more value-conscious working environment—not an easy task given the competitive pressures discussed earlier. Although lawyers give lip service to the idea that ethics and good business practices are complementary, this usually refers to egoistic concerns with maintaining a saleable corporate reputation and freedom from costly ethical sanctions. The deeper, more transformative moral consciousness considered here is harder to justify in terms of marketability. On the other hand, the payoffs of a more loyal and ethically engaged workforce are neither imaginary nor transitory, especially given repeated documentation of significant work dissatisfaction and even despair.

A lawyer can return generalized gratitude in persistent, albeit risky, efforts to reshape the profession and the local work environment. She can screen potential work sites for their ethical as well as material accoutrements.<sup>111</sup> In avoiding “metaphysi-

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111. This is a challenge despite career guides providing plentiful information on types of practice and interviewing. *See, e.g.*, GARY A. MUNNEKE, *THE LEGAL CAREER GUIDE: FROM LAW STUDENT TO LAWYER* 77 (4th ed. 2002); KIMM ALAYNE WALTON, *GUERRILLA TACTICS FOR GETTING THE LEGAL JOB OF YOUR DREAMS* (1999). Several internet websites provide information on specific firms, including size, departments, and regular clients, but offer virtually no information on policies, codes, mission, or work demands. *See, e.g.*, The American Lawyer On the Web Home Page, <http://www.americanlawyer.com> (last visited Apr. 3, 2006); Law.com Home Page, <http://www.law.com> (last visited Apr. 3, 2006); Westlaw Home Page, <http://www.westlaw.com> (last visited Apr. 3, 2006); Martindale.com Home Page, <http://www.martindale.com> (last visited Apr. 3,

cal taint” to her own integrity,<sup>112</sup> she can apply her gratitude to protect the collective integrity of her colleagues and profession. She can instigate normative discussions of law in the workplace and let her superiors know that this is important to her well-being. She can press for pro bono and law reform projects that convert gratitude into concrete generosity. She can voice concern with cases and projects that present ethical problems and refuse to participate in those relatively rare cases that do not meet a minimum ethical threshold.<sup>113</sup> She can express her concerns about working conditions for lawyers with family responsibilities to children and elders and organize the collective support of associates and affected partners in this endeavor. The same concern with work conditions also affects her general energy, curiosity, and enthusiasm. Some space to pursue political, artistic, and social avocations sustains moral aspiration and informs a life in the law. All of these measures are expressions of diffuse gratitude transferred to a workplace character that the lawyer imagines morally better. Her return gift is thought, time, and personal risk absorbed for the sake of the collective ethical identity. If these efforts fail or, worse, if retaliation results, the lawyer’s grateful disposition can bolster the courage and resolve to flee to a more hopeful setting.

#### CONCLUSION

Since genuine gratitude can never be fully repaid,<sup>114</sup> our lawyer should never become resigned to ethical shortcomings in her profession. She should tap whatever reservoir of collective virtue she finds and consciously stoke its gratitude store. Upon failure, revived examination of her fortunes and capacities should be enough to remind her of opportunities remaining to spread her bounty. Her successes should replenish and enlarge her gratitude when she recalls her rare empowerment. She can rally grateful character to the lawyer’s deepest work. Few can dare to press the gates of justice. She realizes that she is one of the lucky few.

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2006); The National Law Journal Home Page, <http://www.nlj.com> (last visited Apr. 3, 2006).

112. See KARL JASPERS, *THE QUESTION OF GERMAN GUILT* 26 (E.B. Aston trans., 2001) (1948) (describing co-responsibility for others’ crimes about which one knows and fails to prevent).

113. I think that every lawyer should be allowed several “peremptory challenges” to refuse work that deeply offends the lawyer’s morality following careful deliberation.

114. See, e.g., Camenisch, *supra* note 11, at 12 (discussing “never quite completed business of gift exchange”).

