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The Rule of Law and Ethical Integrity: Does Haiti Need a Code of Legal Ethics?

Kate E. Bloch and Roxane Edmond-Dimanche*

I. INTRODUCTION: THE EXPERIENCE OF A U.S. VISITOR

You have just read the newspaper article about the inmate whose execution is scheduled for next week. He waits on death row, his appeals exhausted. You hear a knock on your door and a client whom you have represented intermittently over the years in your defense practice arrives in your office. The client has come to seek your legal advice and requests assurances about the confidentiality of the ensuing conversation. You reassure him that the conversation will fall under the attorney-client confidentiality umbrella. The client then convincingly explains that he, rather than the inmate scheduled to be executed, committed the murder for which the inmate has been convicted and is scheduled to die. The client tells you that the inmate, whom your client does not know, had no part in the murder. Due to some physical resemblance between the inmate and your client, the sole eyewitness made an error and mistook the inmate for your client. With this recounting, your client comes to the purpose of his visit. Will your client be “off-the-hook” for the murder once the state executes the innocent inmate? As the enormity of your client’s revelation begins to sink in, he reminds you that you assured him that the conversation would be confidential and pointedly demands that you keep it so.¹ What do you do?

¹ Scholars have grappled for some time with variations of the above scenario in the context of exploring lawyers’ roles and options. See W. William Hodes, What Ought to be Done—What Can be Done—When the Wrong Person is in Jail or About to be Executed? An Invitation to a Multi-Disciplined Inquiry, and a Detour About Law School Pedagogy, 29 LOY. L.A. L. REV. 1547 (1996).
This scenario aims to provoke discussion and test the limits of role morality\(^2\) and attorney-client confidentiality. In March 2012, I presented it to the assembled law school student body at L’École Supérieure Catholique de Droit de Jérémie (ESCDROJ), in Jérémie, Haiti.\(^3\) After acknowledging that Haiti has no death penalty\(^4\) and asking the students to imagine, for purposes of our hypothetical and comparative analysis, that Haiti did, we began with a discussion of relevant U.S. ethics rules. We contrasted approaches to confidentiality available to the attorney in the Model Rules of Professional Conduct, which provide an exception for disclosure under the circumstances described,\(^5\) with those of the California Rules of Professional Conduct, which arguably do not provide the same exception.\(^6\) Then we turned to comparing those approaches with what I understood was the approach to confidentiality in the Haitian legal ethics code. Access to information about some domains of Haitian law and practice can be challenging for a visitor to obtain and I was, in truth, feeling grateful to have accessed a copy of the Haitian code of legal ethics.

During a subsequent short break in the presentation, however, a good friend and graduate of the law school in Jérémie politely informed me that

\(^2\) David Luban, Lawyers and Justice: An Ethical Study 105 (1988).

\(^3\) In this section on the experience of a U.S. visitor, the “I” refers to co-author Bloch.

The scenario was “enacted” by volunteers in Creole and English in front of the Haitian students and differed in small details from the version above. The presentation was part of the Hastings to Haiti Partnership (HHP), a collaboration between ESCDROJ and the University of California, Hastings College of the Law, in which Haitian and U.S. faculty and students engage in mutual exchanges of ideas, and work toward supporting the rule of law in Haiti. HHP was founded by Professors Karen Musalo and Richard Boswell with Dr. Jomanas Eustache, Dean of ESCDROJ, in 1999.


\(^5\) The Model Rules were amended in 2002 to allow disclosure “to the extent the lawyer reasonably believes necessary: (1) to prevent reasonably certain death or substantial bodily harm[.]” Model Rules of Prof’l Conduct R. 1.6 (2013). For a discussion of the change, see ABA Comm. on Ethics & Prof’l Responsibility, Model Rule 1.6 Reporter’s Explanation of Changes (2000), http://www.americanbar.org/content/dam/aba/migrated/cpr/e2k/10_85rem.authcheckdam.pdf (last visited Mar. 21, 2015).

\(^6\) The California Rules of Professional Conduct allow disclosure only “to the extent that the member reasonably believes is likely to result in death of, or substantial bodily harm to, an individual.” Cal. Rules of Prof’l Conduct R. 3-100(B) (2013). For the language of the California exception to apply, the execution would have to constitute a “criminal act.”
what I had understood was the official deontological code in Haiti, was really only a “brouillon,” a draft. In fact, she informed me that Haiti has no official code of legal ethics.

Following the break, swallowing my pride, I proceeded to correct my error, sharing with students what I had just learned and encouraging them to consider that the task of deciding upon such a code for lawyers still lay before them. This unexpected turn of events made me wonder what it might mean to practice law in a country with no official code of professional responsibility and whether having a code would be valuable.

An initial inclination in favor of an official code surfaced almost instantly. Perhaps it arose so quickly because I had been under the impression that Haiti had such a code and it proved an easy transition to imagine that normatively it should have such a code. Perhaps the inclination arose so quickly because, as a legal educator and attorney, I see substantial value for clients, the judicial system, the public, and the legal profession in the U.S. in having an official compiled code to which

\[7 \text{ DROIT À L’ÉTHIQUE [LAW OF ETHICS], available at } http://juristehaitien.chez.com/pages_textes/barreau/p_droit_ethique.htm.\]

I was surprised to discover that there was no official code. I later learned that there is a 1979 government decree that regulates primarily administrative aspects of the legal profession, such as admission to the bar, who can and has to belong to the local bar association, as well as several provisions that relate directly to legal ethics, including a provision on attorney-client confidentiality.


9 In the U.S., codes of legal ethics have developed over time. “Until 1970, most U.S. jurisdictions had only the ABA Canons, which were not adopted as law but often referred to as sources of law.” Email from Geoffrey C. Hazard to Kate Bloch (Apr. 30, 2014) (on file with co-authors). A substantial movement toward more formal codes in the U.S. seems to have grown in the nineteenth and then continued into the twentieth century. Carol Rice Andrews, The Lasting Legacy of the 1887 Code of Ethics of the Alabama State Bar Association, in GILDED AGE LEGAL ETHICS: ESSAYS ON THOMAS GOODE JONES’ 1887 CODE AND THE REGULATION OF THE PROFESSION 7-36 (2003); Geoffrey C. Hazard, Jr., The Future of Legal Ethics, 100 YALE L.J. 1239, 1249 (1991) (“What were fraternal norms issuing from an autonomous professional society have now been transformed into a body of judicially enforced regulations.”). Today, the U.S. has not one but many official codes of legal ethics, one for each state or jurisdiction regulating a bar. Many of these modern official codes rely on or at least draw guidance from the American Bar Association’s Model Rules of Professional Conduct. Courts generally oversee the ultimate enforcement of disciplinary consequences under these official jurisdictional codes as pursued by the governing bar association. Research in the field suggests that relatively detailed lawyers’ oaths may have, in earlier eras, like the Middle Ages in Europe, served a similar purpose. See Andrews, supra, at 9. Even with official codes of ethics, concerns, for example, about insufficient disciplinary enforcement often remain.
attorneys agree to abide and which furnishes fundamental limits, albeit perhaps imperfect ones, on and permissions about attorney behavior, as well as, of course, a basis for recourse for clients in some disciplinary, regulatory, and other realms. As the American Bar Association has noted, for example:

In modern democratic societies based on the rule of law, lawyers play a paramount role in the administration of justice and in safeguarding human rights and fundamental freedoms. . . . Maintaining and observing clear ethical standards is a duty that lawyers owe not only to their clients, but also to the administration of justice, their profession and the society at large.

But, as I reviewed conditions I had witnessed in Haiti, I began to reconsider my hasty inclination to advocate for such a code. Haiti is a country beset with extreme poverty. Approximately eighty percent of the population lives below the poverty line, concerns about judicial corruption are rampant, and prison conditions are often profoundly problematic.

10 Scholarship on the adoption of the 1908 Canons suggests, however, that a motive for their adoption derived from elitist and exclusionary premises. JEROLD S. AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA, 40-53 (1976). With respect to the Canons, according to Auerbach, “[t]he immediate impetus was provided by President Theodore Roosevelt who, in his Harvard address in the spring of 1905, sharply rebuked corporate lawyers for aiding their clients in evading regulatory legislation.” Id. at 40. But, Auerbach opines that “[t]he ethical crusade that produced the Canons concealed class and ethnic hostility” that was particularly focused on “new-immigrant lawyers,” who generally had less wealth and were of different religions than those lawyers writing the Canons. See id. at 50.


12 Id. While poverty may contribute to the problems faced by the judicial system in Haiti, it is arguably not the only significant factor. Email from Jean Elias Xavier to Kate Bloch (Apr. 14, 2014, 17:30 PST) (on file with the co-authors). (“Poverty can be considered as the bottleneck but not [so] serious [as] to be considered as dominant. Each country must have a justice system according to its cultural and economical realities and possibilities.”).


Although the law provides for an independent judiciary, senior officials in the
According to the U.S. State Department 2013 Haiti Human Rights Report, “[c]orruption and a lack of judicial oversight . . . severely hampered the judiciary. Human rights organizations reported that several judicial officials, including judges and court clerks, arbitrarily charged fees to initiate criminal prosecutions, and that judges and prosecutors failed to respond to those who could not afford to pay.” The Report opines that in 

executive and legislative branches exerted significant influence on the judicial branch and law enforcement. Allegations of high-level executive intimidation of judicial officials and corruption were frequent. MINUSTAH and international and local NGOs repeatedly criticized the government for attempting to influence judicial officials. 

Id. at 13. In addition, the Report states: 

The functioning of civil courts (tribunaux de paix), the lowest courts in the judicial system, was poor. Judges presided in chamber based on their personal availability and often maintained separate, full-time jobs. Law enforcement personnel rarely maintained order during court proceedings, and frequently there was no court reporter. Bribes were often the principal factor in a judge’s decision to hear a case. 

Id. at 15. 

For an analysis of concerns about judicial corruption in Haiti, see Jean Sénat Fleury, La Problématique de la Réforme Judiciaire en Haïti 24-27, 32 (2007) (suggesting, among other reforms, the development and adoption of a judicial code of ethics). For an analysis of many of the complex factors that have impeded judicial reform in Haiti, see Louis-Alexandre Berg, All Judicial Politics are Local: The Political Trajectory of Judicial Reform in Haiti, 45 U. Miami Inter-Am. L. Rev. 1 (2014). According to scholarship on mediation and legal ethics codes and practice in Central Asia, a number of countries in Central Asia suffer from corruption and challenges regarding a legal ethics code. See Cynthia Alkon, The Increased Use of “Reconciliation” in Criminal Cases in Central Asia: A Sign of Restorative Justice, Reform or Cause for Concern?, 8 Pepper Disp. Resol. L.J. 41, 61 (2007) (“The prosecutor is still all-powerful. Judicial independence is still at best an aspiration, not a reality. Defense attorneys cannot provide an active defense. This limited role, when combined with high levels of institutional corruption, frequently turns defense attorneys into agents who facilitate resolution of a case by making pay-offs on behalf of the client to investigators, prosecutors, and judges. The legal profession in all four countries operates without any ethical framework, as ethics codes are virtually non-existent and, where they do exist, are extremely weak and not regularly enforced.” (footnotes omitted)).

15 State Department Report, supra note 14, at 6. The Report discusses prison conditions at some length. It notes, for example, that “UN observers indicated in 2012 that approximately [seventy] percent of prisoners and detainees suffered from a lack of basic hygiene, malnutrition, poor quality health care, and water-borne illness.” Id. Moreover, with respect to access to clean water, in a country stricken with a cholera epidemic, the Report indicates that “[p]risons generally used well water as a source for drinking and bath water. . . . Some prison officials used chlorine to sanitize drinking water, but in general, prisoners did not have access to treated drinking water.” State Department Report, supra note 14, at 5.

16 State Department Report, supra note 14, at 14. On challenges facing the judiciary system, see also Jomanas Eustache, The Importance of Teaching Law and the Reinforcement
the “civil courts (tribunaux de paix), the lowest courts in the justice system, . . . [b]ribes were often the principal factor in a judge’s decision to hear a case.”

It is a land with such limited resources that conditions of inmate confinement defy international standards and can be understood as gross violations of human rights. As explained by the 2013 Report, “[o]nly the newly constructed prison in Croix des Bouquets conformed to international norms and was not significantly overcrowded. Others, including the detention facilities in Cap Haitien, Fort Liberte, Gonaives, Petionville, and Port de Paix all held more than four times the maximum number of inmates.” This statistic may seem abstract, but first-hand observation offers another perspective into the underlying reality. Imagine a cell that contains more than fifty men side-by-side who are so crowded together that there is insufficient room for all of them to lie down at one time and sleeping can occur only in limited shifts. Imagine being trapped in such a cell 22-23 hours a day seven days a week. In 2012, I visited the prison in Jérémie, Haiti, where these were the conditions. As suggested by the 2013 Report, the conditions I observed in the Jérémie prison are not unique. In terms of actual meters of floor space available to each inmate, one highly respected on-the-ground grassroots organization providing legal services to inmates reports that:

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17 State Department Report, supra note 14, at 15. On the question of concerns about corruption that may be involved in the prosecution of cases, see also Meena Jagannath, Barriers to Women’s Access to Justice in Haiti, 15 CUNY L. Rev. 27, 46 (2011).

18 See State Department Report, supra note 14, at 5-6; supra note 15 and accompanying text; infra notes 23, 29 and accompanying text.

19 State Department Report, supra note 14, at 5.

20 It is not clear that adult males and male minors were necessarily housed separately. Consequently, some of the males in the cell may have been under eighteen. Conditions for women in the Jérémie Prison, while often problematic, are not necessarily as dire as those for men. Kate E. Bloch, Representation for the Accused: Haiti’s Thirst and a Role for Clinical Legal Education, 14 OREGON Rev. INT’L L.Aw 431, 434-35 (2012); see also Memorandum from Rachel Lopez, Clinical Teaching Fellow, Seton Hall Law School, on prison conditions in Jérémie and recommendations for reform to Nicole Phillips, Inst. for Justice and Democracy in Haiti (Apr. 18, 2012) (on file with the co-authors).

21 See Bloch, supra note 20, at 434-35; Memorandum from Rachel Lopez on prison conditions to Nicole Phillips, supra note 20.

22 See Bloch, supra note 20.
Inmates in the prison in Mirebalais eat, sleep and live in approximately 0.4 square meters of space (the equivalent of one-quarter of a twin bed). International standards recommend every prisoner have 5.4 square meters of living space, and in some extreme circumstances the standard may be lowered to 2.0 square meters—about four times the space available to the inmates in Mirebalais. Without adequate space, prisoners take turns sleeping at night, and many are left standing.\(^2\)

I would be hard pressed to imagine a code of legal ethics that condoned bribing a judge or a prosecutorial official. But, if a bribe were what it would take to save a client from months or years of pre-trial detention in such conditions or a “fee” were necessary to persuade a prosecutor to initiate a meritorious prosecution, and bribing were not an uncommon, perhaps even in some circumstances an expected, practice,\(^2\)\(^4\) would a lawyer be serving a client effectively to decline to offer the prosecutor or judge a bribe for a victim’s access to justice or a client’s pre-trial release?\(^2\)\(^5\)

In describing pressures that lawyers may confront in representing clients in the justice system in Haiti, one co-author has opined that “[l]awyers are like . . . professionals climbing out of an impoverished family, where at a young

\(^2\)

Extreme Prison Overcrowding and Lengthy Pre-Trial Detention Continue in Haiti Despite International Court Order, Institute For Justice and Democracy & Bureau des Avocats Internationaux, http://www.ijdh.org/extreme-prison-overcrowding-and-lengthy-pre-trial-detention-continue-in-haiti-despite-international-court-order/#.UknWUT8-d7w (“Haitian prisons consistently rank among the worst in the world. . . . The overcrowded conditions present the perfect environment for the spread of diseases such as HIV/AIDS, malaria, drug-resistant tuberculosis, and cholera. Coupled with the sweltering heat that often exceeds 100 degrees Fahrenheit, these conditions are inhumane, miserable and torturous.” (footnotes and emphasis omitted)). The State Department Report also discusses the overcrowded conditions. It notes, for example:

Prison conditions generally varied by inmate gender. Female inmates in coed prisons enjoyed proportionately more space in their cells than their male counterparts, but women at the Petionville women’s prison, like men at mixed-gender prison facilities, still occupied less than [eleven] square feet of cell space per person. Female prisoners also enjoyed a better quality of life than did their male counterparts due to their smaller numbers, which wardens suggested was a contributing factor to their ease of control. Access to water and adequate plumbing was still a problem at the women’s prison, which had no flushing toilets, and where one pit latrine served 296 inmates.

State Department Report, supra note 14, at 6. As the newly constructed prison at Croix-des-Bouquets suggests, however, there are efforts underway to improve prison conditions in Haiti. For a discussion of additional efforts and progress, see id. at 8-9.

\(^2\)\(^4\) The issue of bribery is a complex one. Many Haitian judges, prosecutors, and lawyers refuse to engage in such practices. Officials may, however, even be at risk if they refuse a bribe. See Email from Roxane Dimanche to Kate Bloch (Jan. 24, 2014) (on file with the co-authors).

\(^2\)\(^5\) For a discussion of the Bureau des Avocats Internationaux’ success in gaining release for clients without bribery, see infra text accompanying note 157.
age they [may learn] that life will consist of consecutive drowning steps [where o]ne must grab any vine available to survive[, and that h]onor is for those who can afford it."

In this light, the question of whether a code of legal ethics should govern Haitian lawyers did not appear quite so straightforward. Although many lawyers, prosecutors, and judges\textsuperscript{27} refuse to engage in bribery practices,\textsuperscript{28} under some circumstances, prohibiting the bribe might discourage the lawyer from presenting it and could prejudice the client, who, as the victim of a crime, may then be unable to access justice, or as a pre-trial detainee might be condemned to extended confinement in conditions that must violate international human rights standards.\textsuperscript{29} Upon reflection, the question of whether there should be an

\textsuperscript{26} Email from Roxane Dimanche to Kate Bloch (Jan. 11, 2014) (on file with the co-authors) (Roxane Dimanche commenting on potential challenges of law practice in the Haitian justice system.),

\textsuperscript{27} A lack of resources, which could include very low salaries for judges and prosecutors, may play a role in the corruption concerns. For commentary on the salaries of judges and prosecutors in Haiti, see Leonard L. Cavise, \textit{Post-Earthquake Legal Reform in Haiti: In On the Ground Floor}, 38 BROOK. J. INT’L L. 879, 900 (2013) ("In a country such as Haiti, . . . neither prosecutors nor judges are well paid and both are subject to corrupting influences . . .").

\textsuperscript{28} Many factors may affect whether bribery plays a role in a case. As explained by Jean Elias Xavier, these may include:

a) The client’s income so that he can afford to ask the lawyer about the opportunity for a bribe and to ask the lawyer to explore the possibility [of offering] it to the judge.

b) The ethical character of the lawyer and his professional standard as a practice and his willingness to accept [from the client [a]] substantial amount of money for his own professional fees and to make an offer to the judge for the case that will be heard or instructed.

c) The judge’s ethical standard and value to accept [and/or to cooperate with the lawyer of the party to receive the money and decide accordingly.

Email from Jean Elias Xavier to Kate Bloch (Apr. 14, 2014 17:30) (on file with the co-authors). Mr. Xavier emphasizes in his discussion of the complex issue of bribery in Haiti that

[there] are numerous lawyers and judges who have [repudiated] such practice[s] (bribe[s]). Facing a similar situation, the . . . lawyers will decline to continue defending the client[’s] case. In the same way, some judges will [m]ake the decision not to hear or instruct [on] the case. . . . [T]he reality is that it is all about choice and values. The[re] are countless lawyers who did not accept this practice and the[re] are numerous judges who are very upright in their . . . duties. The dire reality is that lawyers are most of the time[] the victims of the practice of bribes. Some other actors . . . [in] or out of the system have perceived the [need for a] bribe to release or give satisfaction to clients.

\textit{Id.}

official code of legal ethics for Haitian lawyers became more complex and it became evident that an answer required more analysis.\textsuperscript{30} In addition, it was readily apparent that such an analysis should (and arguably could) not be effectively undertaken without Haitian colleagues much more familiar with the Haitian justice system than I was. As a result, the article that follows represents a collaborative exploration of whether Haiti should adopt an official code of legal ethics.\textsuperscript{31}

Analyzing this question involves several related inquiries. The first is definitional; what qualifies as or do we understand would comprise a code of legal ethics? The second asks what prospective benefits such a code might confer. The third investigates limitations and challenges that such a code might incur. The Article concludes with an analysis of how Haiti’s new (and perhaps first) law school clinic might provide a venue for a from-the-ground-up implementation and evaluation of an official deontological code for attorneys.

II. OF WHAT WOULD AN OFFICIAL CODE OF LEGAL ETHICS CONSIST?

Existing model codes and official codes of legal ethics vary,\textsuperscript{32} although many contain similar types of provisions.\textsuperscript{33} These usually include specific

\begin{itemize}
\item The related inquiry of why there is not currently an official code of legal ethics also appears to be a complex one, which we defer to another day and perhaps to other scholars.
\item Extensive law reform efforts with respect to the Code of Criminal Procedure and the Penal Code are currently underway in Haiti.\textsuperscript{31} See Cavise, supra note 27. It may be that a confluence of proposed law reforms related to the judicial system and public discourse about them within Haiti can serve a reciprocally reinforcing purpose in enhancing the synthesis of reforms into the fabric of the Haitian justice system and public consciousness.
detail.aspx?ItemID=4766 (last visited Mar. 21, 2015) [hereinafter Vietnam Law on Lawyers]. The codes included in this comparative section are not intended to represent a formal or exhaustive survey of international codes. Rather, they are example codes that are available in English and still offer some diversity because they are drawn from different geographic regions and cultures.
\end{itemize}
or general permissions for attorneys to engage in named behavior,\textsuperscript{34} explicit or general prohibitions that limit or work to prevent certain behavior,\textsuperscript{35} some aspirational elements,\textsuperscript{36} and much room for interpretation.\textsuperscript{37} Codes

\textsuperscript{33} For example, the Uniform Rules of Professional Conduct of the General Council of the Bar of South Africa requires, under section 7.1.1, that fees be reasonable and indicates that factors such as “(a) the time and [labor] required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause; (b) the customary charges by counsel of comparable standing for similar services; and (c) the amount involved in the controversy and its importance to the client,” should be considered in determining the reasonableness of the fee. General Council of the Bar of South Africa, Uniform Rules of Prof’l Conduct R. 7.1.1, \textit{available at http://www.sabar.co.za/GCB-UniformRules-of-Ethics-updated-July2012.pdf} (last visited Mar. 21, 2015) [hereinafter Uniform Ethics Rules of South Africa].

Similarly, the U.S. Model Rule of Professional Conduct 1.5 requires that fees be reasonable and indicates that factors, including the following, should be considered:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained.

\textsc{Model Rules of Prof’l Conduct R. 1.5 (2013)}.\textsuperscript{34}

Example permissions include: In the Code of Conduct for European Lawyers, “3.1.1. A lawyer shall not handle a case for a party except on that party’s instructions. The lawyer may, however, act in a case in which he or she has been instructed by another lawyer acting for the party or where the case has been assigned to him or her by a competent body.” \textit{CCBE, supra note 32}.

Example prohibitions include: “Article 9. Lawyers are forbidden to commit the following acts: c) Disclosing information on cases, affairs or clients they have acquired in the process of professional practice, unless it is agreed by clients in writing or otherwise provided for by law.” \textit{Vietnam Law on Lawyers, supra} note 32; “[Defense] Counsel shall not: (i) contact a prospective client, his relatives or acquaintances in an attempt to solicit work from such prospective client.” Charles Jalloh, \textit{Code of Professional Conduct for Counsel with the Right of Audience Before the Special Court for Sierra Leone}, CONSOLIDATED LEGAL TEXTS FOR THE SPECIAL COURT OF SIERRA LEONE 167, 179 (2007).

\textsuperscript{36} A relatively common aspirational element of codes involves pro bono service. For instance, Article 8 of the Law on Lawyers of Vietnam reads: “The State encourages lawyers and law-practicing organizations to provide pro bono legal aid.” \textit{Vietnam Law on Lawyers, supra} note 32.

\textsuperscript{37} The need for interpretation is, in part, a function of the inability of positive law to address every single circumstance in advance and, in part, because language often possesses inherent ambiguity. The Uniform Rules of Professional Ethics of the General Council of the Bar of South Africa address the former explicitly: “[The Rules] are not intended to be exhaustive nor to cover every point that may arise in the course of [practice] of the profession of an advocate. In case of doubt as to the proper course of conduct to be followed by counsel, counsel is obliged, depending on the circumstances, to obtain either a ruling from his Bar Council or the advice of a member of his Bar Council or of a senior member of his/her Bar.” Uniform Rules of Professional Ethics, General Council of the Bar of South Africa, \textit{available at http://www.sabar.co.za/rules-of-ethics.html} (last visited Mar. 21, 2015);
may consist of standards or professional norms or they may consist of formal enforceable rules or some of each. The question of whether such a code should be implemented in Haiti has taken on particular importance in light of action by the Federation of Haitian Bar Associations. All lawyers who practice in Haiti must belong to the local Bar Association. The Federation is an organization representing those combined Bar Associations in Haiti that choose to associate together in the Federation. In 2002, the Federation adopted a code of ethics. This adoption speaks volumes about Haitian lawyers’ support for having a code of legal ethics and could provide the foundation for an official code. The Federation’s adoption of a deontological code is thus of tremendous importance, but does not imbue that code with the force of law. For Haiti to have an official code of legal ethics, the Haitian government would need to take some formal action to promulgate a code.

Our research has revealed several official Haitian documents promulgated over the previous 200 years that provide administrative regulations about the legal profession and authorize Bar Associations and/or courts to discipline attorneys. Of these, a Decree of March 29,
1979 appears controlling, as its text indicates that it supersedes all prior laws and decrees to the extent that previous enactments possess inconsistent or contradictory provisions. As the title of the March 29th Decree, “Decree of March 29, 1979, Regulating the Legal Profession,” implies, it is primarily an administrative rather than a deontological document. It governs, for example, the qualifications necessary to become an attorney. These include, among others, the requirements that the individual be Haitian, an adult, and able to enjoy his or her civil and political rights.

The Decree also details the administration of the bar association. It regulates the voting procedures for various administrative positions of the bar and the process of the stage, or apprenticeship. It prescribes specific default percentage fees for certain services and addresses a range of other administrative matters. Although the Decree also contains a limited number of provisions that delineate certain ethical obligations of Haitian attorneys, its primary focus is on the structure and administration of the legal profession. Similarly, the action of the Federation in specifically profession in Haiti. In between, for example, there is the 1881 Loi Sur L’Ordre des Avocats et Ses Conseils des Disciplines, Réimprimée aux Cayes, Imprimerie nationale, 1881 (available in the U.S. Library of Congress rare book collection and electronically) [hereinafter Law of 1881]. With respect to the status of provisions of the 1808 law and others up to the Decree of March 29, 1979, the March 29th Decree states that it repeals all laws, provisions of laws, and decrees and provisions of decrees that are contrary to the Decree of March 29th. Consequently, provisions in the Law of 1881 and others like it that contravene those of the Decree appear to have been superseded. The 1881 law indicates that it abrogates earlier laws of 1859 and 1878. The 1881 law is apparently not easy to locate, even within Haiti, as co-author Roxane Dimacone ultimately located it in the U.S. Library of Congress. Various other laws and provisions, like the Penal Code do, of course, govern attorney behavior.

See supra note 42.

DECREE OF MARCH 29, supra note 8.

Id. at Chapitre II.

Id. at Article 5.

Id. at Chapitre V.

Id. at Chapitre III, Article 33.

Id. at Article 58 (discussing fees); see generally DECREE OF MARCH 29, supra note 8, at 4 (discussing administrative matters).

These include, for example, a requirement that attorneys keep clients’ secrets confidential. Id. at Article 56; see also discussion infra notes 89-95 and accompanying text. For additional duties and obligations in the Decree, see DECREE OF MARCH 29, supra note 8, at Chapitre VI.

See DECREE OF MARCH 29, supra note 8.
adopting a Code of Professional Ethics of the Legal Profession,\textsuperscript{52} consistent with our Haitian colleague’s correction, during one co-author’s presentation to the ESCDROJ law students, indicating that Haiti does not have an official code of legal ethics, suggests that the limited provisions of earlier laws and the March 29th Decree regarding legal ethics are not understood as an official (comprehensive or perhaps adequate) code of legal ethics for Haitian lawyers.\textsuperscript{53} In the three succeeding sections, this article analyzes whether, in the wake of the action by the Federation, the government should promulgate an official deontological code for Haitian lawyers.\textsuperscript{54}

III. BENEFITS OF AN OFFICIAL CODE OF LEGAL ETHICS

In Haiti, under provisions of various existing codes and other instruments,\textsuperscript{55} the Bar Associations and court already possess the authority to discipline attorneys for misconduct.\textsuperscript{56} Consequently, promulgating an official code of legal ethics is neither a prerequisite for attorney discipline nor for redress for clients who may be victimized by attorney misconduct that is currently covered by existing laws. In the absence of an official ethics code, and in addition to navigating the requirements posed by other laws, Haitian lawyers currently might draw guidance from a variety of sources when confronted with ethical challenges, including more

\textsuperscript{52} See FBHI Code, \textit{ supra} note 40 ("The Code of Professional Ethics of the Legal Profession").

\textsuperscript{53} A call for a code of professional legal ethics also comes from lawyers in Haiti. See, e.g., Jean Miguelite Maxime, Réflexions pour une revalorisation de la profession d'avocat, \textit{Le Nouvelliste}, Aug. 24, 2007 (calling for, \textit{inter alia}, a bar code of ethics). Moreover, co-author Roxane Dimanche conducted a search for an official code of legal ethics for Haitian attorneys during the drafting of this article. Her research efforts did unearth the hard-to-locate \textit{Law of 1881} and also included consultation with the president of the local bar association. She concludes that “[i]f there is a code of ethics regulating lawyers’ conduct, it has remained mysterious and [elusive].”

\textsuperscript{54} Formal codes of legal ethics can and do develop from more informal sources. For example, the 1887 Code of Ethics of the Alabama State Bar Association, which is often credited as the first state bar association code in the U.S. and a significant influence on the ABA’s 1908 Canons of Legal Ethics, drew upon “[p]revious works [that] had expounded on legal ethics—lawyer oaths, statutory statements of duties and academic discourses.” Carol Rice Andrews, \textit{The Lasting Legacy of the 1887 Code of Ethics of the Alabama State Bar Association} 7-8 (2003) (citing \textit{inter alia} Geoffrey C. Hazard, Jr. & W. William Hodes, \textit{The Law of Lawyering} 1-18 (2003)).

\textsuperscript{55} See, e.g., Decree of March 29, \textit{ supra} note 8, at 4.

\textsuperscript{56} Chapitre V, L’Administration du Barreau, Art. 44, \textit{Decree of March 29, supra} note 8 (“Article 44- Le Conseil de Discipline a pour attributions: 3° De sanctionner les écarts et les fautes, sans prejudice aux actions possibles par devant les Tribunaux.” [The Disciplinary Board shall: Sanction gaps and mistakes, without prejudice to possible actions in Courts.]).
experienced colleagues, the Federation’s code or French or other codes. What purposes then would or could an official deontological code serve? In this Part, we examine three primary purposes for such a code, symbolic value, instrumental value, and clarifying role morality through a functional reevaluation and compilation of relevant provisions.

A. Symbolic Value

Analysts sometimes describe certain laws as having (primarily) symbolic value. Symbolic value embraces the signaling functions of law: its ability to make a statement and to express commitment to an ideology or point of view. Promulgating an official deontological code for lawyers triggers this signaling function. Haiti is a country rife with concerns about impunity and about the need to support the rule of law. In a landscape of concern about recurring corruption and abysmal prison conditions, adopting an official code communicates support for the rule of law and the role of attorneys in supporting that rule, as well as communicating appreciation for integrity in the legal process.

In recent decades, empirical researchers have focused on the value of ethical codes, particularly in the context of corporate culture and practice. In this context, researchers explain that “the mere presence of a code . . . sends a message to all employees.” With an expectation of enforcement, the code can communicate that ethical conduct is valued and encouraged and unethical conduct condemned. In advising about corporate ethics, one text divides employees’ approaches to decision making into three categories, the “good soldier,” the “loose cannon,” and the “grenade.” Under this framework, “the code legitimizes the good soldier’s behavior, teaches the loose cannons what behavior is appropriate . . . , and warns the

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59 See supra note 14 and accompanying text.
61 Adams, supra note 58, at 201.
62 Id. (citing and describing the rubrics of L. TREVINO & K. NELSON, MANAGING BUSINESS ETHICS: STRAIGHT TALK ABOUT HOW TO DO IT RIGHT (1995)).
grenades of sanctions for unethical behavior.\textsuperscript{63} In this way, the embrace of an ethical code can serve multiple functions for members with different approaches to decision-making. In a system in which there are strong countervailing pressures that favor problematic conduct, providing those attorneys who seek to abide by an ethical code (those who employ the “good soldier” approach) greater support for their approach can work to reinforce their commitment to that approach as well as supply a justification for a refusal to deviate from the rule-abiding approach. For attorneys who are unfamiliar with good ethical practice, the code can provide guidance. For those who would be inclined to consciously disregard good ethical practice, the code admonishes and signals the risk of negative consequences.

A code does not represent a cure-all or immediate solution to unethical behavior, but it can communicate a local, regional, or societal commitment to a set of values and best practices.\textsuperscript{64} A code situates the discussion of possible responses to and treatment of an ethical dilemma within a framework, one that is subject to contextual influences, but also one that values ethical conduct. At a minimum, it can frame and offer a starting point for analyzing ethical concerns in legal practice.\textsuperscript{65}

B. Instrumental Effects

A code may thus possess symbolic signaling value and provide a framework supporting ethical analysis within which to begin decision-making. Describing a law as having symbolic value can, however, also connote by omission that the law lacks genuine impact on behavior. Research, however, suggests that a law can be born symbolic and evolve to also become instrumental as it influences attitudes and effects change.\textsuperscript{66}

\textsuperscript{63} Id. at 201.

\textsuperscript{64} In an analysis of how legal ethics should be taught in South Africa, for example, Helen Kruuse acknowledges that “there should be rules (or a code of conduct) . . . Indeed, a code can and does act as an important reference point and/or guide.” Helen Kruuse, A South African Response to Ethics in Legal Education, The Ethics Project in Legal Education 102, 106 (Michael Robertson et al. eds., 2011). But, Kruuse argues, “rules do not and cannot relieve lawyers of the continuing responsibility to exercise their own judgment about the appropriate course to follow.” Id.

\textsuperscript{65} In discussing legal ethics codes in the U.S., commentators note, for example, that “efforts to streamline the professional code of ethics from moral generalizations into more specific guidelines, important as they may be, cannot stand alone. . . There is no way, furthermore, that we can ever anticipate all the ethical quandaries in which practitioners may find themselves.” N. Lee Cooper & Stephen F. Humphreys, Beyond the Rules: Lawyer Image and the Scope of Professionalism, 26 CUMB. L. REV. 923, 930 (1995-96).

\textsuperscript{66} Stuart C. Gilman, Ethics Codes and Codes of Conduct as Tools for Promoting an
Thus, symbolic and instrumental value may co-exist with one eliding into the other. For example, scholars argue that laws prohibiting hate crime in the U.S. were perceived by “many as . . . exclusively symbolic.” In the hate crime context, researchers conducting an empirical study of the reporting of hate crime explain that, contrary to the perception that hate crime laws were purely symbolic, with the establishment of law enforcement agencies’ formal policies on hate crime, “instrumental impacts of hate crime law do exist.” The study’s authors indicate that “some departments and agencies do not currently have hate crime policies that signal . . . an organizational commitment to enforcing hate crime law . . . . When policies do exist, however, they generate significant positive changes in reporting.” In this study, symbolic became instrumental, at least by the metric of reporting.

Similarly, some empirical research in the specific domain of business ethics codes also suggests that the existence of such codes can produce instrumental impacts, although other studies suggest that it produces no discernible effect. In a study involving 766 participants that compared

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Grattet, supra note 57, at 505.

Id. at 502, 518. The authors note that the instrumental impacts “are not uniform.” Id. at 518. They explain that the extent of the policy’s impact is dependent on the circumstances of the local law enforcement environment. Id.

Id. at 518.

See, e.g., Mark S. Schwartz, The Nature of the Relationship Between Corporate Codes of Ethics and Behaviour, 32 J. BUS. ETHICS 259-60 (2001) (“Although further research is necessary, the study found that actual examples of modified behavior due merely to the existence of a code of ethics exist . . . .”).

See, e.g., Margaret Anne Cleek & Sherry Lynn Leonard, Can Corporate Codes of Ethics Influence Behavior, 17 J. BUS. ETHICS 619, 627 (1998) (“[C]odes of ethics are not powerful enough tools to affect ethical-decision making behavior.”). In commenting on combating corruption in Haiti generally, one commentator noted:

What about ethics and morality? Successful leaders set a good example. They sometimes create ethics programs for employees and citizens. Codes of conduct can be useful.

Nonetheless, in the success stories I have studied, what might be called “moral reforms” are not a key to long-term success. Rather, the keys seem to revolve around systems that provide better incentives for imperfect human beings to perform in the public interest—and to avoid corruption.
perceptions of ethical behavior and culture in companies with an ethics code with perceptions in companies that lacked such a code, employees who worked in companies that had a code of ethics “gave higher ratings of company support for ethical behavior, [and] ... more frequently reported being encouraged to behave ethically . . . .” In addition, these employees “perceived fewer restrictions on their ability to behave ethically.”

Consistent with those studies in the corporate environment suggesting a positive influence, research in the academic environment analyzing cheating, for example, comparing cheating in academic institutions that have an honor code with cheating in those that do not, suggests that:

code students cheat significantly less than non-code students. It seems that as students on honor code campuses weigh their responsibilities as a member of a community that is striving to be moral against the very real pressures of the outside world, a large number are deciding in favor of the community’s standards and accepting the corresponding responsibilities.

Nonetheless, as indicated above, not all empirical studies report positive instrumental effects of codes. In a 2007 review of studies of business codes, the review authors indicate that, with respect to empirical studies, the “results are . . . mixed.” Perhaps, the most significant determinant lies in


Adams, supra note 58, at 207.

Id. at 207. The study addresses its own limitations, including, for example, non-random sampling and “unvalidated measures.” Id. at 209. See also Mark John Somers, Ethical Codes of Conduct and Organizational Context: A Study of the Relationship Between Codes of Conduct, Employee Behavior, and Organizational Values, 30 J. Bus. ETHICS 185, 194 (2001) (“[T]his study suggests that organizations that promote ethical behavior reap several important benefits including less wrongdoing and higher levels of employee commitment [but] professional codes of ethical conduct in turn appeared to play a less important role in influencing employee behavior possibly because they are not part of the organizational environment.”). For a study of ethical codes in newsrooms, see David E. Boeyink, How Effective Are Codes of Ethics? A Look at Three Newsrooms, 71 JOURNALISM QUARTERLY 895 (1994).

Donald L. McCabe, Linda Klebe Treviño & Kenneth D. Butterfield, Academic Integrity in Honor Code and Non-Honor Code Environments, 70 J. HIGHER ED. 211, 231 (1999) (internal references omitted); see also Donald L. McCabe, Linda Klebe Treviño & Kenneth D. Butterfield, Honor Codes and Other Contextual Influences on Academic Integrity: A Replication and Extension to Modified Honor Code Settings, 43 RESEARCH IN HIGHER EDUCATION 357, 368 (2002) (“[W]e found that the level of academic dishonesty is highest at colleges that do not have honor codes, is moderate at modified code institutions, and is lowest at schools with traditional honor codes.”).


Id. at 112. The article then critiques the methodology of many of the studies and
whether the company creates a culture in which the ethics code is communicated effectively and taken seriously.\textsuperscript{78} At a minimum, it is fair to conclude that measuring the impact of a business code is challenging and definitive results are difficult to achieve, but that a number of studies show marked positive instrumental effects when a company has an ethics code.\textsuperscript{79}

Still, the existence of ethics codes “does not necessarily help employees act ethically in the complex situations they face in their jobs.”\textsuperscript{80} A code may also enable individuals to simply follow an ethical admonition or guideline reflexively without deeper consideration of the appropriateness of that guideline in the current circumstances.\textsuperscript{81} Ethics codes do not represent a panacea, and research has not produced uniform results, but the research suggests that such codes may possess powerful signaling and instrumental effects.\textsuperscript{82}

For a legal ethics code to trigger positive symbolic and instrumental effects, publicity about and distribution of the code would likely need to

proposes that “measuring the effectiveness of a business code requires multiple methods and sources of data.” \textit{Id.} at 122. Similarly, a review of more recent empirical literature from 2005-2011 explains that, of five studies about the impact of codes of ethics on ethical decision-making, “three . . . found [codes of ethics] positively impact[ed] ethical decision-making . . . [But] two findings suggested the mere existence of codes of ethics were not sufficient to influence ethical behavior or ethical awareness.” \textit{Id.} at 249 (citations omitted). \textit{See also}, Kaptein, \textit{supra} note 60, at 234 (attributing the mixed findings “to the fact that the mere existence of BCEs [Business Code of Ethics] does not necessarily amount to its effectiveness”). \textit{Id.} The 2011 Kaptein study examined a variety of factors with respect to the impact of BCE’s and suggested, \textit{inter alia}, that “the embedment of BCEs by management has the greatest impact on reducing unethical behavior in the workplace of all researched factors.” \textit{Id.} at 245. In ranking other important factors from the study, Kaptein explained that “quality of communication of BCEs had a stronger relationship with unethical behavior than the content of BCEs,” \textit{id.}, and that content was of greater importance with respect to unethical behavior than was “the mere existence of BCEs.” \textit{Id.} The author emphasizes the importance of steps beyond just the “first step” of adopting a BCE in making BCEs effective. \textit{Id.} at 247.

\textsuperscript{78} Cf. Adams, \textit{supra} note 58, at 208. Jang B. Singh, \textit{Determinants of the Effectiveness of Corporate Codes of Ethics: An Empirical Study}, 101 J. BUS. ETHICS 385, 390 (2011) (“[T]he perceived intent of the code coupled with its implementation is seen as having an impact on effectiveness. Moreover, the effectiveness of the code is linked to its communication and enforcement within the organization.”).

\textsuperscript{79} \textit{See supra} notes 71, 73-74, 77 and accompanying text.

\textsuperscript{80} Adams, \textit{supra} note 58, at 202 (citing B. Toffler, \textit{MANAGERS TALK ETHICS: MAKING TOUGH CHOICES IN A COMPETITIVE BUSINESS WORLD} 202 (1991)). For an article examining ways “to improve the effectiveness of codes of ethics at changing the action chosen by decision makers from one deemed to be unethical in the code to one deemed to be ethical,” see John C. Lere & Bruce R. Gaumnitz, \textit{Changing Behavior by Improving Codes of Ethics}, 22 AM. J. BUS. 7 (2007).

\textsuperscript{81} Adams, \textit{supra} note 58, at 202.

\textsuperscript{82} \textit{See supra} note 79.
play a significant role in the process of its adoption and implementation. If such a code is promulgated, formal traditional avenues of publicity in Haiti should, of course, be pursued, including radio and print publications. Even though Internet use and access is decidedly limited in parts of Haiti, publication through a website or other Internet resources should be pursued to reach those who do use the Internet. In addition, cell phones form an essential communication scaffold. Effective avenues of dissemination might include options available through cell phones. Communication about both a possible ethics code as well as about any promulgation of such a code may be foundational to the code serving both symbolic and instrumental purposes.84

In addition to informing attorneys and influencing attorney compliance with ethical expectations, another potential instrumental effect of an official code of legal ethics might arise if significant responsibility for discipline under the code were seated with the Bar Association—as many disciplinary functions are currently.85 In a country in which the 2013 U.S. State Department Haiti Human Rights Report indicates that “[a]llegations of high level executive intimidation of judicial officials and corruption were frequent [and] MINUSTAH and international and local NGOs repeatedly criticized the government for attempting to influence judicial officials,”86 vesting more substantial formal authority in an independent bar might provide means for counteracting possible official intimidation. For example, if prosecutorial or judicial officials were pressured into pursuing an attorney whose client’s interests differed from those of government officials, the bar might be able to intercede by publicly registering its concerns and/or insisting allegations against the attorney be directed to the bar’s disciplinary processes.87

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83 According to ITU, the International Telecommunication Union, a specialized agency of the UN devoted to information and communication technology, only 10.6% of individuals in Haiti used the Internet in 2013. Percentage of Individuals Using the Internet, Haiti, available at http://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx (last visited Mar. 21, 2015).

84 Adams, supra note 58, at 207 (suggesting that awareness of ethics issues may derive from the creation of and introduction of the code to a greater extent than the mere existence of the code).

85 See Decree of March 29, supra note 8.


87 The State Department Report provides an example of Bar Association efforts to register discontent with judicial actions in a specific case. Id. at 9-10. The Report indicates:

In late July [a] newly appointed Judge . . . ordered the arrest of . . . the plaintiff in a corruption case against the wife and son of President Martelly. The judge also issued an official summons for one of his lawyers, Andre Michel . . . In late October HNP officers detained Andre Michel on obstruction of justice charges after he refused to allow his car to be searched during an evening traffic stop. Authorities held Michel
An additional instrumental effect that might result from the promulgation of an official code relates to client confidence. In a justice system riddled with concerns about corruption, formal promulgation of a code of legal ethics may also communicate reason for renewed trust by clients in their lawyers and the system.

Thus, in addition to the potential benefits of symbolic and instrumental effects for attorneys with respect to attorney awareness and compliance with an ethics code, such a code might have ancillary benefits in terms of mediating possible official intimidation and instilling renewed faith in the system for clients.

C. Compiling a Consistent Whole and Clarifying Role Morality

Provisions that govern the behavior of attorneys specifically or govern the populace generally, and that apply to attorney behavior, can be found in various existing official Haitian codes. Promulgating an official code of ethics, however, furnishes an opportunity to collect, analyze, and evaluate the relevant provisions in the context of regulating attorney behavior. For example, the Decree of March 29, 1979, which sets forth provisions on requirements to become an attorney, administrative regulations about bar associations, and other related matters, along with several specific ethics provisions on attorney behavior, explicitly addresses attorney-client confidentiality. In a single sentence, the Decree announces that maintaining confidentiality is an absolute duty. It does not, however, discuss possible exceptions or qualifications to this rule of absolute confidentiality.

for the remainder of the night and most of the next day for questioning... Michel’s detention prompted demonstrations in both Port-au-Prince and Cap Haitien. Following the incident, the Haitian Bar Association initiated a general strike to protest what they described as the judiciary’s harassment of [the plaintiff] and Andre Michel... In November, following negotiations with lawyers affiliated with Michel, [the] Judge... cancelled the subpoena against [Michel]. Michel met with [the Judge] at the Port-au-Prince Bar Association headquarters to answer his questions. As of December the State Prosecutor was relieved of his position and the strike ended.

Id. at 9-10.

89 See DECREES OF MARCH 29, supra note 8.
90 Id.
91 Id. (“Article 56.- Le secret professionnel est un devoir absolu.” [Confidentiality is an absolute duty.]).
92 Id. The Decree emphasizes the sanctity of this duty by indicating that attorneys cannot be required to give evidence of which their knowledge comes only through the exercise of their professional duties. Id. at Article 56 (“L’avocat ne peut être tenu de
Returning to the example with which this Article begins, could or should the attorney, whose client has now confessed to having murdered the victim for whose murder an innocent man awaits imminent execution, disclose that information about the client to authorities? Some might believe it immoral and unethical not to reveal. Others might interpret the trust reposing in the attorney as sacred and revealing the information as a violation of that trust.

Based on the explicit language of the Decree, violating the confidence and revealing may also violate the lawyer’s duties under the Decree. Keeping the confidence, which the language in the Decree suggests is the appropriate path, can be understood as an example of role morality, behavior specific to a role that may be viewed as immoral by a layperson but be encouraged or even required as an attorney. Although the resolution of this ethical challenge may involve following the unqualified language of the Decree and guarding the confidence, arriving at a principled resolution of the ethics conundrum could, at a minimum, benefit from discussion and guidance for such challenges in an official code of ethics.

Developing and promulgating an official code enables the drafters to tackle challenges and guide members in role morality as well as potentially to clarify role morality for the general public. Developing and promulgating an official code also encourages drafters to reevaluate the provisions scattered among codes and determine if

déposer sur les faits dont il n’a connaissance que dans l’exercice de sa profession.” [The attorney cannot be required to give evidence of which his knowledge comes only through the execution of his professional duties.].

93 See DECRE DE MARCH 29, supra note 8.


95 For an example of an attorney considering possible approaches to an attorney-client confidentiality dilemma in an open letter to his Haitian attorney colleagues, Mr. Monferrier Dorval in Le Nouvelliste suggests an example circumstance of a client in a divorce case who reveals to his attorney that the client plans to assassinate his wife to take revenge upon her. Mr. Dorval describes the attorney as caught between two obligations, the duty to maintain the secret and the duty to provide assistance to persons in danger. He proposes a method of resolution for the dilemma that comprehends the lawyer as situated within his Bar Association and enables him to seek counsel from the head of the Association and work to prevent the crime from occurring. Monferrier Dorval, supra note 40. The approach taken by the Code of the Federation of Haitian Bar Associations on the issue of attorney-client confidentiality could also be instructive. See FBH Code, supra note 40, at Chapitre IV, 4.3 (discussing exceptions to the otherwise absolute duty of confidentiality).

96 Fred C. Zacharias, Specificity in Professional Responsibility Codes: Theory, Practice, and the Paradigm of Prosecutorial Ethics, 69 NOTRE DAME L. REV. 223, 231 (1993). In commenting on legal ethics codes in the U.S., for example, Professor Fred Zacharias argues that “[a]t least part of the codes’ function is to explain the parameters of the system and attempt to identify how, when, and why a lawyer should act differently than well-intentioned laypersons might act.”
reconsideration or modifications or additions are appropriate. The process of constructing a primary source document as a repository for a deontological code for lawyers invites rethinking, efforts to harmonize potentially inconsistent provisions, as well as opportunities to furnish commentary and guidance on the application of the rules and on possible limits and qualifications to them. The reconsideration and compilation process brings both prosaic and complex issues of professional ethics to the fore, and can foster discussion among practitioners, members of the bench, laypersons, and academics. This process can also offer explicit recognition of where conflicts may lie among different authorities and which authorities take precedence (e.g., constitution, codes, decrees, etc.). It may also suggest that developing an official code of legal ethics should not occur in isolation, but rather in conjunction with review and reconsideration of the roles and responsibilities of other public officials.

Publicizing the process and the ultimate resultant code through multiple communication vehicles could enable broader and more engaged discussion of the issues involved in evaluating and formulating a code. This could be of particular importance in overcoming obstacles that often arise in trying to access and conduct research on Haitian law and practice. These dimensions of promulgating a code offer platforms to involve members of the bar, the bench, and other individuals and diverse groups in society in participating in the process of evaluating, publicizing, and codifying a set of rules or standards for attorney behavior.

97 Drafters sometimes append comments to accompany codes of legal ethics. See, e.g., Canadian Bar Association, CODE OF PROFESSIONAL CONDUCT ch. 1, cmt. 1. (2009), available at http://www.cba.org/cba/activities/pdf/codeofconduct.pdf (“Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession.”).

98 Jean Elias Xavier opines that:
[a] Code of Legal Ethic[s] should not be published in isolation without a careful evaluation and involvement of the whole system and its functionaries: clerks, ushers, judges, government commissioner[s], lawyers, authorized representative[s] or authorized agent[s] (in Haiti fondés de pouvoir). Moreover, a restructur[ing] of the curriculum of the law school will be an imperative as well as a public education in [these] legal matter[s].
Email from Jean Elias Xavier to Kate Bloch (Apr. 14, 2014) (on file with the co-authors).

99 Because many legal documents have historically not been and may still not be accessible in electronic format, conducting research about certain facets of Haitian law and practice can present substantial challenges.

100 Involving individuals outside the bar in the process of formulating a code of legal ethics can help address the concern that “[s]imply through normal processes of dissonance—reduction and acculturation—professionals may lose sensitivity to interests at odds with their own.” Deborah L. Rhode, Why the ABA Bothers: A Functional Perspective on Professional Codes, 59 TEX. L. REV. 689, 691-92 (1981) (footnote omitted).
An official deontological code for lawyers offers several potential practical benefits. They range from symbolic to instrumental value, from unearthing potential conflicts among codes and approaches to clarification, if not synthesis, and publicity as part and parcel of codification.

IV. LIMITATIONS AND CHALLENGES OF AN OFFICIAL CODE OF LEGAL ETHICS

Adopting an official code of professional ethics may produce a range of potential benefits, a number of which are described above. Such a proposed code also provokes deontological as well as practical concerns. Is it ethical (or prudent) to subject attorneys in Haiti to yet another hurdle that could block or diminish access to justice or the justice system, or extend the duration of pre-trial detention for their prospective or current clients? Is it practical to anticipate implementation in an environment where concerns about corruption abound? Here, the questions are analyzed in four contexts: 1) imposing an ethical code in an environment that may favor unethical conduct; 2) imposing an ethical code as a requirement to become or practice as an attorney; 3) the risk of a code as a retaliatory tool; and 4) the influence of situational versus dispositional factors. Part V then focuses on a proposal for a venue in which to explore responses to these questions and endeavor to implement a code from the ground up.

A. Imposing an Ethics Code in an Environment that May Favor Unethical Conduct

Scholars suggest that a code of legal ethics “prevents attorneys from replacing institutional judgment with personal judgment” but that “[s]uch a limitation is successful only if social institutions are intact and properly functioning such that institutional justice can be realized.” Operating in a context of justice system weaknesses or failures may thus encourage lawyers to apply personal judgment and defy penal prohibitions or those of an ethics code.

As noted above, individuals arrested and detained in Haiti’s prisons regularly face overcrowding so extreme that inmates must sleep in shifts because they are packed into cramped cells that literally do not have

101 See supra Part III.
103 Id.
adequate floor space for all the men to lie down on the ground.\textsuperscript{104} Haitian prisons also commonly lack adequate facilities to dispose of human waste, with, in Jérémie, for example, a bucket shared by perhaps fifty or so men at night.\textsuperscript{105} An American Bar Association Report indicates that:

in practice prisoners are routinely detained for periods from months to years (there is no bail system) before their cases are heard. Many never see a lawyer, and those who do have no right to private encounters and must meet with their attorneys in tiny, squalid cells crowded with other inmates.\textsuperscript{106}

There may be ways, however, out of extended pre-trial detention. One, although not the only, way may involve bribery.\textsuperscript{107} Attorneys in Haiti who practice in the criminal justice system often face enormous obstacles in pursuing justice for their clients. It is hard to imagine that a code of ethics would permit bribing prosecutorial or judicial officials. But without such persuasion, crime victims may be denied access to justice, and clients may remain imprisoned in dehumanizing conditions. Is it fair or just or appropriate to impose an ethics code that may install yet another obstacle to

\textsuperscript{104} See supra notes 18-23 and accompanying text.

\textsuperscript{105} See Bloch, supra note 20, at 435; Memorandum from Rachel Lopez on prison conditions to Nicole Phillips, supra note 20.

\textsuperscript{106} Section Task Force Travels to Haiti to Train Lawyers, available at http://www.americanbar.org/groups/litigation/initiatives/good_works/haiti/section_task_force_travels_to_haiti_to_train_lawyers.html (last visited Mar. 21, 2015). With respect to time spent in pre-trial detention, the State Department Report notes:

Authors must bring the detainee before a judge within 48 hours of arrest. By routinely holding prisoners in pretrial detention, authorities often failed to comply with these provisions. The [Office of Citizen Protector] OPC’s national and 12 regional offices worked on behalf of citizens to ensure that law enforcement and judicial authorities respected the right to due process. When authorities detained persons beyond the maximum allotted 48 hours, the responsibility of the OPC was to intervene on their behalf to speed up the process. The OPC did not have the resources to intervene in all cases of arbitrary detention . . . .

The judicial system rarely observed the constitutional mandate to bring detainees before a judge within 48 hours, and prolonged pretrial detention remained a serious problem. In some cases detainees spent years in detention without appearing before a judge.

State Department Report, supra note 14, at 9, 12. Interestingly, according to the Report, prison wardens estimated the time spent in pre-trial detention as substantially longer than other reports indicated. Id. at 12.

\textsuperscript{107} For a discussion of corruption concerns, see supra notes 14-17 and accompanying text. See infra note 157 and accompanying text on the success of the attorneys of the Bureau des Avocats Internationaux (BAI) to obtain pre-trial release for clients without the use of bribery.
access to justice or to liberating one’s client from conditions that must violate basic human rights? 108

Responses to this criticism, of imposing an ethics code in an environment that may, at times, support a certain Machiavellian expediency, and that may, on occasion, favor unethical conduct, proceed along several dimensions. First, bribery already constitutes a prohibited offense in Haiti. 109 The Penal Code bars the giving of bribes to public functionaries,

108 Universal Declaration of Human Rights, United Nations, available at http://www.un.org/en/documents/udhr/ (“Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”); see also supra notes 15-23 & 29 and accompanying text.


IV. DE LA CORRUPTION DES FONCTIONNAIRES PUBLICS [Of the Corruption of Public Officials]

Art. 137—Tout fonctionnaire public de l’ordre administratif, judiciaire ou militaire, tout agent ou préposé d’une administration publique qui aura agréé des offres ou promesses, ou reçu des dons ou promesses pour faire un acte de sa fonction ou de son emploi, même juste, mais non sujet à salaire, sera puni de la dégradation civique et condamné à une amende double de la valeur de la promesse agréée ou des choses reçues sans que ladite amende puisse être inférieure à cinquante piastres. [Any public administrative, judicial or military servant/official, any agent or individual assigned to a task of public administration who has consented to offers, or received gifts or promises to perform an act in the line of his/her duty or position, even if it seems fair, but not subject to remuneration, will be punished by a demotion and will have to pay a fine that is twice the value of the agreed upon promise or of the things received, but the amount of the fine may not be inferior to fifty piastres (Gourdes).]

Art. 138.—La précédente disposition est applicable à tout fonctionnaire, agent ou préposé, de la qualité ci-dessus exprimée, qui par offres ou promesses agréées, dons ou présents reçus, se sera abstenu de faire un acte qui entrait dans l’ordre de ses devoirs. [The previous provision shall apply to any public servant, agent or individual assigned to a task as defined above, who, by offers or agreed upon promises, donations or gifts received, will have abstained from performing an act that was part of his/her duties.]

Art. 140.—Quiconque aura contraint ou tenté de contraindre par voies de fait ou menaces, corrompu ou tenté de corrompre par promesses, offres, dons ou présents, un fonctionnaire agent ou préposé, de la qualité exprimée en l’article 137, pour obtenir, soit une opinion favorable, soit des procès-verbaux, états, certificats, ou estimations contraires à la vérité, soit des places, emplois, adjudications, entreprises ou autres bénéfices quelconques, soit enfin tout autre acte du ministère du fonctionnaire, agent ou préposé, sera puni d’un emprisonnement d’un an à trois ans. [Whoever coerced or attempted to coerce by violence or threats, corrupted or attempted to corrupt by promises, offers, gifts or presents, a public servant, agent or individual assigned to a task, as defined and expressed in Article 137, to obtain a favorable opinion whether from minutes, statements, certificates, or untruthful estimates or whether positions,
including prosecutorial and judicial officials. Under Haitian Penal Code Article 140, engaging in this type of corruption warrants from one to three years imprisonment. Consequently, the behavior of attorneys who engage in bribery, as defined by the Penal Code, already constitutes a serious crime. While including such a prohibition in a code of ethics might interpose an additional element of dissuasion from bribing a judicial official, it does not constitute a new prohibition. One might contend that the institution of an official code of conduct that prohibits bribery would place an attorney’s privilege to practice law at risk, but it is hard to imagine that this risk does not already inhere in committing the crime of bribery under the Penal Code. Courts in Haiti already have jurisdiction to punish attorneys for violations of existing legal codes, including the Penal Code, just as the courts do for other citizens of Haiti.

Second, beyond the fact that bribery is already a crime, condoning unethical and, in the example given, criminal conduct by a lawyer contradicts a genuine and impassioned desire for the effective rule of law in Haiti. While it is possible that adding a code with provisions that duplicate existing (and perhaps un- or under-enforced) provisions of the Penal or other codes would cause the ethics code to become an object of derision, practicing in a legal environment where corruption may be commonplace has not undermined a desire for effective rule of law in Haiti, as evidenced, for example, by the adoption of the Federation of Haitian Bar Associations’ code of legal ethics. Currently, to become eligible for an apprenticeship in law, a “stage,” of which successful completion may allow an individual to join the bar association and practice, law school graduates swear an oath. They promise, in the exercise of their profession, to observe the principles of dignity and honor that must characterize the conduct of a member of the order of lawyers. This promise embodies a consistent refrain in Haiti, a
deep hope that honor and the rule of law will prevail. \textsuperscript{115} With respect to that hope, Dr. Jomanas Eustache, Dean of ESCDROJ, opines:

I would like to highlight the urgency of the situation and the need for all interested sectors and individuals to act swiftly, legally, and with firmness to ensure and strengthen the basis of the rule of law and the judicial system in Haiti. The result would be the demolition of the foundations of impunity in Haiti. \textsuperscript{116}

Imposing an ethical code that advocates integrity and a consequent support for the rule of law responds to this urgent hope by anchoring the code in the passion of those who seek to build in Haiti a society governed by the rule of law. Even if the code begins as a symbol, it can serve as a powerful testament to a commitment to a justice system based on ethical professional interactions.

Third, beyond its symbolic value, naming the conduct as part of a formal code of legal ethics might serve, with adequate emphasis and support over time, to help adjust common practices. To the extent that the publicity and debate surrounding implementation of a code work to encourage a different set of customary practices and support all those prosecutorial and judicial officials and attorneys who currently refuse to engage in bribery practices, inclusion of a prohibition on bribery may decrease the acceptance of such a practice. \textsuperscript{117} Although, at this time, in an individual case, a better outcome (for the client and perhaps for the attorney, assuming she doesn’t get prosecuted for bribery) might be achieved by bribery to initiate prosecution or liberate the client from pre-trial detention conditions, over time, if attorneys regularly follow the prohibition, perhaps officials would come not to expect or feel pressured to accept bribes and would be in a position to focus greater attention on all the cases on their dockets generally, rather than preferential attention toward those few clients who have or can get the resources to hire an attorney and pay a bribe. Perhaps a movement away from bribery would spur (renewed) consideration of a bail system or an own recognizance release system\textsuperscript{118} or other legal means to consider pre-

\textsuperscript{115} See Eustache, \textit{supra} note 16, at 602.

\textsuperscript{116} Id.

\textsuperscript{117} In 2013, Haiti also established a High Council of the Judiciary whose work may over time come to have a significant positive influence on reform in the judiciary. \textit{ANNUAL REPORT 2013: THE STATE OF THE WORLD’S HUMAN RIGHTS, HAITI, AMNESTY INTERNATIONAL}, https://www.amnesty.org/en/region/haiti/report-2013 (“In July, the High Council of the Judiciary was finally established. However, its functioning was hampered by internal divisions which resulted in the temporary withdrawal of two members, including the representative for the human rights sector. The Council is a key institution for the reform and independence of the justice system.”).

\textsuperscript{118} Release on bail or on a defendant’s own recognizance are approaches commonly used
One may also envision an official code of legal ethics as but one of a series of measures or changes that encourage support for professional ethical integrity and the rule of law.

B. Imposing an Ethical Code and Its Impact on Admission to the Practice of Law

Prospective attorneys in Haiti currently face significant challenges to becoming lawyers and entering the practice of law. Law school entails a four-year undergraduate degree program. While costs vary, in a country in which poverty is the norm, having the time to attend law school and pay tuition represent substantial barriers to successful completion of a law degree. Even if candidates successfully complete the classroom component necessary for a law degree, this turns out to be but an early challenge to entering practice. Following graduation, a candidate for legal practice must complete and defend a memoir, a substantial and demanding piece of writing. Resources for the research, writing, and editing of the memoir must generally be supplied by the candidate as that process does not commonly constitute part of the law school curriculum. In addition, lawyers must complete a “stage” or apprenticeship of one to two years in a government or private law office. Supplementing the cost and time requirements of law school, these additional demands mean that few in U.S. jurisdictions to enable pretrial release of a defendant from custody prior to trial and which offer some financial or other assurance of the defendant’s likely appearance at future court proceedings. See, e.g., Cal. Penal Code §§ 1269b, 1270, 1273 (West 2013).

“The criminal procedure code does not afford a functional bail system.” State Department Report, supra note 14, at 11.

For a discussion of the course of study for a bachelor’s in law program in Haiti, see Licence en Sciences Juridiques, Université Quisqueya, available at http://www.university-directory.eu/jredirect/304823/Bachelors+Degrees+in+Haiti/program-courses/Bachelor-degrees/110/Universit%C3%A9+Quisqueya+HT/12675/Licence+en+Sciences+Juridiques/#.VErpVhZ5H6M (last visited Mar. 21, 2015).

See CIA WORLD FACTBOOK, supra note 12.

Blaine Bookey, Enforcing the Right to be Free From Sexual Violence and the Role of Lawyers in Post-Earthquake Haiti, 14 CUNY. L. REV. 255, 274 (2011) (“The vast majority of Haitian law school graduates never become lawyers because they fail to complete the required memoir (thesis) and stage (apprenticeship) required for admission to the bar. Students of modest means, those most likely to work on behalf of the poor, find it particularly difficult to overcome these hurdles.”).


Id.
candidates succeed in becoming members of the bar. One international human rights attorney acquainted with the law school system and process of admission to the bar in Haiti estimated that, in 2000, in a country of almost seven million people at the time, \(^{125}\) “fewer than twenty lawyers per year are admitted to practice.”\(^ {126}\)

What role, then, might the imposition of an official deontological code play in the likelihood that candidates succeed in entering legal practice? Would such a code pose an extra obstacle to admission? The answer to this question depends upon the expectations associated with the promulgation of the code. In some jurisdictions, admission to the practice of law requires passing an examination that tests awareness and understanding of a legal ethics code.\(^ {127}\) Failure to pass the examination prevents admission.\(^ {128}\) If the promulgation of an official code in Haiti arrives with this expectation, the requirement of success in another testing situation would make it reasonably likely that promulgation of an ethics code will further decrease the number, or delay the admission, of candidates who enter law practice in Haiti. Pre-admission proof of understanding of the ethics code embodies a messaging function and would involve a value judgment implying that a basic understanding of legal ethics is a necessary component in demonstrating one’s ability to practice law professionally. With such a requirement, presumably law school curricula would adjust to provide training in the new ethics code.\(^ {129}\) But even with training, if the Haitian

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\(^{126}\) Concannon, Jr., supra note 123, at 212.

\(^{127}\) For example, most jurisdictions in the U.S. require applicants to pass the Multistate Professional Responsibility Examination (MPRE). Jurisdiction Information, The Multistate Professional Responsibility Examination, http://www.ncbex.org/about-ncbe-exams/mpre/ (last visited Mar. 21, 2015) (“The MPRE is required for admission to the bars of all but three U.S. jurisdictions (Maryland, Wisconsin, and Puerto Rico). . . . Passing scores are established by each jurisdiction.”).

\(^{128}\) See, e.g., California, Multistate Professional Responsibility Examination, California State Bar, http://admissions.calbar.ca.gov/Examinations/MultistateProfessionalResponsibilityExamination.aspx (last visited Mar. 21, 2015) (“In addition to passing the California Bar Examination, applicants for admission to practice law in California must take and pass the Multistate Professional Responsibility Examination (MPRE) in accordance with Title 4, Division 1, Chapter 5 of the Rules of the State Bar of California (Admissions Rules).”).

\(^{129}\) Scholarship on moral reasoning suggests that careful attention to the approaches used to teach ethics is critical to the likely success of affecting students’ moral development. Neil Hamilton & Verna Monson, Answering the Skeptics on Fostering Ethical Professional
experience resembles that of the U.S., some aspiring attorneys are still likely (at least initially) to fail the ethics test. Whether or to what extent that cohort would overlap with the small group of law school graduates who otherwise find the resources and fulfill the requirements for admission to the bar is not clear.

In addition to training as part of a law school curriculum, but instead of a pre-admission requirement, review of a new legal ethics code could form part of post-admission continuing legal education (CLE) training. Using this approach would mean that demonstrating understanding of the new ethics code would not require overcoming a pre-admission hurdle of passing a test on the new code separate from whatever curricular requirements the law school imposed. It does, however, anticipate implementation of post-admission CLE training demands. Presumably, post-admission training on the new ethics code could also be appropriate for attorneys already in practice, and, under this CLE approach, new attorneys could join that training.

Educating lawyers and aspiring lawyers about a new legal ethics code involves choosing an option that meets the goals of signaling the importance of ethical practice and assisting those involved in the justice system to succeed in their admission to the bar and to engage in ethical practice.

C. Risk of a Code as an Obstructive or Retaliatory Tool

Another potential drawback to implementation of an official code of ethics lies in the risk that such a code could be wielded as an obstructive or retaliatory weapon. This risk probably increases with official provisions

Formation (Professionalism), 20 No.4 Prof. Law. 3, 5 (2011) (“There is no empirical evidence that standard, rules-oriented or doctrinal courses on ethics, jurisprudence, or philosophy have an impact on a student’s moral reasoning or moral motivation and identity. There is a growing body of empirical evidence finding that educational engagements on moral issues that promote feedback on a student’s ideas and conduct, self-assessment, and reflection can help foster a student’s moral reasoning and internalization of moral motivation and identity.” (footnote omitted)).

Statistics on the Multistate Professional Responsibility Exam (MPRE) scores required to pass in each of the jurisdictions that employs the MPRE and the percentage of exam takers who achieved various scores are available from the National Conference of Bar Examiners. See Bar Examination and Admission Statistics—2013 Statistics, Nat’l Conf. Bar Exam’r, 34-37, available at http://www.nexbex.org/assets/media_files/Bar-Examiner/articles/830114statistics.pdf (last visited Mar. 21, 2015). These statistics indicate the percentage of test takers who achieve various scores. When compared to the lowest accepted score in any jurisdiction, as indicated on the site, it is apparent that a percentage of test takers fail, on a given administration of the test, to meet the minimum passing score of any jurisdiction.

See Email from Geoffrey C. Hazard, supra note 9.
that embody enforceable rules rather than informative standards or norms. The concern here is that rather than serving as a guide or incentive to encourage ethical behavior, an official code of ethics might serve as an accusatory tool employed by an attorney for one side or for both in a proceeding to try to sideline or shift the focus of the proceeding or distract opposing counsel. Interestingly, one scholar has argued that “[j]ust as legal ethics does not occupy a privileged position in the curricula of foreign [non-U.S.] law schools, neither does it occupy a privileged position in the litigation of disputes in foreign [non-U.S.] courts.” To what extent perceptions of the role of legal ethics, and its use as an accusatory tool, might change with an increased emphasis on legal ethics in the law school curriculum or continuing legal education setting remains to be seen. If increased emphasis on legal ethics corresponds with inappropriate use of the code as a dilatory, obstructive, or retaliatory weapon, attention will need to focus on approaches that limit misuse.

D. The Influence of Situational Versus Dispositional Factors

The Federation of Haitian Bar Associations’ adoption of a legal ethics code suggests substantial support for the concept of having a formal code. It also implies that many lawyers already are acting, or wish to be able to act, consistently with the demands of such a code. Nonetheless, actually promulgating an official code adds challenges. Even if promulgated, getting the code to infuse the daily actions of lawyers who may not be complying with, or even aware of, those demands multiplies the challenges. Bridging aspirations of what a code might bring to law practice to the daily individualized implementation of its provisions will almost certainly require measures beyond those involved in the promulgation of the code itself. In choosing to promulgate an official code, it would be valuable to avoid having the code serve as only a paper code that, from lack of successful implementation, incurs derision and increases cynicism about the likelihood of positive professional deontological conduct.

132 Mary C. Daly, The Dichotomy Between Standards and Rules: A New Way of Understanding the Differences in Perceptions of Lawyer Codes of Conduct by U.S. and Foreign Lawyers, 32 Vand. J. Transnat’l L. 1117 (1999). Professor Daly argues that “[f]or better or for worse, lawyers in the United States routinely invoke the rules of professional responsibility in myriads of state and federal court cases.” Id.

133 Vital links in this bridge could include attention to the code in the law school curriculum, continuing education post-admission, and regular reminders about the applicability/content of the code.

134 Adoption of a code without proper implementation may risk such derision and perhaps even an increase in ethically problematic behavior. Cf. Kaptein, supra note 60, at 247 (discussing risks of adopting a business ethics code without proper implementation).
Research on human behavior and the effect of situational versus dispositional characteristics may also inform the question of encouraging successful implementation of a code. Situational factors and pressures inherent in circumstances in which a person finds herself can override a dispositional inclination towards ethical behavior.\(^{135}\) The Stanford Prison Experiment furnishes an extreme example of the influence of situational circumstances on human behavior, at least in the U.S.\(^{136}\) In the experiment, Professor Zimbardo randomly assigned consenting college students to play the role of either a prison guard or a prison inmate.\(^{137}\) Participating students all underwent psychological testing to qualify to engage in the experiment.\(^{138}\) The evaluators only permitted students who responded “normally” on the testing to participate.\(^{139}\) All students knew that the experiment consisted of a simulation prison experience.\(^{140}\) The mock prison was housed in the basement of the Stanford Psychology Department and the experiment was designed to last two weeks.\(^{141}\) Professor Zimbardo explains, however, that the experiment had to be terminated after six days because “[i]n only a few days, [some of] our guards became sadistic and our prisoners became depressed and showed signs of extreme stress.”\(^{142}\) Being placed into a role and playing that role for six days appear to have driven a number of these ordinary college students into sometimes frightening and ethically problematic behavior.\(^{143}\) The prison experiment, as well as other research on the effects of situational cues, strongly suggests that, at least in some circumstances, situational cues and expectations can trump good judgment and dispositionally expected behavior.\(^{144}\)


\(^{136}\) Id.


\(^{138}\) Id.

\(^{139}\) Id.

\(^{140}\) Id.


\(^{142}\) Id. Only a subset of the guards apparently became sadistic. Philip G. Zimbardo, An End to the Experiment, STANFORD PRISON EXPERIMENT, http://www.prisonexp.org/psychology/37 (last visited Mar. 21, 2015). Many, if not most, of the prisoners, however, suffered significant stress. Id.


\(^{144}\) The importance of situational cues also finds support, inter alia, in the famous experiments on obedience to authority conducted by Stanley Milgram. Saul McLeod, The
importance of situational factors in influencing human behavior implies that successful implementation of a code of legal ethics may benefit from, and perhaps depend upon, creating an environment in which ethical conduct is the expected norm and conduct consistent with that norm is supported and encouraged.\textsuperscript{145}

In a justice system fraught with deficiencies ranging from extremely limited resources to pervasive concerns about corruption,\textsuperscript{146} successfully infusing the responsibilities of a new legal ethics code into daily attorney interactions may require some cultural change. Creating an environment that emphasizes and supports ethical conduct within the paradigm of a new ethical code may result or at least benefit from sustained and conscientious focus on implementation and support for situational cues that encourage ethical responses.

V. NEW LAW SCHOOL CLINIC AS A VENUE FOR IMPLEMENTATION OF A CODE OF LEGAL ETHICS

The launch of what may be Haiti’s first law school clinic (“the Clinic”), Groupe de Recherche, d’Analyse et d’Assistance Légale de ESCDROJ, GRAALE,\textsuperscript{147} will present a venue for sustained and from-the-ground-up training and focus on ethics in the legal landscape. With a February 2014 United Nations’ donation of three shipping containers and actual ground breaking in March 2014,\textsuperscript{148} the law school in Jérémie, Haiti, ESCDROJ, is in the process of constructing a dedicated home for its anticipated new legal aid clinic. ESCDROJ, as an academic institution, commits itself to building

\textsuperscript{145} The idea that change in systems and support for that change may be necessary to successfully address ethics challenges seems consistent with the observations of Robert Klitgaard about addressing corruption concerns more generally in Haiti. See Klitgaard, supra note 72.

\textsuperscript{146} See supra Part I.

\textsuperscript{147} See CUA-Haiti Initiatives, THE CATHOLIC UNIVERSITY OF AMERICA, available at http://1sji.law.edu/AboutCHI.cfm (last visited Mar. 21, 2015) (“ESCDROJ proposes to establish Groupe de Recherche, d’Analyse et d’Assistance Légale, a law school affiliated Criminal Justice Clinic, to serve the Jérémie and Rosseaux regions of Haiti. The Clinic will serve as a model legal clinic that can be emulated by the other nine law schools in Haiti to greatly increase access to high quality legal representation for the indigent accused.”).

\textsuperscript{148} The United Nations mission in Haiti is known as MINUSTAH (United Nations Stabilization Mission in Haiti). The Clinic has also benefitted from the effort, generosity, and support of many volunteers.
“a society where the rule of law can be enforced”149 and to preparing students “to become servants of law and justice.”150 In training students to practice law with an emphasis on social justice and upholding the rule of law, it offers an excellent forum for nurturing ethical practice from the early phases of a student’s formal introduction to, and formation of, professional role identity. Graduates of ESCDROJ regularly serve as integral employees of the justice system in the Grand’Anse Department, one of the ten departments in Haiti and the one in which ESCDROJ is located, including as “prosecutors, judges, and lawyers . . . police officers and public officials”151 as well as serving as law faculty.152 For many Haitian students at ESCDROJ, law school offers an early, if not initial, substantive understanding of their identity as an attorney. Studying and applying a code of legal ethics in the Clinic could serve as a catalyst to enhance students’ sense of professional integrity and commitment to ethical practice. With this foundation, the GRAALE Clinic could supply a venue in which students observe and participate in shaping the culture of local legal ethical norms.

Three key elements animate GRAALE. First, in response to the dire conditions of the Jérémie prison and the desperate need for legal representation for detained inmates there, GRAALE aims to serve as a legal aid clinic, furnishing free legal defense services for indigent detained inmates.153 Second, GRAALE aims to supply free legal counsel to victims of sexual assault crimes.154 Haiti operates in a civil law system in which attorneys for crime victims can participate in the criminal trial and victims can receive monetary compensation from a convicted defendant as a result

149 About ESCDROJ, L’ÉCOLE SUPÉRIEURE CATHOLIQUE DE DROIT DE JÉRÉMIE, http://escdroj.org/About.html (last visited Mar. 21, 2015) (“ESCDROJ was created to help build a society where the rule of law can be enforced, where justice may flourish, and where peace may be enjoyed. We envisioned our law school as a place for those who want to become servants of law and justice, regardless of religion, gender, social, economic or political backgrounds.”).

150 Id.

151 Id. (“Some graduates have become prosecutors, judges and lawyers. Others work as police officers and public officials to protect citizens’ rights and to uphold the laws. Still others work through the electoral commission to ensure democracy. Most important, however, are teachers and professors who educate future generations about their rights and responsibilities as citizens under the law.”).

152 Id.

153 It is worth noting that the Law of 1881, supra note 42, required those attorneys-in-training who were engaged in their “stage” or apprenticeship to accept representation of indigent persons accused of a crime and empowered the bar to lengthen a stage when an apprentice refused an assignment to represent an indigent accused. See id at Article 39.

154 To reduce the likelihood of conflicts of interest, the Clinic plans not to represent inmates charged with sexual assault offenses.
of the criminal trial process. 155 Third, GRAALE plans to offer community mediation services to prevent cases from becoming mired in criminal justice or other court proceedings. In each of these roles, GRAALE faculty and students would have the opportunity to apply a code of legal ethics.

A commitment to ethical practice already infuses the GRAALE ideology. For example, in an early conversation with one of the founding directors, Georges-Gabrielle Paul, we explored the fundamental components of the Clinic. Ms. Paul made clear that a critical component would be developing a code of legal ethics for Clinic participants. When asked what the code should contain, the first item she enumerated was a prohibition on the offering or receiving of bribes. In combination with a range of other topics important to legal ethics, Ms. Paul envisioned ethical instruction and implementation permeating the culture of the legal aid clinic. The Clinic, with its commitment to ethical practice, furnishes an outstanding forum in which to implement ethical practice from the ground up. Through the Clinic, ESCDROJ students should be able to observe and experience the application of an ethical code from the start of their professional exposure to legal practice. These students can benefit from the opportunity to have deontological theory and practice infuse their educational environment. 156 They should have role models focused on demonstrating ethical practice in real cases. As a result, GRAALE could serve as a laboratory for the implementation of a code of legal ethics in Haiti.

This approach offers promise but will likely encounter challenges. For example, at the early stages, as GRAALE students interact with justice system participants, for whom the code would be new and perhaps not yet thoroughly integrated into their professional approach, impediments to fully realizing the goal of effective ethical practice may remain. For instance, if non-GRAALE attorneys were to engage or attempt to engage in monetary persuasion of judicial or prosecutorial officials and GRAALE attorneys and


156 Some informal research at Duke University suggests that being reminded of ethics rules at the time one may be inclined to disregard them may have some impact on increasing compliance with the rules. Louis Lavelle, Duke’s Cheating Problem, Bloomberg Business Week, Aug. 12, 2011, available at http://www.businessweek.com/bschools/blogs/mba_admissions/archives/2011/08/dukes_cheating_problem.html (last visited Mar. 21, 2015).
students did not, GRAALE students might find that their ethical focus initially reduced their effectiveness in certain facets of representation, and clients might be disappointed with GRAALE student representation.

A well-respected legal organization in Haiti has, however, been successful in obtaining the pre-trial release of clients without resort to bribery.¹⁵⁷ For the Bureau des Avocats Internationaux (“BAI”), bribery is not an acceptable protocol,¹⁵⁸ and yet, through creative advocacy strategies, BAI has obtained the release of several clients, even in jurisdictions where there may be concerns about corruption.¹⁵⁹ Consequently, with diligent pursuit of a case and of all available ethical avenues of release, the hope is that GRAALE will be able to emulate the successes of BAI, in obtaining pre-trial release of clients, as well as encourage an expanding emphasis on ethical practice.

The confluence of encouraging factors in the Jérémie community, namely the predominance of a single law school dedicated to upholding the rule of law whose graduates regularly assume positions of power in the justice system and the anticipated launch of the GRAALE Clinic, may offer a remarkable opportunity to imbue cultural change in the legal landscape. Students can learn and apply ethical frameworks in their student days and carry those through the Clinic along their professional trajectories on a continuum into their post-law school careers in the justice system and community. Here is a chance to further nurture the culture of legal practice in the Grand’Anse Department of Haiti to underscore integrity and the rule of law.

VI. CONCLUSION

Haiti lacks an official code of legal ethics. Although adopting such a code poses challenges, the above analysis suggests that if Haiti were to adopt an official code of legal ethics, the substantial potential benefits might indeed outweigh the drawbacks. Situational factors often influence human behavior. As a result, implementing the code in an environment conducive to support for ethical practice may increase the probability of success in infusing the approaches of the code into the daily interactions of

¹⁵⁷ Email from Blaine Bookey, Associate Director/Staff Attorney, Center for Gender and Refugee Studies, University of California, Hastings College of the Law, and former legal intern with BAI, to Kate Bloch (Dec. 17, 2013) (on file with co-authors) (“BAI has had a successful defense program for years and BAI, even without a code, has a strict prohibition for its attorneys against accepting bribes. . . . It has been successful in gaining the release for several clients without paying bribes . . . by engaging in creative strategies . . . .”).
¹⁵⁸ See Jagannath, supra note 17, at 46.
¹⁵⁹ Bookey, supra note 157.
legal practitioners. The ESCDROJ GRAALE Clinic, with its emphasis on social justice and ethical practice, could provide an excellent venue in which to nurture success in the implementation of an official deontological code for Haitian attorneys.