

The Integration of Law and Ethics

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INTRODUCTION

The business school curriculum faces a crisis. "There has never been a more crucial time to emphasize law in a business curriculum."¹ Corporate scandals have highlighted the need for greater understanding and application of law as well as ethics on the part of business school graduates. During the last three decades, most business schools have reduced, marginalized or eliminated business law and business law faculty as other disciplines grew in stature and popularity.² Ethics in the curriculum has suffered an even greater loss. Today, approximately two out of three schools accredited by the Association to Advance Collegiate Schools of Business (AACSB) do not require a stand alone ethics course.³ As curriculum committees have attempted restructuring requirements, not only have law and ethics been marginalized, the two subjects have been treated as trade-offs. Immediately after the outbreak of the scandals at Enron, WorldCom and Adelphia, business schools received some much deserved criticism. However, as will be pointed out later, the AACSB has failed to adjust accrediting standards.

In this paper, a different approach to delivering law and ethics will be explained as well as demonstrating a more in depth understanding of the application of the subject matter by current business school students. "We sometimes assume that a person's values are formed during childhood and do not change after that. In fact, a great deal of psychological research, as well as one's own personal experiences, demonstrate that as people mature, their values change in very deep and profound ways."⁴ The experiences that will be explained, based on student assessments, find that students do change their views and thus their understanding and attitudes as explained in this paper and the companion article entitled "The Psychological Foundation for an Integrated Course in Law and Ethics" by Dr. Richard J. McGowan.

The College of Business Administration of Butler University is accredited by the AACSB. However, Butler is in the minority of AACSB accredited schools requiring a stand alone ethics course. As explained, only one-third of the AACSB schools require an ethics course; this percentage has remained constant since 1988.⁵ Butler has gone one step farther in that we teach such an ethics course fully integrated with the legal environment of business course. This takes place in the sophomore year and we find the students even better prepared for their upper level work than when these two courses were taught as the standard three credit stand alone courses.

In this paper, the integration pedagogy aspects will be covered as well as the legal concepts used to deliver the course. The students' understanding of the contents from both disciplines will be demonstrated by citations from student prepared comments presented in November 2004 to the Tri-State Academy of Legal Studies in Business. Dr. McGowan and this writer team teach the subject course. This course has been taught in multiple sections as a pilot over four semesters by these two full-time faculty members as well as by another full-time faculty member who has been assisted by adjunct faculty. The course has now been approved by the University as a required course of all undergraduate business students replacing the two stand alone courses which were previously required.

Pre-law students from other colleges of the University have elected to take this course based on its reputation among the student body. These pre-law students tend to be quite successful otherwise, but who are willing to put forth added effort simply because they are serious students eager to learn.

Each class begins with an open discussion of current events and things that have happened in the students' lives having relevance to the course. The students become quite engaged during this dialogue and the relevance to law and ethics are openly and freely discussed. One of the central themes of the course is that there is a right and wrong. Many times someone in the news will have simply gotten by on a legal technicality and the discussion focuses on the fact that this does not make that person's conduct right. Usually, the discussion that follows turns to one of the central themes of the course which is that in the long run, the public's perception of what is ethical drives our laws. Even though the course meets four days per week for 75 minutes, faculty still get pressed for time insofar as course content is concerned. The students would rather have to do additional study outside of class than for this discussion and dialogue period to be limited. Colleagues who hear about this from the students marvel at how this can happen. Also, students from prior semesters who are not in class at our class times, have asked to sit in on these beginning of class dialogues. Such requests have to be refused because of the negative impact this would have on the dynamics of the current class.

The semester begins with three common law cases all of which deal with common law precedent that shocked the conscience of the court from an ethical point of view. The first such case deals with the common law based on rugged individualism whereby persons are only responsible for what was done and not for what was not done. This first case, *Soldano v. O'Daniels*,⁶ was heard by the California Court of Appeals who found no specific case on point and ruled in favor of the plaintiff; that court overturned the trial courts granting of summary judgment for the defendant with instructions that a party could be found negligent if his/her inaction resulted in impeding a good samaritan and remanded the case back to the trial court. In this case, a patron of one facility was

1 Prentice, Robert, "An Ethics Lesson for Business Schools," *The New York Times* (August 20, 2002); Section A; column 2; Editorial Desk; Pg 19

2 Ibid

3 Derocher, R. J., "Knowing right from Wrong" *Insight Online* (January/February, 2004); Willen, L., "Kellogg Denies Guilt as Business Schools evade alumni lapses," *Bloomberg* (March 8, 2004)

4 Velasquez, Manuel G., *Business Ethics, Concepts and Cases*, Pg 27; Fifth Edition; Prentice Hall; 2002

5 Stewart C., "A Question of Ethics: How to Teach Them?"; *The New York Times* (March 21, 2004)

6 141, Cal. App. 3d 443, 190 Cal. Rptr. 310, 1983, Cal. App. LEXIS 1539 (1983)

being threatened with death by a second patron. A third patron (termed the good samaritan in the case) went across the street to another bar seeking a call to the police. The bartender refused to make the call or to let the good samaritan use the telephone. The threat was carried out and the heir of the murder victim sued the bartender and his employer. The trial court found for the latter and this shocked the conscience of the Appeals Court.

The second case, *Edwards v. Clinton Valley Center*,⁷ was before the Michigan Court of Appeals whose conscience was similarly shocked but that court could not overturn existing common law due to there being a Michigan Supreme Court case on point granting sovereign immunity to state operated facilities such as Clinton Valley. The judge in dicta expressed displeasure and challenged the Supreme Court of Michigan to overturn prior common law or for the legislature to deal with the issue statutorily. This result allows for the explanation of the operation of *stare decisis* but also introduces how non-constitutional issues are dealt with through the legislative process. In this case, a former mental patient of Clinton Valley stated that she was going to kill someone. The Pontiac Michigan police took her to Clinton Valley, a state run hospital and she was refused admission. The former patient threatened a second time with the same result and thereafter the threat was carried out. The victim's spouse sued the hospital who denied liability under sovereign immunity.

The third case, *Flagiello v. Pennsylvania Hospital*,⁸ was a Pennsylvania Supreme Court case which overruled existing common law which years before had been established by the same court. Again, the conscience of the court was shaken and the court overturned prior precedent. The judge used in excess of 20 rationales and cited numerous cases from other jurisdictions in delivering the majority opinion. In this case, the victim, hospitalized for an unrelated illness, had been injured in the hospital by the alleged negligence of the hospital employees. The hospital, which was operated by a charity, simply moved for summary judgment based on charitable immunity without answering the negligence charge. Naturally, the trial court had granted summary judgment. This is the concluding case in this series which introduced common law, how it gets changed, and how underlying ethical concepts were the driving force in this process.

After a period of time of approximately two weeks when ethics principles are introduced by the ethics professor, the course returns to the legal evolution of the law governing the responsibility of the bystander. The law textbook⁹ has a strong section which takes the student from the old English rule, based on rugged individualism to modern day responsibilities. The concept is introduced by *Union Pacific Railway Co v. Coppier*,¹⁰ a 1903 Kansas case, which found no responsibility of the bystanders who stood by and watched a man die. The man had been injured in a train accident through no fault of the railroad but no emergency assistance had been tendered. The next case in the sequence is an Iowa 1921 case in which an employer did next to nothing when his hired hand in a farm field fainted from sunstroke and remained unconscious. The employer hauled him to a nearby wagon and left him still exposed to the sun. The Iowa court recognized a special relationship of the employer to the employee and held that when "a servant suffers serious injury, or is suddenly stricken down in a manner indicating the immediate and emergent need of aid to save him from death or serious harm,

the master, if present is duty bound to take such measures as may be practicable to relieve him, even though such master be not chargeable with fault in bringing about the emergency."¹¹

These cases lead to a discussion of special relationships and what that means in today's society. This discussion is a joint discussion of the ethics faculty member, the law faculty member and the students. This discussion brings students to find special relationships from their own lives which represent both ethical concepts of care as well as legal duties that could result. This has turned into a creative thinking exercise in each of the classes that have been taught. In every class, several students will have worked as a lifeguard, camp counselor or other related special relationship situations. This process establishes an anchor point for the instructors to refer back while progressing to other law and ethics topics.

The pedagogy of the delivery of the course then returns to the slow evolution of the legal responsibility as society has progressed farther away from the rugged individualism concept. The Soldano case is revisited since the court found an exception to this basic concept in ruling that one can be culpable when impeding the efforts of a good samaritan. We next take up the Tarasoff case¹² where, in the words of the court, "a therapist does in fact determine, or under applicable professional standards reasonably should have determined, that a patient poses a serious danger of violence to others, he bears a duty to exercise reasonable care to protect the foreseeable victim of that danger." In addition to Soldano, the Clinton Valley case is also revisited since the mental hospital turned away a former patient who was threatening to kill someone. That court was bound by *stare decisis* to honor sovereign immunity even though the judge disagreed with the decision the court had to reach.

As the author of the textbook points out, "the bystander rule, that hardy oak, is alive and well. Various initials have been carved into its bark – the exceptions we have seen and a variety of others – but the trunk is strong and the leaves green."¹³ Contemporaneous examples throughout the course are used to keep this discussion going from time to time during the semester as various incidents occur. If one of the instructors fails to find rich examples to continue this process, the other does. Current events always seem to "fall in our lap". An example of how this process works is illustrated next.

Unfortunately, an Indianapolis police officer was gunned down and killed in the summer of 2004 as was a Butler University police officer in September of 2004. As the facts continued to unfold, it was found that both policemen were killed by former mental patients and in turn the mental patients were killed in ensuing gun battles. However, family members in both cases had tried to get each of these patients institutionalized for further treatment but were turned down primarily because the system did not have the capacity to deal with them.

Radio, television, and newspaper media continued their investigation and reporting on how many such cases come to the emergency rooms of hospitals each day and continue to be denied even an examination let alone admission to the hospital. This allows for further discussion of how the legal system has to deal with such cases from a utilitarian point of view. In dealing with ethics, students are continually reminded of the concepts of rights, justice, utility and care. Examples such as this are used to illustrate

7 138 Mich. App. 312, 360 N.W. 2nd 606 (1984)

8 417 PA, 486, 208 A. 2nd 193 (1965)

9 Beatty and Samuelson, *Legal Environment*; Pg 80; Second Edition; Thomson, Southwestern, West; 2005

10 66 Kan. 649, 72 P. 281 (1903)

11 *Carey v. Davis*, 19- Iowa 720, 180 N.E. 889 (1921)

12 *Tarasoff v. Regents of the University of California*, 17 Cal. 3rd 425, 551 P. 2nd, 334, 131 Cal. Rptr. 14, S. Ct. Cal. (1976)

13 Beatty and Samuelson, *Legal Environment*; Pg 81; Second Edition; Thomson, Southwestern, West; 2005

how the doctrine of utility often “trumps” the rights of others but that the process is reversed when the situation gets severe enough that justice is not served. These strong tie-ins are just a few examples of how we are able to effectively integrate law and ethics and keep the continued interest of the students in the process.

This approach is carried throughout the course and the bystander example was used to simply illustrate the methodology. This approach is used in delivering each of the following sections of the law portions of this course:

- ▶ Alternate dispute resolution
- ▶ The court system
- ▶ The litigation process
- ▶ Administrative law
- ▶ Constitutional law
- ▶ Tort law
- ▶ Criminal law
- ▶ International law
- ▶ Agency, employment and labor law
- ▶ Environmental law

The current news, as well as events in students’ lives, serves as rich illustrations throughout this integrated course. The comment about this course by the students continues to be referred to as “my favorite course.”

One student made a presentation before the Tri-State Academy of Legal Studies in Business, November 5, 2004.¹⁴ Excerpts from that presentation that are particularly relevant are:

“Ethics and the Legal Environment embodied the very core of what it means to go to a liberal arts college, as well as force students to step up to the challenge of integrating topics and developing a further understanding of the issues in the ‘real world from various viewpoints’...”

“The class discussions did not shy away from sensitive issues such as affirmative action to environmental issues such as Super Fund (CERCLA). The class discussed issues from both a standpoint regarding laws to an ethical standpoint with regard to rights, justice, utility and care.”

The class’ progress in discussion topics and level of thinking was congruent to “Kohlberg’s theory of moral development. Taking just a law class, most discussions would not exceed the moral development level concerning law and order in the conventional level. However, by integrating ethics into the discussion regarding law, by the end of the semester our class of cohesive students had graduated to discussions that performed at the post conventional, social contract level. Students discussed issues in ethics and law from a standpoint of effects on rights and values, to the effects on society and culture. Due to the integration of subject matter, the intensity of class discussions, and the development of the class as an entity to a higher stage of moral development, the subjects taught in Legal Environment and Ethics are a tool in which I continue to apply to current studies. I often am sitting in class when I realize just how much subjects carry over into other course work and the value of an integrated class becomes even more apparent...”

“I am currently taking a business law course and I continually find myself missing the course structure of the Legal Environment and Ethics. I find it more difficult to learn and retain information without the multiple faceted discussions that became second nature in Legal Environment and Ethics. My current law class seems cut and dry, and the need for further evaluation and study does not exist because it is mostly memorizing fact. I wish I had the

opportunity to take more integrated classes. I realize now that even though it was not an easy experience, the benefit of the knowledge and thinking skills I acquired in Legal Environment and Ethics is indispensable. The overall benefit of integrating subject matter allows students to develop analytical and beneficial thinking skills. The need for more integrated classes is irrefutable as the classes truly epitomize the core reasons and benefits for acquiring a liberal arts education.”

In the spring semester 2005, two very strong junior year students raised a complaint regarding not being advised to take the pilot course instead of the two stand alone courses. Their complaint was that each felt they were not as well prepared as classmates who had the integrated course. One of these students was tapped into Beta Gamma Sigma and the other is strong enough that he may be eligible in his senior year. Both students took this as a challenge and worked very hard in the junior business law class involved, but both claimed nevertheless, that the faculty advisor who recommended not taking the pilot course had “wronged” them.

In a recent article by Diane L. Swanson,¹⁵ she pointed out that “the nation’s business schools’ deans have done little to ensure that the next generation of corporate managers will be more mindful of their legal and ethical responsibilities to society. In response to this dangerous myopia, hundreds of professors launched a collective effort to try to persuade the Association to Advance Collegiate Schools of Business (AACSB), the agency that sanctions business degree programs, to require at least one ethics course as a condition of accreditation.”

Swanson goes on to document the campaign efforts of over 200 professors to get the AACSB to require an ethics course as a part of the accreditation standards. Swanson states “In the final analysis, AACSB officials shut campaign voices out of their annual conference and voted for accrediting standards that do not include the requirement of a stand alone ethics course. As a result, member deans could return to their home turfs and carry on with business as usual.”¹⁶

In conclusion, the faculty of the College of Business Administration not only recognizes the value of an ethics course, but has found a methodology to deliver the subject in an extremely effective way. It is hoped that this will serve as a challenge to the academy as a whole to not only deliver an ethics course but to also teach business law that is delivered in a meaningful way to future business leaders using a methodology which will lead to their retention and application.

BIBLIOGRAPHY AND REFERENCES

- Velasquez, Manuel G., *Business Ethics, concepts and Cases*; Fifth Edition; Prentice Hall; 2002
- Beatty and Samuelson, *Legal Environment*; Second Edition; Thomson, Southwestern, West; 2005
- Derocher, R. J., *Time Heals all Wounds*, *INSIGHT Magazine Online* <http://www.insightmag.com/insight/03/11-12/feat-1-pt-1-TimeHeals.AllWounds.asp> ((November/December), 2003)
- Derocher, R. J., *Knowing Right from Wrong*, *INSIGHT Magazine Online* <http://www.insightmag.com/insight> (January/February, 2004)

¹⁴ Meg McKenzie, presentation before the Tri-State Academy of Legal Studies in Business, November 5, 2004

¹⁵ Swanson, Ph.D., Diane L., “The Buck Stops Here: Why Universities Must Reclaim Business Ethics Education”, *The Journal of Academic Ethics*, 2004

¹⁶ Swanson, Ph.D., Diane L., “The Buck Stops Here: Why Universities Must Reclaim Business Ethics Education”, *The Journal of Academic Ethics*, 2004

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- Frederick, W. C., Business and Society Curriculum: Suggested Guidelines for Accreditation; *AACSB Bulletin* 13 (3) (1977), pp. 1-5
- Jennings, Marianne M., Restoring Ethical Gumption in the Corporation: A Federalist Paper on Corporate Governance – Restoration of Active Virtue in the Corporate Structure to Curb The “YeeHaw Culture” in Organizations; 3. WYO. L. REV. 387 (2003)
- Jennings, Marianne M., A Primer on Enron: Lessons From a Perfect Storm of Financial Reporting, Corporate Governance and Ethical Culture Failures; 39 CAL. W. L. REV. 163 (2003)
- Jennings, Marianne M. & Happel, Stephen, The Post-Enron Era for Stakeholder Theory: A new Look at Corporate Governance and the Coase Theorem; 54 MERCER L. REV. 873 (2003)
- Kelly, M., It’s a Heckuva Time to be Dropping Business Ethics Courses; *Business Ethics* (September/October/November/December 2002), pp. 17-18
- Nichlaus, D., Is a Bigger Dose of Ethics Needed in Business Schools?; *St. Louis Post Dispatch* <http://www.stltoday.com/stltoday/business/stories.nsf/Business/1862491875CBAE9F862> (December 18, 2002)
- Prentice, Robert, Enron: A brief Behavioral Autopsy; 40 AM. BUS. L. J. 417 (2003)
- Prentice, Robert, An Ethics Lesson for Business Schools; *The New York Times* (August 20, 2002); Section A; Column 2: Editorial Desk; Pg 19
- Rest, J. R., Narvaez, D., Bebeau, M. J. & Thoma, S. J., Postconventional Moral Thinking: A Neo-Kohlbergian Approach; (Mahwah, NJ: Lawrence Erlbaum Associates, 1999)
- Stewart, C., A Question of Ethics: How to teach them?; *The New York Times*; <http://www.nytimes.com/2004/03/21/business/yourmoney/21exli.html?ex=1080876890&ei=1&en=741e073b9d470d7e> (March 21, 2004)
- Swanson, D. L. & Frederick, W. C., Campaign AACSB: Are Business Schools Complicit in Corporate Corruption?; *Journal of Individual Employment Rights*, 10 (November, 2003a), pp. 51-165
- Swanson, D. L., The Buck Stops Here: Why Universities Must Reclaim Business Ethics Education; *The Journal of Academic Ethics*, 2004
- Toffler, B. L. & Reingold, J., Final Accounting: Ambition, Greed and the Fall of Arthur Andersen; (NY: Broadway Books, 2003)