

The Psychological Foundation for an Integrated Course in Law and Ethics

Richard J. McGowan

Philosophy and Religion Dept. and College of Business Administration
Butler University
Indianapolis IN

ABSTRACT

Centuries ago, Thomas Aquinas noted that “human reason must proceed from the precepts of the natural law as from certain common and indispensable principles to other more particular dispositions” (ST I-II, 91, 3) He said that “because of the uncertainty of human judgment, especially in contingent and particular matters, it happens that different decisions are made about different human acts so that laws are often divergent and even contradictory.” (91, 4)

To the casual reader, Thomas might be endorsing a position akin to ethical relativism but Thomas finds little to endorse about that position: “the truth is the same for everyone but it is not equally known by everyone.” (94, 4) Further, he noted somewhat optimistically that “reason may cause laws to be changed because it seems to be the nature of human reason to progress by stages from the less perfect to the more perfect.” (97, 1) In his remarks, Thomas anticipates the psychological research of Lawrence Kohlberg into moral development, the research of William Perry into intellectual development, and the students in the integrated ethics-law class at Butler University (and, I dare say, students in college ethics/law classes across America). A brief foray into the research and the course will demonstrate as much.

THE STRUCTURE OF MORAL DEVELOPMENT

Research by Lawrence Kohlberg shows that people ‘progress by stages from the less perfect to the more perfect’ level of moral development. However, he also found that people do not necessarily move to the ‘more perfect’ stages of moral development. He noted that people stop developing. That is, when the skills of a particular stage of moral development are challenged and shown to be wanting, people, including students, often disengage from the hard work of growth. These people avoid the work of maintaining integrity, or an intact sense of identity, while accommodating the challenges to their identity.

While there is a temptation to flee from challenges to the sense of self, not everybody does. Flight is frequently impossible for the captive audience known as students, whose professors often challenge them—and with good reason. Research by Kohlberg shows that moral dilemma, real or imagined, can induce moral growth. (27-8, 146-7) Cognitive dissonance, called cognitive conflict by Kohlberg, can produce upward development. He says, “Presumably, then, movement to the next stage involves internal cognitive reorganization rather than the mere addition of more difficult content from outside” the student. (146). In other words, the move from one stage of development to another is not a function of gathering more information—even if students constantly refer to learning as a matter of ‘knowing more facts.’ If Kohlberg is correct, the step up to a higher stage of thought is a matter of re-orienting the structure of thought.

Kohlberg’s work charts those structures, noting the safe harbors that shelter people from moral development. Of particular interest to those teaching ethics, including business ethics, are the safe harbors of stages 3 and 4, but especially the “society maintaining orientation” of stage 4. Even if it is true that the person in stages 3 and 4 has more capacity to resolve moral issues than the person in the self-interested stages of youth, namely, stages 1 and 2, it is also true that the capabilities of the stage 3 or 4 thinker can improve.

In stage 3, the “interpersonal concordance orientation,” “Good behavior is that which pleases or helps others and is approved by

them.” (Kohlberg, 18) In this stage, people follow peer pressure and adapt their behavior to their social group’s norms. Appeals to social conformity mark this stage and the behavior pattern of these people is obvious to any parent of a middle school or high school student.

In stage 4, the “society maintaining orientation,” the person is less self-interested and more abstract. In this stage, “there is an orientation toward authority, fixed rules, and the maintenance of the social order. Right behavior consists of doing one’s duty, showing respect for authority, and maintaining the given social order for its own sake.” (18) The authority of laws and of social order, including the authority of the nation, is firmly rooted in the stage 4 thinker. However, the cultural relativity of stage 4—right and wrong is relative to the external environment—is less adequate for solving moral dilemmas than the structure of thought found in stages 5 and 6.

Concern for process marks these latter stages. “There is a clear effort to define moral values and principles that have validity and application apart from the authority of the groups or people holding these principles and apart from the individual’s own identification with these groups.” (18) There is “an emphasis on the ‘legal point of view,’ but with an emphasis on the possibility of changing law in terms of rational considerations of social utility (rather than freezing it in terms of Stage 4 ‘law and order’).” (18-19) The person in these stages engages the work of ethics, for as Kohlberg notes, “a clear effort” is made to find moral principles. That work has a chance to produce autonomous, principled conduct, based as it is in critical, cognitive analysis.

THE STRUCTURE OF INTELLECTUAL DEVELOPMENT

Perry’s research, which involved students from Harvard and Radcliff, is analogous to the research of Kohlberg. For instance, Perry observed that when students face cognitive dissonance—Kohlberg’s cognitive conflict—they often avoid adjusting their orientation to the world and altering their identity. Such a

student demonstrates “the wish to retain earlier satisfactions or securities...the reluctance to admit one has been in error...and most importantly, the wish to maintain a self one has felt oneself to be.” (Perry, 52) In a professor’s jargon, students do not get out of their comfort zone. Perry suggests that they resist learning.

Perry even observes common techniques of resistance, or negative defense mechanisms: escape (177), wherein a person detaches himself or herself from the conflict, at least in part; temporizing (178), wherein a person does not engage the problem and hopes it goes away; and retreat (182), when a person regresses to a lower stage of thought instead growing toward the unknown. Perry notes that retreat is often accompanied by anger and hatred of other positions and of the people who manifest them (177) Other researchers (Hart and Chmiel; Haan) offer similar observations.

Advance, observes Perry, “involves risk, subjective and objective”(178) and forces a “reiterated choice between courage and despair.” (32) Perry remarks that movements from one position to another “express the work of considerable psychic energy.” (49) Perry, similar to Kohlberg, suggests that the higher stages of thought demand more work of the person.

Perry found that when students arrive at college, they are typically in what he refers to as the stage of dualism. In this stage, the student looks to the professor as the authority and ‘holder of Truth.’ In this stage, learning is essentially passive and the structure of thought holds that there is one right answer to any question. As such, students often refer to knowledge in terms of true and false. However, whereas students typically arrive in college with a dualistic structure of thought, expecting professors to supply answers, students reach toward multiplicity.

In the stage of multiplicity, students are highly subjective and irresponsible. In this stage, students often assert that there is no right answer and believe that “no judgments among opinions can be made.” (Perry, Glossary) Perry says that students threatened by advance sometimes retreat to “the irresponsible in Multiplicity (‘Anyone has a right to his opinion’),” as though opinions cannot be judged. And yet, students see that their professors are judging their views and opinions all the time.

The language of students in this stage is frequently angry. (99) Students say things like, “What’s true for one person might not be true for another,” “Who’s to say?” or “what is reasonable is always debatable, and who is to determine what is reasonable and what is a poor reason.” These expressions, manifestations of multiplicity, keep the student in the isolated, risk-free world of ethical subjectivism, the position that ethics are relative to the individual. If a student were to move Perry’s stage of relativity, which corresponds to Kohlberg’s stages 3 and 4, then the student would think ethics are relative or dependent on the culture or society; they embrace cultural relativism. In this stage, a student might say, “I think ethics is in fact group morality.” And what better manifestation of ‘group morality’ might there be than a legal system?

Students in Ethics Courses

For the last several years, on the first day of class, I have asked students to respond to the following questions:

Can ethics be taught? If so, how? If not, why not? What is the relation of ethics to business?

Student responses (see appendix) show why the research of Perry and of Kohlberg undergirds the integrated course in law and ethics. Students remark that “ethics are beliefs that are a individual as

DNA,” “[ethics] varies from person to person, nation to nation,” “there is no set definition for correct behavior,” “each individual has a unique lifestyle,” and “we all have our own unique morals and outlooks on ethical behavior and what is right and wrong.” In other words, student remarks show a structure of thought that is similar to ethical subjectivism, the view that the rightness and wrongness of ethical judgment depends on the individual. This structure of thought is characteristic of the lower stages in both Kohlberg’s and Perry’s work.

But students also say that “ethics helps the societal members to understand what behavior is appropriate and which actions are unacceptable,” ethics are “duties that are imposed on them [people] as a member of society,” and that ethics is not “always the morality of one person, but those of society and various groups.” These responses exhibit the position known as cultural relativism, wherein the rightness or wrongness of an ethical judgment depends on the culture, group, or society. This structure of thought is consistent with Kohlberg’s and Perry’s middle stages.

In other words, students exhibit the sorts of patterns that corroborate the psychological research of William Perry and Lawrence Kohlberg. If that is so, then advance to higher stage reasoning has yet to occur for students. The course takes advantage of the possible advance by placing the legal aspects of business, relevant to the stage 4 thinker, adjacent the ethical considerations for judgment, relevant to the stage 5 thinker.

As such, the course attempts to get past the problems outlined by Thomas centuries ago, namely, the reconciliation between contingent legal codes and universal moral truth. The course attempts to place “an emphasis on the possibility of changing law in terms of rational considerations of social utility (rather than freezing it in terms of Stage 4 ‘law and order’).”

Integrating law and ethics puts two structures for resolving ethical dilemma side-by-side and invites students to master the higher thinking skills. Whether the course is successful or not is for our students to say.

APPENDIX STUDENT RESPONSES FROM THE INTEGRATED LAW AND ETHICS CLASS

Fall 2002

1. “...then the structure of my ethics will change as the definition of my moral standards expands.”
2. “all that is considered to be ethical varies from person to person, nation to nation, business to business.”
3. ‘feel’ x 4 in paragraph 1 “once taught ethical values, it is up to the individual to decide their own actions.”
4. “An individual’s morals may be viewed either as the standard of conduct that they have set for themselves or as obligations and duties that are imposed on them as a member of society.”
5. “people are not taught ethics, but rather, people are taught how to do ethics” “it is considered wrong and immoral to take another human being’s life.”

The Psychological Foundation for an Integrated Course in Law and Ethics

6. "the reason ethics cannot be properly taught is because everyone perceives the world a little differently." "it can be seen that what is viewed as ethical..." "there is no set definition as to correct behavior."
7. "the study of morality...Not always the morality of one person, but those of society and various groups"
8. sees ethics but abstractly ethics= moral content (not structure of thought)
9. ethics "cannot be taught" moral guidelines "that were imposed on them."
10. ethics is "knowledge that can be acquired"
11. "Many teachers/professors like to impose new ideas on different topics"
12. although "moral knowledge cannot be taught, it can be instilled"
13. "ethics are an innate characteristic of a person"
14. "depending on what one thinks is moral will establish their ethical beliefs" a professor "is powerless to sway their beliefs"
15. "right tools" "to develop and figure out what we hold to be ethical" "we all have our own unique morals and outlooks on ethical behavior and what is right and wrong"
16. "every person's ethical make-up is determined by what they are taught when they were young"
17. "if basic ethical principles are not taught early in life, it will be exceedingly difficult to train them later" as we age, we do "even more complex ethical learning"
18. "ducks the question; cites childhood "The years that are most important for placing ethics upon a person"
19. "normal everyday behaviors that are learned and mimicked..."
20. My parents "made me understand what was right not only to them but also what was right in our society"
21. "ethics helps the societal members to understand what behavior is appropriate and which actions are unacceptable" "these institutions are forced to follow the ethical guidelines, as defined in society"
22. "a moral is a belief or principle that one believes in strongly enough that they follow it" "a set of beliefs set up by someone for themselves, someone else, or a group of people to follow and live by"
23. stresses childhood and outside influences on the person
24. "ethics is a cognitive and psychological process..."
25. sees the problem but not the process of resolving the problem of how to teach

Spring, 2003

1. "the principle that all people are different and will react to situations differently based on what they believe" "as you get older and can make judgment for yourself, you're the one who gives yourself moral standards"
2. "...the difference between individuals and groups on moral issues." "...moral standards are something that can be held by a group or individual."
3. "Moral standards can come from family, friends, church, and many other outside factors."
4. "Moral standards are the way one holds certain views that are important to her. These standards can sometimes be different than other people's...there are a ton of moral standards."
5. "...different individuals hold different morals." "Moral standards come from individuals. They can vary from person to person based on their personal morals and upbringing."
6. "Moral standards are continuously being reexamined..."
7. "Moral standards are the basis of our decision making skills. They are taught and learned by repetitive reactions to situations."
8. "The principle that states that the ethics of each person is different because they were raised individually and under unique conditions." "Moral standards are the basic feeling of right and wrong."
9. "Moral standards are the basic moral norms for a group or society of people." "As people grow and seek individual knowledge, these standards might change."
10. "People create their own individual moral standards..." "ethics created by certain atmospheres and surroundings."
11. "Each person views morals/ethics in their own way...The views of 'right' vs. 'wrong' differ according to a person's beliefs." "each person has his or her own moral standards."
12. "These standards give a sense of wrong and right. They aren't necessarily the only way to live, and following one set of moral standards isn't necessarily better than another."
13. "Moral standards are the values and beliefs a group, person, etc. develops...the environment also has a strong impact on these so-called standards."
14. "An individual's moral standards are his or her set of guidelines for behavior." "As the child grows up, life experiences also play a part in determining the person's morals."

Richard J. McGowan

15. "moral standards are passed down from generation to generation and are taught through books, examples, and word of mouth."
16. "Each individual has a certain experience that develops their personal thoughts on different situations." "the moral norms are developed from the lifestyle one is faced with and therefore standards created from that society's experiences."
17. "Moral standards are personal and societal limitations or codes for behavior and actions, naming what is accepted or unaccepted, or right or wrong. They are shaped with the influence of laws and government, great thinkers and their philosophies, religions and faiths, and families—as well as individuals that arrive at their own code of 'moral standards.'"
18. moral standards "are embedded inside everyone"
19. "Moral standards are developed on an individual basis and no two people necessarily have the exact same standards."
20. "Moral standards are the personal codes of conduct that we live by. They can be molded by others such as teachers and parents, yet they truly originate from the experiences that one goes through in life." "a moral standard...you feel..."
21. "Each person has their own moral standards."
22. "Moral standards are the basis of individual ethics which lead to a consensus for ethics followed by groups." "...the ethics decide if these are 'good' or 'bad'...it relates back to how people feel when making decisions."
23. an individual develops "the ability to look at situations and decide based on facts and previous experiences what those standards should be."
24. "Unfortunately, there are no absolutes in ethics. Every problem has two sides." "For every individual, the experience of moral standards is different...What one person believes to be moral, another person may see completely differently."
25. "Moral standards are general rules that are meant to guide accepted behavior. They come from many, many years of particular society's culture and way of life. Every society has different moral standards."

Fall, 2003

1. "There is not a black or white zone to morals, therefore, ethics (which is the study of morals) cannot be black or white."
2. "a law is based on the moral standards that are shared by the majority of voters." "ethics can be interpreted many different ways by many different people."
3. "Each person follows their own gut instincts in order to make decisions and there is no black and white answer."
4. as far as ethics is concerned, "for me, I want it all to be about me and no one else." "people have different views and that is why ethics cannot be taught."
5. "right and wrong are not simply a matter of black and white but of several shades of gray...what is right for some may be wrong for others."
6. "each person must look within himself or herself to determine their own ethical values." "there is no black or white regarding the topic of ethics."
7. "Humans are unable to agree on ethical decisions." It is "impossible to teach adults ethics."
8. "Ethics lie within each individual..." "ethics cannot be taught."
9. "There are widely accepted standards of conduct" "ethics cannot always, or possibly ever, be taught." We "build an ethical code that is unique to each individual."
10. keys in on education and awareness
11. "universally shared morals or basic ethical principles" "Through decision making tools and scenarios it is possible to foster an understanding of ethics."
12. "Will your ethics be viewed as correct or unethical by others?"
13. ethics allows us to "conduct ourselves in a manner that is socially acceptable."
14. ethics is "the moral code a person/group is recommended to abide by in order to conduct themselves amongst the group's standards" "ethics vary from individual to individual."
15. "ethics is a knowing what one ought to do" moral standards are "what is accepted as right or wrong or good and bad."
16. personal responsibility for ethics cited
17. "learning ethics is a life-long process."
18. "we can see that what one individual sees as ethical may be completely different for someone else; these standards vary from society to society." "Ethics can't be taught."
19. "what is right to one person could be totally wrong to another."
20. "The ability to teach ethics is non-existent because individuals develop different opinions."
21. "what is ethical varies with time and culture."
22. 'Ethical' means "most people in the society believe that it is a good or correct idea or behavior."
23. "Ethics cannot be taught. It is an instinct we have." "we must... expand our belief system until it is as individual as we are."
24. "Ethics, or one's personal set of beliefs/values, are very unique to every individual."

25. "ethics aid in governing a body of people."

RESOURCES

Norma Haan, "Proposed Model of Ego Functioning: Coping and Defense

Mechanisms in Relationship to IQ Change," Psychological Monographs 77, pt. 571 (1963), noted in Judith Boss, Ethics for Life (Mayfield 2000)

Daniel Hart and Susan Chmiel, "Influence of Defense Mechanisms on Moral

Judgment Development: A Longitudinal Study," Developmental Psychology 28, 4 (1992): 722-29

Lawrence Kohlberg, The Philosophy of Moral Development (San Francisco: Harper and Row, 1981)

Richard J. McGowan, "The Prescient Pedagogy of Plato," Proceedings of The Institute for Liberal Studies--Science and Culture (KSU, 1998).

William Perry et al., Forms of Intellectual and Ethical Development in the College Years (NY: Holt, Rinehart, and Winston, 1968)

