

MORALLY EDUCATING OUR LAWYERS

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I wish to share with the membership of the New Mexico-West Texas Philosophical Society my initial thoughts, now in outline form, on the moral education of the attorney. These deliberations are part of a larger project I am undertaking on the foundational issues in legal ethics.

The moral education of the lawyer is in a curious state at present. On the one hand, largely in response to public outrage over widespread misconduct among members of the bar during the Watergate era, most states now require by law that all law students take a course in legal ethics, or its equivalent, the tacit assumption being that we can teach law students to become moral attorneys. On the other hand, these legal ethics courses are commonly regarded as inevitably inadequate to accomplish so lofty a goal by the law students, the instructors of these courses, and the textbook writers alike. The usual bill of fare for the course is the systematic study of the lawyer's code of professional ethics, and the study is structured on the model used for introducing any body of legal rules in a course—tort, property, or otherwise: the rules are considered in the light of concrete issues and cases in which their application has been called into question. More often than not the course is taught by a faculty member whose area of expertise is other than legal ethics; some see themselves as getting stuck with teaching the course. Textbook or casebook writers for these courses warn of how little the book can offer to educate morally the lawyer, one pointing out that the most that we can expect to accomplish is to make the law student sensitive to the moral issues he may encounter when he enters the profession.

Although philosophers should be well inured at an early point in their careers to the general ignorance on the part of those outside the philosophical community of the contributions of philosophers in wide areas of learning, I, nevertheless, find it more than shocking that pronouncements are made by legal educators about the possibility of morally educating lawyers in the face of what appears to be an unawareness of classical and contemporary theories of moral education. Accordingly, it seems of the very first importance to inject into any informed discussion of the moral education of the lawyer the essential tenets of the rival theories on moral education. After drawing on the resources of the philosophical bank, I offer an analysis of the instant theories and deposit an outline of a view on moral education that seems to approximate more closely the phenomenon. I then consider the cash in value this contribution has for the more specific question of the moral education of the lawyer.

I here offer only a thumbnail sketch of some of the major moves in the theory of moral education. The Platonic contribution, with Lawrence Kohlberg as the contemporary representative, portrays moral education as the acquisition of knowledge—gaining an intellectual awareness or understanding of one or two fundamental concepts—justice on Kohlberg's view, temperance and justice on Plato's. The Aristotelian approach, on the other hand, basically requires the acquisition of a multiplicity of virtues through the formation of habits. Thus, one becomes trustworthy by doing trustworthy acts, honest by doing honest deeds, and so on.

A few modern philosophers have attempted to wed these two fundamental approaches in some way. R. S. Peters, for example, holds that in the early stages of the child's moral development, the child cannot cognitively apprehend sophisticated moral concepts, like stealing, that are part of the rules the adult agent is to follow. Peters thus sees the development of good habits as an important first step in moral education; these habits are later to be replaced by the agent's acting in accord with moral rules that he intellectually understands. In contrast, William Frankena suggests that the two phenomena, the understanding of moral rules and concepts and the formation of good habits, occur simultaneously and reinforce each other. He feels that such a theory allows him to avoid the knowledge-action gap attributed to the Platonists, in which it has been suggested that one may know what the correct thing to do is, but there is no guarantee that he will do it. Frankena envisions the formation of good habits concurrent with learning what is right as the means of bridging the gap.

An interesting feature of this legacy on moral educational theory is the tacit assumption that the essence of moral education involves reason, habit, or both. Following Ramsey's maxim that one might find the truth of the matter among disagreeing parties by searching for a point upon which they agree and challenging it, I wish here to suggest, in this spirit, something which may be so obvious that it has gone unsaid. I wish to suggest that the reason-habit debate may ignore a central factor in moral education, namely, a form of learning by imitation or role modeling. This type of learning, of course, is not new to psychology; Gabriel Tarde suggested in the nineteenth century, in his *The Laws of Imitation*, that our behavior is largely a function of imitation, both conscious and unconscious. Criticizing the pervasiveness of Tarde's view, Ellis Freeman stresses that imitation occurs when some act accords with a conscious desire. Miller and Dollard, in their *Social Learning and Imitation*, indicate that the impetus for imitating some behavior is the perception that the behavior is that of a superior person and that, if imitated, rewards ensue. Piaget explains that children engage in make-believe, imitative behavior to help to adjust to new situations and aspects of the adult world.

In what follows, I offer, first, an analysis of how we might cogently

conceive of a role model such that the notion bears relevance to moral education. Then I argue for the plausibility of bringing role modeling into a well-conceived theory of moral education. Let us begin with a first approximation of role modeling with

$D_1 R$ is a role model for $A =_{df}$ A desires to imitate R 's behavior.

Needed emendations readily suggest themselves. First, it is doubtful that it is the full scope of R 's behavior that A would desire to imitate. My seeing Professor X as a role model for delivering a good undergraduate lecture does not mean that I will engage in habitual pipe-smoking as he does, especially given that I do not much care for his very yellowed teeth. We might thus more carefully circumscribe what we are defining as " R is a role model for A with respect to X ." Moreover, it may not be R 's behavior or actions that A wishes to imitate when he has R as a role model; it may be some status that R has achieved that A , too, wishes to attain. A may wish to be a respected, or A may wish to be a feared or a well-loved member of the community as he perceives R to be. It seems that we would still want to say that R is his role model regardless of whether A imitates any specific act or manifestation of R 's behavior. Taking these observations into account, we can now offer:

$D_2 R$ is a role model for A with respect to $X =_{df}$ A desires to imitate or to be like R with respect to X .

As was pointed out earlier, we are here trying to develop a conception of a role model that may be useful for a theory of moral education. We are thus interested in the more specific feature of role models as they function in learning. Accordingly, it seems important to recognize that R , himself, or his activity, be worthy of being modeled, that he, or his activity, not manifest error or flaw, or, put positively, that he or his activity provide a paradigm of excellence for A . The meteorologist who predicts nothing but daily showers of cats, toads, and blood could hardly qualify as a model for the aspiring weather forecaster. Thus,

$D_3 R$ is a role model for A with respect to $X =_{df}$ A desires to imitate or to be like R with respect to X , and R is an exemplar of X .

At this point we might take cognizance of what we all well know about learning—that desire may be important—necessary, but not sufficient. Thus, if role modeling is to have any significance in a theory of learning, it

would seem that we should additionally bring out that *A* is willing to take the necessary steps to copy *R*. But perhaps even this is too weak, given that *A* may desire to copy *R*, is willing to do so, but still somehow never gets around to doing so. If so, we might well demand some evidence of *A*'s willingness to copy *R* before we commit ourselves to saying that *A* is involved in a learning process in which *R* serves as his role model. Thus,

D, *R* is a role model for *A* with respect to *X* = *or* *A* not only desires to imitate or to be like *R* with respect to *X*, *R* being an exemplar of *X*; but *A* also is willing to do so and has, in fact, evidenced such a willingness by taking some steps to imitate or to become like *R*.

With this understanding of what the dynamics of role modeling are, what can be said of the importance of models in learning? First, it seems that whether we are speaking of learning to follow rules or acquiring some skill or habit, models often play some role. I doubt very much that I would succeed in becoming a fluent speaker of some language were I merely given all of the rules governing the language and if I then attempted to learn the language without ever hearing it spoken. And the same seems to hold true for learning to play a complex game or a musical instrument. Some model of competence in speaking the language, playing the game, or playing the instrument seems important for guiding my development in these areas.

I am not so sure of the use of models in apprehending purely theoretical matters. Given that such are usually transmitted by books, journals, lectures, and the like, we may not want to say that the book or its contents provide a model for the knowledge I wish to glean. However, to the extent to which I wish to be knowledgeable like the lecturer, for example, talk of his being a model for me sounds less awkward.

It is not clear what more I can do to argue for the cogency of this view of models in learning. For it seems that by and large what I am suggesting is a description of a phenomenon and, as such, that I can perhaps expect at best each person's own experiences in these areas to incline them to agree or disagree with my observations.

My comments up to this point about models in learning have been of a general sort. Although an effort was made to construct a concept of a model that would be relevant for a theory of moral education, we did find it

plausible to think that models played some role in both habit formation and in cognition. If so, there is reason to think that this discussion has relevance for any of the major moves in the theory of moral education set out above. And bringing this observation around to the moral education of the law student or the lawyer, it would seem more likely than not that he needs before him some model of a moral attorney; for, again, the rival theories of moral education all seem to draw to some extent on models. If so, conclusions like the following suggest themselves. It would behoove deans of law schools and hiring committees to seek faculty members of obvious moral integrity and eschew those without. Moreover, each attorney might well view himself as a potential model for a brother attorney and conduct himself accordingly, asking the Kantian counterpart of professional ethics, "Is my behavior such that I would be willing for a brother attorney to imitate it or for him to see me as a role model?" Lofty as this conclusion sounds, it, nevertheless, seems to be the product of some informed reasoning in the area of the moral education of the attorney and, if so, is worthy of being taken at least as seriously as those in the literature that are not the product of sound reasoning.