

Breaking the Spell: The Education of Attention and Encounter in Law Schools and Law Firms

*Maksymilian Del Mar**

Abstract

This paper offers some resources for the development of moral sensitivity in law schools and law firms. It does so, first, on the basis of a picture of legal life, which draws on the embodied-connectionist strand in cognitive science. Legal life requires role-differentiated behaviour, and immersion in these roles, and associated tasks, has the consequence that persons are oriented to notice only certain things rather than others (where those things will sometimes be morally relevant things to notice). Further, the lawyer-client relationship is one characterised by the exercise of dominance, control and manipulation (by the lawyer) of a client dependent on the exercise of the lawyer's expertise. Moral education in law schools and law firms must help alleviate the problematic effects of these features of legal life on the moral sensitivity of persons. It can do so by the education of attention and encounter. Both terms are discussed and, by drawing on the Beyond Text in Legal Education project at the University of Edinburgh, associated pedagogical activities are described. Finally, the activities proposed, and their policy implications, are considered by reference to the wider concerns of both tertiary and professional legal education.

Introduction

Krzysztof Kieslowski's extraordinary 1985 film, *Bez Konca (Without End)*, begins with the death of Antek, a lawyer who had recently taken on the case of Darek. Darek is currently in jail, and is alleged to have begun and lead a strike. The film takes place during the period when martial law was imposed in Poland, and Solidarity was banned. After Antek's death, Darek's case ends up being taken up by Labrador – an ageing lawyer, who has not taken on a 'political' case for many years, and has for some time only been involved in criminal defence work. Labrador approaches the case as he believes he must, as a criminal defence lawyer, i.e., he does whatever he can to set Darek free. For most of the film, Darek refuses to co-operate: for example, although Labrador tells him that there is little proof of his alleged crime, and that as long as he remains quiet and co-operative in court, he could walk free, Darek refuses and organises a hunger strike in the jail instead. Throughout, Darek keeps referring to the different approach taken by Antek to the case; according to Darek, Antek had understood him and would have appropriately represented his dissenting voice. In the end, however, Darek bows to Labrador's pressure, ceases the hunger strike and agrees to co-operate in court. As Labrador foresees, he is given a suspended sentence, and is free to go. Labrador's apprentice congratulates Labrador on another victory, but Darek (and his wife) continue to sit in the court (after everyone has left), unable to face each other: clearly, for them, this is a humiliating defeat.

The contrast between Antek and Labrador is instructive. The very first opening lines of the film are by Antek, who has just died, and who says, looking directly at the camera: 'I

* School of Law, University of Edinburgh and Faculty of Social and Political Sciences, University of Lausanne. Email: Maksymilian.DelMar@unil.ch. This paper has been written as part of the Beyond Text in Legal Education project, undertaken at the School of Law, University of Edinburgh. Having said that, it is important to note that this paper is not meant to be exhaustive of the concerns of that project as a whole. It is simply my personal take on the difficulties we have encountered along the way, and is representative only of what I feel needs to be emphasised and requires further work. For more about the project, please visit: www.law.ed.ac.uk/beyondtext. Finally, this paper is a draft, and comments will be very gratefully received.

have died.’ A similarly powerful line is delivered by Labrador, who, addressing some of the concerns of his apprentice over Labrador’s treatment of the case, says: ‘We are only defenders.’ Although Labrador is aware that Antek had given Darek something that Darek was seeking – recognition of his humanity and his courage – he nevertheless recedes into what he sees as his role as a legal professional: to defend Darek. Kieslowski suggests that he achieves the opposite, defending only the system that provides Labrador with the role in the first place. And, by opening with the lines ‘I have died’, Kieslowski also suggests that the humanity and courage exemplified by Antek has died in Polish society (or at least is dying). Nevertheless, Kieslowski did not choose to portray only the actions of Labrador – by including the figure of Antek, and by showing us the resistance offered by Darek, he also gave Polish viewers a sense of what he thought was missing: a way of resistance that was not withdrawal. His film, then, can be read as a very powerful reminder that although we can survive without the courage and humanity exemplified by Antek and Darek, that may not be a life not worth living, or at least not a life we can live with our heads held up high.

Poland in the 1980’s was, of course, a very specific time, with its own unique difficulties (no less so for lawyers than for other citizens), but the contrasting portraits of the two lawyers – Antek and Labrador – are generalisable and of relevance to contemporary times. One need only consider, for example, the role of lawyers and legal institutions in the legitimisation of the sanctions regime in Iraq in the 1990’s, which had resulted in the deaths of 200 Iraqi children a day. As Scott Veitch has pointed out, the death and suffering of the Iraqi population would not have been possible without the co-ordination of the world’s most important institutions, including the United Nations (see Veitch 2007, 12-19).

This paper is not the occasion for an enquiry into the capacity for legal systems as a whole to facilitate moral catastrophes. But it is about the moral quality of the life of the law lived by persons who learn it and work within it on an everyday basis: lawyers, legal academics, and law students. One of the basic difficulties for such a life is the role-differentiated behaviour required by the system. The pressure imposed by such roles, and the potential for moral blindness resulting from uncritical involvement in them, is exemplified in Kieslowski’s film by the figure of Labrador. Veitch also pays a good deal of attention to the capacity for role-differentiated behaviour to enable us, often without us even realising it, to disavow responsibility: to distance ourselves from the consequences of our actions, and to fail to even consider, let alone feel anxious about, the ends supported or created by the system of which our role is a part (Veitch 2007, *passim*). For present purposes, however, a particularly astute discussion of the dangers of role-differentiated behaviour, in the context of legal practice, is offered by Richard Wasserstrom (1975-6).

Writing in the mid 1970’s, Wasserstrom argues that the world created by the lawyer’s role is, ‘at best...a simplified moral world; often it is an amoral one; and more than occasionally, perhaps, an overtly immoral one’ (Wasserstrom 1975-6, 2). He provides a striking example of the number of lawyers involved in the Watergate affair, and offers the following hypothesis: ‘that the fact that they were lawyers made it easier rather than harder for them both to look at the things the way they did and to do the things that were done’ (Wasserstrom 1975-6, 3). For, he continues, it is the principal feature of role-differentiated behaviour that it ‘makes it both appropriate and desirable for the person in a particular role to put to one side considerations of various sorts – and especially various moral considerations – that would otherwise be relevant if not decisive’ (Wasserstrom 1975-6, 3). In her relentless pursuit of the client’s ends, said Wasserstrom, the lawyer was always at risk of becoming ‘an amoral technician whose peculiar skills and knowledge in respect to the law are available to those with whom the relationship of client is established’ (Wasserstrom 1975-6, 6). Wasserstrom acknowledges there are strong arguments in favour of the role to be played by lawyers: persons who may not otherwise have access to legal representation – such as those

ostracised and condemned by the majority and the media – are protected by a system that gives them the right to be defended in court. But the anxiety he articulates is positioned at a more personal (and less systemic) level: he asks, in essence, what is the effect, on the moral sensitivity of specific persons, of a way of life that requires one to inhabit a ‘simplified moral universe’? He says: ‘Role-differentiated behaviour is enticing and reassuring precisely because it does constrain and delimit an otherwise intractable and confusing moral world’ (Wasserstrom 1975-6, 9), and given his characterisation of legal work, he expresses serious concerns about the effect of such constraints and delimitations on the moral development of those immersed in the legal life.

Wasserstrom’s identification of the potentially dangerous effects of role-differentiated behaviour is one of the greatest challenges for moral education in law firms and law schools. It is a challenge that seeks to be met by this paper by reference to what is here called ‘the education of attention.’ Given that role-differentiated behaviour simplifies the moral universe, and influences those who come to learn and master that role to notice only certain things rather than others, there is – one could hypothesise – an important role to be played by ‘breaking the spell’, i.e., re-orienting and re-locating attention. Such re-orientation and re-location must, if it is to be effective, be difficult, perhaps even painful. But that is as it should be, or so it is suggested here, for moral life is, at the very least, difficult and painful. In other words, a moral experience is neither moral, nor an experience, if it does not make one feel the intractable difficulties, uncertainties and risks of the situation at hand. As we shall see in parts IIA and IIB of the paper, the education of attention can be furthered via a mix of initiatives, some of which rely on text, and others which go beyond text.

The education of attention is, however, only one part of the vision for moral education in law schools and law firms articulated here. The other fundamental component is ‘the education of encounter.’ The need for this approach is identified, once again, by Wasserstrom. Legal work is characterised, according to Wasserstrom, not only by role-differentiated behaviour, but also by the kind of encounter with others, particularly clients, that lawyers engage in on an everyday basis. This relationship is, he says, an intensely unequal one, i.e., it is one in which the lawyer, the possessor of expert knowledge, exercises control over the dependent client. As a result, and somewhat paradoxically, ‘the lawyer can both be overly concerned with the interests of the client, and at the same time fail to view the client as a whole person, entitled to be treated in certain ways’, i.e., ‘with the respect and dignity that he or she deserves’ (Wasserstrom 1975-6, 16). This kind of encounter, says Wasserstrom, is characteristic of professionalism generally (whether it be doctors or other experts). Accordingly, the education of encounter is an education based on providing circumstances and situations, and modes of engagement, where those immersed in legal life can encounter other persons in different ways, and in particular, in ways that do not enable (or that frustrate) the tendency to take up a position of dominance and control over dependent others. Part three of the paper pursues this form of education by proposing activities that go beyond text.

Some readers may feel that in all of the above, the legal life has been hard done by: that the characterisations (by Wasserstrom) or the examples (in Kieslowski’s film) do not do justice to the complexities, including moral complexities, of legal life. This is undeniably so. However, it is extraordinarily difficult, and probably impossible, to provide an uncontroversial representation of anything, let alone the life lived by lawyers, legal academics and law students. There will always be enormous variety in how individuals will respond to the requirements imposed upon them: for example, there will always be those who will be more akin to the character of Antek, and those more like Labrador. Neither is it altogether clear that Antek is a moral saint,¹ while Labrador is the opposite. This paper does not wish to

¹ I should point out now that nothing in this paper suggests that we either should strive, or can strive, for moral sainthood. A powerful critique of such an ideal is provided by Wolf 1982.

sit above the difficulties experienced by those involved in the legal life, and pass easy judgement on the rights and wrongs of professional conduct. Rather, the paper seeks to provide a picture of legal life, which shows that there is room for the kind of education (of attention and encounter) that is thereafter explored in more detail. Keeping in mind the difficulties, however, this paper begins, in part one, with a more careful engagement with the question of characterisation: what do we learn when we learn to live the legal life, and what is it like to work in it?

Parts two and three of the paper discuss the education of attention and encounter. Part four then goes on to consider, briefly, how the resources offered differ from and may supplement those initiatives, particularly in moral education, already undertaken by both law schools and law firms. It also returns to some more general issues raised by the policy implications of the preceding parts.

It should be reiterated that this paper is not directed at efforts to assist persons to learn the law more effectively. It is not designed to make law students or lawyers better students or better professionals (though neither is the paper directed against such outcomes). Rather, it is designed to make the institutions of the legal life – law firms and law schools – better equipped at developing the moral sensitivity of the persons that live, study and work in them. In that respect, as is suggested in the fourth part, the reforms encompass not merely changes to the resources of these institutions, but changes also, and perhaps more importantly, to how educators practice education: to the ways and means with which we teach, and the attitudes we exemplify to those within our pedagogical care.

I. The Legal Life: Learning, Knowing, Working

It is important to underscore that this part does not aim to offer a comprehensive picture of legal life. It is designed, instead, to give us a glimpse of learning and knowing the law and working with it, such as to prepare the way for the significance of the two modes of education offered in parts two and three. In other words, the significance of parts two and three would be all the weaker if we underestimated the powerful effects of living the legal life. The focus, then, in what follows, is as much on the effects – particularly on the moral sensitivities of persons – of the legal life, as it is on bringing out some of the features of that life.

One of the most difficult issues in characterising legal life is to neither underestimate nor overestimate the role of language in human action and cognition. On the one hand, we should avoid a picture according to which persons learn and come to know, and thereafter work with, the law, as autonomous and isolated agents, memorising and computing rules. On the other hand, however, we should not push the alternative picture – of say embodied interaction with others and the environment, where we may be said to acquire certain ways of doing and seeing, over long periods of time, in the company of others and in specific institutional settings – so far such as to exclude the power of symbolic instruments.

The work of Andy Clark is particularly helpful in finding such a middle path. Clark is certainly no stranger to embodiment. He has, on many occasions, called upon – and also greatly developed – what has become known as ‘embodied cognitive science’ (Clark 2006, 370; for an early synthesis, see Clark 1997). Other related terms include embedded cognition, cognitive extension and situated cognition. In all of these cases, the underlying idea has been to move away from the notion that cognition takes place inside an individual’s head, which itself is said to be ‘wedged between perception (on the input side) and action (on the output side)’ (Clark and Wilson 2008, 3),² and to replace it with the suggestion that ‘mind and the

² The following page references for Clark and Wilson 2008 refer to a version available on Clark’s website: www.philosophy.ed.ac.uk/staff/clark/publications.html.

cognitive processes that constitute it extend beyond the boundary of the skin of the individual agent' (Clark and Wilson 2008, 5). On this alternative view, then, 'thinking is a kind of building, a kind of intellectual niche construction that appropriates and integrates material resources around one into pre-existing cognitive structures' (Clark and Wilson 2008, 6).

Of course, the above definition does not do justice to the subtleties of the contemporary literature on embodiment, and to differences in various different kinds of externalism in the philosophy of mind. Indeed, this contemporary literature itself draws on an incredible variety of sources, including everything from advances in biology (see Varela et al 1991), neuroscience (Damasio 1994, 1999), the developmental sciences and phenomenology (Gallagher 2005), studies of perception (e.g., Gibson 1979), sociologies of practice (e.g., Bourdieu 1990), as well as more general reflections on craftsmanship (Sennett 2008).³

However, what is particularly useful, for the purposes of this paper, about Clark's contribution, is his stern opposition to the tendency, within this literature, to dismiss or underestimate the value and importance of language (or, more generally, symbolic resources). The step towards recognising the value and importance of symbolic resources begins by acknowledging that 'we are creatures embedded in informationally rich and complex environments' (Clark and Wilson 2008, 8), where those environments must themselves be seen to consist of resources that help persons accomplish cognitive tasks (Clark and Wilson 2008, 13). These resources range from computers to notebooks, and when used repetitively by a person, they become 'fluently tuned and integrated so as to enable the larger system – the biological agent plus specific items of cognitive scaffolding – to engage in new forms of intelligent problem solving' (Clark and Wilson 2008, 14).

Crucially, these cognitively augmenting resources include language. Language, says Clark, is 'a key cognitive tool by means of which we are able to objectify, reflect upon, and hence knowingly engage with, our own thoughts, trains of reasoning, and cognitive and personal characters' (Clark 2006, 372). We do not think in language – to hold that view would come perilously close to an outright rejection of all the lessons of embodiment – but language does help us. Here is a helpful summary of Clark's position:

Embodied agents encounter language first and foremost as new layers of material structure in an already complex world. They also come to produce such structures for themselves, not just for communicative effect but as parts of self-stimulating cycles that scaffold their own behaviour. These layers of structure play a variety of cognition-enhancing roles. They act as new, perceptually simple targets that augment the learning environment, they mediate recalls and help distribute attention, they provide a key resources for freezing and inspecting complex thoughts and ideas, and they seem fit to participate in truly hybrid representational ensembles. All these benefits are available both 'online' (in the presence of actual words on a page, or sounds in the air) and then 'offline' (thanks to cover self-stimulating cycles that engage much of the same machinery used in the ecologically primary case). (Clark 2006, 373)

Elsewhere, in acknowledging the work of Ray Jackendoff (1996), Clark further states that:

Language makes thoughts and complex trains of thought and argument into objects available for attention and inspection in their own right. The linguistic formulations help stabilise complex ideas in working memory and help keep separate the various elements of complex thought and arguments, allowing further scrutiny and repeated revisiting from different argumentative perspectives. (Clark 2000, 14)⁴

³ Sennett reverses the adage used by Clark and Wilson (that thinking is building) by asserting that his guiding intuition is that 'making is thinking' (see his Acknowledgements in Sennett 2008).

⁴ The following page references for Clark 2000 refer to a version available on Clark's website: www.philosophy.ed.ac.uk/staff/clark/publications.html

Significantly and usefully for the purposes of this paper, Clark extends his account of the value and importance of language to the moral life. He argues forcefully against the view of Hubert and Stuart Dreyfus who, in their account of moral expertise (Dreyfus and Dreyfus 1990), relegate the linguistic formulations of moral traditions – i.e., rules, principles and maxims – to a novice stage, and exclude them from the level of the expert. In contrast to their account, Clark argues that ‘linguistic reflection and exchange enables a tuning and orchestration of moral response that is vital to moral expertise’ (Clark 1996, 116). Holding this view of the role of rules and maxims does not entail that we think of rules and maxims as the determinants of solutions to moral problems, or as capable of revealing ‘the rich structure and nuances of the moral visions of those who articulate them’ (Clark 1996, 122). To say that would be to overestimate the role of language in moral cognition and action. But to underestimate that role is also a mistake. Linguistic formulations are better conceived as ‘guides and signposts needed to orchestrate a practical solution sensitive to multiple needs and perspectives’ (Clark 1996, 122).

Clark himself presents his position on the value and importance of language for moral cognition and action as having gone through two stages. In his earlier work (1996), he says, he argued that ‘linguistic formulations and sentential reason are essential parts of the socially extended cognitive mechanisms which support communal reasoning and collaborating problem solving, and are thus crucial and (as far as we know) irreplaceable elements of genuinely moral reason’ (Clark 2000, 10). Under that rubric, we were invited to see linguistic formulations as ‘tools that enable to co-operative explorations of moral space: a space which is intrinsically multi-personal and whose topology is defined largely by the different – but interacting – needs and desires of multiple agents and groups’ (Clark 2000, 10). Four years later, in his reply to Paul Churchland (2000), Clark says he built on the earlier picture to argue that ‘linguistic formulations play a role with the very process by which the moral realm “comes into view” as an object of human cognitive endeavour’ (Clark 2000, 10). With due respect, Clark may have here been characteristically modest about his earlier (1996) paper. Already, there, we can see recognition that the little instructions and rules of thumb articulated in moral rules and maxims enable two skills: first, we are able to recognise moral patterns quickly (hence, at least partly, the use of the term ‘moral connectionism’); and second, we are able ‘to spot cases in which these fluent responses are not serving’ us well (Clark 1996, 120). In other words, with respect to the second skill, we can monitor ‘our morally reactive agencies’, and notice ‘divergences’, such as certain biases, e.g., when we act with ‘frustration at the apparent ingratitude of a sick friend’ (Clark 1996, 119-20). Surely, these skills are pertinent to the ‘moral view coming into view.’

The complex view, then, of moral knowledge, according to Clark, consists in ‘a carefully orchestrated interplay between the kinds of rich, nuanced, know-how directly embodied in neural states, and the genuinely different cognitive tools provided by moral talk and language’ (Clark 2000, 22). Our ‘exposure to moral labels (labelling acts as kind, greedy, selfless...)’ enables our already ‘pattern-sensitive brains to isolate morally salient patterns which might otherwise remain buried beneath the nose of more superficial similarities and dissimilarities’ (Clark 2000, 13). The reference to patterns is important. Looking more deeply into the cognitive role played by symbolic representations, Clark asserts that they trigger prototypes, which are statistical central tendencies of sets of exemplars (Clark 2000, 6). In other words, we do come to know what we know by computing information; rather, along the connectionist model, our neural network has ‘learning algorithms’, which take as input a set of exemplars...and yield a knowledge-base in which the most typical features and the most typically co-associated feature groups becomes highlighted and play an especially potent role in driving future recall, generalisation and problem-solving’ (Clark 2000, 6). An expert, then,

including a moral expert, has ‘finely-tuned pattern recognition skills’ and ‘deploys a highly trained neural network of great dimensionality, tuned by exposure to countless instances and minor variations, and organised around a multiplicity of stored prototypes representing the fruits of long, hard hours of play and practice’ (Clark 2000, 7). Finally, it is worthwhile to note that Clark sees public language – including the rules and maxims of moral traditions – as a ‘reservoir of potentially useful re-coding: re-ifications of complex patterns and tendencies in the underlying web of events’, which have been societally accrued by the painful, slow processes of extended search, trial and error over cultural time’ (Clark 2000, 11-12).

The above has dwelt in some length on Clark’s account, as it provides an excellent framework within which to situate our picture of learning and knowing law, and working within it.⁵ In other words, there is much to be said for an embodied-connectionist model of legal knowledge. What we come to know as lawyers is based on the institutionalised learning of prototypes, i.e., sets of examples, which are symbolised by rules or principles (as forms of shorthand) and are triggered by the environment. This does not mean we are passive receivers of input, merely responding to stimulus. Rather, our stock of prototypes is itself a dynamic system of attention:⁶ we engage actively with the environment, and notice certain things rather than others (e.g., those things that afford certain kinds of actions). It is not the prototypes that do the work for us: it is we who act in the world; but they do enable the intricately interwoven stages of perception, cognition and action. When interviewing a client, then, or in devising a strategy for a case, or even in court (and whether as advocate or judge), we are deploying and redeploying prototypes, shifting attention from one pattern to another, making connections between patterns, and generally exchanging prototypes, or persuading others to adopt the ones that we ourselves have come to adopt. Once we learn these prototypes, which are triggered for us by rules and principles, we are able to use them quickly and non-inferentially, but we do not – as Clark has been at pains to point out – go on, once we have mastered them, to marginalise them; rather, they continue to play an important part in allowing us to frame a space as a legal space, and explore the legal possibilities within that space.

Of course, much more remains to be said to bring out the basic features of this embodied-connectionist picture of legal knowledge. In doing so, we can draw on some previous efforts made by legal theorists. The most prominent of these is Steven Winter’s *A Clearing in the Forest: Law, Life and Mind* (2001). Winter’s account of Cognitive Legal Studies, as he calls it, is composed of three steps: first, he argues that human thought is irreducibly imaginative; second, that imagination is embodied, interactive and grounded; and third, that imagination operates in a regularly, orderly, and systematic fashion. The first of his above moves allows him to distance himself from those theories for whom cognition is ‘primarily representational, propositional, or computational’, replacing this image of cognition with one that is ‘dynamic and adaptive’, and ‘involves processes that are imaginative, associative, and analogical’ (Winter 2001, 5). His second move allows him to argue that ‘imagination...is dependent on the kinds of bodies that we have and on the ways in which those bodies interact with our environment’, and in doing so, helps him to assert that there is no such thing as a higher faculty of reason that is separate or in some sense prior or not built on and grounded in the contingency of our experiences (Winter 2001, 6). Finally, his last move allows Winter to allay concerns that imagination so conceived is not ‘structured,’ providing ‘proof’ of such a structure in such ‘mechanisms’ and ‘mental operations’ as ‘basic-

⁵ I do not necessarily endorse all aspects of Clark’s account of moral knowledge, cognition and action; for example, I am highly sceptical of the very notion of moral expertise (though I agree with Clark that the Dreyfuses were mistaken in restricting the role of symbolic structures to the novice stage). However, I think that Clark’s account does apply, and very powerfully so, to our understanding of legal expertise.

⁶ For more on a dynamical approach to perception, see Beer 2003.

level categorisation', 'conceptual metaphor', 'metonymy', 'image-schemas', 'idealised cognitive models', and 'radial categories' (Winter 2001, 6). These steps taken together are designed, says Winter, to topple the long-standing dominance of the 'higher faculty of reason' in the history of philosophy and no less so in legal theory, and to present 'a picture of human rationality that is bottom-up rather than top-down, imaginative rather than linear, flexible rather than definitional, and characterised by openness rather than closure' (Winter 2001, 9).⁷

There are other relevant sources here, though they do not draw on cognitive science. Pierre Legrand, a legal comparativist, develops a concept he calls 'legal mentalité', which, as Roger Cotterrell neatly summarises it, refers to 'a way of life, a means of interpreting social relationships, a component of an entire outlook, deeply rooted in all kinds of experience.'⁸ In her paper, 'Is Practical Reason Mindless?', Linda Ross Meyer, utilises the concept of 'handiwork', taken from Martin Heidegger, to argue, inter alia, that to apply a rule 'presupposes that one has already "seen" it as relevant to the case' (Meyer 1997-98, 662). That notion of an always and already involved legal worker, who is oriented towards taking certain things as salient, and not necessarily in a self-conscious or deliberative manner, is evident also in Michael Robertson's argument against the very idea of an unconstrained legal actor (Robertson 2007). Robertson claims that there are always and already constraints, not all of which (in fact, little of which, we can be aware of), but unlike Winter, he does not find the source of these mainly in the conceptual metaphors that emerged from embodied experience, but from a 'shared in-place background of goals, fears, hopes, values, etc' (Robertson 2007, 277). For others, such as Geoffrey Samuel (2003) and Bernard Jackson (1998), those constraints come the internalisation of ways of seeing – complexes of facts, which have evolved over time (and can thus be traced back to certain experiences in communities), and which have changed and are themselves influenced by system-specific divisions between bodies of law (e.g., public and private law). For others still, we should not speak of constraints, but of competences. Thus, James Boyd White, in a paper entitled 'Legal Knowledge', says that 'Legal knowledge is an activity of mind, a way of doing something with the rules and cases and other materials of law, an activity which is itself not reducible to a set of directions or any fixed description' (White 2001-2, 1399). Himself known for his account of 'legal imagination' (see White 1973), White asks us to conceive of legal knowledge as a 'competence', which ought to enable us to resist the tendency to objectify, reify and even commodify legal knowledge (White 2001-2, 1396).

The picture that emerges from all of these resources is that legal workers come to acquire certain ways of doing (competences) or seeing by involvement in and exposure to the customs, practices and other forms of interaction in institutional contexts. The reference to a lack of self-awareness tends to be a marker for the inability to act completely without constraints (social, embodied, affective), while nevertheless not being determined by them (indeed, to the contrary, enabled by them). Legal workers become very fluent in noticing those features of situations that they encounter that are legally salient; their prototypes are prompted by, and themselves seek out, facts that create a legal space, which is thereafter effectively explored by reference to the dense bodies of symbolic representations (i.e., the entire spectrum of rules, procedures and cases).

It is unfortunate that this picture, together with the above noted resources, has received little attention in the legal education literature. Sometimes, law students, as a result of traditional text-based pedagogy, are characterised as minds computing rules, becoming ever more entranced by the properties of these linguistically formulated structures, and thus,

⁷ It is unfortunate that Winter's work has received so little attention in legal theoretical literature. The only focused discussion of his work I could find in a law journal was by Mark Johnson (see, Johnson 2002), a philosopher Winter himself relies on extensively.

⁸ Cotterrell 2006, 103; see also, Legrand 1999.

according to many, not capable of exercising the competences required for legal practice. This is the basic message of the recent Carnegie Report on *Educating Lawyers* (Sullivan et al 2007), and other papers favouring a return to apprentice-like models of legal education. The purpose of this part of the paper has been to suggest that these policy initiatives (though they make an important contribution) rely on too simple a picture of legal life, i.e., a picture that does not do justice to the complexity of learning, knowing and working with the law.

There are some important exceptions to this trend. One of these is a recent paper by Alan Lerner (2004). Consider the following description of legal learning:

The environment in which law students are immersed is rich with reading and interpreting statutes and court decisions, analysing text, considering the phrasing of an appropriate rule of law, and arguing for its adoption against professors and colleagues. Students are constantly engaged in analysing the same type of material, deciding what the legal rule should be, and zealously advocating in favour of its application. Socratic dialogue in our classes is emotionally charged, as students are challenged to come up with arguments facing their professors, surrounded by their peers. By implicit learning, i.e., by doing, and being critiqued, rather than by intentionally studying the process, and by repetition, students working in that atmosphere learn principles and processes of analysis of statutes, regulations, and court opinions and how to build an argument in support of the client's position. Their neural networks form patterns of implicit memory that are repeatedly reinforced, to follow or distinguish precedent whenever they must analyse legal problems. Because they work primarily from appellate opinions, they are 'programmed' to look to predetermined sources, e.g., the findings of the court below, the appellate court's identification of the relevant facts.... They may forget most of the particular legal doctrines learned in various substantive courses; however, forever after, whenever their senses perceive a problem as a legal problem, their brains will call on the patterns of neural connections – the memories – that were created implicitly in law school, about how to respond. (Lerner 2004, 681)

It is significant that Lerner's target in the paper is the ineffectiveness of the current environment of the law school for the teaching of professional ethics. He argues that, as a result of this environment (described above), students become good at knowing how to do something, but not whether to do it. When the issue 'involves values and relationships among people – which much of a lawyer's work does – neither explicit nor the implicit knowledge learned in law school is of much help' (Lerner 2004, 682). Lerner goes on to suggest (I return to his specific suggestions briefly in part four) that clinical legal education can help alleviate the incompetence of students to consider whether they ought to do something (rather than how to do it).

Others are not so sure. The problem is in how broadly one approaches the question of moral education. One can, for example, take the view that our primary, if not exclusive, task is to teach law students and lawyers how to be better professionals. In other words, the resources of clinical legal education – and any other resources we muster – are appropriately considered as resources for the more effective teaching of legal professional ethics. One can, however, take a broader, more generous, and no doubt more ambitious, stance to moral education in law schools and law firms. Indeed, based upon the picture of learning, knowing and working with the law above, this paper argues strongly that we should take up such a stance. As noted in the introduction, the broader stance is to ask: first what kind of effect does involvement in legal life have on the moral sensitivities of persons?; and second, what can moral education do to alleviate those effects that are deleterious to the development of moral sensitivity?

Robert Condlin takes up this broader stance in his account of 'the moral failure of clinical legal education' (Condlin 1983). He cites, for example, the reflections of two legal clinicians, Gary Bellow and Earl Johnson (1971), to argue that insofar as we create an environment which attempts to reproduce legal practice, and insofar as we try to focus

exclusively on the teaching of legal professional ethics within that environment, we can certainly raise ‘archetypal questions of professional responsibility’, such as: ‘Should I defend a man who admits his guilt? Should I prosecute a man under a statute with which I disagree? Should I allow a witness to testify when I suspect he is not telling the truth?’ (Bellow and Johnson quoted in Condlin 1983, 320). In doing so, however, we shall miss questions ‘totally ignored in the Code of Professional Responsibility and legal education’, e.g.,: ‘To what degree can or should I impose my judgements on the client’s perceptions? How do I control my fear, anger, and sympathy for the client? To what degree are my judgements influenced by class, race, and caste? In negotiating, when does my manipulation of perception, uncertainty, and attitude become “dishonesty”?’ (Bellow and Johnson quoted in Condlin 1983, 320).

Of course, that criticism need not be – and Condlin does not mean it to be – an argument against clinical legal education per se. After all one can use the resources of clinical legal education to take the broader stance to moral education (thereby widening it beyond the more effective teaching of legal professional ethics). Indeed, Condlin believes that clinical legal education can achieve a great deal that traditional lecture-tutorial style methods cannot. He does, however, raise serious concerns for the exclusive reliance on the reproduction of a legal practice environment for moral education broadly conceived. Based on the ‘analysis of scores of hours of taped supervisory sessions between clinical students and their teachers’, Condlin argues that he was ‘particularly struck by one feature of these interactions, namely that as pieces of behaviour they themselves exemplified patterns that Wasserstrom’ (whom we encountered in the introduction to this paper) ‘identified as morally troubling’ (Condlin 1983, 326). In other words, Condlin says, ‘it began to look as though clinical teachers and students differ from traditional law teachers and students only in that are even more zealous at modelling and imitating dominating and manipulative behaviour’ (Condlin 1983, 326).

In drawing out the strands of his criticism, Condlin calls on the resources of discourse ethics. He argues that discourse ethics ‘emphasises the close connection between the moral point of view and dialogue’ (Condlin 1983, 326). Such a dialogue, he says, ‘aims at a rational consensus among uncoerced individuals in speech situations minimally distorted by socially or psychologically induced communication barriers’ (Condlin 1984, 326). In the ideal speech act situation, participants ‘must make explicit to each other the nature of their ends (which include affective reactions to practical situations) and their plans for adapting available means to those ends. They must explore ambiguities in, and articulate evaluative responses to, each other’s formulations, responses to those responses, and so on, until consensus is achieved’ (Condlin 1983, 326). The purpose of this communicative process ‘must not be to win or silence others’; rather, ‘its purpose is to understand and to produce uncoerced agreement’...the process of communication must be ‘public, bilateral, critical, and cooperative’ (Condlin 1983, 326).

The problem, according to Condlin, is that the clinical legal environment, including, ipso facto, the legal practice environment (which the clinic tries to emulate), has ‘few of these characteristics’ (Condlin 1983, 326). Engaged in what he calls the ‘persuasion mode’ of interaction with others:

Clinical teachers and students often competed over the authorship of ideas, concealed their ends and plans for achieving them, attributed (without investigation) meanings to others’ ambiguous formulations, argued for preferences subliminally and indirectly, suppressed strong but relevant feelings, “protected” each other from difficult but necessary topics by ignoring such topics altogether, argued for beliefs in needlessly stylised and hyperbolic ways, and feigned agreement to produce illusory consensus when underlying belief was the opposite. (Condlin 1983, 326-7)

One could argue that this is not only a description of clinical legal education, but of legal education generally. However, if we are to accept Condlin’s description, clinical legal

education might turn out to be an even more pernicious example of the persuasion mode than traditional pedagogical environments:

It is not just that clinical teachers and students act competitively and insensitively. They also tend to make decisions unilaterally, to keep their agendas private, to dissociate themselves from responsibility for failure, to intellectualise all questions, to argue coercively (if subtly so), and to seal themselves off from data about their own ideological constraints and ineffectiveness. (Condlin 1983, 327)

As a result, according to Condlin, the persuasive mode of interaction in the clinical environment is ‘a low-visibility, indirect, and often cordial method of manipulating others’ (Condlin 1983, 328). Even keeping in mind the great diversity in clinical teachers and clinical education programs, these environments are, more often than not, characterised by attempts to accomplish ‘victory rather than understanding or uncoerced agreement’, and ‘private, unilateral, competitive and self-sealing actions rather than public, bilateral, cooperative, and self-reflective ones’ (Condlin 1983, 328). Under the canopy of ‘adversarial skills’, clinical teachers ‘train students to control conversation – by getting others to agree or not to disagree – until the ability becomes a reflex. In other words, students must learn to convince others or silence them on command’ (Condlin 1983, 328). Usefully, Condlin provides a list of seven features of persuasion-mode behaviours, which, according to him, are often features of clinical legal environments, and by extension, legal practice:

1. A persuasion-mode actor assumes that meaning in communication can and should be produced unilaterally, by attributing single meanings to ambiguous statements....
2. The habit of taking charge, particularly by indirection...allows one to alter the direction of group action adverse to one’s interests while minimising resistance to that alteration by not letting on that that is being done...
3. Persuasion-mode habits encourage one to see problems brought to lawyers as technical, admitting of single, optimum solutions knowable by experts...
4. Persuasion-mode habits cause a person to argue forcefully, hyperbolically, and at length...
5. Persuasion-mode habits enable a person to minimise self-analysis and to reserve it for private moments when it will not weaken instrumental effectiveness...
6. Persuasion-mode habits predispose lawyers to take evaluate stands automatically, as a first response to others’ new ideas...
7. Finally, persuasion-mode habits cause one – understandably in competitive contexts – to hedge bets, cut losses, and pick winnable fights... (Condlin 1983, 329-30)⁹

Taken together, this is a form, says Condlin, of ‘instrumental morality’, which enables one to avoid risks, ‘to value winning and fear losing,’ and generally becoming an expert in ‘manipulating interpersonal exchanges’ (Condlin 1983, 331). In our contemporary media-saturated times, we can easily recognise such features in the portrayal of lawyers in television programs and films, where, as a result of possessing the expert knowledge of complex bodies of rules and principles, they are always in control, dominating and manipulating others (or if not, something is going wrong). Of course, these are caricatures, and we all know that there are persons in law schools and the legal profession who are genuinely anxious about the roles and tasks they are asked to perform as part of their daily work. But these caricatures do bring to the fore the kinds of concerns over the effects of the legal life on the moral sensitivities of persons raised by Wasserstrom. The reference to Condlin above is not designed to suggest that clinical legal education will always fail to help us develop moral sensitivity, but insofar as it illustrates some of the features of the legal life, it should make us think whether a broad approach to moral education in law schools and law firms can be exclusively, or even effectively, pursued in clinical (or, more generally, professional) environments. There is no

⁹ For more detail on the persuasion mode, and its opposite number, the learning mode, see Condlin 1981.

doubt that potential and current participants in legal life must acquire an appreciation of the demands of professionalism: the danger lies in teaching them such that they come to believe that that is all that is required by moral life (in legal institutions or otherwise).

II. The Education of Attention

Many aspects of the above discussion may leave readers unsatisfied. One of those aspects that deserves a great deal more scrutiny is that of the notion of ‘moral sensitivity.’ It is the task of the next two parts of the paper to shed some light on this notion, and thereby also to make a case for the need for a broader approach to moral education in law schools and law firms.

The above picture of learning, knowing and working with the law placed some emphasis on how persons living the legal life come to acquire certain ways of seeing. This part tackles head on this vision metaphor, and its importance for our understanding of the demands of moral life. The next part, focuses more directly on the value of introducing alternative forms of encounter into pedagogical efforts to develop moral sensitivity. Finally, by way of preliminary remarks, the structure of both parts is that I shall first introduce the importance of the two pedagogical notions – attention and encounter, respectively – and then go on to offer specific pedagogical resources for their further development. As indicated earlier, those resources will then be placed in context by reference to contemporary legal education literature in the fourth part of the paper.

One of the first articulations, and certainly one of the most influential in contemporary times, of the importance of the vision metaphor for our understanding of the demands of moral life, comes from Iris Murdoch. As we shall see, Murdoch herself attributes this aspect of her account to Simone Weil (though not without some controversy). As we shall also see, Murdoch’s emphasis on the importance of the cultivation of moral vision has not been without its critics, even very sympathetic ones, which have further developed her account in significant respects.

Although Murdoch does not present herself as doing so, she certainly appears to use the concept of attention in two different ways: first, as a matter of being oriented to notice or see certain things rather than others; and second, as a ‘just and loving gaze directed upon an individual reality’, which, she further notes, she believes ‘to be the characteristic and proper mark of the active moral agent’ (Murdoch 1970, 33). It is the second of these uses that she attributes to Simone Weil (Murdoch 1970, 33). The first, in turn, is designed to thwart the dominance of the concept of choice in moral philosophy, and the associated picture of an autonomous agent, who freely decides whether to follow this or that moral prescription. In the following significant passage, Murdoch elaborates on her resistance to the centrality of choice and the autonomous-driven conception of agency in moral philosophy:

I can only choose within the world I can see, in the moral sense of ‘see’ which implies that clear vision is a result of moral imagination and moral effort. There is also of course ‘distorted vision’, and the word ‘reality’ here inevitably appears as a normative world... One is often compelled almost automatically by what one can see. If we ignore the prior work of attention and notice only the emptiness of the moment of choice we are likely to identify freedom with the outward movement since there is nothing else to identify it with. But if we consider what the work of attention is like, how continuously it goes on, and how imperceptibly it builds up structures of value round about us, we shall not be surprised that at crucial moments of choice most of the business of choosing is already over. This does not imply that we are not free, certainly not. But it implies that the exercise of our freedom is a small piecemeal business which goes on all the time and not a grandiose leaping about unimpeded at important moments. The moral life, on this view, is something that goes on continually, not something

that is switched off in between the occurrence of explicit moral choices. What happens in between such choices is indeed what is crucial. (Murdoch 1970, 36)

The autonomous agent, who ‘chooses his reasons in terms of, and after surveying, the ordinary facts which lie open to everyone’, and who is offered by some philosophers as a description and by others as a norm (Murdoch 1970, 34), is a myth, for such a picture ignores the sense in which persons are already involved in, or constrained by, what they can see, i.e., by what they consider to be relevant or worth noticing. Sometimes, this picture of the agent, ‘thin as a needle’ (Murdoch 1970, 52), is said, by some moral philosophers, to be guaranteed by moral language. Murdoch is certainly not opposed to the value and importance of moral language; she says, for example, that ‘words are the most subtle symbols which we possess and our human fabric depends on them’, that is, as long as we remember ‘the living and radical nature of language’ (Murdoch 1970, 33). However, she stresses that we learn to use such words (such as ‘vulgarity’, or ‘courage’) ‘in the context of particular acts of attention’ (Murdoch 1970, 30). In other words, our knowledge of these moral concepts is dependent on the prior work of looking. Our knowledge deepens, and also becomes more complicated, with time, as we learn to pay attention; as we do so, the words themselves become associated with certain contexts of looking. ‘We learn’, says Murdoch, ‘through attending to contexts’; ‘vocabulary develops through close attention to objects’ (Murdoch 1970, 31). The words, or concepts, themselves do not do the work of moral cognition and action for us.

The central question, then, for Murdoch, is how we can develop this capacity for attention. The task is two-pronged: first, we must be able to re-orient or re-locate our attention; and second, our attention must be such as to be just and loving. ‘Goodness’, says Murdoch, ‘is connected with...a refined and honest perception of what is really the case, a patient and just discernment and exploration of what confronts one, which is the result not simply of opening one’s eyes but of a certainly perfectly familiar kind of moral discipline’ (Murdoch 1970, 37). The education of attention is slow, but so is moral change and moral achievement: ‘we are not free in the sense of being able suddenly to alter ourselves since we cannot suddenly alter what we can see and ergo what we desire and are compelled by’ (Murdoch 1970, 38). Further, we have to realise that ‘the task of attention goes on all the time’, and equally so ‘at apparently empty and everyday moments’ (Murdoch 1970, 42). In law schools, and in law firms, and at home and in any other environments we are immersed in, our attention is being formed, such that small incremental changes at any one moment will often have ‘important cumulative results’ (Murdoch 1970, 42).

Murdoch’s suggestions for the development of attention are a mix of both positive models and warnings. More positively, she argues that the development of that ‘refined and honest perception of what is really the case’ can be furthered by the appreciation of ‘great art.’ However, ‘great art’ is few and far between, for ‘almost all art is a form of fantasy-consolation and few artists achieve the vision of the real’ (Murdoch 1970, 63). ‘The talent of the artist’, she says, ‘can be readily, and is naturally, employed to produce a picture whose purpose is the consolation and aggrandisement of the author and the project of his personal obsessions and wishes’ (Murdoch 1970, 63). ‘Great art,’ by contrast, is able to ‘silence and expel self, to contemplate and delineate nature with a clear eye’ (Murdoch 1970, 63). It is ‘impersonal’ because ‘it shows us the world, our world and not another one, with a clarity which startles and delights us simply because we are not used to looking at the real world at all’ (Murdoch 1970, 63). ‘Great art,’ she continues:

...teaches us how real things can be looked at and loved without being seized and used, without being appropriated into the greedy organism of the self. This exercise of detachment is difficult and valuable whether the thing contemplated is a human being or the root of a tree or the vibration of a colour or a sound. Unsentimental contemplation of nature exhibits the same

quality of detachment: selfish concern vanish, nothing exists except the things which are seen. Beauty is that which attracts this particular sort of unselfish attention. (Murdoch 1970, 64)

The positive model of ‘great art,’ then, is combined with a warning: ‘the chief enemy of excellence in morality (and also in art) is personal fantasy: the tissue of self-aggrandising and consoling wishes and dreams which prevents one from seeing what is there outside one’ (Murdoch 1970, 57). If we are able to ‘overcome prejudice, to avoid temptation, to control and curb imagination, to direct reflection’ (Murdoch 1970, 39), then we have a chance to transcend the fantasy self, and look out, into the world, doing so, furthermore, in a just and loving gaze, i.e., one that does instrumentalise that which it sees, but simply looks, contemplates, loves. Indeed, Murdoch reiterates many times that it is the ‘capacity to love, that is to see, that the liberation of the soul from fantasy consists’ (Murdoch 1970, 65). In a particularly moving passage, reminiscent of a literary rather than philosophical register, Murdoch says:

I am looking out of my window in an anxious and resentful state of mind, oblivious of my surroundings, brooding perhaps on some damage done to my prestige. Then suddenly I observe a hovering kestrel. In a moment everything is altered. The brooding self with its hurt vanity has disappeared. There is nothing now but the kestrel. And when I return to thinking of the other matter it seems less important. (Murdoch 1970, 82)

It is difficult to learn to look. This so because ‘we are anxiety-ridden animals. Our minds are continually active, fabricating an anxious, usually self-preoccupied, often falsifying veil which partially conceals the world’ (Murdoch 1970, 82). To learn to look is to learn to love, and to learn to love is to face others and the world as ‘they really are’; it is to be able to face ‘real death and real chance and real transience’ (Murdoch 1970, 100), which is our human lot, without distancing ourselves from it by the ‘consolations of self-pity, resentment, fantasy and despair’ (Murdoch 1970, 89).

Murdoch’s view is certainly a powerful statement of the value and importance of moral vision. It does, however, contain some problematic elements, which we need not accept in order to learn from her message, and her positive models and warnings. For one, we can be sceptical about the claim that ‘virtuous people’ and ‘great art’ (Murdoch 1970, 54) have a superior access to reality, including moral reality, than others. There is simply too much disagreement about what constitutes greatness in art – and also too much uncertainty about what constitutes virtue (and rightly so, in both cases). Similarly, there is much debate and controversy over what constitutes ‘reality’ – and for whom, when, where, and so on. The danger here lies in coming to believe that one has achieved such access; that one has finally acquired the virtue and artistic sensibility necessary for seeing how things ‘really are.’ The notion of reality, and of virtue and ‘great art,’ can be very positively powerful – as long as they remain ideals, impossibilities, horizons to be striven for, but never attained. The moment we become entranced enough to believe we have some access to reality that is superior to others is also the moment of the most dangerous of all possible self-deceptions.¹⁰ Murdoch would not necessarily endorse such entrancement, but it does arise as a danger on her account.

Another proviso to note is Murdoch’s assertion that the term ‘attention’ is attributable to Weil. There are certainly some similarities in their use of the term. For example, in her paper ‘Human Personality’, Weil states that ‘the spirit of justice and truth is nothing else but a certain kind of attention, which is pure love’ (Weil 2005, 92). Elsewhere, Weil also asserts that ‘attention is the only source of perfectly beautiful art,’ though she does add that it is also the only source of ‘truly original and brilliant scientific discovery, of philosophy which really

¹⁰ It should be noted that self-deception need not only be a matter of being clouded in our vision by our selfish desires. For a sophisticated analysis, see Rorty 1994; see also McLaughlin and Rorty 1986.

aspires to wisdom and of true, practical love of one's neighbour' (Weil 2005, 273). However, the arguably more radical treatment of the term by Weil is visible from the following passage:

Attention consists of suspending our thought, leaving it detached, empty and ready to be penetrated by the object. It means holding in our minds, within reach of this thought, but on a lower level and not in contact with it, the diverse knowledge we have acquired which we are forced to make use of. Our thought should be in relation to all particular and already formulated thoughts as a man on a mountain who, as he looks forward, sees also below him, without actually looking at them, a great many forests and plains. Above all, our thought should be empty, waiting, not seeking anything, but ready to receive in its naked truth the object which is to penetrate it. (Weil 2005, 8)

There is some echo of this in Murdoch's reference to seeing things as they are, and in her call to look and not cover the object with one's anxieties and fantasies (as with the episode of the kestrel). But Weil's notion, at least in the above passage, is not limited to the overcoming of the selfish ego: rather, there is a more basic entreaty to wait, to suspend the work of one's mind, to withhold the rapidity of one's thought, and, just as, if not more, importantly, to be willing to be transformed by what may come. In Murdoch, there is still distance and detachment: what is seen remains an object to be admired for its beauty. The kestrel will not be noticed unless the person can brush aside her consolations. But the kestrel is outside; it does not 'penetrate' one's mind, one's thought. Weil's notion, then, requires one to take a greater risk: not only to look, and look again, but also to open oneself up to be transformed, overcome by the experience.¹¹

A final proviso to make with respect to Murdoch is a point made by Larry May (1992). May sets out to offer a picture of what he calls a 'morally sensitive person.' Such a person, he argues, is characterised by four features: perceptiveness, caring, critical appreciation and strong motivation. The first feature, perceptiveness, is a matter of being vigilant about whether anyone will be hurt or offended by some proposed conduct; the second, caring, requires caring about the well-being of others and acting so as to advance that well-being; the third, critical appreciation, demands that the sensitive person consider 'what is morally relevant about the situation of those who are affected by his behaviour'; and the fourth, motivation, builds in the impetus to act so as to minimise the harms and offences that otherwise might result (May 1992, 10, *et passim*). There are many features of May's account that are echoes of, and which he himself attributes to, Murdoch (e.g., perceptiveness). He also criticises Murdoch for not building in a sufficiently robust account of moral knowledge, such that, according to May, Murdoch does not recognise that 'a person must be able to interpret another's suffering as human suffering first, and this involves more than merely perceiving that suffering' (May 1992, 17). Whether this is appropriate criticism is not an issue for this paper. But what is noteworthy, for present purposes, is May's insistence on the third of the above features, namely critical appreciation. It is this third feature that distinguishes the 'sensitive' person from the 'sympathetic' one, for, according to May, the 'sympathetic person does not typically maintain a critical distance from the suffering of the other, whereas the sensitive person does maintain that critical distance. This is partially due to the fact that sensitivity involves a judgement about the moral legitimacy or worth of the wants or needs of others' (May 1992, 10). May's example is that of a sensitive father who, although attentive to his son's wants and needs, considers those wants and needs in the context of the son's long-term well-being. In other words, it is important to keep in mind, when constructing an account of attention as a component of moral sensitivity, that attention is not only a matter of

¹¹ Interestingly, there is also a form of distancing and detachment visible in the example Murdoch uses in *The Sovereignty of Good* (see Murdoch 1970, 16-18). The example refers to M, the mother in law of D. D is either no longer alive or emigrated. There is certainly a change that occurs in M's mind, but it is a change from a comfortable distance, in the absence of D.

responding to the suffering of another. Sometimes, this immediate response will be of great importance. But at other times, attention will involve attending to the complexity of the situation at hand, including potential long-term consequences of one's actions.¹²

As long as one keeps the above provisos in mind, there is much to learn from Murdoch. Indeed, as noted above, her account has been highly influential among theorists who have stressed the value and importance of moral vision, or, as it has been more popular to call it, moral perception. The two theorists I shall refer to here are Lawrence Blum and Peggy DesAutels.

In a paper dedicated to a detailed examination of Murdoch's view of morality, but also doubling as a chapter in a special journal issue on impartiality, Blum asserts that of particular importance in Murdoch's account is the fact that, for her, 'the moral task is not to generate action based on universal and impartial principles, but to attend and respond to particular persons' (Blum 1986, 344). Blum spends considerable time showing that 'Murdochian reasons' are neither personal nor impersonal. Rather, they are best understood as embracing 'acting from loving attention to particular persons' (Blum 1986, 359). For Murdoch, according to Blum, personal conduct ought not to be understood – as it is allegedly commonly understood by moral philosophers – to 'concern the clash between personal and impartial reasons for action' (Blum 1986, 347); or 'a struggle between an impersonal rightness and a personal good, between impersonal principles and personal desires' (Blum 1986, 359). According to Blum, Murdoch's view cuts across these divides.¹³ Murdoch's view is not designed to equip us with justification, or with a method for weighing and balancing reasons (of, say, benefit to the agent). It is a view concerned not with what is 'merely morally permissible', but rather 'with what is morally good' (Blum 1986, 362). And that goodness, says Blum, is based squarely on that notion of 'loving attention'; of 'concerned responsiveness...to other particular individuals, where this responsiveness involves an element of particularity not reducible to any form of complex universality' (Blum 1986, 343).

In later work, Blum was to build on Murdoch's emphasis on moral vision, but in doing so he also moved away from Murdoch's focus on 'responsiveness to particular individuals' (at least on Blum's own earlier interpretation), and more towards her suggestion that there is much work done by attention prior to any moral choice (or deliberation). Thus, he argues that 'in a given situation, moral perception comes on the scene prior to moral judgement' (Blum 1991, 702). Indeed, Blum locates the unique value and importance of moral perception vis-à-vis moral judgement in two other ways: 'moral perception can lead to moral action outside the operation of judgement entirely; and, more generally, perception involves moral capacities not encompassed by moral judgement' (Blum 1991, 702).

Blum's position of moral perception prior to moral judgement is important for this paper. We have already seen how on the embodied-connectionist model of legal knowledge, persons involved in legal life, are already oriented to finding certain things more salient than others: indeed, their fluency in locating legal saliences is what makes them legal experts. However, this expertise, so valued by legal education and legal practice, is also precisely what is problematic from the perspective of moral sensitivity – or, to use Blum's term, moral perception. Importantly, for Blum, the sense of perception he is working with is not necessarily tied to action: it can be a 'mere' matter of recognising some feature of some

¹² Although May's general discussion of moral sensitivity is a helpful one, his practical suggestions for developing it leave something to be desired. He says, for example, that 'consciousness raising, psycho-therapy, and even the setting of serious resolutions can have an impact on how sensitive a person becomes or remains' (May 1992, 14). I think we can do better than that.

¹³ My own view is that May is being quite generous in his reading here. Murdoch does continually stress overcoming selfish desires, and she also occasionally describes attention as 'impersonal' (e.g., Murdoch 1970, 63). Having said that, when she does emphasise overcoming selfish desires, and attending to another impersonally, it is not for the concern of the greater good, but for the sake of the person being responded to.

situation (Blum 1991, 703, fn 3). Elsewhere, in a moving paper relating his visit to Auschwitz, the example Blum provides is that of the importance of recognising – and communicating the recognition of – others as human beings. Thus, he says, ‘as human beings, we care not only about what people do for and to us, but how they feel about us; and their concern or its absence can be particularly heightened in certain situations’ (he has in mind here the recognition of the common humanity of stigmatised and persecuted groups; see Blum 2004, 143).¹⁴

Importantly, Blum acknowledges that moral deliberation, which occurs after the exercise of moral perception, ‘can further affect...perception of the situation’ (Blum 1991, 707-8, fn 9). It can lead an agent, for example, ‘to see different aspects, to see as applicable moral concepts which she initially did not, and to see previous aspects with a different degree of salience’ (Blum 1991, 707-8, fn 9). In that respect, then, although he stresses the value and importance of moral perception, Blum does not disparage, or underestimate, the role played by deliberation, and particularly deliberation by reference to moral maxims and principles. Rather, like Clark, he presents these maxims and principles as tools for the exploration of the moral space, though, perhaps unlike him, he does not think that moral space comes into view mainly, and certainly not exclusively, as a result of our knowledge of such maxims and principles.

A useful illustration of how Blum sees the exercise of moral perception is provided in the example of a white male, who is awaiting a cab. Earlier along the same road, there is a black woman with a child. As a cab comes into view, both the white male and the black woman begin to hail the cab. However, the cab drives past the black woman and picks up the white male. What Blum is interested in is the capacity of the white male to notice the cab driver’s ‘presumed racism.’ The problem with ‘principle-based traditions,’ he says, even when they are supplemented by the acknowledgement that agents need to know how to apply principles to particular situations,¹⁵ is that they will not guarantee that the white male ‘perceives the racism in the driver’s behaviour in the first place’ (Blum 1991, 711). No matter, then, how thick our conception of moral judgement, it is always moral perception that individuates a situation ‘as a moral situation in the first place...thus providing a setting in which moral judgement carries out its task’ (Blum 1991, 712).

For Blum, what a person striving to be morally sensitive has to do is minimise the causes of non-attentiveness, e.g., situation self-absorption or attentional laziness (Blum 1991, 704). According to Blum, a person can do that by becoming more aware of ‘what sort of obstacles there might be to being sensitive to particular sorts of moral features’, such ‘as injustice, racism, physical pain, discomfort’ (Blum 1991, 715). He argues that there may be ‘some morally distinct features of situations which some persons may be better at perceiving than others’, e.g., some may be better at noticing dishonesty, others better at recognising violations of someone’s rights’ (Blum 1991, 716). That awareness, and the education of moral perception generally, can proceed by way of a mix of activities designed to train the ‘imagination, attention, empathy, critical reason, habit, exposure to new moral categories’: all these, says Blum, ‘can contribute to the formation of moral sensitivities’ (Blum 1991, 715).¹⁶

Another theorist, the final one to consider here, for whom moral perception is a key element of moral development, is Peggy DesAutels. DesAutels makes a distinction between concrete and abstract moral perceivers. The first of these she defines as ‘those persons who have the well-developed capacity and the tendency to deploy embodied theories to perceive

¹⁴ A powerful cinematic example of the importance of this recognition is *The Elephant Man* (1980).

¹⁵ As emphasised, for example, by Herman 1993.

¹⁶ In his later work, Blum appears to have focused his attention on obstacles to the recognition of racism: see Blum 2002. Examining this in more detail falls outside the scope of this paper. For more by Blum on moral perception, see Blum 1994.

moral saliences in time-constrained finely-detailed concrete situations’; abstract moral perceivers, on other hand, ‘have the well-developed capacity and the tendency to use high-level theories to perceive moral saliences in abstracted descriptions of situations’ (DesAutels 1998, 1).¹⁷ Unsurprisingly, perhaps, the latter are more akin to moral philosophers themselves; hence also the tendency, in moral philosophy, for emphasising and valuing this kind of approach. To say this is not to say that abstract moral perceivers have not acquired an important and valuable skill. On the contrary, the ability to ‘use second-hand symbolic descriptions of situations (e.g., a moral dilemma concisely presented in paragraph form, a news segment summarizing the state of affairs in Rwanda, or a briefly described moral “scenario” offered as part of a larger philosophical discussion) and then reason/deliberate in order to determine the best moral response’, takes a great deal of time and effort, and does help persons in recognising, and acting upon, moral features in situations (DesAutels 1998, 9). But it is precisely because this kind of ability has been so emphasised in the literature – both in moral philosophy generally and moral education more specifically – that we need to consider more carefully the abilities of the concrete moral perceiver. This kind of perceiver, says DesAutels, has ‘a highly developed interpersonal competence and tends to emphasize the use of his interpersonal intelligence to determine the moral saliences in the world’ (DesAutels 1998, 9). Further, she is ‘especially good at perceiving first-hand the moral features of an interpersonal situation calling for sensitivity to others’ needs, desires and motivations’ (DesAutels 1998, 9).

For DesAutels, borrowing from the work of Howard Gardner (1983), there are two kinds of intelligences: the analytical intelligence, which is good at ‘perceiving and processing of symbols and/or complex yet clearly ordered abstract patterns’, and the interpersonal intelligence, which is aware of and sensitive to the emotional lives of concrete and particular others’, including ‘access to one’s own feeling life and the ability to notice and make distinctions among other individuals, in particular their moods, temperaments, motivations, and intentions’ (DesAutels 1998, 8). At times, DesAutels describes the interpersonal intelligence, or the concrete moral perceiver, as exercising a ‘more habituated and “embodied”’ ability than that which characterises analytical intelligence or the ability of the abstract moral perceiver (see, e.g., DesAutels 1998, 8). With respect, this could be misleading. It is more accurate, at least if one accepts the account given in part one of this paper, to refer to both intelligences and both kinds of perception as embodied, though by reference to different tools and instruments, and with resulting differences in what is considered most relevant and salient. Be that as it may, DesAutels is surely correct in urging us to make room for both sets of abilities and intelligences.

Furthermore, just as was the case with Murdoch’s loving attention to particular individuals, DesAutels’ recognition of the importance of interpersonal intelligence, and thus of ‘responsiveness to particular persons, in their uniqueness’ – a recognition she also attributes to the ‘care’, as opposed to the ‘justice’ perspective, articulated by Carol Gilligan (1982) – is of utmost relevance for this paper, and will be returned to in the next part. In other work, however, DesAutels has remained more firmly within the metaphor of vision. It remains to explore this briefly before completing this discussion.

In a paper dedicated to exploring Gestalt shifts in moral perception (1996),¹⁸ DesAutels does not rest on describing the value and importance of, as well as the kinds of skills involved in, perceiving moral features of situations, but she also considers some of the ways in which our perception can shift, and how we can develop our sensitivity to such shifts. DesAutels reminds us that ‘as we go about our daily lives, it only makes sense that our current tasks would heavily influence which of all possible perceptual organisations (possible for us

¹⁷ For the moment, the page references are to a version emailed to me personally.

¹⁸ For the moment, the page references are to a version emailed to me personally.

with the learning history that each of us has) is actually brought online' (DesAutels 1996, 5). This 'task-guided' perception 'involves the deployment of rationalised procedures deemed appropriate to the successful completion of the task at hand. These procedures warrant paying differential attention, and giving differential treatment, to various features of an object, event, or situation' (DesAutels 1996, 6). Therefore, one of the best methods for performing a Gestalt shift is shifting tasks, e.g., 'switching from the task of determining what is more fair to that of determining what is most caring' (DesAutels 1996, 6). Paying attention, then, to the kinds of tasks demanded by the roles we play, and switching tasks – e.g., by switching roles – can help us to loosen the hold that those tasks have over that which we notice and recognise as relevant.

Shifting tasks is an important method for Gestalt shifts, but not the only one. We can also switch 'analogies, metaphors and even concepts' (DesAutels 1996, 7). Drawing on the work of Paul Churchland (1989), DesAutels says that we can call on the services of 'conceptual redeployment: a process in which a conceptual framework that is already fully developed, and in regular use in some other domain of experience or comprehension, comes to be used for the first time in a new domain' (DesAutels 1996, 8). As DesAutels notes, this may entail a different kind of approach to both the practice of moral philosophy, and to how one engages with traditions of moral inquiry. In other words, instead of attempting to construct 'a single "best" perspective', i.e., a single unified and overarching theory of morality, we may, under the guise of the recognition of the value and importance of moral sensitivity, come to adopt a form of theoretical pluralism. We need not, then, enter into debates over the possibility of such a unified view in order to see the value and importance of pluralism for the development of moral sensitivity, and for the exercise, on any one occasion, of moral deliberation.¹⁹

We have come to the end of this discussion of the theoretical context in which to situate the role of attention in the development of moral sensitivity. Legal professionals play specific roles, in specific institutional environments, which in turn require the performance of certain tasks and which develop, in those persons, certain ways of noticing certain things rather than others. In short, what we pay attention to is limited in all sorts of ways. If we can become better at seeing, there is also a chance – given the importance of perception for moral life – that we will be more morally sensitive persons. Although this view is informed by traditions of moral inquiry – they can, as has been reiterated throughout, help us to see, but not necessarily exhaust, the moral features relevant in any situation – it does not entail endorsement of any particular set of maxims and principles. Put differently, this view does not entail the endorsement of any particular way of seeing, i.e., it is not underwritten by any one theory as to what is morally relevant. Neither does such a view exclude the possibility that in certain situations there is a form of action that, based on our best knowledge of the situation at hand, is clearly right or clearly wrong. Finally, such a view does not underestimate the pace of life and the limited opportunity persons sometimes have for extensive deliberation, but neither does it suggest that deliberation cannot sometimes play an important role in moral cognition and action. Instead, what this view suggests is that if moral perception is a key element of moral sensitivity – as has been discussed above – then we ought to do whatever we can, as moral educators, to develop that ability. That is precisely what the education of attention is designed to achieve. It is now time to turn to some of the methods and activities that can enable such an education.

¹⁹ In other words, we do not need to be anti-theorists in order to embrace theoretical pluralism. A recent endorsement of pluralism amongst moral theories can be found in Hamalainen (2009), who also discusses the anti-theory strand in moral philosophy. Hamalainen quotes Tim Dare, with approval, who says that 'theories and principles are used as one part of a process of approaching moral problems. They are tools in moral reasoning rather than self-contained machines for the generation of moral answers' (12).

IA. Text

We have already seen that Clark emphasises the value and importance of language, or symbolic structures more generally, for cognition. We do not, he argues, have to believe that we think in language in order to recognise that language augments cognition in very significant respects. However, Clark also goes further, and suggests that symbols can also help ‘break the spell’, relocating attention, and releasing the agent ‘from the immediate tugs of the encountered scene’ (Clark 2000, 4). One illustration he provides is of Sheba, an adult female chimpanzee (see Boysen et al 1996):

Sheba...has had symbol and numeral training. Sheba sits with Sarah (another chimp), and two plates of treats are shown. What Sheba points to, Sarah gets. Sheba finds herself repeatedly pointing to the greater pile, thus getting less. However, when the treats arrive in containers with a cover bearing numerals on top, the spell is broken and Sheba points to the lesser number, thus gaining more treats. The experiments speculate that the material symbols (the numerals on the lids), by being perceptually simple and stripped of the most treat-signifying physical cues, allow the chimps to sidestep the capture of their own behaviour by ecologically-specific fast-and-frugal subroutines. (Clark 2000, 4)

Clark also refers to ‘an increasing body of developmental and simulation-based work suggesting that the presence of words and labels alerts the learner to the existence of deeper and more abstract commonalities between presented items’ (Clark 2000, 5). Somewhat paradoxically, then, although symbolic structures may alleviate ‘computational burdens’ (Clark 2000, 5), and thus enable faster and more frugal cognitive processes, they are also capable of slowing us down and making us see more, or at least re-orienting us sufficiently to decouple our usual modes of engagement with the environment.

Clark’s point is important, and no less so because it offers a different way into the pedagogical benefits of text-based development of moral sensitivity. The contribution that literature can make to the teaching of ethics, or more broadly, virtue, has long been recognised. In contemporary moral philosophy, perhaps the most well-known and most subtle treatment of this topic is due to Martha Nussbaum (1985, 1986 and 1992). However, the topic has also received a good deal of attention in legal education and the teaching of ethics in law schools and law firms. In a recent paper, entitled ‘The Moral of the Story: Toward an Understanding of Ethics in Organisations and Legal Practice’, Kim Economides and Majella O’Leary ‘investigate just how far stories might inform the development of ethical legal practice’ (2007, 5). Quite far indeed, is their answer. They draw heavily on Alasdair MacIntyre’s suggestion that we are ‘storytelling animals’ and that ‘narrative is the key to living a good life; the unity of a human life is the unity of a narrative quest’ (Economides and O’Leary 2007, 8; see also MacIntyre 2007). They say, once again following MacIntyre, that ‘over time stories can encourage more meaningful dialogue through shared reflection surrounding basic collective goals that transcend limitations of individual introspection’; that ‘narrative supports collegial accountability’ and that it can help ‘strengthen...collective responsibility’; and that the telling of stories can enable the more effective passing on of ‘know how’ in certain organisations, including warnings that help avoid occupational hazards (Economides and O’Leary 2007, 10-11). They also suggest that stories can ‘reflect on moral dilemmas arising in everyday work settings’ (Economides and O’Leary 2007, 11), and in doing so, they can, once again, ‘make sense of individual experience as well as providing a means for discursively sharing that experience with others’ (Economides and O’Leary 2007, 12). Stories, then, including those we find in popular culture and those told in the workplace,

are spaces ‘whereby core professional values are asserted and can operate on as a break on crude commercialism’ (Economides and O’Leary 2007, 14).

Although their tone is largely positive, Economides and O’Leary do cast a cautionary note. For example, they say that we should ‘at least ask whether the stories told by lawyers are simply apocryphal embellishments of the truth that are used more to bolster the self-image of the storyteller’ and possibly be ‘even harmful to the story-listener’ (Economides and O’Leary 2007, 19). Such stories ‘may easily confuse or reproduce conduct that perhaps should be discarded or challenged’ (Economides and O’Leary 2007, 19). On the whole, however, they appear to defend the role of literature, as long as it is of such a kind as to develop character, rather than rules to follow. Importantly, they also note that, wherever possible, organisations ought to ‘include stories of various stakeholders...in order to give voice to competing stories or to allow for different interpretations of the same story’ (Economides and O’Leary 2007, 22). This, they say, will help avoid ‘prescribing a single model to guide ethical conduct’ (Economides and O’Leary 2007, 22).

Their last point is a poignant one. The danger with reliance on stories and narratives is that they can be very powerful instruments for the passing on of the same practices, including the same ways of finding certain things relevant. In other words, in much of the literature, including that which discusses the uses of narrative in the teaching of ethics in both law schools and law firms,²⁰ stories can be, and are mostly, used to further sediment principles and models already assumed to constitute ethical behaviour. Unfortunately, much of this repeats rather stereotypical images of the good lawyer, and sometimes also reproduces quite simplistic oppositions between the ‘good professional’ and ‘commercial greed’. Of course, to say this is not to suggest that these uses of stories and narrative do not have their rightful place in legal education; but it is, in the context of this paper, to raise serious doubts about reliance on the undeniable power of stories and narrative to further strengthen the role-differential behaviour that characterises the legal life.²¹

Perhaps the most important problem with reliance on stories and narratives lies in the lack of experimentation with form. For those of us educated in the West, it is very easy to forget just how culturally specific are the forms of narrative and storytelling that we are used to. More often than not, the kinds of stories and narratives relied on in the teaching of ethics are of a kind that present the reader with an example or examples where what is the correct thing to do is either immediately obvious or quickly becomes so. The authority of the narrator is rarely put into question. The effect is the transmission of a mode of engagement with the moral life that positions the reader as sitting in judgement above the characters who are involved in some drama. The reader, thanks to the narrator, is able to stand back, and, from a comfortable distance, evaluate – sometimes also identifying with, empathising with, and so on – the thoughts, feelings and actions of the characters. The problem, in all of this, is that it does not push the reader enough to experience the uncertainty and difficulty that more closely resembles moral experience in the course of moral life.

This is a problem that can afflict not only the use of stories and narratives in the teaching of ethics, but also the use of case scenarios, and thus already identified and individuated moral dilemmas in legal professional ethics classes, as well as, more generally, the construction and manipulation of examples in moral philosophy.²² As I have dealt with

²⁰ I shall not cite the literature here: the reader is invited to look to Economides and O’Leary 2007 for many references.

²¹ It is outside the scope of this paper to support this diagnosis by detailed analysis of the literature. Once again, the reader is invited to consider the paper by Economides and O’Leary, who themselves are cautious (though I think not cautious enough) about the use of stories and narratives in the teaching of ethics.

²² This also includes scenarios not formulated linguistically, such as the use of role-plays and videos.

this issue in more detail elsewhere,²³ I shall refer only to one example. Peter Goldie begins a paper on moral perception with the following scenario:

Mary is in the restaurant with her friends celebrating her birthday. As the centre of attention she is enjoying being teased. But then the teasing begins to get a bit too much for her, and she starts to get upset. She is about to cry. Jack, who is a kind person, recognises that Mary is getting needlessly upset and is about to cry, and he immediately changes the subject. The awkward moment is passed, and Mary is happy again. (Goldie 2007, 347)

What needs to be questioned in relation to this example is the following: in what position must the theorist – the author of this example – be in order to know that Jack has acted appropriately because he has noticed that Mary is upset? From what position are we, the readers, asked to assume that Mary’s happiness depends on Jack’s intervention? From what perspective is Jack’s intervention kind? More pertinently, how does the construction of this example, and our experience of it as readers, make us think of the moral life?

Let us take a step back here and note an important proviso. My gripe with the above example is not that the author’s judgement as to what Jack did is incorrect; I am not arguing, for example, that Jack ought to have allowed Mary to feel upset (because, say, that would make her more resilient to attacks from her peers). In other words, the argument is not that I, as the critical reader of this example, am not persuaded by the judgement of the author of those examples. It is also not that I can (as one always can) add a fact or two to the example (thus in effect assuming the mantle of author) that would render the author’s judgement problematic (and my new judgement correct). Rather, the point is in how the construction of the example sets up the author as omniscient as to the appropriateness (or inappropriateness) of the actions of the actors involved, and how the reader is influenced to adopt the judgement from that omniscient perspective. The danger lies precisely in that omniscience, which is set up artificially by the construction of an example where it can be exercised.

The difficulty, then, with stories and narratives, as with case scenarios and the construction of moral dilemmas, is that it is almost (but, as we shall see, this is a very important ‘almost’) impossible not to offer a description that is already an evaluation of what is at stake for the actors, and what is the appropriate course of conduct (according to the author). This form of narrative or example construction certainly has its uses: it can be used, as it has been used by countless generations, to effectively pass on the maxims and principles of already existing moral traditions. It can also certainly help to make sense of our experiences in certain ways, and generally help to acquire a comforting sense of wholeness or unity to the self (as MacIntyre, 2007, emphasises). When done well, it can help us reflect critically, as well as pointing us to the complexity of situations in which persons exercise moral perception and moral judgement. But, to reiterate, in all of this, the reader is still positioned from a distance, the work of perception and judgement already undertaken, to a large extent, by the author.

It is important to stress that the above argument is not that all literature is like this. On the contrary, the rest of this section wishes to argue that it is possible to construct alternative worlds of text, which help to develop moral sensitivity, as it has been understood in this paper. In other words, if we are careful and inventive about the form(s) in which we offer the world of the text, then we can help educate attention, so as to help ‘break the spell’, decoupling the usual paths between agents and their environment, thereby also re-locating, and generally making more flexible, one’s capacity to pay attention.

It was mentioned above that Nussbaum’s work is one of the subtlest treatments of the use of literature in the teaching of ethics. In that respect, it is worth noting that it is not in her work on literature, but rather in her suggestion of the role of moral theory, that one can find a

²³ See ‘Moral Experience and Legal Education’, available on SSRN.

statement more congenial to the position argued for here. In a paper examining ‘moral progress’, Nussbaum argues that moral theory can provide us with opportunities for the estrangement and defamiliarisation of the exercise of moral judgement (Nussbaum 2007). She argues that ‘our judgements frequently feel so natural to us that it is hard for us to doubt them... But by asking us to look at the logical form of our judgements, and by urging us to describe them in an unfamiliar theoretical language, theory offers us a perspective on them that can be very valuable as we ask to what extent we have been engaging in self-interested rationalisation’ (Nussbaum 2007, 953). In a manner analogous to the theatrical innovations of Bertold Brecht), ‘we look at the overall form of our judgements in ways we frequently don’t, and we use the unfamiliar language of ‘the kingdom of ends’ or ‘the categorical imperative’ to rest reactions we usually don’t even scrutinise. Often this helps us overcome our tendency to rationalise by getting us to see relationships that had eluded us in our daily thinking. Thus the very detachment and remoteness in theory that theory’s opponents sometimes find problematic can serve a valuable practical function’ (Nussbaum 2007, 953).

It was also mentioned above that for those of us educated in the West, it is very easy to forget just how culturally specific our popular forms of narrative and storytelling really are. In that respect, in searching for resources that may help to create opportunities for the disorientation of moral judgement, and thus at once the education of attention, we can look to forgotten or generally ignored literary traditions from other parts of the world. An evocative example of the differences in form is provided by the literary tradition of hikayat, which is practiced in the Malay Peninsula and in the islands of Indonesia. Describing her struggles with translating examples of this tradition, Shelly Errington (1979), notes how she began to realise that in this form of storytelling:

...there is no effort to imitate dialogue, to create voices which are idiosyncratic and can therefore be identified with specific characters. Each figure’s speech is appropriate to its function in the story: the function of hero, the function of king, the function of minister, the function of traitor. Speech does not imitate natural dialogue or express an individuated identity, whose opinions and conversation grow out of an inner idiosyncratic impulse. We do not find characters, competing voices expressing different versions of the world, working themselves out in a dynamic called ‘plot’. (Errington 1979, 237)

Neither can the reader find any intrusion of ‘an authorial voice: the narrator’s tone, opinions, views – voice, in short – is as invisible as that of the hikayat’s figures’ (Errington 1979, 238). Finally, the sense of time and space instantiated by any one example of hikayat wrestles away the possibility of a detached reader, distanced from the story, and regarding it from an omniscient perspective:

In hikayat there is no meanwhile. Events are temporally flat, recounted when they come up. This means that the world cannot be seen as a distant object, separate from the reader. To be understood it must be taken as it is, when it comes. Its shape can be likened to a painting on a temple wall. If you stand back and view from a distance, it is confused and unintelligible mass, simply because there is no perspective, no privileged point of view from which it all makes sense. To follow the story you must go up close and take each bit as it comes: ah, here is Sita being stolen, here are Hanuman’s legions, here is the palace being burned. Only by collapsing the distance between yourself and the story, literally, by going up close to it, can the story be followed. From a distance it is senseless. (Errington 1979, 240)

Fittingly, from the perspective of the education of attention, what this means is that ‘without a privileged end point, there is no criterion for abbreviating, for stripping away the irrelevant’ (Errington 1979, 240). There is, then, no danger, that the reader will be confronted with a scenario in which the description already orients the reader to making certain judgements as to what to pay attention to: that work can only be performed by the immersed reader.

We can learn a great deal from the formal innovations (i.e., ‘innovations’ from our Western perspective) of hikayat. Not only does hikayat give us a sense of the immense possibilities for alternative forms of worlds of text; it also shows us how much our understanding of the moral life has been shaped by certain modes of interacting with texts. In the West, we are certainly more used to (as all the religions of the book can reveal) engaging with texts as sources of more or less authoritative (which does not mean determinative) moral wisdom. We are used to the difficult work of interpretation, and to the creation of more and more texts to help us orient ourselves and – or so we say – minimise personal caprice and corruption, and thus also the unaccountable exercise of power.²⁴ It is rare, indeed, for us to enter the world of text and be genuinely disoriented, and required to be active in exploring the space of possibilities opened by the text.

It is outside the scope of this paper to offer detailed examples of other formal innovations we can draw on. We could, for instance, explore further possible ways of problematising, or undermining, the authority, omniscience and trustworthiness of the narrator. Of course, to do that we can also draw on the modernist and postmodernist literary traditions in the West, including works such as Fitzgerald’s *The Great Gatsby*; Ford’s *The Good Soldier*, Behr’s *The Smell of Apples*, Ishiguro’s *Pale View of the Hills*, Joyce’s *Dubliners*, Coetzee’s *Waiting for the Barbarians*, Robinson’s *Housekeeping*, and others – including, looking earlier, to, for example, Sterne’s *Tristram Shandy*. In all these cases, there are unreliable narrators, repressed narrators, disguised narrators, and multiple narrators.²⁵

We can also look to problematise the tendency to represent time, or history, as a linear progression (from, say, childhood to adulthood, as in the *Bildungsroman*), or at least a linear sequence. In that respect, we can also undermine the common-sense idea of the present being a result of the past, and the future being a consequence of the present. An example of a literary experiment that resists this linearity is Raymond Queneau’s *Exercises in Style*, which relates the ‘same’ story or situation (though the point is that it problematises this notion of an underlying reality) in one hundred different literary styles. We can also learn a great deal from certain innovations in the writing of history (for a recent overview, see Burrow 2007).

As we saw from hikayat, much can be gained from excluding the possibilities of individual characters, or individual voices. One of the innovations introduced by postmodernist literature was precisely this rupturing of the singularity of voice, which was so powerful in both Romanticism and Modernism. Even where innovations were introduced in the latter, such as in Woolf’s *The Waves*, the strands of the multiple streams of consciousness can still be traced back to a character (even if they do sometimes appear to overlap). One example of a formal innovation is Calvino’s use, in *If on a Winter’s Night a Traveller...*, of the second-person pronoun to turn the reader into a character (which nevertheless retains quite classic characteristics of a male hero). Another, equally as entertaining example, this time from the theatre, is Pirandello’s *Six Characters in Search of an Author* (which equally problematises the narrator as it does individuated characters).

Finally, we may experiment with undermining the tendency to attribute properties to things, or, differently, universals to particulars. That we, in the West, are used to doing so becomes evident not only from the perusal of literature, but also metaphysics and certain continually dominant (despite Wittgenstein) theories of meaning (which posit meaning as a property of terms). An anecdotal example of this tendency is related by Maupassant’s description of the kinds of exercises given to him by Flaubert. Maupassant used to see Flaubert every Sunday morning, where he would read the result of the previous assignment, and collect another one. One of these assignments was for Maupassant to attend the royal

²⁴ See, e.g., MacCormick 1989.

²⁵ Except for the reference to *Tristram Shandy*, this list is based on a course given by Brian Shaffer, entitled ‘The Problematic Narrator’, at Rhodes College.

procession, and to describe the properties of one horse so that Flaubert, standing in his window on the next occasion, could identify which horse Maupassant described (one could not cheat by saying it was the first one on the left!). Another version of this assignment was to describe one brick in a wall of bricks, again so that Flaubert could point out which one had been described. An example of the notion of properties being problematised may be some of Robbe-Grillet novels, such as *Jealousy*, where, in the absence of emotionally-charged narrators or character-voices, the vertigo created by excessively repetitive descriptions of things, situations and events (as if these were being scanned by a camera eye), produces an atmosphere in which individual things disappear and merge into different complexes of objects.

Readers will no doubt add their own examples to this brief list. The point in mentioning them is to say that if we are to look to text – as we most certainly can – to educate attention, and thus ultimately also moral sensitivity, then we also have to be both more careful and more courageous about our choices – and if the choices are not available, then we ought to attempt to create them (or ask our students to attempt them). In any event, we should not underestimate the great pedagogical potential of the world of text, at least as long as we do not position ourselves, as authors and teachers, nor our readers and students, in omniscient or passive positions, where we can continue to exercise dominance and control, or as Murdoch warned, escape into the fantasy worlds of self-consolation.

IB. Beyond Text

As useful and important as text-based education of attention can be, our pedagogy will be all the poorer without extending our resources beyond text. Unfortunately, the relevant sources here, both in moral education, but even more so in legal education, are few and far between. There is, of course, an extensive discussion of the role of art in moral education: the topic is as old as Plato (who, as we all know, thought it too dangerous and banned it), and was revived in contemporary times by John Dewey's *Art as Experience* (1934). As I have discussed this literature briefly elsewhere, I shall not dwell on it here,²⁶ except to note that much of this literature is based on the capacity of artworks to develop our capacity to exercise empathy, i.e., art can point to, and enable us to sympathise with, the plight of vulnerable persons, as well as death and suffering worldwide.²⁷ The approach taken in this paper is broader: it is not, in other words, confined to enabling the exercise of empathy, as important and valuable as that is.²⁸ That the appreciation of artworks can facilitate the broader education of attention, and ultimately moral sensitivity, is revealed in some of the activities described below.

There is considerably much less literature on movement and dance in moral education. Although there is some (growing) discussion of dance in education,²⁹ there appears to be little by way of exploration of the role of dance in the education of ethics. The only example I could find was Sarah Leigh Foster's paper, 'Choreography Empathy' (2005), which notes the potential for dance to enable 'kinetic empathy', i.e., the ability of one body to know what another body is feeling. As above, however, the approach taken here is broader, and not confined to the exercise of empathy.

²⁶ See, 'Beyond Text in Legal Education: Art, Ethics and the Carnegie Report', under review and available on request.

²⁷ Even Abowitz (2007), whose approach is informed by Blum's account of moral perception, designs her coursework such that students are exposed to paintings where they experience compassion. See also Pizarro et al 2006.

²⁸ It is important to note that we have to be very careful about the use of images to invoke sympathy. The dangers in question have been identified by Sontag 2003.

²⁹ See, e.g., Arnold 2005. As Arnold notes, the work of Richard Shusterman has been the leader here.

It was this dearth in available resources, particularly in the context of legal education, which led to the Beyond Text in Legal Education project at the School of Law, University of Edinburgh. The project received funding, from the Arts and Humanities Research Council, and brought together a varied group of people, from both the United States and the United Kingdom, involved in both tertiary and professional legal education. More relevantly, for the purposes of this section, the project employed the services of three artists, all of whom also had some experience with educational projects for other communities (e.g., of troubled or disabled children): Alicja Rogalska (visual artist), Keren Ben Dor (dancer), and Zoë Fortherghill (artist and curator at the Talbot Rice Gallery). Although Zenon Bankowski and I had some input in the process of coming up with the activities, they were mainly created, planned and directed by Alicja, Keren and Zoë. The visitors from the US and the local UK participants, including both Zenon and I, participated in these activities.³⁰

For the purposes of the present paper, I shall divide the activities into two categories: first of all, those that may be more readily recognised as contributing to the education of attention (and discussed presently); and second, those that will be more usefully referred in the third part of the paper dealing with the education of encounter.

The first category of activities was focused largely on participants coming face to face with their own limitations, though not their limitations in creating works of art, but rather the limitations of what they noticed, and how their efforts at expression and communication were thwarted by not being allowed to rely on text. The following is a list, with brief descriptions, of the relevant activities:

1. Participants chose a word from a collection based on legal vocabulary, but which were also everyday words (e.g., ‘causation’, ‘attempt’, ‘discovery’). We were then made available a large black sheet of paper, as well as soil, nails of all kinds, bits of plastic, scissors, gloves, and the like. We were asked to come up with a sculpture, or any other kind of work, that responded to the word we chose. We were also asked not to create word shapes to represent our responses. If nothing else, this certainly made us look differently at words that, as lawyers, we often simply look through, given their familiarity to us.
2. In the Talbot Rice Gallery, which is located across the courtyard from the law school at Edinburgh, we were asked to look, as a group, at video installations, and use string and blu-tack to respond, in diagrammatic fashion, to those installations. One of the most difficult things here (or so I found) was to resist the temptation to represent, or attempt to faithfully depict some feature of, what (we understood) the installation to show. The installation my group responded to was an electronic game version of (with matchstick to navigate around) Osama Bin Laden’s hideout. We ended up not being able to resist the temptation, and simply mapped, with the string, the layout of the buildings depicted in the game.³¹
3. Three boxes of all kinds of materials (toys, odds and ends) were made available to two groups, who were given the task to make an installation from those materials in a confined space. The trick was that there was to be no talking to each other; we could only rely on non-verbal communication. One of the interesting things to observe here was how persons who were normally dominant in verbal communication receded to the background. Another interesting feature of this exercise was the difference in how quickly the two groups came to converge on a theme: one of the groups did so very quickly, thereafter choosing materials that

³⁰ A film of this practice-led workshop was made by Robbie McKillop, and is available on request.

³¹ The installation referred to here, and elsewhere in the descriptions referring to installations in the Talbot Rice Gallery, was by Ben Langlands and Nikki Bell. Visit www.trg.ed.ac.uk for more information.

represented the theme; the other group kept exploring what the theme would be right to the end.

4. Participants were matched in pairs and asked to pick up separate instructions (one for the drawer, and one for the describer). Each pair then sat with their backs to each other, and each was asked to read the instructions, but not let the other person know about them. In general, the activity required the describer to describe an artwork (in the Talbot Rice Gallery), which the drawer had to draw (without seeing it). The instructions, however, were designed to rupture expectations. They included, for example, an instruction to the drawer to draw the opposite of what the describer was describing, or to draw the way the voice of the describer sounded (rather than what the describer was describing). An example of an instruction to the describer was to describe an imaginary artwork, or to describe with one's eyes closed. In all cases, the instructions were very effective (in my opinion) in placing in doubt one's ability to control outcomes one sets out to achieve.
5. Participants were given three envelopes with instructions or materials and asked to open each one by when moving from three of the chosen artworks being exhibited in the gallery. The instructions included standing very close to the artwork (almost touching it); using a magnifying glass to look at it; or facing away from the artwork. In all cases, this activity was designed to make one realise how limited (and how standardised) one's usual way of experiencing artworks is.
6. Finally, and perhaps most successfully, participants were given a digital camera, and three envelopes with three different kinds of prompts. We were given 45 minutes to make one photograph each in response to each prompt (so 15 minutes per prompt). We were then asked to go outside into the streets of Edinburgh to take our photos. This activity proved very popular. The prompts included coloured pieces of paper, as well as things like tablets, string, SIM cards, etc. Participants reported being both encouraged and 'permitted' to look much more carefully at their surroundings than they are used to doing. Many produced photos that were only orthogonally (and thus, one might say, creatively) related to the prompts.

This is a selection, from two days packed with activities.³² The above are simply the ones I found particularly powerful. In all these cases, what is being targeted is the decoupling of the usual paths relied on by the agent to engage with the environment. Whether it be by sight or by any other sense (let us not forget that attention is used here as a metaphor), persons tend to be oriented – as a result of a long and continuing learning process in repeated environments, especially when playing roles with repetitive tasks – to notice certain things and respond in certain ways. The mode of instruction, then, for the education of attention, is not so much learning as it is *unlearning*: unravelling, disentangling, and extricating the agent from that which is most familiar to him or her. Although this can also be attempted by text-based activities, it is very effectively pursued by resources and activities that go beyond text.

Of course, going beyond text has budgetary repercussions for law schools and law firms, though these may not be as prohibitive as they first appear. These institutions would certainly need to have easy and regular access to a properly equipped open space – for some, this will require the initial cost of transforming, say, an existing classroom into such a space, as well as further maintaining the stocks of relevant resources; for others, particularly those law schools already with clinical education schemes (or, less ideally, with nearby university facilities) the costs would be minimal. And, although it would be ideal for these spaces to be supported by resident artists, it is possible to save costs by employing ad hoc artists to train

³² An edited collection and policy packages are currently being prepared, with more of the activities described in more detail.

teachers, or to supply teachers with policy and resources packages. In any event, in pursuing any change such as this, one first of all has to offer a vision of possibilities – that has been the aim of this part (and the next). The fourth part returns to the difficulties and the place of these possibilities in the wider concerns of legal education.

III. The Education of Encounter

A good deal has already been noted above that is as relevant to the notion of encounter, as it was to attention. For example, to the extent that we can understand, as Blum urges us to understand, Murdoch's concept of attention as a matter of responsiveness to the particularity of individuals, and, even more so, to the extent that this requires, as Blum appears to suggest, learning from one's personal relationships (Blum 1986, 343), then this is of direct relevance for the education of encounter. There are, however, some specific resources to draw on in this context. As with part two, I shall first discuss these resources (though in less detail than in the previous part), and then go on to show some examples of specific activities created, once again, as part of the Beyond Text in Legal Education project.³³

A neat bridge from the education of attention to that of encounter is offered in two papers by Sven Arvidson. For Arvidson, 'we are what we attend to' – he calls this 'our attentional character... Attentional character is a way of thinking about what is relevant in a human life, what is meaningful and how it becomes so' (Arvidson 2008, 540). Although he puts it more strongly than the theorists considered in the first part of this paper, the idea is a familiar one. Most of the time, he says, attention – including the shifting of it – is 'automatic, bottom-up, exogenous, involuntary' (Arvidson 2008, 540). If it were otherwise, such that 'we had to start anew in visual search each time, imposing order and organisation on experiential flux, we would not be measuring reaction times in milliseconds' (Arvidson 2008, 546). In other words, Arvidson argues, in keeping with the above discussion, that 'the sphere of attention is a dynamic, embodied attending in the world, and attentional character is the relatively stable style of this attending' (Arvidson 2008, 552). By 'style', he means 'a particular manner of opening onto the world, an idiosyncratic, describable way of letting things appear as salient in attending', and by 'stability of character', he means 'a learned, organisational ordering of the attentional system, an initially limited capacity for attending in a given environment, such that some content is more likely to segregate into gestalts, as theme and context, than others' (Arvidson 2008, 552). Again, given the above, all this should be familiar. But what is particularly useful for the purposes of the present discussion is that, in a subsequent paper (Arvidson 2003), Arvidson takes this account of attention and combines it with an exploration of Martin Buber's work (1970).

Buber, a Jewish theologian and philosopher, famously argued, though in a style that many have found impenetrable, of the fundamental importance, for moral life, of the I-You (he called it the 'I-Thou') encounter. According to Arvidson, 'an encounter is I-You to the extent that the importance of means and practicality diminishes' (Arvidson 2003, 74). Arvidson quotes Buber: 'No purpose intervenes between I and You, no greed, no anticipation... Every means is an obstacle. Only where means have disintegrated encounters occur' (Buber quoted in Arvidson 2003, 74). The I-You encounter 'is a tense and intense moment of conscious experience... The inner sense of my embodied consciousness is the context for You as the focus of attention... in encountering You, You confront me in an

³³ I leave aside, then, the possibility of text-based modes of instruction as part of the education of encounter. It has already been mentioned that there is considerable work on the capacity for texts to develop empathy – no doubt this can play a role here also. However, the concept of encounter used here is more experiential, i.e., I focus on direct engagement with other persons.

original way, such that You are presented as immediately and directly relevant and significant in my ongoing conscious life (Arvidson 2003, 82).

Helpfully, Arvidson also discusses a number of obstacles to such an encounter, or differently, circumstances under which the possibility for such an encounter dissipates. Thus, for example, Buber says, 'I can abstract from him the colour of his hair or the colour of his speech or the colour of his graciousness; I have to do this again and again; but immediately he is no longer You' (Buber 1970, 59; quoted in Arvidson 2003, 86). Further, the moment I place You in a context, or thematise You – indeed, even when I reflect upon you – I 'destroy the mode of direct and immediate relation between You and I'; I transform the I-You relation to an I-it relation (Arvidson 2003, 87). For example, 'I can envision You now as a member of a family or as part of what is exciting in the room', but if I do that, then to that extent I no longer encounter You (Arvidson 2003, 87). Similarly, if I 'place him there (in any Somewhere and Sometime)': then, again, 'immediately he becomes a He or a She, an It, and no longer remains my You' (Buber 1970, 59, quoted in Arvidson 2003, 87).

Finally, it is noteworthy that Arvidson reminds us that Buber does not believe there is any prescription that can lead us from an I-It relation, to an I-You encounter. Arvidson himself says that 'some attentional preparation' may make 'encountering you more likely' (Arvidson 2003, 88), though Buber himself is, typically, more restrained, and also more mystical. Buber says that we can only 'prepare with grace' and that 'grace concerns us insofar as we proceed toward it and await its presence: it is not our object' (Buber 1970, 124; quoted in Arvidson 2003, 88-9).

Buber's call to grace, and also for waiting, may rightly remind us of Weil. But it can also remind us of another theorist: Raimond Gaita. There is a famous passage in Gaita's *A Common Humanity* (2000), where Gaita describes how, when he was seventeen years old, he worked as a ward-assistant in a psychiatric hospital. Gaita recalls that 'the patients were judged to be incurable' (this was in the 1960's) 'and they appeared to have irretrievably lost everything which gives meaning to our lives' (Gaita 2000, 17). Although there was, he says, 'a small number of psychiatrists' who worked 'devotedly to improve their condition', and 'spoke, against all appearances, of the inalienable dignity of even those patients', the majority not only treated the patients 'brutishly', but they also thought the above-mentioned minority of psychiatrists were 'naïve, even fools' (Gaita 2000, 18). One day, however, an event occurred, which remain forever etched into Gaita's memory:

One day a nun came to the ward. In her middle years, only her vivacity made an impression on me until she talked to the patients. Then everything in her demeanour towards them – the way she spoke to them, her facial expressions, the inflexions of her body – contrasted with and showed up the behaviour of those noble psychiatrists. She showed that they were, despite their best efforts, condescending, as I too had been. She thereby revealed even such patients were, as the psychiatrists and I had sincerely and genuinely professed, the equals of those who wanted to help them; but she also revealed that in our hearts we did not believe this. (Gaita 2000, 18-19).

Gaita's reaction here, and the very fact that he noticed, let alone interpreted, the nun's behaviour in the way he did, is vital. Feeling ashamed himself, and ashamed too for the minority of psychiatrists he admired, Gaita provides us with an example of the exercise of grace, and thus, also, of the possibility of loving encounters. Without Gaita, it is unlikely that the nun's behaviour would not have been noticed (by other onlookers), let alone thought important enough to describe to others. As he showed in his incredibly moving autobiography, *Romulus, My Father*, Gaita's sensitivity to the value and importance of such encounters extended not only to members of his family, but also to other human beings excluded by the community (he and his father befriend an outcast, whom they allow to live on

their property) and, significantly, to animals. Once again, reading his work recalls the close connection between what is here called attention and encounter.

There have been other theorists who have recognised the importance of what Gaita saw in the nun's behaviour. Daniel Brudney, for example, in a paper examining moral judgement in Conrad's *Lord Jim*, says the following:

The moral life is the life between people, and the structure of that 'between' is important. To treat others as rational beings or as sentient beings or even as beings who (like every snowflake) are unique is not enough, nor is having any particular set of feelings or motives. All these are compatible with looking over or through or beyond the other person. Of course, to acknowledge the other's reality can be less important than one's actions with respect to him or her. Nevertheless, as part of a picture of human relationships, such acknowledgement is important. (Brudney 1998, 274)

The phrase Brudney uses, i.e., 'the acknowledgement of another's reality', is significant. It is a phrase that may remind us of the work of Emmanuel Levinas. Like Buber, Levinas' style is extraordinary difficult; fittingly, and perhaps necessarily, it makes one proceed slowly, reading sentences over and over again. Levinas famously asserted that 'ethics is first philosophy.' Responding to the dominance of metaphysics in the history of philosophy, and versed in Judaic theology, Levinas sought to replace the primacy of what he called 'ecology' (i.e., a person's ontological relation to himself) and 'cosmology' (i.e., 'the totality of things that we call the world') with a person's relation to the other (Levinas in Levinas and Kearney 1986, 21). Even for those, like Heidegger, who used the notion of the interhuman relationship to dislodge what he called 'the metaphysics of presence', the fundamental notion was said to be a 'being-in-the-world', a kind of intelligibility – the forms in which the world always and already discloses itself to us. For Levinas, on the contrary, the interhuman relationship is 'considered from another perspective – the ethical or biblical perspective that transcends the Greek language of intelligibility – as a theme of justice and concern for the other as other, as a theme of love and desire, which carries us beyond the infinite being of the world as presence' (Levinas in Levinas and Kearney 1986, 20). Our relationship to the other cannot be a matter of intelligibility. This suggests a form of a-temporality: something present to be possessed. Rather, Levinas says:

The relationship with the other is *time*: it is an untotalisable diachrony in which one moment pursues another without ever being able to retrieve it, to catch up with, or coincide with it. The non-simultaneous and non-present are my primary rapport with the other in time. Time means that the other is forever beyond me, irreducible to the synchrony of the same. (Levinas in Levinas and Kearney 1986, 21; original emphasis)

So Brudney's phrase, 'the acknowledgement of another's reality', is correct, but only if we understand that reality to remain always on the horizon: out of our reach, out of our grasp; not something we can understand, let alone control, dominate and manipulate; but something we can, and should, approach with grace, awaiting its never complete emergence.

It is also of note that Levinas spoke of the face of the other: of coming face-to-face and looking. This way of speaking was also present in a few fragments of Wittgenstein's papers. In the second, and less organised, part of the *Philosophical Investigations*, Wittgenstein asks himself how, when looking at a person, he can believe that 'he isn't an automaton' (1953 II, iv). How can he see the other as a human being, he asks, and what could this possibly mean? His answer is a powerful one: 'My attitude towards him is an attitude towards a soul', and he adds, 'I am not of the opinion that he has a soul' (Wittgenstein 1953, II, iv). What is significant, then, is the attitude, not some belief – the question originally posed (as with so many of Wittgenstein's questions) disappears; it flies out of the fly bottle.

Later, in the same section, Wittgenstein also says that ‘the human body is the best picture of the human soul’ (Wittgenstein 1953, II, iv). Like Levinas, then, he recognises that awareness of the other is a combination of an attitude with a direct encounter, an encounter that acknowledges the physical presence of another. Elsewhere, in the same work, Wittgenstein speaks of the importance of walking slowly, looking. He says we should say less, and look more. Again, what is noteworthy here, for the purposes of this paper, is the close connection between attention and encounter.

There are others we can draw in bringing out this notion of encounter. The care perspective articulated by Gilligan (1982), for example, asks us to see ‘others thickly, as constituted by their particular human face, their particular psychological and social self’ (Flanagan and Jackson 1987, 623). But this paper is not the occasion for a full review of all available sources. The point, in any event, is that although the emphasis of the education of encounter is slightly different to that of attention, they are, as has been noted a number of times in this part, closely related. The former is designed to enable engagement with others where we are free to notice each other’s physicality, and where we need not hurry to instrumentalise our relationship by, for example, only ever seeing each other as instantiations of the categories, schemes and scripts that we become so good at using on a daily basis in both social and professional life.³⁴ It is also designed to allow us to encounter others in contexts outside of those riddled with roles and associated tasks. But, already in the above description, we can see the vision metaphor lurking: we must see the other and acknowledge their reality; we must look at their face; we must be patient, waiting, not wishing to control, dominate or manipulate the other; and we must resist the tendency to distance ourselves from the other by employing one social ritual after another.

Of course, it is extremely difficult to enable such encounters amongst the busy life of legal institutions, such as law schools and law firms. It is, however, possible to enable such encounters in an open space, where an atmosphere of mutual trust³⁵ is provided. It is exactly that space and atmosphere, together with associated activities, that we tried to create as part of the Beyond Text in Legal Education practice-led workshop. Here, then, are some examples (once again, only a selection) of the activities we engaged in:

1. Participants were matched in pairs, and asked to draw the body of their partner, who stood on the other side of a transparent sheet, and who, in turn, drew them at exactly the same time. In my case, I struggled to keep up with my partner’s body – for he too was moving while he drew me – and I noticed that he was experiencing the same difficulties. The outline that my felt pen produced was very erratic; the lines were wobbly; some of the features (such as the nose, the eyes and the mouth) were overlapping; the proportions were all out of whack. What was most powerful for me here, however, was not my technical failure, but rather that I realised that this was the first time I had encountered another human being, someone whom I had only met moments before, without speaking – without suffocating our encounter by, and drowning our encounter in, words. In other words, this was the first time – and certainly the first time as part of a gathering of legal scholars – that I was enabled to look (and be seen to look) at a fellow participant’s face without anticipating a response; slowly, simply looking, allowing myself to be disoriented, dislocated, even uncomfortable at first.
2. Participants were matched in pairs, and asked to stand next to each other with a large piece of white paper before them. One of us held a piece of charcoal in their

³⁴ Social psychologists have been reminding us of how good we are exercising these tools for many decades now. For an overview, see Kaufmann and Clement 2009.

³⁵ Trust is an important concept for any discussion of moral life. I have not had space to discuss it here, but see Baier 1986.

hand, and was to allow the other person to take their hand and let them draw with it on the piece of paper. Once again, I had not previously encountered another human being's body in this fashion – certainly not with as much trust as this required of someone I had met only a few hours before.

3. Participants were asked to group together in three's. Two persons stood opposite each other and one of them was asked to lead, while the other had to mirror the moments. At any moment, the person mirroring could take over the lead, and other person had to follow. The third person observed, but could also tap one of the other persons on the shoulder, which had the effect of freezing the situation, and enabled the swapping of the observer for one of the persons engaged in the mirroring exercise. One of the fascinating things about this exercise was to see how differently people moved, which you only noticed when you had to pay such close attention. For example, some would make grand movements with their whole body, while others made very subtle movements with their fingers. Indeed, some of us had great difficulty in mirroring the movements made by others. Once again, this activity enabled us all to experience each other as very distinct human beings that could nevertheless share an encounter with no pre-determined end.
4. The group as a whole was asked to move in a large space. At first, we were asked to move about as we wished. Then different kinds of instructions were used: for example, we were asked to become gradually more aware of where everyone else in the group was; or, more confrontationally, one half of the group was given the task of doing everything they could do to make contact (e.g., shake hands) with others, while the other half, in turn, had the task of doing everything they could do to avoid contact.
5. The group was divided into three smaller groups and asked to compose a dance. Each group had different instructions. One group had no rules at all. The other two had either very complex rules, or simply a picture. Interestingly, the group with no instructions composed a dance that gradually involved all the members of the other groups (they began in a circle, and repeated a simple pattern, and every so often gestured towards an outside observer to join in).

One of the potential criticisms of such experiences is that persons who undertake them – especially seasoned professionals – will happily perform them in an environment such as the open space of a workshop (where, say, they are playing the role of an enthusiastic project participant), but will not see the relevance of what they have learnt for other contexts (especially their work context). In other words, no matter how hard teachers try, there is always a risk that persons already adjusted to role-differentiated behaviour will not be transformed by such experiences.³⁶ This is an important criticism. It is not met satisfactorily by suggesting that one cannot force transformation on anyone, though that is obviously true: these activities are not meant to be coercive; they can only work when persons allow themselves to engage. Rather, what the criticism raises is the significance of institutional environments: the efforts of individual law students and legal professionals, as well as individual teachers, are very important, but they are not enough. Introducing the education of attention and encounter into both tertiary and professional legal education requires institutional changes at all levels within the institution. It is to these problems of reform that I now turn.

³⁶ I am grateful to Daniel Augenstein for this point.

IV. Reforming Legal Education

The issues raised by the criticism noted immediately above, point to one vital factor in any proposed reform of legal education (whether it begins, initially, in tertiary or professional legal education): the academy and the profession must work together. This does not mean, as it has sometimes been taken to mean, that the academy must conform to the profession's demands for profession-friendly students. That is not 'working together'. That is attempting to impose the concerns of one institution on another. Instead, both institutions must realise that they have distinct goals, even if they may share some common aims, and both must respect each other's unique challenges.

Tertiary legal educators cannot afford to underestimate the immediate effect, on freshly minted graduates, of coming to work in a law firm. Graduates have to learn fast, adapting not only to the frantic pace of legal work, but also managing many new relationships with often highly stressed individuals working in highly stressful situations. Just as we do when we travel to new countries, and wish to make a positive impression, so graduate students seek to fit in and be accepted by others (especially their superiors). They are, in short, at that very moment, extremely vulnerable to influence. The slightest suggestion, from a senior partner, that, say, the attention they are paying to their responsibilities as citizens, or as professionals with duties to the court (as much as to their clients), is a waste of time, is liable to undo the most strenuous efforts by teachers, clinical or otherwise, in the environment of the law school.

But tertiary teachers also have an obligation to understand not only the difficulties of legal practice, but also its immense diversity (a point forcefully made by Myers 1996), and its position in the wider social context. Legally-educated persons now work, as lawyers and legal advisors, in a bewildering array of workplaces: governments, companies (of many different hues and sizes), as well as small and large firms, not to mention in courtrooms (as judges and clerks), in the police force and at the bar. Academic life certainly has its own values, and these cannot be made subordinate to professional interests. But a law school needs to pay attention to the changing complexity of realities for legal workplaces, and teachers need to inform their teaching with an understanding of these complexities.

More importantly, however, what is vital is that teachers from both tertiary and professional levels of legal education get to know each other, and learn from one another. Often, it is these teachers who are best positioned to understand the difficulties faced by their students or the lawyers for whose 'professional development' they are responsible. Not only must they learn from each other, but they must also themselves be willing to transform their pedagogical practices. If teachers find what is said here about the education of attention and encounter persuasive, they need to consider whether and how it applies to them: to their practices, encounters, orientations, and workplaces. The very point of what this paper argues for will be lost if we, as teachers, come to believe that we stand above those whom we teach, imparting wisdom from some omniscient perspective. Every parent knows how quickly children pick up on the attitudes expressed towards them; students are even better at detecting whether their teacher is genuinely concerned about their welfare (either as current or as future lawyers – and, much more importantly, as human beings). If we underestimate our students, we can be sure they will underestimate us.

There have been many great efforts at reforming moral education in law schools and law firms. In an earlier part of this paper, I noted the work of Alan Lerner, who counsels the use of 'Live Client Clinics' and 'Problem-Based Learning' when teaching ethics to law students (2004). Elsewhere, writing with Erin Talati (2006), he has noted the dangers of professional socialisation and called for clinics to counter these effects with 'multidisciplinary learning.' Steven Hartwell (1995), also involved in clinical legal education, describes the

architecture of a course delivered over six years and based on Lawrence Kohlberg's account of moral development. In his course, students are confronted with a series of 'out-of-class attorney-client' ethical dilemmas, and are encouraged to work in groups and reach a consensus on the response to be taken (by drafting their own rules). The students are encouraged to take their time in seeking consensus, with emphasis being placed on discussion of the disparate views of the participants included in the dilemma. The method, says Hartwell, is 'self-revelation and self-knowledge', which is designed to counter the emphasis on advocacy and persuasion in 'typical legal discourse' (Hartwell 1995, 530). These are all impressive initiatives, and the activities noted above are not meant to displace them, but rather, to supplement them.

A good deal of the debate in the teaching of ethics in law schools is centred around the importance of not confining pedagogical initiatives to the inculcation of the rules of professional conduct, as if the sole purpose of such a course was to help future lawyers avoid prosecution (see, e.g., Spaeth et al 1996). The danger of such an approach has been stressed again and again in the literature, whether by reference to the importance of good judgement (e.g., Luban and Millemann 1995; Frenkel 2001), or developing 'attitudes, dispositions, or normative commitments' (Wilkins 1995, 249), or addressing the reality faced by professionals in practice. These are good points, but they should avoid (as part one of this paper emphasised) underestimating the value and importance of language in moral cognition and action.

Sometimes, the above reminders are accompanied by noting the 'decline of professional values', or the phenomenon of 'the lost lawyer' (Kronman 1993), or the 'crisis in professionalism' (see, e.g., Myers 1996). At other times, teachers of legal ethics pour out their sentiments to their fellow colleagues in law journals, lamenting that no matter how hard they try, students still appear to be cynical and unappreciative of their efforts, and the figures continue to show that their students keep breaching professional requirements (see, e.g., Lerman 1998). But surely we do not need to be doomsayers to recognise the fundamental importance of moral education in law schools and law firms? It is not as if the need for that education would disappear if what we had was a boom in professionalism. More seriously, it is vital that teachers of legal ethics do not characterise themselves as engaged in the narrow, though important, task of teaching professionalism. Rather, all teachers teach, in whatever area of the law, and all students learn from the attitudes teachers impart to them, which includes not only attitudes to professionalism, but, even more importantly, simply human attitudes to relationships with others, and to what is important in life. This does not mean, once again, that teachers can stand above their students and impose their view of what personal goodness entails. To that extent, David Wilkins and others are right that we must maintain a distinction between professional and personal ethics (see Wilkins 1995, 249; and Wilkins 2001). But we ought not to pretend that all teaching is not, ultimately, teaching in the art of life; nor ought we to resist the vital task of a broad approach to moral education (i.e., one not restricted to the teaching of professionalism). In other words, a broad approach to moral education – as argued for here – need not mean that we are forced to impart our own personal view of what is morally relevant and how we can deal with the many challenges thrown up by our relationships with others. Rather, it can mean, as I have sought to show it can in this paper, developing in others (as well as in ourselves) the kind of moral sensitivity that we need, whether we are academics or students in law schools, or professional managers or lawyers in law firms, or vulnerable, fragile human beings living their lives in the company of other fragile, vulnerable human beings.

Finally, let me make a remark, in this context, about budgetary considerations. Articles in law journals, as well as speeches by deans and partners alike, are perennially filled with eloquent and moving tributes to the importance of moral development in law students and

lawyers. If these messages are genuine, then nothing – and especially money – need stand in the way of much needed reform. For a start, professional organisations (such as law societies and bar associations) can facilitate partnerships between tertiary teachers and professional development managers. These partnerships can further be supported by financial commitment from law firms to law schools, which can be reciprocated by law schools offering facilities – such as the above-mentioned need for open spaces and artists in residence – to the professional development of lawyers in those firms. If we are serious about moral education in law schools and law firms our only limitations are the limitations of our imaginations; if we are not, and if we express, instead, cynicism at such suggestions, then why should we be surprised at the cynicism of our students?

Conclusion

As teachers, we should never underestimate the effects of what and how we teach others. The smallest details of who we are emerge in the pedagogical relationship: both from the teacher and from the student. This relationship is such an extraordinary one: it is an enormous waste when its significance is not taken with the utmost seriousness. Notice that that the stress here must be on the word ‘relationship’: education is not one-way. As most educators discover, they can learn as much, if not more, from their students, and from the very process of teaching, as they can from their readings of texts and their encounters with colleagues. The approach to moral education taken here is not one of imparting the wisdom of so-called moral experts. It is a matter of exploring moral spaces together, including, most especially, each other’s reactions and responses. Such explorations must be risky; they must be uncertain; they must be rife with difficulty. If these explorations are anything else, then we risk underestimating the demands of moral life.

As is noted in the fourth part above, many legal educators, in law schools and law firms, have thought deeply about, and offered many innovations for the development of, moral education. This paper did not set out to do justice to previous efforts, though it sought to be informed by at least some of them. Of course, there may well be disagreement about the approach to learning, knowing and working with the law developed in part one, as well as the very framing of and emphasis placed on the education attention and encounter. But I hope that none of the activities offered, nor the specific policy suggestions (such as the creation of open spaces in law schools), are at odds with previous efforts. They are, once again, not meant to displace them, but to supplement them. In any event, I offer them here in the hope for future dialogue and joint efforts.

One final matter needs to be mentioned. Readers might wish to ask: you have at various times referred to moral cognition, moral action, moral sensitivity, moral perception, moral judgement, and to morally relevant features of situations, but what, according to you, is *moral*? What makes a feature a *morally* relevant one? The question is a good one, but what it demands cannot be satisfied. I have, at various times, also referred to the vulnerability and fragility of persons, to responsiveness to the needs of individuals, to the ability to notice the suffering of others, to the exercise of a just and loving gaze, to empathy, and other ‘morally-loaded’ notions – but readers might well wish to ask, but what is it about these notions or others that makes them moral? What is their role vis-à-vis each other? And what exactly *is* vulnerability, or suffering? These questions must be asked. I continue to feel anxious about my attempts at answers to them – not only here, in the life of theory, but in daily life. And what I fear most is the day I think I can stand up and say: I know now, I can tell you, finally. I hope that I can be courageous enough to keep pursuing those answers, and vigilant enough to make sure that that day never comes.

References

- Abowitz, K. (2007), 'Moral Perception through Aesthetics: Engaging Imaginations in Educational Ethics', *Journal of Teacher Education*, 58, 287-298
- Arnold, P.J. (2005), 'Somaesthetics, Education, and the Art of Dance', *The Journal of Aesthetic Education*, 39:1, 48-64
- Arvidson, S. (2003), 'Moral Attention in Encountering You: Gurwitsch and Buber', *Husserl Studies*, 19, 71-91
- Arvidson, S. (2008), 'Attentional Capture and Attentional Character', *Phenomenology and Cognitive Science*, 7, 539-62
- Baier, A. (1986), 'Trust and Antitrust', *Ethics*, 96:2, 231-260
- Beer, R. (2003), 'The Dynamics of Active Categorical Perception in an Evolved Model Agent', *Adaptive Behaviour*, 11:4, 209-243
- Bellow, G and E Johnson. (1971), 'Reflections on the University of Southern California Clinical Semester', *Southern California Law Review*, 44, 686-87
- Blum, L. (1986), 'Iris Murdoch and the Domain of the Moral', *Philosophical Studies* 50:3, 343-367
- Blum, L. (1991), 'Moral Perception and Particularity', *Ethics* 101, 701-725
- Blum, L. (1994), *Moral Perception and Particularity*, Cambridge: Cambridge University Press
- Blum, L. (2002), *I'm Not a Racist, But...: The Moral Quandary of Race*, Cornell: Cornell University Press
- Blum, L. (2004), 'The Poles, the Jews, and the Holocaust: Reflections on an AME Trip to Auschwitz', *Journal of Moral Education*, 33:2, 131-148
- Bourdieu, P. (1990), *The Logic of Practice*, trans. R. Nice, Cambridge: Polity Press
- Boysen, ST, G Bernston, M Hannan, and J Cacioppo. (1996), 'Quantity-Based Inference and Symbolic Representation in Chimpanzees (Pan troglodytes)', *Journal of Experimental Psychology: Animal Behaviour Processes*, 22, 76-86
- Brudney, D. (1998), 'Lord Jim and Moral Judgement: Literature and Moral Philosophy', *The Journal of Aesthetics and Art Criticism*, 56:3, 265-281
- Buber, M. (1970), *I and Thou*, trans. W. Kaufmann, New York: Simon and Schuster
- Burrow, J. (2007), *A History of Histories*, London: Penguin
- Churchland, P. (1989), *A Neurocomputational Perspective: the Nature of Mind and the Structure of Science*, Cambridge, Mass.: MIT Press
- Churchland, P. (2000), 'Rules, Know-How and the Future of Moral Cognition' in Campbell, R and B Hunter (eds.), *Moral Epistemology Naturalized: Canadian Journal of Philosophy Supp. Volume 26*, Alberta: University of Calgary Press
- Clark, A and R Wilson. (2008), 'How to Situate Cognition: Letting Nature Take its Course', in Aydede M, and P Robbins (eds.), *The Cambridge Handbook of Situated Cognition*, Cambridge: Cambridge University Press
- Clark, A. (1996), 'Connectionism, Moral Cognition, and Collaborative Problem Solving' in May, L, M Friedman, and A Clark (eds.) *Mind And Morals*, Mass.: MIT Press
- Clark, A. (1997), *Being There: Putting Brain, Body and World Together Again*, Cambridge, Mass.: MIT Press
- Clark, A. (2000), 'Word and Action: Reconciling Rules and Know-How in Moral Cognition' in Campbell, R and B Hunter (eds.), *Moral Epistemology Naturalized: Canadian Journal of Philosophy Supp. Volume 26*, Alberta: University of Calgary Press, 267-290

- Clark, A. (2006), 'Language, Embodiment and the Cognitive Niche', *Trends in Cognitive Science*, 10:8, 370-374
- Condlin, R. (1981), 'Socrates' New Clothes: Substituting Persuasion for Learning in Clinical Practice Instruction', *Maryland Law Review* 40, 223
- Condlin, R. (1983), 'The Moral Failure of Clinical Legal Education', in Luban, D (ed.), *The Good Lawyer: Lawyers' Roles and Lawyers' Ethics*, Totowa, New Jersey: Rowman & Allanheld, 318-349.
- Cotterrell, R. (2006), *Law, Culture & Society: Legal Ideas in the Mirror of Social Theory*, Dartmouth: Ashgate
- Damasio, A. (1994), *Descartes' Error*, New York: Grosset
- Damasio, A. (1999), *The Feeling of What Happens: Body and Emotion in the Making of Consciousness*, New York: Harcourt
- DesAutels, P. (1996), 'Gestalt Shifts in Moral Perception' in May, L, M Friedman, and A Clark (eds.) *Mind And Morals*, Mass.: MIT Press
- DesAutels, P. (1998), 'Psychologies of Moral Perceivers', *Midwest Studies in Philosophy*, 22, 266-279.
- Dewey, J. (1934), *Art as Experience*, New York: Perigree
- Dreyfus, H and S Dreyfus. (1990), 'What is Morality? A Phenomenological Account of the Development of Ethical Expertise' in Rasmussen, D (ed.), *Universalism vs. Communitarianism: Contemporary Debates in Ethics*, Cambridge, Mass.: MIT Press
- Economides, K and M O'Leary, (2007), 'The Moral of the Story: Toward an Understanding of Ethics in Organisations and Legal Practice', *Legal Ethics*, 10:1, 5-25
- Errington, E. (1979), 'Some Comments on Style in the Meanings of the Past', *Journal of Asian Studies*, 38:2, 231-244
- Flanagan, O and K Jackson. (1987), 'Justice, Care, and Gender: The Kohlberg-Gilligan Debate Revisited', *Ethics*, 97, 622-37
- Foster, SL. (2005), 'Choreography Empathy', *Topoi*, 24, 81-91
- Frenkel, D. (2001), 'On Trying to Teach Judgement', *Legal Education Review*, 12, 19-45
- Gaita, R. (2000), *A Common Humanity: Thinking about Love and Truth and Justice*, London: Routledge
- Gallagher, S. (2005), *How the Body Shapes the Mind*, Oxford: Oxford University Press
- Gardner, H. (1983), *Frames of Mind: The Theory of Multiple Intelligences*, New York: Basic Books
- Gibson, J. (1979), *The Ecological Approach to Visual Perception*, Boston, Houghton Mifflin
- Gilligan, C. (1982), *In a Different Voice: Psychological Theory and Women's Development*, Cambridge, Mass.: Harvard University Press
- Goldie, P. (2007), 'Seeing What is the Kind of Thing to Do: Perception and Emotion in Morality', *Dialectica*, 347-362
- Hamalainen, N. (2009), 'Is Moral Theory Harmful in Practice? – Relocating Anti-Theory in Contemporary Ethics', *Ethical Theory and Moral Practice*, forthcoming
- Hartwell, S. (1995), 'Promoting Moral Development through Experiential Teaching', *Clinical Law Review*, 1, 505-539
- Herman, B. (1993), *The Practice of Moral Judgement*, Cambridge, Mass.: Harvard University Press
- Jackendoff, R. (1996), 'How Language Helps Us Think', *Pragmatics and Cognition*, 4:1, 1-34
- Jackson, B. (1988), *Law, Fact and Narrative Coherence*, Merseyside: Deborah Charles Publications
- Johnson, M. (2002), 'Law Incarnate', *Brooklyn Law Review*, 67:4, 949-962
- Kaufmann, L and F Clement (2009), 'Social Cognition Revisited', forthcoming

- Kronman, A. (1993), *The Lost Lawyer: Failing Ideals of the Legal Profession*, Cambridge, Mass.: The Belknap Press
- Legrand, P. (1999), *Fragments on Law-as-Culture*, Deventer: WEJ Tjeenk Willink
- Lerman, L. (1998), 'Teaching Moral Perception and Moral Judgement in Legal Ethics Courses: A Dialogue about Goals', *William and Mary Law Review*, 28, 457
- Lerner, A and E Talati. (2006), 'Teaching Law and Educating Lawyers: Closing the Gap Through Multidisciplinary Experiential Learning', *International Journal of Clinical Legal Education*, 96
- Lerner, A. (2004), 'Using Our Brains: What Cognitive Science Teaches About Teaching Our Students to be Ethical, Professional Lawyers', *Quinnipiac Law Review*, 23, 643-707
- Levinas, E and R Kearney. (1986), 'Dialogue with Emmanuel Levinas', in Cohen, RA, *Face to Face with Levinas*, New York: State University of New York Press, 13-33
- Luban, D and M Millemann. (1995), 'Good Judgement: Ethics Teaching in Dark Times', *Georgetown Journal of Legal Ethics*, 9, 31
- MacCormick, N. (1989), 'The Ethics of Legalism', *Ratio Juris*, 2:2, 184-93
- MacIntyre, A. (2007), *After Virtue*, 3rd ed, London: Duckworth
- May, L. (1992), 'Insensitivity and Moral Responsibility' (1992) 26 *The Journal of Value Inquiry* 7-22
- McLaughlin, B and AO Rorty (eds.), (1986), *Perspectives on Self-Deception*, California: University of California Press
- Meyer, Linda Ross (1997-98), 'Is Practical Reason Mindless?', *Georgia Law Journal*, 86, 647-675
- Murdoch, I. (1970), *The Sovereignty of Good*, London: Routledge
- Myers, EM. (1996), "'Simple Truths" about Moral Education', *American University Law Review*, 45, 823
- Nussbaum, M. (1985), "'Finely Aware and Richly Responsible": Moral Attention and the Moral Task of Literature", *The Journal of Philosophy*, 516-529
- Nussbaum, M. (1986), *The Fragility of Goodness*, Cambridge: Cambridge University Press
- Nussbaum, M. (1992), *Love's Knowledge: Essays on Philosophy and Literature*, Oxford: Oxford University Press
- Nussbaum, M. (2007), 'On Moral Progress: A Response to Richard Rorty', *University of Chicago Law Review*, 74, 939
- Pizarro, DA, B Detweiler-Bedell, and P Bloom. (2006), 'The Creativity of Everyday Moral Reasoning', in Kaufman, J and J Baer, *Creativity and Reason in Cognitive Development*, Cambridge: Cambridge University Press, 81-98
- Robertson, M. (2007), 'Does the Unconstrained Legal Actor Exist?', *Ratio Juris* 20:2, 258-79
- Rorty, AO. (1994), 'User-Friendly Self-Deception', *Philosophy*, April, 213-30
- Samuel, G. (2003), *Epistemology and Method in Law*, Aldershot: Ashgate
- Sennett, R. (2008), *The Craftsman*, London: Penguin
- Sontag, S. (2003), *Regarding the Pain of Others*, London: Penguin
- Spaeth, EB, JG Perry and PB Wachs. (1996), 'Teaching Legal Ethics: Exploring the Curriculum', *Law and Contemporary Problems*, 58: 3-4, 153-172
- Sullivan, William, Anne Colby, Judith Welch Wegner, Lloyd Bond, and Lee S. Shulman (2007), *Educating Lawyers: Preparation for the Profession of Law*, Hoboken, N.J.: John Wiley & Sons
- Varela, F, E Thompson and E Rosch. (1991), *The Embodied Mind*, Cambridge, Mass.: MIT Press
- Veitch, S. (2007), *Law and Irresponsibility: On the Legitimation of Suffering*, London: Routledge

- Wasserstrom, R. (1975-6), 'Lawyers as Professionals: Some Moral Issues', *Human Rights*, 5, 1-24
- Weil, S. (2005), *An Anthology*, ed. S. Miles, London: Penguin
- White, JB. (1973), *The Legal Imagination: Studies in the Nature of Legal Thought and Expression*, New York: Little Brown & Co
- White, JB. (2001-2), 'Legal Knowledge', *Harvard Law Review*, 115, 1396-1431
- Wilkins, D. (1995), 'Redefining the "Professional" in Professional Ethics: An Interdisciplinary Approach to Teaching Professionalism', *Law and Contemporary Problems*, 58: 3-4, 241-258
- Wilkins, D. (2001), 'Professional Ethics for Lawyers and Law Schools: Interdisciplinary Education and the Law's School's Ethical Obligation to Study and Teach about the Profession', *Legal Education Review*, 12, 47-77
- Winter, S. (2001), *A Clearing in the Forest: Law, Life and Mind*, Chicago: Chicago University Press
- Wittgenstein, L. (1953), *Philosophical Investigations*, trans. G.E.M. Anscombe, Oxford: Blackwell
- Wolf, S. (1982), 'Moral Saints', *The Journal of Philosophy*, 79:8, 419-439