

# Teaching Empathy in Law School

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I BELIEVE THAT the best lawyers are guided by a strong moral compass, and throughout my career as a law teacher, I have encouraged students to consider the morality (in addition to the legality) of their actions. I've been teaching law for twenty years now, and during that time I've taught fifteen different subjects.<sup>1</sup> In every course, on every subject, I've spent some time trying to improve (at least from my own perspective) students' values. In tax courses I've tried to convince them that it's wrong to overtax the poor and undertax the wealthy; in contracts classes I've stressed that it's important to enter into contracts in good faith; in constitutional law, I've said that it's wrong to turn the Equal Protection clause into one that primarily benefits white males; and in negotiation classes I've emphasized that it's important to listen and to work toward Pareto Optimality. In no class have I been able to refrain completely from putting forth my own values in the hope that students would be persuaded to "see the light" the same way that I see it.

Unfortunately, until recently I was never successful in my attempts to influence students' values or to significantly impact their beliefs about what is right and wrong. In recent years, I've begun teaching the only class in which I neither expected nor attempted to

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\* Professor of Law, University of San Francisco School of Law. This article was inspired by my experience teaching *Interpersonal Dynamics for Lawyers*. As will become clear, *Interpersonal Dynamics* is not a typical law school class, and I am grateful to my Dean for allowing me to teach it. I am even more grateful to David Bradford, Mary Ann Huckabay, and Flo Hoylman, all at the Graduate School of Business at Stanford University, for teaching me both *Interpersonal Dynamics* and interpersonal dynamics. Essentially, I have taken a course that they have been teaching for years at the business school and adapted it to the law school. Last, but not most, I could not be teaching this course without the help of my co-teachers, John Holding, Thoraya Halhoul, and Beatrice Chestnut, all of whom are working without pay, because they believe in the course and are dedicated to helping people. And a special note of thanks to the U.S.F. law students who were willing to wholly participate in the development of this class.

1. Federal Income Tax; Corporate Tax; Partnership Tax; Tax Policy; Estate and Gift Tax; Advanced Corporate Tax; Constitutional Law I; Constitutional Law II; Contracts I; Contracts II; Negotiation; Mediation; Alternative Dispute Resolution; and the Mediation Clinic.

influence students' values. It is the one class in which I do not tell students what I think they ought to believe, or what I believe is right and wrong. To my surprise and delight, and despite all those prior failed efforts at persuasion which I put into my other classes and I leave out of this one, this class is the first in my life in which I believe that I actually *have* significantly impacted students' values in positive ways.

In this Article, I will explain why I believe my earlier efforts at teaching values in law school failed, what values I believe are most important for students to be exposed to, and about the class in which students learn those values. I argue that, despite the obvious importance of logic and reasoning in the practice of law, much important potential learning relevant to the practice of law and the development of values is the result not of logic, reading, or analysis, but rather of environmental influences to which we may too often pay very little attention. I then suggest that these kinds of subtle environmental factors are at work in law school, regardless of the intentions or actions of any particular professor, and that they often have significant effects on students' values. While these effects—which tend to encourage students to value hard work and competition—are useful and helpful parts of an overall value system, I suggest that there are other values which are equally important and which seem to get lost in the law school experience. The single such value on which I focus is empathy. I explain why I believe it is so important, and I explain the course in which students learn it.

The course in which my students actually learn empathy, and which I believe has a significant positive effect on students' overall values, is Interpersonal Dynamics for Lawyers. In discussing the course, I explain why I began teaching it (to teach the kinds of interpersonal skills essential to effective negotiation, client counseling, and building good working relationships with other attorneys); how the course works; and why, through no intent or attempt on my part, the course has a real and beneficial impact on students' values.

## **I. The Interaction of Perceptions, Feelings, Thoughts, and Behaviors**

Most of my early (that is, prior to Interpersonal Dynamics for Lawyers) attempts at teaching values centered on simply trying to convince students to accept my own judgments about what is right and wrong with the way the legal system works. Unfortunately, while these efforts might have occasionally influenced someone's thinking, they

were essentially doomed to fail. The biggest problem with these attempts at moral persuasion was that they were based on a kind of linear approach to human behavior that is not necessarily inaccurate, but that is necessarily incomplete. The notion that one can teach values merely by explaining what is right and wrong assumes that reason and logic are the starting point for our values and our actions. In fact, the suggestion that our actions (including our choices with respect to what values to adopt) may be guided by reason is usually no more correct than the opposite notion—that one's reason (including the formulation of her moral system) is guided by her actions.

We all prefer to think of ourselves as acting thoughtfully and intentionally. We see ourselves as rationally choosing values, learning the facts, applying values and logic to those facts, deciding on a course of action, and finally implementing our conscious choices. Sometimes this is what happens. Equally as often, however, our thoughtful and rational analysis of facts does not *cause* our behavior, but instead *follows* (and rationalizes) behavior that was in fact the result of some earlier unconscious learning. Because our brains act so quickly, we are entirely unaware that the rationalization immediately follows (and neither precedes nor motivates) the behavior. Fortunately, a little hindsight into our own or others' behavior, combined with a full understanding of the context in which that behavior occurs, can clearly reveal how the explanations we offer (and believe) for our own behavior are often far from the actual motivators for that behavior which we use them to explain.<sup>2</sup>

A simple experiment I have conducted in some of my own negotiations classes has convincingly demonstrated this fact to many of my former students. In this little experiment, people are chosen for each of two groups, and the remaining students are designated as "observers" of each group. Each group, with its designated "observers," is sent to a separate room and asked to pitch pennies against a wall to see how close they can get them to the wall. One group's penny pitching is met with complete silence by its "observers." The other group is constantly praised by the "observers" (for example, for their ability to get pennies close to the wall, for their good form, etc.). The second group invariably continues to pitch pennies long after the first group stops. When asked why they stopped, the first group typically replies that they were tired or that they had other things to do. When asked why they continued for as long as they did, the second group typically

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2. See generally Joshua D. Rosenberg, *The Psychology of Taxes: Why They Drive Us Crazy and How We Can Make Them Sane*, 16 VA. TAX. REV. 155 (1996).

responds with statements such as "it reminds me of when I was a kid, so it brings back fond memories," or "it was a good challenge." None in the second group respond, or are aware, that they continued because they were getting cheered on by others, and none in the first group suggest or believe that they stopped because their behavior was met by complete silence.

None of us are exempt from this kind of *ex post* rationalization. On a more personal note, I was recently in Las Vegas, putting money into slot machines, and I often told myself things like "this feels like a lucky quarter," or "this machine is due," or (toward the end) "I only have six more quarters; I might as well use them up." Like most gamblers, I actually believed these explanations at the time, and if someone had asked me why I was throwing my money into those damned machines, those are the reasons I would have given. Upon returning home (with empty pockets), I did a little research and discovered, to no surprise, that slot machines had been configured with the assistance of experimental psychologists to generate payout schedules that mirrored the type of reinforcement schedule that maximally sustains learned behavior. In other words, I was not gambling because the machine was "due," I was throwing my money away because I was being conditioned to do so, and I, in turn, believed that the machine was "due" because I was gambling.<sup>3</sup>

The same kinds of things happen to us all hundreds of times a day. The shopper who buys a name brand she saw advertised by famous people on television tells herself and others that the product is more reliable than brand X, and this may be part of the reason she buys it. But even when she is told by reliable sources that the products are identical (and even when told that the products are manufactured by the same company and that the only difference is the label), she will still often tend to purchase the advertised brand. She does so not only for her consciously announced (and believed) reason that the brand is more reliable, but because she is unconsciously imitating the behavior she saw on television. We might think that a compulsive gambler is crazy, while the rest of us are "sane"; but the truth is that we are all somewhat irrational and somewhat driven by unconscious learned responses to stimuli. Any seemingly rational explanation for behavior may be an *ex post* rationalization as easily as an *ex ante*, or causative, explanation. While we might like to distinguish between nonrational conduct and rational behavior, we cannot. All of our behavior is the

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3. See generally JOHN M. IVANCEVICH & MICHAEL T. MATTESON, ORGANIZATIONAL BEHAVIOR AND MANAGEMENT, INSTRUCTOR'S EDITION 202 (3d ed. 1993).

result of a combination of rational thought and nonrational behavioral learning.<sup>4</sup>

Just as our thoughts can be influenced by our actions, our perceptions (seeing, hearing, etc.) of the world around us are influenced significantly by our thoughts and feelings. Indeed, no one who has either studied evidence or been involved in a trial could seriously doubt that what we perceive (both in terms of what we focus on and what we actually see and hear) is dependent in part on our thoughts and feelings. In the same situation, different people will focus on different things, so that even if their perceptions were uniform, they would nonetheless know different aspects of what occurred. More significantly, even if people see, hear, and focus on the same things, they experience those things differently. For example, almost everyone is familiar with the picture in which some people see two faces looking at each other while others see a vase. In the legal context, witnesses often are convinced that their identification of people and actions is accurate, despite the fact that other witnesses are certain of the opposite, and other evidence may make it clear that both percipient witnesses must be mistaken. The people are not necessarily lying. Their perceptions are simply biased by their thoughts and feelings.

Just as our thoughts are influenced by our actions and our perceptions are influenced by our thoughts and feelings, our thoughts (conscious and unconscious) are also influenced by our feelings. Again, these factors influence both what we think about and the way we think about it. An obvious example of the impact of feelings on both what we think about and how we think about it is the story of anyone in the throes of love or of hatred. Such a person will likely find it difficult to think about things other than the object of her intense feelings. In addition, the content of those thoughts will depend significantly on which throes the person is in. Behaviors a person in love thinks are cute, are seen by the same person as repulsive and offensive when that love has turned to hatred.

Simply put, the interaction of perceptions, thoughts (including our consciously held values), feelings (including the strength of the feelings underlying our values), and behaviors is not linear. Instead, these all interact cyclically. Our thoughts are influenced by our feelings and our (unconsciously) learned behaviors as well as by our perceptions; our feelings (and desires) are influenced by our thoughts

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4. By "behavioral learning" I mean to refer to the kind of learning for which Pavlov and his dogs became famous.

and behavior as well as by our perceptions;<sup>5</sup> and our behaviors are influenced by our feelings and by unconscious learning as well as by our perceptions and thoughts. Our behavior then impacts on the world around us, which in turn acts and reacts to us, reinitiating the same cycle. These kinds of cycles play themselves out daily and hourly in our lives.

Good examples of how these cycles work are any of the numerous self-fulfilling prophecies that make up our days (without our knowing it). One such self-fulfilling prophecy that I often discuss in class is the person P at a party who looks at person AC and thinks she is arrogant and cold, and then looks at person FW and thinks he is friendly and warm. I can almost guarantee that by the end of the evening, P's initial perspective will prove (to P, at least) correct, regardless of the actual personality of either AC or FW. In large part this will be because P will likely approach and be receptive to FW, who in response will likely act friendly, and P will likely back away from AC, who in turn will be less likely to act warmly toward P. P will then leave the party unaware of how her feelings and unconscious learning impacted her actions and behaviors, but acutely (albeit inaccurately) aware of her own ability to predict human behavior and of the rationality of her actions (i.e., she was smart to avoid arrogant and cold AC).

## II. The Inevitable Impact of Law School on Values

The interaction of thoughts, feelings, perceptions, and unconscious learned behaviors described above has obvious implications for the teaching of values. Basically, although values and beliefs are themselves both appropriately *labeled* as thoughts, the growth and evolution of an individual's values and beliefs is not the *result* of mere thinking, reasoning, or logic. Ultimately, because values (as all thoughts) are the result of something other than pure logic, even the most brilliant logician cannot, by the force of logic alone, impose a value system on another.<sup>6</sup> Instead, however much we may attempt to change students' values by enlightening them with respect to new ways to *think* about

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5. For example, if we think someone is smiling warmly at us, we feel good about it. If, instead, because of the way we think about that person, we believe she is mocking us, our feeling will be different.

6. I have often asked students if pure logical argument has ever convinced them to change their mind about anything (politics is always an easy example). Typically, only a few say that they have changed their minds as a result of rational discourse. It has always turned out, however, that when they changed their mind about some issue, it was not because of a reasoned argument on the other side. It was always because they learned *facts* that they had not known before.

things, their values are impacted not so much by *our* words as by *their* own experiences.

I do not mean to suggest, however, that law school has no impact on students' values. I have asked numerous third year law students if, and how, their values have changed during their law school careers, and many have said, in response, that their respect for the rule of law, and for the role of law in society, has increased dramatically. To my delight, they have learned to see the Constitution, and even the Uniform Commercial Code and the Internal Revenue Code, with increased respect. Since we all hope that law students will learn respect for the law and for justice, and since this is what we spend our time trying to get students to think about, we might believe that, in fact, our logic does significantly impact students' values.

Despite the fact that many students express that law school has significantly increased their respect for, and value of, the law, I doubt that our own attempts to impart these values (or any other values) to our students are successful. First, I am skeptical that students' avowed increased respect for "law and justice" actually reflects any significant change in their values. Second, I believe that to the extent that this increased respect for law is significant, it is not primarily the result of our logical efforts to convince them.

I discount students' increased respect for law as a significant development in large part because I have seen that each student seems to adapt her vision of the law and justice for which she has such respect into the same value system she had in place prior to law school. Students who came into school with a basically conservative political orientation leave school with that same orientation, as do those who came with a basically liberal outlook. While both groups may have new and philosophically more thorough explanations for their political orientation, and while they can all explain how their orientation is consistent with notions of justice, I have never seen a case where one came in liberal and left conservative, or vice versa. Nor does their increased *respect* for law seem to translate into increased *obedience* to law. Students who began law school with a tendency to follow rules will leave law school with that same tendency; while students who came into school with a tendency to ignore rules seem to leave with that same tendency fully intact.<sup>7</sup>

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7. At the University of San Francisco School of Law, students do quickly learn that they cannot ever get away with ignoring any rules established in Professor Peter Honigberg's legal writing program, because those rules are always quickly and fully enforced. Unfortunately, however, this does not translate into a generalized tendency to follow rules.

Along the same lines, students who come into school valuing and exhibiting personal kindness and being kind to others tend to leave with those values intact (although the stress of law school may at times interfere with their ability to implement those values), and those who come in with a basically hostile attitude usually leave the same way. Essentially, while many students leave law school with an increased respect for law and justice, those terms seem to have a personal meaning for each student, and that personal meaning tends to be one that is entirely consistent with the values the student had upon entering law school.

While increased respect for law and justice may have a different meaning to different students, I do not doubt that, in their own ways, all of the students actually have increased their respect for law and justice. But I do doubt whether this increased respect for law and justice is the result primarily of advocacy of those values. Instead, I believe that people who have spent three years studying law, reading cases, preparing for finals, getting tense and tired, and paying close to \$100,000 to endure the experience will inevitably rationalize their choices and behaviors, in part by thinking that law and justice are, indeed, very important. They have spent time and effort engulfed in an environment dedicated to law, and to deny its value would be to create significant cognitive dissonance. It is not so much the logic, but the time and effort involved, and the universal focus on law in the law school environment, that tends to encourage students to respect and value the law.

Basically, most people value the things they do, while thinking just the opposite (that is, that they do the things they value). People who are predisposed to being introverted and shy tend to believe that it is proper to not be intrusive. Those who are predisposed to being extraverted and outgoing believe that it is proper to not be withdrawn and evasive. Those who have spent three years of money, time, and effort engaged in the study of law believe that law is important. Each thinks she is acting based on a thought out analysis of proper behavior. In fact, each likely adopts an analysis of *proper* behavior that simply conforms to (and actually justifies) her *actual* behavior.

The notion that we value what we do, rather than just the opposite, also explains in large part why many students who came into law school with liberal values and a commitment to "public interest work"

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Instead, it translates into a tendency to both respect and resent those who run the legal writing program.



may leave with the same basic liberal approach intact, but with a better “understanding” of how working for big law firms and corporations is consistent with those liberal values. Often their interest in public service and aversion to corporate practice is overcome by three years of accumulated debt and more accurate knowledge of the salaries they can earn in public interest work. They do tend to appreciate others who engage in that kind of work.

Unfortunately, the notion that increased respect for law and justice is the result of time and effort spent focusing on law, rather than the result of professors’ explanations of why the law is important, is basically consistent with my own experience in the classroom. Personally, in classes ranging from tax to constitutional law to contracts, I have found that I can convince students to adopt my perspective and attitudes only if they already shared my general values and perspective prior to the class; and I am almost entirely incapable of convincing anyone to adopt my viewpoints if they came into class with a different perspective. Liberals will agree with the liberal values and positions I espouse, while conservatives will agree with the conservative values or positions I adopt. Neither is swayed by my logic, and both will gladly accept and appreciate my logic whenever it happens to support their previously held positions. Indeed, more often than not, I find that when I set out my perspective on political and legal issues, those who do not come into class with the same general perspective tend to do nothing other than harden their resistance to my ideas.

Although my own attempts to influence students’ values may fall on deaf ears (or at least on unreceptive minds) I believe that the law school experience does affect students’ values in ways other than increasing the extent to which they value the importance of law itself. The problem, again, is that the primary effects law school has are not those we try to reason students into, but those the environment tends to unconsciously encourage.

Given how values evolve, immersion in *any* intense and relatively uniform environment for three years will tend to influence a person’s focus, perceptions, behaviors, feelings, and values.<sup>8</sup> The intensity and constancy of the law school experience essentially guarantee that it will inevitably impact students’ values, regardless of the efforts of any

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8. Examples of environments that most obviously impact values include the military, or its opposite—a hippie commune, religious communities, or almost any community in which one lives.

individual faculty member.<sup>9</sup> While I don't pretend to know all of the influences that law schools have on students' values, and while I readily acknowledge that those effects, whatever they may be, are likely not uniform in either kind or degree, it is useful to at least explore what kinds of effects (in addition to simply increasing the extent to which students value "law") the law school environment may typically have on peoples' developing values.

For most, the three years of law school are not an end in themselves, but merely a step on the road to becoming a lawyer. Basically, law school is three years spent getting ready for something else—getting a job as a lawyer and (for some) actually learning how to be competent at the job they hope to get.<sup>10</sup>

For students coming right out of college, the notion of spending the present getting ready for the future is second nature—that's what school is about. Even for those students, however, law school is different. There is no (or at least very little) pretense of education for its own sake.<sup>11</sup> Instead, it is almost universally accepted that a legal education is for the purpose of learning to be a future lawyer. This uniform focus on the future as a lawyer leads to an almost universal focus on getting good lawyering jobs. Many students will begin to place value on the most sought after jobs,<sup>12</sup> and on the good grades necessary to get them.

Inevitably, competition for the best jobs will lead to competition for the best grades.<sup>13</sup> Many students will begin to compete for those grades more than they had prior to law school, and will tend to value

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9. To some extent, students may come into school with these values already in place, but the role of the school in enhancing and reinforcing these values is nonetheless significant. This was made obvious to me when my niece, who had been analytic thinker and diligent student, opted to attend art school (where no grades were given, but creativity was praised) rather than law school after college.

10. I do not mean to suggest that other law students will be happy to be less than competent. I mean instead that for many law students, law school is about getting a job. Once they have the job, they will focus much more on being good at it.

11. I wish neither to exaggerate nor to mischaracterize any particular school. In order to prevent any such mischaracterization, I do acknowledge that, at least at Yale Law School, there is indeed a pretense of education for its own sake.

12. Even after law school, many people will seek out better jobs. But never again and nowhere else they are will they experience anything like the same kind of intense and universal focus on getting a good job. If nothing else, once they are in the working world, everyone they work with will have a job already, even if for some it is not the job they want.

13. Of course, many law students are competitive before law school and most had to get good grades in order to be admitted to law school. I do not suggest that law students did not compete or value good jobs prior to law school. I do mean to suggest that law school fosters and encourages those values.

more highly the traits that bring them success in that competition.<sup>14</sup> This impact of the law school milieu is, for many, helpful. It encourages hard work, dedication, and focus on the task at hand—not just “thinking like a lawyer,” but also “working hard” like a lawyer.

### III. Adding Relationships and Empathy into the Mix

Without denigrating the benefits of hard work and focused efforts, I nonetheless aspire to create just a little balance within the law school environment. I would like there to be some encouragement within the school environment for law students to value *relationships* in addition to valuing hard work and accomplishments, and to value their present experiences in addition to their future goals. I would like this for several reasons. One reason not entirely relevant to this paper, but nonetheless significant, is that more focus on relationships could distinctly improve the law school experience for many students.<sup>15</sup> With respect to the *impact* of law school *on* the individual, as opposed to the *experience* of law school *by* the individual, an increased focus on relationships is equally important for at least two reasons. First, attention to relationships is a useful balance to the unconscious but pervasive tendency of law schools to enhance the opposite values. Even more importantly, I believe that a focus on relationships and on the present (as opposed to a focus on preparing for the future) is an essential ingredient to the development of empathy, which is both an

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14. I would not suggest that this impact would be uniform. Some will hate the competitive atmosphere of law school and of legal practice and will reject it entirely or do their best to avoid it.

15. I assume that people at all law schools except those that can afford the luxury of not grading students experience the same phenomenon: Students come into the first year, and spend much of the first semester, eager and interested. Towards the end of the first semester, they tend to become stressed and anxious, and by the time they have received their first semester grades, many are disappointed and feeling alienated, both from the school and from each other.

Until I began specifically talking to students about their relationships in law school, I did not realize the extent to which they continue to feel alienated from their fellow students. While we may not be able to eliminate the competition for good grades, there is much we could do to supplement that competition with other activities that might make it more likely that students will be able to form meaningful relationships even in the face of that competition. Essentially, we can allow for competition without allowing that competition to overwhelm all of the more pleasant aspects that three years of law school can offer. Anything that we could do along these lines would likely improve the experience for students, increase their loyalty to the school, and ultimately redound to our own benefit.

important value in itself and a necessary ingredient to the development, and implementation, of other moral values.<sup>16</sup>

### A. Empathy: What It Is and Is Not

Empathy is not entirely, or even primarily, a cognitive experience. Indeed, it involves the momentary *suspension* of most of the key cognitive functions we teach (or at least try to teach) in law school. In order to experience empathy, one must temporarily suspend judgment, evaluation (positive or negative), analyzing, and problem solving. Empathy is the process of simply *knowing* what another's experience is.

Empathy involves some cognitive functioning, in that it requires a person to "understand" the world in some way, but even that understanding is quite different from what we think of as the type of cognition we teach. Empathizing with another person requires me to "understand" the world as the other person understands it—to "see" the world through the other's eyes and to experience the world as the other experiences it. I must defer either accepting or rejecting the other's viewpoint, or even developing it further than the other has, and must simply (temporarily) experience the world from the other's perspective. Even this kind of cognitive understanding is largely in the service of enabling me to experience the feelings that the other feels. Empathy, in other words, is simply the sense, emotional and cognitive, of knowing what it is like to be the other at a particular point in time.

### B. Empathy As a Foundation of Morality

Numerous writers on business tactics, negotiation, and self-help topics have trumpeted empathy, or at least empathic listening, because of the rewards it can bring.<sup>17</sup> A person who can listen empathically can understand another's needs and wants, and can be in a better position to satisfy those needs and wants while getting for her-

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16. Jim Eustice, my corporate tax professor, used to explain about teaching tax that if one tries to make it comprehensible (by looking at the big picture) he would almost inevitably be wrong when it came to the right answer to any particular question. On the other hand, if one tries to focus on the answer to any particular question, the morass of details that one needs to wade through to get to that answer is overwhelmingly dense and inevitably incomprehensible without (an sometimes even with) an understanding of that "big picture" (which, inevitably, does not apply to any particular case). It seems that the same is true of values. I can give a nice and complete statement about the relationship of empathy to other values, or I can pick it apart (as I will try to do in the rest of this paper) so that it may be technically accurate but is also too detailed to be of much use.

17. See MADELYN BURLEY-ALLEN, LISTENING, THE FORGOTTEN SKILL (1982).

self what she wants (“win-win negotiating”). Similarly, if one can respond empathically, that response alone will both generate good will and add to the credibility of the empathic listener. Ultimately it makes it more likely that the empathic person can get what she wants.

Others have praised the quality of empathy for similar utilitarian reasons. Carl Rogers called empathy “the most effective agent we know” for fostering personal growth and “improving a person’s relationships and communication with others.”<sup>18</sup> In addition, studies reveal that teachers who exhibit empathy are both more popular and are better able to educate their students than are those who may know more but are less empathic, and parents who exhibit empathy are more likely to be able to teach their children than are those who do not.<sup>19</sup>

I am aware of the benefits that an apparently empathic response can bring, and I believe that the ability to empathize is a very useful tool. But I write here not simply to praise the skill as a *tool*, but to suggest the ability and interest in empathic response as a *value*. I believe that empathy is important not just for what financial rewards it can *bring* to a person, or for what a person can *get* with it, but also for what it can *do* to a person. Aside from its productive utility, empathy can shape a person’s experiences, thoughts, and actions in a morally positive way.

Of course, whether any action or experience can be said to have a positive impact on anyone’s moral development ultimately depends on how the person making the judgment defines “morality.” As a result, the proposition that empathy acts as a positive force for morality might be seen as necessarily dependent on the universal adoption of a particular moral code as the correct morality.

In fact, however, I have no desire (and less ability) to define precisely or completely what everyone’s morality should and should not include. Those answers would depend in part on religion and spiritual concerns, which I do not wish to address here. Beyond that, I doubt I could even completely explain my own moral code, much less define what the moral code of others ought to be.

I suggest instead that, regardless of religious and spiritual diversity, *all* generally accepted moral codes are either founded on, or contain as an important principle, concern for fellow human beings. That concern for people which underlies all moralities is in turn depen-

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18. CARL ROGERS, ON BECOMING A PERSON 332 (1961).

19. See ROBERT BOLTON, PEOPLE SKILLS 272 (1979).

dent on the presence of empathy: My knowing your experience is essential to my having any concern for your experience. Without empathy, I have no knowledge of your experience, and I cannot have concern for what I do not know. With empathy, I can *know* something of your experience. From that knowledge can stem *concern* for your experience. From that concern can emanate the principles and conduct that we all would judge as "moral."

### C. Empathy As Necessary to the Implementation of Morality

In addition to underlying the substance of generally accepted moral codes, empathy is often necessary to be able to act in accordance with any of those moral codes. If moral behavior must include some concern for the experience of others, then in order to act morally, I must, at some point, take the experience of another into account. If I have no way to *know* the experience of others, I cannot take that experience into account when acting, and my actions must ultimately be either amoral or, at best, incompletely moral.

For example, if I decide to live completely by the Golden Rule ("do unto others as you would have them do unto you"), I simply cannot implement that decision without empathy. It is empathy that allows me to see *that* I am impacting others in the first place, and empathy with their situation is necessary for me to even begin to know *how* I would have them "do unto me" in that same situation. As a result, if one accepts as an appropriate moral attribute concern for other human beings, the development of empathy is necessary to moral behavior.

### D. Empathy As a Motivator of Moral Behavior

Finally, I believe the experience of empathy motivates moral behavior. When I am feeling empathic, I am aware of the other person, I feel closer to the other person, and I tend to want to reach out to the other person. For most people, most moral dilemmas arise not because they have some uncertainty with respect to which of two or more actions is morally appropriate, but because they experience some internal conflict between their own personal goals (money, prestige, sex, etc.) and the dictates of their own moral codes. Typically, moral codes suggest taking into account the best interest of others, and self-interest suggests taking into account exactly the opposite.

The experience of empathy does not provide any reasoned *resolution* to conflicts between the other and self-interest. Instead, it tends to *erase* the conflict, and replace it with something more akin to conver-

gence. For example, if I am tempted to take money that may legally belong to you, I may experience a conflict between my own need for the money and the dictate of my moral code that I should act in accordance with the law. If I have empathy for you in this situation, that feeling will not directly change my cognitive analysis of my competing goals. Instead, it will likely change, and add to, the goals themselves. If I feel empathy for you, it will bring me pleasure to do something to help you. Basically, then, instead of being faced with a choice between self-interest and concern for another, my choice becomes one between two different *self* interests: Helping myself by taking the money, or helping myself by leaving the money for you.

In other words, if I feel empathy for you, it motivates me to do things that benefit you not simply because those things are good for you, but because they are good for *me*. I may not change my moral code at all, and the experience of empathy may not make me a more moral person, but my empathy for you makes me more likely to want to act in a way that, typically, is more likely to accord with my underlying moral values.

#### IV. Shaping Values

While I believe that the capacity for empathic response is essential to the development of, or adherence to, any accepted moral code, as I stated earlier I disavow any attempt to determine either the specific choices any person makes, or the general moral code she adopts. Instead, I hope to influence the *process* by which people make those choices, in that I want them to consider and be willing to be influenced by others, and to consider the effect their actions have on others.

I realize that, much as procedure can never be entirely separated from substance, the process by which people make choices may affect the substantive choices they make. Empathy may temper judgment.

I also realize that actually paying attention to “process” at any time is itself a “substantive” decision with respect to how to spend that particular moment of time. Since life is a constant and continuous balancing act in which we are continuously making (consciously or unconsciously) choices,<sup>20</sup> the choice to empathize, even for a mo-

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20. For example, we are always choosing between attending primarily to feeling or to acting, to family or to work, to individual wants or to group norms and needs, to small groups or to the world at large, and between millions of other conflicting attractions or repellants every moment. Each choice we make in turn *impacts* on an infinite number of levels at every moment. We affect those close to us (emotionally or physically) not only by

ment, is a choice not to engage in the infinite number of other possible actions for that moment. To the extent our choices are conscious and value based, the choice to empathize is itself the implementation of a value judgment. Nonetheless, much as courses in civil procedure can be usefully separated from substantive law, it is both useful and appropriate to discuss the process of human decisionmaking as something separate from the substantive decisions that are eventually made. While it may well influence the outcome of an individual's decision, empathy is not the exclusive domain of any political party or of any one philosophical outlook; and I would not even attempt to predict the precise way in which an empathic response might influence a person's reaction in any given situation. I believe instead that the ability to empathize will provide a person with more, and more accurate, information upon which to base her ultimate decision, and that on the whole, a capacity for empathy will tend to generate morally superior decisions regardless of the precise code by which morality is to be judged.<sup>21</sup>

## V. Teaching Empathy

Not surprisingly, the typical law school classroom does not readily lend itself to the teaching of empathy. A professor could lecture about the importance of empathy, and students could take notes and be able to explain both that the teacher thinks empathy is important, and why the teacher thinks so. A master of the Socratic method may even be able to help students arrive on their own at the theoretical conclusion that empathy is important. However, in terms of actually convincing students on a personal, rather than a theoretical, level that empathy is important, I doubt that any teacher would be more suc-

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the way we interact with them, but even by the very fact of paying attention to them, as opposed to paying attention to someone or something other than them, and thereby ignoring them. Beyond our obvious sphere of influence, as environmentalists would say, even if we act only locally, we do impact globally, one way or another. We consume or share resources, we donate to others, or we do not, and we either help or worsen (albeit usually in very minor ways) the plights of others far away.

21. Inevitably, people trained in the law and in argument will suggest that empathy can be dangerous. Others have asked me questions such as "What if someone had empathy for Hitler, or for Bin Laden? Wouldn't that be bad?" My response is a firm "no." Empathy is not bad, even if it is empathy for bad people. It might well be "bad" to allow empathy for a few evil people to sway one's actions to support those people. This suggests not that empathy, even for bad people, is bad, but only that random empathy alone is not an independently adequate basis for any morality. This is entirely consistent with my assertion that, instead, empathy is compatible with *all* moralities.



cessful at that than we are at convincing students generally to adopt our own values.

Even for those who are more convincing lecturers than am I, the most one could do in a large law school class would be to convince students that empathic behavior is something to be valued. It would remain for that more talented lecturer, as it is for me, impossible to *teach* how to empathize in the lecture type classroom. Simply put, the ability to empathize is a behavioral skill, rather than a cognitive process. As such, it is no more subject to being taught in a large lecture class than is any other behavioral skill, such as dancing or ice skating.

While all people (except for psychopaths, many of whom opt for careers as mass murderers rather than as lawyers in any event) have some natural capacity for empathy, developing that capacity requires the same kinds of training and practice required to develop any other behavioral skill.<sup>22</sup> Basically, teaching empathy, just as teaching any other behavioral skill, involves (1) having someone model and explain the behavior; (2) having the student practice the behavior; and (3) providing useful individual feedback. The student must have a sense of what to do, try to do it, and get coaching about what to keep doing and what to do differently.

Obviously, this is not the kind of activity that takes place in most law classes. The only behaviors that get modeled for the students in the typical law class are lecturing, question asking, and note taking; no behaviors (only ideas and legal concepts) get explained; the only behaviors the students get to practice are note taking and answering and asking questions about the law; and the only feedback students get is an occasional remark from the teacher about the value (or lack thereof) of his or her contribution to the classroom discussion.

## VI. Interpersonal Dynamics for Lawyers

To the extent I am successful in teaching empathy (among other skills and behaviors), the teaching takes place in the class I teach titled *Interpersonal Dynamics for Lawyers*. I did not begin teaching this class with the goal of teaching empathy, or even with the notion that empathic reactions would be a significant outcome of the course. I began to teach the class because I believed it to be the most effective way to teach communication skills and self-awareness—how to listen

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22. It may be helpful to analogize our natural capacity for empathy to our natural capacity for speech. We are all born with some natural capacity to do it, and as infants we all do it. Some do it better from the start, some do it more often, some improve, and others give it up and never learn how to speak well.

and observe, how to know one's own behavior and its effect on others, how to know and modify one's own goals, and how to communicate with others effectively. This set of skills is essential for effective negotiation, mediation, client counseling, dealing with other attorneys in one's own firm, and dealing with opposing counsel.

Prior to teaching this course, I had taught separate courses in negotiation, mediation, client counseling, and alternative dispute resolution; and I am convinced that this course takes the best of those and adds significant elements that vastly improve the opportunity for students to learn and practice important skills. Another significant benefit of the course, which I have learned only over time, and which is of particular relevance here, is that while I did not begin this class in an effort to teach empathy, that lesson is indeed a very valuable product of the class.

### A. The Original Class Objectives

In *Interpersonal Dynamics*, my ultimate objective is, by definition, entirely consistent with the students' own objectives: To enable students to consciously choose to act in the ways most likely to facilitate their accomplishing their own goals. Some part of the course necessarily involves helping students to try out and practice new and different behaviors that, in some situations, may be more helpful than any behaviors in their current repertoire; but most of these behaviors are nothing new. They are, for the most part, the behaviors that we work to teach in classes on negotiation, mediation, and client counseling. They include learning how to prepare for interactions; keeping in mind Pareto Optimality ("win-win negotiating"); understanding how to recognize competitive, cooperative, "tit for tat," and other strategies and how to effectively deal with each; and learning the behavioral impacts of active listening, as well as the cognitive impacts of anchoring, blocking, leading, and anything else that may come up in the literature on these subjects.

Most students learn these very useful techniques and approaches in any class in which they may be taught. My own experience, though, is that while students may learn these techniques well, they actually tend to use these techniques only occasionally, and eventually forget about them altogether. I am quite certain that this tendency to return to using old ineffective behaviors is the result neither of a conscious choice to act ineffectively, nor of an inability actually to use the new, more effective behaviors. Nor is the reliance on old behaviors usually the result of a logical error made by a person who has consciously

thought through her goals and the available alternative behaviors and simply made a mistake in analyzing the available data with respect to which behavior is most likely to get her what she wants. It happens because people are often unaware of their own motivations, goals, fears, and wants, because they are equally often unaware of how their actual and possible behaviors affect others, and because in the face of uncertainty, most people tend to fall back on old ingrained habits.<sup>23</sup> In other words, for the most part, ineffective behaviors are not the result either of a lack of available alternatives or of bad logic, but of a lack of awareness of one's own motivation and goals, combined with a misunderstanding of how the other person is likely to respond and a human tendency to revert to familiar behaviors in the face of uncertainty.

To make it possible for students to choose to use newly learned (or any other) behaviors, then, it is essential to help them increase their awareness both of (1) what their goals are, and (2) the extent to which their current behaviors actually promote or hinder the accomplishment of those goals. Although both of these seem fairly straightforward on the surface, in fact neither is so. Instead, many people both remain unaware of their own motivations and also misjudge the effect of their behaviors on others.

## **B. Motivations**

Although it may go without saying that one cannot know whether her behavior is promoting her goals without a clear understanding of what those goals actually are, it bears both stating and repeating that many people often have competing, or even conflicting, motivations, and that all of us at times (some more frequently than others) act without any clear understanding, and without any analysis, of our own wants and motivations.

An example of failure to remain aware of one's own goals familiar to both lawyers and nonlawyers alike is a discussion in which person A, involved in what appears to be a purely financial negotiation with B, is personally insulted by B. It is likely that, if A took the time to think about it, she would want both to maximize her financial outcome and to either "get back at" B for the perceived insult, or at least to ensure

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23. Inevitably, when I ask students who revert to old ineffective behaviors why they did what they did (rely on the old ineffective behavior pattern), they have a good explanation at hand. I feel confident that, at least some of the time, the *ex post* explanation is a result of their clever legal minds, and is actually not what motivated them to act as they did at the time.

that it does not happen again. Ideally, A would consider both of these goals, weigh the relative importance of both, and then react in a way that will maximize her "return" with respect to both goals. Most skilled lawyers, looking at the situation in hindsight, will suggest that A ought to both counter the insult (most likely, by addressing it directly and simply asking B to refrain from further insults during the negotiation) and then ought to return to the important substance of the negotiation. Indeed, most students who have taken a course in negotiation would, in hindsight, say the same. Yet those same students (and a surprising number of attorneys) will often not do in practice what they suggest in hindsight.

In the vast majority of such situations, A is likely not to rationally evaluate her competing goals. Depending on her personality, she is likely either to respond primarily to the perceived insult in a way that will "get back" at opposing counsel without paying enough attention to the effect of her behavior on the outcome of the negotiation,<sup>24</sup> or in the alternative, to respond primarily to her overarching goal of "maximizing her financial return" by simply tolerating the personal insult and continuing to focus on the substance of the negotiation.<sup>25</sup> In either case, A will have done less than full service to her combined goals.<sup>26</sup>

A factor which significantly accounts for the difference between the often accurate hindsight evaluation most people have of the above situation, and the less than useful actual behaviors that most people display in the same situation, is that in the moment of the negotiation,

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24. Returning an insult is likely to generate personal animosity, which might make settlement less likely. In addition, it is likely to divert both attention and energy away from the substance of the dispute and away from any behaviors that might generate any kind of "win-win" solutions.

25. Unfortunately, this response, while consciously motivated by a desire to put her financial interest above her own comfort, is likely not only to leave A uncomfortable, but also to end up sacrificing her financial interests as well. If B is a "competitive" negotiator, he will likely see A's acceptance of his personal insult as a sign of weakness, and will likely become more aggressive and more personally insulting as the negotiation wears on. *See generally* GERALD R. WILLIAMS, *LEGAL NEGOTIATION AND SETTLEMENT, TEACHER'S MANUAL* (1983).

26. To put a little more specificity into the example, assume that A has just presented her case for a large settlement, and B replies, "That's just plain stupid. What did they teach you in law school?" Most of my colleagues would suggest that A first address the rude behavior ("please don't insult me during our conversations") and then the substance ("tell me where you disagree with the facts and law I have set out, and we can talk about it"). In fact, if A were competitive by nature, she might quickly respond, "They taught me not to try to negotiate with assholes like you." If A were, by nature, more accommodating, she might simply smile at the insult and ask B what his position was.

A is likely to be thinking less clearly, and *feeling* more intensely, than she is when exercising hindsight. Since many people are uncomfortable with the feelings of hostility, fear, self-doubt, or combativeness that may erupt upon hearing the insult, they may well tend to react almost automatically to that resulting discomfort by reverting to the behaviors they learned as a child. People who learned to give in will give in. Those who learned to fight will fight. Afterwards, both will tend to rationalize their behavior as what they thought would be most likely to get them what they wanted at the moment. Neither, in the heat of the moment, is likely to stop, pay attention to her feelings, separate them out from her other goals, and then deal appropriately with both.

What I mean to suggest by all of this is that in order to actually be able to appropriately use any new behaviors, or to be able to use old ones effectively, students need to become more aware of how *often* they react almost automatically, and of *how* they tend to react at those times. They then need to learn to slow down their responses at least enough to be able to understand their conflicting motivations and their possibly competing goals, and to then consciously determine what actions to take.

Basically, the more we are aware of our own feelings and thoughts, the more able we are to make conscious decisions about our actions. A large part of what I hope to achieve in Interpersonal Dynamics is to increase each student's awareness of the feelings and automatic thoughts and responses that govern, almost unconsciously, much of their behavior.

Of course, regardless of how self-aware a student may be, she cannot even begin to act more effectively unless she actually knows what effects her behaviors actually have. The more aware we are of how others react to us, the more data we have upon which to base any choice about what behaviors to implement. Unfortunately, most people have only a very limited knowledge of how others react to us, and we are typically unable to learn the reactions of others. We tend to make assumptions and guesses about how others are reacting, without ever having an opportunity to test the accuracy of those assumptions.

While some people seem to have little or no interest in finding out the impact of their behavior on others, many more have a keen interest in learning their impact, but lack any way to find it out. When we attempt to learn about how we affect others, the people with whom we interact are often more motivated to be either polite or combative than they are to give honest and accurate feedback; when we do get feedback on the effect of our behavior on others, it is often general

rather than specific, and we tend to take it either as personal criticism against which we defend or as a compliment which we may gladly accept. In neither case, however, do we tend to take the feedback primarily as data upon which we can draw to determine the reality of our effect on others.

### **C. The Class**

#### **1. Overview**

Given the goals of increasing awareness of one's own thoughts, feelings, motivations, and behaviors, and of learning the real effect of our actions on others, the course could not be more simple or direct—I simply do my best to allow and encourage students to communicate to their peers about what is going on with themselves—their perceptions, thoughts, feelings, motivations, and wants. In response, other students communicate their own perceptions, feelings, thoughts, and wants. I seek simply to allow disclosure of internal processes to occur and to help people slow down their own processes enough so that they become aware of the thoughts and feelings that motivate their behavior, as well as of the impact of their behavior on others. The more clearly students begin to communicate to others about their own internal processes and motivations, the more clear their own self-knowledge will become, and the more able they will be to make conscious choices. In turn, the more they are aware of their own internal processes, the more clearly they will be able to communicate those reactions to others and thus help others learn, in turn, about the effect of their own behaviors.

As students increase their own awareness, they will be able to give increasingly useful feedback to others concerning the reactions they have. Soon (hopefully), everyone will become more aware of their own reactions and responses, and, from the reactions of others, they become more aware of how they impact others. They begin to learn ways they communicate ineffectively (in both receiving and interpreting messages from others and in giving messages), they have opportunities to try to communicate in new ways, and all of the time they are becoming more aware of their own internal processes, so that they can make more conscious choices. Once the pattern of behavior I have described begins to occur, people begin to learn tremendous amounts from each other.

## 2. Getting from There (a Typical Law School Class) to Here

### a. The Typical Law School Class

Although the pattern of behavior I seek to encourage in the class appears almost childishly simple, getting to that pattern is in practice a complex and difficult task. For almost everyone, engaging in these apparently simple behaviors involves risks that are new and sometimes intimidating. What makes the beginning of the course so difficult is that what I would like students to do is exactly what they have been trained and encouraged *not* to do. To reveal their own thoughts and feelings and reactions to others is, inevitably, to expose themselves, including their weaknesses, in ways they have often worked hard to avoid.

What law school tends to focus on and to reward is one end product of a student's internal processes—a good legal argument the person ends up making. The kinds of internal processes I want students to focus on and to communicate are typically ignored and devalued in law school. Most people in the law school environment tend to ignore and to hide their internal processes rather than disclose them, and often when people do disclose them, that disclosure is accompanied by embarrassment.

In the classroom, for example, the professor may ask about a case, a student may make some legal argument in response, and all in the classroom may pay attention to both the legal question and the answer. We would never know if the student who is called on thinks to herself that the teacher is picking on her, or if she fears that if she does not give the correct answer, the teacher will be angry or her fellow students will think she is stupid and will shun her. We certainly would not know, and would not ask, if these thoughts in turn made the student feel anxious at being on the spot or resentful of the teacher who put her there.

Possibly, as a result of her anxiety and resentment, the student may give a less clear answer than she otherwise would have, or there might be a little hitch in her voice, but we again would not know and would not ask her about it. If the teacher interpreted some hesitation in the student's answer as meaning either that the student did not prepare or that she was simply uninterested, and then asked a follow up question in a somewhat irritated voice (because she in turn is frustrated by what she believes is the student's lack of interest or respect), other students might infer that the student's answer was somehow inadequate and would be on the lookout for hints to a better answer in

the ensuing discussion. The student who was called on might end up accepting this as evidence that the teacher did not like her and that she was inadequate, causing her to hesitate and causing the teacher to reassure herself that in fact this student was both badly prepared and uninterested.

If all of this scene happened in a classroom (I imagine that variations of the scene have happened hundreds of times in every classroom), those in the room would pay attention almost exclusively to the legal question that was asked, and to the answer that was given (at most, a few fellow students might breathe a small sigh of relief that at least they did not get called on). In light of the fact that it is only the legal arguments and analysis that the students are asked to learn and that will be on the final and on the bar exam, this typical focus of students on the proper legal analysis is eminently sensible.

The focus on the legal substance (rather than the internal process) of the student-teacher exchange is just as likely to be the case for the participants (student and teacher) as for any others in the classroom. The thoughts, interpretations, and feelings they experienced likely happened so automatically and so quickly that they never quite made it into consciousness. More likely than not, even for the participants, the thoughts and feelings that motivated their participation were simply the kind of automatic thoughts that come, impact our behavior, and leave before we are ever even aware of them. Whether those thoughts are that others will shun us if we underperform, that a student is unprepared, that being unprepared is the result of a lack of interest, or any other instant reactions we have to situations, they tend to occur so rapidly that we tend to be aware only of the other person's actions and of our own behavioral reactions (they asked a question, and I answered it; or they hesitated answering and I got irritated). We tend to pay no attention at all to the ways we may (mis)interpret their behavior, the attributions we make to that person, our own feelings as a result of those interpretations, or to the message we wanted to send to that other person in response.

Never could we imagine a situation in which the student, instead of answering the teacher's question, actually explained that she was anxious and resentful because she thought the teacher was intentionally putting her on the spot and because she thought the other students would shun her if she gave a bad answer. Most would not be interested enough to even think about these kinds of reactions—they definitely would not be on the final or on a bar exam—and most



would consider that kind of disclosure in the classroom as nothing short of embarrassing.

Unfortunately, the kinds of disclosures that would seem grossly out of place, if not shocking, in the law school environment are exactly those that are necessary to allow people to learn the kinds of things that might enable them to make meaningful changes in the way they act. In order to even consider making any meaningful change in her responses, the student in the example above would have to first be aware of the thoughts and reactions she was attributing to others—to note that she assumed that the teacher was out to get her, and that the other students would react negatively if she answered less than well. Only after focusing on her internal processes enough to become aware of these assumptions could she even begin to take steps towards more effective behaviors. Such steps would necessarily involve sensibly evaluating either (or both) (1) whether those assumptions themselves were accurate, or (2) whether the reasoning she applied to those assumptions was logical. If the student's hesitation is the result of her fears that the teacher will be angry or that other students will shun her, it would be helpful to at least know the extent to which those fears are well founded. Would the teacher be angry, or would she be supportive if she understood the situation? Would the student's peers perceive her as inept if her answer is incorrect? Would they shun her because of perceived ineptitude? Or would they feel closer to her because of her human imperfections if she were to give an incorrect answer? If she could find out that her assumptions were all wrong, she could adjust her thoughts, would likely feel differently, and would, as a result, likely perform better.

If, on the other hand, the student was aware of the assumptions she was making and found that those assumptions were correct—that the teacher did not like her and that other students were lying in wait for the chance to belittle her, slowing down her internal processes would also allow her the opportunity to evaluate the reasoning she was applying to those correct factual assumptions. She might begin to see that she had also been assuming that if she were shunned by some students, it would mean that she was a bad person; or that she would have no friends; or that she would be a bad attorney. She might notice that, in fact, her moral worth was *not* dependent on the behavior of a few misdirected students; or that while some students might think less of her if she gave an incorrect answer, her friends were not among that group, or that what a few students thought of her would not af-

fect her abilities as an attorney.<sup>27</sup> Similarly, if the teacher in the example above understood what was going on in the student's mind, she might well act differently, think differently, and ultimately teach more effectively.<sup>28</sup> Unless each person is aware of her reactions, feelings and thoughts, she cannot know enough either to check out her assumptions about others with those others or to evaluate on her own the logic (or lack thereof) that she is applying to those assumptions. Yet it is exactly these feelings and thoughts that seem to have no place being disclosed in the law school environment.

### b. Getting to a Focus on Internal Processes

To have any hope of helping students engage in the kind of evaluation of the accuracy of assumptions and of the logic of conclusions that may result in more useful behaviors, one needs to be working in an environment that, above all, feels safe for the students—one where they might begin to be able to leave themselves open to awkwardness, embarrassment, connectedness, and other feelings. In addition, in order to have the potential to check the accuracy of their own assumptions about the reactions, feelings, and thoughts of others, students need to be in an environment where those others feel safe enough to disclose their reactions and to reveal their own internal processes.

Obviously, the typical law school environment is often not conducive to students feeling that kind of safety. In large classes, students do not look at each other and rarely talk to each other. When they do talk to each other, it tends to inspire the teacher's wrath or irritation

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27. Of course, she might also reaffirm her earlier unconscious thoughts that, indeed, an incorrect answer *was* a sign of moral inadequacy and would result in her having no friends and being an inadequate attorney, but even then, she would at least have had the opportunity to reach those conclusions through conscious reasoning rather than as a result of automatic and unconscious nonreasoning.

28. I do not claim that this kind of approach is unique or creative (at least not now). At least thirteen years ago, Aaron Beck, who is still a significant force in the development of Cognitive Therapy, explained the following:

We can never really know the state of mind—the attitudes, thoughts and feelings—of other people. We depend on signals, which are frequently ambiguous, to inform us about the attitudes and wishes of other people. We use our coding system, which may be defective, to decipher those signals. Depending on our own state of mind at a particular time, we may be biased in our method of interpreting other people's behavior, that is, how we decode. The degree to which we *believe* that we are correct in divining another person's motives and attitudes is not related to the actual accuracy of our belief.

AARON T. BECK, M.D., LOVE IS NEVER ENOUGH, HOW COUPLES CAN OVERCOME MISUNDERSTANDINGS, RESOLVE CONFLICTS, AND SOLVE RELATIONSHIP PROBLEMS THROUGH COGNITIVE THERAPY 18 (1989).

(because they are not listening to the professor). Typically, seminar students do face each other; they are encouraged to engage in more discussion with each other than they do in large classes; and the environment may be more casual than it is in large classrooms. Nonetheless, even seminars are still forums for the students to engage only in the type of legal discussion at which they have become skilled. A seminar is certainly not a forum for attending to one's own internal processes, for finding out about others' emotional reactions, or for trying on new and potentially embarrassing behaviors. Appropriately, they allow for no more intimacy than is typical when people sit around a table discussing abstract theoretical topics.

In *Interpersonal Dynamics*, we begin by attempting to create an environment that, unlike either large classrooms or typical law school seminars, enables people to take the kinds of personal risks that can lead to real learning. While the class may have as many as thirty-six people in it and meets as a large group one day a week (one and a half hours per week), it is divided into smaller groups of not more than twelve, with each group having two faculty leaders (facilitators). In addition to meeting for one and a half hours per week during the regular weekly class time, each group meets for at least an additional three hours per week, and for a full weekend together toward the end of the semester. Some large class exercises are used to stir up reactions, or awareness of thoughts and feelings, but most of the real learning occurs in the small groups.

Since people will likely be more willing to disclose their internal processes (thoughts and feelings) directly to a few people they know than they would be to disclose the same things indirectly through hearsay to hundreds they do not know, and since some people may be embarrassed by what they do, what they say, or how they do it, confidentiality is necessary to create any semblance of the safety necessary for the kinds of learning anticipated. As a result, toward the beginning of class, the small groups discuss the notion of, and are asked to reach an understanding with respect to, confidentiality. While knowledge of the confidentiality of any disclosures they may make will not eliminate the sense of risk they might feel, it at least ensures students that any embarrassment they do experience will likely be limited to the actual classroom setting.

Once the groups are established and running, the facilitators do their best both to model self-disclosive and empathic behavior and to set an example of tolerance and understanding. We neither lecture nor question. Instead, we gently encourage people in the group sim-

ply to reveal the feelings and thoughts they may be having at any moment in response to what is going on in the group. In addition, we may point out aspects of group or individual process that we notice, especially when we see processes that may divert the group from its learning goals. Ultimately, all of our interventions are made with the goals of helping the participants gain greater awareness of their own internal processes and encouraging them to share that awareness with the others.

The students in the group do most of the learning on their own, from the simple process of communicating to others their own reactions. Even with little initial guidance from the facilitator, students will inevitably interact, and by almost any kind of initial interactions they will reveal something about themselves. Talkative students will talk, shy students will be shy, and regardless of the substance of discussion, personalities, communication styles, understandings, and misunderstandings will come out.

A talkative student may learn that some see her as helpful and nurturing, while others may see her as bossy and pushy. She may begin to pay attention to the "self talk" that makes her anxious when there is silence, may begin to change what she tells herself in those situations, and may, as a result, improve not only her negotiating skills, but also her relationships with others with whom she works.

A quiet student may find that while some see him as shy, others view him as vain and haughty. He may begin to look at what he tells himself that causes him to remain silent, and may, as a result, develop assertion skills that will serve him well throughout his career.

Basically, the most important part of the course is simply students interacting with each other. The facilitators, serving as player-coaches, encourage more useful forms of interaction; but always the most important role of the facilitator is to help students communicate clearly among and about themselves. Because the important communications come from the other students, each person gets feedback not just from a teacher, but from up to thirteen other individuals. The total effect is often quite powerful.

Inevitably, students will learn both how they misinterpret the behavior of others and how they affect others. Often to their surprise, they learn both that the impact others have on them is not what was intended and that the effect they have on others is not even close to the impact they intended to have. This understanding is essential to motivating them to learn better communication and persuasion skills (why improve unless they see that their current skills are not working

the way they want them to?). Once so motivated, students can, and do, practice other, potentially more effective, communication techniques and receive feedback on the impact of their behaviors.

### c. From Communication to Empathy

Although my primary goal in teaching Interpersonal Dynamics was to enable students to increase the effectiveness of their behavior, I describe the course here because of its impact not so much on behavior, but on values. In terms of impacting values, I have at least two goals for my students: (1) learning to empathize, and (2) valuing the experience of empathizing.

Perhaps not surprisingly, Interpersonal Dynamics provides both opportunities and encouragement for students to feel empathy. In order to empathize with someone, it is essential to know that person's experience. In a setting where people are encouraged to focus on their own internal processes and to communicate those processes as clearly as possible, it is likely that others can know what those processes (thoughts, feelings, wants) are. Because the class is one in which feedback is encouraged, individuals will be able to determine whether their understanding of another's experience is accurate. In this setting, real knowledge of another's experience is possible. As a result, empathy is likely.

Indeed, much of what happens in the class tends to generate empathy as an unintended byproduct. The easiest way for me to show how, and how often this happens, may be to simply set forth a few brief conversations taken from the class. While none of these is individually astonishing or particularly climactic, each represents a small step in the development of understanding others, and through hundreds of such small steps during the course of a semester, students often make significant progress in the development of, and appreciation for, empathy. (The conversations in the following scenes are recreations based on classroom exercises).

#### (1) Scene 1

Allen (to Paul): You just think you're better than everybody else, and to be honest, I'm sick of it.

Paul: Well, I guess I just *am* better than *you*, at least.

Allen (to the group): See? It's just what he always does. It's always like "you're no good, and I don't even care. You're not even worth the time of day." I don't know how everybody can even sit in the room with him.

Donna: Well, I don't know. Allen, you say Paul doesn't even care, but Paul, you look and sound pretty angry to me.

Paul: Of course I'm angry. Allen's just acting like a jackass and calling me names. How would you like it if he did that to you?

Allen: See. There he goes again. It's always everybody else who's no good. Pathetic.

Felicia: Allen, I don't have any idea what you're talking about. You just come out of the blue saying how Paul thinks he's better than everybody else, and I just don't know where you get that.

Allen: Well he just admitted it, didn't he?

Felicia: Yeah, but that was just because he was angry at you. Well, I guess I ought to let him speak for himself (looks at Paul).

Paul: Yeah. I was angry. I just really didn't like it when you (Allen) said I think I'm better than everybody else. It's just not true.

Jess: I gotta admit, Paul, I get the same impression—that you're just above it all, and we're just not interesting to you. And it bugs me, too.

Facilitator: Jess, and Allen, can you say what it is that Paul did that makes you think that?

Allen: Yeah. When anyone else is talking, he just sits back with his hands behind his head, doesn't even look at the person, like he's totally uninterested.

Facilitator: Can you give a specific example?

Allen: Sure—twenty minutes ago, when I was talking about how I screwed up that interview. He just ignored it, like it was totally irrelevant to him. You know, like he'd never do that, and I must be some kind of idiot.

Facilitator: Do you want to check that out with Paul—find out whether he was interested or not and what was going on with him?

Allen: Sure (looks at Paul).

Paul: I was interested in what you were saying. I've got an interview coming up tomorrow, and it made me start worrying about that a little, and I felt bad for you, and it also reminded me of an interview I had last year that I screwed up. If you want to know why I didn't look at you, it was because it seemed like *everybody* was looking at you, and I felt kind of bad for you, like everybody should give you a break and not just stare at you and put you on the spot.

Allen: Wow. That's hard to believe. You were just leaning back, looking so confident and bored.

Paul: Actually, I was just really uncomfortable for you, and worried for myself at the same time.

Allen: I don't know why it made me so angry. It just makes me feel so small and disrespected when you sit back and lean back and look away. It's probably because that's how my older brother used to look at me, or actually *not* look at me, when I was a kid. I start to feel like I'm just irrelevant.

Jess: I guess that makes sense for you, Allen, but I didn't have any brothers, and I reacted the same way. I tend to assume that it means you (Paul) are bored and disinterested. And Paul, you do that sitting back and looking away thing a lot. Not just with Allen.

Rhonda: To be honest, Paul, I've had the same reaction, even though now what you say makes sense.

This scene was actually incredibly rich in terms of students' learning essential communication skills. Paul learned that certain of his behaviors convey, to a sizeable number of people, arrogance and disrespect, even though what he is actually feeling may be quite different. If nothing else, he is now aware of the specific behaviors that trigger those reactions, and, if he chooses, he will now be able to work on changing those behaviors.

Allen has learned that when he makes attributions into someone else's state of mind based on limited evidence, he may well be wrong, regardless of how certain he feels, and regardless of whether others feel the same way. He, and others, have hopefully learned the value of checking out certain assumptions before acting on them.

Aside from learning important communication skills, the participants gave themselves a real chance to experience empathy. When Allen was convinced that Paul was acting out of arrogance and disinterest, he obviously had no empathy for Paul; but all of that changed when Paul explained himself. When Allen understood what was going on with Paul, he was able to let down his defenses to (or, perhaps more accurately, his offensive against) Paul. He was, for the first time, able to understand what Paul's experience was, and, perhaps, even to appreciate that experience.

Similarly, when Allen started to disclose his own feelings and reactions rather than to label and criticize the attributions he was (inaccurately) making to Paul, Paul was able to take in what Allen was saying, and to understand what Allen's experience was like. When each person began to disclose his own internal processes rather than to label the other and analyze the other's motivation, opportunities for empathy arose. In turn, Paul and Allen began to feel closer to each other, began to value each other, and began to treat each other with more respect and appreciation.

**(2) Scene 2**

Barb: Well, since nobody else is talking, I guess I might as well ask for some feedback about what happened with me and Alicia last week, whether you all think I was being unfair, or if anybody wants to tell me.

Tess: To be honest, I don't even remember what happened. I'm more interested in finding out about how Jan's weekend went. (looks at Jan)

Jan: It was great. We went out on Friday and on Saturday and on Sunday. I think I'm in love.

Ben: I want to know why that never happens to me.

Tom (smiling): It's cause you're ugly as a dog. (everyone laughs)

Facilitator: Barb, what's going on with you now?

Barb: I don't know. I shouldn't have asked about last week. It was old stuff.

Facilitator: You don't look very happy.

Barb: Well, it's just that it seems like whenever I bring something up, it's not interesting or not important, I guess. It just sinks like a lead balloon. It's kind of depressing.

Fran: If I were you, I wouldn't have been depressed; I would've been pissed. You asked a question and Tess just completely ignored it and cut you off.

Barb: Actually, you're right. Tess, that was pretty rude and selfish.

Tess: I'm sorry. I thought you didn't really care one way or the other. It didn't seem like you were really interested anyway.

Barb: Actually, I was really interested in getting that feedback. The only reason I waited was because I didn't want to interrupt anybody else.

Tom: You know, Barb, I'm with Tess on this one. It seemed to me that you weren't really very interested in getting feedback, the way you just kind of said, "since nobody's talking, maybe I'll ask . . ."

Fran: Now that I think about it, Barb, I think you do that a lot. You seem to preface your comments with something like, "well, just to say something," or "it really doesn't matter, but . . ." So most of the time when you talk, I sort of tune out, cause I figure if it's not that important to you, it won't be very interesting to me.

Jan: Yeah, I've noticed the same thing. I don't completely tune out, but it seems like you often kind of put yourself down before you talk, or you make some comment to kind of suggest that what you're going to say isn't very important.



Barb: Hmm. Maybe I do. I wonder why. I guess I don't want to push anyone else out of the way, and maybe I'm a little afraid that people won't be interested, so I sort of cushion myself against hearing that.

Jan: I couldn't say why, and I'm not sure I even care about why, but I can say how it impacts me. And that's that it does kind of *make* me less interested in what you're going to say. It sort of becomes a self-fulfilling prophecy.

Tess: I'm sorry, but I've got to say I really didn't like what Barb said to me, and the more I think about it, the angrier I get. You were telling me that I was rude and selfish, and I wasn't. Just like everybody else said, you set yourself up. I actually would've been happy to wait to ask Jan about the weekend, but I had no idea you really wanted feedback, and then I get labeled as rude and selfish. It's not true. And it seems like you can get away with that because you're so quiet and everybody wants you to talk, but I get stuck having to just accept your labels, and I don't like it.

Barb: Yeah, I guess I can see your point. I should have said that I was angry and felt interrupted, instead of just labeling you as rude or selfish.

Tess: Thanks. I appreciate that. And I can see how you could have felt interrupted. I really didn't know . . .

The above scene actually represented a mini breakthrough for Barb. She began to see how often and in how many ways she tended to belittle herself, and she began to intentionally stop herself from doing so. While to this day she is still working on the same issue, she has made significant progress, and her representation, interviewing, and negotiation skills have increased dramatically.

But, again, for present purposes it is more important to note the opportunities the above scene presented for most of the participants to experience empathy. Because Barb explained her thoughts and feelings, the others could understand them, and her perspective. In addition to understanding Barb better, they began to like and appreciate her more. As it turned out, several people who had essentially ignored Barb until this point began to pay more attention to her and to want to help her be more forthcoming and direct. Barb became much more involved in the class, and most of the others in the class began to feel much closer to, and warmer toward, Barb.

In addition to others empathizing with her, Barb, at the end, was able to empathize with Tess, who, as she explained, felt wrongly accused and resentful of the labels put on her. They began to feel closer, and smiled at each other frequently during the rest of that class session.

**(3) Scene 3**

Ann: I kind of resent that class tonight goes until 10:00. I mean, it's Valentine's Day, and even though I like the class, we meet way more than any other class. I know we can't cancel class, and I wouldn't want to, but I was wondering if we could just end at 9:00, so we could at least have a little time to go out and celebrate.

Ron: I totally support that idea. My fiancé has been giving me an incredibly hard time for missing Valentine's Day, and she just won't believe that I can't miss class, especially since I have been known to miss a class in the past.

Lee: I think that's a great idea.

John: Me too. Let's take a vote.

Bill: Well, I got a problem with cutting class short. I take this class seriously, and I've committed every Thursday night to this class, and I intentionally don't make any plans for Thursday nights because I know we have this class. And I've got to admit that I feel a little resentful that you don't seem to take the class very seriously. I know it's fun to go out and party, but we all agreed that we would meet until 10:00 every week, no exceptions. I've committed to doing that, and you did too.

Ann: I don't like your characterization of me as not committed. I obviously am committed. I'm here now. I didn't blow off the class. I'm just suggesting that we could all amend our contract to allow us to leave a little early on Valentine's Day. I'm not breaching the contract, and it sounds like that's what you're accusing me of doing.

Bill: I didn't exactly "AmJur" Contracts, so I don't want to go down that road too far, but my point is that we all made an agreement, and I relied on that agreement and cleared out every Thursday night on my calendar, including tonight, for this class. Now, in the middle of the semester, you want to make up exceptions, and it's not right.

Lee: Look, Bill, nobody's making exceptions or canceling class. John just said we should vote on it. If a majority wants to stay, we'll all stay.

Sandy: I agree. It's not like anybody's refusing to come. But we all decided to stay until 10:00, and if we want, we can all decide to leave early on one night.

Bill: I don't think we could cancel class or stop early anyway. Rosenberg said during the first week that we have to meet at least three hours a week in this group, and if we miss one class we fail. He wouldn't let us leave early even if we wanted to. (looks at Tom, who is one of the co-facilitators of this group)

Tom: Actually, I'm not sure what the rule would be . . .

Ann: If we left early tonight, we could just make it up some other night, tack on an extra hour.

Sandy: Yeah, or we could like just tack on an extra five minutes each week for the rest of the semester. It's just not a big deal.

Ann: So, Tom, could we vote on it?

Bill: Just a reminder, when we agreed to meet every Thursday, it was by a unanimous decision, not just a majority vote. If we decided to change our agreement, it would have to be the same way.

Brenda: Bill, what the fuck is your problem?

Tom: Brenda, can you turn that question to Bill into a statement about yourself—your feelings and thoughts—and about what you're observing?

Brenda: Good idea. I guess I was being kind of nasty. Well, I'm feeling really frustrated. Bill, it seems to me that whatever anyone says about ending early, you have a rebuttal. Each of your statements is logical and makes sense, but just the fact that you're so quick to rebut makes me think that there's more to it. It's like you're just set against ending early, and even though you give a lot of reasons, I guess I don't really believe them. It makes me think there's something else going on, and I have no idea what it is.

Bill: I don't know . . . I guess I look forward to coming here, and I don't like it that everyone else seems to look forward to leaving early. It kind of makes me feel like a sap. Like I must be a real dork to like coming here because everybody else has something better to do.

Tami: Well you're not the only one who likes coming here. I do, and even Ann said she likes it, or didn't want to cancel. I think lots of us like it. Some people just want to leave a little early because it's Valentines Day.

Bill: Yeah . . . I know . . . I guess I just know that if we leave early, Ann's going out with her husband, and Ron's going out with his fiancé, and everybody's got somebody. And I'd go home to an empty apartment to study the UCC, and it just really sucks. My girlfriend broke up with me about six months ago, and I'm getting to just hate going home alone . . .

Silence

Ann: Boy, does that make a lot more sense to me. I know what that's like.

Brenda: Me too. It makes me understand you better and it makes me feel closer to you than when you were being, well, than the way you were being before.

(several people nod in agreement)

While the class continued well after this scene, the opportunities for empathy presented in this scene are, I hope, apparent. Most members of the group went from feeling irritated or frustrated with Bill, who was making more and more petty arguments against leaving early, to feeling much closer and more empathic with him. As it turned out, the subject of leaving early was dropped. The group stayed until 10:00, and at the end of the group, one member asked Bill if he wanted to go get a beer.

Perhaps less apparent from a brief description of this scene is any learning about interpersonal dynamics in general and the way any learning from this scene might be usefully related to the practice of law. To quote a term often used in legal negotiation classes, effective negotiating often requires understanding one's own, as well as the other party's "interests" rather than merely knowing "positions."<sup>29</sup>

What Fischer and Ury meant by this, and what every student who takes negotiation learns, is that in order to have any hope of reaching a "win-win" resolution, it is essential to know what the parties really want, and what would make them satisfied with the negotiation. Unless the other party knows what I want, it will be very difficult for them to give it to me. In this scene, it turned out that Bill really wanted to not feel lonely at the end of the night, and he got what he wanted. If nothing else, Bill learned the difference, in Fischer's terms, between interests and positions.

Bill also learned much more. He saw that often one's real interests are not obvious, even to oneself, and that it is well worth taking some time to learn them. Finally, and perhaps most importantly, he learned that it is often (if not always) difficult to persuade by logical argument, and that it can be much more persuasive to actually be a little personally revealing of one's own weakness. While this last lesson may not be what his firm wants him to keep uppermost on his mind in entering a negotiation with opposing counsel, it is likely to be extremely helpful in his relationships with others at his firm and with clients.

#### **d. It's Not Therapy**

Some people suggest that a course in interpersonal dynamics is silly and a waste of time. To those, however, I simply suggest that they ask those who have taken the course for their opinion. A few people, after hearing a general introduction to the course, have gone to the

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29. ROGER FISHER AND WILLIAM URY, *GETTING TO YES* (2d ed. 1991).

other extreme and suggested that it “sounds like therapy.” It is not. The class is not intended to, and does not, cure mental illness. It is no more psychotherapy than a legal writing class is physical therapy. It is also no more remedial than a legal writing and research class. The class is intended to, and does, enable people to attain self-knowledge in the service of more effective behavior. It is intended to deliver to students the most important teachings that they can get—how to act effectively.

### **Conclusion**

In *Interpersonal Dynamics*, liberals do not become conservatives, nor do Republicans become Democrats; but, as the class progresses, apathetic and alienated students often become less alienated and more interested in, and concerned for, others. They also learn to express that interest and concern in ways that others can understand. To my way of thinking, values have not just changed; they have improved.

In short, the class that I teach to help students learn how to act more effectively also has an impact on the effect that they want their behavior to have. As I suggested at the beginning of this Article, it is as true to say that one’s moral compass is guided by her actions as it is to suggest that one’s actions are guided by her moral compass. It is my hope and experience that in at least one class, I have some positive influence on both.

