

**Swiss Philosophical Preprint Series**

**# 84**

**Maksymilian Del Mar**

**Moral Experience and  
Legal Education**

Added 22/03/2009

ISSN 1662-937X

© Maksymilian Del Mar

# Moral Experience and Legal Education

*Maksymilian Del Mar\**

## **Abstract**

This paper argues that the contemporary practice of moral philosophy (particularly in the examples it relies on) and the contemporary practice of legal education both tend to ignore, dismiss or exclude that which is here called ‘moral experience.’ Moral experience is here defined (non-exhaustively) to be: 1) that which helps us face up to, instead of hide away from, our mortality and fallibility; 2) that which helps us experience radical uncertainty about who we are, where we have been, and where we will be, and about what has happened, is happening and will happen; 3) that which helps us experience the insight that we are not in control of all that which influences us; 4) that which helps us experience the infinite (for us) complexity of others and the world; 5) that which helps us to notice hitherto-invisible (to us) forms of suffering and vulnerability; and 6) that which helps us to widen the scope of, or sometimes change, that which we find valuable and care about. Moral experience is not designed to replace traditions of moral inquiry (such as virtue ethics or utilitarianism), and it is not designed to help us meet the demands of moral life. Rather, it is designed to help us avoid underestimating the demands of moral life. Following a discussion of moral experience in the first part of the paper, the second part turns to offer some activities and resources thanks to which law schools can enable moral experience for both their students and their staff. In doing so, the second part of the paper draws on research undertaken as part of the *AHRC Beyond Text in Legal Education* project at the School of Law, University of Edinburgh. It also draws on the author’s own research as part of a pedagogical project entitled *Unnatural Exercises*.

## **Introduction**

When theorists write about morality, more often than not, the examples that are discussed, or used to illustrate a certain argument, are such that what is correct, appropriate, good, etc is already made obvious by the example. The problems that remain are typical of contemporary moral philosophy: given we know already what is good, does following this or that rule or principle give the actor the right answer? What kind of rule following is involved here: is it tacit or deliberative (or, perhaps, a mixture of both)? Can the actor perceive what is the right thing to do non-inferentially, or is there always some sort of reasoning at play (and, if so, what kind)? If the rule or principle is able to guide the actor towards the right answer, then how can we make the actor responsive to following that rule; or, put differently, how can we

---

\* School of Law, University of Edinburgh and Faculty of Social and Political Sciences, University of Lausanne. Email: Maksymilian.DelMar@unil.ch. My thanks to Katherine Del Mar for comments on a previous draft.

make him or her motivated by it, and what is wrong with actors when they are not so motivated?

Engaged in this way of doing moral philosophy, the theorist positions herself above the din and clamour of moral life. But within that din and clamour, and thus steeped in what is called here ‘moral experience’, we are much less certain, much more confused, much more torn and often painfully aware of our limitations. We are not, in other words, like those actors in the examples of theorists who are acting in circumstances where what is correct, appropriate, good, etc is already known, and where all that is needed is reflection on the means to achieving the pre-determined end(s). Rather, the hallmark of moral experience is precisely the opposite: the clash, contradiction, tension and conflict between ends, or simply the confusion, uncertainty and sheer possibility of potential ends. In other words, the moral experience is neither moral, nor an experience, unless the actor is confronted by, and undergoes the pain of dwelling in, a situation that he or she does not, and somehow cannot, understand, control, manipulate or stand above in judgement. It is exactly this sense of moral experience – to be explored further in this paper – that is so often missing, ignored, and excluded by the contemporary practice of moral philosophy.

This ignorance or exclusion of moral experience is also visible in much of legal education. After five years at law school, a graduate emerges as an expert in the application of rules and principles. Of course, they became gradually ever more aware of the many problems associated with such application, and some may also come to appreciate that knowledge of the rules and principles is intertwined with, and also may to a large extent determine, their perception and classification of phenomena as legal facts, legal situations, legal problems etc. Such a graduate, in other words, begins to think like a lawyer. If the law school has also taken on board the recent revival of apprentice-inspired pedagogies, then the graduate has also begun to act like a lawyer, armed with an impressive array of skills, which are arguably

needed to survive, and perhaps flourish, in practice.<sup>1</sup> However, just as with the practice of moral philosophy, there is, once again, something lost in all this learning, in all this dazzling expertise. What is lost, or at least risks being lost, is precisely the notion of moral experience.

Crucially, however, we cannot stick with the abstract notion, or idea, of moral experience. We certainly cannot do so if we wish to make an impact on the graduates of law schools. We must, in other words, provide opportunities for such moral experiences to be experienced. That is why this paper begins with a discussion and exposition of the notion of moral experience, but then goes on to illustrate what kinds of activities, and what kinds of resources, might be used in order for such experiences to be facilitated in law schools. In providing such illustrations, the paper draws on research conducted at the School of Law at the University of Edinburgh in a project entitled *Beyond Text in Legal Education*,<sup>2</sup> as well as on my own pedagogical project entitled *Unnatural Exercises*.

Before continuing, a few remarks need to be made about the aims and scope of this paper. It is not the primary aim of this paper to discuss the poverty (or otherwise) of rules and our reliance on them, or guidance by them, in moral life. It is not, for example, a paper that will try to defend the importance of learning to perceive what is the right thing to do – e.g., in some non-inferential sense, or as a result of the exercise of an empathetic or compassionate sensibility.<sup>3</sup> It is also not a paper that will place emphasis in the other (or perhaps complementary) direction, i.e., try to defend the importance of rules or principles,<sup>4</sup> or the act of communication<sup>5</sup> (of listening, say), in coming, for example, to understand the world or horizon (as it is sometimes called) of the radically other. It will also not try to defend the

---

<sup>1</sup> An argument for more apprentice-like sophistication in law schools is argued for by the recent Carnegie Report on *Educating Lawyers* (see Sullivan et al 2007). I elaborate on the deficiencies of the ethical education model proposed by the Report elsewhere: see Del Mar 2008a.

<sup>2</sup> The project is generously funded by the Arts and Humanities Research Council. More details are available here: [www.law.ed.ac.uk/beyondtext](http://www.law.ed.ac.uk/beyondtext).

<sup>3</sup> Out of a burgeoning literature, see Goldie 2007 and Nussbaum 1985. Both speak about the importance of moral perception, but in quite different terms. See also the impressive work by Peggy DesAutels (e.g., 1996). Some of this literature on moral perception was addressed from a pedagogical perspective in Abowitz 2007.

<sup>4</sup> Note, for example, Hilary Putnam's reply to an earlier paper by Nussbaum: Putnam 1983.

<sup>5</sup> A sophisticated version of this argument is defended in Clark 1996.

importance of agreeing to some minimum core standards in order to co-ordinate our actions and respect each other's dignity and liberty. Finally, this is not a paper about experiential learning, or about making lawyers better lawyers, or better professionals, or about assisting students, or even citizens, to learn law more effectively.

All this has been done many times before, though to say that is by no means to say that it is not impressive and important work. Whatever its merits, however, this is not the approach taken here. As noted above, the examples relied on (e.g., to illustrate a certain argument or set up the significance of a certain strategy) in a good deal of contemporary moral philosophy, posit or assume that what is good, appropriate, or correct is already obvious, or (at least within the example) could not be otherwise. This has its uses, but this paper takes a different approach. What this paper sets out to do, instead, is to (or at least encourage us to) sit and dwell and look around, as slowly as possible, in the din and clamour of moral life – in the most painful of circumstances where we have no idea what to do; where we have no clue as to how to understand what is facing us (both inside and outside of ourselves); and where we are, perhaps because of this radical uncertainty, apt to panic or react with anger and violence, or at least retreat into ourselves, and thus into that which is familiar and comfortable. If we can sit and dwell in circumstances of radical uncertainty, and become more able and willing to experience not knowing who we are, where we will be, or where we have come from, we also open up the possibility – only ever a possibility – that we may not underestimate the demands of moral life.

Too often in moral philosophy we race each other to the bottom, i.e., we project an image of a person who, from the perspective of the theorist, is not equipped with either the knowledge (however that is explained, e.g., whether deliberative, internalised or embodied etc) of the 'obviously' correct, appropriate or good rules, or does not have the requisite skills

of the moral ‘expert’.<sup>6</sup> In other words, often enough a theorist will set out to understand those who the theorist deems are not controlled or controllable by ‘us’ and ‘our’ criteria, ideals and standards, and then go on to devise strategies, techniques and other modes of more or less surreptitious influence to bring these ‘deviants’ back into line. ‘All these anarchists, sceptics and terrorists,’ laments the theorist; ‘if only “we” could get rid of “them”, and live forever in perpetual peace and harmony.’ To think like this, however, is to wish the world was made in one’s image, and that persons, practices and rituals the world over would be the same (i.e., conform to that which one can already recognise). It is also to become dangerously attached to the impossible dream of some perpetual state of happiness (or peace, or harmony). All this seems to me to be a withdrawal from the world, and from others. This paper is a modest attempt to show both why we need to, and how we can try to, do better.

## **I. Moral Experience**

To see more clearly what moral experience is not, consider the following example. Peter Goldie begins his paper on moral perception with the following scenario:

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

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

---

<sup>6</sup> For the notion of moral expertise, see Dreyfus and Dreyfus 1990.

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

Consider, now, a much more complex example. In her paper on 'Moral Attention and the Moral Task of Literature' (1985), Martha Nussbaum offers a discussion of an episode from Henry James' *The Golden Bowl*. The episode is the one where a father, Adam, releases his parental, fatherly, and protective hold over his daughter, Maggie. Maggie speaks of her passion for Amerigo, her suitor, and following her speech, 'Adam acknowledges, in an image of delicate beauty and lyricism, his daughter's sexuality and free maturity' (Nussbaum 1985, 519). Nussbaum continues:

More: he wishes that she be free, that the suggestion of passion in her voice be translated into, fulfilled in a life of sparkling playfulness. He assents to her pleasure and wishes to be its approving spectator, not its impediment. He renounces, at the same time, his own personal gain – renounces even the putting of the question as to what he might or might not gain. (Nussbaum 1985, 519-20)

Nussbaum's reading here is that the moral significance of this episode – and thus also, for her, an exemplar of the kind of moral pedagogical value in literature – is Adam's decision to recognise Maggie as a 'separate autonomous centre of choice' (Nussbaum 1985, 520); Adam's action is a 'moral achievement'; it is an act of 'sacrifice' of 'enormous causal significance' (Nussbaum 1985, 520); it 'tells us a great deal about the quality of' Adam's 'moral imagination – that it is subtle and high, rather than simple and coarse; richly coloured rather than monochromatic; exuberant rather than reluctant, generous rather than stingy, suffused with loving emotion rather than mired in depression' (Nussbaum 1985, 521). This exercise, by Adam, of his 'moral imagination,' shows us, says Nussbaum, that 'moral knowledge...is not simply intellectual grasp of propositions; it is not even simply intellectual grasp of particular facts; it is perception' (Nussbaum 1985, 521). In recognising Maggie as he does, Adam sees 'a complex concrete reality in a highly lucid and richly responsive way'; he takes 'what is there, with imagination and feeling' (Nussbaum 1985, 521).

For all its wisdom – and one must admire not only Nussbaum's reminder that we ought not to reduce moral knowledge to the 'uttering and receiving of general propositional judgements', but also her own rich and lyrical response to James' episode – there is one nagging difficulty. The episode is constructed in such a manner – and here, it must be stressed, I am relying only on Nussbaum's reconstruction – that we as readers know what Adam ought to do; clearly (on the basis of the construction of the example), he ought to resist his self-interested inclination to have his daughter return with him and continue to live with and look after him; surely, he ought to ('and oh, but will he, will he?', we find ourselves asking) recognise her own personhood, her sexuality, her womanhood, and give her his blessing to stay with Amerigo. The problem, once again, is not disagreement with Nussbaum's judgement that what Adam does is the appropriate action. Rather, the problem is that the example is constructed in such a manner that readers are given a portrait of moral life

as consisting in overcoming obstacles of self-interest on the way to an obviously moral end. We the readers, together with the author of the episode, can observe – and no doubt learn from – actors who are said to face certain choices and who can make certain decisions, where what is within the realm of choice is already restricted, and where the decisions that can be made are already value-laden (once again, because of the way in which the example is constructed).<sup>7</sup>

Let us step back, once again, in order to avoid misunderstanding. The argument here is not that this form of teaching and learning via examples and stories – whether in the writings of moral philosophers or in literature – is in itself something dangerous. Once again, the argument is not that this age-old tradition of the more or less effective passing on of ‘moral wisdom’ from one generation to the next is a bad thing. On the contrary, communities (of whatever size, whether families or nations) could hardly do without it (and would be much poorer in heart and soul for less beautifully expressed and crafted modes of transmission). Further, it is important to recognise that this kind of transmission happens not only via well-worn stories, myths, anecdotes, cases, fables, narratives etc, but also via the repetition of images and symbols, and of course also via less visible, but at once more concrete, means, such as practices, rituals, and the design of spaces (including everything from forms of domestic living to the design of places of conflict-resolution). Human beings do learn important lessons, and it is important that they pass them on to each other; indeed, often the most powerful and most influential lessons are those that we do not even notice are being transmitted.<sup>8</sup> It should also not be thought that this generous notion of transmission does not leave room for debate and disagreement within traditions; nor should it be forgotten that each community, again of whatever size, employs many forms of transmission, not all of which

---

<sup>7</sup> I stress here that I am not suggesting here that this treatment of this episode is representative of Nussbaum’s work. On the contrary, Nussbaum has consistently and powerfully stressed the importance of recognising the difficulties of moral life: see, especially, her *Fragility of Goodness* (1986).

<sup>8</sup> This last point is made, for example, by Martin Krygier in his ‘Law as Tradition’ (1986).

will constitute coherent and consistent systems of ways of life (whether we call them moral or not).<sup>9</sup>

Rather, the argument being made here is that the construction and experience of these examples is not exhaustive of moral experience; in fact, it tends to ignore and exclude that which is arguably most important about it, namely its radical uncertainty. But now the question becomes: how can we give some account of this notion of moral experience? Can we construct examples of radical uncertainty, or is it that these examples – and any other form of transmission, precisely because it is a form of teaching and learning – can only ever be set up in hindsight, with the wisdom to be passed on well-settled, and with all energies being devoted to the highly-skilled and highly-prized tasks of creating the most effective means of persuasion to pre-determined ends? Is passing on that which we have learnt, then, and doing our best to persuade others to see the wisdom of what which we have come to value, the best we can do as theorists and storytellers – and as teachers?

What follows for the remainder of this part of the paper is an exploration of these difficult questions. Before I turn to that task, let me return to the basic features of this notion of moral experience; that way, we can have this notion in the forefront of our minds when exploring the difficulties at hand. Here is a list (which aims to be representative, but not exhaustive):

1. That which helps us face up to, instead of hide away from, our mortality and fallibility – in short, our limitations (keeping in mind that any one way of expressing our limitations will itself be limited);
2. That which helps us experience radical uncertainty about who we are, where we have been, and where we will be, and about what has happened, is happening and will happen;

---

<sup>9</sup> Once again, Krygier (1986) makes these points forcefully.

3. That which helps us experience the insight that we are not in control of all that which influences us;
4. That which helps us experience the infinite (for us) complexity of others and the world, such that we come to recognise that others and the world are not governed or regulated by laws we can come to know and master; and
5. That which helps us to notice hitherto-invisible (to us) forms of suffering and vulnerability; and
6. That which helps us to widen the scope of, or, sometimes change, that which we find valuable and care about.

Consider now the following example as an attempt to illustrate moral experience:

### **The Chess Player**

When Amelia arrived at the playing hall, about an hour early for another chess tournament, she saw two buses filled with players – none of whom she recognised – who, one by one, began to make their way inside. This was her first tournament in these parts, and although she was by no means the favourite – and certainly not now in view of these new arrivals from abroad – she could give anyone a good game. She looked forward, in any event, to some good fighting chess, and, if she was lucky, some enlightening post-mortem analysis with a strong player. Her first two games were a success – she won both without too much hassle. On the evening before the third game, a friend knocked on his door. ‘Come on Amelia, come to our room; we’re having some wine, solving some puzzles.’ She went along, and a surprisingly large group of players were huddled round a chessboard, sipping wine, smoking, laughing. She joined in, offering suggestions, enjoying a glass, and as the evening wore on, she began to notice remarks of the following kind: ‘Yes, he certainly had to try hard to

lose that position!', or 'I couldn't believe the arbiters didn't notice how slowly she was playing.' Comments such as these were unusual, but as further explanations were not forthcoming, and as Amelia was enjoying herself, she kept her focus on the wine, the puzzles, the jokes. As she was leaving, she was told 'We're glad you came; feel free to join us every evening.' Amelia was happy, but surprised – she had never enjoyed such popularity with these players before. They usually kept to themselves; or, she thought, maybe she had been too withdrawn on previous occasions.

As it happened, from then on, Amelia's tournament did not go so well. It was by no means a failure, but she lost games against higher-rated opponents, and won them against those she was expected to beat. She didn't get a chance to play any of the bunch of players who were, and who continued to be (though with less and less enthusiasm), hospitable to her. Once, she played a player from abroad – one of those players who came on a bus – and she noticed that the players who had been kind to her had taken a particular interest in her game. But she didn't think much of that – in fact, she was pretty focused on the task at hand and even managed to draw. The tournament was won, in the end, by one of the players who had she come to know, which, though her own tournament did not go so well, made Amelia proud, even happy.

After the tournament had ended, and as the venue was some way away from a main train station, all the participants – save for those who had come on those two buses – stayed the night at the hotel. As was customary by now, Amelia went to visit the room of the players she had been frequenting most evenings. This time, however, when she knocked, she was asked to wait for a moment. Eventually, one of the players opened the door, looked around, and ushered her in. As she came inside Amelia froze, with disbelief. The table, around which all the players were huddled, was covered with money. 'I thought you knew Amelia?' said one of them. 'Are you really surprised?'

‘We didn’t tell you, as we assumed you knew.’ It turned out that Amelia had been participating in a racket. In fact, it turned out that this racket was formed in order to counter the racket organised by the rivals from abroad. The racket worked by choosing one player, to whom all the other members of the racket would lose (deliberately), drawing amongst each other, and attempting to make life as difficult as possible for members from the rival racket. As it happened, Amelia was nowhere near the leaders for the instructions to have been made more explicit than the members of the group had thought they had made it.

Amelia was about to offer protest, when one of the players handed her some money. ‘That was a good draw you made against...what was his name, yes, anyway, that draw – that was well played Amelia!’ Seeing her surprise, another said, ‘You know, these guys, they come in two bus loads, gang up on us, and attempt to take away our livelihood – it’s all very well for you Amelia, you’re not a professional player, but we have to live!’ Amelia did not say anything, and, leaving the money handed to her on the table, she walked back to her room. Only later did she realise she was shaking. And, for the rest of the night, she could not sleep; all she could hear was much laughter coming from that other room.

At first blush, and from the perspective of moral experience, this example looks to be an improvement on the examples noted above. It encourages the reader to identify with Amelia, who, perhaps out of naivety or simply ignorance of the practices of professional chess playing in those parts, had become involved in something that horrified her. At the same time, the reader is encouraged to reflect on why the practice is, if it is, wrong. It is certainly set up as being wrong – for example, the players are careful not to let anyone not in the racket see their spoils at the end of the tournament (i.e., the players exhibit signs of guilt), but, as the players

explain, their livelihood depends on resisting a rival racket being successful. Who has been hurt, you might ask, apart from chess itself? Uncertainty begins to creep in; the example begins to swell with difficulty. Nevertheless, the shortcomings of this example are also plain – and not at all that different to the examples considered above. The principal problem is the familiar one of the authorial voice, and thus of the reader, too, who is positioned above, and sitting in judgement over, the actors within the example. At best, you might justifiably protest, the example problematises the notion of responsibility (particularly in Amelia’s case), but it does nothing to alleviate the difficulty of encouraging a picture of moral judgement as standing above the din and clamour of moral life.

The complaint is strong, and relates to the problem of the authorial, or narrative, voice. This problem is one of the difficulties that some works of literature confront and experiment with. Crucially, however, it is not the central – or even a – problem confronted by the author of examples in moral philosophy.<sup>10</sup> If confronted, the problem might lead us to ask the following sorts of questions: should the narrator be omniscient, or should she be a character in her own right – and, further, perhaps a naïve, or ignorant, character? Might the story be told in such a manner that the reader begins to trust the narrator less and less? Might the narrative voice be swapped from character to character to enable a multiplicity of limited perspectives (as in, for example, Virginia Woolf’s *The Waves*)? Can the structure of the narrative be constructed in such a manner that the narrator’s voice gradually loses its omniscience (as is achieved, arguably, in Julio Cortazar’s *Hopscotch*, where, depending on the order in which one reads the chapters, the narrator appears under a different guise)? All these are possibilities that loosen the reader’s reliance on the narrator’s hold over the facts, and thus also the source of the positioning of judgement over and above the actors (or characters). In this respect, those literary works that struggle with the position of authorial authority, and thus

---

<sup>10</sup> I leave it as an open question as to whether it is confronted in legal education (especially in the teaching of legal professional ethics).

problematise narrative omniscience, may be of particular help in finding more faithful illustrations of moral experience.<sup>11</sup>

In the above example, for instance, one could re-construct it such that it is Amelia all along who (though it does not appear so from the narrator's telling of the story) is the originator and organiser of the racket. In an alternative ending, the reader could be told, for example, that Amelia was welcomed with hushed reverence into the room, and was given the largest stack of money on the table; after which she walked out confidently (and, perhaps, surreptitiously boarded the bus containing players from abroad, whereupon, let us say, she collected another sizeable payment from the rival racket). These kinds of techniques of rupture in the omniscience of the narrative voice, or break in reliance on authorial intention, are an improvement (from the perspective of moral experience). However, they do not go as far as one could go, for they do not so much place the reader in a position of radical uncertainty, as they place in doubt, from the perspective of hindsight (and most usually via the addition of facts), judgements that are formed all too easily, and all too quickly. In other words, exercising hindsight, the reader simply replaces one judgement with another, rather than being given the opportunity to experience the radical uncertainty of judgement.

To notice the difference between experiencing the doubt of judgement under hindsight and experiencing the radical uncertainty of judgement consider the following two examples. The first example runs as follows:

### **Parenthood on the Subway**

You are catching the subway late one Sunday evening. There is hardly anyone on board. Platform after platform is deserted. Suddenly, however, the doors open and in stream four children and a man, who, given his behaviour, you assume is the father of

---

<sup>11</sup> Significantly, for my purposes here, this problematisation does not appear in Nussbaum's reconstruction of James' episode in *The Golden Bowl*.

the children. The children run amuck in the carriage. They run back and forth, yelling and screaming, throwing things. At one point, they even grab the newspaper that is next to you, and which you had begun reading when all was quiet, but had now stopped given the excessive noise. Much to your (increasing) frustration, the father is not doing anything. He has closed his eyes and is ignoring the children. You bear the misbehaviour of the children for a while, but then can no longer stand it. So you ask the man: ‘Excuse me, but are these your children?’ ‘Yes, they are’, he answers. And before you can add your complaint, the man continues: ‘Yes, I know... I know I should do something about it. We have just come from the hospital where their mother died about an hour ago. I don’t know what to think, and I guess they don’t know how to handle it either.’<sup>12</sup>

Now consider the second example:

### **The Gun Club President**

Borat, a journalist from Kazakhstan, visits a gun club in Texas. Unbeknownst to the Gun Club President, whom Borat interviews, Borat is a mock journalist – in reality, he is a comedian from Britain, who manages to pretend very convincingly (though in a way that is obvious once you know he is pretending) that he is a real journalist, making a film about the United States for the benefit of viewers back home in Kazakhstan. The two have a conversation, an excerpt of which goes as follows:

Borat: ‘You know what we do back at home, in Kazakhstan?’

Gun Club President: ‘What’s that?’

---

<sup>12</sup> This example is reconstructed from a story told by Stephen R. Covey in his *The Seven Habits of Highly Effective People*. Covey continues ‘Suddenly I saw things differently, I thought differently, I felt differently, I behaved differently. My irritation vanished. I didn’t have to worry about controlling my attitude or my behaviour; my heart was filled with the man’s pain. Feelings of sympathy and compassion followed freely... Everything changed in an instant’: cited in DesAutels 1996.

B: 'You know those nasty criminals, rapists and murderers? Well the government takes those and gives them to our gun clubs, so that they can practice their shooting on them.'

GCP: 'Wow, that's crazy. That's the craziest thing I've heard.'

B: 'Yeah, but it's fun you know. It's great fun. Don't you think it would be great fun?'

GCP: 'Yes, definitely, that would be fun, but man, that's crazy.'

B: 'You don't do that here?'

GCP: 'Oh no, we do execute people here, but the government does it.'

B: 'But why? Why not the gun club? You have a firing range. It would be fun.'

GCP: 'No, no that's crazy. But yes, you're right. There's no good reason why we couldn't do it.'<sup>13</sup>

The second example is offensive in the typical Borat fashion. But, on one possible (and no doubt controversial) reading of it, there is a hidden uncertainty within it. The uncertainty lies in the Gun Club President's statement that there is no good reason why the government, rather than a gun club, has to execute those on death row. After all, one might think that whether it is the government, or a private body, executing other human beings is equally wrong. In other words, once one makes the decision to execute human beings, why should we think that the government doing it is somehow less wrong than any other persons being given the task? Is this not, at bottom, killing – the intentional deprivation of the life of another human being?<sup>14</sup> Notice that this kind of difficulty is created not, as it is in the first of the two examples, by the

---

<sup>13</sup> This example has been reconstructed from a real Borat episode, available online here: [www.youtube.com/watch?v=MUcyphPxcVY](http://www.youtube.com/watch?v=MUcyphPxcVY).

<sup>14</sup> I am not endorsing this way of looking at it; the point is to rupture the bias towards seeing the government's actions as less wrong than those whom it condemns as rule-breakers. For a sophisticated discussion of this bias, and the related tendency to disavow responsibility for the imposition of suffering that is legitimately sanctioned, see Veitch 2007; see also Del Mar 2008b.

addition of an extra fact, which places, in hindsight, the original judgement in doubt. Here, by contrast, the uncertainty is created by the potential for alternative judgements. In the first example, ‘you,’ the passenger on the subway, are given an extra fact (i.e., the recent death of the mother), which changes your perception of the events. In the second, the uncertainty is hidden within the facts already available to the reader. However, crucially, the second example does not spell this out within its own ranks: it is easy enough to read it and think how awful, how ‘immoral,’ the Gun Club President is.<sup>15</sup> The lesson to be learnt, then, is that the uncertainty cannot be forced upon someone by the example itself: the author, in other words, if he or she wishes to create the opportunity for that kind of uncertainty, cannot control what the reader will take away; the reader can, at best, be given the opportunity.

What the above discussion has sought to address is the extreme difficulty in devising examples that allow us to illustrate moral experience. As we have seen, to reiterate, we cannot force the experience onto a reader; we can, at best, make it possible – as, for example, humour can, when it gives us the opportunity to scrutinise ourselves (and our biases towards assuming certain things to be correct, good, appropriate, or otherwise), and thus also the opportunity to realise that we are, in fact, only laughing at ourselves. In concluding this part, I shall mention two further resources that one may be able to draw on in order to give the reader such opportunities for – though never guarantees of – moral experience.

First of all, we have the tradition of tragedy. It is perhaps no surprise that Walter Kaufmann chose to call his book, *Tragedy and Philosophy* (1992), separating the two already in the title, and indeed going on to criticise the treatment by philosophers of tragedy, ‘offering all kinds of grand generalisations without considering in detail a single tragedy’ (1992, xi). Kaufmann was deliberately polemical. He said, for example, that ‘philosophy is a branch of

---

<sup>15</sup> Indeed, that is part of the power of Borat as a character (perhaps also of humour more generally): he makes us laugh at others, which comes back to tap us on the shoulder and gives us at least the opportunity to scrutinise ourselves. In fact, I myself felt so awkward about the example – including using it in the way I do here – that I thought that was a good argument for its inclusion. After all, awkwardness, like laughter, is often a sign of the hold something (e.g., an attitude or a value) has on us.

literature, in which suffering and extreme situations have been largely ignored' (1992, xii), hence the close attention he pays to Homer, Aeschylus, Sophocles and Shakespeare. Of course, since that time there have been philosophers, including moral philosophers, most notably Nussbaum, who have drawn on tragedy, and specifically Greek tragedy, to reveal something of the great uncertainty of moral life.<sup>16</sup> Although it is, obviously enough, outside the scope of the present paper, a proper study of tragedy looks promising for a more extensive portrait of moral experience.

The second resource I shall also but mention here is Edward Said's discussion of works that, on his conception of it, exhibited 'late style' (Said 2006). The first hurdle for a work classified in such a manner was that it was written late in life, whether that lateness was the result of illness or simply age. Late in life, then, with the decay of the body for whatever reason, we might expect to find, says Said, an artist expressing 'a special maturity, a new spirit of reconciliation and serenity' (2006, 6). And, he says, there are indeed examples of this kind of 'late style': e.g., Shakespeare's *The Tempest* or *The Winter's Tale*, or Sophocles' *Oedipus at Colonus*, where, in the latter case, the aged hero is portrayed as having finally attained a remarkable holiness and sense of resolution' (2006, 6). However, this is not at all what Said means by 'late style.' What interests him is 'artistic lateness not as harmony and resolution but as intransigence, difficulty, and unresolved contradiction' (2006, 7). 'I'd like to explore', he says, 'the experience of late style that involves a nonharmonious, nonserene tension, and above all, a sort of deliberately unproductive productiveness going against...'  
(2006, 7). His subjects are many and varied: Ibsen, Adorno, Genet, Mann, Beethoven, and Cavafy, to mention but a few. Considering his examples carefully, we may acquire another set of illustrations of moral experience.

---

<sup>16</sup> The most pertinent example comes from Nussbaum's reading of *Antigone*, where both Creon and Antigone are said to be morally inadequate for being unable to stand outside the rules to which they feel bound and sense the extreme difficulty of the decision: see Nussbaum 1986; see also Bankowski 2001.

These two resources – tragedy and Said’s late style – combined with others, such as Kafka’s parables and Borges’ paradoxes, might well help us to undertake the disorientation and dislocation that are an important aspect of moral experience. In fact, however, the most promising activities of all are not based on one’s experience as a reader of texts. Rather, the most promising, and potentially the most powerful resources, are those that offer opportunities for (arguably) more active participation, and thus also, more risk than readers ever have to endure. It is to these kinds of resources that I now turn.

## **II. Activities and Resources**

It should be stressed that the six basic features of the notion of moral experience listed above are not offered as recipes for satisfying the demands of moral life. On the contrary, they are offered as assistance to help avoid underestimating those demands. It is time now to consider what concrete activities and specific resources can be used in law schools for a pedagogy that does not exclude, but rather facilitates, opportunities for moral experience.

I shall refer to two sets of activities and resources. The first comes from a recent workshop, held in December 2008, as part of the *Beyond Text in Legal Education* project at the School of Law, University of Edinburgh. This workshop was led by three artists, Alicja Rogalska (visual artist), Keren Ben Dor (dancer), and Zoë Fortherghill (artist and curator). Although Zenon Bankowski and I had some input in the process of coming up with the activities, they were mainly created, planned and directed by Alicja, Keren and Zoë. Zenon and I participated in the activities, as did ten other lawyers and legal educators (from both tertiary and continuing professional development) from both the United Kingdom and the United States. The workshop was filmed, and a short film is available on request.

The second set of activities and resources is my own. It comes from a collection of activities I call *Unnatural Exercises*, and which are designed to encourage what I call

thoughtfulness, i.e., the ability and willingness to widen the scope or, sometimes, change, that which one finds insightful. Some of the unnatural exercises, as will become clear, do not require bodily participation (i.e., some are cognitive, requiring the use of one's imagination), while all of the activities produced as part of the Beyond Text workshop are embodied exercises.

## **IIA. Beyond Text Activities**

The practice-led workshop was held over two days, with a packed programme of activities (the programme, with brief descriptions of the activities, itself runs to eight pages). I shall not attempt to reproduce the variety here. Rather, I shall focus mainly on those activities that moved me most, all the while paying attention to how these activities might be conducive to facilitating moral experience.

Before the workshop, I anticipated that the activities that would affect me most would be those where I would come face to face with my limitations, e.g., where I would find that my attempt at non-verbal communication with others, or my attempt at expressing myself with soil, paper, crayons and scissors, would be hopelessly frustrating. Actually, although I did experience that frustration, I also felt liberated in having been given the permission to do things (such as sculpt, draw and dance) that I have not engaged in much before, and certainly not at law school. Here are some examples of these kinds of activities:

1. Participants chose a word from a collection based on legal vocabulary, but which were also everyday words (e.g., 'causation', 'attempt', 'discovery'). We were then made available a large black sheet of paper, as well as soil, nails of all kinds, bits of plastic, scissors, gloves, and the like. We were asked to come up with a sculpture, or any other kind of work, that responded to the word we chose. If

nothing else, this certainly made us look at words that, as lawyers, we often simply look through, given their familiarity to us.

2. In the Talbot Rice Gallery, which is located across the courtyard from the law school at Edinburgh, we were asked to look, as a group, at video installations, and use string to respond, in diagrammatic fashion, to those installations. One of the most difficult things here (or so I found) was to resist the temptation to represent, or attempt to faithfully depict some feature of, what (we understood) the installation to show. The installation my group responded to was an electronic game version (with matchstick to navigate) of Osama Bin Laden's hideout. We ended up not being able to resist the temptation, and simply mapped, with the string, the layout of the buildings depicted in the game.<sup>17</sup>
3. Three boxes of all kinds of materials (toys, odds and ends) were made available to two groups, who were given the task to make an installation from those materials in a confined space. The trick was that there was to be no talking to each other; we could only rely on non-verbal communication. One of the interesting things to observe here was how persons who were normally dominant in verbal communication receded to the background. Another interesting feature of this exercise was the difference in how quickly the two groups came to converge on a theme: one of the groups did so very quickly, thereafter choosing materials that represented the theme; the other group kept exploring what the theme would be right to the end.

The frustrations experienced, however, were not simply those of coming face to face with one's limitations – both with the modes of expression and tools that were unfamiliar (especially to lawyers), and also simply with the very act of expression that had no particular

---

<sup>17</sup> The installation referred to here, and elsewhere in the descriptions referring to installations in the Talbot Rice Gallery, was by Ben Langlands and Nikki Bell. Visit [www.trg.ed.ac.uk](http://www.trg.ed.ac.uk) for more information.

end (the goal was certainly not artistic achievement). Rather, part of the aim with these activities was to rupture the reliance on one's intention to control what was happening around one, and what would happen in the next instance. In other words, these kinds of activities were designed, at least partly, to break the link between the pursuit of a particular end and reasoning (often by reference to guides, such as rules and principles) to that end (again, as is arguably typical of a lawyer's mentality).<sup>18</sup> The clearest example of this kind of break was in the following activity:

1. Participants were matched in pairs and asked to pick up separate instructions (one for the drawer, and one for the describer). Each pair then sat with their backs to each other, and were asked to read the instructions, but not let the other person know about them. In general, the activity required the describer to describe an artwork (in the Talbot Rice Gallery), which the drawer had to draw (without seeing it). The instructions, however, created the above-mentioned break. They included, for example, an instruction to the drawer to draw the opposite of what the describer was describing, or to draw the way the voice of the describer sounded (rather than what the describer was describing). An example of an instruction to the describer was to describe an imaginary artwork, or to describe with one's eyes closed. In all cases, the instructions were very effective (in my opinion) in placing in doubt one's reliance on one's ability to achieve the outcomes one (or one's client) sets for oneself (a skill that, again arguably, lawyers have to learn quickly and which they are often lauded for).<sup>19</sup>

---

<sup>18</sup> Indeed, one of the most difficult things about this project was coming up with (accessible) lists of habits or effects of legal education that we wanted the activities, to be composed by the artists, to counter. I cannot address these difficulties within the scope of this paper.

<sup>19</sup> What this suggests is that exercises that facilitate moral experience may sometimes (though they need not always and necessarily) run counter to that which is valued in legal education and legal practice. The argument, then, is not that we ought to change what is valued in legal practice, but that educators should try to weaken the effects of certain habits (understood in a generous way to encompass ways of doing, seeing and valuing) arguably created by legal education and reinforced by legal practice. Again, the difficulty here is one of

Finally, two further activities from this range that I am here classifying as enabling one to come face to face with one's limitations were the following:

1. Participants were given three envelopes with instructions or materials and asked to open each one by when moving from three of the chosen artworks being exhibited in the gallery. The instructions included standing very close to the artwork (almost touching it); using a magnifying glass to look at it; or facing away from the artwork. In all cases, this activity was designed to make one realise how limited (and how standardised) one's usual way of experiencing artworks is.
2. Participants were given a digital camera, and three envelopes with three different kinds of prompts. We were given 45 minutes to make one photograph each in response to each prompt (so 15 minutes per prompt). We were then asked to go outside into the streets of Edinburgh to take our photos. This activity proved very popular. The prompts included coloured pieces of paper, as well as things like tablets, string, sim cards, etc. Participants reported being both encouraged and 'permitted' to look much more carefully at their surroundings than they are used to doing. Many produced photos that were only orthogonally (and thus, one might say, creatively) related to the prompts.

All of these kinds of activities I have grouped here under the category of coming face to face with one's limitations, including those habits one forms of seeing, doing and communicating in certain ways, which may not be visible to one unless and until they are ruptured. This is certainly an important feature of enabling moral experience – for example, when not in a hurry, and given permission to linger and observe (as in the photography activity mentioned

---

characterising those habits, which will always be controversial. At the risk of repetition, let me state again that problems to do with characterisation are outside the scope of this paper.

above), participants were given the opportunity to see things they might otherwise (not even realise) they avoid or ignore (e.g., pockets of the city that are deemed ‘disgusting’ or ‘dangerous’, which acquire a sudden revival behind the eye of a camera and the ‘permission’ and ‘inspiration’ of a prompt).

However, much to my surprise, it was not these activities that I found to be the most powerful. The activities that most moved me were those in which we were both enabled and encouraged to engage with fellow participants. Here are some examples:

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

on the piece of paper. Once again, I had not previously encountered another human being's body in this fashion – certainly not with as much trust as this required of someone I had met only a few hours before.

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

other two had either very complex rules, or simply a picture. Interestingly, the group with no instructions composed a dance that gradually involved all the members of the other groups (they began in a circle, and repeated a simple pattern, and every so often gestured towards an outside observer to join in).

All these activities affected me more than I anticipated. The structures of the activities, as well as the atmosphere created by the three artists, were such that they enabled forms of interaction and encounter with others where there was no specific end in sight; no standard which was assumed to be operative, and against which we were being evaluated; and no easy way to withdraw into oneself and thus from the sometimes uncomfortable, and certainly unfamiliar (to most, if not all of us), modes of participation. In participating in them, we were given the opportunity to undergo a transformation that is made possible when one does not know, at any moment, where one will end up, or what to anticipate or expect from encounters with others. One learns, gradually and painfully, not to attempt to control the situation, or to direct the kind of response one may receive from another human being. Certainly, one becomes slightly less dependent on the usual categories (scripts, schemas, etc) that one tends to use in everyday social life, and which tend to minimise encounters with others to largely effortless rituals.

Much more would need to be said to give the activities explored in the Beyond Text workshop their due. What remains to be said here, by way of a policy implication – given the (I think it is fair to say) successful impact of these activities on the majority of the participants, judging from their reflections both during and after the workshop – is that whatever activities one chooses to employ (whether for students or fellow colleagues), if law schools do not make available a space for these kinds of activities to take place, then such

opportunities will be lost. There is, in other words, a need for an open space<sup>20</sup> at each law school, as well as resources, such as the employment of artists (whether as consultants, or ideally, as resident artists). Of course, a more thorough case for such a policy – accompanied by a proper discussion of the relevant literature, and a proper exposition of the necessary resources and suggested activities – cannot be made here. Such a policy package (for both law schools and professional development providers) is currently underway, as is a book with responses from legal educators and legal education theorists.<sup>21</sup>

### **IIB. Unnatural Exercises**

In other work, I have sought to examine the moral significance of the willingness and ability to widen the scope of, or, sometimes, change, that which one finds insightful. I call this willingness and ability ‘thoughtfulness.’ I will not reproduce the efforts of previous papers here.<sup>22</sup> Instead, I wish to share with the reader some examples of exercises I have been collecting, which are designed to allow for the development of thoughtfulness. I shall return to link them with the notion of moral experience at the conclusion of this part of the paper.

Here, then, are some ten examples of exercises from a collection of one hundred entitled *Unnatural Exercises*:

1. Imagine the first time a question was asked. For example, consider the possibility that there came one day, when a person spoke, and the sound of their utterance did not end abruptly, but rose up, instead, in intonation, and appeared to leave room for, or call for, a response, or for something to be added. Imagine, now, that time before the first

---

<sup>20</sup> Others, such as Gary Watt, the 2009 Teacher of the Year, awarded by the UK Centre for Legal Education at Warwick University, have argued for open spaces. It is unfortunately outside the scope of this paper to compare their arguments to the one made here.

<sup>21</sup> Please visit [www.law.ed.ac.uk/beyondtext](http://www.law.ed.ac.uk/beyondtext) for news and announcements.

<sup>22</sup> See, for example, Del Mar 2009a and 2009b.

question was asked. Consider how human beings lived before they asked each other questions.

- a. A variation: do the same, but this time with dialogue instead of questions.

Consider the possibility that there was a time when a human being first came face to face with another human being; a first time when one eye looked into another eye; a first time when one human being gestured or uttered something to another.

2. Return to the recent past, i.e., twenty or thirty years ago as you read this. If you are reading this in the early twenty-first century, look at music videos from the seventies and eighties. Look carefully at gestures and facial expressions. Do they not seem familiar, and yet alien to you?

- a. A variation: when a footballer misses scoring a goal from a promising position he often raises his arms to his head, or looks up at the sky and rolls his eyes. Ask yourself whether you ever noticed this gesture as a gesture, or whether it has always appeared to you as part of the entire event of a missed opportunity in football.

3. Find a busy square in your city. When you are there, a coffee and notepad at hand, pick a category of the properties of objects, e.g., temperature, density, surface, texture. Then, using that category, describe, following any one arrow of your senses, what you can sense. Avoid, if possible, the names of objects. Follow only the sensory quality of the particular category you have chosen.

- a. A variation: it would be particularly impressive if you created your own category of a property, and, even more so, if such a new category was not the mere combination of two already known to you (e.g., temperature-density).
4. During the course of one day, whenever you feel like expressing disapproval, do so in a self-reflexive, self-deprecating, manner. For example, instead of saying, ‘This food is awful’, say, ‘Something is wrong with my taste buds.’
5. In the course of one day, attempt to switch roles with someone. For example, when entering a café, ask the waiter if he wouldn’t mind having your coffee while you waited the tables.
6. Imagine that you have a body such that you know that with each new decade you will lose a limb, but you don’t know which one.
  - a. A variation: imagine that you are born with a certain basic body, e.g., with no limbs, and that with each decade you grow a hand, an arm, a leg, a foot.
7. Try to walk unnaturally, but not in any way designed to create a certain response in your real or imaginary audience. If your real or imaginary audience laugh or cringe, then try again. You can move on when they do not respond in any way whatsoever.
8. Describe a memory you have never before recalled.
9. Look at the nearest skyline, e.g., of houses or skyscrapers. Imagine that behind that skyline is one of the world’s great oceans. If you are lucky enough to be in a place

where that is the case, imagine instead that behind the nearest skyline is an ancient forest.

10. Describe an event without saying what happened.

a. A variation: describe an event backwards.

Thoughtfulness is closely related to moral experience because, as per the sixth basic feature listed above, one of the most difficult things in moral life is being able and willing to exercise concern over that which one has hitherto not noticed as calling out for such concern. How do we, for instance, come to care about the plight of future generations – endangered as a result of our treatment of the environment? How do we come to notice forms of suffering and vulnerability – such as, the lack of capacity of disabled persons to participate fully in life, including political life – which may be hidden under existing arrangements of communal living? How do we come to care about that which is outside the circle of our own interests, plans and projects? How can we pay proper regard to the wisdom of the ages, but without canonising the past, and without squeezing out the possibility for innovation that may alleviate the suffering and vulnerability of persons? Perhaps most importantly, as was also asked by Emmanuel Levinas, how can we resist reducing everything to the empire of the same, i.e., to that which ‘we’ already recognise; to that which is familiar to ‘us’ and comfortable for ‘us’; to that which ‘we’ have already phrased in and on ‘our’ terms; and to that which we have become so attached that we no longer see its influence on our ways of seeing, doing, and caring? It is these questions that the above exercises are designed to open up (though often indirectly, by making us feel uncomfortable with ourselves or our surroundings), and which make them closely related to the notion of moral experience.

## **Conclusion**

In concluding this paper, it will be particularly important to stress that the aim has not been to suggest that moral experience, as conceived of here, ought to replace the long-standing traditions of moral inquiry (such as virtue ethics, or utilitarianism, etc), or that, worse still, the notion of moral experience can help us satisfy the demands of moral life. All that this paper argues is: first, that the notion of moral experience, as conceived of here, is sometimes ignored by, or dismissed or excluded from both the examples often relied on in the practice of moral philosophy and the practice of legal education; and, second, that the notion of moral experience cannot do more than, but would be important if it could, help us to avoid underestimating the demands of moral life.

Of course, in making the first of the above two arguments without properly detailed engagement with either the practice of moral philosophy or legal education – and thus no doubt offering caricatures of both – the paper might be said to set up easy, perhaps even completely fanciful, targets. This is not a charge I wish to meet; in fact, on the contrary, it is one I would wish to encourage. In any event, whether you reader do or not, I certainly will return to my understanding of moral philosophy and legal education, and see whether I can see enough room being made for moral experience. I sincerely hope I am wrong, but I fear I am not.

As for the second of the above two arguments, I can but reiterate that too much should not be, and cannot be, expected from the notion of moral experience. That experience is not one that can be forced onto others; it can merely be made available, or facilitated. Further, the notion of moral experience is not offered here as a ‘fundamental’ or ‘necessary’ concept for our understanding of morality; I find such language difficult to accept, and I do not think we need to accept it in order to take the demands of moral life seriously. Perhaps the best that the

notion of moral experience can do is: first, remind us of our tendency to lever ourselves into the position of omniscient observers, sitting in easy judgement above the din and clamour of moral life; and second, whisper to us that all we can ever do with respect to the demands of moral life is to keep trying to understand them, and have the courage to keep trying, despite knowing that we will never find a code or key for, or magic formula of, moral life.

## References

- Abowitz, K. (2007), 'Moral Perception through Aesthetics: Engaging Imaginations in Educational Ethics', *Journal of Teacher Education*, 58, 287-298.
- Bańkowski, Z. (2001), *Living Lawfully: Love in Law and Law in Love*, Dordrecht: Kluwer Academic Publishers.
- Clark, A. (1996), 'Connectionism, Moral Cognition, and Collaborative Problem Solving' in May et al (eds.), 109-127.
- Del Mar, M. (2008a), 'Beyond Text in Legal Education: Art, Ethics and the Carnegie Report', under review.
- Del Mar, M. (2008b), 'Jurisprudence on the Frontline', *European Journal of International Law*, 1095-1108.
- Del Mar, M. (2009a), 'Normativity and Thoughtfulness: A Footnote to Socrates', under review.
- Del Mar, M. (2009b), 'The Moral and Political Life of Thoughtfulness', under review.
- DesAutels, P. (1996), 'Gestalt Shifts in Moral Perception', in May et al (eds.), 129-144.
- Dreyfus, H. and S. Dreyfus. (1990), 'What is Morality? A Phenomenological Account of the Development of Ethical Expertise' in Rasmussen, D (ed.), *Universalism vs. Communitarianism: Contemporary Debates in Ethics*, Cambridge, Mass.: MIT Press.
- Goldie, P. (2007), 'Seeing What is the Kind of Thing to Do: Perception and Emotion in Morality', *Dialectica*, 347-362.
- Kaufmann, W. (1992), *Tragedy and Philosophy*, Princeton: Princeton University Press.
- Krygier, M. (1986), 'Law as Tradition', *Law and Philosophy*, 5, 237-262.
- May, L, M. Friedman and A. Clark (eds.). (1996), *Mind and Morals: Essays on Cognitive Science and Ethics*, Cambridge, Mass.: MIT Press.
- Nussbaum, M. (1985), "'Finely Aware and Richly Responsible": Moral Attention and the Moral Task of Literature", *The Journal of Philosophy*, 516-529.
- Nussbaum, M. (1986), *The Fragility of Goodness*, Cambridge: Cambridge University Press.
- Putnam, H. (1983), 'Taking Rules Seriously: A Reply to Martha Nussbaum', *New Literary History*, 15:1, 77-81.
- Said, E. (2006), *On Late Style*, London: Bloomsbury.
- Sullivan, W., A. Colby, J. Welch Wegner, L. Bond, and L.S. Shulman (2007), *Educating Lawyers: Preparation for the Profession of Law*, Hoboken, N.J.: John Wiley & Sons.
- Veitch, Scott, *Law and Irresponsibility: On the Legitimation of Human Suffering*, London: Routledge Cavendish, 2007.