

A CONVERSATION OF MORALISTS

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The following conversation, between two teachers, one in legal education, one in public life, took place over a decade ago. The conversation was recorded and transcribed. The transcript has been edited to smooth the rough edges of conversation translated into written prose. However, the questions and responses have not been substantially altered, or rearranged in any way. Both Rodgers and Belden reviewed the edited transcript. Neither expressed objection to this edited version of the conversation. One of the parties to the conversation expressed a desire that the conversation not be published using his name. The other participant in the conversation is now, as at the time of the conversation, a law teacher. The names, Beldon and Rodgers, are not the real names of the speakers. Beldon and Rodgers had not met prior to the conversation and have not meet since the following conversation took place.

Belden: You take a rather critical stance toward the teaching of values and ethics in professional schools. Can you explain your criticism?

Rogers: Did you mean critical as a compliment? My basic criticism is that most ethics teaching is flawed. It is neither conducive to the development of good character or ethical development. The ethics work done in professional schools is either irrelevant by its own standards, or is simply not taken seriously. I'm in favor of ethics, in favor of people acting ethically and behaving ethically, but I'm critical of the educational means proffered to that end.

Belden: How do you see the relationship of values education, ethics teaching, and character?

Rogers: There is little connection between values education and teaching ethics as ethics. People say, "Students aren't clear today about right and wrong." This is true of students in the professions as well. Young lawyers and doctors face hard ethical choices. They must decide what kind of professionals they're going to be. One finds in certain educational circles and in professional schools that the influence of traditional beliefs about right and wrong, along with traditional

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religious beliefs, have waned. So one might ask, "What do I do now under these circumstances?" The result is that with the diminished influence of tradition and religion we turn to a substitute. Values education and the efforts to "teach" ethics is a reaction to the loss of our Judeo-Christian tradition.

Belden: But don't values education and ethics teaching reflect a deep human need to raise fundamental existential questions lost in today's modern universities?

Rogers: I think it depends on the teaching. There are some deeper aspects of human nature I don't want to think about, or even try to teach. A person who drinks too much may have some deep psychological need but that doesn't mean we need to dignify the need by making it a part of our teaching. Basically, much ethics teaching is a hustle, simply a hustle.

Well intentioned teachers who care about their students and their ethical development have been taken in by efforts at values clarification. Values clarification has nothing to do with ethics. One has to be careful here. If you're talking about what Lawrence Kohlberg, and those who follow his work, I think they're serious people, trying to do good. But they're mistaken.

Belden: Values clarification, simply having everyone practice articulating their values, may be misguided as an educational "movement" but your criticism seems to imply a still broader criticism. Isn't the basic point of even the most simplistic exercises in values clarification to encourage awareness of one's own values, the awareness of others' values, and what values we share with others and how they sometimes come into conflict? If we cannot articulate our values how are we to resolve conflicts? Or even know what values we hold in common? What is it about articulating and focusing on values that bothers you so much?

Rogers: I'm all in favor of educators teaching virtue. Your description of what teaches do with values is much too innocent. We don't need programs in which students learn to state their values. Students know what their values are. Even children know what their values are. And we know, if we know anything, that other people have values and that they are often different from our own.

Imagine two sisters. Each of them is quite clear about what she wants and attuned to those instances in which their views conflict. The

present approach to teaching about values promises more than this. It suggests that there is no right and wrong apart from what each of the sisters wants and values, no rights and wrongs that can be passed from generation to generation. I oppose simplistic approaches to values teaching because it is so exceedingly relativistic and subjective. It really doesn't have anything to do with ethics; it's just a disguised way of dealing with individual wants.

Belden: Are you saying there isn't a need to know more about the values we hold as a first step in ethics teaching?

Rogers: Right. Teaching about individual values is antithetical to good ethics teaching.

Belden: With the present level of use of therapy and counseling services, isn't there a suggestion that we live in a time and a culture in which it is easy to become confused even about such basic matters as our own values, especially to we express in our work?

Rogers: Well, don't believe everything you hear from psychotherapists. Maybe it's the therapists themselves who are in a muddle. I know people who live in muddles, but most people don't. There are a lot of muddles around psychiatric clinics, but one would expect to find it so. I see no reason to believe that now, at this time in history, we are any more muddled than we have ever been.

Belden: So you don't think that we're in a time of psychological and ethical confusion?

Rogers: If you're talking about the citizens of this country, remember that we are talking just days after an election, and people seem to be clear about their political values, and about what kind of leaders they want. I regard these citizens' politics as a statement of their values.

I have just returned from a conference on "The Loss of Consensus on Values in America." A number of these intellectuals, admittedly not all, were in a crisis about their own values and beliefs. Before the conference I did some homework. My homework consisted of reading public opinion polls to determine what people want of their schools and their country. People want better teaching (and in the lower schools, discipline); they favor capital punishment; oppose totalitarian government; believe in God; and believe two people should be treated the same regardless of race or sex. These are our values as citizens and there is

a remarkable consistency and congruence among these values. That's no muddle.

Belden: The ordinary person, then, in your view, is relatively clear about where she stands. It's intellectuals who go to conferences and teach ethics that are confused. It is philosophers who are in a muddle.

Rogers: I am not unduly cynical about academics and intellectuals, but there's no denying that there's money in muddle. There's money in values and applied ethics teaching. There is money to be made in a world in which we assume we don't know what our values are. If you can convince people they're in a muddle, you can make money by helping them address their confusion.

Yes, ordinary people are sometimes in muddles; we all get in bad shape from time to time. But teaching applied ethics isn't going to get us out of our muddles.

Belden: Muddle is an odd word. I remember Gregory Bateson using it in his book, *Steps To An Ecology of Mind*, where he carries on a dialogue with his daughter about muddles. She asks, "Daddy, why do things have outlines?" My question is: Why all this energy today for teaching ethics? Why does our thinking about moral education have the "outline" it does?

Rogers: I visited a school recently and talked to a teacher heavily engaged in the moral education movement. Her colleagues were also experimenting with moral development education and I asked, "Why are you doing this?" This teacher told of a discussion with students about cleaning up the school yard which was covered with broken bottles. Some of the teachers had told the students, "You know, you really shouldn't throw bottles in the school yard," and a couple of kids asked, "Why?" One student, picking up on some of the new teaching of values said: "Don't impose your values on us." A number of the teachers were speechless. They didn't know how to answer. I think this is where today's teaching leaves us.

We are confronted today by young people asking the questions young people have asked for generations. "Why should I do this and not that? Why shouldn't I do that? Why should I listen to you? Why shouldn't I listen to the people I want to listen to?"

There are fashions in education and ethics teaching is a new fashion. Many teachers are like the painter whose work wasn't very good because he imitated the work of other painters. When asked why

he painted this way, he said, "Well, at least I'm a contemporary." I think there's a lot of that going on in ethics teaching.

Dealing with questions of value, questions of right and wrong, has always been painful. It's difficult. It is difficult for one generation to talk to another, to the young, about how they should behave and act.

A final point. Many approaches to teaching ethics let the teacher off the hook by allowing the teacher to avoid taking responsible for his own point of view.

Belden: I hear in your comments and see in the work you've published a strong emphasis on traditional authority. You make it clear that teachers should be authorities and tell their students what is right and wrong. Yet, I suspect that one feature of the present muddle we're in is that the very authority you revere is now suspect. We've listened to teachers and leaders and found their view of the world impoverished. We have depended upon leaders as authorities and they betrayed us. Its become a common pattern in this country.

Perhaps, our authorities haven't provided as good a guidance as you assume. The present questioning of traditional authority is, one might argue, for good reason. Yet, there is no recognition of the limits of traditional authority in your work.

Rogers: When you say there's widespread questioning of authority in our society, I think there is actually now less than in decades past.

Have leaders let us down? Sometimes. There is general agreement that Roosevelt, Kennedy, and Truman were good capable leaders. Are teachers reliable? Well, it depends on the teacher. I'm not recommending that one listen to teachers because of the teacher's position of authority but because of the authority of what they teach. My position is not that we should defer to authority, but defer to what makes sense. Teachers say, "You shouldn't lie," and the student says, "Why shouldn't I lie?" There is an answer to that question and the teacher must respond with an authoritative answer. The best answer is not one found in an ethics courses but in traditional Christian morality, a morality that is sophisticated, complex, rich, and as noble a tradition as one could want. Yes, it has some inconsistencies and rough spots. But Christian morality has a theory of human behavior, with clear rules and expectations.

Belden: But education is no longer, if it was ever, fashioned around the Judeo-Christian tradition you would reestablish as authoritative. The ideology of higher education is scientific, rationalistic, and humanistic.

Rogers: Some educators have given up on the Christian ethic and some haven't. Rationalistic? I don't find contemporary educational practices excessively rational. In fact, I wish they were more rational. There is too much doubt now. Why? Because there are grounds for doubt? Maybe, but I am suspicious. Doubt is fashionable. I don't think all this doubt is merited. I'm not arguing we should do things the way we have always done them. It's no more argument to say a thing is good because it's old, than to say its good because it's new. Teachers are constantly being pushed toward doing things differently. If asked why, those who promote new ways of teaching act like giving a reason is too much to ask of them. We change because we want to be innovative, they say. Fine, I understand innovation. But is it any good?

It's interesting how "innovative" becomes a synonym for good and "traditional" a synonym for bad. With innovation and tradition we must ask which is more plausible, what provides better answers. The Sermon on the Mount compares favorably with anything contemporary ethics teachers are doing.

Belden: Personally, I think there is something seriously wrong with education and many colleagues agree. I know this charge is rather broad, but it deserves inquiry and thoughtful conversation. If you take education to be problematic, as I do, then you are more likely to pursue innovation. Innovation is a defense against cynicism and resignation. Innovation is a way to imagine you are doing something about the muddle. I think this is why teachers attend conferences. (I know they go for less exalted reasons as well.) This is why teachers turn to the teaching of ethics; they cannot live with and continue to ignore what they see going on in and around education. They are looking for a way, less to innovate, more to address the real needs they see around them.

For the few, teachers and students, education serves the purposes it has always served. But for many, education is deeply problematic, philosophically confused, doing neither what it can or should.

Rogers: Of course, education is a mess in lots of places. Worse than a mess. The condition of schooling in the United States, at all levels, can be bad. I don't think I've said it always has been bad and always will be bad. Failure is not inevitable. No one in his right mind could look at the state of American schools and say, "Terrific!" "Things are going great." But will the adoption of dubious efforts at teaching ethics (and other innovations of the day) provide a solution? What do you mean education is problematic?

Belden: Let me give you an example. Law schools and medical schools generally train students for significant and powerful roles in society and do so in ways that ignore, disguise, or confuse the moral and ethical aspects of professional life. Professional schools put their faith in skills, in the “science” and “logic” of the discipline. This makes educating professionals problematic. A professional education that doesn’t address values and ethics, whether it’s law, medicine, or engineering becomes a nuisance in society.

Rogers: You think that the behavior of doctors and lawyers and the people coming out of medical school and law school today is worse than it was 50 years ago?

Belden: I don’t know how we could begin to answer that question. The real point is that professionals have a different place in society today than they did 50 years ago. I think that is why we focus on the moral and ethical dimension of professional education in a way we did not a half-century ago.

Rogers: Historically, I don’t think the professions are in worse shape today.

Belden: There is more going on here than the empirical or historical verification of the claim that lawyers are behaving more badly today. My point is that professionals are becoming more visible and are beginning to conventional practices of the profession. It goes back to the point about authority. The concern with the education of professionals is rooted in the questions we have about the role and nature of their place in society.

Rogers: People continue to go to doctors.

Belden: No, they go to doctors but . . .

Rogers: The doctor says, “You’ve got this.” They say, “Nonsense. Who do you think you are to tell me that?”

Belden: Doctors do incredible things. They heal us; and keep us alive; they’re magical at times. They do wonderful things. But we might finally admit that we pay a price for today’s modern forms of medicine.

Rogers: But how does this concern about the practice of medicine translate into a need for a course in medical ethics. My thinking on this takes about five seconds.

Belden: Wouldn't medicine be better off if we made our moral and ethical concerns about medicine the subject of traditional humanistic inquiry? Ivan Illich has argued that professionals create needs. We go to professionals because of certain needs, both our own and those created by professionals. So it's in the interest of professionals to keep us seeking out their services, and to ignore changes in the system which would help reduce the level of needs. The history of both the American Medical Association and the American Bar Association suggest that established medical and legal interests in this country have not always had the best interests of patients and clients at heart.

Rogers: I take issue with what you said about people not going to professionals with real needs but with needs generated for them. Most of my friends avoid lawyers and doctors if at all possible, unless they have insurance. But I still don't see how ethics teaching is going to address these concerns.

Belden: Ethics directs our attention to the ways we routinely and traditionally follow actions, adopt conventions, accept routine ways of thinking, without regard to how they change the moral world(s) in which we live. We engage in urban renewal and built new concrete ghettos. We routinely displace the poor from their homes in the guise of progress.

If we want to know how to act, how to address our social, political, and personal problems, doesn't ethics shape these concerns? Doesn't a working knowledge of ethics help us make more reasonable judgments about matters in which the welfare of others is at stake?

Rogers: One problem with this conversation is the way we talk in such generalities.

Belden: I agree. Let me give you an example. I teach a law school class on legal ethics and I ask the class, "What are we doing here? Why have you set out to become a lawyer?"

Rogers: And the student says, "I want to make a lot of money."

Belden: And, "I want to make a lot of money," is one possible response. Students come to law school with all kinds of notions that push and pull them into law. Some think law is the best way to engage in socially significant work (that will at the same time offer them status and prestige). Some people want to do work that offers a measure of autonomy and independence. They may be mistaken about how much of this is available in the modern law firm, but it is certainly a phantasy. Others see learning law as a way of protecting themselves and the values they prize. Some students want to be lawyers to be a member of a community of workers with shared values. Others come to law to develop a sense of personal competence.

Then I ask, "How far would you go on behalf of your client? Seek a delay until witnesses memories have dimmed? Seek a delay until the plaintiff is destitute? Would you be willing to humiliate a witness on cross-examination, knowing that witness is telling the truth? Would you make a claim for custody of the children in a divorce action when your client makes clear that the only reason for doing so is to secure a favorable settlement? Would you help make the legal arrangements for your client to sell pesticides banned in the United States to the farmers in developing countries? Where do you draw the line and say no?"

When asked these questions it becomes clear that many students don't want to know that their responses are morally problematic. They don't want to be asked such questions.

For example, when a student says "I came to law school to make money," we might respond, "How is it that you came to want to have this money?" Lying beneath this business about money we may find other needs, values, concerns, anxieties, and expectations that need to be examined and puzzled over. If a person can see that he wants to be a professional, because he wants to make money, he may also learn that he has a need for approval of others and thinks that approval of others comes from money, status, prestige, power, or whatever. This knowledge might actually free him to take an entirely different path but a path nevertheless his own.

Rogers: How long have you been a agent of the American Psychiatric Association? This isn't ethics. This is psychotherapy. Why do you want to make money? Well, because I don't want to be like my father. I mean, is that any of your business? There are all sorts of reasons people want to make money. You may have these discussions but they're not likely to change anyone minds about money or anything else.

Students take the courses which interest them. When I was in law school I took courses in Jurisprudence, Legal Theory, Comparative Law.

Everybody else was in Commercial Transactions, Tax, Gift and Estates, and Corporations because those are the courses one takes in a wanted to make a lot of money and wanted to be good lawyers. Some of these students want to help people with problems. I take them at their word. You are using ethics to meddle.

Belden: If we suppose a person wants money, social status, prestige, fame, and glory and another person wants to help others, solve social problems, and improve our communities and make them better places to live, I assume an ethicist might find the two different approaches to life of interest and deserving examination. Some ways of life, and some approaches to professional life, need to be questioned; some deserve to be condemned.

Rogers: Well, all right, if you want to talk about the great debates from Plato's *Gorgias* where those interested in power and glory are challenged by Socrates, we can. I think students should be exposed to this kind of dialogue, but in their freshman year of college, not as law students. Now, if you're saying they've never read Plato and don't know the historical significance of these arguments, that they haven't thought about these things, then that is an indictment of our high schools and colleges, not professional schools. Law teachers concerned about Plato's philosophical arguments may translate their concerns into some elementary ethics teaching but I think it's misplaced. Students sophisticated moral perspectives are likely to say things like "all values are subjective" and this troubles a teacher. I suspect that much of the rather silly things said in the classroom is designed to get attention.

No one really believes in the subjectivity of values. I've never met a student who when overcharged for dinner at a restaurant and told—"Oh, we charge double here, rip you off, these are our values"—would respond by saying, "Fine, values are subjective. I don't want to impose my values on you. It's alright to rip me off." No, that student would call the cops, and the Better Business Bureau.

Students fool around and talk as if values are subjective. So if you're saying, "Look, the condition of education is so bad we have to teach elementary ethics in graduate and professional school, I am sympathetic, but the real blame lies with our colleges. Let's insist that a condition of entry to law school be a course in philosophy. Wouldn't that be more reasonable than teaching a watered-down version of ethics in law school?"

Belden: I want to look more closely at the student who says, "My values are as good as yours. Values are subjective. Everybody should be able to do his or her own thing, have his or her own bag when it comes to values." I agree that this stance is impossible to live. And yet, many students respond in just this fashion and reject the idea that there is any moral expertise or moral authority on which their ethics as lawyers can be based.

Rogers: The student comes into an ethics class and says all values are subjective. My colleague tells the student, "There are no subjectivists allowed in this class." And the student said, "What do you mean?" He says, "If you're subjective about your values, you flunk." The student, outraged, replies, "That's not fair." And the teacher, "Don't push your values on me." That student has a perfectly clear idea of what fairness is and he knows it's absolutely wrong for this teacher to flunk him because he disagrees on this point.

Students play the philosophy game. Catch me if you can. I'm going to say that values are subjective; see if you can make me say something else. The teachers says, "Very interesting." Well, are we going to play golf or are we going to fool around? What are we doing? Are we having a discussion about discussions or a discussion about ethics?

The student has values. Everybody knows it. You remember the conditions Socrates lays out for dialogue: intelligence, good will, and candor. You've got to tell the truth. "Now, is there anybody in this class who's a subjectivist?" And, you find if you go around the room, there really isn't, provided, the student knows you're not fooling around or playing golf. This isn't "existential hour." The question isn't, "How many things can I doubt?" We're talking about the real world. Not make-believe. Teachers like to work with extreme situations: You're in outer space and someone is tied to you. Should you release him or her and save your own life? We like life rafts with 13 people on a 12 person raft and the group must choose what course of action must be taken. This approach to ethics is far-fetched and abstract.

I've gotten away from the main point. When we approach these things directly and tell students what truths we know, I think there would be a good deal less muddle and possibly less need for ethics teaching.

Belden: You raised a question which deserves comment. How should we educate professionals? How can philosophy and moral and ethical concerns inform, structure, channel, and guide the education of professionals?

Rogers: Philosophy might make a contribution to a law school course in Jurisprudence, and philosophers occasionally have interesting things to say about Criminal Law, for example, theories of intent. Should philosophers teach in medical and law schools and seek to make them better professionals? I don't think so. I see no reason to believe that philosophers are better people than law professors and medical school professors. Philosophers may have some tools and skills which enable them to refine discussion on certain points, and make distinctions, which is what philosophers do. If you want philosophers in law schools, fine, bring them in.

Belden: Do you think we legal educators who worry about the moral character of our students are in a muddle?

Rogers: If your students are morally confused and worried about it, then perhaps your concerns are appropriate. It all depends on what we're talking about. I don't know how to generalize about the need for moral education the way you do.

Belden: In legal academic writing there has been a good deal of attention given to the question of whether one's professional morality justifies zealous representation of a client that results in social harm. Consider for an example a real estate developer who owns a number of houses (located on adjoining lots) that have been designated historical homes. He wants to tear down those houses and build an apartment house. He goes to a lawyer and he says, "These homes have been designated historical homes and I'm going to take a real bath if we can't tear them down and build condos." The lawyer takes a look at the statute under which these properties were designated historical homes. He sees a possibility that the statute is unconstitutional because it doesn't contain appropriate standards under which locally constituted Historical Preservation Boards are to act. The lawyer knows there was strong legislative support for the Historical Preservation Act legislation and assumes that the legislature would move quickly to correct any constitutional error in the legislation. The lawyer is personally opposed to the destruction of historical homes. He believes it's a social harm. The question is whether the lawyer can morally and ethically take the client and help the client do what he proposes?

Rogers: Well, does he want to take the client?

Belden: The question is whether he can represent the client and not worry about what the client wants to do.

Rogers: I guess so, yes, but . . .

Belden: Can the lawyer take the client, represent the client's interest and argue that those who register moral condemnation for his doing so are misguided and are meddling in matters for which they have no good business?

Rogers: I don't see any problem in a lawyer who represents a real estate developer who wants to destroy historic homes. Presumably, the real estate developer wants to do something with those houses that would benefit someone. Let's not stack the deck on the side of the angels. That, by the way, is what teachers of ethics do. I think the question is, "Does the lawyer want to take the case?" If he doesn't want to take the case, it's not an issue. "How about you, John? Do you want to take the case?" "No, I really don't because I like historic homes so much I would really be pained to do this." "All right, John," the teachers says.

But change the example. "You're the only lawyer in town." "Oh, I'm the only lawyer in town. Well, I guess I've got to take the case." The student pauses for a second, "Well, no, maybe I've got too much other business to take this client." "No," the teacher says, "you don't have any business at all. You're not only the only lawyer in town, you need the business."

Are you suggesting in your problem that historic preservationists can't find a lawyer?

Belden: No, they can find a lawyer.

Rogers: Okay. We presume they have a lawyer so their interest will be represented and will it be represented well.

Belden: Yes, but does that mean that a lawyer can represent interests that are detrimental to the community and do so with the good blessings of his professional brethren?

Rogers: A lawyer might say, "I'm not going to take the case unless the other side is represented well. If he knew the historical preservationists are being represented by a good lawyer who hasn't spent his time in law school taking courses in legal ethics but in Property, then he might not be so troubled. God bless, one of the beauties of the adversary legal

system is that the other side has a lawyer. Basically, I don't really see a problem here. Do you see a problem?

Belden: There may be cases in which your scenario of good representation for the opposing parties is enough, but yes, I think there is a real moral and ethical problem for any lawyer who takes the position that she can represent anyone, on any matter, regardless of the harm that might be done to the community so long as that harm is not proscribed by law. I think there are moral limits to lawyers representing clients in civil cases when those clients, boldly and brazenly, seek to promote their own interests at the expense of those who are unlikely to have their interests adequately represented.

Rogers: I don't see how the public interest is undermined by knocking down a few old houses. Maybe you can fill me in on the details of what the real estate developer wants to do and bring me around. If what the client wants to do is legal and he doesn't propose some use of the property that is itself immoral, then I don't see the problem.

Belden: You don't see that it's a moral problem or you don't see that it's a problem at all?

Rogers: No, this isn't a moral problem. We may decide we don't want to knock down houses of historical interest, but you know the lawyer on the opposing side will argue that. You have to postulate too many things to make it a moral problem.

Belden: But lawyers face exactly these sorts of dilemma we are talking about here.

Rogers: Even if your right, and I don't think you are, what kind of instruction is the course in legal ethics going to provide on this issue? It may be that the ethics teacher is fond of old houses and is willing to say, "Don't any of you, no matter what you do, ever destroy any of these old houses." The teacher is opposed to progress and wants to pass this lesson on to his students.

Belden: I think the problem is that lawyers enter the adversary system, take up a role, and assume that the role demands of them that they be hired-guns. At times, law seems to turn a blind-eye to the ends that individuals pursue, ends that are extremely harmful, but ends that the law does not prohibit. So even if a lawyer knows that a town finds the

preservation of historical homes important, a state legislature has enacted a statute prohibiting exactly what the client seeks to accomplish, local authorities have taken every action they thought necessary to save historical homes, there is someone who seeks to profit by undermining all that the community and its leaders have sought to protect. The lawyer is being asked to use his expertise, to find a latent defect in the law, to permit the developer to accomplish what the community opposes, and has turned to law to make possible the very SOMETHING the community has sought to avoid.

In the world I live in, the lawyer who is asked to represent the real estate developer who seeks to destroy historic homes presents a moral and ethical problem. If the lawyer says, "In my role as lawyer I'm free to represent the developer and no one can question that representation so long as what the client does is legal," this lawyer wouldn't know an ethical problem if it grabbed him and choked him. This is an ethic of denial, an adversarial ethic disguised as professional ethics. Following this ethic a lawyer could represent anyone, pursue any and all lawful goals and be free of moral condemnation regardless of the harm he creates in the community. Do you really think that law is the only limit on a lawyer's responsibility to the community, to society, to the very village in which he lives? Is there no client a lawyer should refuse to represent on moral grounds?

Rogers: Maybe there's a place for raising questions like this. Call the course "Problems in Legal Practice." But I don't see any reason to call it "Legal Ethics."

Belden: Let's take another example: A doctor decides not to give a narcotic drug to a person experiencing extreme pain because of the fear the person might become addicted. Do you see a moral, or ethical dimension in the decision?

Rogers: I'm troubled with all of this. If a doctor says, "Well, what am I going to do for the patient in this case? The patient is susceptible to addiction." I don't see that calling it a moral problem will affect what the physician will do. These kinds of questions arise, in every medical and legal practice. I worry about the student who says, "Now we're thinking about ethics. We're not thinking about law; we're thinking about ethics." To treat these questions in a separate professional ethics course suggests that it's not in and of the law but collateral to it. All that is collateral becomes an exercise in irrelevance. It comes too late. It will have no effect on students' thinking about the practice of law. I

don't think lawyers are supposed to think about the interests of other people. You say, "My God, if the lawyer takes the case and knocks down those old houses he's not thinking about the good of the community." If you are saying to me that this twenty-four year old student has never confronted an issue like this, then God help us. Doesn't this student see himself as a citizen who ought to take some interest in public issues? If not, and this is the sort of thing you must teach in law school, then it will need to be a five year program rather than three. But, I would be opposed to the longer program. The longer program would simply be used as a justification for doing later what should be done as a fundamental part of secondary and higher education.

Belden: I don't agree that we can simply call the problems we are talking about problems in professional practice as opposed to moral and ethical problems. There is, of course, a cost to relegating examination and exploration of these problems to a legal ethics course. And I agree that the problems raise social, political, and cultural concerns beyond ethics. The purpose in teaching lawyer ethics is to make students aware of the pervasive moral dimension of law work.

The pervasive method of ethical instruction—the idea that ethics should be everywhere in the curriculum rather than in a specific course or courses—was adjudged a failure. Desirable in theory, it failed in practice and would fail if attempted again. Paradoxically, Rogers, it is you who is well known for your emphasis on moral teaching and yet, you consider a law school course on lawyer ethics irrelevant and coming far too late in the education of a professional student. I take a different stance: Ethics teaching is the only hope we have to draw attention to the moral muddle that lawyers find themselves in and it can never be too late to attend to ethics.

Rogers: Again, you assume that lawyers are either dazed or in a muddle. I don't. Is ethics teaching to be aimed at development of character?

Belden: Yes, I think it should.

Rogers: I don't understand what that kind of teaching is about. I don't think you can do it in law school.

Belden: It is difficult. We may fail. But there are some ventures, teaching ethics is one of them, that we may do, knowing that we are likely to fail.

Rogers: Matters of character lie deep and a thirteen week law school course in legal ethics lacks seriousness, the kind of seriousness needed to deal with matters of moral philosophy. I think it would be better to have a professor of medicine or lawyer come in and say, "I have never lied to a court, or to the judge, or to a patient. I could never lie. I don't lie and it's a good thing I don't." After a person says this, there's not much more he can say or teach without sending the student off for an education in moral philosophy.

I know a principal who took a tough school and made it work. Incurrigible kids now fear him, they also respect him and hold affection for him. They hug in the halls and then he says, "Hey, you know, you dropped some paper, and you didn't pick it up. Now come on, we're trying to keep this place nice." And the kid picks it up.

Belden: Rogers, you would probably be a wonderful high school principal. But I don't think this idea of teaching the old bag of virtues—honesty, politeness, hard work—would qualify you as a professor of lawyer ethics.

Rogers: I believe in the bag of virtues.

Belden: Good, I do as well. But our old homilies have not gotten us the world we want. I think it's good to have physicians think about medicine, lawyers to think about the moral dimensions of their craft. I can't claim that ethics teaching will transform the legal profession into a haven for moralists. But I find nothing in your argument to convince me to give up on the effort to teach law students about the moral and ethical dimensions of the life they are about to adopt. I'll continue teaching ethics, knowing that it is thought by some (including you), as a fool's errand.

