

Too Few Examples, Too Much Law

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Fostering Moral Capital

This “crucible moment” in which democratic capitalism finds itself does not call for more government mandates to dictate progressive activism in higher education.¹ Rather, this crucible moment calls higher education on its own initiative to focus on the moral foundation that both democracy and capitalism require. The foundation of democratic representative government and a market economy lies in the virtues, capacities, and skills that lead to trust in leaders of government, business, and the professions and among the citizens themselves.

These are critical educational objectives for higher education, but higher education does poorly at fostering them. For example, from the turn of the century to 2010, the Carnegie Foundation for the Advancement of Teaching conducted dozens of site visits to study how professional schools educate physicians, nurses, clergy, engineers, and lawyers. From these visits came five studies, and the president of the Carnegie Foundation, Lee Shulman,

¹The National Task Force on Civic Learning and Democratic Engagement, *A Crucible Moment: College Learning & Democracy's Future* (Washington, DC: Association of American Colleges and Universities, 2012).

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wrote that “the most overlooked aspect of professional preparation was the formation of a professional identity with a moral core of service and responsibility.”² This is true across all of higher education.

All of the Carnegie studies agree that an ethical professional identity leading to trustworthiness requires each student to internalize a deep responsibility for others (especially the person served by the professional) and for self. Four studies also emphasize a strong competency at the technical skills of the work and a commitment to excellence in all domains of the work, as well as moral reasoning, an understanding of successful interpersonal relationships, and some social responsibility to the community. Three emphasize integrity and adherence to the law.

Likewise, in *Stewardship: Lessons Learned from the Lost Culture of Wall Street* (2012), John G. Taft, CEO of Royal Bank of Canada Wealth Management U.S., writes that we have more than enough law and regulation, but too few examples of stewardship (moral responsibility for others) in the financial services industry, and thus we have a crisis of trust.³ “No amount of legislation and no amount of regulatory rules will be able to overcome or compensate for failures of leadership,” Taft writes. “The path forward...requires that not just our leaders, but *all of us*, reconnect with our Stewardship responsibilities” (emphasis in original).⁴

To respond to this crucible moment, I propose that a major educational objective of higher education should be to foster internalization of a moral core of deep responsibility for others, particularly the person directly being served, with some restraint on self-interest, as well as the other elements of an ethical identity, in as large a proportion of students as possible. The Carnegie Foundation argues that, for medical education, “[f]ormation is the most fundamental goal of the learning process.”⁵ The same should be true for all of higher education. Empirical research provides substantial guidance on how to engage students most effectively to foster this growth.

²Lee S. Shulman, foreword to *Educating Physicians: A Call for Reform of Medical School and Residency*, by Molly Cooke, David M. Irby, and Bridget C. O’Brien (Stanford, CA: The Carnegie Foundation for the Advancement of Teaching, 2010), xi. See also, Neil W. Hamilton and Verna Monson, “Legal Education’s Ethical Challenge: Empirical Research on How Most Effectively to Foster Each Student’s Professional Formation (Professionalism),” *University of St. Thomas Law Journal* 9 (forthcoming, 2012): manuscript at 4, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2004749.

³John G. Taft, *Stewardship: Lessons Learned from the Lost Culture of Wall Street* (Hoboken, NJ: John Wiley & Sons, 2012): 4, 131.

⁴*Ibid.*, 139.

⁵Cooke, Irby, and O’Brien, *Educating Physicians*, 41.

Fostering a Moral Core: Effective Pedagogies

My colleague Dr. Verna Monson and I analyzed empirical studies in education psychology, and in medical, dental, legal, management, and engineering education to determine which pedagogies most effectively foster each student's moral core of deep responsibility for others and the other elements of an ethical identity. We see some convergence in the empirical data. Different studies conducted by different researchers using different methods point toward some common themes set forth below.⁶

Stage-Appropriate Educational Engagements

Scholars in moral psychology posit that four distinct capacities, called the Four Component Model, are necessary for moral behavior. The four capacities are moral sensitivity, moral reasoning, moral motivation and identity, and moral implementation.⁷ Underdevelopment of any one capacity may interfere with the development of moral behavior. Each student is at different stages of development in each of the four components. The pedagogy used must engage the student at his or her current developmental stage.

Cognitive Disequilibrium and Optimal Conflict

Central to pedagogies of formation toward an ethical identity is the idea that in order to grow, each person needs to experience cognitive disequilibrium or optimal conflict on issues relating to the person's moral core within a context of psychological safety. Introducing the student to "disorienting dilemmas" involving the student's moral core is another phrase used in this literature. The curriculum should offer repeated opportunities for each student to engage with stage-appropriate questions that create optimal conflict.

The Habit of Feedback, Dialogue, and Reflection (FDR)

On matters involving the student's internalized moral core, both the Carnegie Foundation studies and the Four Component Model studies of effective pedagogies emphasize the effectiveness of helping each student

⁶See, Hamilton and Monson, "Legal Education's Ethical Challenge." The discussion in the next five paragraphs borrows from this article.

⁷Ibid., sect. III.A.

learn to (1) seek feedback from others, (2) dialogue with others about the tough calls, and (3) reflect. We call this the habit of FDR.

Structuring Curricular Opportunities for FDR—Especially via Formative Assessment

The Carnegie studies recommend giving broad attention to professional formation by integrating structured opportunities for practicing and rehearsing the habit of FDR (plus formative assessment) throughout the curriculum in teacher-facilitated discussions of ethics, clinical education, service learning and practical experiences, coaching, modeling, reflective writing, storytelling and narrative, and small group discussion. Based on twenty-five years of empirical research using the Four Component Model, developmental psychologist Muriel Bebeau also recommends a curriculum that “provides students with multiple assessment and reflective self-assessment opportunities on professional formation, including feedback from multiple sources.”⁸ The curriculum should help students become reflective and self-directed over an extended period of time in the context of the overall program.

There is no empirical evidence that a single ethics program makes any difference on any of the Four Component capacities. There is empirical evidence that multiple engagements over a period of time using the pedagogies discussed above can make a difference in student growth. There is also no empirical evidence that an ethics course focused on doctrinal knowledge and critical analysis of ethics without some reflective exploration of the student’s own internalized moral core makes any difference on any of the Four Component Model capacities.

Conclusion

My strongest disagreement with *A Crucible Moment* is its call for strengthened federal and state regulation regarding accreditation to ensure the report’s recommended outcomes. More government regulation of the curriculum is not the answer to this crisis of trust in our government and business leaders. Higher education should on its own initiative consider growing empirical research on how to foster each student’s internalized

⁸Muriel Bebeau, “Promoting Ethical Development and Professionalism: Insights from Educational Research in the Professions,” *University of St. Thomas Law Journal* 5 (Winter 2008): 366, 391.

moral core of deep responsibility for others leading to trustworthiness. This is not about inculcating an agenda of progressive activism. Indeed, the roles of personal conscience and personal service in carrying out responsibilities for others in contrast to government mandates to dictate progressive political agendas is a most crucial distinction. Many students have not been exposed to leaders who have internalized and live out a deep responsibility for others but who also believe in limited government.

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