

THE DISCIPLINE OF LAW: A DEVELOPMENTAL AND HISTORICAL PERSPECTIVE

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This paper seeks to add to our image of the discipline of law from a perspective which combines ideas from developmental psychology and history. It begins by arguing for a working notion of the discipline for historians and educators which, although confined to the English common law tradition, is still broad enough to encompass the various shapes and forms of law within that tradition. It then seeks to view the discipline, so delineated, through the lens of developmental psychology. Finally, it argues for the centrality of courts, before seeking to draw some implications for learning and researching law in Australia today.

What is the nature of the discipline of law? This is a big question which can be tackled at many levels and from varying perspectives. But it is also a necessary question. How one imagines the discipline – whether consciously or unconsciously – underlies all learning and research within the discipline.¹ It is a keystone question from which, depending upon the shape and form of the thing imagined, implications follow. Of course, if the discipline of law exists as a Platonic form, then the best that can be achieved in this paper is to briefly glimpse its shadow through the tunnel vision of a particular perspective.

This paper argues that the discipline of law can be painted as a broad image of mind and talk, rather than just as a package of rules and enforcement. Drawing upon Michael Lobban and James Boyd White, the discipline is portrayed as the processes of reasoning – or ‘culture of argument’ - found in and about courts of law. Variable kinds of talk and dynamic patterns of thinking emerge and regress over time and place. The idea of law as rules, including the process of reasoning by precedent, is but one of these – itself encompassing many subtle variations and levels of sophistication.

The contribution of this paper can perhaps be represented as the third side of a triangle. The baseline is Jean Piaget’s developmental psychology - especially his ideas about how we learn - as further developed by Lawrence Kohlberg in the specific context of reasoning about justice and morality. The line running from one end of the base up to the apex is Charles Radding’s pioneering historical work - applying Piaget and Kohlberg towards better understanding

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¹ See generally, Sarah Stein, Geoff Isaacs and Trish Andrews, ‘Incorporating authentic learning experiences within a university course’ (2004) 29(2) *Studies in Higher Education* 239, for an example of how a conception of ‘the nature of the discipline’ (not law specifically) is said to underpin the process of delineating authentic learning within that discipline.

the medieval mentality in the specific context of law. In short, the cognitive shifts Piaget finds in children are mirrored on a cultural scale in Europe in the eleventh century – giving rise to law as we know it. In proffering a developmental and historical perspective of the discipline, this paper seeks to complete the line from that apex back down to the base – reconnecting with Piaget and Kohlberg and the issue of learning and researching law in Australia today.

I NATURE OF THE DISCIPLINE OF LAW

A *A Discipline*

A discipline is ‘a branch of instruction or learning’.² The Latin noun *disciplina* (instruction, knowledge) was derived from *discipulus* (learner).³ Carrying the Roman penchant for system in education, the word ‘discipline’ entered English, via Old French, in the sense ‘maintenance of order (necessary for giving instruction)’.⁴ Historically, order was maintained, instruction was simplified and attention was focused by compartmentalising knowledge.⁵

While recognising the need for boundaries, James Boyd White makes a persuasive case that dividing up knowledge into ‘disciplines’ or ‘fields’, each with their own ‘territories’ – as might be defined for university faculties or schools - is a false metaphor.

A discipline can for many purposes in fact be defined as a community of discourse organized around its disagreements, its way of disagreeing, as well as its agreements...If you think of ‘fields’ not as terrains or machines, but as communities of discourse, groups of people defined by their willingness to talk in certain ways, the question becomes: What kind of relationships can we establish among these various ways of talking, and the communities they define? In so doing, what larger community can we create?⁶

Adopting White’s definition breaks down rigidities and allows the boundaries between disciplines to be reconceptualised as something more permeable. With the requisite openness to new ways of thinking and talking, this also opens up prospects for enriching, cross-fertilising talk and the creation of new and larger ‘communities of discourse’ – in this case, of and about law.

B *Of Law*

² Colin Yallop and others (eds), *Macquarie Concise Dictionary* (3rd revised ed, 2004) 334-5.

³ John Ayto, *Bloomsbury Dictionary of Word Origins* (1990) 174.

⁴ *Ibid.*

⁵ For example, note the medieval classification of the seven liberal arts, namely: grammar, rhetoric, dialectic (the *trivium*) and music, astronomy, geometry and arithmetic (the *quadrivium*): William Boyd, *The History of Western Education* (9th ed, 1969) 117.

⁶ James Boyd White, *Justice as Translation* (1994) 16.

‘Law’ is an Old English word borrowed from a Scandinavian source more than 1000 years ago.⁷ A related word in Old Icelandic meant literally, ‘something laid down or fixed’, which developed semantically to ‘decree, law’. The collective plural, literally translated, was ‘layer’. (For the historian, the latter invites a geological metaphor of law over time as accumulated sedimentary layers.) These days, the common understanding of law, in the dictionary definitional sense, is ‘the department of knowledge concerned with [legal] rules’.⁸ In this way, the etymological flavour of ‘law’ as something fixed and external is preserved and carried forward to the present day.

It is beyond the scope of this paper to digress into the prolific jurisprudential literature about such questions as ‘what is law?’ The object is not to define law *per se* but, rather, to suggest a working notion of law for historians and educators – one wide enough to encompass variable ideas of law over time. For reasons developed below, the dictionary definition of law as rules is unduly narrow for this purpose. Much of value can be lost by historians and educators adopting such a blinkered frame of reference, especially when contemplating either the task of grasping older, somewhat alien modes of thinking about law or finding new ways for cultivating law within the emergent the minds of the present generation of students.

Significantly, the ‘law as rules’ approach fails to accommodate how law has been perceived from the inside, from the perspective of lawyers and judges. Michael Lobban argues persuasively that attempts by Blackstone and Bentham to impose system and coherence upon the common law – by delineating positivist rules and narrow sources of law - were ‘outside the mainstream of what lawyers thought the law was about’.⁹ He further shows how these attempts failed to take hold in practice. Yet, the Blackstonian and Benthamic views of law have ‘essentially [been] taken up by historians as the mainstream discussions of what the law was about’.¹⁰ These views have become distilled into the sort of dictionary definition given above and diffused across the common imagination. Further, for all of its limitations as recognised by practitioners, Blackstone’s *Commentaries* became the standard, base reference for legal education in the common law world. By contrast, the practitioner view reflected Coke’s early seventeenth century definition, interpreted by Lobban to mean ‘that the common law was a system of reasoning, that the source of law lay in the way that judges thought about legal problems’.¹¹ Law was not so much a thing, as patterns of thinking variably recomposed according to the capacities of the individual legal actors and the social milieu

⁷ Robert Barnhart (ed), *The Barnhart Concise Dictionary of Etymology* (1995) 423.

⁸ Yallop, above n 2, 670-1. A related definition describes law as ‘any written or positive rule of conduct, or collection of rules, prescribed under the authority of the state or nation, whether by the people in its constitution, as the organic law, or by the legislature in its statute law, or by the treaty-making power, or by municipalities in their ordinances or by-laws’.

⁹ Michael Lobban, *The Common Law and English Jurisprudence 1760-1850* (1991) 13.

¹⁰ *Ibid.*

¹¹ *Ibid* 7.

across time and place. The practitioner view better explains the renowned adaptability of the common law. Indeed, '[t]he law could change simply because it was not a fixed set of rules, but a reasoning process, working with a system of remedies'.¹² This wider notion is reinforced in a more contemporary setting by White, who sees law:

as a 'culture of argument' – or...as a language, as a set of ways of making sense of things and acting in the world. So regarded, it is far more complex than the 'law as rules' (or 'law as rules plus principles') theory can begin to allow and far more substantial in its effects, actual and potential, than the 'law as façade' [or 'realist'] theory would have it. The law is a set of ways of thinking and talking, which means, as Wittgenstein would tell us, a set of ways of acting in the world (and with each other) that has its own configurations and qualities, its own consequences. Its life is a life of art.¹³

From this, the common image of the discipline of law as a boxed set of rules (as things), bestowed from above and systemised for orderly transmission into the minds of learners, is discarded as inadequate for our purpose. A wider and better working conception for historians and educators is to view a discipline as 'a community of discourse' and law as a process of reasoning and talking – as a 'culture of argument'.

C *Circles of Discourse*

Even as a community of discourse, the discipline can still be characterised at different levels. For instance, those educated in law might engage at two levels, namely: the 'internal discourse of law' (eg, the discourse involving any combination of lawyers, judges and academics using the discipline-specific processes of reasoning, argument and technical proficiency); and the 'external discourse of law' (eg, translating the latter as a contribution towards a wider discourse with clients, policy-makers, experts in other disciplines and the public at large). Of course, there is a third, still wider circle of legal discourse, perhaps captured by the phrase 'external discourse about law'. This is where traditional discipline boundaries start to break down, opening up different questions, ways of thinking and kinds of discussion about law. These circles of legal discourse are represented below:

¹² Ibid 54.

¹³ White, above n 6, xiii.

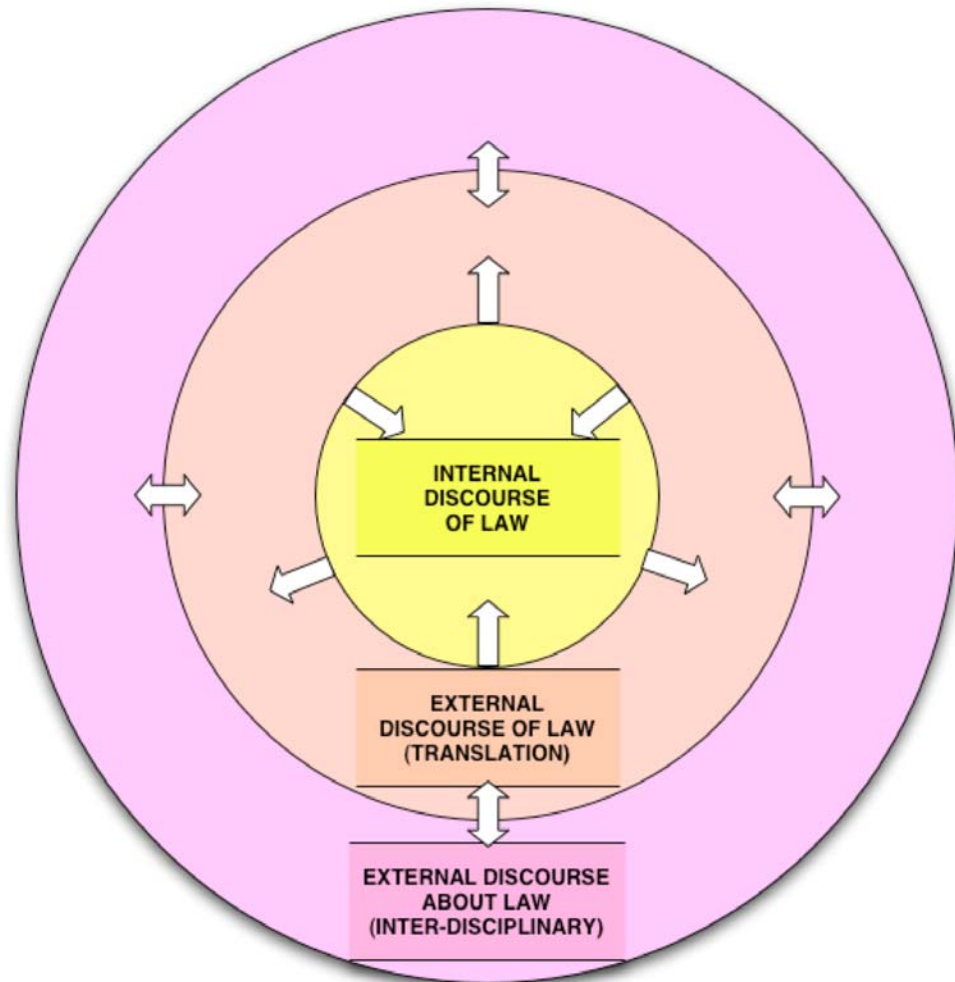


Figure 1: The discipline of law as circles of discourse.

But the above diagram is not a complete representation of the discipline. A further step is to imagine the outer rim folded back and underneath, and re-emerging so as to feed into the central core. The specialised ‘internal discourse of law’ is replenished and influenced by the wider realms of social discourse both through the person of judges and advocates (drawn as they are from the community) and through jury participation in the courtroom.

II DEVELOPMENTAL INSIGHTS

If the discipline of law is painted as a broad image of mind and talk rather than as a package of rules and enforcement, then a rich field of discourse opens up for exploring and integrating the relationship between law and psychology. Specifically, patterns of legal thinking can be viewed through the lens provided by developmental psychologists such as Piaget and Kohlberg.

Radding is an historian who, in pioneering fashion, has sought to view law in this kind of way.

Piaget's work, spanning the period from the 1920s to the 1970s, concerned how patterns of reasoning develop in children.¹⁴ He found that qualitatively different forms of reasoning emerge, although not inevitably so, with age. He identified four major stages of development to describe 'the organized cognitive possibilities and limits that characterize a child's thinking and feeling processes at a given point in the child's development'.¹⁵ Piaget's central ideas have withstood thousands of empirical studies and remain resilient and breathing. Kohlberg extends Piaget's work beyond childhood and argues for six distinct stages of reasoning about justice and morality (see Appendix 1).¹⁶ This developmental sequence is fixed in the sense that one cannot achieve a higher stage without first passing through the preceding stages. The later stages involve 'mastering cognitive operations that are logically more complex than the operations characterizing the earlier stage'.¹⁷ Further, one's reasoning can comprise a mixture of adjacent stages and can regress under stress. Radding, in the medieval context, overlays Piagetian psychology upon fragments of legal, scientific and religious thought as captured by the documentary record.¹⁸ This sheds new light upon varying forms of reasoning within and about law – amongst both groups and individuals and within different cultural contexts.

Three main insights for better understanding the nature of the discipline of law, as drawn from developmental psychology, are amplified below.

A. *Law as Rules*

Firstly, as demonstrated above, the idea of law as a body of externally imposed rules is pervasive enough to gain expression in contemporary dictionary definitions. And, as observed by Lobban and Radding, historians and educators frequently approach legal materials with this sort view in mind. Indeed, Radding's work, in particular, demonstrates the existence of this notion as a matter of historical record. Yet, within Kohlberg's scheme, this conception of law can reflect a 'stage 1' egocentric form of reasoning. Piaget found this same pattern of thinking about rules as things - external and requiring obedience - in his studies of young children.

¹⁴ See, eg, Jean Piaget, *The Growth of Logical Thinking from Childhood to Adolescence* (1958); Jean Piaget, *The Psychology of the Child* (1962); Jean Piaget, *The Moral Judgment of the Child* (1932).

¹⁵ Joseph Reimer, Diana Paolitto and Richard Hersh, *Promoting Moral Growth: From Piaget to Kohlberg* (1990) 25.

¹⁶ Lawrence Kohlberg, *Essay on Moral Development, Vol. 1: The Philosophy of Moral Development* (1981); Lawrence Kohlberg, *Essay on Moral Development, Vol. 2: The Psychology of Moral Development – The Nature and Validity of Moral Stages* (1984).

¹⁷ Reimer and others, above n 15, 53.

¹⁸ Charles Radding, *A World made by Men: Cognition and Society, 400-1200* (1985).

In analogy to the ‘realism’ of egocentric reasoning that attributes real or objective existence to names and other products of thought, Piaget termed the moral attitudes of young children ‘moral realism’ ...[which] has three main features. First, the belief that any act showing obedience to a rule is good, and that any act not conforming to a rule is bad. The rule, moreover, is not taken as something to be judged and interpreted but is seen as given “ready made and external to the mind”. Second, and related to the first, is that the letter and not the spirit of the rule is to be obeyed. Third, acts are evaluated in terms of their conformity with the rule, and not according to the motive that prompted them.¹⁹

While the idea of law as rules is subsumed within our broader notion of law as a process of reasoning, historians and educators also need to be sensitive to more complex forms of reasoning within law – as depicted by Kohlberg’s other stages.

B. Medieval Emergence of Modern Law

Secondly, both the English common law and the continental revival of the Roman law of the classical age can be traced back to the medieval times of the eleventh century. While Radding’s work focuses upon the continental revival, the same kind of cognitive shift appears to have spawned both. Broadly, Radding identifies a distinct change of mentality about the year 1050. Using a broad brush, Radding contrasts the different modes of thinking within two large blocks of time - 100 AD to 1050 and 1050 to about 1700 – as follows.²⁰

In the earlier period (100 AD to 1050), seven particular traits might be noted in connection with thinking about law. First, people conceived of law as ‘coming from the king, and...they believed that the king himself received his authority from God...[with both] conceived of as external to the community’.²¹ Secondly, both officials and subjects tended to have ‘an orientation toward literal, external obedience’, although this did not necessarily translate into consistently obeying rules in practice – only ‘formal’ submission was required.²² Thirdly, ‘they regarded the words of their authorities as realities existing apart from consciousness, instead of as a logical development of ideas’.²³ Fourthly, ‘instead of reasoning independently, the debaters quoted authority as a substitute for argument’ - their works relied heavily on quotations unprocessed by the mind as self-evident truths.²⁴ Fifthly, ‘they believed their actions and wishes could influence the physical world either by the invocation of supernatural forces through ritualised prayer or by providing the occasion for the operation of divine justice’ (eg, through trial by ordeal or battle).²⁵ Sixthly, ‘[t]hey rarely concerned themselves with intention, whether they were assessing the morality of an action or interpreting the words of

¹⁹ Ibid 274.

²⁰ Ibid 256

²¹ Ibid 78.

²² Ibid 147.

²³ Ibid 128.

²⁴ Ibid 131.

²⁵ Ibid 153.

authority'.²⁶ The notion of *mens rea* did not exist. People had difficulty distinguishing between objective and subjective worlds. Finally, small circles of obligation applied, mainly revolving around kinship. For officials, violence could occur so long as it did not directly affect them. In the age of the 'bloodfeud', violence was met with violence. People 'took little interest in relations between peers except to regulate exchange and reprisals' and 'had no sense of society as a community based on consent'.²⁷

By contrast, a different mentality appears to be at work in the later period (1050 to 1700). First, 'law and politics became affairs of the community, not just the king alone'.²⁸ Secondly, a measure of reciprocity between king and subjects became expected (well exemplified in England by the Magna Carta of 1215).²⁹ Thirdly, discussion of law 'changed to being a creative rather than curatorial process'.³⁰ Fourthly, attempts to *understand* authority and manipulate ideas emerged. Fifthly, people started to be judged using evidence and the power of reasoning, with the growing recognition that society and government was a product of human nature (with the abolition of trial by ordeal in England also in 1215).³¹ Sixthly, intention emerges as a vital component in judging guilt or innocence – along with the capacity to see things from another person's point of view. Finally, the sense of obligation became more generalised and less a matter of kinship and individual or temporal connections.

If the discipline of law is conceived as a process of reasoning, then that process (and the discipline) as we know it today was made possible by a cognitive shift on a cultural scale – sparked by massive feats of individual imagination - in the eleventh century. These days, at the individual level, that same cognitive shift away from a base, egocentric perspective occurs in most children.

C. *The Rule of Law*

Thirdly, while the transition from Kohlberg's stage 1 to stage 2 reasoning is a basic pre-requisite for individuals to begin learning law, making the transition from stage 3 to (at least) stage 4 is necessary for law graduates to begin to perform law in modern Australian society. This involves a shift in perspective from the 'concrete interests or standards of one's group' towards taking 'the shared point of view of the generalized other'.³² The idea of 'the rule of law' only makes sense for those with a stage 4 pattern of thinking. This stage also

²⁶ Ibid.

²⁷ Ibid 153.

²⁸ Ibid 256.

²⁹ Ibid 239.

³⁰ Ibid.

³¹ R H Helmholz and Thomas Green, *Juries, Libel, & Justice: The role of English juries in seventeenth- and eighteenth-century trials for libel and slander* (1984) 46.

³² Reimer and others, above n 15, 71 and 74.

offers a whole new basis for legal and moral judgment. Significantly, then, ‘law emerges for stage 4 reasoners as a central value’.³³

III THE CENTRALITY OF COURTS

It is contended that ‘internal discourse of law’ lies at the heart of the discipline and makes it distinctive from other disciplines (using White’s definition). If this circle of discourse is imagined as something in motion, then it might also be seen to orbit within the gravitational pull of courts. Three main points are advanced below in support of the centrality of courts for the discipline and cognitive development within it.

A. *The Law Court of Pavia*

First, the law court at Pavia (in northern Italy, near Bologna, where the first law university was founded and flourished soon after) was one crucible for the monumental cognitive shift which occurred in the eleventh century.³⁴ Radding argues that it was here that a fragmentation of authority transformed the conditions of discussion and debate.

What emerges as the key to the period is the collapse of traditional authority ...Unable any longer to count on their superiors to settle their disputes, disputants found it useless to cite rules and authorities in support of their position; the other side simply answered with citations of their own. Instead, people had to learn ways of persuading their peers by showing their interpretation of the text was correct, by answering the arguments of their opponents, and in general by appealing to the good sense of their audience. The effort to adapt to this necessity stimulated the development of cognitive skills that had rarely been required since the time of Cicero.³⁵

To similar effect, Piaget highlighted the significance of the cognitive conflict which occurs in a child through social interaction, as ‘one of the mechanisms of progress’ through the stages of moral reasoning.³⁶

Social interaction inevitably leads to arguments and discussion: The child’s views are questioned, and he must defend and justify his opinions. This action forces the child to clarify his thoughts, for if he wants to convince others of the validity of his own views, the child must present them clearly and logically. In addition, other people may not be as tolerant of his inconsistencies as is the child himself and they do not hesitate to point them out. Thus social interaction helps the child recognise the shortcomings in his thinking and forces him to see other points of view which may conflict with his own.³⁷

³³ Ibid 75.

³⁴ The cathedral school at Chartres was another continental crucible: Radding, above n 17, 255. Subsequently, parliaments and universities have provided similar institutionalised fora and opportunities for cognitive conflict through discussion and debate.

³⁵ Ibid 155.

³⁶ Herbert Ginsburg and Sylvia Opper, *Piaget’s Theory of Intellectual Development* (2nd ed, 1979) 230.

³⁷ Ibid.

As for the stimulus to the child provided by social interaction, a similar stimulus occurred historically in the law court at Pavia – and this was ‘one of the mechanisms of progress’, on a cultural scale, for thinking about law.

B. *Problems of Actual Life*

Secondly, and more generally, courts contain the ingredients for cognitive shifts and progress to occur – both for the individual legal actors and through the influence of courts and lawyers upon society at large. Using courts as a mental laboratory, lawyers reason, talk and argue with the aim of persuasion. White puts it this way:

For what the law insists upon is that we are a discoursing community, committed to talking with each other about our differences of perception, feeling, and value, our differences of language and experience. The task of law is to provide a place and a set of institutions and methods where this conversational process can go on, as well as a second conversation by which the first is criticized and judged.³⁸

Litigants, while pursuing on the spot resolution of real and unique disputes, enter courts to *argue* their case, with the ultimate outcome a live issue and certainly no forgone conclusion. Contrary to the ‘law as rules’ idea of law:

In practice, courts could only find the *best* answer, answers which only had validity so long as they succeeded in their aims and were useful. Law had to reflect society and its needs: and just as there were no single answers in daily life, so there were none in law.³⁹

In this way, courts draw within, contain and dissipate social pressures. Old patterns of thinking combust, as lawyers’ strain to recompose and explain a legal problem and advocated solution under the intense heat generated by this combination of peer challenge, public transparency, novelty and necessity. Lawyers experience first hand the consequences – whether success or failure - of their reasoning and talk. The social conflict of litigants, therefore, potentially produces cognitive conflict for lawyers and their tools of thought – within the court as a simulated field of battle.

C. *Pleadings and Procedure*

Thirdly, courts are central in the sense that they generate the language and method of the discipline. For instance, the form and nature of reasoning and talk is shaped and guided by the system of pleadings and procedure necessary to present a case in court. In this way, the internal discourse of law becomes structured and institutionalised. Variations in the individual cognition of legal actors are contained and channelled. Attention is focused upon particular legal points at issue (for instance, permitting a straightforward negative or positive finding or verdict) and the plaintiff’s claim to a concrete remedy. Referring to the period 1760-1850, Lobban notes that:

³⁸ White, above n 6, 80.

³⁹ Lobban, above n 9, 16.

Law remained in essence procedural, not rule based. Within this series of forms, judges sought the best answers to problems, which could best benefit the community, which served the interests of justice – however they defined that – and which satisfied the litigants. Each case was set by the litigants, each dispute was new; and because judges were solving each case as presented to them by drawing on a multiplicity of sources, the legal answers they produced were a reflection of the haphazard morality of the society, shaped in the artificial forum.⁴⁰

Society's 'haphazard morality', reflected in the artificial forum of the court, makes more sense when viewed through the lens of Kohlberg's stages of reasoning about morality and justice, and the cross-currents there found. For law, much turns upon the reasoning capacities of the individual actors involved in the particular case.

IV CONCLUSION

This paper proposes for historians and educators a broad, working notion of the discipline of law as a community of discourse, centred upon the processes of reasoning and 'culture of argument' found in courts. This conception, especially when viewed through the lens of developmental psychology, has implications for learning law. In particular, the role of debate and discussion is emphasised together with the need for learners to achieve a cognitive structure sufficient to grasp the idea of law from a society-wide standpoint. Students rarely come equipped with such a structure at the point of entry into the discipline. It follows that learners need to become familiar with the language and methods of the internal discourse of law before effectively engaging with acts of translation and wider discourse. Following Radding, the paper also argues that historians and other researchers also have much to gain when working with legal materials by lending a sharpened sensitivity to different modes of legal thinking. Further, this paper demonstrates a multiplicity of legal discourses. That is, by seeking to better understand the internal discourse of law, this paper draws from and engages at the inter-disciplinary level of external discourse about law.

With sedimentary layers of case volumes accumulated over the centuries, each report buried within offers access to the operation of a particular legal mind embodied within a certain time and place. The best examples carry value, not only as artefacts of mind, but as a spur to one's own cognitive conflict, reflection and development.

The great contribution of the judicial mind is not the [decision] but the judicial opinion, which gives meaning to the [decision]. This is the text in which – at least in its ideal form – the case is characterised and located with respect to a series of prior, authoritative texts, assimilated to one line, distinguished from another; in which competing lines of argument are developed, with the object of exposing to view what is most deeply problematic both in our resources of legal meaning and in the case upon which they bear; in which the power of generality is brought to bear upon a case presented in its full particularity; and in

⁴⁰ Lobban, above n 9, 16.

which the speaker shows sensitivity to the imperatives and limits of his or her institutional situation...and in an important sense what distinguishes the work of a good judge is not the vote but the achievement of mind, essentially literary in character, in which the results are given meaning in the context of the rest of law, the rest of life.⁴¹

Courtroom combat, from a developmental and historical perspective, sits at the heart of the discipline of law. And, whether this is experienced first-hand or lived vicariously through written judgments, such combat remains one of the sources of historic and future transformations of the human mind.

⁴¹ White, above n 6, 91-2.

APPENDIX 1: KOHLBERG'S SIX STAGES OF MORAL JUDGMENT

Stage	What Is Right?	Reasons For Doing Right	Social Perspective of Stage
<p>Level I: Pre-conventional</p> <p><i>Stage 1:</i> Heteronomous morality</p>	Sticking to rules backed by punishment; obedience for its own sake; avoiding physical damage to persons and property	Avoidance of punishment, superior power of authorities	<i>Egocentric point of view:</i> Doesn't consider the interests of others or recognise that they differ from the actor's; doesn't relate two points of view. Actions considered physically rather than in terms of psychological interests of others. Confusion of authority's perspective with one's own.
<p><i>Stage 2:</i> Individualism, instrumental purpose and exchange</p>	Following rules only when in one's immediate interest; acting to meet one's own interests and needs and letting others do the same. Right is also what is fair or what is an equal exchange, deal, agreement.	To serve one's own needs or interests in a world where one has to recognise that other people also have interests.	<i>Concrete Individualistic Perspective.</i> Aware that everybody has interests to pursue and that these can conflict; right is relative (in the concrete individualistic sense).
<p>Level II: Conventional</p> <p><i>Stage 3:</i> Mutual interpersonal expectations, relationships, and interpersonal conformity</p>	Living up to what is expected by people close to you or what people generally expect of a good son, brother, friend etc. 'Being good' is important and means having good motives, showing concern for others. It also means keeping mutual relationships such as trust, loyalty, respect, and gratitude.	The need to be a good person in your own eyes and those of others; belief in the Golden Rule; desire to maintain rules and authority that support stereotypical good behaviour.	Perspective of the individual in relationships with other individuals. Aware of shared feelings, agreements, and expectations which take primacy over individual interests. Relates points of view through the concrete Golden Rule, putting oneself in the other guy's shoes. Does not yet consider generalized system perspective.
<p><i>Stage 4:</i> Social system and conscience</p>	Fulfilling duties to which you have agreed; laws to be upheld except in extreme cases where they conflict with other fixed social duties. Right is also contributing to the society, group or institution.	To keep the institution going as a whole and avoid a breakdown in the system 'if everyone did it'; imperative of conscience to meet one's defined obligations (Easily confused with stage 3 belief in rules and authority.)	<i>Differentiates societal point of view from interpersonal agreement or motives.</i> Takes the point of view of the system that defines roles and rules; considers individual relations in terms of place in the system.
<p>Level III: Postconventional; or Principled</p> <p><i>Stage 5:</i> Social contract or utility and individual rights</p>	Being aware that people hold a variety of values and opinions and that most of their values and rules are relative to their group. Relative rules usually upheld in the interest of impartiality and because they are the social contract. Some non-relative values and rights (eg <i>life</i> and <i>liberty</i>) must be upheld in any society and regardless of majority opinion.	A sense of obligation to law because of one's social contract to make and abide by laws for the welfare of all and for the protection of all people's rights. A feeling of contractual commitment, freely entered upon, to family, friendship, trust and work obligations. Concern that laws and duties be based on a rational calculation of overall utility, 'the greatest good for the greatest number'.	<i>Prior-to-society perspective.</i> Rational individual aware of values and rights prior to social attachments and contracts. Integrates perspectives by formal mechanisms of agreement, contract, objective impartiality, and due process. Considers moral and legal points of view; recognises that they sometimes conflict and finds it difficult to integrate them.
<p><i>Stage 6:</i> Universal ethical principles</p>	Following self-chosen ethical principles. Particular laws or social agreements usually valid because they rest on such principles; one acts in accordance with principle. Principles are universal principles of justice: equality of human rights and respect for the dignity of human beings as individuals.	The belief as a rational person in the validity of universal moral principles and a sense of personal commitment to them.	<i>Perspective of a moral point of view from which social arrangements derive.</i> Perspective is that of a rational individual recognising the nature of morality or the fact that persons are ends in themselves and must be treated as such.

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