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# Moral Reasoning and Moral Identity in Arbitration Lawyers

## Razonamiento moral e identidad moral en abogados dedicados al arbitraje

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**Abstract:** Arbitration offers a fast and effective way to resolve disputes between different entities. Arbitrators have the responsibility to solve these conflicts with justice and impartiality. Given the importance of this function, it is necessary to have professionals who have developed their moral capacities to the fullest extent. Unfortunately, various acts of corruption have cast doubt on the moral capacity of some arbitrators and have highlighted the need to investigate the moral development of this population. In this context, the present study aimed to describe and analyze the characteristics of moral reasoning and moral identity of a group of lawyers who devote a good part of their professional work to arbitration. Seventeen lawyers, men and women, who devote more than 50% of their time to arbitration, participated in this study. The results indicate that, generally speaking, participants reason at a conventional level that makes them prioritize interpersonal expectations and the maintenance of the social system over moral principles. Additionally, the interviewees show different types of identities, some related to social or prosocial issues, but none strictly moral. The results are discussed emphasizing the consequences of low moral reasoning and poor moral identity development, and the need to rethink the moral education of students in law schools.

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**Key words:** Arbitrators, arbitration, moral identity, moral reasoning, moral development

***Resumen:*** El arbitraje ofrece una manera rápida y efectiva de solucionar controversias entre diferentes entidades. Los abogados que se dedican a la labor arbitral tienen la responsabilidad de dar solución a dichos conflictos con justicia e imparcialidad. Dada la importancia de esta función, es necesario contar con profesionales que hayan desarrollado del modo más pleno posible sus capacidades morales. Lamentablemente, diversos actos de corrupción han puesto en duda la capacidad moral de algunos árbitros y evidenciado la necesidad de investigar el desarrollo moral en dicha población. En este contexto, el presente estudio tuvo como objetivo describir y analizar las características del razonamiento moral y de la identidad moral de un grupo de abogados que destinan buena parte de su labor profesional al arbitraje. Para ello, participaron diecisiete abogados, hombres y mujeres, que dedican más del 50 % de su tiempo al arbitraje. Los resultados indican que los participantes cuentan, principalmente, con un razonamiento de naturaleza convencional que los hace priorizar las expectativas interpersonales y el mantenimiento del sistema social por sobre los principios morales. Adicionalmente, los entrevistados evidencian diversos tipos de identidad, algunas relacionadas a lo social o a lo prosocial, pero ninguna estrictamente moral. Los resultados se discuten haciendo énfasis en las consecuencias de la falta de desarrollo del razonamiento y la identidad moral, y en la necesidad repensar la formación moral del abogado en las facultades de derecho.

***Palabras clave:*** Árbitros, arbitraje, identidad moral, razonamiento moral, desarrollo moral

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## I. INTRODUCTION

Corruption is a very serious problem in many countries around the world. According to the World Economic Forum estimates, the global cost of corruption is at least USD 2.6 trillion or 5% of the global gross domestic product (GDP); and, according to the World Bank, companies and individuals pay more than USD 1 trillion in bribes every year (UN, 2018). In Latin America, the "Lava Jato" case has evidenced that corruption has infiltrated many public works contracts in several countries in the region, including Peru.

According to the Prosecutor's Offices Specialized in Corruption Offenses Committed by Public Officials, to date, there are more than twenty investigations in Peru—with varying degrees of progress—related to corruption cases linked to public works projects. These cases involve officials of state entities, construction companies, arbitrators, among others. The arbitrators are being investigated for allegedly receiving bribes in exchange for favoring the construction company Odebrecht. Public officials who allegedly received bribes in exchange for failing to fulfill their role of defending the interests of the State are also part of these investigations. Similarly, Odebrecht company officials are being investigated for allegedly giving bribes to both arbitrators and state officials (*arbitration awards in favor of Odebrecht*).

These investigations are particularly relevant due to the fact that, in Peru, disputes arising between a state entity and a private party regarding the execution, interpretation, termination, inexistence, ineffectiveness, or invalidity of a contract are resolved through arbitration or conciliation, according to the agreement of the parties[1]. Arbitration is a means of dispute resolution alternative to the judiciary that consists of placing the solution of a conflict in the hands of a third party, called arbitrator, with the parties agreeing to respect the solution issued by this individual (Guzmán Barrón, 2017, p. 29). In this sense, the so-called arbitration award contains the arbitrator's decision, which seeks to resolve a dispute and must have a final and binding effect upon the parties that entered into an arbitration agreement (Zuleta, 2012, p. 1). Such award is not subject to appeal, and it is final and binding on the parties from the moment they are notified[2].

Arbitrators may be appointed by the parties to the dispute, by an arbitration institution, or by a third party appointed by the parties[3]. In the case of disputes with state entities, the arbitration is settled by a sole arbitrator or an arbitral tribunal composed of three members, one of whom acts as chairman. In this case, the sole arbitrator and the chairman of an arbitral tribunal must necessarily be lawyers[4]. The usual election procedure is that each party to the dispute appoints one arbitrator, and then both arbitrators choose the arbitral tribunal chairman by mutual agreement. Residual appointment by an arbitral institution is also possible when one of the parties fails to appoint its arbitrator or the party-appointed arbitrators fail to appoint the tribunal chairman[5]. According to the General Arbitration Law, arbitrators are natural persons in full exercise of their civil rights who have not received a final conviction for

1 Article 45.1 of Legislative Decree No. 1444, which amends Law No. 30225, State Contracting Law.
2 Article 45.21 of Legislative Decree No. 1444, which amends Law No. 30225, State Contracting Law.
3 Article 22 of Legislative Decree No. 1071, which regulates arbitration in Peru.
4 Article 45 of Legislative Decree No. 1444, which amends Law No. 30225, State Contracting Law.
5 Article 232 of the Regulations of Law No. 30225, State Contracting Law.

any intentional crime. Likewise, the State Contracting Law points out that arbitrators must have accredited specialization in administrative law, arbitration, and state contracting. The abovementioned law, along with the guidelines of the International Bar Association (IBA, 2014, p. 5), indicate that arbitrators must be and remain impartial and independent of the parties that choose them throughout the arbitration process, until the award is issued. In the event of justified doubts as to the arbitrator's impartiality and independence, the arbitrator must decline to be appointed as such or withdraw from the arbitration process (Escobar Martínez, 2009, p. 200).

The State Contracting Law Regulations[6] state that an arbitrator may be challenged or removed from arbitration in circumstances that give rise to justified doubts as to their impartiality or independence. Challenging an arbitrator constitutes a mechanism whereby the parties to an arbitration request the removal of an arbitrator in whom they have lost confidence, when justified doubts arise as to the arbitrator's impartiality and independence. The following quotation, taken from a decision on the challenge to an arbitrator investigated by the Prosecutor's Office, provides an example:

> In the specific case, it is necessary to consider the situation in which the arbitrator in charge of resolving a dispute is, at the same time, under preliminary investigation for an alleged crime, to the detriment of one of the parties to this arbitration. This implies that said party, that is, the State, is obliged to assist in the clarification of the facts and to rate, through the preparation of legal or technical reports, the performance of said arbitrator in the facts under investigation. From an objective point of view, this constitutes an assumption that reasonably justifies the decrease of confidence in said arbitrator's performance (Legal Defense Council of the State, Arbitral Case File No. 1458-170-17).

The party's grounds for requesting the challenge in question was based on a newspaper report (*La República,* 2018, May 3) indicating the existence of a prosecutorial investigation in which, through a cooperating witness, it was made known that the Odebrecht company, in concert with arbitrators and former officials of the state entity involved, had agreed to issue arbitration awards in its favor, obtaining an illicit benefit of more than PEN 240 million and thus harming the interests of the State. The following quotes from newspaper articles give an account of the corruption investigations related to arbitration:

> According to the cooperating witness, payments were made to arbitrators to issue an award in favor of Odebrecht, to the prosecutor

6 Article 234.1, paragraph c), of the Regulations of Law No. 30225, State Contracting Law.

> not to challenge it, and to the concessions manager to immediately make the award (*La República,* 2018, May 3).
>
> According to the prosecutor's office, they allegedly received bribes in exchange for issuing awards in favor of the construction company Odebrecht in various disputes it held with the State: IIRSA Norte, IIRSA Sur - Stretches 2 and 3, Chimbote Drinking Water System, and Callejón de Huaylas-Chacas-San Luis Highway (*El Comercio,* 2019, February 6).
>
> Jorge Barata, former Odebrecht executive in Peru, revealed that former arbitrator Horacio Cánepa received USD 878,000 to favor the Brazilian construction company in an arbitration against the Peruvian State for the Southern Interoceanic highway (*Gestión,* 2019, August 6).

Investigations into corruption in arbitration have raised the alarm among arbitration system operators, whose measures are based on an "external control" or sanction reasoning; for example, the removal of arbitrators from arbitration center payrolls or the implementation of the confirmation of arbitrators (ICC, 2017). These measures do not take into account that the corruption issue has an important subjective component because, from a psychological point of view, corruption is, among other things, an expression of people's poor moral development. This development is complex and involves cognitive aspects as well as affective processes and the construction of one's own identity.

Indeed, in the exercise of dispensing justice in an impartial, independent, and ethical manner, arbitrators face moral dilemmas and conflicts. An important part of their performance in the face of these moral conflicts or dilemmas will depend on their identification and recognition, the way they reason about them, and the way they themselves have developed as persons, giving more or less room for ethical elements in their own identity.

In an article published in *Memoria*, Frisancho (2008, p. 63) highlighted the difficulties in moral reasoning and the construction of moral identity evidenced in a group of judges of the Peruvian judiciary. However, from then on, very little research has been done on lawyers, and none on arbitrators, aimed at exploring the psychological characteristics of their moral development. In response to this gap, and with the motivation for contributing to the fight against corruption by identifying psychological factors that work as protection to confront and resist the attempts to fall into corruption, this research was carried out.

### I.2. Philosophical Foundations of the Study

The philosophical-moral approach that supports this study is the one developed by German philosopher Immanuel Kant in the 18th century. This perspective has been updated and complemented by contemporary philosophers such as Jürgen Habermas, John Rawls, Rainer Forst, Christine Korsgaard, Thomas Nagel, and Thomas Scanlon, among others. This tradition is at the basis of Lawrence Kohlberg's theory of the development of moral reasoning, which is used in this research work and explained below. One of the main ideas of Kant's moral philosophy is the distinction between heteronomy and autonomy. The word "heteronomy" comes from two Greek terms: *hetero*, meaning "other," and *nomos*, meaning "command, law, order." Thus, "heteronomy" means to follow or submit to the commands of another, while "autonomy" —which derives from the terms *auto*, meaning "oneself," and *nomos*— means that an individual self-imposes their own laws.

Therefore, people are heteronomous when they act according to guidelines, demands, or principles they have not examined by their own reason; for example, when children do what their fathers tell them to do or when faithful people obey the commands of their pastor, without asking themselves whether what they are required to do is correct. In other words, heteronomous people are completely uncritical because they do not examine whether the commands they are following are valid by means of their reason. In contrast, people are autonomous when they rationally examine the validity of the norms, so that they cultivate a critical attitude.

Kant (2002, p. 114) points out that this discernment is possible through a human reason procedure he calls "categorical imperative," which refers to an "unconditional obligation." Kant stated that an authentically moral law or requirement is unconditional; therefore, it does not admit exceptions nor is it subject to conditions such as the social, cultural, or historical context, since it is produced by reason regardless of experience. In this sense, it is an *a priori* law. However, Kant also uses the "categorical imperative" expression to refer to the procedure by which reason can produce moral laws. In his book *Groundwork for the Metaphysics of Morals* (p. 84), Kant offers three categorical imperative formulations.

The first formulation indicates that people should act in accordance with a maxim that they themselves can turn into a universal law, without falling into a contradiction or absurdity. In this context, the word "maxim" represents any rule of will we may have for our actions, so that we will act according to it in appropriate cases. One way to understand this is to use the expression "to be authorized to." Thus, having a maxim is similar to saying "I am authorized to X." On the other hand, when we try to convert such a maxim into a universal law, we would have to

say "I authorize every human being to X." If making that step does not generate any absurdity and we do not fall into a contradiction, then that maxim can be taken as a moral requirement. For example, let's imagine that we assume the maxim of getting on buses for the purpose of outwitting fare collectors, and that we do it in such a way that no one notices our cunning. What happens in the world when we do that? Not much, actually. The collector will think that he loses a few coins from time to time. Since the other passengers do not notice, no one feels morally offended; and since our actions will not bankrupt the bus companies, they will continue to exist and we will be able to continue acting according to our maxim. But what happens if we turn our particular maxim into a moral law? In other words, what happens if we state it not only as "I am authorized to X," but also as "I authorize every human being to X." By universalizing the maxim, we have to imagine that all human beings would act according to it, which would cause bus companies to end up unfunded and go bankrupt. This way, we would be producing an absurdity because we are destroying what makes it possible to follow our maxim, given the fact that the condition that makes it possible for us to get on the buses and pay the fare or outwit the collector is that bus companies continue to exist. If the maxim is universalized, it would end up destroying the bus companies and thus the maxim would self-cancel because it generates a contradiction that destroys the condition that makes it possible. In this sense, it is immoral because it is contradictory.

The latter allows the moral autonomy of people's reason. It does not refer to anything external to evaluate the maxim and produce the moral law, as could be the commands of a sacred authority; it rather refers to something internal to itself, namely, the principle of non-contradiction. The principle of non-contradiction not only makes people's moral autonomy possible, but also allows the universality of the moral law because this principle is inherent to the reason of every human being. Thus, what Kant offers is a morality that emerges from people's reason without the need to resort to any external element.

To Kant, morality is *a priori;* that is, it is independent of experience and is not drawn from the conditions of nature nor from the conditions of societies or culture. Contemporary Kantians accept that reason is the core element for morality, but they question its apriorism and relativize its autonomy. To these Kantians, Reason (with a capital R) is no longer seen only as a faculty of the human mind, but they take from Hegel the idea that reason is a relation between persons. Thus, for contemporary Kantians, moral guidelines or principles are articulated in the exchange of reasons. Thus, instead of the solitary person producing the moral law, it is persons who, by exchanging and sharing reasons, clarify the moral

guidelines and demands that are valid for the concrete contexts they are in.

### I.3. Psychological Foundations of the Study

From psychology, but following the same line of thought, Piaget (1918) conceptualized morality as a balance between the individual and society. In later, better known works (Piaget, 1984; 1995), he explained morality as an interrelation between the individual's cognitive and affective structures and the demands made by social life. After Piaget, the best known theory of moral development is that of Lawrence Kohlberg (1984), who, relying mainly on philosophers such as Kant and Rawls, also thinks that reason is at the center of moral experience. To Kohlberg, the moral act derives from a reasoning and moral judgment process based on principles of justice, which are seen as the best way to resolve conflicts. In that sense, human beings hierarchize values and principles, and decide about what is just or unjust in different life situations. Like Piaget, Kohlberg also assumes that people develop morality throughout life, from the most concrete to the most sophisticated and abstract aspect, hand in hand with the development of the ability to reason. Thus, cognitive development is a necessary (though not sufficient) condition for moral development.

Kohlberg's model of moral development proposes three levels (preconventional, conventional, and postconventional) and two stages in each, which imply a different structuring of the idea of justice and of the way individuals take on roles and relate to society. In this sequence, the most advanced stage builds moral judgments around concepts such as mutual respect, obligation, and justice as impartiality; commits to universal ethical principles; and, following Kantian logic, recognizes that human beings are not only means, but ends in themselves who should always be treated as such (Colby & Kohlberg, 1987).

Following this developmental framework, several studies have shown that people, including children and adolescents, differentiate between personal, conventional, and moral issues. That way, they distinguish moral acts involving harm and injustice from social conventions and judge the former as independent of external authority and punishment (Smetana, 1981; Nucci & Turiel, 2000). From this perspective, social conventions are consensual norms aimed at maintaining social order and structure, whereas morality involves categorical and prescriptive judgments of right and wrong about justice and interpersonal harm matters. On the other hand, personal matters are thought of as areas of private interest, values, and behaviors that primarily concern the individual or self.

In summary, from this conceptual framework, morality is seen as a process that includes a strong rational component through which people organize their values and principles, and engage in conscious discernment processes to decide about right and wrong in different life situations. In doing so, they also differentiate between personal, conventional, and moral issues.

Along with moral reasoning and judgment, there are identity processes that play a very relevant role in individuals' moral development. Identity is constructed and developed thanks to social interaction and group membership because people make sense of who they are and learn to justify, before others and before themselves, the values and beliefs they embrace in different memberships and social interactions. In other words, it is during development that people elaborate explanations about themselves, who they are, what they value, and what they believe in.

In this study, identity is understood as the construction each person makes of his or her individual, subjective, organized, and dynamic experience, as a separate and autonomous agent that is in constant and inevitable relationship with others within an extensive social network. This construction responds explicitly or implicitly to the question "Who am I?" and consists in the achievement of a new unity between the elements of the past and the expectations for the future (Blasi & Glodis, 1995).

Moral identity (Blasi, 1984; 1993) is the area of overall identity built around the individual's moral ideals. For people for whom morality is fundamental and integrated into their identity, the desire to live in a manner consistent with their sense of self is a key moral motivation. Thus, the concept of moral identity was put forward as a bridge to explain the relationship between moral reasoning and moral behavior, and helps to understand the discrepancy commonly found between what people think and what they do. Evidently, people are not born with a moral identity, but it is built throughout development.

Blasi (1988; 1995) describes two important aspects of moral identities: the centrality of moral values in the understanding of the self, and the level of internalization and integration in the self. When moral values are central and integrated into the self, they are experienced as ideals of the self to be attained rather than as social expectations that are supposed to be met (Blasi & Glodis, 1995). As Blasi (1984, 1993) states, the highest degree of moral integration is achieved when people's moral understanding and concerns become part of their sense of identity. This is because the motivation for moral action comes from the degree to which prescriptive moral principles have been integrated into the individuals' moral identity, so not acting in accordance with them would

not only be a betrayal of those principles, but a betrayal of one's own identity or sense of self.

In the context of the above, the objective of this study was to describe and analyze the moral reasoning and the characteristics of the moral identity of a group of lawyers practicing as arbitrators in Peru.

## II. METHOD

This is a qualitative study based on an interpretive paradigm (Creswell & Poth, 2018, pp. 82-87). Semi-structured interviews focused on describing and understanding individual beliefs and ways of reasoning about social situations, conflicts, and moral dilemmas, and also on one's own subjectivity, were conducted. The information collected was recorded and transcribed, and then examined through content analysis in order to identify the structure of the participants' reasoning and self-descriptions.

### II.1. Participants

Seventeen lawyers—twelve men and five women between the ages of 34 and 71—participated. Twelve of them have master's degrees, four have bachelor's degrees, and one has a doctorate degree. Most of them devote more than 50% of their professional work to arbitration and, with the exception of one participant, all of them have taught at university at some point in their careers. Purposive sampling was used in order to achieve greater representativeness in the conclusions and to capture the heterogeneity of the population (Vieytes, 2004, pp. 643-644). Participants were contacted through an arbitration center to which they belonged. Initially, they were contacted by telephone to explain the general objective of the study and were asked if they wished to participate. Those who agreed to do so signed an informed consent form agreeing to participate in the study.

### II.2. Instruments

Two moral dilemmas were used to assess moral reasoning. The first is the so-called Heinz dilemma, a classic dilemma in Kohlberg's research (1992, p. 589; 2010, p. 84). The second, framed within the arbitral function, was prepared by the researchers and validated according to judges' criteria. The dilemmas are the following:

Table 1. Dilemmas Used in the Research

| Source of the dilemma | Narrative of the dilemma |
|---|---|
| Heinz dilemma | In Europe, a woman was dying of cancer, but there was a drug that doctors thought could save her. It was a form of radium that a pharmacist in the same town had recently discovered. The drug was very expensive to develop, but the pharmacist wanted to charge ten times what it had cost him to make it. He paid USD 400 for the radium and was now charging USD 4,000 for a small dose of the drug. The sick woman's husband, Heinz, borrowed money from everyone he knew and tried to get it by all legal means, but he could only scrape together USD 2,000, half of what the drug cost. Heinz told the pharmacist that his wife was dying and asked him to sell him the drug at a lower price or let him pay him later. But the pharmacist said, "No, I discovered the drug and now I'm going to make money on it." So, having tried to get the money by every legal means possible, Heinz becomes desperate and considers breaking into the pharmacy to steal the drug for his wife. |
| Arbitration dilemma | A lawyer is appointed as arbitrator in many arbitrations due to his outstanding professional career, his impartiality, and his speed in handling cases. After some time, he begins to feel concerned because he has realized that, due to overwork, he can no longer dedicate himself to his arbitrations with the necessary quality and time. He has learned that some of his colleagues hire junior lawyers as assistants, to whom they delegate the analysis of the parties' claims and the drafting of awards. The arbitrator considers that refusing to accept more cases would mean less income and "losing clients." In this situation, he is thinking about what to do: he does not want to lose clients or money, and therefore thinks about the possibility of hiring assistants, as his colleagues do. However, he is not convinced because he firmly believes that the parties appoint arbitrators *intuitu personae*. What should this lawyer do? |

Source: Kohlberg (1992, p. 589) for the Heinz dilemma and own elaboration for the arbitration dilemma.

The first case (the Heinz dilemma) aims to identify the level of participants' moral reasoning. The instrument allows categorizing their reasoning into three stages of development, which are described in the following table.

Table 2. Stages of Moral Reasoning Development

| Stage | Description |
|---|---|
| Preconventional | Arguments are oriented to the fear of punishment and instrumental exchanges. |
| Conventional | Arguments are oriented to the fulfillment of social expectations and the avoidance of social chaos. |
| Postconventional | Arguments are guided by moral principles that cannot be altered by the historical moment or social conventions. |

Source: adapted from Kohlberg (1984).

The second case (the arbitration dilemma) allows identifying and analyzing the judgments and rationale formulated by arbitrators when faced with a dilemma typical of their work.

To assess moral identity, a semi-structured interview guide was developed on the basis of the one proposed by Higgins-D'Alessandro (1996). Four areas were articulated: (Area 1) Personal descriptions, (Area 2) Conception of a "good person," (Area 3) Personal moral rules, and (Area 4) Moral actions and mistakes.

The first explores the characteristics that individuals include in their self-descriptions. In the second, the components that are considered important in a moral person are reviewed. The third describes the criteria and precepts used to guide and generate a value criterion about their behaviors and those of others. Finally, the last area requests the description of moral actions and mistakes made from the experience and perspective of each person.

This interview makes it possible to identify predominant characteristics in the identities of the interviewees and to categorize them into the following types, according to the predominant characteristics of their identities:

Table 3. Types of Identities

| Type of identity | Description |
|---|---|
| Personal trait | It includes statements that relate primarily to personal skills and characteristics. |
| Social | Emphasis is placed on sociability and enjoyment of the company of others, feelings of affection for others, the ability to assume roles, and the ability to understand emotions and perspectives. |
| Prosocial | The individual favors and values moral behavior, but this behavior is represented as optional or as a preference without a sense of obligation. |
| Spiritual | It involves descriptions of the self in spiritual or religious terms. There is a prosocial identity justified with religious categories. |
| Moral | The individual shows a relationship between his or her identity and the moral domain, and evidences a sense of responsibility and the need for his or her actions to be guided by moral principles. |

Source: adapted from Higgins-D'Alessandro, A. (1996).

## III. PROCEDURE

Each lawyer was interviewed individually. An informed consent form was designed to explain the objective and conditions of the study, and it was signed by all participants. The interviews were audio-recorded

and then transcribed for later analysis. In all cases, the study began with the Heinz dilemma, followed by the arbitration dilemma and the moral identity interview.

## IV. RESULTS

We begin by presenting a table summarizing the general results regarding the level of moral reasoning with the Heinz dilemma and the types of moral identity that were identified. Then, we qualitatively analyze these results, starting with the two moral reasoning dilemmas, in the order in which they were applied. Finally, we present the results related to moral identity formation.

Table 4. Results - Heinz Dilemma

| Participant | Moral reasoning level (Heinz dilemma) |
|---|---|
| P1 | Conventional |
| P2 | Conventional |
| P3 | Conventional |
| P4 | Preconventional |
| P5 | Conventional/postconventional |
| P6 | Conventional |
| P7 | Conventional |
| P8 | Conventional |
| P9 | Conventional |
| P10 | Conventional |
| P11 | Conventional |
| P12 | Conventional |
| P13 | Preconventional |
| P14 | Conventional |
| P15 | Conventional/postconventional |
| P16 | Conventional |
| P17 | Conventional |

Source: own elaboration.

### IV.1. Moral Reasoning - Heinz Dilemma

The results indicate that participants reach three levels of development: preconventional, conventional, and a transitional level between the conventional and postconventional levels.

Two of the interviewees are at the preconventional level. Responses at this level can take two forms. In the first, they are focused on preventing violations to the norms of a society in order to avoid punishment. In the second, they seek to perform an action that satisfies one's own desires; that is, to carry out an instrumental exchange, recognizing that there are others who also have interests. The first type of reasoning is evidenced in the following quote:

> **The recommendation you are giving Heinz is not to steal the medicine. Why do you think he should not steal it?**
>
> **P4:** [...] the question is, what is going to be the consequence of the theft? In practical terms, you steal, then, what is the consequence? If we have a legal system like the Peruvian one, probably [...] well, go ahead, steal, because nothing or very little will happen to you [...].

As can be seen, what determines the decision to steal are the consequences that will follow. There is also a concern for performing an action that can maintain a system of exchanges. For example, respecting other people's goods is considered to later allow other people to respect one's own:

> **And why is it not good to steal? What is the reason?**
>
> **P4:** I think it is respecting each one's framework; I think it is respecting what is not mine, respecting other people's property, and I want and demand respect for what is mine to the same extent in which I respect what is yours.

As can be seen, respecting other people's goods has more to do with a reciprocal exchange than with a principled stance.

On the other hand, the conventional level (corresponding to thirteen of our interviewees) is characterized by reasoning oriented to social norms or conventions. What is considered correct is no longer guided by the fear of punishment, but by the certainty that what must be done is to respect the convention, either to comply with social expectations or in the interest of maintaining order and the social system. For example, the following arbitrators were asked about the reasons for their choices after stating that they would not steal medicine. The response illustrates the importance of the social contract and norms for people's moral decisions at this stage.

> **P8:** I mean, part of the social contract we all have, from the moment we accept to live in a society and respect its rules, is that we will respect, as I said, private property, and then the "possibility" of stealing should not exist because that is not acceptable.
>
> **P14:** [...] whether we like it or not, rules are the way to live together in society; respect for rules makes it possible for people to live together in a society.

Those at this level recognize the value of people's lives. However, they consider that law is above that value and think that stealing to save a life is equivalent to killing:

> **And should we always do everything we can or everything in our power to save a life?**
>
> **P3:** Yes, of course.
>
> **And how would that apply to the Heinz case?**
>
> **P3:** What happens is that it is an exception, of course, it is an extreme situation; sometimes we cannot do it because we would break the law. And it seems unbelievable, but in a specific case, the law is above it.
>
> **P17:** From my moral and Catholic principles, stealing is the same as killing, they have the same incidence [...] they are a commandment, do not kill, do not steal, so [...] it is catalogued for me, it is the same thing, do you know what I mean?

In some cases, they consider that stealing to save a life is equivalent to stealing for an instrumental and superficial interest:

> **Why would it be inappropriate to steal? What would be the reason, specifically?**
>
> **P7:** [...] I don't think that is the way, otherwise we would be already in chaos because there will always be the need to justify it. A person's need is different from another one's and we all, in one way or another, can appeal [to] the fact that we have some kind of need. I have the need to buy a more luxurious car, maybe, I don't know; someone else will say a bigger house, so I also want to steal, right?

It is worth noting that some participants claim that if rules allowed stealing the medicine, then it would be legitimate to steal. For example, in the following quote, an arbitrator is asked if anything would change their decision not to steal the medicine.

**Q16:** It could change, it depends on whether the law authorizes you to do certain things. But let's see, in the system we know, stealing is not allowed under any circumstances and, therefore, you should not steal.

Finally, two arbitrators exhibited transitional reasoning between the conventional and postconventional levels. People whose reasoning is located in the postconventional stage clearly recognize the value of life and place it above social expectations or norms. For this reason, although they would be willing to assume the sanction given to them for violating the law, they would consider that receiving such sanction would be unfair in moral terms. However, an intermediate transitional stage has been considered when the arbitrators, while recognizing the value of life, continue to consider that saving it is something that deserves a sanction and that this sanction is fair both legally and morally. This level is evidenced in the responses of participant P15:

**Why would it be right to steal in such a circumstance?**

**P15:** To me, life is superior to any assets; the patrimonial good in any situation, I believe, is compensable. It can be recovered, restituted, or compensated for any loss you may have; life cannot be compensated or recovered, so they are two completely different goods.

Then he says:

**If Heinz steals the medicine, would it be fair for him to go to jail?**

**P15:** Yes, it would be fair for him to go to jail, there is no justification [... ] it would seem fair for him to go to jail and it is a risk he must have taken.

Participant 5 reasons along the same lines:

**What should Heinz do?**

**P5:** If I were Heinz, I would steal the drugs and save my wife, and then I would go to jail because I am committing a crime [...] I do not break the rules, I mean, when one commits a crime, that crime is typified in the rules and you bear the sanction from there [...].

**Sure, but let's say, what I want to emphasize is that you would accept a sanction knowing that you don't deserve it.**

**P5:** No, knowing that I deserve it. The legal system may be unfair, but it must be respected, it is part of the game [...].

Finally, an unresolved conflict between moral principles and social norms can be found at this transitional level. The answers reveal that the principle of life is differentiated and above the norm. However, there

is ambiguity as to whether saving a person's life is an entirely fair or right decision.

> **Actually, you don't consider it right, you consider that he should do it, but you don't consider it right for him to do it.**
>
> **P15:** Exactly.
>
> **You say the right thing to do would be not to steal the medicine, and to steal it, what would that be? What word should we use to describe the action?**
>
> **Q15:** If we put it this way, in terms of Robin Hood, it would be, quote unquote, the fair thing to do, I think.
>
> **And should we behave in life by doing the fair thing or the right thing?**
>
> **Q15:** I think by doing the right thing, without a doubt.

## IV.2. Arbitration Dilemma - Categorization of Responses

The interviewees were posed a dilemma focused on the following question: Is it or is it not correct to hire an assistant to issue awards in place of the appointed arbitrator? The three stances that were identified are organized in the following table:

Table 5. Responses to the Question on Whether or Not It Is Correct to Hire Assistants

| Type of response | Participants |
| --- | --- |
| Assistants should not be hired. | P1 |
| It is correct to hire assistants, but for minor tasks (logistics, for example). | P3, P5, P6, P7, P8, P9, P10, P11, P12, P17 |
| Yes, it is correct to hire assistants and they can even draft the award under the supervision of the appointed arbitrator. | P2, P4, P13, P14, P15, P16 |

Source: own elaboration.

Among the arbitrators interviewed, there is a discrepancy in the level of participation that assistants should have in the drafting of awards; however, there is agreement on the fact that it is wrong to allow assistants to issue awards (that is, to make the decision) in place of the appointed arbitrator. The recognition of what is correct in this situation may be because the lawyers interviewed are more familiar with this situation and are aware of what is socially accepted. Additionally, in this case, the right action is the same as the legal action; that is, there is no conflict

between what is legal and what is moral, unlike the previous dilemma. For example, the Code of Ethics of the Center for Conflict Analysis and Resolution - PUCP (2017) stipulates that arbitrators cannot entrust a third party with the responsibility of deciding the final outcome of an award (p. 65). Consequently, making a judgment on this situation may have been simpler for the participants of this study.

The reasons given by the arbitrators to support the view that it is wrong to allow assistants to issue awards were of three types: instrumental, legalistic, and principled. Instrumental arguments are characterized by being oriented towards obtaining an individual benefit or avoiding punishment; legalistic arguments are centered on respect for the norms or the maintenance of the social system; and principled arguments are centered on moral principles. This distribution is presented in the following table:

Table 6. Reasons Why Assistants Should Not Issue Awards

| Types of arguments | Participants |
|---|---|
| Instrumental arguments | P6 |
| Legalistic arguments | P1, P2, P4, P17 |
| Principled arguments | P3, P5, P7, P8, P9, P10, P11, P12, P13, P14, P15, P16 |

Source: own elaboration.

As presented in Table 6, twelve interviewees provide principled arguments to support the view that an assistant cannot issue awards. For example, participant P14 responds as follows:

> **P14:** [...] arbitrators must make a very fine analysis of their availability because what arbitrators finally do is to administer justice, and consequently, it is valid to consider arbitration as a source of income. In fact, it is a source of income for many people, many lawyers, and I include myself among them. But arbitration is not a mere business, it is not, I don't know, setting up a store, it is not a business, arbitration has a social responsibility, a greater professional responsibility, because, as I said, justice is being administered. I see it from a moral point of view, of course, it can be very easy, I hire 5 or 6 people, I take all the money, I have more income, but I believe that we have to devote ourselves to arbitration with all these moral and responsibility connotations because, above all, in private arbitration, of course the interests of two parties come into play.

Contrary to participant P14, four of the interviewees formulated legalistic arguments; that is, they consider that rules are the main reason why

it is wrong to have an assistant issue awards instead of the appointed arbitrator. For example, the argument of participant P2 is centered on this idea.

> **Why would it be wrong for an assistant to issue awards?**
>
> **P2:** First, because the rules do not allow it, that's the first thing. What's more, you state that you have the time and all the knowledge to be able to solve. And second, because you are the arbitrator. It's like you are a child's mother, so the right thing to do is for the mother to be the one to take the reins while the nanny is only there to carry out your orders, something like that.
>
> **A powerful reason in your argument is that there is a rule that forbids it.**
>
> **P2:** Exactly, firstly because the rule establishes it.
>
> **And is there another reason?**
>
> **P2:** No, well, if it goes against the rules, it is against everything, it is part of the rules of morality and everything, I think that would be it. Besides, you yourself would feel bad, you would feel that you do not [...] that what they say is yours is not yours; besides, everything is known in arbitration.

Finally, in this dilemma, only one of the participants developed an argument focused on punishment. For example, the following response shows that P6's decision is guided by the fear of consequences.

> **Why wouldn't you want an assistant to issue awards for you?**
>
> **P6:** Because they can make mistakes, because my award can be annulled. I have never had an award set aside, that discredits you as an arbitrator. You cannot take the risk of having them add any nonsense and then, in a decision, the Judicial Court tells you, "Hey, you did not assess this, there are no substantiated reasons, there is no due knowledge," and you are the one affected because of that. An assistant doesn't care because you will never be able to say that you told him to do it, you are the one who is signing those documents, you are the one solving, and you are the one who can be involved in any other issue [...] it can lead you to criminal matters.

### IV.3. Construction of Moral Identity

Regarding the construction of identity, the results indicate that the participants' identities mainly consist of non-moral categories. These

include personal trait identity, spiritual identity, social identity, and prosocial identity, as shown in the following table.

Table 7. Types of Identity per Participant

| Participant | Type of identity |
|---|---|
| P1 | Personal trait |
| P2 | Social |
| P3 | Prosocial |
| P4 | Social |
| P5 | Prosocial |
| P6 | Social |
| P7 | Social |
| P8 | Prosocial |
| P9 | Personal trait |
| P10 | Social |
| P11 | Social |
| P12 | Prosocial |
| P13 | Social |
| P14 | Social |
| P15 | Social |
| P16 | Personal trait |
| P17 | Spiritual |

Source: own elaboration.

All types of identities found are described and explained below.

## IV. 4. Personal Trait Identity

This category includes statements that describe a person by pointing out, mainly or only, physical and personality traits and skills. The moral dimension does not appear in the description. This is observed in the description of participant 1:

> **Could you describe yourself? Imagine I don't know you and I want to know what you are like; how would you describe yourself?**
>
> **P1:** Well, I am a crazy person.

**What characteristics that make you a good litigator do you think you have?**

**P1:** Strong character is the main characteristic.

**Have you ever made a mistake?**

**P1:** Many.

**E: Could you tell us about one of them?**

P1: Maybe I designed a strategy and made a mistake. it was not the right one, let's say. Being an athlete, I made mistakes in a championship too.

**E: Any mistakes that you consider moral, ethical?**

P1: No.

## IV. 5. Social Identity

People who are mainly characterized by this type of identity are described by emphasizing sociability and enjoyment of the company of others, the ability to understand their emotions and perspectives, and the ability to experience feelings of affection for others. For example:

**P11:** I am very sociable, I love sharing with my friends, with my family. I'm a homebody, that's why I love it when they come to my house.

**Are there any rules that govern your actions?**

**P11:** Well, to behave well. Of course, I think that's basic, I think all human beings should do that. To be attentive, for example, if I am in my house, to be attentive, to make them feel comfortable. A characteristic of mine when they come to my house is "Make yourself at home, if you want to go to the kitchen or you want something, open doors, grab." In other words, to make them feel comfortable, to make them feel good. Yes, I like people to feel good, to feel comfortable in my house.

**P15:** I think I am a very open and friendly person with others I am with, with whoever I have the possibility of contacting; that is satisfying for me, getting along with people, you can't get along with everyone, but I always try not to fight with anyone, if I could say that somehow. I feel that I am a shy person, but I do my best to be sociable and it works out well.

## IV. 6. Prosocial Identity

People with this type of identity see themselves as oriented towards the common good and altruistic behavior, which are presented as optional or preferential, but not with a sense of obligation.

> **What characteristics do you think would describe a good person?**
>
> **P3:** To me, a good person is a morally correct person.
>
> **What does it mean to be morally correct?**
>
> **P3:** To me, having principles that I share as morally correct.
>
> **You are telling me that a good person would be a person who shares the same values or principles that you have.**
>
> **P3:** The ones I consider correct, of course, because what I think is right may not be the same to another person. To me, an upright person should be someone who has deep respect for others, for example, but another person may not think the same.

## IV. 7. Spiritual Identity

In this type of identity, the descriptions of oneself appear in spiritual or religious terms. People identify themselves with a spiritual outlook on life and declare that religion or belief in a higher, transcendent being is part of who they are as people. Justifications for their actions are based on their faith in a higher being. The description of participant 17 shows these characteristics:

> **P17:** I believe in the principle that a person in his or her integrity is a bio-psycho-spiritual person, these three elements shape the person as such. Well, personally, above all, I must have a good relationship with God through my faith, I mean, it is the whole spiritual part [...].
>
> **Is there any rule that guides all the things you decide or do?**
>
> **P17:** Yes.
>
> **What is this rule?**
>
> **P17:** I have been raised in a very practicing family, so to speak, they don't only follow the Catholic religion [...] so the commandments are things that govern my behavior a lot.
>
> **To you, these commandments are rules that govern your behavior, and are these rules moral rules?**

**P17:** Yes. To me, they are rules that somehow help me to determine if something is right or wrong, they help me to discern, and in this regard, I have to make a decision.

### IV. 8. Moral Identity

It implies a description of the self that is contained within the moral domain. Moral principles are part of people's description of the real and ideal self. Moral responsibility derives from having integrated such principles into the identity, which are understood as morally necessary and mandatory.

No participants were found in this category.

## V. DISCUSSION AND CONCLUSIONS

This study analyzed the moral reasoning and moral characteristics of the identity of a group of lawyers who perform arbitration functions in Peru. The results indicate that conventional reasoning linked to rules and legal systems prevails in this group of arbitrators; and that, in relation to the construction of identity, no participants have integrated moral elements predominantly in their subjectivity. This goes hand in hand with what has been reported in research works carried out both in Peru and elsewhere in the world, which show that law students and practicing lawyers generally employ a legalistic and conventional reasoning (Frisancho, 2010; 2008; Grimaldo, 2011; Perry *et al.*, 2009; Tapp & Levine, 1974). This reasoning may be at the basis of a series of problems linked to malpractice and corruption, which are so often observed in this profession. Lawyers themselves recognize and are concerned about the various ethical problems the professional practice and the quality of the ethical training received by law students (Del Mastro, 2018; Fredricks, 2006; Gomez Sanchez, 2016; Morales, 2010; Nicolson, 2005; 2010; Pásara, 2004; 2005).

Having lawyers who, whatever the function they perform, can morally reason from a principled and not only conventional or legalistic point of view, and who have also built solid moral identities for themselves, is very important for several reasons. The main reason is the fact that the professional practice of lawyers implies exercising autonomy and requires adopting, in different situations, principles of justice, as well as autonomous reasoning and discernment processes, as support for their decisions. These abilities and qualities are relevant to think of the administration of justice not as a technique that does not require discernment, but as an activity linked to moral rationality. For example, in the case of arbitration, it is known that, when faced with the distinction between "arbitration of law" and "arbitration of conscience" (Trazegnies, 1996, p. 115), arbitrators tend to think that arbitration of

law is less confusing and safer, since it is carried out with legal arguments and with the tools available in laws. As a counterpart, they reject arbitration of conscience because it lacks such tools and they consider it subjective, arbitrary, and unscientific (Del Castillo, 2017; Sologuren & Purizaga, 2016), since in this type of arbitration arbitrators have the power to issue awards according to their own criteria, that is, following their own knowledge and understanding. This rejection is mainly due to the fact that many lawyers consider that the moral conscience of each person varies, is arbitrary, and does not have clear rules (Davey, 2001). However, as has been pointed out (Trazegnies, 1996, p. 122), arbitration of conscience not only requires substantiation, but this substantiation is even more demanding than the one required for arbitration of law. Precisely, this substantiation is demanding because it requires a level of postconventional moral development that, as noted above, is not prevalent among lawyers. We can say that this attitude towards "arbitration of conscience" shows us that lawyers feel more comfortable at the conventional level of legality and insecure within what corresponds to the postconventional level of morality.

There are several causes behind this situation, one of the main ones being the type of training that lawyers receive in law schools, which leads them to build a legalistic reasoning instead of one based on principles (Hamilton & Monson, 2011; Mangan, 2007). The years of university studies are known to constitute a privileged space that can have an important impact on the moral development of individuals (Colby *et al.*, 2003; King & Mayhew, 2002; 2004; McNeel, 1994; Morrison, 2001; Nucci & Pascarella, 1987; Rest & Narvaez, 1991); however, this development is surely not guaranteed and will depend on the characteristics of the education received. In the case of law schools, it has become evident that students' moral reasoning does not increase and may even decrease throughout their studies (Edwards, 1992; Feldman, 1995; Kronman, 2003; Nicolson, 2005; Landsman & McNeel, 2004). In this context, and in light of the findings of this study, it would be advisable to review the contents of the curriculum with which lawyers are trained in our environment. That way, throughout their studies, law students will have the opportunity to reflect on moral requirements and weigh the legal framework and link it with ethics, giving greater value to moral reasoning for decision-making within their profession. Undoubtedly, the problem revealed by this study does not indicate that arbitrators are corrupt and immoral, nor that the entire problem lies in the structure of their professional training. However, given that there is literature—as we have pointed out—showing structural difficulties in the training of lawyers, this recommendation could contribute to improving their initial training, correcting the lack of practice in reasoning about ethical and legal conflicts.

Regarding moral identity, found to be underdeveloped in this study, it is important that future lawyers can have educational spaces to think about it and ask themselves central questions about it. Moral identity results from a complex and long-term development process (Krettenauer, 2013; Krettenauer & Hertz, 2015). Thus, although this process begins in childhood and university cannot be held entirely responsible for its poor development, the formative spaces provided by higher education can offer opportunities for students to strengthen their identity and articulate in it not only their personal goals, but also social goals oriented to the common good and derived from universal ethical principles. We believe that this is a pending task in many universities.

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