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Doing right by students: Professional ethics for professors

Fassett, William Edmond, Ph.D.

University of Washington, 1992

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Doing Right by Students:
Professional Ethics for Professors

by

William E. Fassett

A dissertation submitted in partial fulfillment
of the requirements for the degree of

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Approved by _____

Donald F. Phillips, Jr.
(Chairperson of Supervisory Committee)

Program Authorized
to Offer Degree _____

College of Education

Date _____

June 1, 1992

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William E. Fassett

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Abstract

**Doing Right by Students:
Professional Ethics for Professors**

by William E. Fassett

**Chairperson of the Supervisory Committee: Professor Donald T. Williams, Jr.
College of Education**

Academic interest in professional ethics burgeoned during the 1970s and 1980s, subsequent to public awareness of ethical failures in law, medicine, business, and government. Only recently, however, did academics turn their attention to the ethics of the academy itself. New models of academic ethical behavior developed during the 1980s drew heavily on the work of medical ethicists, but failed to recognize that differences between the professoriate and other professions ought to result in different principles for professors' guidance.

This work formulates a set of ethical principles specific to the relation between professors and their students in American higher education.

Chapter I explores the applied ethics literature for a method to identify and validate ethical principles applicable to a given profession. Drawing on the work of Rawls, Beauchamp and Childress, and Jonsen and Toulmin, a quasi-casuistic approach is adopted whereby provisional principles are tested against considered judgments in cases.

Chapter II begins the search for a list of provisional principles. The nature of the academic profession and its claims is developed from an historical review. Then six existing approaches to ethics in higher education are examined: Alethetropism; the Medical Ethics Model; the Fiduciary Relationship Model; the Power Disparity Model; Codification; and Nel Noddings's version of a Caring Perspective. Finally, three classes of ethical challenges in academia (Decline of an Ethical Ideal; the Professorate as Title to a Sinecure; and Role Conflicts) are elucidated and discussed.

Chapter III explores constellations of roles and the role-sets of professors and students to further characterize the nature of ethical expectations for the academic profession. The set of provisional principles is completed: alethetropism (the creation of an environment in which truth is

respected); nonmaleficence; respect for autonomy; justice; and trustworthiness. Exclusion of beneficence and fidelity from the academic model is justified.

Chapter IV develops a taxonomy of professors' ethical failures which classifies 43 cases drawn from a review of 129 case reports in the legal literature, the news media, and the secondary literature. By case discussions, the provisional list of principles is validated, and its utility in conjunction with a caring perspective is defended.

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Finally, I must acknowledge two publishers for their gracious permission to reprint copyrighted material in Appendix C.

Jossey-Bass, Inc., of San Francisco, granted permission to reprint in part the following cases, listed as I have named them: "The Biased Evaluator," "The Human Relations Seminar," "The Lead Author," "The Placement Program," and "The Process Group," all from Harry J. Canon and Robert D. Brown (Eds.), *Applied Ethics in Student Services*, New Directions for Student Services No. 30, July, 1985.

The following cases -- "The College Test," "Laborious Rewards," "Who Makes The Grade?," "The Blitz," "The Assistant Consultant," and "The Umpire's Decision," -- are all from Stephen L. Payne and Bruce H. Charnov, *Ethical Dilemmas for Academic Professionals*, 1987, courtesy of Charles C Thomas, Publisher, Springfield, Illinois.

Written in loving memory of

Mabel Bryan Webster, my paternal grandmother,
who taught me to care about learning;

and

Ruth Georgia Eyer, my mother,
who taught me to care for myself;

and

Dedicated to

Sharon Elaine Johnson, my wife,
who is still teaching me to care for others.

INTRODUCTION

This is a dissertation about professors and students in American colleges and universities. I have undertaken this project to begin to answer one general question: What set of ethical principles can inform the professor regarding his or her obligations to students?

Subsidiary questions that seem important to this project are eight-fold. (1) What are the acknowledged roles of professors in their relationships with students? (2) How did these roles evolve? (3) What expectations of professors' actions arise from these roles? (4) How are these roles and expectations similar to those of other professions in their relationships with clients? (5) Based on these similarities, which ethical principles, drawn from models for other professions, appear to give guidance for a model of professorial ethics? (6) How do the roles and expectations of professors differ from those of other professionals? (7) Which ethical principles can be added to those drawn from other professions so as to guide development of a model of professorial ethics? (8) What cases can be identified that will, upon analysis, clarify the nature of a principle-based model of professorial ethics?

My impetus is a growing realization that applied ethics in other professions have undergone rapid change during my lifetime, and the role of the university in the ethical preparation of its students has changed more rapidly than has the theoretical underpinning of the academic profession itself. This suggests a gap: faculty responsible for inculcating ethical sensitivity in their students are bereft of an ethical underpinning for their own distinct profession as educators.

Whether post-1950s changes in the American ethical climate were first recognized on our campuses as a result of developments in drug use,¹ date from the Vietnam war era student protests, or were contemporaneous with revelations from the Watergate Affair, by the mid-

¹I am referring here not only to recreational drug use in the 60s and 70s that has culminated in more serious addictive behavior in the 90s, but also to the development of the "pill," which many believe helped lead to revised ethical views regarding the autonomy of women and also to the "sexual revolution."

1970s academic writers began to recognize a decline of public confidence in the integrity of our national institutions and leaders.² That our universities needed to pay renewed attention to the ethical development of students seemed obvious, in Derek Bok's view,

... if only because higher education occupies such strategic ground from which to make a contribution. Every businessman and lawyer, every public servant and doctor will pass through our colleges, and most will attend our professional schools as well. If other sources of ethical values have declined in influence, educators have a responsibility to contribute in any way they can to the moral development of their students.³

As indicated by Bok's exemplars, the public had become particularly aware of misfeasance in four arenas: business, law, government, and medicine. Although heightened interest in professional ethics in each of these fields (particularly law and government following Watergate) led to increased scholarship, the growth of the medical ethics (and a corresponding bioethics) discipline was particularly striking and productive. Revised ethical theory concerning the physician-patient relationship, a substantial body of case material, deliberations by two national commissions, and new approaches to teaching ethical decision making to professional students resulted from this enterprise.

Arising from the interest and experience of bio- and medical ethicists, the Hastings Center engaged a study of ethics teaching in higher education in the late 1970s.⁴

²Bok, Derek C. "Can Ethics Be Taught?," *Change* 8:26-30, (October) 1976.

³*Ibid.*, p. 26. Of course, if the subject of this dissertation was the *teaching of ethics*, I would want to develop a stronger claim for such an activity than did Bok, a claim that ethics teaching is inherent in higher education's purpose for valid ethical reasons arising from the relationship between professors and students and from their resulting expectations. Such a claim was elaborated by Mortimer R. Kadish (*Toward an Ethic of Higher Education*, Stanford: Stanford University Press, 1991, pp. 172-176).

⁴*The Teaching of Ethics in Higher Education*. Hastings-on-Hudson, NY: The Hastings Center, 1980.

Subsequently, under the editorship of two medical ethicists, a collection of essays extended the results of this study and the biomedical ethics experience to ethics education at the undergraduate and professional level outside of medicine.⁵ Throughout the 1980s, interest in ethics education has increased in the higher education literature and among educators in disciplines and professions beyond medicine.

In two significant ways, medical ethicists have informed scholars interested in ethics in other professions. First, models of the professional-client relationship have been developed as sets of principles that can be appealed to during decision making in individual cases.⁶ Second, the importance of role has been made clear. Whereas, for example, it was once assumed that the interests of research subjects would be protected by the physician's professional code of ethics when that physician is active in the role of researcher, experience proved sadly otherwise,⁷ and new codes enunciated the duties to subjects of researchers *per se*. Although scholars in other professions have tacitly accepted that the success of principle-based models in medicine can be extended to other professions, they have not as clearly recognized the consequence of the second discovery; they have often transported the medical model directly

⁵Callahan, Daniel and Sissela Bok (eds.). *Ethics Teaching in Higher Education*. New York: Plenum Press, 1980.

⁶Beauchamp, Tom L. and James F. Childress. *Principles of Biomedical Ethics, 3rd Ed.* New York: Oxford University Press, 1989. At this point I acknowledge existing skepticism about the applicability of principles to practical ethical deliberation, both from a casuistical purview (see, for example, Stephen Toulmin, "The Tyranny of Principles," *Hastings Center Reports* 11(6):31-39, 1981) and by feminist philosophers such as Nel Noddings (*Caring: A Feminine Approach to Ethics and Moral Education*, Berkeley: University of California Press, 1984); my approach below will be to examine these perspectives as supplementary concepts in developing my ethical model.

⁷Rothman, David J. *Strangers at the Bedside: a History of How Law and Bioethics Transformed Medical Decision Making*. New York: Basic Books, 1991, pp. 70-84.

into the other professional setting,⁸ without adapting it to the specific roles and objectives of the other profession.

Although there has been ready acceptance of the need for models of ethics in specific professions and disciplines, and the development of a variety of ethical codes, the same academics who have been active in these discipline-centered efforts have not as readily recognized that they are also members of an academic profession, separate from their disciplinary attachments. As recently as 1986, Stephen Cahn summarized the state of the literature as limited, with much written about the rights of faculty but little about their responsibilities. He further implied that the prevailing attitude among the professoriate was cavalier:

Some years ago I was asked to deliver a lecture on the subject of "Ethics in the Academic World." When I mentioned the topic to a faculty colleague, he remarked, "It'll be a short talk."⁹

In a similar vein, William May noted in 1990 that colleges and universities are devoting a great deal of scholarly effort to ethical issues in business and the professions, but "very little of this attention has been focused on higher education itself."¹⁰ Although May and his contributors then attempted to address ethical issues in higher education, they did so by concentrating predominantly on organizational structure and activities, rather than by examining the ethical obligations of the professor *qua* professional.

⁸See, for example, Karen S. Kitchener, "Intuition, Critical Evaluation and Ethical Principles: The Foundation for Ethical Decisions in Counseling Psychology," *The Counseling Psychologist* 12(3):43-55, 1984.

⁹Cahn, Stephen M. *Saints and Scamps: Ethics in Academia*. Totowa, NJ: Rowman & Littlefield, 1986, p. xi.

¹⁰May, William W. (ed.). *Ethics and Higher Education*. New York: American Council on Education and Macmillan Publishing Company, 1990, p. 1.

Thus, in spite of recently increased attention to ethical issues in higher education, one cannot identify an existing model of ethical action by professors that will serve the professoriate as have similar models in other professions. It is the objective of this dissertation to develop such a model, insofar as it pertains to the ethical obligations of the professor as regards his or her principal client, the student.

Four tenets underlie this work. First, that professors are members of an academic profession distinct from (and in addition to) any disciplinary attachments. Second, that the expectations arising from the professional assertions and adopted roles of that profession form the basis for assessing ethical obligations. Third, that the academic profession, while sharing certain role expectations with other professions such as law, medicine, and theology, is possessed of unique roles as well. Fourth, that these unique roles result in ethical obligations fully explained neither by ethical models appropriate to other professions nor by existing expositions of ethical responsibility in academia.

Following a discussion of method in the next chapter, I shall undertake a literature review to note the major claims of an academic profession and justify its existence. Existing models of academic ethics will then be carefully reviewed and a preliminary attempt will be made to map these principles against the teaching roles assumed by the profession. The thesis that principles and rules are necessarily role-related will be developed and defended. A topical approach will therefore be used to categorize major ethical areas that must be included in an ethical theory that can reasonably guide professorial behavior. The topics used will be derived from a structural analysis of the academic profession and its roles as revealed in the literature review. Finally, specific cases will be drawn from a review of legal case material, accounts in the news media, and from secondary literature. Existing ethical models will be tested for their usefulness in explaining considered judgments in the cases, and appropriate principles added to or deleted from these models to construct a final proposed model.

Chapter I
METHODS OF ETHICAL INQUIRY

Introduction

Discussions of professional ethics are undertaken within the context of general normative ethics, but there is disagreement among philosophers and ethicists concerning method. Therefore, prior to undertaking an exposition of the nature of the academic profession, how it developed its modern roles, and the resulting claims it makes and duties it owes thereby, I must first justify the form of ethical inquiry I will use in this dissertation. What follows arises primarily from the literature of the medical ethics discipline which, as I have noted, has significantly led the way for discussions of ethics in other professions.

This dissertation is an exercise in applied ethics. By this I mean that its intention is to answer the following generic question that faces a faculty member devoted to ethical behavior regarding his or her students: "What is the right action for me to take toward student X in situation Y?" By addressing the inquiry to a particular situation within a professional or public policy context, rather than seeking to answer "general questions about how moral knowledge should be applied," the exercise becomes, in the minds of many, one in applied rather than theoretical ethics.¹

Applied versus Theoretical Ethics

Alisdair MacIntyre characterized this distinction as between an enterprise (theoretical ethics) whose subject matter is "morality as such," which establishes constraints on how rational persons in society may ethically pursue their "rival and competing interests," and an enterprise (applied ethics) which attempts to frame "rules which specify how institutionalised relationships are to be conducted."² In the latter case,

¹Silvers, Anita. "Prefatory Note," *Monist* 67(4):488, 1984.

²MacIntyre, Alisdair. "Does Applied Ethics Rest on a Mistake?," *Monist* 67(4):498-513, 1984, p. 499.

... the rules of morality as such have to be *applied* to this kind of socially and institutionally specific subject-matter to yield socially and institutionally specific rules. The academic discipline of *ethics as such*, which enquires into the nature of morality as such, has to be supplemented by the discipline of *applied ethics*.³

Considerable debate continues among moral philosophers whether this top-down approach can and does work.

MacIntyre, for one, argued that there is a fundamental mistake to this notion of applied ethics, in part because of the presumption in this model that theoretical ethics produces moral rules that are so widely agreed upon that a rational agent, seeking to apply them to specific cases, can reliably appeal to them for justification. In fact, at the theoretical level, the very stuff of moral philosophizing seems to be a never-ending argument among competing schools.

If reliable rules governing professional actions were to be derived from theory, then, "we should expect to find that the disagreements over moral rules reproduce themselves within applied ethics."⁴ However, such a correspondence does not appear to exist when practical ethics is conducted. Stephen Toulmin's experience with the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research has been widely cited.

Before the Commission began work, many onlookers assumed that its discussions would degenerate into a Babel of rival opinions. One worldly commentator remarked in the *New England Journal of Medicine*, "Now (I suppose) we shall see matters of eternal principle decided by a six to five vote." But things did not work out that way. In practice, the commissioners were never split along the line between scientists and nonscientists. In almost

³*Ibid.*

⁴*Ibid.*, p. 500.

every case they came close to agreement even about quite detailed recommendations--at least for so long as their discussions proceeded taxonomically, taking one difficult class of cases at a time and comparing it in detail with other clearer and easier classes of cases.⁵

Only when the commissioners attempted to justify their decisions in particular instances by an appeal to principles did significant disagreement surface. They each appealed separately to principles derived from traditions to which they adhered: Catholics to Catholicism, humanists to humanism, and so on, according to Toulmin. Instead of justifying the collective agreement, this appeal to principles served "rather to square the collective ethical conclusions of the Commission as a whole to each individual commissioner's other *nonethical* commitments."⁶

MacIntyre concluded that the dominant conception of applied ethics obscures the actual nature of ethical inquiry in professional contexts. The principles appealed to "have been rendered indeterminate in order to be adequately shared ... for the purposes of practical life, that is, with persons of quite different and incompatible standpoints."⁷ As such, they serve not to link specific judgments to fundamental moral truths, but rather to provide a basis for relatively uniform behavior by professionals within a particular profession. Such uniform behavior warrants public expectations that lead to public confidence in the profession. Because each profession must appear morally credible and accountable, MacIntyre wrote, "the need to affiliate its particular code or procedures to morality in general arises and with it the need for applied ethics."⁸

⁵Toulmin, Stephen. "The Tyranny of Principles," *Hastings Center Reports* 11(6):31, (December) 1981. Citation with the paragraph omitted.

⁶*Ibid.*, p. 32.

⁷MacIntyre, Alisdair. "Does Applied Ethics Rest on a Mistake?", p. 510.

⁸*Ibid.*, p. 512.

An alternate view of applied ethics begins by disputing the conception presented by MacIntyre. Tom L. Beauchamp suggested, rather, that applied ethics refers to the use of moral theory and methods to deal with problems in professional and public policy. He argued, therefore, that the distinction between applied ethics and ethical theory as "philosophical activities or methods" ought to be eliminated.⁹ It is important to understand Beauchamp's position, since he is usually thought of (along with James Childress) as a major proponent of the "principles approach" to applied ethics.

First, Beauchamp argued that there is no philosophical method that is particular to applied ethics. Rather,

"Applied philosophers" do what philosophers have always done: They analyze concepts, submit to critical scrutiny various strategies that are used to justify beliefs, policies, and actions, examine the hidden presuppositions of various moral opinions and theories, and offer criticism and constructive accounts of the moral phenomena in question. They seek a reasoned defense of a moral viewpoint, and they use guides to duty and virtue in order to distinguish justified moral claims from unjustified ones. They try to stimulate the moral imagination of their students, while promoting analytical skills and preventing the substitution of purely personal attitudes or intuitions for a reasoned and justified moral position. Prejudice, emotion, false data, false authority, and the like are weeded from the premises of arguments, and moral reasons are advanced and defended by recognizably philosophical modes of argument.¹⁰

⁹Beauchamp, Tom L. "On Eliminating the Distinction between Applied Ethics and Ethical Theory," *Monist* 67(4):515-531, 1984.

¹⁰*Ibid.*, pp. 515-516.

Any differences that do exist lie in the content of the examined issues, or in the relative emphasis given to the nature of "good" versus concepts such as "confidentiality, medicine, trade secrets, environmental responsibility, euthanasia, ... privacy, and entrapment."¹¹

Role of Principles in Applied Ethics

Perhaps more important, Beauchamp took issue with assumptions about the application of fundamental principles in applied ethics. In particular, he rejected the conception that MacIntyre put forward as the dominant formulation of applied ethics. On this view, ethical theory is responsible for developing general and fundamental principles, while applied ethics derives less general rules and judgments in specific settings from the more general principles. Beauchamp dealt with what he apparently regarded as a prevalent misconception about his own work when he cited his *Principles of Biomedical Ethics* as a presumed example of this view of applied ethics, by which "the attempt throughout [the book] is to show how moral problems in modern medicine and biology can be analyzed by appeal to these principles as they apply to specific problems."¹²

On the contrary, he argued, his own work demonstrated the use of empirical studies and cases to reach judgments to which abstract moral principles are adjusted. Moral principles, empirical data, and paradigm cases provide grist for the mill of moral reflection about specific problems, and judgments, though justified by more general principles, are not "derived" from them.

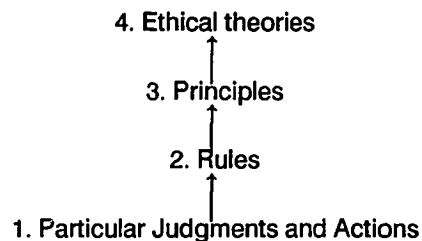
I accept the view that certain broad *fundamental* moral principles give support to numerous other principles, rules, and judgments (as part of their "foundation" or justification); but support is not entailment, and the underlying ideas of generality, application, and fundamentalness (as well as derivation) in

¹¹*Ibid.*, p. 516.

¹²*Ibid.*, pp. 517-518.

this interpretation can easily conspire to a view that has more falsity and misleading statement than truth and insight.¹³

Evidence that Beauchamp's and Childress's text supports a bottom-up (or at least parallel) rather than top-down relationship between judgments and less specific moral affirmations comes from their depiction of the relationship between theories, principles, rules, and judgments:



The direction of their arrows indicates "appeals to" rather than "applications of" rules, principles, and ethical theories. They regard rules and principles as "action-guides" only.¹⁴

Nevertheless, these action-guides are important for Beauchamp and Childress, whose program is to outline a framework, which they equate with a "theory," for ethical decision making in the biomedical disciplines. They suggest four basic moral principles of respect for autonomy, nonmaleficence, beneficence, and justice as comprising sufficient elements to meet the tests of such a framework.

In their view, ethical theory must be clear, internally consistent and coherent, complete and comprehensive, simple, and able to account for our considered judgments. Two of these tests, comprehensiveness and compatibility with experience, are particularly relevant to the tenets underlying this dissertation.

¹³*Ibid.*, p. 518.

¹⁴Beauchamp, Tom L. and James F. Childress. *Principles of Biomedical Ethics, 3rd Ed.* New York: Oxford University Press, 1989, pp. 6-7.

There is congruence between MacIntyre and Beauchamp and Childress regarding the content goals of analyses done under the rubric of applied ethics. MacIntyre argued that the scope of a particular ethical formulation required by a profession's "... warranted expectation[s] is by and large no greater than the single profession," and that it's unimportant that formulations for different professions be in agreement with one another.¹⁵ Although MacIntyre noted this conclusion with implied disapprobation, he made a point that Beauchamp freely admitted:

Courses in philosophy of psychology commonly begin with an introductory text in the philosophy of science, and courses in business ethics typically begin with a major section on ethical theory. Yet, as the courses proceed, differences in content from the "parent" field will invariably emerge: The concepts analyzed will be different, the topics treated will be different, the presuppositions examined will be different, and the principles employed or investigated will vary.¹⁶

Thus, when Beauchamp and Childress stated that the "... four principles ... presented in this book do not provide a complete system for general normative ethics, [but] they do provide a sufficiently comprehensive framework for biomedical ethics,"¹⁷ they were not claiming to supply a list of principles that is complete for other disciplines.

Case-based Reasoning

The other of these tests, consonance with considered judgments in relevant cases, locates Beauchamp and Childress in a nexus with several modern writers, including W. D.

¹⁵MacIntyre, Alisdair. "Does Applied Ethics Rest on a Mistake?", pp. 511-512.

¹⁶Beauchamp, Tom L. "On Eliminating the Distinction", p. 516.

¹⁷Beauchamp, Tom L. and James F. Childress. *Principles of Biomedical Ethics*, p. 15.

Ross, Stephen Toulmin, Albert Jonsen, and, arguably, John Rawls. Each of these authors relies in one way or another on a dialectic between principles and considered judgments.

Ross, a rule deontologist, is widely credited with the notion of prima facie duties. As summarized by Frankena,¹⁸ Ross claimed that one may formulate a number of rules of right action which are universally duties of prima facie, but not actual, obligation. One should always try to tell the truth, but in actual situations, another prima facie duty, such as avoiding harm, may conflict and outweigh the duty of veracity. Beauchamp and Childress characterized prima facie duties by concluding that they "count even when they do not win."¹⁹

As to determining which of two or more conflicting prima facie duties shall be fulfilled in a given situation, Ross wrote that "Our judgments about our actual duty in concrete situations have none of the certainty that attaches to our recognition of the general principles of duty." Rather, these judgments are "an object of probable opinion."²⁰ What is "probable" in the situation is that by weighing one principle over another, the greatest balance of good will be achieved, and one's judgments in this regard should be influenced, it seems, by prior experience and experimental evidence, as well as reason.

Beauchamp and Childress suggested four requirements to be met when a prima facie principle is infringed:

- (1) the moral objective justifying the infringement must have a realistic prospect of achievement;

¹⁸Frankena, William K. *Ethics, 2nd Ed.*, Englewood Cliffs, NJ: Prentice-Hall, 1973, pp. 26-27.

¹⁹Beauchamp, Tom L. and James F. Childress. *Principles of Biomedical Ethics*, p. 52.

²⁰Ross, W. D. *The Right and the Good*. Oxford: Clarendon Press, 1930. From an excerpt reprinted in Tom L. Beauchamp, *Philosophical Ethics*, New York: McGraw-Hill, 1982, p. 128.

- (2) infringement of a prima facie principle must be necessary in the circumstances, in the sense that there are no morally preferable alternative actions that could be substituted;
- (3) the form of infringement selected must constitute the least infringement possible, commensurate with achieving the primary goal of the action; and
- (4) the agent must seek to minimize the effects of the infringement.²¹

These requirements are part of an ethically appropriate procedure for making judgments in individual cases. When followed, they provide for judgments to be informed by principles taken as prima facie.

Recurring cases or classes of cases may cause professionals to infringe a prima facie obligation somewhat routinely. Such was the situation in medicine when the principle of beneficence was respected in a paternalistic fashion such that the patient's wishes were routinely overruled. Seen in its best light, this state arose from the collective judgment of the medical profession that the probability of patients comprehending their own best interests was low. As changing circumstances (improved education and medical knowledge, greater communication, and the rise of a consumer movement, for example) forced consideration of respect for autonomy as a valid principle to be considered along with beneficence, considered judgments in particular cases changed.

One mechanism for this was to reconsider whether a particular case represented, in fact, a situation in which the patient was truly unable to appreciate his or her interests clearly. An older paradigm, in which patients were always seen as dependent, was supplemented by a new paradigm, where dependency was not seen to exist. In those cases that fit the older

²¹Beauchamp, Tom L. and James F. Childress. *Principles of Biomedical Ethics*, p. 53.

paradigm, beneficence would continue to be given primary weight, but in the newly recognized class of cases, respect for autonomy would win out.

One can conceive of exemplars for each of these classes of cases. If clearly enunciated, the exemplars would be of such a nature that reasonable and informed people would invariably agree on the proper course of action. Such a proper course could be articulated as being the rule to follow in all such cases, under the requirements of formal justice that like cases should be treated alike.

This method of forming judgments in particular cases, by comparing them to exemplars or "paradigm cases," has been proposed by ethicists who would revive casuistry as a principal method for applied ethics. Jonsen and Toulmin characterized modern casuistry as follows:

1. Similar type cases ("paradigms") serve as final objects of reference in moral arguments, creating initial "presumptions" that carry conclusive weight, absent "exceptional" circumstances.
2. In particular cases the first task is to decide which paradigms are directly relevant to the issues each raises.
3. Substantive difficulties arise, first, if the paradigms fit current cases only ambiguously, so the presumptions they create are open to serious challenge.
4. Such difficulties arise also if two or more paradigms apply in conflicting ways, which must be mediated.
5. The social and cultural history of moral practice reveals a progressive clarification of the "exceptions" admitted as rebutting the initial moral presumptions.

6. The same social and cultural history shows a progressive elucidation of the recognized type cases themselves.
7. Finally, cases may arise in which the factual basis of the paradigm is radically changed.²²

An apparent parallel is evident between the first four elements of this list and the treatment of *prima facie* duties in specific cases by Beauchamp and Childress.

First, they clearly adopted Ross's schema by declaring that rules and principles, once elucidated, are *prima facie* binding.²³ However, while Ross regarded his *prima facie* duties as those which become self evident through normal experiences,²⁴ Beauchamp and Childress argued that it "seems mistaken ... to say that ethical theory is not *drawn from* cases but only *applied to* cases. Rather, cases provide data for theory and are theory's testing ground as well."²⁵ As Beauchamp noted elsewhere, "Cases lead us to modify and refine embryonic theoretical claims, especially by pointing to inadequacies in or limitations of theories."²⁶

Beauchamp and Childress also recognized the need to determine whether a particular case falls under the rule drawn from other, clearer, cases.²⁷ As an example of how a rule against lying might not apply in a given situation, they used the following:

Suppose Nazi soldiers investigating a hospital in Germany in the late 1930s had asked the administrator whether there were Jewish patients in the

²²Jonsen, Albert R. and Stephen Toulmin. *The Abuse of Casuistry: A History of Moral Reasoning*. Berkeley: University of California Press, 1988, pp. 306-307.

²³Beauchamp, Tom L. and James F. Childress. *Principles of Biomedical Ethics*, p. 51.

²⁴Ross, W. D. *The Right and the Good*. See also William Frankena, *Ethics*, p. 27.

²⁵Beauchamp, Tom L. and James F. Childress. *Principles of Biomedical Ethics*, p. 16.

²⁶Beauchamp, Tom L. "On Eliminating the Distinction between Applied Ethics and Ethical Theory," p. 528.

²⁷Beauchamp, Tom L. and James F. Childress. *Principles of Biomedical Ethics*, p. 54.

hospital. If the administrator insisted that the hospital had no Jewish patients, although knowing there were several, how should we describe this exchange?²⁸

One avenue they considered open to deal with this quandary was to consider it as a setting in which paradigmatic notions of lying did not apply; that is, lying was taken to mean "not making truthful statements to a person to whom the truth is due." Since the Nazi soldiers weren't due the truth, this case didn't fit the paradigm. This same approach was cited by Jonsen and Toulmin as one of the maneuvers adopted by Jesuit casuists in the late 16th century to allow English Catholics to swear the Oath of Supremacy while continuing to observe Catholic sacraments.²⁹

Finally, Beauchamp fairly espoused a casuistic approach as an appropriate current extension of scholarly methods in philosophy.

Paradigm cases of what clearly are right courses of action could first be examined, and a search could then be undertaken for principles consistent with our judgments about these paradigm cases. These principles could be tested by reference to other paradigm cases and other considered judgments found in similar cases in order to see if they yield counterintuitive or conflicting results. ... Presumably the more complex and difficult the cases that force revisions, the richer the resultant theory will be.³⁰

²⁸*Ibid.*, p. 50.

²⁹Jonsen, Albert R. and Stephen Toulmin. *The Abuse of Casuistry*, pp. 203-211.

³⁰Beauchamp, Tom L. "On Eliminating the Distinction between Applied Ethics and Ethical Theory," pp. 528-529.

In doing so, he linked this form of case-based theory revision to John Rawls's concept of a reflective equilibrium, where "widely accepted principles of right action (moral beliefs) might be taken, as Rawls puts it, 'provisionally as fixed points,' but also as 'liable to revision.'"³¹

Rawls's Reflective Equilibrium

Rawls's project³² was not one in applied ethics; he sought to justify a largely Kantian concept of "justice as fairness," with particular attention to distributive justice. He suggested that rational individuals in a society could agree upon principles of distributive justice within that society by examining what they would agree to in the "original position." Under a "veil of ignorance" about the individual advantages and attributes they would possess in their daily lives, individuals in the original position would bargain³³ freely concerning the fair distribution of society's benefits and burdens.

Rawls readily acknowledged that the original position is hypothetical: "one or more persons can at any time ... simulate the deliberations of this hypothetical situation ... simply by reasoning in accordance with the appropriate restrictions."³⁴ As such, it has the virtues of the paradigm cases described above.³⁵ One who is dealing with the real and present can enter into the paradigm situation, where the principles for action are apparent to any reasonable person who limits his or her evaluation to the conditions of the paradigm case. The veil of

³¹*Ibid.*, p. 528. References in passage omitted.

³²Rawls, John. *A Theory of Justice*. Cambridge: Harvard University Press, 1971.

³³I use *bargain* in the sense of coming to an agreement, not necessarily by *haggling*; this is consistent with Rawls's comment that parties in the original position "have no basis for bargaining in the usual sense." See *ibid.*, p. 139.

³⁴*Ibid.*, p. 138.

³⁵See *supra*, pp. 15 ff. I am not suggesting here that the original position has the *characteristics* of a paradigm case. It might rather be thought of as a setting in which a particular class of paradigm cases could be situated.

ignorance serves to limit the intrusion of extraneous interests into the resolution of what should be a question seen clearly by all viewers in essentially the same light.

What takes place behind the veil of ignorance is the proposal of an initial set of principles, that will become "provisional fixed points," to be subjected to further consideration and refinement. These contingent principles are then brought out of the hypothetical situation for our use in the here and now. As Rawls put it, "a particular description of the original position" allows us

to see if the principles which would be chosen match our considered convictions of justice or extend them in an acceptable way. We can note whether applying these principles would lead us to make the same judgments about the basic structure of society which we now make intuitively and in which we have the greatest confidence; or whether, in cases where our present judgments are in doubt and given with hesitation, these principles offer a resolution which we can affirm on reflection.³⁶

The reflection on the coherence between principles we'd develop from the original position and judgments we make in the here and now takes place in the here and now.

If there are discrepancies between the principles and our considered judgments, Rawls wrote, "We can either modify the account of the initial situation or we can revise our existing judgments ..."³⁷ Does the "account of the initial situation" include the restrictions and conditions of decision, including the veil of ignorance, or does it merely mean the report of the principles which would be reached therein? I think the former. Rawls viewed the initial position as being generative of the principles:

³⁶Rawls, John. *A Theory of Justice*, p. 19.

³⁷*Ibid.*, p. 20.

A problem of rational decision has a definite answer only if we know the beliefs and interests of the parties, their relations with respect to one another, the alternatives between which they are to choose, the procedure whereby they make up their minds, and so on. *As the circumstances are presented in different ways, correspondingly different principles are accepted* [emphasis added].³⁸

When discrepancies between our considered judgments and the principles generated in the original position are, upon reflection, to be adjusted while retaining our considered judgments, this will be accomplished at the expense of the description of the original position.

The process of reconciliation assumes that both our judgments and the original position may be in error. A dialectic of sorts ensues:

By going back and forth, sometimes altering the conditions of the contractual circumstances, at others withdrawing our judgments and conforming them to principle, I assume that eventually we shall find a description of the initial situation that both expresses reasonable conditions and yields principles which match our considered judgments duly pruned and adjusted. This state of affairs I refer to as reflective equilibrium.³⁹

Very much the same process is used to construct and validate simulations in realms other than ethics.⁴⁰

³⁸*Ibid.*, pp. 17-18.

³⁹*Ibid.*, p. 20.

⁴⁰See John R. Raser, *Simulation and Society*, Boston: Allyn and Bacon, 1969, pp. 29-32, for a discussion of the "gaming approach to simulation," whereby the starting point in building a valid simulation is to begin with a non-isomorphic model as "*an admittedly inadequate framework for conducting research leading to the improvement of the framework itself.*"

Consider the application of this process to a different simulation in which are formulated the relationships, processes, and restrictions that result in one party acting to kill another. Adding the structural restriction that the actor must be ignorant of the results of his actions, the principles generated by this simulation may not agree with an initial judgment that one who kills another is morally culpable. On reflection, one may conclude that the simulation is flawed, and remove the ignorance of consequences from the acting party. I suggest that the new simulation is a qualitatively different case, although it was created by adherence to Rawls's procedure.

Development of Principles

From these authors I distill the following approach to principle formation in applied ethics. Cases can be described whose limning can be so narrowly drawn as to generate a reflective equilibrium with a perspicuous account of what should be done. This account becomes a paradigm by which actions in an entire class of cases can be evaluated. If the paradigm is very tightly constructed, a single principle could describe it. Collections of such cases drawn from the domain of expectations for a given profession provide a set of justified principles around which the profession can organize its discussions about what should be done.

The argument in favor of specifying a set of principles for the ethical conduct of professors lies mostly in this last regard: principles serve as rubrics for organization of our discourse and as synopses that summarize our considered obligations to generalized others and serve to "mobilize our springs of moral action."⁴¹ Perhaps principles are best thought of as constructs, ethical shorthand under which to subsume a relevant history of theory construction and reflection. They represent particular conceptions derived from not-

⁴¹Jonsen, Albert R. and Stephen Toulmin. *The Abuse of Casuistry*, p. 300.

necessarily-stable reflective equilibria that are associated with singular paradigm cases. Only when they become reified do they exert the tyranny of which Toulmin warns.

Caring Perspective

The philosophical tradition that includes Locke, Kant, and Rawls has been variously labeled the justice tradition,⁴² the morality of rights,⁴³ the ethics of strangers,⁴⁴ and the EP (equal pull) model.⁴⁵ It can be characterized as fulfilling a need for a "morality of self defense ... [that] aims to protect people from aggression and severe deprivation ... [and] tells us how we must act in order to respect people's fundamental human dignity."⁴⁶ Ascendant in philosophical ethics since Sidgwick,⁴⁷ this view is now being recognized as not sufficient for moral discourse in the professions.

A perspective offered in apposition (by some, in opposition) to the justice tradition is consonant with the recognition that in "the actual affairs of life we acknowledge important differences between our moral relations with our families, intimates, and immediate neighbors or associates on one side and our moral relations with complete strangers on the other."⁴⁸ A view that concentrates on the morality of special relations (sometimes to the exclusion of

⁴²Kittay, Eva Feder and Diana T. Meyers (eds.). *Women and Moral Theory*. Totowa, NJ: Rowman & Littlefield, 1987, pp. 4-6.

⁴³Meyers, Diana T. "The Socialized Individual and Individual Autonomy," in Eva Feder Kittay and Diana T. Meyers, *ibid.*, p. 146.

⁴⁴Jonsen, Albert R. and Stephen Toulmin. *The Abuse of Casuistry*, pp. 290-293.

⁴⁵Sommers, Christina Hoff. "Filial Morality," in Eva Feder Kittay and Diana T. Meyers, *Women and Moral Theory*, p. 73.

⁴⁶Meyers, Diana T. "The Socialized Individual and Individual Autonomy," p. 146.

⁴⁷Jonsen, Albert R. and Stephen Toulmin. *The Abuse of Casuistry*, pp. 279-280.

⁴⁸*ibid.*, pp. 290-291.

general obligations) has been called the care perspective,^{49,50} the ethics of intimacy,⁵¹ or the sentimentalist view.⁵² It has been associated with theoretical precedents from Aristotle, Hume, and more recent writers including MacIntyre and Bernard Williams.⁵³ A particular formulation of the care perspective, however, has arisen from the writings and investigations of feminist authors, and has gained such currency in the contemporary literature of higher education that it must be discussed separately here.

Feminist philosophers, in particular, have rejected the justice tradition as paternalistic and male-dominated, and as having spawned Lawrence Kohlberg's theory of stages of moral development which seemed in its early incarnations to lock women into perpetual moral adolescence. Relying on phenomenological studies reported by Carol Gilligan,⁵⁴ they have asserted that many women make perfectly good (if not superior⁵⁵) ethical judgments without resorting to justification by principles, but rather from caring.

The most controversial implications of feminist authors regarding the care perspective are: (1) the rejection of any appeal to principles or to notions of universalizability; and (2) the existence of a gender-based ethic. I wish expeditiously to cite rejections of the first view and briefly argue against the second before describing an important conception of caring that supplements principles in models of professional ethics.

⁴⁹Kittay, Eva Feder and Diana T. Meyers. *Women and Moral Theory*.

⁵⁰Meyers, Diana T., "The Socialized Individual and Individual Autonomy."

⁵¹Jonsen, Albert R. and Stephen Toulmin. *The Abuse of Casuistry*.

⁵²Sommers, Christina Hoff. "Filial Morality."

⁵³Kittay, Eva Feder and Diana T. Meyers. *Women and Moral Theory*, p. 8.

⁵⁴Gilligan, Carol. *In a Different Voice*. Cambridge: Harvard University Press, 1982.

⁵⁵Gilligan has been cited as claiming that "given a choice, most people regard solutions stemming from the care perspective as better." See Diana Meyers, "The Socialized Individual and Individual Autonomy," p. 148.

One response to the feminist critique is the recognition that the justice paradigm is a relatively recent development, and that earlier philosophical traditions are not incommensurate with the imperative to deal with concrete others in individualistic ways. Jonsen and Toulmin compared the claims of "reason" with those of "rhetoric," and found in Aristotle a formulation that "Far from being inescapably opposed, the claims of 'reason' and those of 'rhetoric' are ... natural allies."

1. The patterns of argument (*topoi*) used in discussing and resolving moral difficulties are not so many rival intellectual theories, of which one and only one gives a universally correct general analysis of morality and moral reasoning. Rather, they are complementary practical theories, each of which is relevant to some specific types of moral problems.
2. Decisions about which practical theory, perspective, and pattern of argument will best allow us to resolve any particular problem can only be made in the context and with an eye to the detailed circumstances of that particular problem.⁵⁶

Jonsen and Toulmin argued that Rawls's theory simply does not cover situations involving close relationships; it is not invalidated thereby simply because it applies to a different class of problems. It does supply answers to problems, such as that of racial inequalities, and imperatives to action at a distance.

Arguing in a similar fashion, Sommers recognized that the positions of Locke, Kant, and Rawls (and also Mill) depend on a thesis that "the moral domain ... [consists of] beings whose ethical pull is equal on all moral agents."⁵⁷ This equal pull (EP) thesis leads to principles

⁵⁶Jonsen, Albert R. and Stephen Toulmin. *The Abuse of Casuistry*, pp. 298-299.

⁵⁷Sommers, Christina Hoff. "Filial Morality", p. 73.

of impartiality forming the basis for ethical behavior. At the other extreme lies the sentimentalist position, where actions are only determined by relationships and spring from mutual love and respect. For Sommers, a differential pull (DP) thesis is more appropriate, in that "the ethical pull of a moral patient will always partly depend on how the moral patient is related to the moral agent on whom the pull is exerted." But "the 'how' of relatedness will be determined in part by the social practices and institutions in which the agent and patient play their roles."⁵⁸ Thus, she concludes, it is a valid critique of the EP thesis that it is insensitive to filial relationships, but that "sentimentalism ignores the extent to which the 'care perspective' is itself dependent on a formal sense of what is fitting and morally proper."⁵⁹ A proper consideration of what should be done in a given case will avoid either extreme.

I will not assume in this dissertation that there is one ethic for men and a separate one for women.⁶⁰ It is difficult to understand, in the first place, how such a conception would not destroy the possibility of undertaking the fundamental conversation on what should be done. It also seems that the current debate has arisen, in part, over a mutual misunderstanding of how empirical studies of decision making can contribute to ethical discourse. As noted by Debra Nails, both Kohlberg and Gilligan have confused measures of how people make decisions with the appropriateness of the decisions, and each may be equally guilty of introducing conceptual bias into his and her investigations.⁶¹ Finally, as Gilligan admitted, both women

⁵⁸*Ibid.*, p. 74.

⁵⁹*Ibid.*, p. 78.

⁶⁰I will note later, however, that different individuals may understand moral dilemmas in different ways, at least initially, and I accept that women may more often than men see issues in terms of relationships; this has important implications when one attempts to explain to students the nature of ethical debate.

⁶¹Nails, Debra. Social-Scientific Sexism: Gilligan's Mismeasure of Man. *Social Research* 50(3):643-664, (Autumn) 1983.

and men are capable of using either justice- or care-based rationales for resolving ethical dilemmas; at best there is a preference for the latter approach by women.⁶²

Nel Noddings's description of caring⁶³ is perhaps the most widely known in educational circles. As such, it is useful to summarize the important features of her model, and to look at how they can be integrated along with principles into a guide for professorial ethics.

Noddings relied only partially on Gilligan. Mostly, she offered an essay on ethics in "the language of the mother," relying on her readers' "memories of caring and being cared-for" to affirm the validity of her premises. Caring exists within a relationship between the "one-caring" and the "cared-for" in which each contributes and caring only fully occurs when it is completed in the cared-for:

Logically, we have the following situation: (W,X) is a caring relation if and only

if

i) W cares for X (as described in the one-caring) and

ii) X recognizes that W cares for X.⁶⁴

If this reciprocity cannot be realized, there is no actual obligation ascribed to the one-caring. For example, one is not *required* to care for starving children in Africa, "because there is no way for this caring to be completed in the other ..."⁶⁵ What we have are *potential obligations*, a need to be ready to move into a caring relationship when it presents itself. We are obligated by chains of relationship that link us to others, beginning with those in close proximity and extending to those further away who are linked by relations with those close to us. The

⁶²Gilligan, Carol. "Moral Orientation and Moral Development," in Eva Feder Kittay and Diana T. Meyers, *Women and Moral Theory*, p. 25.

⁶³Noddings, Nel. *Caring: A Feminine Approach to Ethics and Moral Education*. Berkeley: University of California Press, 1984.

⁶⁴*Ibid.*, p. 69.

⁶⁵*Ibid.*, p. 86.

rightness or wrongness of an act toward the cared-for is determined by "how faithfully it was rooted in caring -- that is, in a genuine response to the perceived needs of the [other]."⁶⁶

The imperative to care arises from our natural inclination to care, which resides in our memories of being cared for as infants. In women, these memories of being cared for are reinforced by child bearing. In cases where natural caring does not suffice, we then act through "ethical caring," in which our desire to preserve ourselves as one-who-cares impels us:

I care about myself as one-caring and, although I do not naturally care for the person who has asked something of me--at least not at this moment--I feel the genuine moral sentiment, the "I ought," that sensibility to which I have committed myself.⁶⁷

Other features of Noddings's account will be encountered in later chapters, as her ideals are considered in regard to specific cases. It is sufficient for now to have reviewed her main tenets: acts are moral to the extent that they are rooted in caring, a mutual relationship between one-caring and the cared-for that springs from natural inclinations and our memories of maternal-child caring, and that is limited to proximal encounters within chains of relations.

One commentator on the application of Noddings's work to professional ethics is Barbara Walton.⁶⁸ She first considered whether Noddings was primarily espousing a virtue ethics that fits well with other virtue theories. Such a view is plausible, according to Walton, except that "virtues exist without necessarily being acted upon. An ethics of virtue is an ethics of being, and prescribes not so much what I should do as who I should be."⁶⁹ Walton

⁶⁶*Ibid.*, p. 53.

⁶⁷*Ibid.*, p. 82.

⁶⁸Walton, Barbara J. *The Ethical Dimensions of Human Service: Nel Noddings and Caring*. Ed.D. dissertation, New York: Teachers College, Columbia University, 1989.

⁶⁹*Ibid.*, p. 97.

concluded that there is strong congruence between Noddings's views and those of John Dewey, if not in Dewey's subordination of feeling to reason, then in their instrumental approaches:

Dewey and Noddings both make certain assumptions about the kind of community that is necessary to support the moral life ... They would both create institutions which socialize children according to a reflectively caring ideal.⁷⁰

Walton was concerned about Noddings's distinction between caring-for and caring-about, which mirrors Sommers's rejection of sentimentalism as incomplete in describing institutional and societal obligations. However, she surmised, in part, that Noddings provided a "suggestive way of beginning to restore a neglected ethical dimension to service. Caring dialogue, together with respect for persons, provides the underpinning for a helping professional relationship."⁷¹ As did Walton, I see in Noddings's work a fundamental commitment to respect for persons, a concept in itself subject to further useful delineation by explicatory principles such as beneficence, non-maleficence, fidelity, and so on. I also see a description of caring as a way of approaching the other that is not necessarily evoked by the justice tradition alone.

In the concluding chapter of *The Abuse of Casuistry*, Jonsen and Toulmin recounted the story of the theologian who summarized, at the end of a lifetime of writings, the essentials of Christian ethics with "a single sentence from St Augustine, *Ama, et fac quod vis* -- i.e., 'Love, and do what you will.'"⁷² Understanding the need to deal with students from the perspective espoused by Noddings is, on this view, a precondition for professors to do the right thing. It is difficult, however, to see that a fuller understanding of how to achieve the right does not

⁷⁰*Ibid.*, pp. 113-114.

⁷¹*Ibid.*, p. 147.

⁷²Jonsen, Albert R. and Stephen Toulmin. *The Abuse of Casuistry*, p. 342.

depend on comprehension of principles. As Jonsen and Toulmin concluded, "the practical task is to apply general moral rules, and other ethical considerations, to new and more complex sets of circumstances, in ways that respect these human needs."⁷³

Roles in Ethics

I conclude from the foregoing that the relationship between professor and student is a special one that fits within the domain of what Jonsen and Toulmin viewed as being ignored by an ethics of strangers, and encompassed by the chains of relations for which Noddings prescribed an ethic of caring. Such relationships meet the two conditions Sommers thought to constitute a "presumption of a special positive obligation:"

(1) In a given social arrangement (or practice), there is a specific interaction or transaction ... such as promising and being promised, nurturing and being nurtured, befriending and being befriended. (2) The interaction in that context gives rise to certain conventional expectations ...⁷⁴

How these expectations arise for institutionalized relationships is another topic to which an appeal will be made to the literature. In particular, Dorothy Emmet's treatise on the relationship of sociology to philosophy⁷⁵ is instructive, and will form the basis of the approach taken in Chapter III. Emmet indicated that societally-acknowledged professional roles form the basis for the expectations by which a profession's ethical performance is judged.

Emmet listed several levels of formalizations of ethical imperatives, including: legal sanctions; professional ethics formalized by a disciplinary body; less formalized ethics where there is no disciplinary body; rules related to a recognized status, such as parenthood; and

⁷³*Ibid.*, p. 343.

⁷⁴Sommers, Christina Hoff. "Filial Morality," p. 75.

⁷⁵Emmet, Dorothy. *Rules, Roles and Relations*. New York: St Martin's Press, 1966.

levels where rules are less well defined.⁷⁶ The ethics related to the professoriate appear to fall in the third classification, and are related to a definable professional status.

Following Emmet's lead, I shall examine the roles that can be ascribed to the professoriate based on published descriptions of the academic profession, and on claims made by the professoriate generally. Legitimate expectations arising from these roles will then form the basis for outlining a list of potential principles to be evaluated against cases. This approach seems justified by the literature reviewed above.

⁷⁶*Ibid.*, pp. 167-168.

Chapter II

ETHICS IN ACADEMIA: A LITERATURE REVIEW

Introduction

The literature relevant to this dissertation falls into four major categories: (1) philosophical discussions of applied ethical theory and methods of ethical inquiry, which were reviewed in Chapter I; (2) theory regarding the nature and structure of professions, and of the academic profession in particular; (3) literature proposing various models for ethical behavior of professors; and (4) reports and discussions of cases that describe and/or analyze ethical dilemmas that face professors. Each of the following sections reviews and discusses, respectively, the latter three of these divisions of the literature.

The Nature of the Academic Profession

The activities, objectives, and roles of academics in the United States have been described in the literature according to three separate eras: pre-Civil War, post-Civil War to World War I, and post-World War I. The first of these periods was characterized by small institutions with mostly religious sponsorship, whose ethical goal was the creation of morally responsible young men. The second period was characterized by increased institutional size and complexity, and the adaptation of the German university model to American circumstances. Professionalization of the academy proceeded apace with growing specialization. The last period saw growth in the importance of research, ascendancy of sciences in the curriculum, growth of educational bureaucracies, and, particularly following World War II, the rise of the multiversity to the pinnacle of a hierarchy of institutional types. The literature on this topic is voluminous; I have been selective in reviewing the following exemplars for each period.

The Antebellum Era

During the colonial phase of the pre-Civil War period, nine colleges¹ were established in North America on the model of the English college,² beginning, of course, with Harvard in 1636.

¹Specifically, their modern descendants are Harvard University (1636); the College of William and Mary (1693); Yale University (1701); the University of Pennsylvania (the College of Philadelphia, 1740); Princeton University (1746); Columbia University (King's College, 1754); Brown University

Although two were non-sectarian (King's College and the College of Philadelphia),³ all were presided over by clergy, and shared with their British predecessors the aims of preparing gentlemen for a life as moral leaders of the community.⁴ As Yale students were warned by their college's president in 1743, "The great End of all your Studies is to obtain the Clearest Conceptions of Divine Things and to lead you to a Saving Knowledge of God in his Son Jesus Christ."⁵

British and continental models of higher learning were more adapted than adopted in the New World, establishing a persistent pattern of American academic peculiarity. Although entry into the clergy was conditioned upon higher education, training of other professions in America largely escaped the influence of the college and was accomplished by apprenticeship. The paucity of students (annual graduation rates circa 1800 were 42 at Harvard, 15 at Columbia, and 23 at Princeton⁶) created a penury which, added to the isolation from England and the low population

(1764); Rutgers, the State University of New Jersey (Queen's College, 1766); and Dartmouth College (1769).

²The influence on American academics of Scottish universities and French Huguenot academies, and also of dissenting Calvinist academies in Britain after 1662 is noted by Frederick Rudolph, *Curriculum: A History of the American Undergraduate Course of Study Since 1636*, San Francisco: Jossey-Bass, 1977, p. 26. Dutch influence, beginning with the founding of Queen's College in 1766, has been noted by others to include both the concept of a lay board and early ideas of academic freedom; see Clark Kerr, *The Uses of the University, 3rd Ed.*, Cambridge: Harvard University Press, 1982, p. 25.

³Meyer, Adolphe E. *An Educational History of the Western World, 2nd Ed.* New York: McGraw-Hill, 1972, pp. 217, 222.

⁴Histories of the moral aims of British and American colleges in the peri-revolutionary period are found in James Steven Hewitt, *Oaks of Righteousness: Formation of Character in British Higher Education, 1800 to 1850*, Ph.D. Dissertation, University of Massachusetts, 1980; and James Doyle Casteel, *Professors and Applied Ethics: Higher Education in a Revolutionary Era, 1750-1800*, Ph.D. Dissertation, George Peabody College for Teachers, 1964.

⁵Rudolph, Frederick. *Curriculum*, p. 27. Rudolph's more widely known history, *The American College and University*, and his labor of love, *Mark Hopkins and the Log*, also provide insight into this period. However, *Curriculum* is more useful here, given the obvious nexus among teachers, students, and the course of study.

⁶Wilshire, Bruce. *The Moral Collapse of the University: Professionalism, Purity, and Alienation*. Albany: State University of New York Press, 1990, p. 61.

density in the colonies, forced colonial education to rely on few and poorly qualified faculty, and to adopt a pedagogy based on groups rather than individual students.⁷

Academic standards for both faculty and students were low, and were kept low by a proliferation of institutions following the establishment of the United States. Sixteen new institutions joined the nine colonial colleges by 1800, and 44 additional colleges were chartered between 1800 and 1830.⁸ Among these three score or so colleges were divided the 5,400 young men enrolled in higher education in 1830;⁹ as an example, about 120 students were enrolled at Williams College in the 1830s.¹⁰ Even prior to the Morrill Act in 1862, 21 states had established colleges or universities that added to the private institutions already in existence.¹¹ During the antebellum period, as a result, one could not really identify an academic career in American colleges, let alone a profession.

Although in the U.S. students moved as classes through their four (sometimes three) college years, as opposed to their British counterparts who were more or less individually instructed and stood for exams when ready, the British tutorial system was followed in America. Yale did not, for example, appoint its first professor until 1755, and the model of the president doing most of the teaching with the assistance of tutors, themselves only recent graduates of the college, persisted at smaller schools well into the early 19th century. In 1750, there were but 10

⁷Rudolph, Frederick. *Curriculum*, pp. 28-29.

⁸*Ibid.*, p. 60.

⁹*Ibid.*, p. 61.

¹⁰Rudolph, Frederick. *Mark Hopkins and the Log: Williams College, 1836-1872*. New Haven: Yale University Press, 1956, p. 215.

¹¹Metzger, Walter P. *Academic Freedom in the Age of the University*. New York: Columbia University Press (Columbia Paperback Edition), 1961, p. 24.

professors in American higher education (although this had increased to 105 by the turn of the century).¹²

"In the early nineteenth-century college, the professor had often been a clergyman and, sometimes, a failed clergyman. He was usually assisted in his work by young tutors who looked upon their positions as way stations to a more rewarding career beyond the college."¹³ Both professors and tutors supervised (and often lived in) dormitories, heard recitations, and assumed disciplinary responsibilities. They also were responsible for the moral and intellectual development of their students, who were placed in their care *in loco parentis*. The early professors were distinguished from tutors primarily by virtue of the "permanence" of their position.¹⁴ However, the occupation of professor was only infrequently the sole or preferred career of its holder; most considered themselves primarily practitioners of one of the professions (particularly the ministry or medicine).¹⁵

It can hardly be said that in the antebellum period much in the way of an "academic profession" existed, although the groundwork for an "academic career" is thought to have been laid during the early 1800s.¹⁶ Haber's account of the power and distinction of these men suggests that the academic profession's "quest for authority and honor" was only in its incipiency:

A few professors gained reputations for saintliness and erudition, and even won some independence and power, but most were hardly illustrious and stood

¹²Finkelstein, Martin J. *The American Academic Profession*. Columbus: Ohio State University Press, 1984, p. 9.

¹³Haber, Samuel. *The Quest for Authority and Honor in the American Professions, 1750 - 1900*. Chicago: University of Chicago Press, 1991, p. 277.

¹⁴Finkelstein, Martin J. *The American Academic Profession*, p. 10.

¹⁵*Ibid.*, p. 11. A similar nature of the professoriate existed contemporaneously in Britain: "It was one of the grievances laid before the Royal Commissioners on Cambridge in 1852 that college teaching was 'only a temporary employment during a few years of early life, and not a definite or acknowledged career.'" Sir Eric Ashby, "The Academic Profession," *Minerva* 8(1):90-99, 1970, p. 91.

¹⁶Finkelstein, Martin J. *The American Academic Profession*, pp. 9-18.

diffidently if not obsequiously before the board of trustees and the college presidents. The stereotype of the professor as a milksop, as the embodiment of ineptitude and fecklessness in the world of men, stems from the early nineteenth century.¹⁷

For most faculty members, their objective remained largely that of the founding faculty at Yale: to develop Christian gentlemen "fitted for Publick employment both in Church and Civil State."¹⁸ Their relationship to their charges arose from their ministerial objectives and their delegated parental authority.

Important changes arose, however, during the revolutionary era. Enlightenment notions had begun to sunder reliance on divine law in favor of reason and observation, and natural science and mathematics were gaining currency in the curriculum. If not as disciplines, mathematics, chemistry, geography, and natural history began to emerge as subject areas from the penumbra of natural philosophy. Higher learning in America was not yet secular, but

The God who inhabited Dunster's Harvard [in 1636] was a righteous and wrathful God; the God who inhabited Princeton in 1764 was the creator and source of all of nature's wonders. The curriculum had shifted from explaining the ways of God to exploring the ways of man.¹⁹

Also largely gone from the curriculum by the turn of the century was the use of Latin in instruction in most colleges; texts in English were becoming available as was instruction in French and other modern languages. Disputation "had all but disappeared."²⁰

Several harbingers of change deserve mention. The first is the appointment of George Ticknor to a professorship of modern language at Harvard in 1817. Not only did this mark the

¹⁷Haber, Samuel. *The Quest for Authority and Honor*, p. 277.

¹⁸Rudolph, Frederick. *Curriculum*, p. 27.

¹⁹*Ibid.*, p. 53.

²⁰*Ibid.*

arrival of modern languages as a fit subject, and signal the beginning of the end of the dominance of Latin and Greek, but Ticknor had gone to Germany to study and to specialize. He brought back to the American academic world the notion of specialization, and exposure to the German academic model.

Based on his experience in Germany, Ticknor pressed for, and saw temporarily enacted, a series of reforms at Harvard in 1825, including elective courses and the creation of "separate departments ... arranged as to embrace ... studies of an analogous and connected nature'... with the professors in charge of each department possessed with authority to nominate appointees and to supervise and control instruction."²¹ Changes at Harvard did not, on the record available, include major revisions in the supervision of students' lives. As noted below, the doctrine of *in loco parentis* was retained in America though it was never a feature of the German system.²²

The second appointment of note was Asa Gray's 1842 engagement as the first professor of botany in the U.S., again at Harvard. Gray was, by account of his biography, greatly involved in laboratory and expeditionary work, and only had limited teaching duties. Obtaining similar perquisites was Gray's colleague, history professor Jared Sparks, who demanded that he teach only four months of the year.²³ These men appear to be among the earliest professors for whom research and scholarship overshadowed teaching.

The creation of departments, experimentation with electives, and the appointment of professors with a role that included scholarship as well as instruction served to presage the university movement that was to come. Other important precursors were the founding of the University of Virginia in 1819 in accordance with Thomas Jefferson's ambitious and visionary

²¹ *Ibid.*, p. 77.

²² See, *infra*, pp. 43 ff.

²³ Rudolph, Frederick. *Curriculum*, p. 79; regarding Gray, see also A. Hunter Dupree, *Asa Gray, 1810-1888*, Cambridge: Belknap Press of Harvard University Press, 1959.

design, and the opening of the University of the City of New York as a graduate school only.²⁴ Finally, the successes in curricular diversity at Union College under Eliphalet Nott alerted the academic world to "the shift that had been taking place in the way young men looked at themselves: Once they had asked, 'How can I be saved?' Now they asked, 'How can I be successful?'"²⁵

Civil War to World War I

The period following the Civil War is generally recognized as a period of remarkable growth in the number and complexity of academic institutions. Between 1860 and 1870, 175 new institutions of higher learning were chartered in the United States.²⁶ As noted above, a great deal of change took place in the first half of the 19th century. Finkelstein cited the period from 1820 to 1880 as the time during which the academic career evolved.²⁷ Metzger questioned the view that little change took place in the antebellum colleges. Writers supporting this interpretation were prominent shortly after the Civil War, and Metzger believed that their perspective "from the bridge of the late nineteenth century was a too foreshortened one."²⁸ Metzger differentiated the "antebellum" colleges by age, and found that

Only the 136 youngest colleges (those ... founded after 1830 ...) had failed as a group to compile a significant record of diversification [of curriculum]. But some of these infants and adolescents in 1860 had a future of curriculum expansion

²⁴Rudolph, Frederick. *Curriculum*, pp. 80-82.

²⁵*Ibid.*, pp. 85-87.

²⁶*Ibid.*, p. 60.

²⁷Finkelstein, Martin J. *The American Academic Profession*, pp. 19-24.

²⁸Metzger, Walter P. "The Academic Profession in the United States," in Burton Clark (ed.), *The Academic Profession: National, Disciplinary, and Institutional Settings*, Berkeley: University of California Press, 1987, p. 127.

before them which would make them the equal of their elders but which could not be credited to their antebellum accounts.²⁹

Thus, the four decades following the Civil War comprised a period of "substantive growth" in which the seeds planted earlier by the Enlightenment reached full flower in the growth of universities, land-grant colleges, and modern liberal arts colleges.³⁰ Curricular growth, changes in the professoriate, and clear evidence of the German influence on American academia also characterized this period.

Curricular expansion, according to Metzger, proceeded by processes of *subject parturition*, *program affiliation*, *subject dignification*, and *subject dispersion*. Parturition meant the emergence of new subjects from old, largely as new knowledge within the old subject areas expanded to the point where specialties could form. Subjects were also spawned as students began to return to higher education for training in professions, such as medicine, whose knowledge base was expanding as a result of new science and technology. Colleges began to add (or absorb nearby free-standing schools) programs in these fields. The example of Harvard and other colleges in adding modern languages and belles lettres to the curriculum paved the way for incorporating subjects that were formerly considered "too practical or plebeian" for inclusion. Technology-based courses frequently achieved this "dignification" via the efforts of a persuasive patron, often an emerging profession or business interest. Finally, the "dispersion" of older subjects

²⁹*Ibid.*, pp. 127-128.

³⁰This efflorescence is important in that it represented a sustained growth in the size of the academic enterprise during the last half of the 19th century; it is well documented in numerous texts, succinctly so in Clark Kerr, *The Uses of the University*, pp. 9-18. That the growth contributed to the professionalization of higher education (see, for example, Bruce Wilshire, *The Moral Collapse of the University*, pp. 60-65) is also relevant, and will be picked up as a *fait accompli* in the section on the 20th century; but it is not essential to establishing the claims of the academic profession from which ethical obligations may be adduced, and won't be further elaborated in this section.

to new purviews expanded course offerings. History is a good example as it expanded to studies of formerly excluded times and cultures.³¹

The expansion of courses was associated with a great expansion of faculty who had specialized training in the associated fields. The last decades of the 19th century also saw the incipient professionalization of higher education, marked by secularization of the faculty, the growth of research as an institutional objective, and the development of academic specialty organizations that were aligned with academic disciplines within the university.

The fact of a secular faculty is best evidenced by the changing of the presidential guard: a lay president occupied the post at Harvard by 1869, and Princeton had similarly capitulated by 1902.³² The most significant watershed in the secularization of academia was surely the debate over Darwin's theory of evolution. The outcome of the debate was a new notion of the source of knowledge, the acknowledged stock-in-trade of the university. This new notion "upheld the claim that scientists were the exemplary men of knowledge ... [and] discounted the qualifications of the priest to control the domain of knowledge." The new paradigm "asserted that cultivation rather than consecration, accomplishments rather than observances, skill and method rather than piousness, accredited the man of knowledge. Not before the Darwinian controversy did scientists present so pre-emptive and imperious a claim to gnostic superiority."³³

The obvious implication of this paradigm was the need to demonstrate one's accomplishments, skill, and method through research and scholarship. Thus, Charles W. Eliot, entering the last decade of his Harvard presidency, could note in 1899 that "the appointment and promotion of professors at his institution depended as much on their 'success as investigators' as on their teaching prowess," whereas his assumption speech thirty years earlier had asserted that

³¹Metzger, Walter P. "The Academic Profession in the United States", *passim*; see also Frederick Rudolph, *Curriculum*, p. 156.

³²Metzger, Walter P. "The Academic Profession in the United States", p. 135.

³³Metzger, Walter P. *Academic Freedom*, p. 76.

"regular and assiduous class teaching" must be the prime duty of professors.³⁴ The research university, arising from changes in older universities that emulated The Johns Hopkins University after its founding in 1876, although neither today nor then the modal example of American higher education, became its cynosure.

Finally, the period saw the founding of numerous academic specialty organizations, within whose auspices professors could find recognition and certification of their cultivation of the arcana of a given discipline. Some 200 such societies organized themselves in the 1870s and 1880s.³⁵ The academic now became identified with the disciplines that transcended institutional boundaries, and dependent on the discipline for peer recognition and validation.³⁶ These associations also provided means for academic mobility, as they provided awareness of, and avenues of access to positions in other institutions.³⁷ The new form of external allegiance to a discipline set the stage for professionalization of faculty members within growing academic bureaucracies.

These bureaucracies developed and grew because of the emergence of universities based on the German model. This model provided not only structural antecedents, but a philosophical underpinning for a peculiarly American form of academic freedom. The establishment of the University of Berlin in 1809 under von Humboldt introduced an institution devoted to research and graduate education. Within its departments, each run as a fiefdom by a professor, the quest for new knowledge that the Germans called *Wissenschaft* was undertaken, along with the training of future researchers.

Metzger explained the special nature of *Wissenschaft*, and how it differed from its English translation, *science*:

³⁴Cited in Metzger, Walter P. "The Academic Profession in the United States," p. 135.

³⁵Wilshire, Bruce. *The Moral Collapse of the University*, p. 64; Frederick Rudolph, *Curriculum*, p. 156.

³⁶Metzger, Walter P. "The Academic Profession in the United States," p. 136.

³⁷Haber, Samuel. *The Quest for Honor and Authority*, p. 287.

The German term signified a dedicated, sanctified pursuit. It signified not merely the goal of rational understanding, but the goal of self-fulfillment; not merely the study of the "exact sciences," but of everything taught by the university; not the study of things for their ultimate utilities, but the morally imperative study of things for themselves and for their ultimate meanings.³⁸

Or, as Haber put it, "The spirit of the German university of the nineteenth century was *Wissenschaft*. That translated loosely into science, but more accurately, it denoted a disciplined study of all subjects for the purpose of discovery."³⁹

Wissenschaft as the end determined the means of the German academic endeavor. Humboldt's principles called for the conflation of teaching and research. Instruction, the transmission of knowledge, was the function of the professor whose principal task was the discovery of that knowledge, and could not be divorced therefrom. On the notion of flux -- "the truth in all its complexity continuously develops and must be revealed progressively through new experience and research"⁴⁰ -- the highest academic value was placed on encouraging and training students in research. To carry out this instruction, "only those who had established themselves as scholars ought to have the right to teach."⁴¹

The teaching-research enterprise was organized around uniquely German units of academic endeavor, the professorial chairs. Holders of these chairs were theoretically chosen only from academicians who had distinguished themselves through scholarship while teaching for some time without pay as *Privatdozenten*, and who had passed a special qualifying examination. Once ensconced, the professor ruled over specialized research units that were the entitlement of

³⁸Metzger, Walter P. *Academic Freedom*, p. 99.

³⁹Haber, Samuel. *The Quest for Honor and Authority*, p. 276.

⁴⁰*Ibid.*; see also Walter Metzger, *Academic Freedom*, p. 113.

⁴¹Mommsen, Wolfgang J. "The Academic Profession in the Federal Republic of Germany," in Burton R. Clark, *The Academic Profession*, p. 61.

the chair, and which took one of several forms appropriate to the professor's research: seminars, laboratories, institutes, or hospitals. Classically, the rule was "one man, one institute," and the solitary professor would be assisted by junior faculty and staff.⁴²

Students were associated with the institutes, and were taught in small numbers. They were seen as collaborators in the enterprise of *Wissenschaft*, and to be successful in learning, students were accorded significant freedom from

... administrative coercions in the learning situation. ... German students were free to roam from place to place, sampling academic wares; ... wherever they lighted, they were free to determine the choice and sequence of courses, and were responsible to no one for regular attendance; ... they were exempted from all tests save the final examination; ... they lived in private quarters and controlled their private lives.⁴³

This tradition, one of two essential conditions of German academic freedom, was *Lernfreiheit*; the academic freedom of the learner.

The other necessity was the corollary freedom of the professor: *Lehrfreiheit*. This included the untrammled privilege of the professor to "examine bodies of evidence and to report his findings in lecture or published form ...,"⁴⁴ the twin prerogatives to freely inquire and to freely teach. It also included, in a fashion which paralleled *Lernfreiheit*, freedom from administrative constraints: the professor had no required tutorial duties, was exempt from a required syllabus, and was entitled to lecture on any subject that interested him. "Academic freedom, as the Germans defined it, was not simply the right of professors to speak without fear or favor, but the atmosphere of consent that surrounded the whole process of research and instruction;" it was, moreover, "not

⁴²*Ibid.*, p. 65.

⁴³Metzger, Walter P. *Academic Freedom*, p. 112.

⁴⁴*Ibid.*, pp. 112-113.

... an inalienable endowment of all men...; rather, it was the distinctive prerogative of the academic profession, and the essential condition of all universities.⁴⁵

Conditions in Germany were non-identical with the American context. Perhaps most important was the relationship between the State and the German university. Unlike in America, the German government provided principal support for the university, and the impersonal and bureaucratic State was seen as the protector of the university from societal influences.⁴⁶ Also important, and resulting from this relationship between the State and the university, was the character of academic freedom as a special entitlement which operated *inside* the university, by which *Lehrfreiheit* found its proper balance in *Lernfreiheit*.

The content of instruction is not prescribed for the academic teacher; he is, as searcher as well as teacher, attached to no authority; he himself answers for his own instruction and is responsible to no one else. Opposite him is his student with complete freedom to accept or reject; he is not a pupil but has the privilege of the critic or the improver. There is only one aim for both: the truth; only one yardstick: the agreement of thought with reality and with no other outside authority.⁴⁷

Outside the university, however, "it was generally assumed that professors as civil servants were bound to be circumspect and loyal, and that participation in partisan politics spoiled the habits of scholarship."⁴⁸

The adaptation of the German model in American higher education diverged from its progenitor in three key ways. First, the freedom of the student was divorced from the freedom of the professor. Second, the vision of the student as "critic or improver" was not to overcome the

⁴⁵*Ibid.*, p. 113.

⁴⁶*Ibid.*, p. 111.

⁴⁷Paulsen, Friedrich. "Die akademische Lehrfreiheit und ihre Grenzen: eine Rede *pro domo*," *Preussische Jahrbücher* 91:515-31, (January-April) 1898. Translated and cited in Walter P. Metzger, *Academic Freedom*, p. 115.

⁴⁸Metzger, Walter P. *Academic Freedom*, p. 115.

more prevalent view of the student as a charge or ward placed in the hands of the university and under the supervision of the professor who stood *in loco parentis*. Finally, unlike his German peer, the American professor was to retain, in addition to his special privilege of *Lehrfreiheit*, his general citizenship rights of free speech.

The fate of *Lernfreiheit* in America was to provide the underpinning for the elective principle, but little more. Initially, student elective opportunities were the tangible result of the fertilization of American higher education by German ideas as American educators brought them back after their sojourns in Europe. Metzger cited an article in 1885 by Dean West of Princeton as equating academic freedom with "the elective system, scientific courses, [and] voluntary chapel attendance."⁴⁹ Similarly, Clark Kerr expressed the sequence and logic of the development of the modern curriculum as beginning with the notion of *Lernfreiheit* and then metamorphosing:

... If students were to be free to choose their courses[,] ... then professors were free to offer their wares[,] ... The elective system, however, came more to serve the professors than the students for whom it was first intended, for it meant that the curriculum was no longer controlled by educational policy[,] ... [F]reedom for the student to choose became freedom for the professor to invent; and the professor's love of specialization has become the student's hate of fragmentation. A kind of bizarre version of academic laissez-faire has emerged.⁵⁰

⁴⁹*Ibid.*, p. 123.

⁵⁰Kerr, Clark. *The Uses of the University*, pp. 14-15.

The failure to accord the American student (particularly the undergraduate) the same role as his (or rarely, her⁵¹) German counterpart was based in part on differences in their preparation. There was no universally-available American equivalent to the *Gymnasium*; private academies were not widely established and of great variety, and the high school movement would not even be legitimized by the Kalamazoo decision until the 1870s.⁵² Thus, American undergraduates were not perceived as having the requisites for fully independent study. Furthermore, whereas in Germany, completion of studies at the *Gymnasium* marked "arrival at man's estate,"⁵³ for those classes of American students who were to be privileged with a college education, it was college that was their preparation for life.

The perception of the undergraduate as more pupil than student restricted the application of *Lehrfreiheit* in the American classroom (although its application to research and discourse among academicians pretty much paralleled the German notions). The American professor was to be a neutral reporter of objective knowledge, and was limited in the classroom to his field of competence; the classroom podium was not to be a platform for the promulgation of the professor's personal opinions. The academic community generally was in accord that

... college students were in constant danger of mental seduction by their teachers.

The old fear that students were easy prey to heretical doctrine became the new

⁵¹Some state-supported institutions in the West and a few special women's colleges were admitting women occasionally prior to the Civil War, but the major change in the East would wait until the 1870s with Cornell's implementation of coeducational admission. Notable new institutions admitting women only were established at about this time: Vassar in 1860, and Smith and Wellesley in 1875. See Frederick Rudolph, *Curriculum*, p. 124. Strictly speaking, American women in these colleges had no "German counterparts;" German women were not admitted into higher education until after the turn of the 20th century. See Adolphe Meyer, *An Educational History of the Western World*, pp. 283-285, 415-417.

⁵²Meyer, Adolphe E. *An Educational History of the Western World*, pp. 400-402.

⁵³Metzger, Walter P. *Academic Freedom*, p. 113.

fear that students had but fragile defenses against subtle insinuation of "propaganda."⁵⁴

At the same time, however, the protection of the professor's political utterances *outside* the classroom were thought to be subject to the same First Amendment protections as the speech of other citizens. In some ways, the *tenured* American professor was more protected against retaliation than his non-academic fellow citizens, since tenure was thought to be inviolable in this regard.⁵⁵

In 1915, this model of academic freedom found its formal expression in the *General Report of the Committee on Academic Freedom and Academic Tenure* presented at the annual meeting of the American Association of University Professors.⁵⁶ It limited its discussion to the academic freedom of the teacher, which embodies freedom of research, freedom of instruction, and freedom of speech and action outside the university.⁵⁷ Academic freedom so described must be granted by society because it is indispensable to the very functioning of the university. First, the modern university is the seat of research, and the first requisite for research is "complete and unlimited freedom to pursue inquiry and publish its results. Such freedom is the breath in the nostrils of all scientific activity."⁵⁸ Second, in the modern world, the adequacy of instruction is founded on the intellectual integrity of the teacher:

⁵⁴*Ibid.*, p. 128.

⁵⁵*Ibid.*, pp. 130-132. Although the concept that the professor retained his freedom of speech and should not be disciplined nor his position threatened for exercising it was recognized by the turn of the 20th century, it remained an unsettled matter in law until the 1950s; see *Sweezy v. New Hampshire*, 354 U.S. 234 (1957).

⁵⁶AAUP. "General Report of the Committee on Academic Freedom and Academic Tenure," *Bulletin of the American Association of University Professors* 1(1):17-43, (December) 1915. [Cited hereafter as "Report of Committee A, 1915"] An excellent summary of this document is found in Walter P. Metzger, *Academic Freedom*, pp. 133-138.

⁵⁷*Ibid.*, p. 20.

⁵⁸*Ibid.*, p. 28.

... if the student has reason to believe that the instructor is not true to himself, the virtue of the instruction as an educative force is incalculably diminished. There must be in the mind of the teacher no mental reservation. He must give the student the best of what he has and what he is.⁵⁹

The report also relied on the role of the professoriate in providing expert opinions to public policy makers, and the need for these opinions to be unimpeachably free from influence by special interests.⁶⁰

Academic freedom was not seen as unlimited. First, the professor enjoys what Russell Kirk has called the "benefit of clerisy"⁶¹ as long as the conclusions he has freedom to expound are based in competency, that is, "... gained by a scholar's method and held in a scholar's spirit; ... the fruits of competent and patient and sincere inquiry."⁶² Also, within the classroom, the professor must be

... of fair and judicial mind; ... he should, above all, remember that his business is not to provide his students with ready-made conclusions but to train them to think for themselves...⁶³

This latter standard of appropriate dealing with controversial subject matter in the classroom reflected the continuing sense in American higher education that the undergraduate student remained less than fully mature.

... especially in the first two years of the course, the student's character is not yet fully formed, his mind is still relatively immature. ... [The instructor must not take] advantage of the student's immaturity by indoctrinating him with the teacher's own

⁵⁹*Ibid.*

⁶⁰*Ibid.*, pp. 28-29.

⁶¹Kirk, Russell. *Academic Freedom: An Essay in Definition*. Chicago: Henry Regnery, 1955, p. 114.

⁶²AAUP, Report of Committee A, 1915, p. 33.

⁶³*Ibid.*, pp. 33-34.

opinions before the student has had an opportunity fairly to examine other opinions ... and before he has sufficient ... ripeness of judgment ...⁶⁴

Inherent in this portion of the report are some notions of an ethic regarding the professor's relationship with his students. It was not, however, a special relationship, but rather was consistent with the *in loco parentis* doctrine, and was ill-defined.

John Dewey, the AAUP's founding president, was quite interested in making the primary work of the AAUP the establishment of professional standards, not that of targeting infringements of academic freedom.⁶⁵ Dewey declined the chairmanship of Committee A (on academic freedom) in favor of heading Committee B (on professional ethics), reasoning that academic freedom was accorded to the profession only to the extent that it was justified by the academic responsibilities of professors that it would protect.⁶⁶

By the beginning of World War I, the American professoriate had achieved significant steps toward professionalization, and had codified the most important underpinning to its professional prerogatives. Professors had laid claim to authority in research and teaching, and if their role in governance was yet to be established, they had at least found a new image based on presumed expertise. As Haber summarized the outcome,

... as the elective system--as well as the new ideas of higher education that found expression in that system--spread rapidly through American universities and colleges, the traditional view of college instructors was supplemented by a new image of the professor, who now assumed a position much closer to that of an expert. When many important truths could no longer be persuasively described as fixed, clear, or in any way self-evident but rather appeared to be increasingly

⁶⁴*Ibid.*, p. 35.

⁶⁵See Finkelstein, Martin J. *The American Academic Profession*, p. 25, and Walter P. Metzger, *Academic Freedom*, p. 204.

⁶⁶Dill, David D. "Introduction [to the Special Issue on Ethics and the Academic Profession]," *The Journal of Higher Education* 53(3):243-255, 1982.

impermanent, complex, and even obscure, then the professor, who was the investigator of changing truth (or was at least fully informed of the results of such investigations) acquired an exclusive or even a monopoly position in a field of knowledge from which he could command attention and intellectual deference.

* * *

As a result, the professor transformed independence to autonomy. This set him apart, somewhat, from the self-employed professionals, for the professor's independence was exercised from a position of subordination. His independence did not mean complete freedom from external control but rather that the most essential commands that he obeyed he himself should give. ... He would be largely self-directed and, at the same time, responsible. He would be sovereign and, at the same time, subject. This was the source of the dignity that was associated with the burgeoning profession of the professoriate.⁶⁷

The professoriate would build on these assumptions in the ensuing half-century -- in conjunction with significant changes in presumptions about the efficacy of higher education, in technology, in the role of government, and in the academic marketplace -- to obtain two additional accoutrements of the current academic profession: recognition of tenure and a significant role in institutional governance.

World War I to Present

In the same sense that ontogeny is said to recapitulate phylogeny, the essence of the rise of the modern research university, and the growth of the faculty profession, might well be captured in the career of Robert A. Millikan, as described in a 1979 essay by Daniel Kevles.⁶⁸ Born in 1868, Millikan studied classics at Oberlin College, and was persuaded by his Greek professor to stay on

⁶⁷Haber, Samuel. *The Quest for Authority and Honor in the American Professions*, pp. 292-293.

⁶⁸Kevles, Daniel J. "Robert A. Millikan," in Owen Gingerich (ed.), *Scientific Genius and Creativity: Readings from Scientific American*, New York: W. H. Freeman and Company, 1987, pp. 86-94.

after graduation and teach physics at Oberlin's preparatory school ("Anyone who can do well in my Greek can teach physics."). His interest in science piqued, Millikan went on to Columbia where he earned a Ph.D. in physics, and studied for a year afterwards in Europe with Max Planck and others.

Millikan joined the faculty at Chicago in 1896, taught physics and co-authored a number of physics texts and manuals, including an introductory textbook that became a best-seller. Rewards at Chicago favored research, however, and Millikan put aside his textbook writing and concentrated on the laboratory, where, in 1913, he carried out the experiment that was to make him famous: the determination of the charge on the electron. During World War I, he served as vice-chairman of the National Research Council (NRC) in the National Academy of Sciences (NAS), the NRC being newly established to help bring university science to the country's defense. He simultaneously served in the Army Signal Corps. Through connections made during the war, he was invited to California to direct the physics laboratory and serve as chief executive of the newly-chartered California Institute of Technology. He received the Nobel Prize in physics in 1923 for his work on the electron charge. He stayed at Cal Tech for the rest of his productive research and administrative career, retiring from his executive's position in 1946, but working at the institute until his death in 1953.

Millikan was an accomplished publicist, especially for his own work and institution, but also for science generally. He was also important to the promotion of federal aid to academic research following World War I, even though he wanted it handled indirectly through the NAS, so as to avoid the "politicizing" of science. He fought a losing battle against establishment of agencies such as the National Science Foundation and the National Institutes of Health after World War II, for fear of excessive government involvement in or control of research, and also concern that scientists' esteem would be diminished if the public saw them as just another interest group lining up "behind pork-barrel science bills." As his biographer notes, Millikan was probably wrong that

private funding would be sufficient to support postwar academic science, but "few thoughtful scientists or academic administrators nowadays would find fault with Millikan for his fears."⁶⁹

The parallels between Millikan's career and the evolution of academia in America over the same period are several. The classics gave considerable way to the sciences. At the same time, natural philosophy gave way to physics and other sciences, and then to specialties within these sciences. Teachers became part- or full-time researchers, and many more than in the past became administrators. At the same time, small colleges evolved into universities and research centers. Finally, the predominantly private condition of higher education came to be highly dependent on government support, direct or indirect. And through it all was suffused a sustained growth in size and complexity.

In 1900, when Millikan was still early in his position at Chicago, American colleges enrolled fewer than a quarter-million students; while he was still working at Cal Tech just prior to his death, the number had increased to 2.7 million. Baccalaureate degrees awarded in 1950 were 15-fold greater than in 1900, master's degrees had increased by a factor of 37 over the turn of the century, and doctorates had grown to 17 times their number just 50 years before.⁷⁰ The variety of degrees had also grown; by 1960 over 2,400 different degrees had been awarded during the history of American higher education, and 1,620 were still in vogue. Of these, 108 were varieties of B.A. degrees and 426 were varieties of B.S. degrees.⁷¹

Participation in higher education also grew. Improved preparation through expansion of the nation's high schools, and easier access to higher education, combined with increased expectations for the value of a college education so that by 1970 nearly 7 million students, 40

⁶⁹*Ibid.*, p. 93.

⁷⁰Kirk, Russell. *Academic Freedom*, p. 81.

⁷¹Rudolph, Frederick. *Curriculum*, p. 9.

percent of college age citizens, were enrolled in higher education. Comparable participation rates earlier in the century were 4.8% in 1910, 12.1% in 1930, and 20% in 1950.⁷²

To accommodate this growth, American institutions of higher learning underwent a simultaneously sustained period of what Metzger calls "reactive growth." Whereas earlier growth prior to World War I was seen as "substantive," i.e., arising from expansion of subject matter and the growth of disciplines, subsequent growth was very largely in response to increase in demand.⁷³

Through the 1960s and after, institutions grew even more rapidly in both size and number, and there was a general conversion upwards in the complexity of institutions. By the 1970s, institutions could be classified into several categories: two-year colleges, liberal arts colleges, comprehensive colleges and universities, doctorate-granting universities, and research universities.⁷⁴ Throughout the post-war years (particularly since the 1950s), institutions formerly in the "lower" categories had been upgrading as they grew in size. At the upper echelon, the so-called "Research I" universities, the latter decades saw the development of the "multiversity," of which the University of California system is one of the largest exemplars. Writing in 1963, Kerr described it:

The University of California last year had operating expenditures ... of nearly half a billion dollars[;] ... a total employment of over 40,000 people[;] ... nearly 10,000 courses in its catalogues; some form of contact with nearly every industry, nearly every level of government, nearly every person in its region. ... Over 4,000 babies were born in its hospitals. It is the world's largest purveyor of white mice. It will soon have the world's largest primate colony. It will soon also have 100,000

⁷²Metzger, Walter P. "The Academic Profession in the United States," pp. 149-152.

⁷³*Ibid.*, p. 147.

⁷⁴*A Classification of Institutions of Higher Education: Revised Edition*. Berkeley: Carnegie Council on Policy Studies in Higher Education, 1976.

students -- 30,000 of them at the graduate level; yet much less than one third of its expenditures are directly related to teaching. ...⁷⁵

By 1985, the U.S. had approximately 90 research universities, and upwards of half were Research I institutions.

At the other end of the institutional pyramid emerged the community college, whose principal academic terrain consists of the first two post-secondary years of higher education. The idea that these years are distinct in character from the later college years might have been derived from the European tradition which extended high school for two years beyond the American counterpart, but the junior college (the community college's immediate progenitor) in the United States was spawned as much by the universities as by the secondary schools. McDowell cited pioneering efforts at the Universities of Michigan (1883), Chicago (1892), and California (1892).⁷⁶ Important concepts involved in the bifurcation of university work into an upper and lower division (or a "senior" and "junior" college) included declaration of majors after the sophomore year, acceptance of high school courses as satisfying some freshman requirements, creation of working relationships between universities and two-year postsecondary institutions, and a predecessor of the Associate in Arts degree (the "junior certificate").⁷⁷

In addition to the "transfer function" -- the preparation of students at the lower division for transfer to four-year colleges -- community colleges assumed other roles that may now overshadow their original purposes. Vocational training, community service, remedial education, and adult and continuing education are now seen as significant imperatives for community

⁷⁵Kerr, Clark. *The Uses of the University*, pp. 7-8.

⁷⁶McDowell, F.M. *The Junior College*, Department of the Interior Bulletin, 1919, No. 35. Washington, DC: Government Printing Office, pp. 10-15.

⁷⁷Much of this paragraph was first presented in William E. Fassett, "The University of Washington and the American System of Higher Education," June, 1989, an unpublished paper submitted as a requirement of coursework leading to candidacy for the Ph.D. at the University of Washington.

colleges. These roles have closely tied these colleges to their communities, and the "junior college" appellation is clearly inadequate to describe their position in the higher education firmament.⁷⁸

During the period of greatest growth in college enrollment, the public community colleges absorbed the lion's share of the new students. By 1980, public community colleges enrolled over four million students, 35 percent of the total student population, figures which are considerably greater than the corresponding 400,000 students and 11 percent of the total in 1960.⁷⁹

The 1985-86 Carnegie Foundation survey revealed the breakdown of institutions by Carnegie Classification that is summarized in Table 1.

Table 1. Characteristics of U.S. Higher Education Institutions⁸⁰

Category	No. Public	No. Private	Percent Public
Research I.....	30	22	57.7
Research II.....	27	13	32.5
Doctorate-Granting I.....	34	19	64.2
Doctorate-Granting II.....	18	10	64.3
Comprehensive I.....	223	100	61.9
Comprehensive II.....	86	47	64.7
Liberal Arts I.....	2	144	1.4
Liberal Arts II.....	30	545	5.2
Community & Jr.....	808	255	76.0
Totals.....	1,258	1,155	52.1

Many of these institutional types are uniquely American; the diversity of types is also an American singularity.

If Metzger is correct, this diversity is a response to the growth of the academic marketplace. It also reflects a lack of federal involvement in the chartering and financing of higher education. Because colleges and universities have thus been free to develop various institutional

⁷⁸Commission on the Future of the Community Colleges. *Building Communities -- A Vision for a New Century*. Washington, DC: American Association of Community and Junior Colleges, 1988.

⁷⁹Kerr, Clark. *The Uses of the University*, p. 154.

⁸⁰Carnegie Foundation for the Advancement of Teaching, *A Classification of Institutions of Higher Education*. Princeton, NJ: Carnegie Foundation for the Advancement of Teaching, 1987. This table and some of the accompanying text is reprinted, corrected, from William E. Fassett, "The University of Washington and the American System of Higher Education", p. 2.

forms in response to perceived local market opportunities, the resulting diversity and capacity have created access to higher education in America that is unprecedented in other industrialized nations.

How have the last 75 years of generally sustained growth⁸¹ affected the professoriate, and what is its present status? The answer to this question, particularly regarding professors' teaching functions, will set the stage for ensuing examination of academic roles and relations.

Two principal outcomes arising from the growth of the American academic enterprise, and periods of high demand for professors that were associated with phases of that growth, were general recognition of tenure as an important safeguard for academic freedom, and increased participation by the faculty in the governance of their institutions. Each of these developments can be fairly attributed in large part to efforts by the AAUP combined with fortuitous circumstances.

The 1915 Committee A Report suggested three practical goals to be accomplished to secure academic freedom: (1) the formation of judicial bodies within institutions, composed of faculty, to determine issues of academic freedom prior to dismissal or discipline of their colleagues; (2) to thereby "protect college executives and governing boards against unjust charges of infringement of academic freedom"; and (3) "to render the profession more attractive to men [*sic*] of high ability ... by insuring the dignity, the independence, and the reasonable security of tenure, of the professorial office."⁸² The AAUP offered the governing boards of institutions a valuable exchange at a time of growth and competition among institutions: tenure and increased self-governance in return for a steady supply of faculty and avoidance of unwanted controversy that might damage the reputation of institutions. Subsumed in this offer were the assumptions about the role of academic freedom discussed above; the expertise and credibility of the professor

⁸¹The post-World War II baby boom and its resulting tidal fluctuations in student supply certainly distorted higher education over the last 20 years, but the long-term pattern of growth appears to have been sustained.

⁸²AAUP. Report of Committee A, 1915, p. 40.

was the underpinning of institutional claims, and academic freedom was the underpinning of the professor's repute and competence.

Administrators were excluded from membership when the AAUP was founded; the corresponding organization of university administrators founded the same year as the AAUP was the Association of American Colleges (AAC).⁸³ Although initial response by the AAC's own Committee on Academic Freedom and Tenure to the AAUP report was hostile, particularly regarding increased faculty participation in governance ("No way has yet been found to play the 'cello or the harp and at the same time to direct the orchestra."⁸⁴), by 1922 the AAC had reversed its position and virtually adopted the AAUP's position as its own. Metzger believes that an account of the reasons for this turnabout must include cooperation between the organizations during World War I, and changes in the players on the AAC committee, as factors to be considered along with "the merits of the AAUP Report, which loomed as a massive contribution compared with the efforts of its critics."⁸⁵

The 1922 AAC report differed from the AAUP's in but few details. Financial exigency was suggested as a basis in addition to misfeasance whereby a tenured professor's employment might be terminated, and some due process specifications in the AAUP report were omitted. However, the general tone of the report and substantial acceptance of the principles espoused by the AAUP helped pave the way for a conference held in 1925 under the auspices of the American Council for Education (ACE). Attending the conference were the major organizations representing professors,

⁸³Metzger, Walter P. *Academic Freedom*, p. 209. Another organization, the Association of American Universities, was founded in 1900 and consisted of 23 selected research universities in 1916; see Logan Wilson, *American Academics: Then and Now*. New York: Oxford University Press, 1979, p. 213. Other institutional categories are represented by a plethora of associations; the American Association of State Colleges and Universities, the American Association of State Universities and Land-Grant Colleges, and the American Association of Community and Junior Colleges are all listed in the index to Logan's text.

⁸⁴Cited in Walter P. Metzger, *Academic Freedom*, p. 209.

⁸⁵*Ibid.*, p. 211.

administrators, and governing boards. As Metzger notes, with the adoption of the 1922 AAC report essentially unchanged, "A great bridge had been crossed."⁸⁶

Additional changes were adopted in 1940, resulting in the approach to tenure that predominates nationally today. The main features of tenure as enunciated in the statement are: (1) explicit expression of the terms and conditions of every academic appointment; (2) a probationary period not to exceed seven years following initial appointment at the level of instructor or above, with minimum notice of non-renewal of one year prior to the end of the period; (3) rights to academic freedom during the probationary period that are co-equal with those of tenured professors; (4) termination after tenure has been granted shall be only for cause, and is subject to due process requirements; and (5) termination because of financial exigency must be "demonstrably bona fide." The text of the 1940 statement is reprinted in Appendix A.

Finkelstein argued that increased faculty participation in institutional governance following World War I was another reflection of "increasing recognition of faculty as professionals." He cited the 1937 Report of AAUP's Committee T as the culmination of this growth and summarized "five overarching principles for faculty participation in institutional governance" contained in the report: faculty participation in the selection of administrators; in the formulation of educational policy; in the control of the educational process; in initial appointments to the faculty; and in promotion decisions.⁸⁷ Another summary of the faculty role, made famous by its appropriation for legal reasoning by Justice Frankfurter in the 1957 case of *Sweezy v. New Hampshire*, is that of Centlivres *et al.*:

⁸⁶*Ibid.*, p. 212. Included were AAUP, AAC, AAU, the American Association of University Women, the Association of Governing Boards, the Association of Land-Grant Colleges, the National Association of State Universities, and the Association of Urban Universities.

⁸⁷Finkelstein, Martin J. *The American Academic Profession*, p. 28.

... [The university shall] determine for itself on academic grounds, who may teach, what may be taught, how it shall be taught, and who may be admitted to study.⁸⁸

Nearly 25 years after the *Sweezy* decision, the Supreme Court again wrestled with the extent of academic governance in attempting to decide whether faculty at Yeshiva University were managerial employees and exempt from collective bargaining under the National Labor Relations Act. The issue of collective bargaining is of little importance here, but that the court was split, five to four, is: it illustrates the difficulty in essaying the nature of faculty governance and its parallel to management of non-academic institutions. Writing for the majority, Justice Powell clearly saw the faculty as having a central managerial role:

... the faculty of Yeshiva University exercise authority which in any other context unquestionably would be managerial. Their authority in academic matters is absolute. They decide what courses will be offered, when they will be scheduled, and to whom they will be taught. They effectively decide which students will be admitted, retained, and graduated. On occasion their views have determined the size of the student body, the tuition to be charged, and the location of a school. ... To the extent the industrial analogy applies, the faculty determines within each school the product to be produced, the terms upon which it will be offered, and the customers who will be served.⁸⁹

Writing for the minority, Justice Brennan countered that

... The Court's perception of the Yeshiva faculty's status is distorted by the rose-colored lens through which it views the governance structure of the modern day university. ... the task of operating the university enterprise has been transferred

⁸⁸*Centlivres, A.v.d.S., et al. "The Open Universities of South Africa", cited in Felix Frankfurter, opinion of the court, Sweezy v. New Hampshire, 354 U.S. 234 (1957), p. 263.*

⁸⁹*National Labor Relations Board v. Yeshiva University and Yeshiva University Faculty Association v. Yeshiva University, Supreme Court of U.S. Nos. 78-857 and 78-997, Opinion of the Court, February 20, 1980, p. 13.*

from the faculty to an autonomous administration, which faces the same pressures to cut costs and increase efficiencies that confront any large industrial organization.⁹⁰

The difficulty the Court experienced in characterizing the nature and source of governance at Yeshiva University is not surprising to observers of American higher education. Within any institution, the formal structure may only at times reflect the actual relationships among the actors. Seen in cross section, some faculty members take a very active role in governance, and believe it important, while others in the same institution are barely involved.⁹¹ Seen longitudinally, the degree of faculty involvement will vary over time depending on the congruence between faculty and administration goals: the faculty often asserts its rights to governance not as a matter of principle but as a matter of specific disagreement with the present course of the institution.⁹²

For Kenneth Ruscio, the diversity in governance arrangements within and across institutions, as well as over time, is only one area in which the academic profession is anything but monolithic. The role of a given professor is related to the characteristics of the institution in which he or she works, and is also influenced by his or her discipline. These two influences engage in "a subtle, intricate interaction with many nuances ... as we move through the various disciplines and across many institutions... ." In a way somehow analogous to the expression of nature and nurture in a particular biological organism, the academic profession can be seen as an organism with a given "blueprint, the expression of which depends on the environment, with some traits and characteristics remaining forever latent and others fully revealing themselves." In biological terms, the blueprint is the genotype of the organism, the expression of traits the phenotype; and

⁹⁰*National Labor Relations Board v. Yeshiva University*, Supreme Court of U.S. No. 78-857, Dissent of Justice Brennan, February 20, 1980, pp. 11-12.

⁹¹Williams, Don, William Gore, Charles Broches, and Cynthia Lostoski. "One Faculty's Perception of Its Governance Role," *Journal of Higher Education* 58(6):629-657, (November/December) 1987.

⁹²Ruscio, Kenneth P. "Many Sectors, Many Professions," in Burton Clark, *The Academic Profession*, p. 351.

What distinguishes the American professoriat [*sic*] and makes it so complicated and intriguing is not its genotype (the academic profession everywhere organizes itself around areas of knowledge or disciplines) but its phenotype: American higher education is characterized by an array of extremely diverse institutional settings.⁹³

Is Ruscio warning us away from attempting to discern a common profession amid the profusion of "work styles, reference groups, objectives, organization of authority, and attitudes"⁹⁴ that constitutes the outward display of the academic enterprise? In one sense, yes. American academic institutions are "highly interactive with [their] constituencies." Diversity and fragmentation dominate the arrangements of American higher education, and the "resulting differences among the academic professoriat [*sic*] are very likely not simply small adjustments of a pervasive ethos to minor local variations; instead, they are significant phenomena that severely question the existence of a unified, integrated community of scholars."⁹⁵ On the other hand, "But for all these differences, the disciplines share a common ethos, a compensatory integrating mechanism."⁹⁶ Reviewing the plethora of literature on the academic profession,⁹⁷ Ruscio noted that research is a common factor at all institutions, in varying degrees, and that an interest in scholarship is expressed universally by

⁹³*Ibid.*, p. 331.

⁹⁴*Ibid.*, p. 333.

⁹⁵*Ibid.*, p. 338.

⁹⁶*Ibid.*, p. 363.

⁹⁷A listing of the "classics" in studies of the professoriate, not all of which are cited by Ruscio, would include: Logan Wilson, *The Academic Man and American Academics: Then and Now*, New York: Oxford University Press, 1942 and 1979; Theodore Caplow and Reece McGee, *The Academic Marketplace*, New York: Basic Books, 1958; E. C. Ladd, Jr. and Seymour Lipset, *Professors, Unions and American Higher Education*, Berkeley: Carnegie Commission on Higher Education, 1973; Donald Light, Jr., "Introduction: The Structure of the Academic Professions," *Sociology of Education* 47:2-28, (Winter) 1974; Oliver Fulton and Martin Trow, "Research Activity in American Higher Education," *Sociology of Education* 47:29-73, (Winter) 1974; Howard R. Bowen and Jack H. Schuster, *American Professors: A National Resource Imperiled*, New York: Oxford University Press, 1986; and Burton R. Clark, *The Academic Life: Small Worlds, Different Worlds*, Lawrenceville, NJ: Princeton University Press, 1987.

faculty. At the same time, teaching is valued, again in varying degrees, across all sectors of the profession.

Metzger disagreed with the majority of writers who, he wrote, "tend to agree that [academic] professionalism finds its major habitat not in the common room of the house of learning, but in its specialist wings and suites." Rather, he was willing to envision "the existence of two full-fledged, mutually supportive professions in the academic fold -- the knowledge-seeking professions of the disciplines ... and a free-standing teaching profession of the faculties, composed of all academic staffs."⁹⁸ Metzger also countered the notion that research must be the *sine qua non* which defines the academic profession. Agreeing with Metzger in many respects, I particularly find implications in his text that justify in part this particular work, so I shall quote him here somewhat extensively:

But there are good empirical and logical reasons why full professional faith and credit should be extended to [the profession of the faculties] as well as to [the knowledge-seeking professions]. The fact remains that while all or nearly all academics teach, only a quarter of them account for what may be deservedly called research, and only a tenth of them account for nine-tenths of all scientific and scholarly publication. And it remains a fact ... that academics do derive deep personal satisfaction from teaching well and are pained by student ratings and enrollments that tell them they do not. On its face, a universally shared activity fraught with emotional meaning for the participants is not markedly inferior to a narrowly engaged, albeit more highly regarded and rewarded, activity as a professional tie that binds. Nor is the body of academic teachers rendered a professional nullity by its haphazard approach to the science or art of teaching. No law of nature decrees that a profession must deploy knowledge strictly of its own creation or generate knowledge of a highly esoteric kind. Academic teachers

⁹⁸Metzger, Walter P. "The Academic Profession in the United States", pp. 162-163.

draw much of their classroom expertise from the knowledge funded by their specialties, and they also acquire a special lore about the workings of academic institutions and the norms of academic citizenship. To hold that they are too unknowing to constitute a true profession is to favor one of a number of tenable gnostic requirements, not to state an ineluctable truth.⁹⁹

For Ruscio, the common element in the academic profession is one enunciated by Edward

Shils:

The fundamental obligations of university teachers for teaching, research and academic citizenship are the same for all academics. All these activities are necessary for the university to perform its indispensable tasks for modern activities and modern intellectual culture and it falls to the individual academic to contribute to the best of his capacity to the performance of those tasks. Not all academics are equally endowed or equally inclined, for whatever reasons, to the activities needed to meet these obligations. ... Nevertheless to abstain from any of these totally and to show no respect for them is contrary to the obligations of an academic career.¹⁰⁰

In a sense, Shils is echoed by Ernest Boyer who, speaking of the undergraduate experience and noting the fact of less-than-universal participation in research by teachers of undergraduates, argued that "While not all professors are likely to publish with regularity, they, nonetheless, should be first-rate *scholars*."¹⁰¹

⁹⁹*Ibid.*, p. 163. Citations within the paragraph omitted.

¹⁰⁰Ruscio, Kenneth P. "Many Sectors, Many Professions", pp. 355-356, citing Edward Shils, *The Academic Ethic*, Chicago: University of Chicago Press, 1984, p. 104.

¹⁰¹Boyer, Ernest L. *College: The Undergraduate Experience in America*. New York: Harper & Row, 1987, p. 131. Boyer defined scholarship as "staying abreast of the profession, knowing the literature in one's field, and skillfully communicating such information to students."

In the next section, Shils will be seen to adumbrate an ethos of inquiry and the dissemination of the results thereof as the moral underpinning of the academy. Whether this approach provides an adequate framework for guiding a professor in his or her dealings with students remains, for now, an open question. However, it supports a central conviction of this dissertation: assumptions about the authority of the professor and the efficacy of higher education rest firmly on the claims of the professoriate to expertise in seeking knowledge and transmitting it to students.

Current Models of Ethical Behavior

I have attempted two undertakings in Chapter I and the previous section of this chapter. First, I reviewed the literature on professional ethics to lay out a method for developing a reasonably comprehensive model to guide ethical decision making in higher education. Next, I examined the history of American higher education to elucidate the development of professional prerogatives and protections for the professoriate. I contended that the claims which were made to achieve these perquisites (academic freedom, tenure, and participation in governance) gave rise to obligations. In this section, I will examine the literature that presents models of how professors can discharge these obligations, especially to their students.

Modern authors on the subject of academic ethics have viewed their topic through several general approaches. Six approaches shall be discussed here; I have labeled them Alethetropism; the Medical Ethics Model; the Fiduciary Relationship Model; the Power Disparity Model; Codification; and the Caring Perspective.

Alethetropism

When asked during my general examination what I thought might be the first principle of a professor's action, I initially replied, "Veracity." But I immediately realized that truth-telling was not the essence of such a first principle. Something more, involving the "creation of an atmosphere in

which truth is respected,"¹⁰² is what I had in mind. I shall use the term alethetropism¹⁰³ (alethe- from the Greek word for truth, plus -tropism, the tendency to turn or grow toward) to describe the drive to find the truth, and the need to instill this drive in others, that marks much of the professor's nature.

The need for such a term is illustrated by the difficulty which Burton Clark's subjects experienced in describing the essential value they thought the academic disciplines had in common. Among the phrases Clark reported were "knowledge,' 'information,' 'intellectual curiosity,' ..." and "Striving for new understanding. Wanting to excite and impart information to others." Closely associated to these phrases were various themes regarding intellectual honesty: "Are they truly giving us original information, are they truly teaching in a modern and effective way? Intellectual honesty."¹⁰⁴ Several other authors similarly describe a coda that could be called alethetropism as the central tenet of the academy.

Sir Eric Ashby approached the topic of an academic ethic in his 1969 lecture, "The Academic Profession." He concluded that the academic ethic must be embodied in notions of academic freedom, and the uses to which it is put: "... the fight for the concomitants of academic freedom -- security of tenure and control of standards -- was won half a century ago; but the uses to which academic freedom should be put have not been defined."¹⁰⁵ He argued that one use had been consistent: the dissemination of the results of research,

... not only without the fear that they will be suppressed because they challenge orthodoxy, but also with the assurance that if the ideas and discoveries stand up

¹⁰²This phrase was used in media coverage of the Senate confirmation hearings of CIA Director Gates.

¹⁰³This term was suggested (and coined, I believe) by Professor Albert Jonsen during one of our pre-dissertation discussions; I gratefully appropriate it for my own use. See also *alethiology*, the doctrine of truth, in *Oxford English Dictionary, 2nd Edition*, volume I, 1989, p. 308.

¹⁰⁴Clark, Burton R. *The Academic Life*, p. 132.

¹⁰⁵Ashby, Sir Eric. "The Academic Profession," p. 92.

to criticism, they will in fact become the new orthodoxy and displace the old. In the world of research there is no class hierarchy; pundits have no permanent standing; the whole fabric of learning is held together by a consensus of what constitutes sound scholarship. In this respect the academic profession does seem to have established unwritten, supranational, professional standards, which are independent of nationality, race, politics, and religion.¹⁰⁶

Ashby then recommended a second use of academic freedom, related to one's teaching duties, by which the professor instills in students a respect for truth.

... to use academic freedom for pastoral as well as for narrowly professional purposes; indeed, to include a moral content in university education ...

* * *

... not by indoctrinating students with a repertoire of moral principles -- that way danger lies -- but by asserting that the discipline of scholarship carries its own ethical values: reverence for truth, with the recognition, which generates humility, that all truth may be contaminated by error; equality, for any scholar, however junior, who advances knowledge has his place in the guild of learning; internationalism, for it is immaterial whether a scholar's theory is upset by one of his countrymen or by an enemy, by a black man or a yellow man, by a Christian or a Muslim -- the theory is upset all the same. ... what is valid for scholarship is valid for all rational decision-making. Arrogance, insincerity, prejudice, intolerance, failure to ascertain the facts: these are incompatible with intellectual health, whether in research, or politics, or commerce.¹⁰⁷

¹⁰⁶*ibid.*

¹⁰⁷*ibid.*, pp. 97-98.

For Ashby, it seems, it was almost an ethic of virtue: by adhering to the virtue of alethetropism will the professor quite naturally carry out his or her ethical responsibilities.¹⁰⁸

Ashby's address served to trigger the activities of a study group on academic ethics formed under the auspices of the International Council on the Future of the University. The editor of the report, Edward Shils, wrote that the academic ethic derived from an inherent commitment: "Universities have a distinctive task. It is the methodical discovery and the teaching of truths about serious and important things."¹⁰⁹ As did Ashby, Shils saw the creation of an atmosphere that favored the truth as the overarching principle of the academic profession, and the source of all academic duties:

It is exactly their concern that their statements, made in their teaching or formulated in their research, should be as true as possible, based on the most methodically gathered and analysed evidence, taking into account the state of knowledge in their own particular fields, that characterises the academic profession. ... The more specific obligations of the academic as such, as distinct from the obligations he shares with other human beings, all flow from his concern for truths about particular things and for the idea of truth in general. Just as if illness is a myth there is no point in having a medical profession, if rights are a myth there is no point in having lawyers, so if truth, objectivity and rational argument are myths there is no point in teaching and research and no point in taking any particular care in such more specific tasks as making academic appointments, giving expert advice, and so on.¹¹⁰

¹⁰⁸Ashby saw all members of the academic community, administrators, faculty, and students, as being engaged in an alethetropic pursuit: "all three ... work toward the same end; ... the preservation, advancement, and transmission of knowledge." *Masters and Scholars: Reflections on the Rights and Responsibilities of Students*, London: Oxford University Press, 1970, p. 4.

¹⁰⁹Shils, Edward (ed.). *The Academic Ethic*. Chicago: University of Chicago Press, 1983, p. 3.

¹¹⁰*Ibid.*, p. 4.

Shils also specifically described the duties of professors to students as arising from this ethic: "All the particular obligations of ... teachers to students ... derive their binding force fundamentally from their obligations to ... cultivate and propagate an active quest for truth as an ideal."¹¹¹

Others writing in this vein include Russell Kirk, for whom a Teacher's Oath, if developed, would "include a promise to adhere to the Truth, according to the light that is given to the teacher;"¹¹² and Robertson and Grant, who wished to strengthen the AAUP Statement on Professional Ethics by emphasizing the "primary aim of devotion to truth."¹¹³ Stephen Cahn discussed several ways in which academics fail to espouse this principle,¹¹⁴ and George Schurr distinguished the "academic professional" from the "professional academic" based on their orientation: "... we can tell the kind of professors by the kinds of ethics they profess: the academic professional by the intrinsic value of a truth to which he or she is committed, the professional academic by the extrinsic values of a specialization by which he or she makes a living."¹¹⁵

The principle of alethetropism, as I define it, serves well to distinguish the academic profession from others. While the physician may respect the truth, and desire to know the truth about a patient's condition or the cause thereof, it is not essential to his or her practice, and for therapy of many self-limiting illnesses that are treated symptomatically, is not particularly important. One likewise notes, without being necessarily invidious, that the attorney's interest in the truth concerning clients' guilt or innocence is often irrelevant to their defenses. Whether it can serve as a complete model for right behavior of professors remains an open question, which will await resolution until after the alternatives are considered.

¹¹¹*Ibid.*, p. 41.

¹¹²Kirk, Russell. *Academic Freedom*, p. 153.

¹¹³Robertson, Emily and Gerald Grant. "Teaching and Ethics," *Journal of Higher Education* 53(3):345-357, 1982, p. 355.

¹¹⁴Cahn, Stephen. *Saints and Scamps*.

¹¹⁵Schurr, George. "Academics, Ethics and Professionalism," *The Christian Century*, October 15, 1980, p. 972.

Several authors, who have not highlighted truth-seeking, have viewed the professorial role in relation to students as being quite similar to that of the physician and patient. Largely a contractarian view, the student as client is seen as seeking the professor's expertise in a relationship marked by superior knowledge on the one part and dependency on the other. Proponents of this view conflated teaching, medicine, nursing, and similar professions as "helping professions," and often emphasized the relative positions of the helper and the helped, noting, for example, that "equality does not characterize most aspects of the professional encounter."¹¹⁶ Based on these perceived commonalities, a previously enunciated model taken from medical ethics has been applied directly to academia. One group of authors relied on models with multiple principles, particularly that of Beauchamp and Childress, and espoused a general medical ethics model. Similar approaches, which developed an educational model by analogy to medicine, emphasized a fiduciary relationship, or viewed power relationships as critical. Each of these "medical analogy" approaches will be discussed in turn.

The Medical Ethics Model

Karen Kitchener combined Beauchamp's and Childress's four principles of beneficence, nonmaleficence, respect for autonomy, and justice with Paul Ramsey's principle of fidelity to create a model that she advocated for ethical decision making in counseling psychology¹¹⁷ and in student services.¹¹⁸ LuAnn Krager extended Kitchener's work by relating each of the five principles to specific work roles of student services administrators, i.e., as planner, resource manager, coordinator, staff developer, and evaluator.¹¹⁹ Citing her work, Brown and Krager

¹¹⁶Walton, Barbara J. *The Ethical Dimensions of Human Service*, p. 39.

¹¹⁷Kitchener, Karen S. "Intuition, Critical Evaluation and Ethical Principles."

¹¹⁸Kitchener, Karen Strohm. "Ethical Principles and Ethical Decisions in Student Affairs," in Harry J. Canon and Robert D. Brown (eds.), *Applied Ethics in Student Services, New Directions for Student Services No. 30*. San Francisco: Jossey-Bass, June, 1985, pp. 17-30.

¹¹⁹Krager, LuAnn. "A New Model for Defining Ethical Behavior," in Harry J. Cannon and Robert D. Brown (eds.), *Applied Ethics in Student Services*, pp. 31-48.

suggested the same model as a basis for dealing with ethical issues in graduate schools, using the roles of advisor, instructor, curriculum planner, researcher, and mentor, and adding a discussion of reciprocal graduate student roles as advisee, student, member of a department, researcher, and mentee.¹²⁰

The five principles espoused by these authors (respectively, doing good, avoiding harm, respecting autonomy, fairness, and being faithful) are derived from general principles of human interaction, and will need to be examined later as candidates for effectiveness in dealing with academic quandaries.

Fiduciary Model

The fiduciary relationship, or one where the client reposes trust in the professional who is bound thereby to act in the client's interest, was seen by some writers as the core of the professional-client union. It is grounded in the possession by the professional of formal knowledge that the client does not possess, upon which decisions that affect the client must be based if they are to be efficacious in furthering the client's interests. It is distinguished from fidelity because of the reliance on purported special knowledge or ability that the client lacks, rather than on promise keeping and loyalty.¹²¹

Writers who apply the fiduciary model to education have done so while casting a wide net; in speaking of trust they have commingled several professions as exemplars. Robert Sokolowski, for example, wrote that the fiduciary relationship arises from natural needs; after suggesting that the physician-patient relationship is required by the existence of disease, he continued by noting that

¹²⁰Brown, Robert D. and LuAnn Krager. "Ethical Issues in Graduate Education: Faculty and Student Responsibilities," *Journal of Higher Education* 56(4):403-418, (July/August) 1985.

¹²¹Sokolowski, Robert. "The Fiduciary Relationship and the Nature of Professions," in Edmund Pellegrino, Robert Veatch, and John Langan (eds.), *Ethics, Trust and the Professions: Philosophical and Cultural Aspects*. Washington, DC: Georgetown University Press, 1991, p. 31.

The teaching profession depends on the fact that we can and must learn things, and that such learning can be assisted by others, who have become identified as members of a profession; but all the conventions, technology, and knowledge that empower the teaching professionals would immediately turn to worthless dust if the natural process of learning were to disappear.¹²²

Similarly, Pellegrino averred that "Trust in the helping professions -- medicine, law, ministry, and teaching -- has many features in common," and continued by using medicine as his prototype: "The medical relationship will serve to illustrate the way trust shapes the ethical relationships between patients and physicians, and by analogy the relationships between lawyers and clients, ministers and parishioners, and teachers and students."¹²³

If the fiduciary relationship is at the core of professionals' dealings with their clients, it may not take the same form in different professions. Gilbert Meilaender has written that at the base of the fiduciary relationship is a virtue that may be specific to a given profession, and "so integral to the office that failure [to display the virtue] 'must result in loss of office.'"¹²⁴ Credence is given to Meilaender's suggestion by the findings reported by Clark regarding professors' opinions concerning plagiarism:

In the eyes of researchers plagiarism is *the* crime. It is sufficient for full withdrawal of respect, even banishment to the Siberia of a lesser institution. You must not steal ideas, that is "unpardonable," even "analogous to murder," for you are doing violence to someone's professional identity.¹²⁵

¹²²*Ibid.*, p. 33.

¹²³Pellegrino, Edmund D. "Trust and Distrust in Professional Ethics," in Edmund Pellegrino *et al.*, *Ethics, Trust and the Professions*, p. 72.

¹²⁴Meilaender, Gilbert. "Are There Virtues Inherent in a Profession?," in Edmund Pellegrino *et al.*, *Ethics, Trust and the Professions*, p. 147.

¹²⁵Clark, Burton R. *The Academic Life*, pp. 133-134.

The application of the fiduciary relationship to higher education was well described by Samuel Gorovitz: "The primary responsibility of professors is to educate their students. Given this, the student should be able to trust not only the faculty member's knowledge, but also the procedural fairness with which the professor conveys this knowledge and assesses student performance."¹²⁶ Even as Gorovitz indicated the appropriateness of this concept to education, however, he recognized an apparent limitation that prevents it from being a univocal basis for ethical action: a variety of conflicts arise in academia that prevent the professor from reliably assuming a fiduciary relationship with a student.¹²⁷

Power Disparity

Disparities of power are found in many professor-student relationships, and writers interested in dealing with this type of ethical conundrum often find reliance on the professor's professionalism an insufficient approach. Rather they may advocate procedural solutions to power disparities that cannot be overcome by appropriate empowerment of students. The underlying concern was expressed by Everett Wilson: "Power can be misused. It will be misused -- out of ignorance, sloth, prejudice, and, maybe, meanness."¹²⁸

For Wilson, the very disparity of power arises in ways that prevents the student from even detecting, let alone redressing, the imbalance. Wilson's answer in part was to change the structure of the relationship from a dyad to a triad, by introducing an external person into the relationship. For example, examinations, in his view, should be standardized and administered outside of the classroom. Structural or procedural safeguards not mentioned by Wilson that have arisen in higher

¹²⁶Gorovitz, Samuel. "Professions, Professors, and Competing Obligations," in Edmund Pellegrino *et al.*, *Ethics, Trust and the Professions*, p. 179.

¹²⁷*Ibid.*, pp. 180-184; see also Robert M. Veatch, "Is Trust of Professionals a Coherent Concept?," in Edmund Pellegrino *et al.*, *Ethics, Trust and the Professions*, pp. 159-169.

¹²⁸Wilson, Everett K. "Power, Pretense, and Piggybacking: Some Ethical Issues in Teaching," *Journal of Higher Education* 53(3):268-281, 1982, p. 272.

education include ombudsmen, increased reliance on student services professionals, and more formal documentation of appeals procedures.

Karen Lebacqz has written about the disparity of power that exists in other professional relationships, and has proposed that principles of justice rise to highest priority. Lebacqz's form of justice is closely associated with theological liberation: "... justice includes both correcting imbalances in power and addressing the effects of imbalances of power. ... If power is central to professional ethics, then justice and liberation become central norms."¹²⁹ For Lebacqz, the norm of justice should replace the dominant norm of beneficence. Rather than the trustworthiness of the professional being measured in the reliability that the professional will work for the client's good, Lebacqz argued that "We may need a new definition of what it means to be trustworthy: *the trustworthy one is the one who works for a balance of power that could be called justice.*"¹³⁰

In a later work with Ronald Barton, Lebacqz elaborated the role of power in undermining consent. Writing about consenting sexual relations between pastor and parishioner, Lebacqz and Barton particularly noted that of the four conditions considered necessary for valid consent -- disclosure of information, ability of the client to understand, legal competence to consent, and capacity or freedom to consent -- the last is compromised by unequal power.

Most important when considering the question of freedom to consent is whether freedom is undermined by being in a position of unequal power. Where there is a power gap between professional and client ... does this power gap itself undermine the freedom of the [client] and therefore render the consent invalid?

We think so. Inequality of power can restrict the capacity for voluntary action.¹³¹

¹²⁹Lebacqz, Karen. *Professional Ethics: Power & Paradox*. Nashville: Abingdon Press, 1985, p. 129.

¹³⁰*Ibid.*, p. 130.

¹³¹Lebacqz, Karen and Ronald G. Barton. *Sex in the Parish*, Louisville: Westminster/John Knox, 1991, p. 119.

However, as Lebacqz and Barton recognized, there is a potential problem in analyses of power relationships that too greatly fix on the ability of a power imbalance to debilitate capacity to consent. "If pastor and parishioner have unequal power, and if unequal power undermines the validity of consent, then it would seem to be the logical conclusion that no parishioner could ever consent to anything requested by a pastor!"¹³² They suggested that the domain of sexual relations held particular risks of lack of valid consent, and one could foresee also particularly damaging consequences in this arena. As did Wilson, Lebacqz and Barton proposed structural changes designed to open the relationship to others who can help protect both parties.

Applications of other ethical principles already mentioned, including respect for autonomy and nonmaleficence, seem to possess potential efficacy for dealing with power imbalances, but do not obviate the need for attention to appropriate procedures and organizational structures as well. The particular issues of sexual harassment and the validity of consensual sexual relationships between professors and students may benefit more from analyses of power relationships than from more traditional professional models based on beneficence.

Codification Approaches

George Schurr has written that the act which traditionally made one a "professional" -- the act of "professing" -- was the declaration by the professional of a particular vow: the cleric a vow of "poverty, chastity, stability, and obedience;" the academic a dedication "to the preservation, recombination and development of knowledge, in devotion to the truth, especially the truth."¹³³ By swearing certain allegiances and forswearing certain self-interests, the professional was elevated above the common person and the profession "became a center of value regardless of the society

¹³²*Ibid.*, p. 121.

¹³³Schurr, George M. "Toward a Code of Ethics for Academics," *Journal of Higher Education* 53(3):318-334, 1982, p. 319.

around it."¹³⁴ The "ideal of the teacher as scholar, unsullied by worldly interests and dedicated to the pursuit of truth" was captured for Robertson and Grant in lines from *The Canterbury Tales*:

Threadbare the little outer-coat he had,
 For he was still to get a benefice
 And thoughts of worldly office were not his.
 For he would rather have beside his bed
 Twenty books arrayed in black or red . . .
 He gave to study all his care and heed,
 Nor ever spoke a word beyond his need,
 And that was said in form, respectfully,
 And brief and quick and charged with meaning high.
 Harmonious with virtue was his speech,
 And gladly would he learn and gladly teach.¹³⁵

For Schurr, the AAUP Statement on Professional Ethics (reprinted herein as Appendix B) represented a passage of sorts between the older, open-ended vows and a more modern codification of minimum professional standards. Whereas ancient vows were self-imposed, and fulfillment thereof largely self-assessed, modern professions have become so central to society that pressures are now being brought to bear for accountability.

The old vow of devotion to the truth has been translated into devotion to a competence valued by society ...

* * *

¹³⁴*Ibid.*

¹³⁵Chaucer, Geoffrey. *The Canterbury Tales*. Translated by F. E. Hill, New York: David McKay Company, 1930, p. 13. Cited in Emily Robertson and Gerald Grant, "Teaching and Ethics: An Epilogue," *Journal of Higher Education* 53(3):345, 1982.

However much an academician may be interested in freedom of inquiry, this freedom is not self-authenticating. It may at one time have been justified because it served devotion to truth. It is not so justified today. ...

* * *

All professions, not just academicians, are being asked to specify what it is that they contribute to society, and demonstrate that they are contributing to it -- not just satisfying their own interests.¹³⁶

The form and content of the AAUP Statement provide echoes of older vows, but also by an emphasis on freedom of inquiry rather than pursuit of truth, Schurr argued that it suggests that a self-imposed vow to promote knowledge in devotion to truth is no longer operating as the normative definition of the academic profession. Rather, professional academics are bound together by a shared interest in freedom of inquiry, subspecialization into disciplines, and their economic positions.¹³⁷

This shift in the profession's own perceptions of itself militates in favor of codes of ethics as bases for quality assurance.

A code of ethics for a profession represents an "ethic of responsibility as an alternative to an ethic based on good personal intentions," an approach said to be advocated by Max Weber.¹³⁸ Setting the tone for a new book on higher education ethics that favored an institutionally-based analysis of ethical issues, Reynolds and Smith wrote that Weber's objective was to insure that the consequences of individual professional's good intentions would be carefully weighed as public policy considerations. They further argued that

¹³⁶Schurr, George M. "Toward a Code of Ethics for Academics," p. 321.

¹³⁷*Ibid.*, p. 320.

¹³⁸Reynolds, Charles H. and David C. Smith. "Academic Principles of Responsibility," in William W. May (ed.), *Ethics and Higher Education*, p. 32.

Precisely because the academic profession wields such enormous power in a postindustrial information society, it is appropriate for us to explore an ethic of responsibility, and a statement of principles of responsibility that can guide the choices of individuals and institutions in higher education.¹³⁹

They then laid out such a set of principles which, unlike codes commonly found in medicine or various other professional and scientific disciplines, considered institutional principles as well as those that should guide individuals.

Reynolds and Smith distinguished five sets of principles: personal, professional, systemic, public, and political (the last three categories relate to responsibilities of institutions, rather than individuals). The first two sets are reproduced here:

Personal Principles

Everyone in an academic community has responsibilities to

- 1.1 demonstrate a respect for each person as an individual
- 1.2 communicate honestly and truthfully with all persons
- 1.3 enhance the self-esteem of other persons
- 1.4 help build fair and compassionate social and cultural systems that promote the common good of all persons

Professional Principles

Professionals associated with a college or university have responsibilities to

- 2.1 assist their institution to fulfill its educational mission
- 2.2 strive to enhance the personal and intellectual development of other persons
- 2.3 be compassionate, thorough, and fair in assessing the performance of students and professional associates

¹³⁹*Ibid.*, p. 33.

- 2.4 exercise the authority of their office in ways that respect persons and avoid the use of power
- 2.5 conduct their professional activities in ways that uphold or surpass the ideals of virtue and competence¹⁴⁰

Critics of codes of ethics find them feckless in actually regulating the conduct of professionals who would not otherwise practice ethically, and, at their worst, legalistic prescriptions of minimum standards that serve as a "shield behind which practitioners can hide, meanwhile doing business as usual."¹⁴¹ Codes are also difficult to develop, both in obtaining general agreement on principles, and in being able to specify in a sufficiently succinct manner how a myriad of ethical issues might be dealt with. One such critic, Daniel Callahan, has suggested that for the academic community a better alternative would be increased attention by all members of the academic community to ethical discourse: "... that every college and university in this country, and every professional organization concerned with academic life, devote a significant period of time every two years or so to examining the questions of academic ethics."¹⁴²

One could argue that the process of developing codes of ethics provides the profession with just such opportunities for reflection on ethical imperatives. Even if the principles enshrined in these codes may lag behind reality, the progressive history of professional codes in medicine, pharmacy, and other professions illustrates the changing nature of the profession's relationship to society, technology, and culture; so one may wish to see the development of codes by professional organizations endure. However, as statements of minimal professional standards,

¹⁴⁰*Ibid.*, p. 37.

¹⁴¹Callahan, Daniel. "Should There Be an Academic Code of Ethics?," *Journal of Higher Education* 53(3):335-344, 1982, p. 342.

¹⁴²*Ibid.*, p. 343.

professional codes are not likely to offer individual professionals much guidance in problematic cases.¹⁴³

The Caring Perspective

The statement proposed by Reynolds and Smith commingled principles of professional action with general duties of citizenship and with virtues. One can find embedded in the sections reprinted above the principles of respect for autonomy (§ 1.1), veracity (§ 1.2), beneficence (§ 2.2), nonmaleficence (§ 2.4), and justice (§ 1.4 and § 2.3). Each of these has an anchor in the professional role. However, some sections (e.g., § 1.4) are not specific to the academic role, but arise from our very humanity, and others (e.g., § 2.1) seem not ethical duties but are job responsibilities. Finally, the imperative to compassion suggests the sentiment expressed by Walton, that "Within institutions professional obligation is not only to the careful exercise of professional functions but to caring about the people on whom they are exercised."¹⁴⁴

Walton was writing about "the practice of caring," that is the implementation of the ethic of caring in the daily practices of an academic and within colleges and universities. This ethic was described earlier;¹⁴⁵ however, it also fits here as a model of professorial behavior. As described by Walton, caring in action involves at least two inclinations: (1) the "special kind of listening that is part of what Noddings calls 'receiving the other';"¹⁴⁶ and (2) accessibility. That these are important virtues of a professor is witnessed by the presence on numerous faculty rating sheets of these two criteria: "Demonstrated interest that the student learned," and "Was accessible." Or, as one of Boyer's respondents pictured his best professor: "He ... shows a genuine concern about his students, and he cares whether we are learning something, ... I always see him out on the campus,

¹⁴³Callahan concluded, too, that codes of ethics would be incapable of dealing with "the more difficult moral dilemmas ... now posed by the very complexity of the university, [and] by the increase in the range of ethical dilemmas that will face faculty members ...;" see *ibid.*, p. 344.

¹⁴⁴Walton, Barbara J. *The Ethical Dimensions of Human Service*, p. 136.

¹⁴⁵See *supra*, pp. 26 ff.

¹⁴⁶Walton, Barbara J. *The Ethical Dimensions of Human Service*, p. 129.

talking to kids, and you can tell he worries about them and about the school."¹⁴⁷ Of course, like the other approaches to professorial ethics discussed in this section, the exact fit of the caring perspective within a model of academic professional ethics will be the subject of a later chapter.

I can now turn to the last item on my agenda of literature to review in preparation for the analytical portions of this dissertation. In the next section, I shall examine the principal secondary literature that suggests ethical quandaries facing American professors.

Ethical Challenges in Academia

American academics have written extensively about ethics in the professions generally, against which the volume of material regarding ethics for the professoriate seems almost insignificant. Nevertheless, increasing attention has been paid to the latter topic since the 1970s, and this section will adumbrate the major thrusts of this literature. Payne and Charnov wrote in 1987 that prior work had "examine[d] broadly the history, culture and controversies of American institutions of higher learning," or provided "exposes critical of the excesses and indolence of American college professors."¹⁴⁸ The first category of literature largely relates to the ideal of the university, and the second to professorial peccabilities. Payne's and Charnov's text was among the earliest to discuss specific cases, and is part of a third class of literature. I would add a fourth: discussions of role conflicts in higher education. The literature on cases will be important in a later chapter; here I will review the other three classes of recent literature regarding ethical challenges for American professors: the Decline of an Intellectual Ideal; the Professorate [*sic*¹⁴⁹] as Title to a Sinecure; and Role Conflicts.

¹⁴⁷Boyer, Ernest L. *College*, p. 157.

¹⁴⁸Payne, Stephen L. and Bruce H. Charnov. *Ethical Dilemmas for Academic Professionals*. Springfield, IL: Charles C Thomas, 1987, p. x.

¹⁴⁹I distinguish here between *professorate*, the actual appointment that a professor receives to his or her position, and the *professoriate*, the professors generally or the position of being a professor singularly.

Decline of an Intellectual Ideal

Higher education in America now provides greater access for a widely diverse student population to a broader range of studies and degree programs in a more expansive array of institutional types than any educational system elsewhere on this planet. For some critics, the modern university, faced with the responsibility of deciding "what may be taught, how it shall be taught, and who may be admitted to study," chose a path that had also become a too-frequent response used in the now-popular multiple-choice exams: "all of the above." Or, as Frederick Rudolph wrote, "The nation ... entered its third century with an array of colleges and universities that defied classification and with a curriculum that had once certified an elite but was now being designed to make room, literally, for everyone."¹⁵⁰

Prior to the second World War (indeed, as early as the Yale Report of 1828), critics of the diversified, largely elective, curriculum worked to rehabilitate the curricula in their institutions. A. Lawrence Lowell followed Eliot into the presidency at Harvard, and attempted to return that institution to its former emphasis on undergraduate liberal education.¹⁵¹ Robert M. Hutchins at the University of Chicago actually carried out a series of reforms in the early 1930s in line with his doctrine that "the heart of any course of study designed for the whole people will be, if education is rightly understood, the same at any time, in any place, under any political, social, or economic conditions."¹⁵²

For Hutchins, education in America was in disarray, the victim of external conditions and internal weaknesses. In particular, it was confused about its mission, with most of the confusion arising over the conflict between training and education. Was the high school preparing students for life, or for college? Did the junior college prepare for higher education, or was it a finishing

¹⁵⁰Rudolph, Frederick. *Curriculum*, p. 274.

¹⁵¹Kerr, Clark. *The Uses of the University*, p. 16.

¹⁵²Hutchins, Robert M. *The Higher Learning in America*. New Haven: Yale University Press, 1936, p. 66.

school? Should the college and university educate, or prepare students for the technical and learned professions? Unlike Clark Kerr, who saw perplexity as an attribute of a healthy pluralism "preserv[ing] ... the whole uneasy balance,"¹⁵³ Hutchins saw chaos.

Hutchins blamed the confusion on the failure of the modern professoriate to eschew riches in favor of a dedication to the higher learning. Thus, institutions catered to donors and alumni, pandered to students in order to maintain tuition revenues, and accommodated their curricula to whatever were the current political and social fads so as to engender popular and legislative succor. In addition, the professoriate suffered from a "confused notion of democracy" that supposed it both proper and wise to attempt to train all citizens in higher education, whether or not they were fitted for the pursuit. Finally, universities had assumed an erroneous notion of progress that led them to reject the past as outdated and irrelevant, and equated accumulation of information to an end in itself. Emphasis on data gathering (as opposed to growth in wisdom) led to excessive empiricism, encouraged vocationalism, and branded contemplative scholarship as impractical, thus leading, in Hutchins's view, to an anti-intellectual climate in higher education.¹⁵⁴

Hutchins may not have been willing to stamp his higher education colleagues as malefactors, but he saw the American higher education enterprise as confused and misguided. Two more recent authors, however, hard on the heels of the tumult of the 1960s and 1970s, have clearly seen the abandonment of an earlier ideal of the university as a moral defection. For one, higher education had "failed democracy and impoverished the souls of today's students,"¹⁵⁵ while the other wrote of the "moral collapse" of the university.¹⁵⁶ Each anchored his thesis in the

¹⁵³Kerr, Clark. *The Uses of the University*, p. 18.

¹⁵⁴Hutchins, Robert M. *The Higher Learning in America*.

¹⁵⁵Bloom, Allan. *The Closing of the American Mind: How Higher Education has Failed Democracy and Impoverished the Souls of Today's Students*. Touchstone Edition. New York: Simon & Schuster, 1988.

¹⁵⁶Wilshire, Bruce. *The Moral Collapse of the University*.

desertion by higher education of an intellectual ideal regarding the purposes of the academic enterprise.

Allan Bloom was critical of several trends he perceived in American higher education, including the willingness of academics to embrace cultural relativism and abandon the traditional canon of Western literature which, he believed, should form the core of a liberal education. More important for Bloom, however, was the withdrawal by the university from the Socratic ideal under the influence of a sustained attack by Nietzsche and Heidegger.¹⁵⁷ The result was a radical shift in the notion of what a university should be and stand for:

The university began in spirit from Socrates' contemptuous and insolent distancing of himself from the Athenian people, his refusal to accept any command from them to cease asking, "What is justice? What is knowledge? What is a god?" and hence doubting the common opinions about such questions, and in his serious game (in the *Republic*) of trying to impose the rule of philosophers on an unwilling people without respect for their "culture." The university may have come near to its death when Heidegger joined the German people -- especially the youngest part of that people, which he said had already made an irreversible commitment to the future -- and put philosophy at service of German culture. If I am right in believing that Heidegger's teachings are the most powerful intellectual force in our times, then the crisis of the German university, which everyone saw, is the crisis of the university everywhere.

... the university, of all institutions, is most dependent on the deepest beliefs of those who participate in its peculiar life. Our present educational problems cannot seriously be attributed to bad administrators, weakness of will, lack of discipline, lack of money, insufficient attention to the three R's, or any of the other common explanations that indicate things will be set aright if we professors

¹⁵⁷Bloom, Allan. *The Closing of the American Mind*, pp. 307-310.

would just pull up our socks. All these things are the result of a deeper lack of belief in the university's vocation.¹⁵⁸

According to Bloom, the American intelligentsia during the 1930s and 1940s absorbed German notions in an almost uncritical way, and we are today virtually unaware of the effects of the popularization of German philosophy.

In politics, in entertainment, in religion, everywhere, we find the language connected with Nietzsche's value revolution, a language necessitated by a new perspective on the things of most concern to us. Words such as "charisma," "life-style," "commitment," "identity" and many others, all of which can easily be traced to Nietzsche, are now practically American slang, although they, and the things to which they refer, would have been incomprehensible to our fathers, not to speak of our Founding Fathers.¹⁵⁹

A great problem arises from the wholesale adoption of Nietzschean and Heideggerean concepts into the American system. First, Bloom wrote, "Modern democracy was, of course, the target of Nietzsche's criticism."¹⁶⁰ Therefore, America was ingesting a sweet poison to its own vitality.

Perhaps more significant for Bloom was the replacement of a universalistic Enlightenment tradition by a philosophy that had little to offer to cultures other than the German culture that spawned it.

The great influence of a nation with a powerful intellectual life over less well endowed nations, even if the armies of the latter are very powerful, is not rare in human experience. The most obvious cases are of Greece on Rome and of France on Germany and Russia. But it is precisely the differences between these two cases and the example of Germany and the United States that makes the

¹⁵⁸*Ibid.*, pp. 311-312.

¹⁵⁹*Ibid.*, pp. 146-147.

¹⁶⁰*Ibid.*, p. 143.

latter so problematic for us. Greek and French philosophy were universalistic in intention and fact. They appealed to the use of a faculty potentially possessed by all men everywhere and at all times. ...

... For Nietzsche and those influenced by him, values are the products of folk minds and have relevance only to those minds. ... German thought tended not toward liberation from one's own culture, as did earlier thought, but toward reconstituting the rootedness in one's own ... We chose a system of thought that, like some wines, does not travel; we chose a way of looking at things that could never be ours and had as its starting point dislike of us and our goals. The United States was held to be a nonculture, a collection of castoffs from real cultures, seeking only comfortable self-preservation in a regime dedicated to superficial cosmopolitanism in thought and deed. Our desire for the German things was proof we could not understand them. ... Given our country's extreme Enlightenment universalism, nothing could be more unwelcome to Nietzsche and Heidegger than our embrace.¹⁶¹

Bloom seemed to argue that by attempting to assimilate a philosophy that could not fit our culture, Americans, in the end, abandoned an older ideal without replacing it. A philosophy of nihilism on the Continent became a nihility of philosophy in America.

No specter better illustrated this phenomenon for Bloom than the turmoil in American universities in the 1960s. Writing of his experience at Cornell in 1969,¹⁶² Bloom characterized his colleagues' response to student militancy in a bitter recollection:

The professors, the repositories of our best traditions and highest intellectual aspirations, were fawning over what was nothing better than a rabble;

¹⁶¹*Ibid.*, pp. 152-154.

¹⁶²It is, of course, ironic that Bloom should have found himself in an institution whose progenitor promised to "found an institution where any person can find instruction in any study." Ezra Cornell, cited in Frederick Rudolph, *Curriculum*, p. 1.

publicly confessing their guilt and apologizing for not having understood the most important moral issues, the proper response to which they were learning from the mob; expressing their willingness to change the university's goals and the content of what they taught. As I surveyed this spectacle, Marx's overused dictum kept coming to my mind against my will: History always repeats itself, the first time as tragedy, the second as farce. The American university in the sixties was experiencing the same dismantling of the structure of rational inquiry as had the German university in the thirties. No longer believing in their higher vocation, both gave way to a highly ideologized student populace.¹⁶³

As a result of the displacement of the earlier ideal by a non-philosophy of value commitment, American universities, as had their German counterparts three decades earlier, "... gave way under the pressure of mass movements, and did so in large measure because they thought those movements possessed a moral truth superior to any the university could provide."¹⁶⁴

Bloom's solution was a return to the ancient and ongoing dialogue that philosophy, in the Socratic tradition, provides regarding the proper aims and aspirations of humankind. Bloom was clearly on the side of Hutchins, who knew there is a natural, universal curriculum for all people everywhere; its elements are the same in any time and place. Perhaps above all, Bloom wanted to reinvigorate the role of the American university in transmitting Western culture to its students, for "... the West is defined by its need for justification of its ways or values, by its need for discovery of nature, by its need for philosophy and science. This is its cultural imperative. Deprived of that, it will collapse."¹⁶⁵

The moral collapse of the university was also Bruce Wilshire's theme. As did Bloom, Wilshire saw that the American university had abandoned an earlier Socratic tradition. However,

¹⁶³*Ibid.*, p. 313.

¹⁶⁴*Ibid.*, p. 314.

¹⁶⁵*Ibid.*, p. 39.

rather than cultural relativism, Wilshire wrote that professionalism achieved through a commitment to a positivist empiricism was the inappropriate new ideal embraced by American professors. Wilshire found the roots of this collapse in the late 19th century as the formerly sectarian colleges became secularized universities:

By the last decades of the nineteenth century [the primarily religious nature of higher education] had changed radically. Science and technology had become autonomous, often defiantly so. A large middle class had been created and stood poised, like a flood, before the doors of institutions of higher learning. The university must now satisfy not only established needs for medical, legal, and ministerial practice -- and the culturally conditioned and stabilized desires of agent and patient in each field -- but naked desire for power and advancement as the possibility of these had opened abruptly in many fields of science and technology for many people. A multitude of professions and professional possibilities -- most of them completely secular -- beckoned brightly.¹⁶⁶

The resulting opportunity to become the training ground for America's professionals, eagerly seized by the universities, led to the emergence of academic disciplines as the preeminent organizing and certifying structures of higher education: "Through [the university's] gates must pass all those who would harness science to their desires, including those who would be the future gatekeepers themselves."¹⁶⁷ Older aims of higher education, those associated with liberal education, gave way, according to Wilshire, to the demands of professionalization and of discipline-centered research and publication. As a result, "The university is in a crisis, and in significant part because of our proud professionalism."¹⁶⁸

¹⁶⁶Wilshire, Bruce. *The Moral Collapse of the University*, p. 61.

¹⁶⁷*Ibid.*, p. 62.

¹⁶⁸*Ibid.*, p. 95.

Ultimately, Wilshire put forth what has become a pervasive lament within higher education circles: the priority for research and publication has caused academics to abandon an earlier commitment to teaching, and in doing so the professoriate has violated a fundamental ethical responsibility to students. "The professional educator cannot in good conscience separate completely his professional role from his personal relationships to students. ... Professors must place one foot in the ethical if they would contact the pedagogical. Without this there is no moral guidance for the moral task of education."¹⁶⁹

Bloom and Wilshire are readily seen to espouse the tradition for higher education favored by Hutchins and by Newman¹⁷⁰ nearly a century earlier. This Socratic tradition is not, however, the only possible source for the animus of modern higher education.

In fact, higher education in America has evolved from many heritages, and in conjunction with both democratic and elitist purposes. Although its basic philosophy is inherited from the ancient Greeks, its architecture and customs come from the medieval university, its undergraduate traditions from the British, graduate and research procedures and structures from the Germans, and governance from the Dutch. Its sense of duty to prepare citizens for a useful life arises from northern colonial Calvinist threads; its desire to provide a liberal education to those who will lead was born of southern, Anglican traditions. As the rest of American society continues to espouse both the benefits of free enterprise and private philanthropy while essaying a role for the government in supporting and assuring equal opportunity for its citizens, so does American higher education reflect a broad range of public and private support and aims.¹⁷¹

Thus it is not surprising that Clark Kerr would conclude about the multiversity in particular and higher education in general that

¹⁶⁹*Ibid.*, p. 93.

¹⁷⁰Newman, John Henry, Cardinal. *The Idea of a University*. Notre Dame, IN: University of Notre Dame Press, 1982.

¹⁷¹This argument was presented in greater length in William E. Fassett, "The University of Washington and the American System of Higher Education."

The resulting combination does not seem plausible but it has given America a remarkably effective educational institution. A university anywhere can aim no higher than to be as British as possible for the sake of the undergraduates, as German as possible for the sake of the graduates and research personnel, as American as possible for the sake of the public at large -- and as confused as possible for the sake of the preservation of the whole uneasy balance.¹⁷²

What Kerr argued, it seems, is that on the North American continent has emerged a unique system of higher education.¹⁷³ In keeping with the pluralistic and democratic system of government that has been so important to its growth, American higher education draws from a multiplicity of traditions and attempts an experiment in higher education as novel as American society: a truly diverse culture that harbors under one enterprise the full range of institutions from the community college to the multiversity.

If the Socratic tradition that underpins the professoriate's commitment to students has lost adherents in the fray occasioned by competing obligations in the modern university, then Bloom, Wilshire, and others who remind us of it have done the higher learning a great service. As Kerr wrote of Hutchins, "[He] tried to take the university back to Cardinal Newman, to Thomas Aquinas, and to Plato and Aristotle. He succeeded in reviving the philosophic dialogue he loves so well and practices so expertly; but Chicago went on being a modern American university."¹⁷⁴ There is little chance that research, consulting, extension services, graduate education and professional training can be divorced from the teaching of undergraduates in American higher education, nor that the

¹⁷²Kerr, Clark. *The Uses of the University*, p. 18.

¹⁷³Of course, there are *two* distinct systems of higher education on the North American continent: in the United States and in Canada; the interest here is in the former rather than the latter. For an interesting discussion of the significant differences between the two countries, see Michael L. Skolnik and Glen A. Jones, "A Comparative Analysis of Arrangements for State Coordination of Higher Education in Canada and the United States," *Journal of Higher Education* 63(2):121-142, (March/April) 1992.

¹⁷⁴Kerr, Clark. *The Uses of the University*, p. 17.

professoriate is likely to wish to do so. The challenge underscored by Bloom and others is to find a way to incorporate the ideal they express for undergraduate liberal education into a niche within the larger "city of intellect"¹⁷⁵ that is the modern university. They remind us that if the university will not do without its undergraduates, it must therefore learn to do right by them.

The Professoriate as Title to a Sinecure

Commentators such as Bloom have advanced fairly complex philosophical arguments about the university's putative abandonment of an important central mission, and wrote that it had done so as a result of philosophical confusions. Another cadre of critics has argued that American higher education has failed its students out of pure misfeasance: professors have sold America a bill of goods but have failed to deliver the commodity promised. They have achieved a true *beneficium sine cura*; the professoriate has become a title of a cleristic office that obtains a salary without the need to care for its clients, a sinecure.

The range of this criticism spans a continuum from H. L. Mencken's jocose suggestion of pedanticide ("anyone who really wanted to improve the universities should start by burning the buildings and hanging the professors"¹⁷⁶) to a more genial recognition that some professors are scamps, a few are saints, and the majority in between are susceptible to ennoblement through education and encouragement.¹⁷⁷ There are several works that fit into this spectrum,¹⁷⁸ of which three can serve as examples of the scope of the genre.

Charles Sykes is the most acerbic of these three critics of the professoriate. He laid out the harshest list of collective professorial misdeeds, and the most complete. His "Indictment" in

¹⁷⁵*Ibid.*, p. 123.

¹⁷⁶Sykes, Charles J. *Profscam: Professors and the Demise of Higher Education*. Washington, DC: Regnery Gateway, 1988, p. 3.

¹⁷⁷Cahn, Stephen. *Saints and Scamps*, pp. 1-7.

¹⁷⁸Including the pseudonymous works of "Professor X," *This Beats Working for a Living: the Dark Secrets of a College Professor*, and *Never at a Loss for an Opinion*, New Rochelle, NY: Arlington House, 1972 and 1973; and of "Simon O'Toole," *Confessions of an American Scholar*, Minneapolis: University of Minnesota Press, 1971 (cited in Charles Sykes, *Profscam*, p. 10).

Profscam comprised 15 charges against professors, and he thought it was a partial list at best.

Those of his charges that seem clearly relevant to professors' relationships with students are:

- They are overpaid, grotesquely underworked, and the architects of academia's vast empires of waste.
- They have abandoned their teaching responsibilities and their students. To the average undergraduate, the professoriate is unapproachable, uncommunicative, and unavailable.
- In pursuit of their own interests -- research, academic politicking, cushier grants -- they have left the nation's students in the care of an ill-trained, ill-paid, and bitter academic underclass.
- They have distorted university curriculums to accommodate their own narrow and selfish interests rather than the interests of their students.
- They have created a culture in which bad teaching goes unnoticed and unsanctioned and good teaching is penalized.
- They insist that their obligations to research justify their flight from the college classroom despite the fact that fewer than one in ten ever makes any significant contribution to their field [s/c].

* * *

- In the sciences, professors have mortgaged the nation's scientific future and its economic competitiveness to their own self-interest by ignoring undergraduates and an epidemic of academic fraud.
- In schools of education, their disdain for teaching and the arrogance with which they treat their students has turned the universities into the home office of educational mediocrity, poisoning the entire educational system from top to bottom.¹⁷⁹

¹⁷⁹Sykes, Charles J. *Profscam*, pp. 5-6.

Sykes's thesis is generally this: having achieved the power associated with academic freedom, professors, as will anyone given such absolute immunity from critique, have abused it. The promised benefits of *Lehrfreiheit* and *Lernfreiheit* have not materialized, in part because the German concept was transmuted in a sort of reverse academic alchemy: from the aureate conception of a community of scholars to the base proposition in which "almost from the beginning, academic freedom was seen as almost exclusively the right of the professors, while the concept of student freedom took a decidedly secondary status." Rather, *Lehrfreiheit* became adjoined to peer review, tenure, and academic governance prerogatives, and became "a bulwark of the increasingly elaborate and intricate system of faculty power and privileges."¹⁸⁰

Sykes argued that the student must again become the focal point of the academic endeavor. The idea of the average professor as a researcher was, for Sykes, a sham, clearly exposed by the researches of Fulton and Trow.¹⁸¹ Once this facade was dismantled, the way was clear for the assault on the ivory tower itself. Sykes recommended a pentad of elements in his campaign to reform higher education: demythologize research; abolish tenure; require professors to spend a reasonable minimum of their time in the classroom; enforce "truth-in-advertising" about the extent to which professors teach in specific courses; and restore a curriculum and a canon "centered on the intellectual tradition of Western civilization."¹⁸²

Less vitriolic than Sykes, and more sanguine regarding the possibility of reform of American higher education, was Richard Mandell in *The Professor Game*.¹⁸³ As did Sykes, Mandell traced the development of professors' power and perquisites in American universities, emphasizing the periods following the Civil War and World War II. He argued, also in line with

¹⁸⁰*Ibid.*, p. 136.

¹⁸¹Sykes, *Ibid.*, p. 102, cites Chester Finn, "Higher Education on Trial: An Indictment," *Current*, October 1984, but it is apparent that Finn was, in turn, relying on Oliver Fulton and Martin Trow, "Research Activity in American Higher Education."

¹⁸²Sykes, Charles J. *Profscam*, pp. 257-264.

¹⁸³Mandell, Richard D. *The Professor Game*. New York: Doubleday & Company, 1977.

Sykes's treatment, that academic freedom, tenure, and self-government arose from the assurance made to the public that these privileges, and the rise of the professoriate to the separate professional class that these prerogatives both permitted and signaled, were fundamental to the furtherance of knowledge, its discovery and dissemination. However, he also argued that an additional promise -- that a university degree was the ticket to upward social mobility, not only for its holder but for the holder's family -- greatly spurred American indulgence of higher education and the professors' requisites.¹⁸⁴

Mandell differed from Sykes in attribution of motive and responsibility for the alleged deficiencies of higher education. For example, when Mandell cited Bird's¹⁸⁵ belief that a college degree "is outrageously expensive and therefore is a 'dumb investment,'" he disputed her assignment of blame to the professoriate.

Bird, I believe, coarsely attributes much of the expense and claimed irrelevance of college to the professors, whom she views as the keepers of the gates that allow access to respectable positions in society. The blame for irrelevance and expense is more diffuse and lies deep in the American past and with the larger society. Americans have scarcely even looked for better ways to occupy the time, energy and imagination of youths aged eighteen to twenty-two.¹⁸⁶

Mandell argued that much instruction in universities is desultorily delivered, but at least part of this arises from imperatives to attend college placed by society on unwilling students:

A basis for the professors' pathetic performances -- and one which in turn determines much of the quality of American education, is that *the great majority of students do not want conventional, structured higher education*. ... the atmosphere on campus is that of the culture at large. Most American college and

¹⁸⁴*Ibid.*, pp. 12-38.

¹⁸⁵Bird, Caroline. *The Case Against College*. New York: David McKay, 1975.

¹⁸⁶Mandell, Richard. *The Professor Game*, p. 252.

university students have already rejected conventions and disciplined work in the high schools. They wish to avoid hard work and the determined structuring of time and have alluring alternatives to these pursuits on or near the college campuses. Many professors ... nobly maintain and attempt to demonstrate their partaking in the grand academic tradition and their intellectual integrity. However, many ... students see them as curious wraiths, annoyances, specimens of a bygone age or reminders of quaint, harmless life styles that, for ecology's sake, should not be allowed to become extinct.

The professors (and this includes about two thirds of their number) are more or less aware of their superfluity. The dedicated teacher who honestly demands of himself that he accomplish *something* in the classroom progressively simplifies his presentations and lowers the performance expectations until he shames himself by the banality of what he says and the performance he gets.¹⁸⁷

Mandell was less Draconian than Sykes in his prescriptions for change in American colleges and universities. Clearly, he was influenced by the problems associated with the rapid growth of higher education during the 1960s, and querulous regarding the societal intent that drove it. Writing in 1977, he declared that "It seems now that the great campus boom of the previous fifteen years was in many ways an expensive mistake. ... The cause was a regnant and unchallenged social and political ideology which positioned marvelous benefits for ever more higher education -- benefits that could not possibly have been realized."¹⁸⁸ He called for a reduction in the number of four-year colleges and research universities (to 50 of the former and about 10 of the latter, chosen from the best that currently exist), but an expansion of technical and occupational training within the community college system. The remaining four-year institutions could serve a useful function, but Mandell would have them recognized for what they are and do:

¹⁸⁷*Ibid.*, p. 191.

¹⁸⁸*Ibid.*, p. 257.

places that "work together to maintain existing class distinctions, to keep young people of the middle classes off the job market during their difficult years, and to give these young people degrees."¹⁸⁹ Therefore, Mandell advocated renaming them "resorts'... for example: the Resort of Indiana, East Tennessee State Resort, Morgan State Resort, Resort of St. Catherine, or Slippery Rock State Resort."¹⁹⁰

This latter suggestion must have been regarded about as seriously by its author as hanging of professors was deemed realistic by Mencken. In fact, Mandell acknowledged that "gross barbarism" would characterize policies that permitted the desuetude of the "splendid academic plants now in existence," and it would be unjust to blame professors entirely for the current malaise of higher education. However, he wrote,

... professors cannot remain as isolated as they have been from criteria of public responsibility. ... Taxpayers, legislators, and trustees should be able to ask just what they have been getting for such staggering outlays. Students ought to ask more questions regarding the purposes their present courses or degrees serve. Professors might be expected to declare what they are supposed to be doing and how they are trying to do it.¹⁹¹

Ultimately, Mandell held the professoriate responsible neither for the structure of higher education in America nor for difficulties in the milieu in which professors work, but rather for a requite to society for the prestige and autonomy it has been given on account of the proffer it has made.

Setting forth just how professors are to go about repaying their obligees was the project of Stephen Cahn. In his preface to *Saints and Scamps*, he noted that "Numerous books and articles have examined the rights of faculty members, but no corresponding literature exists regarding their

¹⁸⁹ *Ibid.*, p. 255.

¹⁹⁰ *Ibid.*, p. 259.

¹⁹¹ *Ibid.*, pp. 260-261.

responsibilities."¹⁹² He then set about providing a first entry into a neoteric canon regarding professional responsibilities of professors.

Similarly to Sykes, Mandell, and other critics of higher education, Cahn recognized that academics' claims as investigators of truth and teachers of knowledge undergird the autonomy they are given, and that a continuing quandary of higher education relates to the protection and independence society has granted faculty. Cahn explained the central issue as follows: "... it is this extraordinary degree of faculty autonomy that leads into an ethical thicket. How much faculty autonomy is warranted? And how can we assure professional conduct without undermining appropriate autonomy?"¹⁹³

Cahn also acknowledged that charges of malfeasance may be appropriately levied against many professors. He opened his essay by recollecting the assertion in *This Beats Working for a Living* by "Professor X" that "I have met few professors whom I would hire to run a peanut stand, let alone be the guardian of wisdom and Western civilization," and even provided a characterization of one professor he once knew who was compatible with such a judgment. However, he parted company from these other critics in believing outright incompetence or immorality among professors to be the exception, not the rule.¹⁹⁴ Cahn accepted that most faculty members are sincere and dedicated individuals, for whom

... the professorial life is remarkably autonomous [but] it nevertheless entails a wide range of professional responsibilities. These are faced in a variety of settings: in classrooms, in departmental meetings, in faculty meetings; whenever one's advice is sought, whenever one's recommendations are requested, and whenever one's evaluations are needed.

¹⁹²Cahn, Stephen. *Saints and Scamps*, p. xi.

¹⁹³*Ibid.*, p. 4.

¹⁹⁴*Ibid.*, pp. 1-2.

Cahn then considered a list of topics and associated activities related to the professorial life, and discussed ways in which professors could discharge their duties. He was duly circumspect about his own claims for his work, and wrote that "To enumerate these obligations is not to guarantee their fulfillment. But the first step toward discharging duties is to know what they are."¹⁹⁵

The body of work critical of the American professoriate provides a useful, if sometimes exaggerated, commentary on professorial obligations and how their fulfillment may be frustrated; this family of work will be revisited later for the potential repertory of cases it provides as well.

Role Conflicts

Not all critics of the professoriate build their cases by fundamentally impugning professors' motives. Although Sykes, for example, charges American professors with individually and collectively perpetrating an intentional fraud,¹⁹⁶ most critics of higher education attribute to professors good intentions that, nevertheless, go awry. For many of these critics, an overriding contributing factor to the failure of professors' purposes is the conflict that exists among the various roles the professor must assume. This notion was stated succinctly by Smith and Reynolds: "*Many dilemmas arise not from individual bad intentions or judgments, but out of the complexity of our organizations and the competing claims of those affected by major decisions.*"¹⁹⁷ Professors by their appointments obtain threefold commitments to teaching, research, and service, and the proper balance among these general functions is perhaps the underlying conundrum in the literature on higher education.¹⁹⁸

¹⁹⁵*Ibid.*, p. 7.

¹⁹⁶Sykes, Charles. *Profscam*, p. 4.

¹⁹⁷Smith, David C. and Charles H. Reynolds. "Institutional Culture and Ethics," in William W. May (ed.), *Ethics and Higher Education*, p. 23.

¹⁹⁸The pervasiveness of discussions on this point is exemplified by: Burton Clark, *The Academic Life*, pp. 73-89; Ernest L. Boyer, *College*, pp. 119-139; Martin J. Finkelstein, *The American Academic Profession*, pp. 87-153; Kenneth P. Ruscio, "Many Sectors, Many Professions," pp. 338-348; Howard Bowen and Jack Schuster, *American Professors*, pp. 14-24; Logan Wilson, *American Academics*, pp. 122-143; Clark Kerr, *The Uses of the University*, pp. 64-65.

David Dill outlined a role description for academic professionals that built on the core functions of teaching, research, and service, and saw that these functions had both complementary and conflicting attributes. Each major area of activity was also associated with specific constituencies, whose interests, in turn, might be complementary or conflicting. The major constituencies Dill listed were: supporters of research; institutional colleagues; members of one's academic field; clients of service activities; institutional administration; and students.¹⁹⁹ On this account, professors are faced with choices regarding the allocation of their effort among the three dimensions of the professional role, knowing that to take on excessive responsibilities in any one dimension is to necessarily undercut their attention to the other two. At the same time, there are competing claims made by individuals within the various constituencies that must be balanced.

Michael Scriven wrote that "the ethical dimension comes into each of the many roles of the college professor, and it also comes in *because* of the many roles, for example, because of the need to allocate time and loyalties among them."²⁰⁰ He also called attention to potentially competing subroles within the three general areas of responsibility. For example, service includes roles of counselor, editor, referee, consultant (voluntary or paid), expert witness, and inventor. "Merely to mention these is to make it obvious that ethical issues of some interest arise in connection with each of them."²⁰¹

Robertson and Grant commented on the subroles involved with teaching, and corresponding conflicts that result. Four examples were provided of "dilemmas created by conflicting goods." First, in the process of grading, they noted "a tension between the role of teacher as evaluator, screener, certifier, and the role of helping students."²⁰² Second, they

¹⁹⁹Dill, David D. "The Structure of the Academic Profession: Toward a Definition of Ethical Issues," *Journal of Higher Education* 53(3):255-267, 1982, p. 261.

²⁰⁰Scriven, Michael. "Professorial Ethics," *Journal of Higher Education* 53(3):307-317, 1982, p. 311.

²⁰¹*ibid.*

²⁰²Robertson, Emily and Gerald Grant. "Teaching and Ethics: an Epilogue," p. 346.

recognized a difficulty faced by teachers in choosing "the degree of neutrality required ... to avoid indoctrination [of students]."²⁰³ Third, they were cognizant of real incidents exemplifying conflicts between research and teaching, and "uneasy to find that courses are being unwisely subsumed under research projects, that faculty are shortchanging students, that administrators are loading resources on the side of research."²⁰⁴ They noted, in this regard, however, a new form of tension, in that faculty were increasingly experiencing

"a new conflict between the demands of two sets of evaluators -- students who might give greater weight to being a popular and available teacher who can 'get it across,' and faculty peers who judge one on complexity of thought, search for truth, and published research in refereed journals."²⁰⁵

Finally, Robertson and Grant recognized a fundamental conflict for all professionals, that between the professional's own interests and those of others, clients in particular. They recalled George Schurr's criticism that professional standards of selflessness have declined generally in America, including in higher education, but took issue with his assumption of "a golden age of 'the traditional academic professional' of monastic character that never was, at least not in American college life."²⁰⁶ Although they would eschew a romantic notion of a purer academic community in the past than now, they nevertheless recognized the need to give "careful consideration to the moral dimensions of the daily classroom performances of teachers ... [and] ways in which [their performances] have been affected by the other functions they are expected to perform as faculty members."²⁰⁷

²⁰³*Ibid.*, p. 348.

²⁰⁴*Ibid.*, p. 349.

²⁰⁵*Ibid.*, p. 351.

²⁰⁶*Ibid.*, p. 352.

²⁰⁷*Ibid.*, p. 356.

All conflicts among roles of faculty members do not arise entirely within the university. Professors are husbands, wives, mothers, fathers, lovers, daughters, sons, parishioners, and participants in the political system. They are also continuing learners whose views, ambitions, and interests evolve throughout their lives. An engaging account of her passage from granddaughter and daughter to student, then wife, mother, professional, and, ultimately educator, was written by Sophie Freud Lowenstein. It highlighted the conflicts and compensations of the academic life as it relates to one's involvement in family and community.²⁰⁸

By their nature, at least some role conflicts are unresolvable. Gorovitz provided an example where a professor's responsibility as a classroom teacher, to the class as a whole, conflicted with his responsibility as a teacher to the development of an individual student.

A severely handicapped student had earned standing as a junior by virtue of his intelligence and tenacity ... He was wheelchair-bound and had minimal communicative capacity; he could not speak or write! ... In class, he had a board which had a limited vocabulary of perhaps two or three dozen key words printed on it -- the logical connectives, for example, and the alphabet. He had enough muscular control to cause one hand to circle around; if one looked carefully, one could discern what word or letter he was indicating. He raised his hand when he had something to say, and when he was called on, another member of the class would decode his behavior and translate it to the class. This was a slow procedure. It took minutes for his question, or the point he wanted to make, to surface. At the same time, members of the class learned much from the presence of this student -- about stereotyping, tenacity, courage, tolerance, and human capacity. At one point the student raised his hand to offer a joke ... to the class. It was extremely irritating to the rest of the class, partly because it took so much

²⁰⁸Lowenstein, Sophie Freud. "The Passion and Challenge of Teaching," *Harvard Educational Review* 50(1):1-12, 1980.

time. I felt a particular relationship of nurturance, caring ... and encouragement with this student, but I made a decision that day henceforth to discriminate against him on the grounds of his handicap; that is, ... Others could quip, others could make a joke. He no longer could. I felt an obligation to explain to him why that decision was made and ... to put him under injunction to cease and desist from communicating in ways which ... were detrimental to the interests of the class generally. It is not at all clear that his own interests were thereby advanced.²⁰⁹

Gorovitz felt that "whatever I did would give me legitimate grounds for regret and possibly for feeling guilty ... and it is a bad piece of moral luck."²¹⁰ Robert Veatch responded that it is

... logically necessary in some cases to serve the individual interest [*sic*] of at least some of one's clients. ... If that is true, the corollary is that trust at a certain point is inappropriate, and it would be morally misleading for clients in those spots to trust their professional to be serving their interests when they are in head-on conflict with the interests of other clients, possibly with the interests of third parties outside the relationship.²¹¹

The inevitability of conflicting obligations in higher education does not necessarily diminish the level of trust between students and professors, even though the professor may suffer regret over less-than-perfect outcomes. As Daniel Brock wrote,

... we always know if we have even a modestly sized class that we don't do all that we could do for those students to educate them, and we don't think that somehow undermines their trust in the kind of relationship we have. Well, why is that? One reason, I think, is that there is an implicit, rough understanding that we are dealing

²⁰⁹Gorovitz, Samuel. "Professions, Professors, and Competing Obligations," p. 182.

²¹⁰*Ibid.*, p. 188.

²¹¹Veatch, Robert, responding to Samuel Gorovitz, "Professions, Professors, and Competing Obligations," p. 186.

with scarce resources. There are a lot more of them than there are of us in any one class, and so they don't expect that much of us. ... where trust might be undermined is where students get something different from what they have been led to expect they would get by norms of the profession.²¹²

It would be the morally naive student, rather than the "morally misled," for whom trust in the professoriate would diminish as a result of competing obligations within academia that are well-known and expected.

The unavoidable conflicts Gorovitz saw were those that pitted individual interests against the common good. Because the "primary responsibility of professors is to educate their students,"²¹³ Gorovitz did not identify research commitments versus teaching commitments as being unresolvable; it is clear that the research and service obligations the professor has to the university are secondary to those he or she assumes to students. It is a correctable failing of higher education that "... new faculty members are in general not trained in or brought into an ethos which places student interests at the center of their behavior,"²¹⁴ not an unavoidable conflict in priorities.

The "common good" envisioned by Gorovitz "may be defined in terms of the discipline which a faculty member feels an obligation to represent fairly, to advocate, and perhaps to advance. It may also be defined in terms of the class, as distinct from the individual student, or in terms of the college, the university, or even the nation."²¹⁵ Reading between Gorovitz's lines, one concludes that the student must share in the good for it to be "common." Therefore, the professor also has a commitment to the core values of the academy to which, by application for admission, the student also implicitly declares allegiance. "So, for example," wrote Gorovitz, "plagiarism and

²¹²Brock, Daniel W., responding to Samuel Gorovitz, "Professions, Professors, and Competing Obligations," p. 188.

²¹³Gorovitz, Samuel. "Professions, Professors and Competing Obligations," p. 179.

²¹⁴*Ibid.*, p. 183.

²¹⁵*Ibid.*, p. 179.

cheating are violations of those fundamental values, and faculty members have responsibilities, more weighty and pervasive responsibilities than faculty members reliably fulfill, to combat such violations of academic values."²¹⁶

Professor-Student Relations

From their respective understanding of the common academic good, professors and students define the proper nature of their interactions *qua* professors and *qua* students. Given his interpretation of the primary responsibility of faculty as the education of students, Gorovitz concluded that "the student should be able to trust not only the faculty member's knowledge, but also the procedural fairness with which the professor conveys this knowledge and assesses student performance. These elements constitute the basis of the fiduciary relationship between professor and student."²¹⁷

The nature of the relationship between the student and professor thus forms the nexus that can organize my consideration of the literature just reviewed. Writers interested in articulating the ideal of the university understand the necessity of a shared vision of the purposes of the academic enterprise so that the common good is also understood. Perhaps more important in their view is the quality of the vision; the fervency of their arguments arises from this conviction.

By the same token, authors concerned with the apparent failure of faculty to carry out responsibilities to students see the relationship as being violated. They also conclude that the autonomy of faculty enables, if not invites, the violation and undermines any form of redress. Thus arises the conclusion of the more strident writers of this genre that radical structural changes in higher education must be effected.

Finally, for those writers who see conflicting obligations among teaching, research, and service roles as the essential quandary facing higher education, it is the impact on teaching that is most problematic. Virtually no writers complain that research and service are not getting done

²¹⁶*Ibid.*, p. 183.

²¹⁷*Ibid.*, p. 179.

because teaching gets in the way, but the concern that professors' obligations to students are often unfulfilled because of research and service demands is quite commonly expressed. No doubt this is partly because of the immediacy of the professor-student relationship, whereas clients of service and research are more remote.

Illuminating the professor-student relationship and its associated principles of action thus becomes my first analytical task. In the next chapter, I shall more closely examine the roles and relations affecting professor and student and the expectations of right behavior that inhere therein.

Chapter III

ACADEMIC ROLES AND RELATIONS

Introduction

This chapter begins the analytical portion of this dissertation by attempting to characterize the principal academic roles that involve professors with students. This attempt is based on the assumption, pervasive in the literature reviewed above, of an identifiable set of expectations associated with being a professor and with being a student that define actions acceptable to society, to professors, and to students generally. In the following three sections, I will first review Dorothy Emmet's expostulation of roles and relations, and how their description provides one means of essaying ethical imperatives. Next, I shall extract from the literature a description of the role-set associated with the professorship. Finally, I will attempt to contrast the professor role-set with those of other professions so that a preliminary enumeration of ethical principles applicable to the role-set can be discerned.

"Rules, Roles and Relations"

When MacIntyre argued that principles in applied ethics serve not to link specific judgments to fundamental moral truths, but rather to provide a basis for uniform behavior that warrants public faith in a particular profession,¹ he echoed an essential premise of Dorothy Emmet's *Rules, Roles and Relations*. Early in Emmet's opening chapter, she argued that "social action depends on there being mutual reciprocal expectations as to how people are likely to act, and on these expectations not being too often disappointed."²

Expectations are fulfilled in social settings, and in many settings people meet each other in recognizable types of relations, such as parent-child, doctor-patient, teacher-student, friend-friend. When common types of relations can be identified, the people in them can be referred to by the

¹See *supra*, p. 8.

²Emmet, Dorothy. *Rules, Roles and Relations*. New York: St Martin's Press, 1966, p. 7.

roles they fulfill in the relationships.³ For Emmet, "a role relation in a social situation has some notion of conduct as appropriate or inappropriate built into its description."⁴ That notion may take the form of a rule, which "is a directive that acts of a certain kind should or should not be done"⁵ within that relationship in that setting.

Emmet attempted to show the interdependence of sociology and ethics, and so the ability of the sociologist to describe a role relation was important, because it provided a means by which ethical assertions could be enunciated. On the view of some that ethics must be autonomous of social description, factual statements may not be premises for moral arguments.

They will maintain the "autonomy of ethics" either on what we may call "non-reducibility" grounds, or on what we may call "non-deducibility" grounds. The former would be the contention that the *meaning* of ethical terms such as "right" and "good" cannot be exhaustively reduced to non-ethical terms. The latter would be the contention that no proposition containing an "ought" or other ethical term can be deduced from purely factual propositions.⁶

Emmet agreed that at least two types of moral imperatives which might be asserted with apparently factual premises do fail on these grounds. In the first type (e.g., "You ought not hit him because he is smaller than you."), there is a suppressed value premise hiding in the background (i.e., it is unfair to hit small persons). The second type is not a moral imperative at all, but a hypothetical imperative based on prudence (e.g., "If you want to get good grades, you ought to study harder.").⁷

³*Ibid.*, p. 13.

⁴*Ibid.*, p. 15.

⁵*Ibid.*, p. 11.

⁶*Ibid.*, p. 36.

⁷*Ibid.*, pp. 37-39.

However, there is a third type of imperative, exemplified by the statement, "You ought to help her because she is your mother." In this case,

... The obligation to help is said to follow from the fact of parenthood. But the fact is not a mere fact; it is a fact of social relationship. And a fact of social relationship is one about people occupying roles *vis-a-vis* each other. The notion of a role has built into it a notion of some conduct as appropriate. It thus provides a bridge in instances of this kind between factual statements about social situations and conclusions that something ought to be done in them. ... social behaviour is ... informed by expectations to which people have been taught to conform, as to how they should behave in certain relationships and situations; ... The notion of *role*, therefore, I suggest provides a link between factual descriptions of social situations and moral pronouncements about what ought to be done in them. It has, so to speak, a foot in both camps, that of fact and of value; it refers to a relationship with a factual basis, and it has a norm of behaviour built into it which is being explicitly or tacitly accepted if the role is cited as a reason.⁸

In this way, I believe, Emmet justified one of the tenets of this dissertation cited earlier: that "the expectations arising from the professional assertions and adopted roles of [the academic] profession form the basis for assessing ethical obligations."⁹

Specification of role aids the applied ethical enterprise in developing principles associated with that role: "... through showing the individual as occupying a position in a network of multiple roles, [one may] specify some of the premises (in the form of commitments, expectations, obligations) which he will be likely to take into account in forming his decisions."¹⁰ However,

⁸*Ibid.*, pp. 40-41.

⁹See *supra*, p. 5.

¹⁰Emmet, Dorothy. *Rules, Roles and Relations*, p. 137.

Emmet isn't sure that such a formulation of premises will be sufficient for aiding individuals in forming decisions.

Few persons, if any, occupy a single role. Rather, "a person finds himself in more than one constellation of roles ... and also in tension between different claims within the same 'role-set.'"¹¹ If a general set of principles could be applied to major role-sets, "if it is to be applied realistically, [it] must be supplemented by Casuistry, ... a necessary exercise in trying to determine the limits of principles in regard to new and varied circumstances, and in trying to resolve conflicts of principles."¹²

However, role morality, particularly when applied to professional roles, can be structured through the development of rules, either implicitly, or, as found in professional codes of ethics, explicitly. These rules specify standards of performance, whose maintenance is entrusted to the profession by their client-fiduciaries. "These are partly standards of competence," Emmet wrote,

... But not only so; professional competence has to be joined with professional integrity. ... Conduct prescribed by a professional code encourages ... confidence between the professional person and his client as will make it more likely that the function in which they are both interested will be carried out successfully.¹³

This describes the activity of professional ethics seconded by MacIntyre: the development of behaviors that fulfill the reasonable expectation of clients and justify their reposing of trust in the professional.

Implied in Emmet's account is another important characteristic of the professional role. If the justification of the professional role-set is "based on functional grounds, as promoting the kind of relationship within which a job is most likely to be done effectively,"¹⁴ then the "job" or central

¹¹ *Ibid.*, p. 147.

¹² *Ibid.*, pp. 50-51.

¹³ *Ibid.*, p. 159.

¹⁴ *Ibid.*, p. 162.

purpose of the role cannot be made out of whole cloth. Sokolowski stated it correctly when he argued that "A profession is based upon a natural process that it tries to imitate and bring to as perfect a condition as it can. Through this focus, the profession itself, as an institution and as an activity, has its own nature and its own end."¹⁵ We can expect, then, that an analysis of the "job" to be done in a professional role should reveal a client need that arises "naturally" from the human condition within the particular social milieu.

Role Categories in Academia

The Nature of Academic Roles

Dorothy Emmet indicated some definitions that sociologists use in examining social structures. According to Emmet, sociologists

... see webs of relationships divided into subsidiary webs or patterns of special relationships ... whose special internal properties can be studied. The notion of a role refers to such a special relationship, while a "role-set" is the group of relationships associated with a particular role. A "role performance" is the enactment of a relationship of a special kind, and in any given society there will be certain ways of enacting a role considered important ... In a role one sees oneself in a situation in relation to others who also have their parts in the situation.¹⁶

If I interpret Emmet correctly, the teacher-student relationship is one in which there is a teacher role and a student role. Associated with each role is a role-set; the teacher role-set comprises relationships with other students, with administration, and so on. Emmet further wrote that individuals find themselves in "constellations of roles,"¹⁷ which I take to imply that the teacher role is found, in higher education, within a constellation of roles that encompass the professor: teacher, researcher, provider of service. Each of these roles has a role-set, so that the expanded web of

¹⁵Sokolowski, Robert. "The Fiduciary Relationship and the Nature of Professions," p. 35.

¹⁶Emmet, Dorothy. *Rules, Roles and Relations*, p. 140.

¹⁷*Ibid.*, p. 147.

relationships for a professor includes those with the others listed by Dill: students, institutional administrators, supporters of research, institutional colleagues, members of one's academic field, and clients of service.¹⁸

Walter and Von Glinow have written that the teaching role, and by extension each role within a constellation, has its own ends and means.¹⁹ This is consistent with Emmet's notion that each role has expected ways of behavior, the means of the role,²⁰ which serve societal functions, the ends of the role. For Walter and Von Glinow, faculty use process and content means to reach teaching goals of disseminating knowledge, cultivating students' skills, and cultivating students' capacities.²¹ Each task in the process and each content element is associated with ethical considerations.

One source of role conflict ought to be found within the role if the means to one end conflict with another end in a given situation. For example, the goal of efficiently disseminating knowledge in higher education may conflict with the goal of cultivating the students' skills in self-learning, and there are arguments in the literature that suggest that much college instruction is teacher-centered rather than student-centered, and that this fails to meet the ethical demands of

¹⁸Dill, David D. "The Structure of the Academic Profession," p. 261.

¹⁹Walter, Gordon A. and Mary Ann Von Glinow. "Fundamental Means to Ethical Teaching," in Stephen Payne and Bruce Charnov, *Ethical Dilemmas for Academic Professionals*, pp. 21-31.

²⁰Williams called for studies of the actual role performance of professors, as well as of their status, as long ago as 1963. See Donald T. Williams, *The Concepts, Status and Role, as They Affect the Study of Higher Education*, Ph.D. Dissertation, Stanford University, 1963, pp. 332-333. The works previously cited by Finkelstein, by Bowen and Schuster, and by Burton Clark have shed much light on professorial status. My review of the literature would suggest that the role behavior studies suggested by Williams have yet to be done. My own characterization of professorial roles deals little with actual role performance and more with expectations about the limits of professorial role behavior.

²¹Walter, Gordon A. and Mary Ann Von Glinow. "Fundamental Means to Ethical Teaching," p. 23.

the teaching role.²² Thus, enumerating the ends and means for each role is one approach to categorizing ethically-relevant role factors.

Although the multiple roles within the professor's constellation may conflict as well, their mutual coexistence over time has very likely resulted from a balance of compatibility over conflict. The provost who argued, for example, that "The very best teachers ... are those who are also on the leading edge of research, and that's axiomatic,"²³ was making a not indefensible (if exaggerated) case that good research and good teaching can go hand-in-hand.²⁴ In a similar manner, many service activities, particularly those associated with institutional governance, support the teaching role in needed ways.

For this reason, if not for the very formidable barriers to change in higher education, the professor will continue to be defined within a constellation of roles. Eliminating one or more is neither feasible nor necessarily desirable as a means of reducing the need to make ethical choices. In particular, colleges and universities are unlikely to disappear, and as long as the majority of their students are undergraduates, they must pay attention to teaching. Faculty who, for example, aspire to positions in research-oriented universities must continue to balance their effort among roles in a manner that pays homage to the ethical claims of their students.

The student role is the other important role in the teacher-student relationship. The student brings to the relationship certain ends and potential means, and expectations about the value and outcome of entering into the relationship. Because student expectations help define the teacher's responsibilities, a good starting place for analysis of academic roles is with the student role.

²²Nel Noddings, for example, wrote that "I can lecture to hundreds, and this is neither inconsequential nor unimportant, but this is not teaching." *Caring*, p. 113.

²³Boyer, Ernest L. *College*, p. 124. This sentiment has venerable origins, and was similarly expressed as early as 1891 by David Starr Jordan at Stanford. See W. H. Cowley and Don Williams, *International and Historical Roots of American Higher Education*, New York: Garland Publishing, 1991, p. 141.

²⁴On this point, see also Martin J. Finkelstein, *The American Academic Profession*, p. 126.

Students

The first characteristic of the student role in higher education is that it is voluntary. In many public systems, legislatures have given entitlements to young adults to enter higher education (especially at the community college level), but there is no compulsion to attend. Virtually without exception, students in American higher education are over 18 years in age, and are, in the 1990s, legal adults for nearly all purposes relevant to university life. Therefore, universities can rightly link admission to the academic community with acknowledgment by the student that he or she accepts its fundamental tenets, because the students are legally competent to make such an agreement.

The doctrine of *in loco parentis* may well have undermined the *American* acceptance of *Lernfreiheit* as an important component of academic freedom during the late 19th and early 20th centuries. One critique of those years may be that the German concept of *Lernfreiheit* did not replace the American version of *in loco parentis* as a model for thinking about students, thus delaying recognition that students' needs and preferences are relevant to the conduct of higher education. Many authoritarian practices in American higher education may have been abandoned earlier had this occurred.

The 1960s and 1970s finally saw the demise of *in loco parentis* in the face of student reclamation of a role in setting the priorities for higher education in America. A recognizable result of this transition was the further distancing of American professors from their students. Given the remoteness of German professors from their students in the 19th and early 20th centuries,²⁵ this result should not be unexpected.

Nevertheless, when casting faculty roles as partial correspondences to student expectations, one may assume that reasonable expectations of students arise from a relationship in which students and professors share common and mutually beneficial goals. This, I think, was

²⁵Cowley, W. H. and Don Williams. *International and Historical Roots of American Higher Education*, p. 148.

the approach taken by Kadish when he "... select[ed] as the principle for discriminating among policy choices the self-interest of those who do the job of education. ... I propose to assume that the self-interest of students rather than their manipulation for other purposes is central for determining the primary educational policies."²⁶ If the self-interest of the student is not, however, compatible with the proper aims of higher education, then one cannot see how the relationship can endure.

Before explicating what these student interests might be, it is useful to consider that the student-professor relationship includes within its role-sets the public and private benefactors of higher education; students rarely pay the full cost of their education. When faculty and students alike accept their benevolence, it should be done so with an appreciation for the aims envisioned by the donors and taxpayers.

Some harsh critics of society's intentions for higher education have spoken of universities as a vehicle for enforcing an "apartheid of the young,"²⁷ places that "work ... to maintain existing class distinctions, to keep young people of the middle classes off the job market during their difficult years, and to give these young people degrees."²⁸ A more reasonable assumption is that universities are supported largely for the promises made by them. Claims about teaching infer that colleges will prepare students for successful places in the society of educated men and women; will train many to be the nation's future professionals, scientists, technologists, and leaders; and will encourage some to be society's future professors. All the assumptions that led to public and private support for higher education in the early part of this century appear likely to remain in place, reinforced by concerns about America's competitiveness in the world market and its ability to solve present and future social problems. We maintain a fundamental belief in the power of

²⁶Kadish, Mortimer R. *Toward an Ethic of Higher Education*, p. 6.

²⁷Wilson, Everett K. "Power, Pretense, and Piggybacking," p. 271.

²⁸Mandell, Richard D. *The Professor Game*, p. 255.

education to transform society, and in the efficacy of research and scholarship to provide society with valuable new information and insight.

Certainly parents and college-bound high school students have expectations about college. As Ernest Boyer wrote,

Students go to college expecting something special. Their parents share this hope. Only in America is the decal from almost any college displayed proudly on the rear window of the family car. ... One high school student reflected this nation's almost touching faith in higher education when she said: "I think my main concern is that without a college education I'll have slim chances in today's world. I want a better life for myself. That means college."²⁹

More than 80 percent of parents and college-bound students cited the following as very important reasons for attending college: to have a more satisfying career; to prepare for a specific occupation; to get a better job; to maximally develop talents and abilities; to learn more about interesting things; to gain a well-rounded education. In addition, half or more of the students agreed that these reasons included to become an authority in a specialized field or to become a "well-rounded, more interesting person."³⁰

According to these parents' and students' perspectives, the university is a place for *both* education *and* instruction, in the sense used by Newman where the former is the development of character and the cultivation of the mind, and where the latter aims to develop useful and manual skills for the trades or for business.³¹ Kerr was correct in his assessment of Hutchins's impact on the University of Chicago; in the United States, the argument whether the university course should include practical training had already been lost. The ends of teaching identified by Walter and Von

²⁹Boyer, Ernest L. *College*, p. 11.

³⁰*Ibid.*, p. 12.

³¹Newman, John Henry, *The Idea of the University*.

Glinow (disseminating knowledge, cultivating students' skills, and cultivating students' capacities) would receive the approbation of the parents and students surveyed by Boyer.

Perhaps the primary expectation of students is that they will pursue, and eventually obtain, the degree sought, and that it will be valued by society. Since colonial times, American colleges have offered certification, and even when practical training was rejected as a valid purpose of higher education, the degree had tangible value. As Rudolph commented, "Nothing could have been more cultural or nonutilitarian than the Harvard education that was being experienced by the student who responded to Henry Adams's question as to why he was at Harvard: 'The degree of Harvard College is worth money to me in Chicago.'"³²

This proffer of certification and its acceptance bind the professor and student to a relationship of accountability with society at large. Consider society's regard for the sanctity of the degree as reflected in judicial reluctance to interfere with academic decisions of faculty. Because society places such great faith in the certification provided by college degrees,³³ it has granted considerable freedom to faculty so that their classroom activities will be unimpaired by outside pressures. The court's reluctance to "cast a pall of orthodoxy over the classroom"³⁴ is the clear indication of this grant.

This mutual accountability of professor and student to society is even more critical in professional schools. Whereas a liberal arts baccalaureate certifies students as being mature and generally prepared for the world of work at a certain socioeconomic level, a professional degree is a credential for entrance into a specific profession and, in some cases, for examination for licensure by the state. It thus attests to minimum professional competencies and, at the very least,

³²Rudolph, Frederick. *Curriculum*, p. 14.

³³Even when a professor misstated the requirements for passing a final master's examination, and a student met the misstated requirements, the court would not award the degree, holding that the sanctity of the certification implied by the degree is of overriding importance. *Olsson v. Board of Higher Education*, 426 N.Y.S.2d 248, 1980.

³⁴*Keyishian v. Board of Regents*, 385 U.S. 589, 1967, p. 603.

sufficient training to protect the public welfare. Professors and students in professional programs are thus obligated more specifically, often via accreditation mechanisms, to achieving specific learning outcomes and proficiencies. They are also jointly committed to the norms of their profession.

Other expectations arise, if for no other reason than because students generally attend college for the tangible rewards associated with a degree. Equitable treatment is certainly one. Again, the courts have found no difficulty in discovering contract rights in private institutions and due process rights in public universities that are grounded in a property interest in the receipt of a degree as long as appropriate requirements are met. Once students are admitted to study, institutions are bound to treat them fairly and equitably. It is no hard task to find the same imperative in ethical considerations of distributive justice. Even in the absence of property considerations, one may argue, as did Ashby, that it is the very nature of an alethropic ethos to embrace equally all seekers of the truth and to treat them equitably.

Students expect efficacy and efficiency in their instruction. Gorovitz cited a betrayal of one of these expectations when a student sued "a faculty member and an institution on the grounds that the course did not correspond to the catalog description, that it cost money and it cost work, and it didn't provide what was advertised, and it was successful litigation."³⁵ Similar cases were reported by Mandell, where students successfully received tuition refunds for courses that were poorly taught.³⁶ Even courses that are well-taught, but required for a degree when they do not bear a reasonable relationship to the core of the major, are bothersome to students if they either require a longer time to achieve the degree or diminish elective opportunities. It is, unfortunately, not uncommon that a department will drop a required course only when the faculty member that teaches it retires. One could argue that if it were essential to the major, the department should find someone new to teach it, or they should have dropped it as a requirement much sooner.

³⁵Gorovitz, Samuel. "Professions, Professors, and Competing Obligations," p. 189.

³⁶Mandell, Richard D. *The Professor Game*, pp. 6-7.

Finally, students do not expect to shed their important projects, dignity, or personhood at the campus gates. Although the university's long-standing avowal that the curricular experience will make a positive contribution to one's character and will help develop one's mind ought to imply a guarantee of nonmaleficence, this expectation of having one's autonomy respected is also fundamental to the promise of a constitutional democracy.

In summary, students³⁷ attend the university for at least one of the following purposes: to acquire knowledge about interesting things; to become mature, well-rounded, educated individuals; to become proficient in a particular technical or professional occupation; and to be certified to the world that they have achieved one or more of these goals. They expect to be treated fairly and equitably. They hope their effort and expense will obtain them instruction which is efficacious, and whose extent and expense is reasonably related to their goals. Finally, they expect to carry with them all the rights and privileges of citizenship and personhood, and not to have these abrogated as an additional and unjustified cost of their education. In return, it is appropriate to require that students adhere to standards of scholarship and inquiry, respect their own and others' academic freedom, and work diligently to justify society's investment in their education.

This rather concise list of student expectations will, its brevity notwithstanding, serve to illuminate professors' several roles in their relations with students.

Professors

The classic expression of faculty freedoms and responsibilities that emanated from the battle for academic freedom in South Africa in the 1950s can serve as an organizing motif for examination of faculty roles:

³⁷The caveat, "most students," need hardly be entered here but for completeness; I understand that students whose expectations are other than these need to be better informed about college, for their experience will be wasted and usually short-lived, and I count the university justified in removing them from its environs.

[The university shall] determine for itself on academic grounds, who may teach, what may be taught, how it shall be taught, and who may be admitted to study.³⁸

Each of the elements here expressed can be examined in light of the student expectations found reasonable above. Reinterpreted as role-names, these elements become the following in the professor's constellation of roles: Peer Evaluator; Curriculum Planner; Teacher; and Student Evaluator.

Peer Evaluator

Individuals who are allowed to teach courses in a university comprise a diverse lot which includes graduate students with teaching assistantships, non-tenure track faculty with lectureships or affiliate faculty appointments (both paid and volunteer), and tenure-track faculty at ranks ranging from instructor to full professor. Approval of admission to the faculty and continued appointment or promotion to tenured positions is the prerogative of the faculty in most institutions, and is the critical means by which individual professors can act to assure high quality of instruction in their institutions.³⁹

For the most part, faculty with peer review responsibilities are those with tenure-track appointments, who will evaluate only faculty members at ranks below their own. (As a general exception, a wide variety of faculty ranks, and often students, participate on search committees and vote on initial appointments.) As reported by Bowen and Schuster, nearly 25% of full-time faculty were instructors or at other non-tenure track ranks, and 32% of faculty had part-time

³⁸Centlivres, A.v.d.S., *et al.* "The Open Universities of South Africa", cited in Felix Frankfurter, opinion of the court, *Sweezy v. New Hampshire*, 354 U.S. 234 (1957), p. 263.

³⁹I am ignoring variations on the general theme that are found in some community colleges, certain private institutions, some unionized faculties, and specific departments from time to time, where faculty members (as opposed to administrators) are bereft of one or more peer appointment and review responsibilities.

appointments.⁴⁰ A minority of higher education's personnel had, as a result, peer review authority (although they represented the majority of faculty FTEs⁴¹).

Peer review in most institutions is a departmental function,⁴² and because departments are organized largely along disciplinary lines, standards of excellence in scholarship and research are those of the discipline. Disciplines vary in their methods and nature of their organizing paradigms; variety is therefore exhibited in their peer review standards, and is particularly noticeable in their recruitment approaches.⁴³

Regardless of the department or discipline, the peer reviewer obtains an obligation to exercise the best judgment so that faculty members who are recruited and retained will fulfill their ethical obligations as well as contribute to the department's growth. This seems to entail some evaluation of the character of the faculty member or candidate being reviewed. In pre-20th century America, character was often the critical variable in faculty hiring decisions. But because it had been difficult to attain agreement on what constitutes good character, and because ostensible criteria of character might be used as a guise to screen out minorities, women, or holders of unpopular opinions, by the late 1930s evaluation of character came under suspicion. Derek Bok has recounted the report of the faculty at Harvard in 1939:

"Personal characteristics should not be considered as primary criteria. A faculty made up wholly of amiable and attractive men, or even of saints, would not as such serve the purposes of a college or university." In this fashion, the earlier emphasis on character was pushed aside, save in exceptional cases, as

⁴⁰Bowen, Howard R. and Jack H. Schuster. *American Professors*, pp. 44, 62.

⁴¹FTEs: full-time equivalents.

⁴²Not all evaluation participants are departmental peers. Many universities have university-wide promotion and tenure review boards in addition to departmental committees, and, more important, a great deal of reliance is placed on reviews by peers at other institutions. See George R. LaNoue, "Ethical Issues in Faculty Evaluation," in William May, *Ethics and Higher Education*, p. 134.

⁴³Zaugg, Karen. *Degree of Paradigm Development and Faculty Search Processes in Academic Departments*. Ph.D. Dissertation, University of Washington, 1990, pp. 78-81.

incompatible with the standards of academic freedom and scholarly excellence that seemed more and more essential to the modern university.⁴⁴

The revival of interest in ethics in higher education in the late 1970s and early 1980s did not reinstate character as an evaluand. As Bok continued, "... no research university could hope to reinstitute character as a basis for appointments. The criterion is simply too susceptible to abuse, too vague, too remote from the primary commitment to learning and discovery."⁴⁵

Nevertheless, interest continues in peer review serving as a means to assure ethical behavior by faculty appointees; "select the trustworthy" is one writer's solution to guarding against misuse of faculty power in ways that violate students' rights.⁴⁶ How to do that becomes the issue. At the very least, faculty members involved in peer review can no longer turn a blind eye to known ethical violations. This includes those who write, as well as review, recommendations. Failure to act in the face of demonstrated ethical violations constitutes a perversion of collegiality that violates the presumptions about professional responsibility upon which society grants professional autonomy.⁴⁷

Commensurate with peer reviewers' obligations to act in the face of ethical violations, to put students' and other clients' interests ahead of collegiality, is a duty to work to make the hiring and promotion process equitable. When women and minority faculty members are assured of just treatment⁴⁸ at the hands of their peers, students also benefit, from faculty diversity and from the ethical environment that is promoted by justice.

⁴⁴Bok, Derek. *Beyond the Ivory Tower: Social Responsibilities of the Modern University*. Cambridge: Harvard University Press, 1982, p. 119.

⁴⁵*Ibid.*, p. 122.

⁴⁶Wilson, Everett K. "Power, Pretense, and Piggybacking," p. 272.

⁴⁷Freidson, Elliot. "Nourishing Professionalism," in Edmund Pellegrino *et al.*, *Ethics, Trust, and the Professions*, pp. 198-199.

⁴⁸This is not a plea, necessarily, for affirmative action. See George LaNoue, "Ethical Issues in Faculty Evaluation," pp. 146-147, for a discussion of factors in evaluation that bias the evaluation against women and minorities.

Curriculum Planner

The professor plans courses, and usually has complete control over them, especially if they are elective. He or she also may serve on faculty committees, at the departmental, college, or university level, that design curricula and requirements for majors and degrees, and approve course materials. In most universities, all faculty members within a department or college have the opportunity to vote on major curriculum changes, particularly graduation requirements and core courses. Thus every faculty member bears ethical responsibility, not only for his or her own courses, but for the general nature of curriculum in his or her university.

The student reasonably expects efficacy and efficiency from the curriculum and the planning process. By efficacy is meant that the course, and the curriculum of which it is a part, accomplishes its educational goal. By efficiency is meant that student (as well as faculty and university) resources are not wasted.

The university offers, and most students accept, to educate, instruct, and certify. Some students exhibit extreme narrowness of purpose -- just "wanting to get through" -- while others lack focus altogether. It is not a waste of student resources to provide curriculum that guides each of these extremes toward an objective that is reasonably discrete yet sufficiently broad. It is a waste of student resources to plan a curriculum that errs either in allowing credit for "gut" courses or in requiring attendance in courses that are nothing more than faculty hobbies, rigorously taught.

Faculty responsibility for curriculum in general goes beyond the type of quality control that merely rejects obvious extremes of inefficiency and fecklessness. The very nature of a good curriculum is that the degree it leads to *means something*. Critics of American higher education are particularly bothered that for students who pursue a non-professional curriculum, the resulting degree may only certify that the student endured four years of coursework. As Frederick Rudolph challenged, "Can there be any question about the values a college or university teaches when it

says: 'We don't care what courses you take; you can have a B.A., and not know how to write, how to understand nuclear fission, look at a painting, or listen to music?'"⁴⁹

The problem, of course, is that Rudolph may find that professors in general agree with his sentiment that curriculum matters, and most would concur that a B.A. holder ought to be capable of passable prose. However, many would balk at Rudolph's insistence that the rest of the items in his list are essential preparation for all arts baccalaureates. Thus the persistence of curricular debates. What is important is that faculty members enter into these debates seriously.

That the American college was always somewhat hypocritical about the contribution of curriculum to the tangible value of a college education,⁵⁰ or that students do not always demonstrate that they care about rigor in their curriculum, doesn't absolve the faculty of its responsibility in overall curriculum planning.

At the level of individual courses, every coursemaster is a curriculum planner. Student expectations for individual courses rightly include a well-structured and explicable syllabus, course materials that reasonably relate thereto, prerequisite requirements that are devoid of ulterior purposes, and a format appropriate to the stated course goals.

Aside from adherence to truth-in-advertising, care in developing -- and updating -- the course syllabus is an essential demonstration to students that their professor takes the subject matter seriously. The faculty member who is insouciant about his or her preparation for the course undermines a critical requirement for learning: "If faculty and students do not see themselves as having important business to do together, prospects for effective learning are diminished. If students view their teachers as distant and *their material as irrelevant*, what could be a time of exciting exploration is reduced to a series of uninspired routines. [emphasis added]"⁵¹

⁴⁹Rudolph, Frederick. *Curriculum*, p. 289.

⁵⁰Rudolph has underscored the importance, and necessity of, the *extracurriculum*, largely student-developed, in rounding out the college experience and making it valuable, citing the motto, "Don't let your studies interfere with your education," that was popular in the 1900s. *Curriculum*, p. 12.

⁵¹Boyer, Ernest L. *College*, p. 141.

The syllabus also provides students with an instrument they can use for their own planning. The reality of the modern university is that students have demands outside the classroom, real and pressing. The syllabus's schedule should be one that the professor can and will adhere to, and announced deadlines should be enforced. "To give those who are late the same consideration as those who are not is blatantly unfair, misleading to students, and self-defeating for instructors."⁵²

Textbooks and readings required for a course, but not made integral to the course, undermine students' confidence in the professor, and in the value of assigned materials generally. They also waste student resources. The professor assigning required reading possesses the same potential to violate a fiduciary trust as does the physician who prescribes medications to treat a patient; everyone is now aware of the problem of unnecessary prescribing, but only students fully appreciate the losses associated with excessive required readings and textbooks.

Professors position their courses within the curriculum by means of prerequisites. In most cases the prerequisites are stated as prior courses that must be completed in order to be eligible for the course, but positioning can also be accomplished by assigning a course number that puts the course at a particular level, such as upper division only. Theoretically, this positioning is in the student's interest, because it assures that the student will be taking a course only when he or she is academically ready. However, ulterior motives do exist for course positioning. The class size can be restricted by requiring prerequisites that are difficult to obtain.⁵³ Some universities reward departments with higher budgets for upper division coursework. A course placed in the spring term, but requiring a prerequisite that can only be taken in the fall, forces students to stay enrolled in the interim. Lastly, enrollment in an unpopular and poorly-taught course can be maintained or

⁵²Cahn, Stephen. *Saints and Scamps*, p. 16.

⁵³Community college transfer students may be disadvantaged when a university will not accept work in equivalent courses at the community college in fulfillment of university course prerequisites, a practice seen as without justification by community college leaders; see Commission on the Future of the Community Colleges, *Building Communities -- A Vision for a New Century*, Washington, DC: American Association of Community and Junior Colleges, 1988, p. 37.

increased by finagling to have it required as a prerequisite for a later, desirable course. To the extent that unwarranted prerequisites are instituted for these ulterior purposes, students suffer, and the faculty planning a course should resist importunings in this direction.

Finally, the course planner must choose wisely a course format from among a variety of tested methods. The large lecture class is the overwhelmingly favored format in American higher education, and is appropriate for *many* courses. However, one must be mindful, as was Boyer, of Adler's dictum that "all genuine learning is active, not passive. It involves the use of the mind, not just the memory. It is a process of discovery in which the student is the main agent, not the teacher."⁵⁴ Boyer was also impressed with the distinction made by Schorske:

Do you regard "learning" as a noun or a verb? If as a noun, as a thing to be possessed and passed along, then you present your truths, neatly packaged, to your students. But if you see "learning" as a verb! -- the process is different.⁵⁵

The professor as course planner must consider alternatives to lecturing when appropriate: seminars, laboratories, field studies, directed readings, case studies, computer-aided instruction, group projects, and practicums are among the well-documented choices available. This suggests that faculty members are individually and collectively responsible to prepare themselves to instruct in multiple formats.

Teacher

I understand teaching in the university as a volitional activity whose intended result is to facilitate student learning. Thus described, it differs in sense from what many think of as educating. Many etymologists have indicated that *educating* has its roots in the Latin *educere*, to draw out.⁵⁶ On this derivation, numerous educators believe that one is educating only if the act is completed

⁵⁴Adler, Mortimer, cited in Ernest L. Boyer, *College*, p. 150.

⁵⁵Schorske, Carl, quoted in *ibid.*, p. 151.

⁵⁶*Webster's New World Dictionary of the American Language* (Second College Edition). Cleveland: The World Publishing Co., 1958, p. 444.

by learning taking place in the student. Noddings concluded that, perforce, "teaching involves a meeting of one-caring and cared-for. I can lecture to hundreds, and this is neither inconsequential nor unimportant, but this is not teaching."⁵⁷ I believe Noddings has adopted the education-as-drawing-out definition. Others have argued that the roots of *education* arise, rather, from the Latin *educare*, which was used in the sense of raising (a child).⁵⁸ For these authors, "in its broadest sense education consists in the products of the process of acquiring new knowledge, skills, and attitudes, that is, new subjective and projective modes of behaving. Nature and culture both trigger the process, the latter predominating."⁵⁹ Their definition would contradict Noddings's conception which implies that only education as "drawing-out" counts as teaching.

To place on the professor the ethical duty to develop educating relationships with each student, or to define the professor's activity as non-teaching when one or several students fail to learn in response to it is both to overstate the professor's role and to underemphasize the student's responsibility as a learner. I believe the Germans were correct to surmise that *Wissenschaft* comprised two collateral roles that united professor and student in the quest for knowledge. Thus the German professor was responsible for instruction of high quality, but not for whether his students learned thereby.⁶⁰

When a professor instructs, by lecturing, demonstrating, moderating a seminar, or other methods, that must be considered only one portion of the learning resources available to the student. Texts, the scholarly literature, instructional programming, group projects, cases, and scholarly writing exercises all involve the student as an independent learner, and may legitimately contribute as much or more to a course than the professor's performance.

⁵⁷Noddings, Nel. *Caring*, p. 113.

⁵⁸Cowley, W.H. and Donald Williams, "The Meaning of 'Higher Education'," *The Educational Forum* 33(4):497-509, 1969.

⁵⁹*Ibid.*, p. 505.

⁶⁰Boyer, Ernest L. *College*, p. 120.

The instructional role, however, does imply a willingness to interact with students at their initiative. The professor must be available for clarification, for feedback from students, and to be able to extend the discourse begun in class sessions.

Is there no role, then, for the professor as one-caring, or for friendship between professor and student? On the contrary, to exclude such a role would be a mistake. I agree with Baumgarten when he wrote,

... having a professional relationship with a student does not preclude a wider human relationship as well. If the restrictions I have proposed in the name of professionalism implied that I could not simultaneously have other kinds of relationships when both the student and I freely chose them, then I would agree that we would be paying too heavy a price to be a professional. The best teachers are probably those who genuinely like the company of many of their students and who enjoy discussion with them that is unrestrained by the conventions appropriate to a classroom. No doubt some of our warmest friendships may even develop from these associations. But this does not mean that the freedom that befits a friendship should be our model for classroom behavior; unlike our friends, our students are not obliged to indulge our intellectual prejudices or our personal idiosyncrasies.⁶¹

For both professor and student, their basic relationship implies a professional interaction; participating more fully as one-caring or cared-for is largely supererogatory, in my view.

A readiness to enter into a caring relationship with a student, or at least to help guide the student into one with another person in the institution, may well be an obligation of the college teacher. True mentoring relationships are rare in higher education, even in graduate education where the opportunities for their development are more often present. These relationships must be

⁶¹Baumgarten, Elias. "Ethics in the Academic Profession: A Socratic View," *Journal of Higher Education* 53(3):283-295, 1982, p. 293.

reciprocal, and probably cannot be forced. Not all students will want to participate in such a relationship, and not all professors will feel capable of entering into one at all points in their careers.⁶² However, a student seeking advice and counsel cannot be ignored, if the professor who does so is to be considered as fulfilling a minimal professional responsibility.

Two kinds of advisory roles are associated with teaching. The first concerns academic matters. In this regard, it is difficult to conceive that a professor would be an adequate teacher if he or she were not interested in the academic progress of his or her students. Yet in Boyer's study of undergraduate education, "about one [student] in four said there is *not* even one professor on their campus who takes a personal interest in their *academic* progress."⁶³ That does not mean there were *some* professors on these campuses who took *no* interest in *any* student's progress, but only that *many* students (about 25 percent) were unable to connect with a professor who showed interest in them. Academic growth of students must be a core value of the teaching role, and it is legitimate to expect professors, individually and collectively, to be concerned about findings such as Boyer's.

The role of the teacher as counselor on personal matters must be an optional one. At the very least, many professors lack the background and training to do a competent job of personal counseling. Therefore, the provision of personal counseling is an institutional interest handled by professionally-trained counselors in counseling centers. On another level, assuming a counseling role for a particular student may necessarily involve abandoning a neutral stance that is needed to avoid bias in evaluating the student or in maintaining "the 'commitment to the integrity of inquiry,' which ... is a definitive characteristic of teaching."⁶⁴ Nevertheless, professors can pay attention to

⁶²Friedman, Nathalie. *Mentors and Supervisors: Doctoral Advising of Foreign and U.S. Graduate Students*. IIE Research Report No. 14, New York: Institute of International Education, 1987, pp. 79-82.

⁶³Boyer, Ernest L. *College*, p. 54.

⁶⁴Robertson, Emily and Gerald Grant. "Teaching and Ethics," p. 347.

obvious signs that a particular student in their class needs referral, and can become aware of the options available for student counseling and emotional support.

Student Evaluator

A professor's objectivity is particularly critical because of his or her role in evaluating students and certifying their academic achievement. Faculty also set standards for, and may be directly involved in deciding about, students' admission to their programs. At least some professors are involved in proceedings leading to student dismissal. Finally, most professors write letters of recommendation for students. Because these activities "affect the students' life chances," the professor must "discover how to balance encouragement, compassion, and support for students with rigorous evaluation and intellectual honesty."⁶⁵

Evaluation is an important form of feedback to the student by which he or she measures his or her own progress, and can guide his or her actions. As such, it is a private communication. One of my own professors⁶⁶ once wrote to his students that he regarded the necessity of reporting grades to the Registrar as an unfortunate invasion of his and their mutual privacy, and it is doubtless that many would agree with him.

However, through many years of such usage, students are entitled to rely on these evaluations as a certification of their attainment, and as evidence of their relative rank among their peers. So all grades become matters of semi-public concern, and a professor cannot consider his or her evaluation of an individual student as a private affair, independent of his or her evaluation of all other students.

Professors are collectively responsible for a system of evaluation by which the societal use of college and university grades and degrees has a reliable base. Recent criticism of higher education has centered on three alleged failings in this regard. First, lack of curricular rigor leads to degrees that no longer mean what they once did, and mislead society about the nature of a

⁶⁵*Ibid.*, p. 346.

⁶⁶Professor Emeritus Charles Burgess.

college-educated person. Second, softening of enrollment procedures and curricular standards (e.g., peremptory drop policies, availability of "gut" courses, and pass-fail grading options) permits students to

... artificially hik[e] their grade point averages. On campuses all across the country, undergraduates are overenrolling in courses and dropping the ones in which they do poorly on the last possible drop date; taking optional pass-fail courses outside their majors and working harder in their graded major courses; ... changing from pass-fail to letter ... grades or vice versa after the first course exams and taking "gut" courses, "mickey mouse" [*sic*] courses, or courses known for their high grades. Almost half (43 percent) of all undergraduates believe that many of the successful students at their college make it by "beating the system," rather than by studying.⁶⁷

Third, for a variety of reasons faculty have collectively permitted a steady inflation in grades. As an example, although standardized achievement scores were declining between 1969 and 1976, the percentage of A grades awarded rose from seven to 19 percent, while the proportion of grades below C declined from seven to three percent.⁶⁸

One interpretation of this phenomenon is that it arises from a fundamental change in philosophy. In spite of grade inflation, noted Arthur Levine, three-fifths of college students in the late 1970s continued to believe that their grades underreported their actual performance. But, wrote Levine,

⁶⁷Levine, Arthur. *When Dreams and Heroes Died: A Portrait of Today's College Student*. San Francisco: Jossey-Bass, 1980, pp. 71-72. References in passage omitted.

⁶⁸*Ibid.*, pp. 71, 73.

In view of grade inflation, this is, of course, impossible. ... underlying this belief must surely be a misplaced sense of entitlement, a confusion of aspiration with accomplishment, and a loss of perspective about what constitutes merit.⁶⁹

Some observers believe the university faculty have a moral duty to combat this form of "cultural narcissism, construed to mean an inability to self-validate on the part of each individual," by "exercising the authority of their office ... to establish the kind of moral atmosphere" in which what I have called alethetropism may flourish.⁷⁰

This demand that grades be consonant with alethetropism requires that the individual professor is as careful about the truth of his or her evaluative claims regarding students as he or she would be about research findings. Some principles applying to research are applicable to enquiry regarding students' achievement. Just as a poor research design may lead to findings that are statistically significant but essentially devoid of probative value concerning the research hypothesis, poor design of examinations, evaluation instruments, or in the combination of these instruments to determine a grade, can lead to grades in which "precision" is achieved in the absence of validity.⁷¹ Few professors have formal training in the design and analysis of examinations, or in pedagogy generally;⁷² this undercuts the assumption of expertise on their part that would undergird fair and equitable evaluation of their students.⁷³

⁶⁹*Ibid.*, pp. 72-73.

⁷⁰Worsfold, Victor L. "Toward a Code of Ethics for University Administrators," in Peter Andre Sola (ed.), *Ethics, Education and Administrative Decisions: A Book of Readings*. New York: Peter Lang, 1984, p. 97. Worsfold credits this notion of "cultural narcissism" to Christopher Lasch, *The Culture of Narcissism: American Life in an Age of Diminishing Expectations*, New York: W. W. Norton & Co., 1978, pp. 182-186.

⁷¹Sax, Gilbert. *Principles of Educational and Psychological Measurement and Evaluation, 3rd Ed.* Belmont, CA: Wadsworth, 1989, pp. 538-539.

⁷²Boyer, Ernest L. *College*, pp. 154-155.

⁷³Scriven, Michael. "Professorial Ethics," p. 313.

Scriven identified several "prima facie obligations" of professors in the testing/grading process:

- a. To provide early sample tests/assignments so that students can get some idea of them before it is too late to cancel without penalty; ...
- b. To provide enough feedback on early test performances so that something can be learned from failure; ...
- c. If teaching one section of a multisection course, consistency in grading practices between sections is an ethical responsibility, not an infringement of academic freedom. ... Similar problems arise at the departmental level, for example, a full grade-point difference in the GPAs of history versus English majors at Berkeley.
- d. Giving all As or all Fs for work that is not particularly good or bad by reasonable standards is denying students their right to useful feedback ... It is *not* a sign of liberation or political acuteness but malfeasance and sloppy thinking.
- e. In grading essay exams, standard operating procedure ... is to grade by question and not by student, to have students use code numbers ..., and to regrade the first few answers to each question and do it blind ...⁷⁴

One may not agree entirely with Scriven, particularly if one is among those critics who oppose students' use of preemptory drops to avoid challenging courses, but he reminds us of the role of examinations as a teaching tool, the need for fairness and consistency in grading, the reality of external constituencies who depend on faculty evaluations, and procedural standards necessary to avoid evaluation errors from such causes as fatigue and halo effects.

A root-level concern about student evaluation is the conflict of interest that inheres in the roles of teacher and evaluator. As teacher, one wants to encourage and support students in their

⁷⁴*Ibid.*, pp. 313-314.

endeavors, and wishes to operate on a basis of trust that the student shares with the professor the common commitment to enquiry and intellectual growth. As evaluator, one must be detached and objective, and must place fairness to the group above individual needs. Thus, although a teacher is reluctant to fail a student when he or she knows that the failing grade will irrevocably terminate the student's career, a sense of obligation to students generally, to the integrity of the institution, and to external constituencies drives him or her to assign the failing grade. Another need for the evaluator is to detect cheating and plagiarism, and possibly to deal with it in a convincing manner that underscores its fundamental incompatibility with core values of the academy.

Combining roles of teacher and evaluator also increases the imbalance of power between professor and student. Wilson was particularly strident in his criticism of the teacher *cum* grader:

We see this situation of asymmetrical power most clearly in the testing-grading process that pits impotent student against instructor and taints every other interchange between the two. The disparity of power represented in our customary testing-grading practices creates an adversary diad [*sic*]. This diad perpetuates a compliant dependence, engenders higher levels of deception, subverts the goals of learning, and ultimately has the effect on the master that slavery always has.⁷⁵

An interesting reciprocity can develop, particularly as student evaluations of professors become increasingly important in tenure and promotion decisions. Potentially, students disappointed with their grades in a course (or in previous courses from the same professor), can retaliate when the evaluation is in their hands. This possibility lends additional credence to Wilson's suggestion that grading ought to be done by a third party, or that the evaluation should be accomplished by mutual involvement of professor and student who measure their joint progress in attaining a goal shared by both: "With the problems posed by a laboratory exercise, or a set of data, a poem or a

⁷⁵Wilson, Everett K. "Power, Pretense, and Piggybacking," p. 273.

play -- in all such instances, instructor and student can triangulate on an issue outside their own relationship."⁷⁶

Alternately, one hopes that the professor's scrupulous attention to procedural and substantive fairness in grading will result in student's realization that the grade is proper, and in the student's appreciation of the virtues of alethetropism. Such a result was exemplified by one student's comment about her professor: "I took the class because I needed it for my major, and have found it is much tougher than I expected -- he really makes you work, but I respect him for that ... I think he just wants us to be the best we can be."⁷⁷

Matching Roles with Models

Perhaps the ideal of a professor in his or her relationship with students is, for most professors, fully described by the phrase, "(s)he just wants us to be the best we can." This goal of student development, understood to be in terms of academic growth primarily, and personal development secondarily, is consistent with the variety of methods and approaches found among good college and university teachers. It is consistent, as well, with a range of personal style and involvement with students exemplified at one end by Professor Kingman in *Paper Chase*, and at the other by Mr. Chips.⁷⁸

The concrete nature of an education that will effectuate such a goal arises, according to Levine, from an understanding of the nature of college students at a particular time. The current generation of students, he wrote in 1980, is different from other generations -- neither worse nor better, but different -- and an education that will serve it well will be possessed of "four distinctive qualities":

- Education that teaches the skills of reading, writing, arithmetic, speaking, problem solving, lifelong learning, "crap detecting" (identifying the drivel,

⁷⁶*ibid.*, pp. 273-274.

⁷⁷Quoted in Boyer, Ernest L. *College*, p. 157.

⁷⁸These polar epitomes were suggested by Ernest L. Boyer in *College*, p. 54.

exaggerations, and untruths that we hear and read each day), and surviving (coping with a rapidly changing environment). These skills are critical for a generation raised on the media, weak in the three Rs, and apt to live longer.

- Education which emphasizes our common humanity and which is concerned with our common problems and the ways that we together can solve them. This is ever so important in mitigating the self-concern that, more than any other characteristic, stands out in this generation.
- Education which stresses issues of value and questions of ethics. For a pragmatic, competitive generation with a Titanic mentality and a propensity for taking academic shortcuts, this is essential.
- And education which enlarges in two ways upon the vocational preparation this generation so desperately seeks. First, in serving much as the label on a bottle of medicine -- telling when certain types of learning should be used, when they should not be used, and what the consequences of their misuse are likely to be. Second, in preparing students for a career, not a job. ... Today's education should give students a base from which to continue learning and the skills necessary to perform well in a succession of jobs.⁷⁹

Such an education, I agree, will meet the reasonable expectations of students (that they both perceive upon entry into college and in later years) and of society. If they accomplish this task with efficacy and efficiency, the professoriate will fulfill the promise it has made regarding their relationship with students.

This attention to the development of students provides the crux of the distinction between the professoriate and other professions, in that this good is of a different kind than other

⁷⁹Levine, Arthur. *When Dreams and Heroes Died*, pp. 131-132.

professional goods. Other important variables are also critical to a comparison of professional models, and the nature of the student is paramount among these. Finally, the nature of the expertise and specialized knowledge possessed by faculty differs from that of other professions. A discussion of these differences between the professoriate and other professions, particularly medicine, will help adumbrate a provisional ethical model for the professoriate.

Such a discussion must also recognize similarities between the academic profession and others. The possibility of conflicting interests and roles is common to all professions (indeed, to the human condition generally). Power disparities continue to be as problematic in higher education as in other professions; whenever a professional is in the power to grant a desired article to one who lacks the means to get it except through the intercession of the professional, a power imbalance exists that can be exploited. Ultimately, all relationships with the potential for unequal status involve, also, the need for trust on the part of the party more susceptible to abuse.

The Good Provided

I noted earlier the notion that different professions have unique ends inherent in their work. Physicians facilitate the healing process by properly diagnosing the state of the patient, and by applying appropriate technology in aid of the body's natural recuperative powers. Lawyers facilitate access to justice by understanding the client's case and an appropriate theory of recovery or defense, and by then applying their knowledge of appropriate legal procedures and arguments to obtain the best representation of their client's position. Professors enquire into the nature of things (broadly speaking), and make the results of their enquiry available to students, in furtherance of learning. However, it cannot be said that professors generally apply pedagogical technology or procedures to facilitate learning; for the most part they are not experts in pedagogy. Rather, they are experts in enquiry and scholarship, and if they have technical expertise to offer students, it is these.

The good offered by physicians or lawyers is the use of their expertise to do something to or for their client. The good offered by professors is to share their knowledge and bring the student

into their expertise in enquiry;⁸⁰ at its best, this is an exercise done *with*, rather than to or for, students. Often, the professor's ultimate goal is to enable the student to become a professor;⁸¹ the attorney or physician does not aim to make a lawyer or doctor out of his or her client.

By this reasoning, I conclude that beneficence, so important in theories of ethical action by physicians and attorneys, is not essential to the professor-student relationship. Doing good for the student-client is not the immediate goal of the professor, enabling the student to do good for himself or herself is.

The Client

The student's participation in higher education is voluntary, and in more ways than a patient or attorney's client can be said to enjoy voluntary participation in the professional-client relationship. Patients and litigants have been forced by circumstances to seek professional help; one generally neither desires to be ill nor wishes to sue or be sued. Their freedom to choose a particular attorney or physician, and freedom to accept or reject the advice given, is qualitatively different from the student's freedom.

Furthermore, students are not generally debilitated by virtue of their condition as students. Clients of physicians and attorneys (and perhaps clergy) are often in dire straits, and the fear associated with their distress may well disable them from truly autonomous decision making. Students are occasionally in distress, but this is not characteristic of them in their relationships with professors.

Students differ, too, from the clients of other professionals in that they are seldom the only stakeholder in a particular professional decision. Most decisions made by physicians and patients,

⁸⁰The use of their expertise to do good to or for a client is more common when professors are consultants; in these relationships their standards of care are more like those of attorneys. See D.L. Sherman and P. Clifford, "Internal Evaluation: Integrating Program Evaluation and Management," *New Directions for Program Evaluation* 20:23-46, 1983, p. 40.

⁸¹Faculty who seek a mentoring relationship do so primarily with those graduate students whom they believe they can steer into academic careers; see Nathalie Friedman, *Mentors and Supervisors*, p. 79.

and by attorneys and clients, are of the nature as to affect the client in private areas of his or her life, and do not extend to others to whom the physician or attorney have simultaneous obligations. I have earlier indicated how the professor, by the nature of the academic enterprise, invariably serves the interests of multiple students, many (if not most) of whom are potential competitors. In addition, the professor's role in certification of student achievement must be reconciled with interests of parties outside the university.

The professor thus approaches each student in a relationship where the professor's loyalties are necessarily divided. Fortunately, the student-client is not as dependent on professorial loyalty as are clients of physicians or lawyers, and is more greatly availed of his or her own resources. The ideal of the professor and student as co-conspirators in a campaign against ignorance suggests a different form of loyalty, that which they mutually owe to the search for truth.⁸² Therefore, the principle of fidelity inherent in physicians' or attorneys' relationships with their clients is not as essential in the professor-student association.

A corollary of a voluntary relationship is the assumption that rational beings do not knowingly enter into harmful situations unless the potential for harm is clearly outweighed by the potential for benefit. Therefore, students cannot be expected to attend college in anticipation of danger to themselves or their central projects. The professor must ascribe to the principle of nonmaleficence, and its injunction to avoid harm in situations under his or her control.⁸³

Professional Expertise

The procedures and practices of professors in carrying out their professional roles involving students differ in other ways from those of medical doctors or lawyers. Physicians perform invasive procedures on patients that pose real danger to them. Attorneys obtain authority from clients to argue under one theory or another, to file or not file a particular suit, and to

⁸²Victor L. Worsfold stated this in his conclusion that "... the members of an academic community are not so interested in each other as persons as they are in the joint pursuit of a commonly held set of goals ...," in "Toward a Code of Ethics for University Administrators," p. 93.

⁸³Beauchamp, Tom L. and James F. Childress. *Principles of Biomedical Ethics*, pp. 120-122.

negotiate with third parties on their behalf. In each of these professions, the professional is in a privileged position by virtue of his or her ability to estimate the risks and benefits of alternate courses of action, and must then interpret these odds to the client. Based on this interpretation, the client consents to possibly dangerous actions, and assumes risk.

This same potential for lasting harm through misadvising and through direct intervention infrequently obtains in the professor-student relationship, and then typically in the graduate student-advisor relationship. This is not to say that the professor cannot give bad advice, nor that academic damage cannot be as severe and lasting as the damage inflicted by other professionals, but that it is much more rare. It is also the case that the knowledge the student needs to successfully negotiate a college career is both more widely available and less arcane. The student relies more on institutional information (and often on other students), and is more dependent on institutional truth-in-advertising, than he or she relies on the judgment and counsel of individual professors.

The setting for the student-professor encounter differs from medical and legal contexts in a way that also improves the chances that any advice given is truly in the student's best interest. Professors are institutional employees, rather than self-employed professionals, so that the conflict between personal enrichment and client interest is less problematic in one-on-one encounters between professors and students than in similar encounters between other professionals and their clients. Presumably, within institutional settings, peer review functions more adequately to assure professional performance.⁸⁴

Professors may not possess the same capacity to violate client autonomy in individual encounters as do physicians or lawyers. However, in one-to-many relationships with students, that is, in the classroom, many ethical violations can be seen as breaches of the principle of respect for client autonomy. A partial list includes: finagling to get one's desultorily taught course required for

⁸⁴See, on these points, Eliot Freidson, "Nourishing Professionalism," pp. 199 ff. See also Samuel Haber, *The Quest for Authority and Honor in the American Professions*, pp. 274 ff.

the major; requiring one's own textbook (or one of a favored colleague) when it is not essential to the course or when there are less expensive alternatives available in the marketplace; requiring student projects of limited relevance to the course that become data sources for one's own publications;⁸⁵ required class exercises that involve unwarranted self-disclosure; and failing to follow the course description so that students make, in the end, an uninformed course selection.

Although the situation in which its violation occurs differs between academic and other professions, the rule that one should respect the client's autonomy is as important in higher education as elsewhere. Perhaps it is more important in higher education, for the goal of enabling the student through his or her studies is, fundamentally, one of enhancing autonomy. Wilson wrote that "The careless use of power undercuts this aim. The ... student ... is taught to lean on others -- for the questions to be raised, the means of answering them, and the tolerable range of solutions."⁸⁶ This conclusion seems obvious; what is not obvious is why American higher education so long adhered to the contrary notion of *in loco parentis* and a doctrine of discipline, or why some professors still do.

Conflicts of Interest

Professors may fail to respect student autonomy when their own interests are served thereby. I have disparaged the idea that the widely discussed conflict among research, service, and teaching roles is an irresolvable cumbrance in serving students' interests. More likely, particular professors in particular departments may perceive that their own agenda is best served by carrying out their teaching roles in a negligent manner, so as better to pursue other activities. A particularly egregious example is the professor who repeatedly cancels classes to pursue a paid consultancy. This case, of course, involves no inherent conflict among traditional roles. However, the professor in question may attempt to present the consultancy as some form of scholarship or

⁸⁵This particular tack often produces poor quality data that violates principles of good research practice as well.

⁸⁶Wilson, Everett K. "Power, Pretense, and Piggybacking," p. 272.

service, and thereby insulate himself from moral responsibility by pretending he had no choice. This maneuver is readily recognized by critics of higher education as one of the myths involving research, and it is belied by low publication rates of otherwise poor teachers.

To the extent that time required for research and service cannot be spent on teaching, intelligent choices can be made by faculty, both individually and collectively. First, even in research-intensive universities, the faculty can recognize that if it is permissible for one of their number to do mostly research and little teaching, then it is equally valid for some of their number to do some research and mostly teaching.⁸⁷ It ought to be a professional ethic that the *quality* of one's research and teaching, not their *quantity*, is of paramount importance in faculty evaluation. Faculty who collectively, by their tenure and promotion decisions, emphasize only quantity, such as by publication counts, encourage lapses of academic integrity.

This is but one way in which faculty, who can have a great deal of influence on institutional priorities, may establish incentives that work against students' interests. Not only may some faculty interests be encouraged by inappropriate or excessive rewards, but failure to penalize poor teaching can also shift professors' attention away from student needs. If incentives for research and consulting are excessive, and disincentives for poor teaching are absent, the extent to which faculty apathy allows the situation to continue assigns a moral blame to the faculty as a collective.

Students in a research-intensive university cannot rightly claim the undivided attention of faculty. The research and service activities of professors are as essential to the mission of the university as is student development. Faculty members cannot be expected to respond to every conceivable student need, and certainly not to allocate all of their resources to teaching. A more reasonable claim is that, when professors do take on course responsibilities, students admitted to those courses have first priority. The faculty incur an obligation to make arrangements by which they are accessible to students, and to adhere to those arrangements. They also incur an obligation to make their performance of classroom duties the best it can become.

⁸⁷ Boyer, Ernest L. *College*, p. 124.

Power Imbalances

The professor does have power over students. Particularly significant is the power to grant or deny credit, and in the instance of a required course, the power to allow or preclude progress toward the degree sought. They also have the power to raise or lower the student's grade point average and class standing, which are critical for many students' future prospects. Compared to medical doctors or attorneys, the power of the gatekeeper that resides in the professor may be greater. The power of the professor may be more akin to the power of the minister, who, in relationship to the parishioner, has the power of entry into the future life.

It is also significant that external controls on professors' power over students may be lacking compared to those over attorneys' or physicians' authority. As with suits against clergy, the courts, for differing reasons perhaps, have largely deferred to professors' presumed expertise in academic decisions, reinforcing the power that comes from the professor's grading authority. While malpractice suits against both physicians and attorneys are quite common, and plaintiffs have a reasonable (if not sure) chance of prevailing, malpractice suits against professors are not only rare but invariably feckless. As the court stated in one case, "Educational malpractice is a tort theory beloved of commentators, but not of courts."⁸⁸

A particularly obnoxious violation of a student's personhood and autonomy that is almost always associated with an abuse of power is sexual harassment. However, although there are interesting discussions about its definition, and possible confusion in gray areas, the clear cases involving sexual submission on a *quid pro quo* basis are not ethically complex: Cahn wrote succinctly that "... for a professor to attempt to seduce or coerce a student into having an affair is an egregious abuse of authority that provides strong grounds for dismissal. Indeed, faculty

⁸⁸Ross v. Creighton University, 740 F.Supp. 1319 (N.D. Ill., 1990), cited in *The College Student and the Courts* 18(2):915-916, (March) 1991.

members who tolerate such irresponsible behavior by colleagues are themselves guilty of irresponsibility.⁸⁹

Consensual relationships are more problematic. The professor in such a relationship may lose objectivity in a way that violates the rights of students outside the relationship. Moreover, because of the power imbalance in such a situation, student consent may not be fully autonomous.⁹⁰

Another more subtle abuse of power is found most often in graduate education, but can also occur in undergraduate professor-student relationships. The professor may use the student's term paper or research assignment as the basis for a paper published under the professor's name. Sometimes the student's name is listed as a secondary author, or it may be acknowledged in a footnote. Because these cases are not clear incidents of plagiarism, they are often considered unremarkable by peers. The abuse is aided by the improbability that the student will complain for fear of reprisal. The power of the professor has made possible the usurpation of the student's work.

These issues are more fully discussed in the next chapter. It is sufficient for now to conclude that power imbalance is a significant area of ethical concern for professors. I tentatively side with Lebacqz and Barton in concluding that consent is compromised by power imbalance in at least some cases, and with Lebacqz that the important principle in issues of unequal power is one of justice.⁹¹

Fiduciary Relationships

In what ways that are similar to physicians' and lawyers' clients do students place trust in a professor such that a fiduciary relationship is established? I argued above that the student is less dependent on the professor for knowledge that is critical to forming decisions about his or her educational course. One would stretch to find undergraduate contexts for students that parallel

⁸⁹Cahn, Stephen. *Saints and Scamps*, p. 36.

⁹⁰Lebacqz, Karen and Ronald G. Barton. *Sex in the Parish*, pp. 119-121.

⁹¹Lebacqz, Karen. *Professional Ethics*, pp. 128-131.

patients "going under the knife" in a state of utter dependency. Students seldom assign agency authority to their professor. Still, one can conjure up some problem areas.

Wilson listed at least three ways in which student trust might be violated: "loading the evidence in favor of our views through selective use of data; propagandizing; breaching the confidentiality of data supplied by students."⁹² Students also believe evaluative comments made by professors; a trusted faculty member's judgment that the student is not a good prospect for graduate school can permanently undermine the student's confidence and become a self-fulfilling prophecy. A way of violating trust, seemingly innocent, is the annual summer feature in the "Marginalia" column in *The Chronicle of Higher Education* that contains burlesques from student papers. As humorous as they may be, and as difficult as they are not to laugh at, and as compelling reading as they may be, I experience a small pang of remorse knowing that for at least some of the students cited therein, I am mocking their best effort. Were I to send my students' "bloopers" to the *Chronicle*, even anonymously, would I not in some way violate a trust?

Caring

If Walton is to be believed, all human service professions, including medicine and law, share an ethical void that must be filled by an ethic of caring. She recounted Noddings's description of "what happens in teaching as a kind of blossoming, a visible and gratifying (to the one-caring) kind of growth." Walton then links the human services professions to the academic enterprise:

I suggest that this kind of growth is ultimately the aim, the ethical ideal, of service providers in social work and the health professions. Since all human service aims at growth in some form, all are broadly educational in intent.⁹³

Indeed, there is evidence that job satisfaction for professors, which has a very high rate overall, is bolstered primarily by intrinsic rewards: the quest for knowledge; the feeling that education is the

⁹²Wilson, Everett K. "Power, Pretense, and Piggybacking," p. 269.

⁹³Walton, Barbara J. *The Ethical Dimensions of Human Service*, p. 71.

best hope for improving the human condition; and the satisfaction of working with students and witnessing their growth.⁹⁴

Even if, as I suggested earlier, participation in a relationship as one-caring is largely supererogatory,⁹⁵ the propensity for perhaps 90 percent of faculty to enjoy interactions with students outside of the classroom⁹⁶ indicates the merit of professors owning a fuller understanding of what it means to be one-caring.

Recapitulation

By this comparison of the professorial role to that of physicians, attorneys and the clergy, a preliminary list of principles develops. The central goal of higher education is the development of the student's academic prowess; and alethetropism emerges as the organizing ethos for that project. An underlying assumption regarding this project is that the student enters college expecting reasonable freedom from harm, either physical or psychological; nonmaleficence becomes an assumed first obligation of professors. Respect for autonomy, commitment to justice, and trustworthiness become the provisional positive principles of right action for professors. Willingness to enter into some relationships as one-caring is important for professors' intrinsic rewards, which may arise in significant part as their caring is fulfilled in the growth of students cared-for. Walton suggested that accessibility and careful listening in the form of "receiving the other" are the hallmarks of caring-in-action.⁹⁷

In Chapter IV, cases will be examined to test more fully whether our provisional list of principles -- alethetropism, nonmaleficence, respect for autonomy, justice, trustworthiness -- and a virtue of ethical caring constitute a necessary and sufficient "tool kit" for applied ethics in higher education.

⁹⁴Clark, Burton R. *The Academic Life*, pp. 217-225.

⁹⁵See *supra*, pp. 122-123.

⁹⁶Clark, Burton R. *The Academic Life*, p. 222.

⁹⁷Walton, Barbara J. *Ethical Issues in Human Services*, pp. 129-131.

Chapter IV

A CASE-BASED ANALYSIS

Introduction

The goal of this chapter is to subject the provisional list of principles and virtues, developed in Chapter III, to the test of applicability to cases drawn from the literature. It begins by reporting a survey of cases: how I undertook the survey and what I found. A taxonomy of ethical failures is presented that summarizes an initial analysis of the cases within the framework of the provisional set of principles, and lends support to the utility of the provisional ethical model. The chapter concludes with a detailed discussion comprising two sections: the first takes each taxonomic level in turn and describes its subsections with reference to the cases that support their inclusion; the second section analyzes four illustrative cases in greater depth with reference to the portions of the taxonomy relevant to each case.

A Survey and Taxonomy of Academic Ethics Cases

Before explicating the match between principles and judgments in cases, I shall first describe how the cases were gleaned from available sources in the literature of higher education, in the news media, and in the legal literature. Next, the development of a taxonomy is described, and finally, a summary of how the cases obtained fit within the taxonomic structure is presented.

Method

The cases included in this chapter were obtained from several sources. First, the tertiary literature reviewed in Chapter II often contained cases developed by the authors, and also referred to cases in primary and secondary literature. Next, I reviewed computerized databases for potential case material, particularly the *InfoTrac National Newspaper Index* and *Newsbank Electronic Information Systems* databases. Several reports in *The Chronicle of Higher Education* were reviewed based on a listing in a 1979 Carnegie Council Report.¹ For a listing of reported legal

¹Carnegie Council on Policy Studies in Higher Education. *Fair Practices in Higher Education: Rights and Responsibilities of Students and their Colleges in a Period of Intensified Competition for Enrollments*. San Francisco: Jossey-Bass, 1979.

cases involving dismissal of professors, I utilized Hendrickson's 1988 review of over 40 such proceedings.² Suits filed by students against universities are reviewed in a specialized periodical, *The College Student and the Courts*.³ Citations from this source prior to 1986 are collected in a single volume; I closely reviewed all abstracts in the "Academic Affairs" section, and scanned the rest of this volume. However, I examined each of the abstracts that appeared in the quarterly updates after 1985.

Based on the abstracts or citations in the literature, I obtained original articles or court opinions for those cases in which specific allegations of ethical misconduct by professors seemed likely. The criteria for selection at this stage involved neither the legal theory under which a case was decided nor the outcome of the court decision. The deference courts give to academic decisions often preclude successful judgments, even though an outside observer might well conclude that a probable ethical violation had occurred.

Each primary or secondary source document examined as a result of the initial search was assessed for potential relevance on the following criteria: (1) the case involved faculty and students in higher education -- i.e., community colleges through multiversities; (2) the actions of the professor appeared or were alleged to have adversely affected a student or students; (3) there was sufficient detail in the account to form a case for discussion and potentially to categorize the ethical implications therein. Cases were generally excluded that reflected institutional actions but did not identify a particular faculty member or group who carried them out. It was not necessary to be able to conclude whether the professor involved had actually violated an ethical principle; the purpose of these cases is to raise ethical questions. However, it was thought more helpful if the record did reveal a fairly clear conclusion about the probable ethical culpability of the faculty member involved. Several cases were excluded from the appendix because their inclusion would

²Hendrickson, Robert M. "Removing Tenured Faculty for Cause," *West's Education Law Reporter* 44:483-494, 1988.

³Young, D. Parker and Donald D. Gehring (eds.). *The College Student and the Courts*. Asheville, NC: College Administration Publications, Inc., published quarterly.

be overly redundant. I tried to retain those cases in a given category that were most suitable for exposition of the principles involved. All of the cases and articles reviewed firsthand are cited in the Bibliography.

This process did not, of course, provide a basis for estimating the total number of cases filed by students or faculty, nor did it yield a means of estimating the probability that a student's or professor's case would be successful. Most of the reported decisions were from appellate courts, and are a limited and selective sample at best. A large percentage were brought to appeal on the basis of due process violations, and even if successful on appeal, were then only remanded. Thus the final outcome of many cases is unknown. It is obvious that many incidences of ethical impropriety never result in lawsuits, so this process only provides cases that indicate necessary principles; it does not necessarily cause a sufficient list of principles to be tested.

Taxonomy

The taxonomy was first formulated with six major divisions, each corresponding to potential violations of the principles recapitulated at the end of Chapter III: alethetropism, nonmaleficence, autonomy, justice, trust, and caring, respectively. As each case was reviewed, I first attempted to define the principal ethical violation exhibited in the case. Then I characterized possible subdivisions of the various main categories which were represented in the case.

For example, the first case I selected for firsthand review was *Bow v. Melton*;⁴ a student sued a professor for defamation because the professor incorrectly accused him of stealing hot plates from a laboratory. This action was a suit in tort, alleging libel and slander, actions that violate duties every person obtains with regard to others. What makes the professor's actions particularly violative of academic ethics? Because avoidance of this type of harm is not a duty unique to the academic setting, I concluded that nonmaleficence, though violated, was not the special

⁴Fuller descriptions of each case mentioned in this chapter are contained in Appendix C, although I will repeat some relevant information during the discussion. Occasionally, I will add material from the original source that is not already included in the description in the Appendix; in such a case I will cite the original source.

nonmaleficence associated with the professional functions of a college teacher. What made the professor's actions unethical in light of his academic position was his willingness to leap to false conclusions on the flimsiest of evidence, and his failure to validate his conclusions before announcing them to the world. When a non-academic observer reads of a professor defaming a student in this way, great damage is done to the notion that the academy and all in it revere the truth.

This case, then, led to the inclusion, under violations of alethetropism, of the propagating of irresponsible or unsupported claims. The particular title of this subdivision derives in part from the general literature; I was influenced by Wilson's suggestion that pretense is a major category of ethical misbehavior in academic circles.⁵ Wilson spoke of unsupported claims for teaching, certainly to be included in unsupported claims in general, and properly subsumed under violations of alethetropism.

This conclusion suggests that each of the subdivisions could be further subdivided. The subdivision of unsupported claims could be divided into sections according to the subject of the claims: claims about teaching, claims about students, and so on. Such further delineation, however, is unnecessary for the purposes of this dissertation, and thus beyond its scope.

The remainder of the taxonomy was developed in a like manner. Some subdivisions were suggested *a priori* from the general literature or as logical counterparts to existing subdivisions (e.g., "paternalistic abridgments of autonomy" suggests a logical complement: abridgments that are not justified by appeals to paternalism). Other subdivisions were added when cases suggested them *de novo*. The taxonomy is shown in Table 2.

⁵Wilson, Everett K. "Power, Pretense, and Piggybacking," pp. 274-276.

Table 2. A Taxonomy of Ethical Failures Involving Professors and Students

1. Violations of alethetropism
 - 1.1 Irresponsible or unsupported claims
 - 1.2 Plagiarism
 - 1.3 Inaccurate or biased evaluation, grading, or certification
 - 1.4 Dishonesty and fraud
2. Violations of the principle of nonmaleficence
 - 2.1 Emotional harm or abuse
 - 2.2 Physically unsafe teaching practices or learning environments
 - 2.3 Careless disregard of students' interests
 - 2.4 Harmful or debilitating teaching practices
3. Violations of students' autonomy
 - 3.1 Paternalistic disregard of autonomy
 - 3.2 Nonpaternalistic disregard of autonomy
4. Violations of justice
 - 4.1 Abuses of power
 - 4.2 Inequitable treatment
 - 4.3 Failure to provide procedural justice (due process)
 - 4.4 Undeserved rewards
5. Violations of trust
 - 5.1 Breach of confidentiality
 - 5.2 Denigration and ridicule
 - 5.3 Actions favoring the professor's self-interest
 - 5.4 Incompetence

No cases were discarded because they could not be fitted within the developing taxonomy. The taxonomy was always adjusted in conformance to cases. Therefore, that a major division of the taxonomy concerning beneficence was not added through this process lends support for the contention that the principle of beneficence is not of prime importance in a model of ethical behavior by professors.

Provisionally, a sixth division of the taxonomy was to include violations of caring. This division does not appear in the structure outlined in Table 2. I will discuss this result more fully in the next chapter, but for now I simply note that I did not find any cases that explicated a violation of caring that did not more clearly exemplify a principal violation in one of the other divisions. In the summary of cases tabulated below, I have indicated those cases that have a caring component, but its violation doesn't seem a dominant factor in any case. Some cases, in fact, do not seem to involve a violation of caring at all, or if so, only an heroic effort will connect caring to the case. For example, the Agarwal case tells of a professor who was dismissed for plagiarizing three chapters in a laboratory manual. His graduate students also charged him with being nasty to students, but the crux of his case was the plagiarism. Even if he was a kind and caring fellow, he still could plagiarize. I concluded, as the taxonomy developed, that a division related to violations of caring was not essential to the structure.

Cases Included

The first level of the search yielded upwards of 100 abstracts from *InfoTrac* and *Newsbank*, and over 300 from *The College Student and the Courts*. The 31 actual cases abstracted in Appendix C resulted from the firsthand examination and analysis of 129 cases reported in court decisions in the national reporter system, and of 26 articles in the news media. An additional 11 fictionalized cases were adapted from the two collections cited. One further case was fictionalized from my own experience.

When analyzed according to the single principle most characteristic of the dominant ethical issue in each case, the 31 actual cases included in the appendix support the five principles

with the following frequencies: violations of alethetropism, 11 cases; violations of nonmaleficence, three cases; violations of autonomy, two cases; violations of justice, eight cases; and violations of trust, seven cases. However, most cases illustrate the violation of more than one principle. Thus violations of alethetropism are present in 16 cases; of nonmaleficence in 13 cases; of autonomy in seven cases; of justice in 15 cases; and of trust in 11 cases. Finally, although writers on caring might well conclude that failures to observe students' ethical claims are invariably failures to care, I identified five actual cases that were particularly illustrative of failures to maintain a virtue of "ethical caring," as Noddings described it.

These simple tallies cannot imply anything about the universe of ethical violations. The cases were selected so that at least one case would exemplify each subdivision of the taxonomy. More important, I was particularly interested in demonstrating violations of alethetropism, in support of my claim that this is an important principle to be added to the model. This sample is therefore biased by the needs of my argument and the structure of the taxonomy.

Table 3 summarizes the 43 cases discussed in Appendix C. Each major division of the taxonomy provides a heading for one column in the table, and an additional column is provided to indicate cases where a violation of caring seems involved. To the right of each case name is a number representing the major division and subdivision I regard as including the principal ethical failure in the case. In the columns, an uppercase "X" indicates that the respective principle plays a significant role in the case; a lowercase "x" indicates the principle is of some, or minor, importance to the case.

Principles and Judgments

In the following sections, I will first discuss each division of the taxonomy in turn, citing in brief how specific cases helped justify its subdivisions. Then I will examine specific cases in greater detail, hoping to reveal with some richness the judgments one might make about the case and how these judgments are supportive of and suggested by the principles in the model.

Table 3. Summary of Cases

Case	Category*	Alethe- Nonmalef-					
		tropism	icence	Autonomy	Justice	Trust	Caring
Agarwal v. Univ. Minnesota....	1.2	X					
Beheshtitabar v. Fla. State	1.3	X					
Bevli v. Brisco	5.4		x			X	
Bivas v. State	2.3	x	X				x
Bow v. Melton	1.1	X	x				x
Brown v. California	4.1		x	X	X	X	
Christilles v. SW Tex. State.....	2.2		X				
Corstvet v. Boger.....	5.3			x	X	X	
Dartmouth Rev. v. Dartmouth	3.2			X			
DiBona v. Matthews.....	3.2			X			
Frost, Dr. Walter.....	1.2	X	x		x	x	
Goldman v. Wayne State.....	1.4	X			X	X	
Harris v. Blake.....	1.3	X					
Harris v. Columbia	4.1				X		
Heisler v. NY Medical Coll.....	4.2				X		x
Ivey v. Univ. Alaska.....	1.4	X				x	
Johnson v. Lincoln Christian..	5.1		x	x	x	X	
Johnson v. Sullivan.....	1.3	X			x		
Korf v. Ball State	4.1		X	X	X	x	X
Lightsey v. King	4.3	x			X		
McIntosh v. Manhattan C.C....	1.3	X			x		
Naragon v. Wharton	4.2				X		
Obinna, Prof. Ecazu	4.1	X	x		X		
Riggin v. Ball State.....	5.4		x			X	
Russell v. Salve Regina	5.2	X	X	X	X	X	X
Samaari v. Cal. State	1.4	X					
Shuffer v. Cal. State.....	4.2				X		
Susan M. v. N.Y. Law School.	1.3	X					
Wardlaw v. Peck	5.2	x	x		x	X	
White v. Board of Trustees.....	2.2		X				
Wilson, Prof. Terry	5.3	X			x	X	
"Laborious Rewards"	1.4	X				x	x
"Persistence by Extension".....	4.4					X	
"The Assistant Consultant"	5.3	x				X	
"The Biased Evaluator"	4.2		x		X		X
"The Blitz"	1.3	X			x		
"The College Test"	4.3	X			X		x
"The Human Relations Sem."	2.1		X				X
"The Lead Author"	1.2	X	x		X	x	x
"The Placement Program"	5.3					X	
"The Process Group"	3.1			X			x
"The Umpire's Decision"	4.2				X		
"Who Makes the Grade?"	1.3	X	x			X	

* = Taxonomic division and subdivision; see Table 2.

X = Provides major support for principle

x = Provides minor support for principle

The Taxonomy Related to Cases

1. Alethetropism

The principle of alethetropism holds that creating an environment in which the truth is respected is a primary duty of the academician. The great good that students derive from their college experience is not found just in the specific content they obtain in their coursework, nor in the maturity they gain from spending four years on campus. The content will become obsolete in time, and maturity arises from many sources other than college. The alethetropic impetus rests on the assumption that students benefit most directly from learning to distinguish truth from falsity or error, and from becoming enabled to pursue truth for themselves.

Alethetropism subsumes a principle of veracity: the habitual telling of the truth as one knows it. It requires, however, more, for it implies questioning whether what one supposes to be true, is. This impulse provides the underpinning for inquiry, and the justification for protection of inquiry by the assurance of academic freedoms granted to professor and student.

Violations of alethetropism cannot be reduced to violations of students' trust that what their professors tell them can be relied on. This is so because the effect of a violation of alethetropism undermines more than students' confidence, and it does more than mislead students. In an extension of Kant's argument that breaking a promise destroys the very institution of promising (is inherently contradictory such that one cannot simultaneously will that one should make promises and also break them),⁶ it seems that a professor cannot will simultaneously to seek the truth and also knowingly to tolerate error.⁷ To do so lays waste to the institution of inquiry for students and professors alike.

⁶Kant, Immanuel. *Groundwork of the Metaphysics of Morals* [1785]. H.J. Paton translation, Harper Torchbook Edition, New York: Harper & Row, 1964.

⁷I imply here error that can be reduced or corrected. Professors assume that what is held true today on the best of evidence is subject to falsification in the future. They hold themselves responsible for the search for truth, not its complete discovery.

It was through adoption of an alethetropic mien that Ashby intended for professors to instill in their students a reverence for the pursuit of truth and thereby infuse moral content into their endeavors. Failure to do so, or to exhibit behaviors that are anaethetropic by their very nature, must therefore run the risk of instilling the opposite: a belief by students that truth may be disregarded if it stands in the way of desire. The cases herein demonstrate at least four general ways in which professors have violated this principle: by putting forth unsupported or irresponsible claims; through plagiarism; by failing to insist on accuracy in their grading, evaluation, and certification; and by acts of frank dishonesty and/or fraud.

1.1 IRRESPONSIBLE OR UNSUPPORTED CLAIMS

The mendacious professor is not often caught out, at least not in the undergraduate classroom. Students sometimes obsequiously request clarification of statements that are obviously inconsistent with something else the professor has recently stated. Mostly, students respect the reputation associated with the professorate that its holder knows what he or she is talking about. Much of the professor's authority rests on this presumption.

In general, arising out of their research training and indoctrination, professors are quite careful about statements concerning their area of expertise, particularly when there are other specialists available to challenge misstatements. However, the temptation to trade on their reputations for accuracy and veracity is strong in other arenas, and sometimes manifests itself in authoritarian pronouncements to and about students.

I have already discussed the case of *Bow v. Melton*, and how it helped fix this category of academic peccancies within the taxonomy. To recapitulate briefly, Professor Melton appears to have falsely and quite carelessly accused Bow of theft of hot plates from his laboratory. Bow's reputation damaged, he sued, and obtained a substantial award for those damages. This case was brought in tort, and seems, like other tort cases, to be a straightaway violation of the principle of nonmaleficence: do no harm. However, the injunction to avoid harm as a principle of professional ethics has more to do with careful use of professional interventions. The assertions of Mr. Bow's

criminality in this case were not exercises of teaching functions or of academic freedom (indeed, the court held that Professor Melton was not, as he insisted, immunized from suit as a university official, since the statements did not flow from his academic responsibilities). So, nonmaleficence does little to capture the essence of this violation of academic ethics.

The particularly injurious force of Melton's charges against Bow must have arisen from their issuance by a normally unimpeachable source: a professor.⁸ Because professorial pronouncements carry such great weight, much care must be used in formulating and issuing them. False charges, whether arising from caprice or from malice, are damaging to the heart of the academic enterprise and must be avoided, even if harmless to the subject.

So the argument against unsupported claims rests not on whether they directly harm students, as in Bow's case. The professor has the power to mislead students by claims that are carelessly developed and untrue, or by true claims that are carelessly communicated so that students' understanding of them is inaccurate. These failings produce indirect harm that can be equally grave. Furthermore, students thus misled may carry with them false beliefs and understandings that so color their judgments as to injure remote third parties.

Maybe more damaging in the long run is the disillusionment that evolves when certain claims espoused by professors as all but eternal verities are later discovered by students to be nothing more than these professors' idiosyncratic crotchets. By this is not meant the presentation of theories that are supported by the best present evidence and that are later refuted. The reputations of paleontologists who continued to teach a theory of now-vanished land bridges between continents are not condemned for failing to adopt Wegener's theory of continental drift prior to the 1960s, when overwhelming evidence accumulated.⁹ However, the recalcitrance of the

⁸One of the difficulties surely faced by observers in evaluating statements made by each party during the Senate Judiciary Committee hearings on Justice Clarence Thomas's confirmation were that two normally unimpeachable sources -- a professor and a judge -- were clearly in opposition, with each suggesting the other was lying.

⁹See A. Hallam, "Alfred Wegener and the Hypothesis of Continental Drift," in Owen Gingerich, *Scientific Genius and Creativity*, pp. 78-85.

older clerical academic regime in the face of Darwinian evidence favoring natural processes in human development led to its demise as a source of authority and power in academia and the emergence of a new regime led by scientists.¹⁰

This process operates at the individual level, too. When professors lapse into solipsistic habits whereby their unjustified personal opinions are presented as of equivalent value to notions verified by evidence external to the observer, students are given a powerful message that they too should disregard the importance of rigorous analysis.

The temptation to be authoritarian rather than authoritative is strong. It often seems easier to persuade on the basis of one's authority than through convincing argument, even when one's position can be thus supported. By reinforcing the students' reliance on professorial authority rather than their own reasoning, students are debilitated, but professors achieve power to gain student acquiescence when they might otherwise have to respect student autonomy.

In the case of *DiBona v. Matthews*, the president cancelled a controversial play and thereby stifled the academic freedom of his professor and the professor's students, as well as the students' freedom of expression and autonomy. He seemingly attempted to assert his authority by claiming that he had cancelled the course (not the play) because of low enrollment, and thus the professor and students had no standing to demand otherwise. The president's claim, given the custom at the college for enrollment in drama courses, appears disingenuous at best.

A similar process, putting forth a specious theory under professorial authority to conceal a base motive for action, can be imagined in *Russell v. Salve Regina*. Nursing school faculty members collectively and individually asserted that their student, who weighed over 300 pounds, needed to lose weight to stay in the program, because, they insisted solely on their own authority, she could not otherwise be a successful practitioner: her adiposis would set a poor example for her patients. In the face of a contrary evaluation of Russell's actual clinical performance, they

¹⁰Metzger, Walter P. *Academic Freedom*, pp. 46-92.

dismissed her from the program. Their "rationale" may be viewed as unsupported dogma arising from their collective "obesophobic obsession," to quote judicial phrasing.¹¹

One might allow the Salve Regina professors the benefit of doubt that they were acting from the best of motives. They might, after all, have put forth the "patient's Interest" claim as a stalking horse for an ulterior motive vested in Ms. Russell's best interest (they would then, of course, stand accused of paternalism). Alternatively, they may have genuinely believed their notion. In either case, they violated in one way an ethic of alethetropism, for they failed to seek the real truth in the situation regardless.

Without referring to specific cases, one can think of many instances where professors base academic decisions or requirements on comfortable precedents whose validity they have not reconsidered in light of current knowledge or recent contexts. Unnecessary prerequisites continue to be required of students based on casually-supported rationales. In the minds of some detractors, an uncritical acceptance of the reliability and predictive power of SAT scores foists an unjust burden on millions of prospective college students.¹² Whether or not use of SAT scores, *per se*, is unfounded, it remains a cogent criticism of higher education that many professors are ill-trained in valid methods of examination and that they continue to rely on approaches that have been placed in disrepute for many of the settings in which they are used. When the bases for prerequisites, testing, or other academic requirements lie in untested beliefs, a violation of alethetropism ensues.

1.2 PLAGIARISM

At one remove, it might be argued that plagiarism, not imitation, is the sincerest form of flattery. After all, the plagiarist thinks so highly of another's product that he or she is willing to claim it as his or her own, and to let his or her reputation rise or fall on its quality. Clark pointed out that

¹¹*Russell v. Salve Regina College*, 649 F.Supp. 391 (D.R.I.), 1986, p 407.

¹²Owen, David. *None of the Above: Behind the Myth of Scholastic Aptitude*. Boston: Houghton Mifflin, 1985.

researchers in his survey regarded plagiarism as a most heinous academic crime, for it is the theft of the basis of another's reputation.¹³

More important, perhaps, is the acknowledgment that through acts of literary larceny the plagiarist falsely enhances his or her own reputation. In the minds of most academics, their reputation is their stock-in-trade, and there is fear that to countenance plagiarism is to allow the inventory of reputations to be diluted. One is legitimately concerned that a sort of academic Gresham's Law¹⁴ will be operative: unfounded reputations drive out the good.

Thus in *Agarwal*, graduate students, who are generally idealistic in academic matters,¹⁵ raised a challenge to Agarwal's plagiarism of chapters in a laboratory manual.¹⁶ To be sure, they also complained of his incompetence, general nastiness, and that he was a snoop. But it is clear from the case that Agarwal's dismissal was predicated primarily on his violation of a core value of the academy.

A variation on this theme is the toleration of plagiarism by faculty. Sykes charged professors generally with laissez faire policies in failing to confront "an epidemic of academic fraud."¹⁷ Among the problems in higher education that surfaced during the mid-1970s was the

¹³Clark, Burton R. *The Academic Life*, pp. 132-134. In this connection, it is not surprising that the term has its roots in the Latin *plagium*, a kidnapping.

¹⁴A theory, attributed to Sir Thomas Gresham [c. 1550], that when "two or more kinds of money of equal denomination but unequal intrinsic value are in circulation, the one of greater value will tend to be hoarded or exported; popularly, the principle that bad money will drive good money out of circulation." *Webster's New World Dictionary of the American Language*, p. 614.

¹⁵Barna, George. *A Psycho-Graphic Profile of Graduate Students*. Dallas, TX: Grad Resources, 1991.

¹⁶It would be an interesting study indeed to determine the extent to which publicized cases of plagiarism in academia have originated with graduate students' discoveries of the theft. Few in academia ever again occupy the same coign of vantage to discover plagiarism as they did during their dissertation research.

¹⁷Sykes, Charles. *Profscam*, p. 6.

failure of institutions to take action against students who purchased term papers from commercial vendors until pressured to do so by state officials.¹⁸

Considerable outrage, and official action, characterized responses to news that Dr. Walter Frost had allowed graduate students to copy significant portions of his work in their theses. His motive in this case appeared to be self-interest, since he was repaid by these students when they received their degrees by favoritism when they (federal employees all) ruled on grant applications he submitted to agencies in which they worked. Not only did federal officials take disciplinary action against the former students, but the university revoked several degrees. Particularly disturbing, however, were the charges by one student that members of his committee were fully aware of his use of Frost's data in his dissertation, and that they approved.

The case of "The Lead Author" broaches a more subtle issue regarding plagiarism. When is it fair for a professor to append his or her name to published work that arises in large part from the effort of students under his or her supervision? Although some journals are now attempting to control this problem with stricter policies on joint authorship, it will remain an ethical issue for many faculty members not well settled by procedural guidelines.

Seen in the light of an alethetropic ethic, the issue should be resolved on the basis of the fundamental accuracy of implications inherent in authorship claims. Named authors imply that they have made significant intellectual contributions to the work. They also add their name in affirmation of the fundamental correctness of assertions and supporting evidence contained therein. Thus decisions about authorship must pass a two-pronged test: (1) did each named author contribute significantly to the *particular work*; and (2) can each named author stake his or her reputation on the validity of the work as measured in terms germane to the discipline?

Publications resulting from a thesis or dissertation should name the thesis or dissertation writer among the authors. This precept must be accepted unless the student's committee is in the

¹⁸Boffey, Philip M. "5 of Boston's 'Big 8' Universities Took No Action Against Students Involved in Term-Paper Scandal," *The Chronicle of Higher Education* 8(25):A1, A8, March 25, 1974; and "Crack Down on Cheaters, New York Colleges Told," *ibid*, p. A8.

habit of approving theses that are not products of the student's own labor! Whether the thesis advisor should also be named as author is subject to the tests just described. I emphasize that the tests should be applied to the instant work. Therefore, it is reasonable in some cases for the major professor to be listed as first author on the derivative publication, if in fact his or her contribution to the work in question was the greater of the two. As described in the fictionalized case, Professor X was quite egregious¹⁹ in suggesting that the only credit that should be given the student was a footnote.

1.3 EVALUATION, GRADING, AND CERTIFICATION

Because professors' activities in evaluating students, awarding grades, and certifying to others their students' progress and achievements can have substantial effects on their students' lives, it would be easy to classify ethical failures in these proceedings as violations of trust or justice. I have nonetheless placed this category of ethical debasements under alethetropic violations because their adverse consequences transcend effects on the subject students only.

It has already been noted that individuals or institutions external to the professor-student relationship rely on the professor's indicators of student progress and achievement. In several states, professional licensing boards grant a "diploma privilege" to graduates of their state universities and relieve them from taking licensing examinations. In all states, degree completion is a precondition to licensure examinations in most professions. Graduate and professional schools, in turn, depend on undergraduate grades for a significant part of the admissions evaluation. Students compete for entrance into these programs, and are affected by inappropriately low grades given to them as individuals, and also by inappropriately elevated grades given to competitors. Universities depend on graduate advisors' evaluations of their graduate students when they assess potential new faculty members. Entrance to the professions, the work place, and academia itself depends on a system whereby merit is presumed to be evaluated fairly and

¹⁹Professor X was also inexplicably mean-spirited, it seems, since listing co-authors hardly detracts from one's *vita*.

accurately; the system itself hinges on the quality of appraisals of students and assertions about those evaluations by individual faculty members.

In the case, "Who Makes the Grade?," the use of an unqualified MBA student to evaluate undergraduate students' essays illustrates one way in which this system can be undermined. The professor in this case cannot reliably attest to the accuracy of those grades. Even if advanced graduate students are given grading responsibilities, they should be given adequate training and supervision. That few professors are themselves as adequately trained in measurement as they are in inquiry does not militate in favor of delegating their responsibility for grading to someone even less well prepared.

Biased evaluations also violate the principle of alethetropism. The F given to Sharon Russell by an instructor at Salve Regina College was later revealed to have been awarded because of her obesity, and was not related to any objective measure of her clinical performance. An unbiased faculty member at an outside hospital found Sharon's performance to be sufficiently adequate that she would be willing to hire her.

Not all bias adversely affects the student being evaluated. In *Goldman v. Wayne State*, the evaluations in question potentially unfairly overstated Goldman's qualifications because of the undisclosed bias inherent when a parent (in this case, Goldman's mother) rated her child. This type of bias which inequitably advantages the student being evaluated over other students, forms one basis for objecting to consensual sexual relations between professors and students. This was exemplified in the case of "The Umpire's Decision," where the graduate program coordinator had developed a relationship with one of his graduate students. He evaluated her prior experience so as to obviate the need for a particular course, but denied such a waiver to a similarly situated fellow student. In each case the professor should have abstained from making the evaluation, and their undertaking of evaluations in these situations violated the principle of alethetropism.²⁰

²⁰Their taking action based on these evaluations constituted a graver violation of principles of justice relative to other students, which is discussed below.

Professors seeking truth in their research acknowledge their results may be unintentionally biased, can be vitiated by chance error, or can be faulty because of errors in their judgment in particular instances. They guard against these possibilities by publication and exposure of their methods and results to scrutiny by colleagues. They do not widely avail themselves of these same safeguards when they seek to assess the truth about their students' performance. Even when students challenge a grade, their avenues for appeal rarely extend beyond the professor who issued it. Some situations cry out for a mandatory "second opinion." In *Susan M. v. New York Law School*, the professor graded as entirely wrong an exam answer in which the student supplied two correct responses, simply because she had supplied more than he requested. Susan M. averred she had clearly distinguished the circumstances appropriate to each of her responses (one was for Delaware, the other for New York); in this light it is difficult to accept as accurate an evaluation that her answer was entirely incorrect.

In *Lightsey v. King*, Professor King gave Lightsey a zero on an exam because he suspected the student of cheating. As a result the student failed the entire course. A review board concluded that the student had not cheated, but the professor refused to revise his grade. Thus, although the student could not be expelled as a disciplinary matter, he was subject to dismissal on the assumption that he had failed to meet academic standards. Assuming the grade was undeserved, this is more a grave injustice than it is a violation of alethetropism, but it suggests a professor's unwillingness to admit to possible self-error, a position incompatible with reverence for truth.

A recurring theme in student suits against universities (in which suits, owing to the courts' almost unfailing deference to faculties in academic evaluations, the students usually lose) centers on what can be called the issue of *precision* versus *accuracy* in evaluation. Two such cases were included in Appendix C as exemplars of their ilk. *McIntosh v. Borough of Manhattan Community College* illustrates the frustration students feel when they fail by a margin that seems unreasonably narrow given the sensitivity of most forms of academic assessment. McIntosh failed a nursing

course in her first attempt, and repeated the course. The school's standards for passing grades in that type of course called for a score of 70. Her grade in her second attempt was reported by the faculty member as "69.713." What seems ludicrous to students, and to some outside observers, is that a faculty member can actually claim to be measuring some construct to the level of precision implied by five significant figures. Her attorneys argued, in effect, that if the instructor were required to confine the grade to two significant figures, Ms. McIntosh would have received a 70. This is aside from the question whether the particular examination was a valid predictor of whatever nursing-related competencies were subsumed in the course goals.

A related source of student lawsuits is policies enacted by faculties that require that cumulative grade point averages include grades from all attempts at any one course. *Johnson v. Sullivan* is such a case. Faculty members favoring such a policy argue that a student who obtains a C in a course in his or her first attempt is obviously superior to one who does so only on a second try. This may be true if they are making a comparative claim about the relative performances of two students. However, if they are making a claim about a single student's achievement at a given point in time, then it is misleading to include historical information in the evaluation. Thus a guideline: all grades should be reported, for the information they provide about a student's entire educational history and aptitude. However, when students are to be denied a degree for failing to attain a particular level of achievement, it should be their present level that counts more than the possibly circuitous route they took to reach it. It is the faculty's failure to examine closely the actual claims they are making in the different cases that reveals a carelessness about evaluation; and it is this carelessness that violates alethetropism.

Professors sometimes use grades as bargaining chips. Particularly obnoxious, of course, are professors who offer to exchange grades for sex. But less invidious bargaining also takes place. A common misuse of grades occurs when undergraduate students are allowed to enroll in an independent study course during which they act as a teaching assistant in an unrelated course. Unless the purpose of the independent study is to teach them something about pedagogy, and

they are evaluated according to their achievement of specific learning objectives relevant to their course of study, this is an abuse of academic credit for a non-academic endeavor. Students doing secretarial work should get paid, not receive academic credit.

Another form of negotiation is akin to the strategy sometimes used in the public schools: promotion of a student to move him or her into someone else's venue. *Beheshtitabar v. Florida State University* illustrated such a case. The faculty member acting as an administrator apparently thought he had negotiated an agreement with Beheshtitabar whereby several low grades would be retroactively converted to "withdrawals" so he would then have a transcript showing him in good standing. In return for this belatedly revised certification, the student was to refrain from attempting to continue in the Ph.D. program at Florida State. This settlement apparently would solve FSU's problem with the student, but it appears to have provided him with the certification necessary to attempt enrollment at some other institution.

Professors sometimes do find a conflict between the imperative to accurately certify students' achievement and the impulse to help students overcome a bad start or other problems. In "The Blitz" a professor has an opportunity by slightly fudging his grading to help keep a promising athlete in college. Notwithstanding the positive effect this student might have on his team's competitiveness, there seems a genuine concern that keeping the student in college long enough to get into the NFL might be truly in the student's best interest. Against this possibility, a subtle shift from an F to a D seems a very small violation of the sanctity of grading. Likewise, in "The College Test," the professor senses that Joe might benefit from some leniency regarding his apparent cheating on an exam, and maybe even more from some lenient grading.

These two cases differ in circumstance. In "The Blitz," the professor is quite sure that the athlete's proper grade is an F. To give a D would violate the professor's integrity and the principle of alethetropism. It must, therefore, be presumed as prima facie wrong. Because it is truly difficult to construe the university or its faculty to have an obligation to the athlete to keep him eligible for athletic participation, one concludes that the F should be given. In "The College Test," the

professor is uncertain whether Joe cheated, and would only be able to confirm his suspicion by getting either Kathy or Joe to admit to participating in cheating. Thus the second case presents more an issue of procedural justice. Until a fair procedure has been utilized to resolve the doubt in the professor's mind, Joe deserves the benefit thereof.

Finally, there are times when a professor's evaluation of a student is administratively overruled. *Beheshtitabar* is one example, and "The Blitz" suggested another. In *Lightsey*, the professor prevailed, possibly wrongly. In *Harris v. Blake*, a student was allowed administratively to drop a course long after the deadline for passing withdrawal. The professor felt the student dropped because he knew his performance had been substandard and would he would be given a poor or failing grade. Because this course was a practicum, the professor felt compelled to place an evaluative report in his record, so that others would not be misled by the record. Although there is evidence the professor attempted to place the item in the student's record in a manner which might have prevented the student from seeing it, there was no evidence that it was a faulty evaluation. A faculty member acting as an administrator must be extremely cautious in overriding a professor's judgment, and should do so not by administrative fiat, but by providing the student with an appropriate hearing before other faculty. This "second opinion" model appears to be the best way to preserve students' rights to fair evaluation yet protect the accuracy of the evaluation and the interests of third parties therein.

1.4 DISHONESTY AND FRAUD

Clearly, fraudulent and dishonest actions by a professor are the antithesis of creating an environment in which truth is respected. Four of the selected cases serve more to adumbrate the range of violations that have been reported than to verify this notion.

The case of "Laborious Rewards" demonstrates a perennial problem in research: the investigator believes that deception is permissible to facilitate the research design. The professor thought that he would not get the student's full cooperation in helping him carry out his pilot project, so he engaged in "harmless" deception. He could probably rationalize that the experience

was a valuable lesson. His reluctance to give them extra points indicates he wished to avoid compromising his grading, but paradoxically he failed to see that his deception was inconsistent with his adherence to appropriate grading procedure. Note that if the "pilot study" had not been performed with students, the professor/researcher might well have had difficulty justifying the deception to an institutional review board (IRB).

The English professor in *Goldman*, the student's mother, may have violated her professional duties twice. First, she wrote a letter of recommendation, identifying herself as a professor, while concealing her relationship to the student. Second, and more clearly a dishonest act, she awarded her son an A in a course he was charged with never attending.

Ivey v. Board of Regents of University of Alaska, according to the record, offers another egregious example. The instructor here accepted pay for teaching courses which students did not attend, and he awarded grades to conceal this fact. There is no real ethical conundrum here; this case serves as a clear example of an alethetropic violation, against which other cases may be distinguished.

Samaan might be just such a distinguishable case. The professor here got into difficulty because of his relationship with the Medi-Cal program as a counselor in private practice, completely outside of his teaching duties. There was no allegation that any students were involved, either in practicums or as patients. In fact, a faculty panel urged against his dismissal, and concluded that the distinction between pleading guilty to a felony in a plea bargain and being convicted of a felony was a relevant basis for finding him not to have violated university policy or to have committed moral turpitude. The committee found, in essence, that Samaan had been punished by the state for his malfeasances, and that to dismiss him in the absence of a clearer nexus between his actions and his fitness to teach would be cruel and unjust.

The committee appeared to follow a narrow legalistic approach and ignore its ethical responsibilities. Although the reasons cited by Bok for not considering character traits in peer review -- the opportunity this would present for mischief against minorities, women, and

nonconformists -- are valid, they do not preclude evaluating actual behavior. It must be naive in the extreme to assume that a person who exhibits felonious disregard for the truth in his or her business life would respect the truth in his academic life in situations where its disregard would serve his or her immediate self-interests. The connection between extramural professional peccancies and academic fitness is all the clearer when the professor is teaching in a professional program. In such a case the professor and the students are expected to share a commitment to professional goals, and the professor is rightly expected to model professional behavior.

Faculty members engaged in peer review must not put on moral blinders when faced with violations of alethetropism. Practices they would condemn if carried out during research or scholarship must not be entertained in the classroom or in dealing with students.

2. *Nonmaleficence*

Beauchamp and Childress indicated that nonmaleficence in the professional context required avoiding harm in connection with professional activities.²¹ Although one way of looking at nonmaleficence is as the flip-side of beneficence -- one does good by removing harm -- I interpret the principle to relate to use of due care in carrying out professional functions.²² In attempting to fulfill his or her positive obligations to students, the professor should not inadvertently or otherwise inflict harm that is not incidental to the greater purpose.

This is not a proscription against taking actions that result in some discomfort to the student, providing that the discomforts are well publicized concomitants of the educational process. An example of such discomforts is the emotional distress that accompanies a failing grade. However, there are responsible ways in which faculty administer such a grade, and in which they deal with students who receive it. Furthermore, such procedures as entail anxiety or psychic

²¹Beauchamp, Tom L. and James F. Childress, *Principles of Biomedical Ethics*, pp. 120-122.

²²Beauchamp and Childress (*ibid.*, p. 123) contrasted their univocal principle with a four-level typology promulgated by Jonsen that included use of due care: striving to serve clients' well-being; standards of due care; risk-benefit assessments; and detriment-benefit assessments. While some of these activities may not be as critical in professors' day-to-day activities, they are not incompatible with the view expressed herein of the professor's responsibility to avoid harm.

pain must be avoided unless there is a clear relation between their use and the student's academic progress.

What this principle requires is that the professor be attuned to the possibilities of harm, and take such actions as are feasible to minimize or prevent emotional harm or abuse, physically unsafe practices or environments, careless disregard of students' interests, and debilitating teaching practices.

2.1 EMOTIONAL HARM OR ABUSE

The notion persists in some academic quarters that one must break down in order to build. While it is true that no intellectual growth arises unless existing beliefs are challenged, this does not justify tearing down the student. However, one hears of harassment and hectoring that would give Professor Kingman pause. Challenge interviews for admission, dark predictions of mass failures ("by next year half of you will be gone"), and classroom humiliations may be confused with rigor. Attempts to improve students' interpersonal skills through self-disclosure and various forms of group process may hold the potential for emotional harm.

Such is the issue presented in "The Human Relations Seminar." Although the case is brief, it implies some form of "opening up" that results in emotional difficulties for some students. Particularly worrisome is the apparently mandatory nature of this seminar. If there is any doubt about the benign nature of the exercises, as there is in this professor's mind, the professor should seek consultation from others, feedback from students, and consider making participation optional.

It is current vogue to want to improve students' interpersonal skills and enhance their "critical thinking" abilities, particularly in professional programs. Sometimes faculty have been willing to attempt approaches adopted from non-educational environments (often from therapeutic settings) that, though shown effective in selected groups of adults with specific needs, have not been proven for use in academic situations. Faculty who never underwent these types of interventions in their own training, and yet have developed their own interpersonal skills through

professional experience, now seem unwilling to allow the same maturation process take place in their students' lives. In some cases, they run the risk of attempting to attain through university training that which can only be gained in the world of real work. As a result, potentially harmful curricular experimentation has been undertaken which would not have been approved outside the classroom in, for example, work-site studies.

2.2 PHYSICALLY UNSAFE TEACHING PRACTICES OR ENVIRONMENTS

Although the doctrine of *in loco parentis* is no longer of major significance in higher education, the professor does owe a duty of care to his or her students by virtue of their relative inexperience. They must not be forced or enticed into danger that is avoidable or not clearly related to their training.

Of course, art students wishing to do metal sculpture will need to learn the use of acetylene torches and such, and there is risk inherent in this use. Likewise, health science students must learn to draw blood and give injections, and there is some risk of contracting blood-borne diseases thereby. But where the practice does not require potentially harmful exposure but could make use of simulations to teach fundamentals, it is a violation of nonmaleficence to insist on "reality." Such is the case in *Christilles*, where a real glass was used instead of a fake prop. The glass broke during the student's attempt to act out a fall, injuring the student. The professor's error was in confusing the need for risk that contributes to the student's learning and the risk associated with actual production. The latter is not demanded of many academic exercises.

There still may be instances where paternalistic restriction on students' activities may be justified. The music professor in *White* taught in a community college where at least some band members were not yet 19, the legal drinking age in his state. Court records showed that he allowed them to consume alcohol and marijuana while on a band field trip, and that he purchased beer for them. He could not, unfortunately, distinguish between being "a gestapo," to use his phrase, and his responsibility to supervise this school-sponsored activity.

2.3 CARELESS DISREGARD OF STUDENTS' INTERESTS

In addition to their emotional and physical well-being, other student interests may be harmed by faculty and university personnel in the normal fulfillment of their academic responsibilities. Many of these harms result from inadvertence. One such domain includes release of student records from careless posting of grades or return of papers; even if papers are coded, there are many sources on campus for student identification codes by which confidential information may be revealed. Also, faculty are by nature collegial and trusting, and may not pay much attention to security. So letters and student files are left out on desks in open offices, and various documents containing student information are discarded in accessible waste baskets, rather than shredded.

Another inadvertent harm to student interests can occur with casual responses to inquiries regarding students. In *Bivas v. State*, the student had protested certain tuition charges and during the interim while these were being disputed, his diploma was withheld. He had been given a job in anticipation of his graduation, and his employer contacted the university to inquire whether he had, in fact, graduated. A very limited reply was given that no diploma or certification had been given to Bivas, without revealing that his diploma was only being withheld over fee payments. Bivas lost his job.

One could easily argue that Bivas should have informed his employer about the dispute, so that the employer would ask the right question of the school. Nevertheless, the harm could have been avoided had the school official been slightly more thoughtful and given a more complete answer.

This category of harms seems somewhat innocuous compared to other possible violations of students' rights. But it illustrates an aspect of nonmaleficence that is grounded in respect for students' important projects and preferences as well as for their emotional and physical well-being.

2.4 HARMFUL OR DEBILITATING TEACHING PRACTICES

Can poor instruction have a negative impact on students? This does not refer to missed opportunities, but to teaching that leaves the student in worse condition than before he or she was exposed to the instruction. Even so qualified, I think the answer to the question is yes.

This was Wilson's criticism of what he called the careless abuse of power over students: "the student ... is taught to lean on others -- for the questions to be raised, the means of answering them, and the tolerable range of solutions. One pathetic indicator is seen on the title page of the student paper that carries the obsequious note: 'For Professor so-and-so.'²³

In cases where professors were dismissed for incompetence in their teaching, including *Bevli v. Brisco* and *Riggin v. Ball State*, charges against the professor included the harm that had been done their students through their incompetence. In Riggin's case, some students lost valuable time because they were not prepared by his course for more advanced work, and had to repeat courses.

In the case of Dr. Walter Frost, at least some of his former students found their degrees rescinded, and one claimed that he was duped by relying on Frost and his entire committee for assurances (or at least implications) that his use of Frost's material in his dissertation was permissible. Extrapolating from this case, enfeebling teaching practices can be recognized where professors encourage, either directly or by failing to discourage, sloppy scholarship, multiple publications from one database, or similar practices among graduate students.

3. Violations of Autonomy

Support for autonomy as a principle to undergird professional ethics has very often arisen as a rejection of paternalism. As Joel Feinberg opened a chapter on autonomy, so have many other writers set the stage for their espousal of this principle:

Those who have experienced, or can experience hypothetically in their imaginations, irksome constraints justified wholly on paternalistic grounds, will

²³Wilson, Everett K. "Power, Pretense, and Piggybacking," p. 272.

testify that their resentment is not mere frustration or antipathy. Rather it has the full flavor of moral indignation and outrage. ... Moreover, the paternalistic "justifications" for the invasions rub salt in the wound by denying the very existence of the privacy, independence, and prerogatives asserted in the protests, and thereby are also belittling, degrading, and demeaning.²⁴

He continued by noting that the "realm of inviolable sanctuary most of us sense in our own beings," that which we feel is assaulted by paternalistic interventions, is the realm of personal autonomy.

The condition of being autonomous, that is being both capable of and acting to lay out one's own life plans and follow them so long as they do not interfere with the life plans of others, is taken to be a prime goal of higher learning for the student. Unwarranted violations of autonomy are thereby incompatible with the academic enterprise.

Although Mill never used the term "autonomy" *per se*, it is clear that his passage in *On Liberty* came close to defining autonomy and impermissible violations thereof:

The object of this Essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. The principle is, that the sole end for which mankind are warranted, individually or collectively in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. ... Over himself, over his own body and mind, the individual is sovereign.²⁵

²⁴Feinberg, Joel. "Autonomy," in John Christman (ed.), *The Inner Citadel*. Oxford: Oxford University Press, 1988, p. 27.

²⁵Mill, John Stuart. *On Liberty* [1859]. (Promethius Edition) New York: Promethius Books, 1986, p. 16.

By extension of Mill's argument, one can envision two categories of violations of autonomy: impermissible (when the person has reached the age of majority) violations for paternalistic reasons, and possibly permissible infringements in order to prevent harm to the rights of others.

3.1 PATERNALISTIC INTERVENTIONS

The doctrine of *in loco parentis* virtually required colleges to restrict students' freedom of action in the students' best interest, acting in the same way as parents would. With the demise of *in loco parentis* following a series of court cases in the 1960s and 1970s,²⁶ and the passage of the 26th Amendment, paternalistic restrictions on students' choices became untenable.

Nevertheless, while overt rules that violate autonomy may be disappearing, faculty may abuse their power over students under the justification that such action serves the students' own best interests.

In "The Process Group," students were required to participate in group exercises, partly to help them learn group process management skills, but also to help their own growth (a paternalistic justification). They were expected to participate fully in ways that required self-disclosure. Students who revealed too little (exercising their own sense of privacy) were labeled "defensive," but if they revealed too much, might find themselves advised to undertake therapy if they were to stay in the program. In a similar way, Sharon Russell was coerced into undertaking a weight loss program, against her will, and the faculty justified this in part by an appeal to her own good, and in part in the interests of her future patients. Unless these requirements were clearly based in either valid learning objectives or the necessity of protecting others, they must be abandoned, for to impose them for the students' good is to ignore the students' right to make their own decisions regarding what are their best interests.

Johnson v. Lincoln Christian College appears to illustrate paternalistic violations of Johnson's right to his own life plans, in that the College fully believed his alleged homosexuality

²⁶*Dixon v. Alabama State Board of Education*, 294 F.2d 150 (5th Cir.), 1960; *Goldberg v. Regents of University of California*, 57 Cal.Rptr. 463 (Cal.App.), 1967; *Buttny v. Smiley*, 281 F.Supp. 280 (D.Colo.), 1968; *Healy v. James*, 408 U.S. 169, 1972.

was harmful to his spiritual well-being. This case raises the question, however, of whether a student can voluntarily surrender his autonomy upon enrollment in college, with the understanding that he or she is seeking a certain degree of paternalism that will make him or her a better person upon graduation.

Particularly in curricular issues, students cannot be presumed to know their best interests, what will best provide them with the competence they seek. Therefore they give up prerogatives such as choosing to sit for a particular midterm, or whether certain readings should be required. The imperative they choose to accept, however, is quite conditional: if students wish to learn X, they will study Y in accordance with the instructions of Professor Z. Therefore, their forfeiture of some of their autonomy is also conditional: Professor Z can require study of Y only if it reasonably leads to mastery of X.

When reasonable infringements on autonomy are to be required, consent to those infringements must be informed. In a case similar in many ways to *Johnson*, a homosexual student was considered properly dismissed from a sectarian institution when he knew or should have known that his sexual orientation clearly violated institutional tenets.²⁷ In the same vein, Lincoln Christian College might have had a basis for dismissing Johnson after appropriate due process; the violation of his autonomy was in the forced counseling and in violation of his privacy when he had every reason to believe that it would be respected.

3.2 NONPATERNALISTIC VIOLATIONS OF AUTONOMY

If paternalism can seldom serve as a justification for violating a student's autonomy, the rights of others, on the other hand, must be respected. A professor often must restrict individual student prerogatives in the interest of the class as a whole. Furthermore, the professor's responsibilities extend to others external to the college: those who rely on its degrees, future employers who will expect accurate evaluation, future patients and clients who will expect competence.

²⁷*Lexington Theological Seminary v. Vance*, 592 S.W.2d 11 (Ky.App.), 1979.

When a professor infringes on student autonomy for potentially justifiable reasons, he or she must be prepared to explicate the basis for the action. Pretense about the basis for these infringements certainly violates alethetropism; it just as surely vitiates the justification for restricting students' freedom of choice or action. In addition, the supervening rights being protected by the action must be those of others with legitimate standing in the academic community. Their position must truly be adversely affected by avoiding the restriction, and their position must be seen as legitimately superior to the student's.

In *DiBona v. Matthews*, the president justified his cancellation of the play in part by an appeal to protecting the interest of the university in avoiding controversy with "the religious community." The justification seems insufficient on two counts. First, a group of Christians *qua* Christians has no protected interest in the operation of a public university. The president's priority was to protect the rights of persons with standing (the students) versus those without (taxpayers advancing their religious interests). Second, the freedom being abridged clearly was academic freedom, of both the instructor and the students. The university must withstand controversy in support of academic freedom. Recalling Beauchamp's and Childress's four requirements for infringing *prima facie* duties,²⁸ the president's actions were incompatible with three: alternative actions (production of the play in private) were not even considered; the infringement proposed was far from the least odious measure that could be taken; and no attempt was taken to minimize the effect of the infringement.

The *Dartmouth Review* case is seen by many commentators in a similar light. Although the student editors did not achieve redress in the courts, it was largely because of the legal theory they chose to propound. The court recognized that the administration may have chosen, for political or other reasons,²⁹ to protect a professor against criticism, and inappropriately appealed to

²⁸See *supra*, p. 13.

²⁹The *Wall Street Journal* opined that "the students' true crime was presuming to assess scholarship at their college." "The Joys of Hypocrisy," April 4, 1988, cited in Charles Sykes, *Profscam*, p. 256.

protecting the campus community against racism to justify restricting the students' freedom of expression.

Some professors have infringed student autonomy without such attempts at justification. Sexual harassment is a most serious intrusion into the student's "inner citadel" and cannot be justified by appeals to the rights of others. It is also an abuse of power such that any appeal to justification by consent must be considered groundless. Both heterosexual and homosexual harassment cases have appeared: *Brown v. California State Personnel Board* is an example of the former; *Korf v. Ball State University* exemplifies the latter. In each case, the professors' activities were considered such outrageous violations of academic ethics that dismissal was the only remedy considered acceptable.

4. Violations of Justice

The taxonomy envisions four types of violations of justice: abuses of power, inequitable treatment, lack of due process, and granting of undeserved rewards. These are not mutually exclusive categories. All abuses of power are injustices that may be undertaken to effect a result that falls into one of the other categories. Inequitable treatment might consist of providing some students with unjustified rewards that favor them over others. Nevertheless, it seems useful to use these categories for placing cases within the taxonomy. Perhaps they can be thought of as "regions" in the domain of injustice whose boundaries are not quite distinct.

4.1 ABUSES OF POWER

The professor has a great deal of power within the university setting, and particularly within the classroom or the research laboratory. If tenured, the professor is protected against countervailing power as well. The authority given the professor arises primarily from his or her academic freedom, which is grounded in alethropic ideals. Abuse of that power is an ethical failing second only to dishonesty in the centrality of its attack on the academic enterprise.

Power is sometimes abused in pursuit of ends other than the professor's immediate self-interest. In *Harris v. Columbia*, the graduate school dean had no obvious vested interest in making

Harris vacate the apartment unit in question. He most likely was acting in what he thought were the university's interests. Lacking patience with appropriate procedural approaches, he apparently attempted to force Harris out of the apartment by threat.

In *Russell*, the faculty members' collective obsession with their student's obesity may well have sprung from real concern for her health as well as her ability to function. Being unable to persuade her to cooperate, however, they resorted to a panoply of tactics, including their authority over her continuation in the program.

Untrammelled power can, of course, be used to achieve inappropriate personal ends. Professor Obinna allegedly used his power to force students in his course to sell or buy raffle tickets: \$100 for an A. According to contemporary newspaper reports, the "charity" Obinna ran had a dismal record of actually contributing to the needy the money raised in his raffles.

This subcategory is the principal level in the taxonomy for cases involving sexual harassment. Both Brown and Korf promised or implied rewards for submission that could not have been granted absent their authority over grades. Harassment of students also can succeed because of fear on the student's part that retaliation will take place in the form of withholding grades. None of the other three subcategories of injustice captures the essential character of sexual harassment: it is more than inequitable treatment; it is really unrelated to due process; and undeserved rewards on the student's part are irrelevant to its explication. Thus, if for harassment cases only, this subcategory is needed.

4.2 INEQUITABLE TREATMENT

Equity is not equality. In law, equity relates to application of general principles of fairness and justice in deciding disputes where there is inadequate statutory basis for settlement. There is more art than science in the practice of higher education, and the impetus to meet individual student needs creates many opportunities for action where specific institutional rules are silent. Pursuing the legal treatment of equity slightly further, there are specific circumstances in which existing rules, strictly applied, result in manifest unfairness, and the application of the rules must be

waived if equity is to be achieved. Faculty members are thus given great discretion in resolving ethical quandaries involving their students. In exercising this discretion, respect for equity requires that students who are alike in morally relevant ways should be treated equally. Where students are unlike in morally relevant characteristics, unequal treatment should be rationally different, i.e., in some reasonable proportion to the ethically relevant distinctions among them. In assessing students in this regard, faculty may (and should) consider the student's entire academic record.

Ethically irrelevant differences among students include gender, race, many disabilities, and so on. In general, there is a fair correspondence between ethically irrelevant distinctions among persons and Constitutionally irrelevant distinctions. Prior academic performance (i.e., whether the student is academically strong, average, or weak) is generally irrelevant as long as the student is in good standing. However, waivers and special considerations in the university are sometimes available only to the top students. Finally, it is easier to love some students than others, but that is not a basis for inequitable treatment.

Such a perplexity faced the professor in the case of "The Biased Evaluator." She wonders if her openness to certain types of students during admissions interviews poses an ethical problem. She is, in fact, behaving normally; it is impossible not to prefer certain types of students. However, it should be possible to avoid favoring them. In this case, her recognition of the problem is the first step to its solution. One must work diligently to ignore irrelevant differences among applicants. The attractiveness of grade point as the sole determinant of entry into programs may arise from its apparent neutrality. Unfortunately, prior work is only one predictor of success in academic programs, and there are difficulties of equity in evaluating grades from a spectrum of institutions. Thus, some subjective assessments will also be required. Faculty members must simply work hard to rid themselves of bias, or recognize and then isolate from decision making such biases as they do possess.

Faculty members frequently place individual student interests above bureaucratic necessity. Particularly in dismissal actions, students are often given probationary periods and are

also frequently readmitted in consideration of factors that may be beyond their control and which adversely affected their chances of success. However, professors wish to retain as much control over these waivers as possible, and are reluctant to rely on precedent in deciding individual student petitions. If the faculties had their way, no waiver would set precedent for future waiver decisions. To eschew precedent, however, is to commit one to *ad hoc* judgments in which two ethically similar cases could be treated in ethically diverse ways. Under these circumstances, whim, subjectivity, prejudice, and favoritism can prevail. Such an approach is inherently inequitable.

Heisler v. New York Medical College exemplifies an inexplicable judgment not to readmit a student who experienced severe family-related problems during her first year of school. Three other students, with comparable academic records, were readmitted on the basis that family-related problems had adversely affected their academic performance. One can imagine that other factors, Heisler's personality perhaps, entered inequitably into the decision.

The graduate student in *Shuffer v. Trustees of California State University and Colleges* was to be required to take an additional practicum beyond the requirements of the curriculum, in which his performance would be judged by fellow students. He objected that there was no precedent for this requirement, nor was there any statement in college documents that would allow such a demand. This unjustifiable action might be cited as an abuse of power, but the fundamental ethical infringement is failure to treat Shuffer in a manner that is equivalent to treatment of similarly situated fellow students.

"The Umpire's Decision" was selected to illustrate a problem that arises when professors must choose between honoring "filial" relationships as opposed to demands for equity from students for whom the professor lacks such personal ties. The existence of this conundrum tips the scales for many against consensual sexual relationships on campus. In the case, a graduate program coordinator allowed himself to decide a waiver request from a graduate student with whom he had a dating relationship. He chose to accede to her request at the same time that he

denied a similar request from another student. The unfairness is obvious. Because it is difficult for a professor to carry out his or her duties by recusing himself or herself from decisions of this type, many writers argue that the relationship should be avoided, at least so long as the student is under the academic direction of the professor in question. Does this mean that one should never admit one's son, daughter, or spouse to one's course? Probably not, but appearance of fairness as well as substantive fairness can be preserved by involving another professor in the evaluation of the relative during that particular term. Lebacqz and Barton also suggested that the professional contemplating a personal relationship with a client should seek the counsel and ongoing intendance of peers as long as the lover remains a client.³⁰

4.3 FAILURE TO PROVIDE DUE PROCESS

Procedural justice is an important underpinning of American freedoms. Students facing discipline or dismissal are unjustly treated if they are not adequately informed of the basis for their discipline, and if they have no opportunity to present their interpretation of events to an impartial and qualified decision maker.

In *Lightsey v. King*, the student was granted a hearing on whether he should be suspended for cheating, and was exonerated. However, the professor, who gave him a zero grade because of the alleged cheating, not because his answers were incorrect, refused to change the grade and the administration of the college refused to provide any appeal process.

Absent a pattern of inappropriate student evaluations, a professor's grades should not be routinely overturned, *when based on academic judgments*. But where the grade is admittedly based on allegations of rule violations, and there is a question of fact as to whether the violations have occurred, the professor has no more expertise in resolving the issues of fact than does a panel of peers. However, the professor as witness cannot free himself or herself from bias in the decision, and should ethically defer to others.

³⁰Lebacqz, Karen and Ronald G. Barton, *Sex in the Parish*, p. 189.

An acceptance of this guideline would help resolve the issue presented in "The College Test." The professor has good reason to believe that Joe has cheated, but has difficulty distancing himself from his biases in favor of Joe and Kathy. Procedure can help here. Faculty should provide themselves with departmental or college panels to whom charges can be referred. A confidential inquiry by such a panel could consider both the evidence and the equitable penalty to be applied if they conclude that cheating occurred. Such a penalty would be determined after a review of the student's entire record, which may not be available to the individual professor.

4.4 UNDESERVED REWARDS

Granting a student a reward he or she does not deserve is, admittedly, a form of inequitable treatment. It differs in character from general inequitable treatment, however, because other students are not necessarily or even very often directly disadvantaged by such a move. There is no upper limit on the number of degrees an institution may award, for example, so that granting one extra degree when it is not really earned may not hurt any other student in particular. It is fortunate that this is so, because it implies minimal risk from erring in favor of leniency in those cases where there is question about whether a particular student has actually satisfied degree or other requirements.

Given the egalitarian traditions of American society, however, students see this type of inequity in a very bad light. That undeserved grants undermine the value of the reward being given does underscore the indirect harm that other students perceive. The undeserved reward also calls into question the veracity and accuracy of the faculty's judgment, and violates alethropic imperatives.

"The Blitz" suggests a potential violation in this category. The professor is being importuned to revise a grade so as to maintain a football player's eligibility. I concluded above that for him to do so would be to inaccurately certify the student's performance, and violate alethropicism. It would also clearly confer an undeserved passing grade on the student. Which perspective is more probative of an ethical violation depends, I suppose, on whether one considers

the action from the professor's point of view or from that of another student (possibly a stronger academic performer who is in contention with this student for a position on the team).

Drawn from my own experience, the student described in "Persistence through Extension," was also asking for a reward, entrance into the university, that was undeserved in light of current standards. Its grant would also mean that some other student, more deserving by all accounts, would be denied admission. The professors who were faced with making this particular decision were troubled because they could not say that this student was absolutely undeserving of admission, only relatively so. Had he sought admission a few years earlier, when demand for access to the university was less, he would have been admissible. So, this case also exhibits problems of general equity, and of the toughest type: distribution of scarce resources in an ethically appropriate manner.

5. Trust

Students enter the university naive. They must voluntarily give up some of their autonomy and be willing to conform to university rules under a general expectation that their college years will provide one or more assumed benefits. Their naivety perforce requires that they place trust in the university and its professors to take only so much autonomy as absolutely necessary to meet their expectations.

Students' trust resides in the faculty with the understanding that it will not be violated. In particular, students' privacy and self-esteem should not be unnecessarily abridged. Furthermore, in return for many considerations (including tuition), students expect that professors will reasonably place their interests above professors'. Finally, they trust that for the money paid and the effort invested, they will be the beneficiaries of competent instruction that will facilitate the higher learning they seek.

5.1 BREACH OF CONFIDENTIALITY

An expectation of confidentiality in student-professor relationships arises from concern for avoiding harm (since some disclosures can be harmful to the student) as well as from respect for

autonomy. The latter concern is that true freedom to make one's personal decisions is inhibited by lack of privacy in those decisions, because it allows inappropriate others to intercede directly or potentially. For a variety of reasons, confidentiality of student records is one of a very few venues in which Congress has promulgated rules for higher education.³¹

In *Johnson v. Lincoln Christian College*, the student's confidence appeared to be violated twice. Initially, the school-appointed counselor released information to the school that the student had every right to believe was confidential, not only from the expectation that the counselor would respect his confidence, but apparently from actual assurances. The school also may have breached his confidence by revealing to his mother the allegations that resulted in his dismissal.

5.2 DENIGRATION AND RIDICULE

The time has long since passed when American appreciation of the psychological aspects of human behavior led to a human relations model of student motivation. Criticism, humiliation, and "dark sarcasm in the classroom"³² are no longer accepted pedagogical methods.

One simply cannot imagine that a student, told in advance that by volunteering to pick up a professor at the airport she would be opening herself to the vituperation heaped upon Mary Jo Wardlaw by Professor Peck, would acquiesce. Likewise, one can easily imagine the outrage and sense of betrayal felt by Sharon Russell when she was repeatedly singled out as a prototypic fat patient for fellow nursing students' practice.

More subtle examples of ridicule become apparent if viewed from the student's point of view. Embarrassing self-disclosure or forced public presentations can be perceived as violations of a student's trust unless the relevance of these experiences to the student's academic goals is clear. Faculty must be careful in imposing these types of potential mortifications on students to be sure

³¹Kaplin, William A. *The Law of Higher Education, 2nd Ed.* San Francisco: Jossey-Bass, 1986, pp. 358-360.

³²Waters, Roger. Lyrics to "Another Brick in the Wall, Part 2," in *Pink Floyd: The Wall*, New York: Columbia Records, Inc., 1979.

they are academically necessary, and that all feasible steps have been taken to minimize the potential assault on the student's self image and privacy.

5.3 ACTIONS FAVORING PROFESSORS' SELF-INTERESTS OVER STUDENTS'

Achievement of a professor's ambitions must not be accomplished at students' expense. Several of the selected cases illustrate violations of this principle in that professors took advantage of students for their own selfish ends.

The professor in "The Assistant Consultant" who was willing for a graduate student to forego her important academic projects to devote time to his consultancies clearly placed his interests above hers. Similarly violative of this principle was the professor in "The Placement Program," for whom job-seeking students were a means to his enrichment rather than ends in themselves.

The case of Professor Terry Wilson demonstrates again the use of students in furthering consulting practices of a professor. In this case, Wilson reportedly encouraged students to dissemble concerning their affiliation with his clients when they engaged in "marketing research" involving his clients' competitors. In doing so, he improperly embroiled them in a conflict of interests, and doubly violated his ethical duties by exemplifying questionable practices. As a result, he diminished whatever academic benefit could have been claimed for the class activity.

Similar violations of students' interests in favor of the professors' occur when students become research subjects. As noted earlier, the professor in "Laborious Rewards" was dishonest with his students so that they would carry out a pilot study on his behalf. Because he positioned this exercise as a classroom activity, he may well have accomplished without institutional review a deception he would not have been permitted with subjects who were not students.

It appears that Professor Corstvet (*Corstvet v. Boger*) was terminated in part because of homophobia. The stated reasons for dismissal labeled his sexual activities as "deviant," and his dismissal centered on his solicitation of sex in a men's restroom. If one allows that Corstvet had a permissible interest in maintaining homosexual relationships with consenting adults, and further

allows that not all arrests automatically give rise to censure, one can still agree with the administration that these particular actions are ethically suspect for having taken place on campus in a site frequented by students. As in other sexual relationships with students, the professor must be aware of potential entanglements that will result in unfair treatment of other students. One may minimize this risk in selectively encouraging or discouraging consensual relationships, based on whether the student is in one's department, for example. One may also justify such consenting relationships because of the positive value that arises from long-term loving partnerships. Indiscriminate and fleeting sexual encounters are more problematic, and the possibility of care is greatly diminished. Such encounters also constitute "high risk" sex and thus present real danger to students of threats to health. Corstvet placed himself in a setting where there was a very high chance that the relationship would in one or more ways be damaging to the students, and where he had little opportunity to act reflectively to minimize the chance of damage. In doing so, he placed his interests first, recklessly ignoring student interests.

5.4 INCOMPETENCE

Two prime examples of faculty incompetence are *Bevli v. Brisco* and *Riggin v. Ball State University*. In each instance, the professors asserted their rights to continue teaching, unmolested, although the quality of their instruction had declined to levels such that students' interests were clearly violated. Where the quality of instruction is not well monitored, and only such blatant examples such as Dr. Bevli and Professor Riggin are dealt with decisively once faculty members are tenured, professors obtain a special duty to self assessment. With the elimination of mandatory retirement policies on many campuses, this self-assessment becomes a more pressing need.

Institutional structures and procedures must be developed to replace mandatory retirement as the major safeguard against incompetence arising from burnout or physical or mental incapacity. Institutional strategies for dealing with incompetence, both "premature"³³ and

³³I use this term advisedly; there are many assumptions about the inevitability of intellectual decline that are ripe for testing and probable rejection.

otherwise, must include mandatory peer and student evaluations on a regular basis. Further discussion of this topic is beyond the scope of this dissertation.

Illustrative Cases Related to the Taxonomy

In this section I shall examine four cases, relating them to the taxonomy, rather than vice versa. I have chosen these cases on the following bases: two cases, taken together, are intended to show how case discussions can help clarify issues in a general topic area, viz consensual sexual relationships with students; one case is intended to illustrate a relatively "pure" case where a single principle captures the essence of the ethical quandary; and a final case will illustrate how a complex web of issues may surface, and how one can find a principle that takes one furthest in analysis.

Consenting Relationships Between Teachers and Students: "The Umpire's Decision" and "Naragon v. Wharton"

The possibility and perplexity of loving relationships between teachers and students has been recognized at least since the 11th century.³⁴ Whether Abelard and Heloise were "star-crossed lovers, brought together by learning and thwarted by boorish relatives and rigid moral conventions," or whether, as seen by Heloise's family, "Abelard had betrayed a sacred trust and their punishment of him was richly deserved,"³⁵ persists as the central question about such relationships.

The distinction depends, in part, on the issue of valid consent by the student. I take it as settled that a professor's continued pursuit of a relationship after a student has indicated his or her disinclination constitutes sexual harassment, behavior that is not only unethical but illegal. Not settled is what behaviors and signals on the student's part constitute rejection of the professor's advances, and what behaviors and signals from the student constitute justified indicators that the

³⁴For a succinct description of the affair between Peter Abelard and his pupil, Heloise, see Adolphe Meyer, *An Educational History of the Western World*, p. 107.

³⁵Small, Mary Jo. "The Guardians of Heloise?: Sexual Harassment in Higher Education," in William W. May, *Ethics and Higher Education*, pp. 249-250.

student is open to a relationship. Also unsettled, as discussed above, is the legitimate question of whether a student, faced with the professor's power over her or him, is capable of valid consent.³⁶

Experience suggests that loving partnerships can result from what was initially an academic relationship only.³⁷ Not only can most faculty think of successful couples in their own discipline whose work together originated when one was the other's graduate student, but there is evidence of such partnerships emerging from other professional-client situations, including ministers and parishioners.³⁸

Two cases in Appendix C appear to deal with the ethics of consensual relationships. In one, the professor is a supervisor of his paramour; in the second, the teacher is not responsible for instructing, grading, or promoting her lover. In each case, the teacher is single; no issues of adultery are cogent. For the sake of discussion, I will assume that the students' consent is real and valid (although such consent is more problematic with undergraduates than with graduate students).

"THE UMPIRE'S DECISION"

This case's title was given it in its source, in which the setting was more fully described, and Komarek was serving as the umpire of a faculty-student softball game at the outset of the case description. His decision is whether to raise within departmental and college channels an objection to the ongoing relationship between Professor Hardy and his graduate student, Jessica Crouse.

Because Hardy is the graduate program coordinator, he is duty-bound to evaluate Jessica, and to decide whether she has met program requirements. This places him in a position of potential power over her. However, we assume here that Jessica's involvement is sufficiently free of

³⁶See *supra*, pp. 139-140, 174.

³⁷I note, however, that of the five or six such successful relationships I am aware of, none *blossomed* during the student's period of study under her spouse. In each case, the professor first began openly dating the student after completion of her studies.

³⁸Lebacqz, Karen and Ronald G. Barton, *Sex in the Parish*, pp. 238 ff.

coercion that it constitutes what Lebacqz and Barton have called "risky but not impossible."³⁹ What is problematic is that Hardy's judgment about Jessica is suspect due to bias, and it raises the specter of treatment of Jessica that is preferential, thus violating principles of just treatment of other students in the program. For Komarek, the issue came to a head when, inevitably, another student complained of just such an eventuality.

Once valid consent is assumed, there seems no legitimate ethical barrier to the relationship save that it may predispose to unjust treatment of other students. The student and professor, being adults, do possess rights to free association, privacy, and respect for their own autonomous decisions. Only if unfairness to others rises to an ethically significant level can these rights be abridged.

In this case, the fact of Hardy's supervision of not only Jessica but other students who are competing for fellowships and academic recognition, calls for a presumption in favor of the rights of the other students, and against Hardy's continuing relationship with Jessica. One might conclude that to prevent this occurrence, the university should prohibit such relationships from ever developing. However, since this one has, Hardy's bias in favor of Jessica may continue even if the relationship is publicly terminated. Hardy should relinquish any supervisory role in Jessica's case, and should consider removing himself as program coordinator during the pendency of his affair with her.

One notes from the case that the relationship between Professor Harper and Jessica's fellow student, Sarah, did not seem as problematic for Komarek, owing to Harper's lack of involvement in Sarah's program or supervision. It may have also better suited Komarek's sense of propriety that Harper and Sarah were nearly the same age, whereas Hardy was considerably older than Jessica (raising again the knotty problem of Hardy's potential power in the relationship).

³⁹*Ibid.*, p. 239.

NARAGON V. WHARTON

In the absence of any teaching, grading, or evaluation authority on the part of the instructor over the student, does the objection to a relationship between the two vanish? Yes, asserted Kristine Naragon. Although, as a graduate assistant, she was a faculty member, she claimed that her relationship with Jane Doe was completely consensual, and free from taint of power. Thus, she argued, it was an ethically permissible relationship that was none of the university's business.

Of her two claims, it is the first that interests us here. The relationship was indeed homosexual in nature, and a source of great consternation to Miss Doe's parents. Setting aside any discussion of whether, in this society, there is an ethically relevant distinction between heterosexual and homosexual affairs (indeed, the university asserted there was none in their mind: both were importunate in their eyes), and if there were no question of adequate consent being given, one might side with Ms. Naragon. It is not *prima facie* unethical for a teacher to have an intimate relationship with a student who is not his or her student and is unlikely ever to be so. This conclusion is made in regard to the professor's duty as a teacher to his or her other students.

CIRCUMSTANTIAL DIFFERENCES AND INSTITUTIONAL PROTECTIONS

The contrast between these two cases hinges on the nature of the instructional relationship between the teacher and student. The more distant, the better. It is likely, however, that relationships develop from both propinquity and shared interests. Thus Naragon and Doe were brought together by a shared interest in music, and some nexus must be construed between a music major and the instructional duties of a graduate student in the same college. However, there was no evidence in the Naragon case that this connection posed the dangers described in "The Umpire's Decision."

There is a largely fiduciary duty, however, owed by a teacher to the institution, aside from the ethical obligations that the professor owes to his or her students. When one's relationships, in or out of the institution, begin to intrude on the interests of the university, one should seek to

minimize the impact. The public confrontations and continuing pressure brought to bear on the university by Doe's parents, combined with Doe's recent coming of age, created a difficult situation for the university in which Naragon had some ameliorative power. Naragon continued a controversy that should have been dropped in the interest of the university.

I have earlier cited, with approbation, the suggestions of Lebacqz and Barton that faculty members pursuing relationships with students are entering a situation fraught with ambiguity and in which their judgments may be less than objective. They recommended that professionals seek counsel from peers before entering into such relationships, and that peers provide ongoing monitoring of the relationship. This approach seems preferable to an outright ban on faculty-student intimacies where the student is not under the supervision of the faculty member.

One final caveat is worth noting. The remoteness of supervision and possible favoritism varies with institutional character. On this basis, Small concluded that "the rationale for banning all faculty-student amorous relationships at the small and purely undergraduate college is therefore strong," because "the faculty member's power tends to range over the entire college rather than be focused in an individual department." In larger institutions, "when the academic lines of faculty member and student do not intersect, their personal relationship is free to blossom."⁴⁰

A "Pure" Violation of Alethetropism: Samaan v. Trustees of the California State University and Colleges

In order to include *Samaan* among the cases in Appendix C, it was necessary to find a nexus between Samaan's fraud conviction and an ethical duty owed to students, because duties owed to the university generally, or duties arising in conduct of service and research activities are not germane to this dissertation. In essence, to decide to include this case is to answer the question: On what basis does dishonesty in affairs remote from the university disqualify a teacher from continued association with students?

⁴⁰Small, Mary Jo. "Guardians of Heloise?," pp. 253-254.

To recapitulate Samaan's alleged transgressions, he was accused of filling 119 false invoices with Medi-Cal, swearing that he had performed counseling services for Medi-Cal enrollees when, in fact, the services had been provided by his wife, who was ineligible for Medi-Cal participation. He also submitted bills, and diagnoses, for counseling children, when he had in fact never met the children but had only seen their mothers; he had already billed Medi-Cal for the mothers' visits. Samaan explained these peccadillos away to a faculty committee as billing errors: he signed the statements for his spouse's services without reading them and he intended to see the children at a later date and just didn't get around to it.

The committee accepted his explanations and recommended leniency. In doing so they ignored the large number of "billing errors" and the fact that these were not just mix-ups where the wrong person signed the form: his wife was ineligible to submit any Medi-Cal billings in the first instance. They also must have ignored the ethical question of testifying to a diagnosis regarding the children without having sufficient evidence from observation to devise one.⁴¹

The president of the university reviewed the record and exercised his option to reject the committee's advice. At Samaan's later suit against the university, the appellate court substantiated that "with regard to [Samaan's] contention that the evidence against him was equivocal, we must agree with the President, the arbitrator, and the trial court that the evidence was not equivocal; it was convincing."⁴²

Based on the record, Samaan exhibited dishonesty if not outright fraud in his professional practice. This profession (counseling psychology) was the subject he taught, and his training and experience in his profession was the source of his authority to teach. Samaan was properly

⁴¹Because there were only two cases involving pre-billing for children, it is possible that this was a petty form of larceny in situations where the children's Medi-Cal status was about to expire or where some bureaucratic snarl would prevent him from billing for a subsequent appointment altogether.

⁴²*Samaan v. Trustees of California State University and Colleges*, 197 Cal.Rptr. 856 (Cal.App. 3 Dist.), 1983, p. 866.

dismissed, because his fitness to teach was disqualified by his dishonesty. A duty to students was thereby breached.

The principle violated by Samaan may be identified by a process of elimination. First, no student, or student group could complain of direct harm from Samaan's deceit of Medi-Cal. There was no evidence presented that he took class time to discuss how to fraudulently bill Medi-Cal for counseling services, for example. Second, outside activities that do not involve students directly pose no identifiable danger of infringing any student's autonomy. Third, principles of justice also appear to be operative only as students are affected by their violations. No student was subject to an abuse of Samaan's power, nor treated inequitably, nor given undeserved rewards as a result of his Medi-Cal abuses. No students, by the record, filed any grievances of any sort against Samaan, so failure to provide procedural justice is also unavailing to explain Samaan's moral culpability.

Could violations of trust be explanatory? Possibly so: his actions were self-serving, and allegations of unfitness to teach at least raise questions of competence. Taking the latter issue first, consider a professor who teaches counseling psychology and who is so confused about the day-to-day management of an important aspect of practice that he runs afoul of the Medi-Cal authorities on over 150 occasions. Is this person competent to answer students' questions about practice management? Are his record-keeping skills so inadequate that one wonders whether he can keep his students' records straight? Competence to teach in a professional course may very well rest on competence in the practice of that profession. However, the record suggests that Samaan was perfectly competent, but dishonest.

That Samaan's actions were self-serving is recognized. However, he placed his interests above those of taxpayers generally. It was not shown that he acted similarly regarding his students, or regarding any of his professional clients. Seeking a violation of students' trust, in the sense of his fiduciary relationships with them, is not very helpful in explaining the ethical culpability arising from Samaan's actions.

It must be concluded that Samaan violated the principle of alethetropism. Dishonesty of the magnitude committed by Samaan, particularly in connection with the practice of the very profession he presumed to teach about, undermines the achievement on his campus of an environment in which truth is respected. The sense that if he could lie so extravagantly about his professional practice, then he could lie about other things, is what fuels umbrage of his actions and his colleagues' toleration thereof.

Multiple Ethical Abuses: Russell v. Salve Regina College

In *Samaan*, adherence to but one principle would have supplied sufficient armor to stem the professor's tide of iniquities. *Russell*, by contrast, provides a provocative case in which a panoply of tenets would be required to bulwark the attacks by Sharon Russell's faculty against her citadel of ethical claims. As the trial court judge observed: "This case ... raises a host of intriguing federal and state law questions in an exotic factual context."⁴³

In contradistinction to *Samaan*, an argument for the applicability of virtually the entire taxonomy of principles to this case can be built, not by elimination, but by accretion. For each taxon in order, *Russell* will illustrate an ethical violation. At the culmination of the argument, a search for the most explicatory principle will ensue.

A VIOLATION OF ALETHETROPISM: THE FALSE PROFESSIONAL STANDARD

The basis upon which Sharon's nursing professors asserted their authority to require her to lose weight was a statement in the "Nursing Handbook" that required all students to disclose any medical problems to the clinical coordinator each quarter. This requirement was grounded in protection of the health of patients who would be exposed to the student during clinical training. Whether this notice to Sharon upon her enrollment was sufficient to apprise her that success in the program would depend on mandatory weight reduction is questionable. As the trial judge noted:

⁴³Selya, Judge, Opinion of the court, *Russell v. Salve Regina College*, 649 F.Supp. 391 (D.R.I.), 1986, pp. 393-394. Judge Selya's opinion presents a wonderful example of erudite juridical prose, resplendent with tightly written and never-mixed metaphors ("The fabric of Russell's aspirations began to unravel ..."), and a veritable treasure-trove of obscure but marvelously trenchant vocabulary.

Contagion was not legitimately at issue -- after all, there is no allegation of communicable corpulence here -- nor have the [faculty] essayed any showing that clinical work would have jeopardized Russell's own well being.⁴⁴

Therefore, the faculty must have concluded that Sharon's obesity would inhibit her ability to perform patient care, or as they ultimately claimed, that she would impair her patient's health by setting a bad example.

The proof being in the pudding, to abuse a phrase, the faculty could not have really believed that Sharon was incapable of providing good care. In point of fact she received good evaluations from clinical faculty outside the institution. The ultimate negation of this notion was, of course, that she transferred to another nursing school (operated by the same religious order), completed her degree, and ultimately was successfully employed.

The faculty, apparently, attempted to force the issue by failing her in a clinical rotation. Here, one instructor indulged in the first violation of alethetropism by awarding her an F that had only to do with her weight, not with her clinical performance, as was later admitted on deposition.

The remaining violation of alethetropism was the faculty's persistent asseveration that nursing students must serve as positive role models for their patients, and that Sharon's adiposity violated a critical professional standard. Again, the court looked askance at this conjecture:

The argument that her overweight condition was deleterious to patients as a matter of example rests, at this point, on sheer speculation. Accordingly, the decision to expel Russell, insofar as it prescinds from the Handbook, must be tried to determine whether it was the product of reason or caprice.⁴⁵

In the face of Sharon's undeniable success once departed of Salve Regina's strictures, one must conclude that the faculty's position arose from caprice. That no one in a position of influence on the faculty (seven faculty members in a small school were named as defendants) seemed to

⁴⁴*Ibid.*, p. 405.

⁴⁵*Ibid.*, p. 406.

question seriously the validity of their position represents a profound disinterest in the pursuit of truth. The standard they asserted was more than lacking in foundation; it was absurd on its face.

VIOLATION OF NONMALEFICENCE: EMOTIONAL HARM OR ABUSE

One of the critical counts in Russell's case against Salve Regina College was that the faculty violated Rhode Island law by intentional infliction of emotional distress. Such an action is grounded in common law:

One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such body harms.⁴⁶

The trial court judged that this standard applied to a college just as to any other potential defendant:

... this court is persuaded that the uniquely vulnerable nature of the student's standing in the world of the university places that pairing squarely within the category of relationships which, on any reasonably taxonomy [*sic*], would give rise to a duty to avoid the intentional infliction of emotional harm.⁴⁷

In this case, the law and ethics coincide: the college owed Sharon a duty not to harm her emotionally.

Harm her, however, they did. She was told there would be difficulty in finding gowns large enough to fit her. She was used as a teaching example whenever the subject matter lent itself to consideration of obese patients. She was subjected to repeated summonings before professors to receive harangues about the desirability of losing weight. As a result of this conduct, Sharon suffered "nightmares, sleeplessness, nausea, vomiting, diarrhea, gastric upset, and hypoglycemic attacks," according to the court record.

⁴⁶*Restatement (Second) of Torts*. St. Louis: American Law Institute, 1965, § 46.

⁴⁷Selya, Judge, *Russell v. Salve Regina*, p. 401.

In the conclusion of the court, students have a clear right, set in apposition to a college's authority to operate its program, to "be sheltered from gratuitous debasement or intrusiveness (or worse, from malicious conduct which offends fundamental notions of human decency) ..." ⁴⁸ The faculty at Salve Regina violated this right to freedom from emotional harm.

VIOLATIONS OF AUTONOMY: FORCED ATTENDANCE AT WEIGHT WATCHERS; COERCED ACCESSION TO CONTRACT

The inappropriate awarding of the F grade in her clinical rotation supplied the fulcrum over which the balance between Sharon's wishes and the demands of the faculty finally tipped. Faced with expulsion for low scholarship, Sharon at last agreed to attend a weight loss program, maintain a two-pound-per-week weight loss, or, failing that, to "voluntarily withdraw." The faculty's asserted motives for this insistence were, as noted above, predicated in promotion of Sharon's welfare and those of her future patients. To the extent that this action violated her autonomy, it was for both paternalistic and nonpaternalistic reasons.

The court found material questions of "duress, coercion, and [Sharon's] state of mind" sufficient to submit to a fact finder whether Sharon's acquiescence to the contract was valid. Judge Selya further opined that the contract could likely be seen, not as a valid basis for discharging Sharon upon her failure to complete it, but as evidence of profound discrimination against her. The court noted that the proffered consideration for Sharon's agreement to the contract (being allowed to continue in spite of a falsely awarded failing grade) was scant at best, and further scoffed at the "oxymoronic concept of a student essaying a 'voluntary withdrawal' against her will." ⁴⁹

VIOLATIONS OF JUSTICE: DISCRIMINATORY TREATMENT; ABUSE OF POWER

Succinctly put, the professors at Salve Regina singled out Sharon Russell for special, and discriminatory treatment based on her girth. They then forced her, by virtue of an arbitrary and capricious failing grade, to sign a contract she had previously clearly inclined against. In main trial,

⁴⁸*Ibid.*, p. 407.

⁴⁹*Ibid.*

the jury found that "The College ... forced Russell into withdrawal because she was obese, and for no other reason."⁵⁰ Given the recounting of the record here, what was done against Sharon Russell is clearly included under the rubric of injustice.

VIOLATION OF TRUST: PUBLIC DENIGRATION AND RIDICULE

Sharon Russell wanted very badly to become a nurse, a fact she made plain when she matriculated at Salve Regina College during her freshman year. After being admitted to the nursing program the following autumn, it became readily apparent to school officials, according to court records, that she was quite sensitive about her weight. How the school treated her has been clearly revealed: they made her the object of public ridicule concerning the one area in which she was most vulnerable, and they persisted for two years in their harassment. The appeals court concluded that

we are unable to see what interest would be served by the petty, mean-spirited and concerted conduct in question. If anything, the interest of a college faculty and administrators should be the creation of an atmosphere of courtesy and tolerance.⁵¹

The school's indifference to Sharon's emotional well-being is pathetically emphasized by their claim that the following example in the *Second Restatement of Torts* "closely parallels this case:"

A is an otherwise normal girl who is a little overweight, and is quite sensitive about it. Knowing this, B tells A that she looks like a hippopotamus. This causes A to become embarrassed and angry. She broods over the incident, and is made ill. B is not liable to A.

Regarding this claim, the court concluded that

In view of the ongoing nature of the conduct in the instant case, as well as the control Salve Regina held over Russell's professional future, the comparison to an

⁵⁰*Russell v. Salve Regina College*, 890 F.2d 484 (1st Cir.), 1989, p. 489.

⁵¹*Ibid.*, p. 487.

isolated remark, even one made with knowledge of special sensitivity, is disingenuous.⁵²

IN PURSUIT OF THE CENTRAL ETHICAL TRANSGRESSION

At first blush, one is tempted to assign centrality to the principle most severely offended. On reflection, however, it seems not the *summum malum* that is central to a particular case but the principle which constitutes the *sine qua non*. I shall explore this notion more fully below and see if it produces an agreeable result.

As a starting point, one may conduct a thought experiment by which it is presumed that one or more of the offending actions were abated. If the eliminated violation fails to break the chain of abuses, then it is not the essential violation.

First, consider the ridicule and public abuse. If the faculty had omitted this behavior, but continued with the assumption that Sharon's obesity was a bar to her continuation, she might have had a more pleasant time up until she received the bogus F grade and was asked to sign the contract or leave. The violation of trust inherent in the denigration and ridicule heaped on Sharon seems not to be the central violation, although it is the most umbrageous.

The haranguing that was part and parcel of Sharon's abuse was the principal source of the emotional harm. Were it to have stopped in the face of a simple ultimatum (lose 40 pounds by fall or you're out) unaccompanied by repeated lectures, the fundamental harm would have continued, but the emotional distress might be less.

The breach of autonomy was also derivative from the belief held by the faculty that forcing Sharon to loose weight was either in her interest, or in patient's interest, or both. However, had the faculty simply forgotten about the contract and attempting to force it on Sharon, an unhappy Sharon would have graduated.

If, however, the faculty had early on disabused themselves of their antiobesity views, there would have been no impetus to the other ethical violations. Mean and petty jibes, and insensitive

⁵²*ibid.*

use of Sharon as an obesity prototype might have continued, and would have stood on their own as opprobria. But the full array of abuses would not have gathered such support on the faculty if it weren't for the underlying justification.

Professors are inculcated with a self-image drawn from a model of rationality. Unsubstantiated dogma derived from faulty ratiocination can perpetuate itself within an institutional ethos. One would be surprised to discover that very many other students, whatever their nature or limitations, were so shabbily treated at Salve Regina College during Sharon Russell's tenure as was she. She may have been less a victim of inherently malevolent professors than of a malignant conception about obesity. The ill effects of regnant misconstructions about the chances for minorities and women in higher education in the past have been equally odious, but were defended as vigorously by well-meaning professors as were the myths about obesity staunchly supported by the Salve Regina faculty.

The most important ethical lesson to be drawn from Sharon Russell's ordeal is for faculty to question seriously any assumption that would suggest grounds for breach of the prima facie duties of nonmaleficence, respect for autonomy, justice, and fiduciary responsibility -- to seek the real truth.

Caring Revisited

Paradoxically, the one case that exemplified the violation of the widest range of principles is also the case that suggests the strongest rejection of a care perspective. Entering a relationship with a student as one-caring remains supererogatory. On the other hand, a review of Sharon Russell's experience suggests that she and her faculty members had an extraordinary degree of contact during her tenure at Salve Regina. She was to report to Professor Chapdelaine weekly, for example. Had even one or two faculty members displayed the accessibility and careful attendance to Sharon that Noddings and Walton suggested are the hallmarks of caring-in-action, how could the result not have been different?

Perhaps the care perspective demands attention in *Russell* because the faculty did, in fact, choose to become very closely involved with Sharon Russell. They intentionally elected to forge chains of relationship with her that were more binding than are the routine relationships between teachers and students. In such a situation, Noddings, if I understand her correctly, argues that "if we do not care naturally, then we must call upon our capacity for ethical caring."⁵³ In other words, if we choose to get involved, we must do so as one-caring.

This interpretation is compatible with the sense that we may have an educational relationship with a student in one of our classes, and one that is mutually beneficial, without necessarily establishing the closeness that demands what Noddings considers caring.

Recalling my earlier discussion of the care perspective⁵⁴ suggests an additional view. The care perspective is often set in apposition to the justice tradition. It is as if two distinct lenses were available for viewing moral dilemmas. One works well at a distance while the other gives richer detail up close. At some intermediate range either lens can be used.

Viewed through the lens of the justice tradition, *Russell* does not fully resolve. What we think is the essential feature, a breach of alethetropism, doesn't explain the near revulsion we feel concerning the faculty's actions. What we identify as the source of our outrage -- the injustice -- doesn't seem to be the controlling issue.

Seen up close through the lens of the sentimentalist tradition, we discover a route by which the problem could be resolved, if perhaps one faculty member had fully "received" Sharon and then brought the faculty member's resources to bear in a caring intervention that might have changed the outcome for all concerned. Larger issues will be lost in the process, but are not necessarily relevant at the distance we would be working.

I conclude this chapter with the realization that excluding caring from the taxonomy is not an unreasonable outcome; the taxonomy relates properly to an analysis from the justice tradition.

⁵³Noddings, Nel. *Caring*, p. 86.

⁵⁴*Supra*, pp. 22 ff.

The taxonomy was successfully justified by case analysis using two different approaches. It should prove a useful motif for a traditional evaluation of ethical issues involving relationships between professors and students. It is compatible with a willingness to adopt a caring perspective in many student-professor interactions.

Chapter V

CONCLUSIONS, LIMITATIONS, AND WORK TO BE DONE

Questions Answered

I opened this work with a list of eight subsidiary questions that would help me determine "what set of ethical principles can inform the professor regarding his or her obligations to students?" I am much relieved to discover that I have answered those questions and have substantially completed the task I had in mind at the outset. I shall now recapitulate these questions and summarize my findings.

What are the acknowledged roles of professors in their relationships with students?

The modern professor is a member of a profession separate and distinct from membership in his or her academic discipline. This profession carries the principal mandate in the United States for the simultaneous discovery and dissemination of knowledge. It also provides service to society in varied ways. For the most part, in spite of mythology to the contrary, the three functions of the professor in teaching, research, and service are complementary.

With undergraduate students, the professor interacts primarily in his or her teaching role, which subsumes responsibilities as peer evaluator, curriculum planner, instructor, and student evaluator. These same roles obtain with graduate students, but the relationship takes on an added dimension as the graduate student more closely joins the professor as a junior colleague in research and scholarship.

In all of the professor's roles, he or she enjoys academic freedom and often tenure. These are considered means to the end of supporting the quest for knowledge and of permitting its unfettered dissemination. The professor's claim that these goods will arise from the freedom and security afforded him or her is a fundamental source of societal expectations for the professor.

How did these roles evolve?

The teaching role has been present in American higher education since its inception. Prior to the mid-19th century, however, an "academic profession" could hardly be discerned: most faculty members either taught part-time or only during their early adulthood. The growth of the

research function became much more prominent after many American professors obtained training in Europe and became enamored with the German scholastic model.

Particularly following the Civil War, emulation of the German model, coupled with a secularization of the faculty and a growth of discipline-centered organizations both signalled and contributed to a growing curricular diversity. Departmentalization of colleges and specialization of professors characterized the postbellum emergence of the research university (epitomized by the founding of The Johns Hopkins University in 1876) as the cynosure of American higher education.

The period from the turn of the 20th century through World War II witnessed the efflorescence of the academic profession in the United States. Building on the German concept of *Lehrfreiheit*, and in response to serious curtailments of professors' freedoms in and out of the classroom by college trustees, an American concept of academic freedom was enunciated by the fledgling AAUP. Simultaneously, American optimism concerning the pursuit of both esoteric and useful knowledge conspired with growing governmental support of research to stimulate an era of sustained growth in higher education. The number of institutions, the size of institutions, the number of academic specialties, the number of faculty members, and the rate at which college-age students participated in higher education all grew dramatically during this period. Finally, the service role grew in response to institutional requirements within departments, to the recognition by industry of the value of academic consultants, and to government's needs for both a "brain trust" and for scientific and technological research.

The growth of and participation in higher education expanded at an even greater rate following World War II, most precipitously during the 1960s. This growth spawned several changes in higher education, most notably the community college movement (which absorbed the lion's share of the growth) and a fundamental change in the position of students. The demise of the doctrine of *in loco parentis* in the last 30 years has reconstructed a model of students as fully autonomous clients of professors, with a growing say in the governance of their institutions. This

has opened the way for the emergence of a role shared by students and faculty as co-conspirators in the search for knowledge.

What expectations of professors' actions arise from these roles?

Because so many of the professoriate's perquisites hinge on the need to protect academic freedom, the primary expectation of professors is that they will revere the truth, be dedicated to its elucidation, and will endeavor to create an environment for themselves and their students in which the truth is respected.

In addition, because of the voluntary nature of student participation in higher education, and because the student is seen, therefore, as having self-authority, it is presumed that students enroll in colleges for the benefits proffered. Included in these assumed benefits are: preparation for a more satisfying career than would be obtained without college attendance; preparation for specific occupations; development of existing talents and abilities more fully; acquisition of knowledge about interesting things; to become a well-rounded, educated individual and all which that entails.

Students are not thought to be seeking harm or violation of their personhood or important life projects in return for the presumed benefits. They expect instruction that is efficacious, efficient, and engendering of trust. Because efficiency is understood to be associated with one-to-many interactions between teachers and students, students accept the American style of instruction that involves classroom instruction and a reasonable amount of competition among students for access to higher education and the resources (including the faculty) therein. However, they expect fair and equitable treatment as they engage in this pursuit.

Society has expectations for both faculty and students, at least in part because of the tremendous investment of public capital in the American higher education enterprise. As do the students, the external stakeholders expect efficacy and efficiency. They also expect that the certifications made by the faculty are reliable.

How are these roles and expectations similar to those of other professions in their relationships with clients?

The higher education literature and the evidence provided by numerous cases demonstrated that the academic profession is similar to other professions in three respects: professors experience conflicts among interests; the imbalance of power between professor and students is not unlike power imbalances in other professional-client relationships, especially those of minister and parishioner; and a fiduciary relationship must therefore characterize much of the association between professor and student.

Based on these similarities, which ethical principles, drawn from models for other professions, appear to give guidance for a model of professorial ethics?

The preceding chapter elaborated four principles that are commonly found in the ethics literature of other professions: nonmaleficence, respect for autonomy, justice, and trust. Each principle contributes to the protection of clients who, because of their need for the special expertise of the professional and/or for access to goods that are controlled by the professional (in societally-sanctioned gatekeeper roles), are vulnerable to the abuse of professional power.

How do the roles and expectations of professors differ from those of other professionals?

The professor's role and expectations thereof are not exactly analogous to those of the physician (for whom an ethical model is perhaps best developed), any more than the roles of the physician and the lawyer can be perfectly superposed. First, the good provided by the professor is qualitatively different from the good provided by physician or attorney: the good provided by doctors or lawyers is to carry out a procedure (diagnostic, therapeutic, litigatory) on or for the client, whereas the professor offers up the fruits of enquiry and training in enquiry so that the student is enabled to do more for himself or herself. The distinction largely hinges on doing *to* or *for* versus doing *with*.

A second point of comparison is that the student is a qualitatively different client than is a patient or litigant. Students' participation in academia is much more voluntary than is the

involvement of patients or litigants with their physicians or attorneys. Also, students are not debilitated by virtue of being students -- vulnerable, perhaps, but they enter academia at a most vigorous point of their life, full of vitality and promise and hope.

The professor's professional services are considered less invasive than those of physicians or lawyers, and are provided in a setting more enhanced with peer review and institutional safeguards. Also, for both students and professors, relationships are one-to-many: one professor to many students in a class, and each student has many classes and professors.

Which ethical principles can be added to those drawn from other professions so as to guide development of professorial ethics?

These differences account, first, for omission of two principles often adjoined to the medical ethics model. Beneficence (using one's skills to do good to the client) is not the primary aim of the academic enterprise. By virtue of the multiplicity of relationships within higher education, the professor obtains duties to groups that often overshadow commitments to any one student. The assumption of the personal loyalty to a student that would preclude simultaneous commitments to others is therefore inappropriate. Thus the principle of fidelity that subsumes this conception of loyalty was omitted from the model.

Each profession is distinguished from every other by its particular expertise and by some natural process or need that it seeks to facilitate. This latter component also distinguishes a profession from a discipline. Claims made by professors for the protections of tenure and academic freedom clearly identify the mission of the professoriate as related to what the Germans called *Wissenschaft*. The "disciplined study of all subjects for the purpose of discovery"¹ is the need that arises from basic human inquisitiveness that professors endeavor to assuage.

Because the cause of *Wissenschaft* is realized only in an environment where its product -- truth about the nature of things -- is respected, I conclude that the creation and maintenance of

¹Haber, Samuel. *The Quest for Honor and Authority*, p. 276.

such an environment is the first positive duty of the professor. A neoteric principle was nominated to characterize this duty: alethetropism.

What cases can be identified that will, upon analysis, clarify the nature of a principle-based model of professorial ethics?

Over forty cases were extracted from secondary and tertiary sources and abstracted in Appendix C. These cases fit a taxonomy whereby two to four categories of violations of the five principles were identified from the cases. Each taxon was shown to be supported by one or more cases, and four cases were analyzed across the taxonomy. These exercises lend support to the notion that the taxonomy provides a necessary and sufficient structure for further exploration of professorial ethics.

Although the cases supported a principle-based model, their use did not disclaim the applicability of an alternative ethical perspective based on caring. In fact, a signal case in which violations of the full range of principles were evident, strongly suggested that the care perspective would provide a useful, probably supplemental, approach for ethical analysis.

This result is not incompatible with a case-based analysis of professional ethics. Jonsen offered a clarifying metaphor in which the ethicist working the moral terrain of a real case was likened to a bicyclist -- forced to negotiate the bumps and turns occasioned by the detailed topography. The theorist, on the other hand, was represented as a balloonist, floating above the ethical landscape, missing some details but able to recognize a larger reality and looming problems not discernable at close range.²

In a compelling case such as *Russell v. Salve Regina*, the impulse to become immersed in the case detail, to apprehend Sharon Russell's frustration, anger, and humiliation, is very strong. The ethereal analyst in us moves to the background while the engaged professional emerges. We descend from the balloon and mount the bicycle. In this analytical mode, and I agree with Gilligan

²Jonsen, Albert R. "Of Balloons and Bicycles: Or, the Relationship Between Ethical Theory and Practical Judgment," *Hastings Center Report* 21(2):14-16, (September-October) 1991.

that we are all capable of entering it, our sentiments contribute mightily to our sense of proper resolution. The specific circumstances, and the specific relationships therewith associated, occupy our moral attention, and the nature of the general moral terrain that surrounds us is of less interest.

I am, on this view, now comfortable with not having developed more fully the caring perspective as it may illuminate the immediate environment of a particular case, but with explicating a taxonomy of useful principles -- road signs or map legends -- as the primary outcome of this work.

Limitations

The intent of this work was to develop a list of principles of professorial ethics, on the assumption that because such lists were useful for medicine and other professions, it would be useful in the burgeoning dialog concerning the ethics of higher education; this was also undertaken on the assumption that such a useful list had not yet been presented.

One shortcoming of this work, occasioned, quite frankly, by my desire to avoid an interminable effort, is that I have not undertaken to disprove those inclusions in the medical model that are omitted here. For example, I saw no need for beneficence, arguing from a theory of the nature of the good that professors intend. However, Kitchener included this principle in her model and gave some examples of its application. I have not undertaken to use the cases I found to demonstrate either that beneficence is unnecessary for or inapplicable to their resolution.

Of course, disproving the need for beneficence by use of selected cases is not sufficient, because the sample of cases may not reflect the universe of applicable dilemmas. This is a more serious limitation, and there is good reason to believe that the list of cases is limited by their source. The sample is heavily weighted in favor of court proceedings; only those cases that had hopes of being resolvable at law will be found in it. Also, reported legal cases are almost exclusively drawn from appellate decisions, and do not include the plethora of cases never filed or resolved through settlement. "Tip of the iceberg" is clearly an apt metaphor to describe these cases.

A related problem is that few cases are brought by undergraduates. The availability of alternative sources for completion of baccalaureate degrees, especially the B.A. and B.S., may well result in many dissatisfied students simply moving on to other institutions. Lawsuits are filed when there is quite a bit at stake: medical degrees, law degrees, and Ph.D. degrees are all quite valuable to those who seek them, and opportunities to do so are much more limited. Therefore, the cases represent problems in professional and graduate programs more than in undergraduate programs generally. But the range of this dissertation reaches from the freshman year through the dissertation defense. However, I have emphasized undergraduate teaching, so the problem of applicability of cases is heightened.

This concentration on undergraduate professor-student relationships is a final major limitation of this work. So many intriguing conundrums might emerge from a fuller consideration of graduate work that the only justification for failing to do so is lack of time and space, to which I lay claim.

A caveat about this work, not considered a limitation to the achievement of its goals, but rather a matter of scope, is that I looked only at the professional duties owed to students by professors, and did not examine in any detail the duties arising to other constituencies such as colleagues, the institution, and research sponsors.

And More

One obvious task, therefore, arises from this last caveat. Considering the varied roles of the professor, presumed to be complementary but nevertheless distinct, how well would this taxonomy of principles and their violations serve analyses in these other domains? Rothman's account³ of the ethical failures of physicians *cum* researchers suggests that the taxonomy might not be complete. However, the comparison of this list of tenets against those pertaining to other professorial roles would be somewhat aided (and somewhat hindered) by the plethora of ethics

³Rothman, David J. *Strangers at the Bedside*, pp. 70-84.

codes of disciplinary-based associations. A model for such a comparative analysis can be found in the work of Winston and Dagley.⁴

I believe that a better understanding of the universe of ethical violations in higher education would be a valuable undertaking. An obvious approach is by survey, using a properly designed sample that is representative of institutional types and the student population. To be truly valuable, the study should be prospective and longitudinal, capturing the experience of a cohort over time.

The academic profession could also benefit from the development of a literature of academic casuistry. Much has been gained in medicine by analysis of paradigm legal cases from an ethical perspective: *Tarasoff*, *Roe v. Wade*, *Bouvia*, and others. Although legal analyses of major educational cases abound, a corresponding ethical literature has not flourished.

Departments, or at least professorates, devoted to professional ethics, have developed in many professional schools (medical ethics, legal ethics, business ethics, and communications ethics are all examples). Will such an entity as a department or professorship in educational ethics also develop? If so, in what way will it affect the ethical awareness of the members of such a diffuse profession as the professoriate? Education faculty interested in the K-12 domain are currently seeking increased involvement in the affairs of the common schools. The real work of improving the ethical climate in academia awaits the assumption by higher education faculty of a similar impetus to involvement in their own institutions.

In moments of reverie, I ponder the possibility that this work will contribute to such a development.

⁴Winston, Roger B., Jr. and John C. Dagley. "Ethical Standards Statements: Uses and Limitations," in Harry J. Canon and Robert D. Brown, *Applied Ethics in Student Services*, pp. 49-65.

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Appendix A

1940 STATEMENT OF PRINCIPLES ON ACADEMIC FREEDOM AND TENURE, AAUP

The purpose of this statement is to promote public understanding and support of academic freedom and tenure and agreement upon procedures to assure them in colleges and universities. Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights.

Tenure is a means to certain ends; specifically: (1) Freedom of teaching and research and of extramural activities and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and society.

Academic Freedom

(a) The teacher is entitled to full freedom in research and in the publication of the results, subject to the adequate performance of his other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.

(b) The teacher is entitled to freedom in the classroom in discussing his subject, but he should be careful not to introduce into his teaching controversial matter which has no relation to his subject. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.

(c) The college or university teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When he speaks or writes as a citizen, he should be free from institutional censorship or discipline, but his special position in the community imposes special obligations. As a man of learning and an educational officer, he should remember that the public may judge his profession and his institution by his utterances. Hence he should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that he is not an institutional spokesman.

Academic Tenure

(a) After the expiration of a probationary period, teachers or investigators should have a permanent or continuous tenure, and their service should be terminated only for adequate cause, except in the case of retirement for age, or under extraordinary circumstances because of financial exigencies.

In the interpretation of this principle it is understood that the following represents acceptable academic practice:

(1) The precise terms and conditions of every appointment should be stated in writing and be in the possession of both institution and teacher before the appointment is consummated.

(2) Beginning with the appointment to the rank of full-time instructor or a higher rank, the probationary period should not exceed seven years, including within this period full-time service in all institutions of higher education; but subject to the proviso that when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution it may be agreed in writing that his new appointment is for a probationary period of not more than four years, even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years. Notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period.

(3) During the probationary period a teacher should have the academic freedom that all other members of the faculty have.

(4) Termination for cause of a continuous appointment, or the dismissal for cause of a teacher previous to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution. In all cases where the facts are in dispute, the accused teacher should be informed before the hearing in writing of the charges against him and should have the opportunity to be heard in his own defense by all bodies that pass judgment upon his case. He should be permitted to have with him an adviser of his own choosing who may act as counsel. There should be a full stenographic record of the hearing available to the parties concerned. In the hearing of charges of incompetence the testimony should include that of teachers and other scholars, either from his own or other institutions. Teachers on continuous appointments who are dismissed for reasons not involving moral turpitude should receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution.

(5) Termination of a continuous appointment because of financial exigency should be demonstrably bona fide.

APPENDIX B

1966 STATEMENT ON PROFESSIONAL ETHICS, AAUP

I. The professor, guided by a deep conviction of the worth and dignity of the advancement of knowledge, recognizes the special responsibilities placed upon him. His primary responsibility to his subject is to seek and to state the truth as he sees it. To this end he devotes his energies to developing and improving his scholarly competence. He accepts the obligation to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge. He practices intellectual honesty. Although he may follow subsidiary interests, these interests must never seriously hamper or compromise his freedom of inquiry.

II. As a teacher, the professor encourages the free pursuit of learning in his students. He holds before them the best scholarly standards of his discipline. He demonstrates respect for the student as an individual, and adheres to his proper role as an intellectual guide and counselor. He makes every reasonable effort to foster honest academic conduct and to assure that his evaluation of students reflects their true merit. He respects the confidential nature of the relationship between professor and student. He avoids any exploitation of students for his private advantage and acknowledges significant assistance from them. He protects their academic freedom.

III. As a colleague, the professor has obligations that derive from common membership in the community of scholars. He respects and defends the free inquiry of his associates. In the exchange of criticism and ideas he shows due respect for the opinions of others. He acknowledges his academic debts and strives to be objective in his professional judgment of colleagues. He accepts his share of faculty responsibilities for the governance of his institution.

IV. As a member of the institution, the professor seeks above all to be an effective teacher and scholar. Although he observes the stated regulations of the institution, provided they do not contravene academic freedom, he maintains his right to criticize and seek revision. He determines the amount and character of the work he does outside his institution with due regard to his paramount responsibilities within it. When considering the interruption or termination of his service, he recognizes the effect of his decision upon the program of the institution and gives notice of his intentions.

V. As a member of the community, the professor has the rights and obligations of any citizen. He measures the urgency of these obligations in the light of his responsibilities to his subject, to his students, to his profession, and to his institution. When he speaks or acts as a private person he avoids creating the impression that he speaks or acts for his college or university. As a citizen engaged in a profession that depends upon freedom for its health and integrity, the professor has a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

APPENDIX C

CASES

Actual cases drawn from news accounts or court opinions are listed first, in alphabetical order. Fictionalized cases, whose titles are enclosed in double quotation marks, are listed next. Following each case description, comments in brackets refer first to the primary taxonomic category to which the case is assigned, then to secondary categories in the taxonomy that the case represents. Cases without cited sources were developed by the author from his own experiences; these cases are adapted to disguise student, faculty, departmental, or institutional identities.

Agarwal v. Regents of the University of Minnesota

In 1977, Dr. Som Agarwal, a tenured professor of physics, "was charged with plagiarism in the preparation of three physics laboratory manuals for use in introductory courses on the Morris campus of the University [of Minnesota]. ... In December ... eight physics majors, all students and former students of Agarwal, filed a formal grievance against Agarwal alleging that he had displayed a lack of moral integrity in the plagiarism incident and in his unauthorized examination of confidential documents concerning another professor, and that he was incompetent as a teacher, frequently harrassing [sic] students and behaving in an unprofessional manner toward colleagues. ... The [faculty reviewing] Committee found that the students' charges were supported by the evidence and that each charge justified Agarwal's dismissal.¹ [1.2, plagiarism]

Beheshtitabar v. Florida State University

A graduate student was dismissed from the Ph.D. program for failing, over four consecutive quarters, to maintain a required 3.0 GPA. Subsequently, the dean of his college allowed him to "retroactively withdraw" from two courses: in one, taken over a year previously, he had received a C; in the other, a D. Each grade was converted to a "W" on

¹Agarwal v. Regents of University of Minnesota, 788 F.2d 504 (8th Cir.), 1986, p. 506.

his official transcript. This action was conditioned upon the student's agreement not to seek readmission to that particular department or college, but apparently it would not prevent him from seeking enrollment elsewhere. The retroactive change in his record raised his cumulative GPA to 3.08.² [1.3, false certification]

Bevli v. Brisco

Dr. Pammi Bevli, a tenured chemistry instructor in a community college, was dismissed for incompetence. At an arbitration hearing, the arbitrator found "that the [Community College] District had proved its charge of evident unfitness for service against [Bevli], specifically noting that she was unable to define certain words, explain basic concepts of chemistry such as 'significant numbers,' the amount of electric power going through a system, the Dumas method of determining molecular weight, conduct an electrolysis experiment, or radiation experiment although supplied with necessary equipment. He further considered testimony of numerous lecture mistakes and errors in grading examinations, finally concluding that 'she is unable to employ knowledge of the subject matter at a professional level.'"³ [5.4, incompetence; also: 2.4, harmful or debilitating teaching practices]

Bivas v. State

A student completed all requirements for a baccalaureate degree, but his diploma was withheld pending settlement of a dispute between the student and the college over tuition charges. Ultimately, the student paid the disputed charges and was given his diploma. In the interim, however, his employer, who had hired him in anticipation of his graduation, inquired of the school whether the student had, in fact, completed his coursework. The school responded that "no degree, diploma or certificate had been conferred," and did not

²*Beheshtitabar v. Florida State University*, 432 So.2d 166 (Fla.App. 1 Dist.), 1983.

³*Bevli v. Brisco*, 212 Cal.Rptr. 36 (Cal.App. 2 Dist), 1985, p. 39.

elaborate on the circumstances. The student was dismissed from his job.⁴ [2.3, careless disregard of student's interests; also: 1.3, false or misleading certification]

Bow v. Melton

M.L. Bow, a student employed in the chemistry department in a work-study program was one of several students who received paychecks which had been stolen and forged, but was not the perpetrator, who was later caught and convicted. No evidence suggested that Bow was guilty of any wrongdoing. However, during the controversy, the department chairperson, Professor Melton, claimed both orally and in writing that Bow had stolen hot plates from the laboratory, was in trouble with the IRS, and was a liar. The student later was awarded \$200,000 in damages in a slander suit.⁵ [1.1, irresponsible or unsupported claims; also: 2.3, careless disregard of student's interests]

Brown v. California State Personnel Board

A tenured law professor was dismissed for sexual harassment of female students. Three students' allegations were found to provide the basis for this action. Ms. H. had been drinking beer with him at the cafeteria, and accompanied him to his office. He embraced her and attempted to kiss her, in spite of her rejection. Another student, Ms. N., was discussing an extra credit paper with him in his office when he made comments on her physical attractiveness, hugged her, and attempted a kiss. She pushed him away and left. The students complained to officials, but were reluctant to file formal charges, and his tenure, pending at the time, was approved. The final allegation came four years later when Ms. B., another student, was in his office seeking help with her studies, since she was having difficulties in his course. He asked her when his date was going to be. Noting that he was married, she said there was no date, whereupon the professor stated that he would

⁴*Bivas v. State*, 411 N.Y.S.2d 854 (N.Y. Claims), 1978.

⁵*Melton v. Bow*, 247 S.E.2d 100 (Supr.Ct.Ga.), 1978.

"sure like to make love to [her]."⁶ [4.1, abuse of power; also: 2.1, emotional abuse; 3.2, nonpaternalistic disregard of autonomy; 5.3, actions favoring the professor's self-interest]

Christilles v. Southwest Texas State University

A drama student was portraying a character who was required by the script to fall with a glass in his hand. The professor in charge of the production chose to use an actual glass for the sake of realism, rather than an alternative prop which would shatter in a safer, but less convincing manner. Although the student was instructed to fall with his palm up to avoid injury, during a dress rehearsal he became unbalanced, and fell in a way as to injure his hand.⁷ [2.2, physically unsafe teaching practices]

Corstvet v. Boger

A tenured professor at Oklahoma State University was apprehended in an undercover operation mounted by the OSU police department in response to complaints of sexual solicitation in student union building men's restrooms. He was arrested after he passed notes from one bathroom stall to another in which the police officer was situated. The notes clearly solicited a sexual encounter, although the professor maintained that he was seeking a heterosexual, not a homosexual, liaison. Subsequent to his arrest, the president of the university learned of the professor's apprehension, and upon further investigation recommended that the professor be dismissed on the basis of moral turpitude. The professor subsequently received written notice that he was being dismissed because he had "admitted and acknowledged committing a series of deviant sexual acts, including your recent solicitation of a lewd act in a men's restroom in the Student Union ... which conduct constitutes moral turpitude and exhibits a pattern of unfit ... behavior for a public university faculty member."⁸ [5.3, actions favoring the professor's self interest]

⁶*Brown v. California State Personnel Board*, 213 Cal.Rptr. 53 (Cal.App. 3 Dist.), 1985.

⁷*Christilles v. Southwest Texas State University*, 639 S.W.2d 38 (Tex.App. Austin), 1982.

⁸*Corstvet v. Boger*, 757 F.2d 223 (10th Cir.), 1985, p. 226.

Dartmouth Review v. Dartmouth College

Three student editors of an independent college newspaper printed an article critical of two professors, particularly of the quality of their instruction, calling them a "... Dynamic Duo of Mediocrity." The article, which charged the professors with sloppy and desultory instruction, was based on the author's attendance in their classes, and consisted largely of excerpts from her class notes. One of the professors was black. Following a confrontation between the editors and the black professor, in which a camera was damaged, the professor complained to the College's administration, and accused the students of harassment and disorderly conduct. The president of the College characterized the editors as having "recklessly [set] out to create a climate of intolerance and intimidation that destroys our mutual sense of community." The editors were suspended. In a subsequent suit filed by the students, the court recognized that the administration may have "unfairly and incorrectly branded ... the students and their tactics as racist" and may have used its powers "as weapons to silence or mute the [editors'] criticism, thereby chilling freedom of expression."⁹ [3.2, nonpaternalistic disrespect for autonomy]

DiBona v. Matthews

DiBona, a part-time professor of drama, scheduled a summer production of "Split Second," based on a confrontation between a black police officer and a white suspect. At the time, there was considerable attention being paid by the media to the trial of a black man accused of killing two police officers. Although it was not usually done, DiBona gave a copy of the play to the college's cultural advisor. Auditions were begun the week prior to the start of the quarter. On the first day of classes, the president of the college notified DiBona that he would not allow public performance of the play, since he was getting many calls about the play from church groups, and he was not "prepared to take on the religious

⁹*Dartmouth Review v. Dartmouth College*, 709 F.Supp. 32 (D.N.H.), 1989; Paul Reidinger, "Sue U.," *ABA Journal* NV:82-86, (February) 1990; see also Charles J. Sykes, *Profscam*, pp. 252-256.

community." He later refused to allow private performance of the play so that students could get credit in the course. In drama courses, it was customary for students to enroll after the start of classes, when they knew if they had a part in the production. Because of this, only three students had officially enrolled as of the first day of classes. The president seized the opportunity to cancel the course for "low enrollment."¹⁰ [3.2, nonpaternalistic disregard of autonomy; also: 1.1; irresponsible or unsupported claims]

Dr. Walter Frost

"[Federal and university] investigators said Dr. Walter Frost of [University of Tennessee's] Space Institute allowed graduate students to plagiarize his work while writing their theses and dissertations. In exchange, the students, who worked for nearby government installations, allegedly helped Frost get government contracts for his research firm."¹¹ As a result of the investigation, two students were asked to return their graduate degrees. One student, however, refused, indicating that, although he had used large portions of Frost's prior work in his thesis, he had Frost's permission, had informed the other five members of the committee of this fact, and the committee had approved the dissertation.¹² [1.2, plagiarism; also: 2.4, debilitating teaching practices; 4.1, abuse of power; 4.4, undeserved rewards; 5.3, actions favoring professor's self-interest]

Goldman v. Wayne State University

At Wayne State University, a special committee provides assistance to students in preparing their applications for health-related professional schools. Goldman wished to attend medical school, and submitted his documents to the committee. One such document was a letter of recommendation from a professor of English at the University.

¹⁰*DiBona v. Matthews*, 269 Cal.Rptr. 882 (Cal.App. 4 Dist.), 1990.

¹¹Waters, David. "UT professor allegedly ran degrees-for-contracts scam," [Memphis, TN] *Commercial Appeal*, July 13, 1991.

¹²Eagleston, Leigh Ann, "Scandal at UTSl rocks state," [Nashville] *Tennessean*, July 14, 1991.

However, the professor was Goldman's mother, who failed in the letter to state her relationship to Goldman. The committee recommended he withdraw the letter, and he did so. Later, it was determined by the committee that two of Goldman's courses, in which he received As, had met at the same time. The class he never attended, but in which he nevertheless received an A, was an English course taught by his mother. The committee refused to recommend him for medical school, and included in his materials a demurral concerning his "suitability for a profession that values personal integrity."¹³ [1.3, inaccurate or biased evaluation, grading, or certification; also: 1.4, dishonesty and fraud; 4.4, undeserved rewards; 5.3, actions favoring the professor's self-interest]

Harris v. Blake

A graduate student was permitted by an administrator to withdraw from a counseling course after the official drop date. His professor wrote the following letter to be placed in his file:

This letter concerns when Henry Harris was registered for and his withdrawal from my [course] during Spring Quarter Mr. Harris was allowed to withdraw by the Dean of Students, long after the drop date and after he had exhibited specific behaviors of being incompetent and unethical in his supervised practicum. It is my belief that Henry should not be allowed to register for a practicum and that if he does, the practicum should be aware of his past performances.

¹³*Goldman v. Wayne State University Board of Governors*, 390 N.W.2d 672 (Mich.App.), 1986.

The student attempted twice to obtain a copy of the letter by mail, and finally was given one when he went to the program coordinator. The Dean later commented that placing the letter in his file was "most inappropriate" and had it removed.¹⁴ [1.3, accurate evaluation]

Harris v. Trustees of Columbia University

A graduate student had formerly been on the staff of the University, and, as a result, had been allowed a lease on a University-owned apartment. He was required as part of the lease, however, to "maintain an affiliation with the university." His position was terminated because of the end of the project, but in the interim he obtained admission to graduate school. He then applied for a renewal of his lease based on his student status. Through a clerical error, he was granted a two-year renewal instead of the one-year period normally given. The University initiated a suit to evict him, but the court held that his lease was valid as long as he maintained student status. The dean of the graduate school then issued the student a "directive" to vacate the apartment, and threatened to dismiss the student from graduate school if he failed to "follow a directive from a school official" as provided in the University's policy manual. The student refused to vacate the apartment and was dismissed from graduate school.¹⁵ [4.1, abuse of power; also: 4.3, procedural justice]

Heisler v. New York Medical College

A first-year medical student, bedeviled by problems in finding housing, and by family circumstances, failed four courses during her first year, and was dismissed by the school, in accordance with college rules. However, she was able to demonstrate that three other students (whose academic records were as bad as or worse than hers) had also failed four

¹⁴*Harris v. Blake*, 798 F.2d 419 (10th Cir.), 1986. Quoted material taken from citation in *The College Student and the Courts* 14(1):690, (December) 1986.

¹⁵*Harris v. Trustees of Columbia University*, 470 N.Y.S.2d 368 (N.Y.App.Div. 1 Dept.), 1983.

courses, and were retained, in spite of the rules, because they had suffered family-related problems, which were similar to hers.¹⁶ [4.2, inequitable treatment]

Ivey v. Board of Regents of University of Alaska

"During the 1975-76 academic year [Richard Ivey] was a director of vocational classes at the Barrow Extension of the University of Alaska ..., and at Inupiat University In 1976 an investigation conducted by the Alaska Commission on Postsecondary Education revealed that he was not teaching courses which he purported to teach and that students had been given credit for attending those courses."¹⁷ [1.4, dishonesty and fraud; also: 4.4, undeserved rewards]

Johnson v. Lincoln Christian College

A student who had completed all the requirements for a degree in teaching sacred music was required to attend counseling sessions from a therapist at the direction of the dean of students at Lincoln Christian College. This arose from rumors that the student was gay. Believing the sessions to be confidential, the student disclosed many personal details to the therapist, who informed the dean, without the student's permission, that the student was not progressing. A hearing was scheduled at which the student would have an opportunity to defend himself against the charges of being homosexual. He was also informed that if he failed to defend himself adequately, he would be dismissed and the fact of his dismissal by reason of homosexuality would be stamped across his transcript. Fearing this, the student simply withdrew from the College. The hearing was, nevertheless held, and he was dismissed *in absentia*. The dean then informed the student's mother that he had been dismissed for homosexuality. His degree was never awarded.¹⁸ [5.1, breach

¹⁶*Heisler v. New York Medical College*, 449 N.Y.S.2d 834 (Supr.Ct. Westchester Co.), 1982.

¹⁷*Ivey v. Board of Regents of University of Alaska*, 673 F.2d 266 (9th Cir.), 1982, p. 268.

¹⁸*Johnson v. Lincoln Christian College*, 501 N.E.2d 1380 (Ill.App. 4 Dist.), 1986.

of confidentiality; also: 2.1, emotional abuse; 3.1, paternalistic violation of autonomy; 4.1, abuse of power; 4.3, failure to provide procedural justice]

Johnson v. Sullivan

A student at a public law school received an F and two Ds during her first three semesters and was dismissed for low scholarship. Upon readmission in consideration of "special circumstances" during her first year, she retook the course in which the F was given and received a C. Because the school averaged all attempts at a particular course in computing the cumulative grade point average, the student was dismissed again, since her cumulative grade point average was still below a 2.0.¹⁹ [1.3, accurate evaluation; also: 4.2, inequitable treatment]

Korf v. Ball State University

In February 1981, Professor William E. Korf was advised by his dean that several current and former male students of the professor had complained that Korf had subjected them to sexual harassment. At a hearing demanded by Korf, one student testified that he had begun a relationship with Korf while the student was a freshman and was 17 years old. In this relationship, Korf provided the student with money and gifts in return for sex. In addition, Korf promised the student good grades. Korf admitted the sexual relationship, but denied the promise of grades, and argued that consensual sexual acts between students and professors were not prohibited by the school code, and that he should therefore not be dismissed.²⁰ [4.1, abuse of power; also: 2.1, emotional abuse; 2.2, nonpaternalistic violation of autonomy; 5.3, self-serving actions]

Lightsey v. King

An instructor at the U.S. Merchant Marine Academy awarded a midshipman a grade of

¹⁹*Johnson v. Sullivan*, 571 P.2d 798 (Mont.Supr.Ct.), 1977. See also: *Essignmann v. Western New England College*, 419 N.E.2d 1047 (Mass.App.), 1981 and *Pfaff v. Columbia-Greene Community College*, 472 N.Y.S.2d 480 (Supr.Ct.App.Div. 3 Dept.), 1984.

²⁰*Korf v. Ball State University*, 726 F.2d 1222 (7th Cir.), 1984.

zero on an examination, believing the student to have cheated. As a result, the student failed the course. The Academy's honor board, however, found the student "not guilty." Claiming that grades are delegated to the faculty and are only subject to review by the administration, the instructor, supported by the administration, refused to change the grade.²¹ [4.3, failure to provide procedural justice; also: 4.2, inequitable treatment; 1.3, inappropriate grading]

McIntosh v. Borough of Manhattan Community College

A nursing student failed a particular core course twice, and was dismissed, in accordance with college rules that required dismissal after two failed attempts in this course. The college grading policy was that 70 was a passing grade in the course. The student's grade was reported as "69.713." The student argued it should have been rounded to 70 and she should have been given a passing grade.²² [1.3, accurate grading; also: 4.2, inequitable treatment]

Naragon v. Wharton

Kristine Naragon was a doctoral degree candidate in music, with a near-perfect academic record, when she met Jane Doe, a 17-year old freshman, at a School of Music function. At the time, Naragon was also a teaching assistant, with responsibility for a music appreciation course taught to non-majors (Jane Doe, as a music major, was not a student in this course, nor would likely ever be). By Naragon's admission, she and Miss Doe developed a "deep personal romantic relationship." Following Miss Doe's 18th birthday, the relationship included consenting sexual activities while Miss Doe resided with Naragon. The relationship did not remain private, however, because Miss Doe's parents learned of it and sought assistance from university officials to sunder it. Two public confrontations between Naragon and Doe's parents, one on campus, followed. Naragon was allowed to

²¹*Lightsey v. King*, 567 F.Supp. 645 (E.D. N.Y.), 1983.

²²*McIntosh v. Borough of Manhattan Community College*, 449 N.Y.S.2d 26 (N.Y.App.), 1982.

complete her teaching duties during the spring term, but when she was reappointed for the autumn semester, her duties were restricted to non-teaching activities. This decision was made in spite of Naragon's averment that her private relationship with a student whom she in no way supervised was none of the university's business, and in conflict with the recommendation of the majority of School of Music "area supervisors." In Ms. Naragon's subsequent lawsuit, the vice-chancellor testified that he made the decision in concert with two vice-presidents and two deans who share responsibility for appointments of graduate assistants. They concluded, the court found,

that it would be in the best interest of the University and of the students thereof if [Ms. Naragon] served in some capacity other than as a teaching assistant. It was their opinion that a teacher at the University should serve somewhat as a role model for students as well as an instructor or teacher. It was their testimony that while they had been aware of the sexual orientation of [Ms. Naragon], that that [sic] was not a motivation for changing her assignment. According to the testimony of [the vice-chancellor], while the University has no specific written policy concerning standards of conduct for a teacher, nevertheless it is certainly generally understood that the teacher must act "professionally and with good judgment" and must not act in such a manner as to "impede or intrude" into the teaching process. It was the feeling of those responsible for making teaching assignments that "deep, personal romantic relationships" between teachers and students should not be permitted, especially when such relationships might reflect unfavorably on the University or impede or intrude into the teaching process. They concluded that such conduct is not only contrary to the interests of the particular persons involved, but that it has a direct effect on the opinion of other students at the University,

and could, if known, affect the opinions of other prospective students contemplating coming to the University.²³

This case was decided in the university's favor, primarily on the basis that teaching assistantships offer no expectation of continuous appointment, and the university has every right to award them in its own best interests. Because the court concluded that Ms. Naragon's sexual preference was not material to the decision -- that a similar judgment would have been made about a heterosexual relationship -- it found no abridgment of her Constitutional rights. [This case is included for its contrast with "The Umpire's Decision." Assuming that Jane Doe's apparent consent was real and valid, I do not classify this as a violation of an ethical duty owed by teachers to students.]

Professor Ecazu Obinna

Two professors were involved with a non-profit organization that was holding a raffle to raise funds, allegedly for charity. To improve ticket sales, the professors offered students A grades in their course for selling 20 tickets at \$5 each. One student said that she sold 11 tickets to family members, then "When I turned in my tickets [to the professor], he told me I had nine more to sell, so I bought them myself. I know lots of students who got mad because they got stuck with tickets they had to buy themselves."²⁴ [4.1, abuse of power; also: 1.3 inaccurate grading; 1.4, dishonesty and fraud; 2.4, debilitating teaching practices]

Riggin v. Board of Trustees of Ball State University

A tenured finance professor at Ball State University, Dr. Richard Riggin, was charged by his department chairperson with incompetence. At a faculty hearing in about 1981,

²³*Naragon v. Wharton*, 572 F.Supp. 1117 (M.D. La.), 1983, pp. 1120-1121.

²⁴Szymanski, Michael. "2 accused of grade deals at CSUN," [Los Angeles] *Daily News*, April 29, 1988; see also: Patricia Klein Lerner and John Johnson, "Racist Disregard' Charged in Cancellation of CSUN Classes," *Los Angeles Times*, April 30, 1988 and "D.A.'s Office Studying Data in Grades Case at University," *Los Angeles Times*, May 7, 1988; Beth Barrett, "DA expands probe at CSUN," [Los Angeles] *Daily News*, May 25, 1988 and "University reviewing 2 accused of grade dealing," [Los Angeles] *Daily News*, May 26, 1988; Pamela Moreland and John Johnson, "Scandal Fallout: Black Studies Program Under Scrutiny in Grade-Selling Case," *Los Angeles Times*, May 31, 1988.

bolstered by testimony from colleagues and former students, the committee identified the following deficiencies in Dr. Riggin's performance: "lack of preparation; showing too many irrelevant films which consumed about one-third of class time; lack of teaching materials or aids (justified by Riggin on the grounds that he had taught so long that he did not need them); a reading list which contained no books published later than 1968 and that had not been updated since 1975; haphazard lectures; lack of diligence in completing course content; and failure to assign problems in a course, finance, that routinely calls for such.

"... at least some of his students were not prepared to advance in Riggin's particular area of discipline and ... could not meet minimum qualifications for advanced work. He spent an inordinate amount of class time on non-pertinent matters such as telling stories and talking about his dairy business, athletics, his experiences as a legislator, current events, lawsuits in which he had been involved, and the societal influence of bankers. Some witnesses concluded that he spent 50% to 75% of class time on such irrelevant matters."

Further findings showed that Riggin had attended only five of the prior 16 departmental meetings, had not served on any doctoral committees in nearly a decade, and had served on no university committees in a dozen years. "He had not engaged in research or scholarly activities for at least 10 years, had not belonged to any professional organizations, and did not attend any academic organization meetings."²⁵ [5.4, incompetence; also: 2.4, debilitating teaching practices]

Russell v. Salve Regina College

Sharon Russell entered Salve Regina College in Rhode Island with the intended goal of pursuing a bachelor's degree in nursing. On her application for admission, she had stated her weight as 280 pounds. During her freshman year of pre-nursing studies, Sharon

²⁵*Riggin v. Board of Trustees of Ball State University*, 489 N.E.2d 616 (Ind.App. 1 Dist), 1986, p. 626.

weighed at various times between 306 and 315 pounds, according to health clinic records at the college. Nevertheless, she performed well academically and was admitted to the nursing program at the start of her sophomore year.

According to a subsequent First Circuit appeals court opinion, "The year began on a sour note when a school administrator told Sharon in public that they would have trouble finding a nurse's uniform to fit her. Later, during a class on how to make beds occupied by patients, the instructor had Russell serve as the patient, reasoning aloud that if the students could make a bed occupied by Russell, who weighed over 300 pounds, they would have no problem with real patients. The same instructor used Russell in similar fashion for demonstrations on injections and the taking of blood pressure."

The college increased pressure on Russell to lose weight during her junior year. Arguing that nurses must serve as "positive models of health" for their patients, they attempted to impel Russell during the first semester to sign a "contract" that she would attend Weight Watchers and provide proof of attendance. She refused, but did attend the weight loss program, albeit unsuccessfully. Then, in a clinical rotation, the instructor gave Sharon an F grade. In a later trial, the instructor admitted that this grade related solely to her obesity, not to her clinical performance.

Armed with the failing grade, and school rules that required dismissal for failing any clinical rotation, the faculty succeeded in obtaining Sharon's acquiescence to the following "contract:"

I, Sharon Russell, agree to the following conditions for continuing in Nursing 312 during the Spring 1985 Semester. I understand that failure to meet any and all of these conditions will result in my voluntary and immediate withdrawal from the Nursing Program at Salve Regina College thus making me ineligible for Nursing 411.

1. Maintain a minimum weight loss of 2 pounds per week effective immediately.
2. Report to Mrs. Chapdelaine or Faculty Secretary weekly (every Friday morning)

with evidence of progress in weight loss program. This will commence January 25, 1985.

NB -- Report January 22nd for first accounting after the holiday.

3. Maintain academic standing as required.

Additionally, I will be aware of all requirements listed in the Nursing Department Handbook, 1983-85 Edition.

Sharon attended Weight Watchers during the Spring term, as required by the contract, but failed to lose the requisite weight. She was, however, allowed to complete her junior year. In Sharon's clinical evaluation at the end of her Summer term rotation at the nearby Hartford Hospital, the preceptor wrote that Sharon "looked and acted in a very professional manner. Her attendance was excellent and her performance very good. I would most pleased to hire her as a professional nurse. In fact, I expect to be able to offer her a position for June of 1986." Nevertheless, two days later Professor Chapdelaine wrote to Sharon, informing her that she was being dismissed from the program for breaching her "contract."

Sharon transferred to another nursing program at St. Joseph's College where she completed her degree without further difficulty.²⁶ [5.2, denigration and ridicule; also: 1.1, irresponsible or unsupported claims; 1.3, inaccurate or improper grading; 2.1, emotional abuse; 3.1 and 3.2, disrespect for autonomy; 4.1, abuse of power; 4.2, inequitable treatment; 4.3, due process violations]

Samaan v. Trustees of the California State University and Colleges

Makram K. Samaan, a tenured professor of psychology, maintained an outside clinical psychology counseling practice along with his wife, who was licensed as a marriage and family counselor. Dr. Samaan was charged with attempting to defraud the Medi-Cal program in California for three types of activities: billing Medi-Cal for 119 instances in

²⁶*Russell v. Salve Regina College*, 649 F.Supp. 391 (D.R.I.), 1986; 890 F.2d 484 (1st Cir.), 1989. See also, Paul Reidinger, "Sue U.," *ABA Journal* NV:82-86, (February) 1990.

which his wife (whose type of license made her ineligible for payment) performed the services, not he; billing for excessive counseling hours; and billing for counseling both Medi-Cal mothers and children when, in fact, he never saw the children. He pled guilty to one count of grand theft in return for the dismissal of 16 other counts against himself and his wife.

On learning of the plea, the president of his university initiated proceedings to dismiss Samaan from his tenured position for violation of California Education Code section 89535, which establishes as grounds for dismissal "immoral conduct, unprofessional conduct, dishonesty, and conviction of a felony or of a misdemeanor involving moral turpitude ..."

Samaan exercised his privilege for a faculty hearing. As noted in court findings: "The committee found 'no convincing evidence that there was premeditation or intent to defraud.' With regard to the [excessive] billings, the committee acknowledged that [Samaan] had submitted impossible billings (e.g., 'twelve fifty-minute sessions in one-half day'), but the committee concluded the errors were the result of unrealistic Medi-Cal billing procedures, and that appellant in fact provided the services for which he billed. With regard to the Medi-Cal billings for services performed by [Samaan's] wife, the committee found that [his] 'mistake' was understandable The committee found no evidence of immoral conduct, unprofessional conduct, or dishonesty. With regard to appellant's felony conviction the committee emphasized 'It is important to note that Dr. Samaan was not convicted of a felony, but rather pleaded guilty, a distinction of some significance.' ... The committee explained that it found no nexus between [Samaan's] actions and his fitness to teach, and that [dismissal] would constitute cruel and unusual punishment."²⁷ [1.4, dishonesty and fraud]

²⁷*Samaan v. Trustees of the California State University and Colleges*, 197 Cal.Rptr. 856 (Cal.App. 3 Dist.), 1983, p. 859.

Shuffer v. Trustees of California State University and Colleges

Alone among the graduate students in his cohort, a master's candidate was told he would be "required to meet with an additional section of a practicum and that he would be subject to evaluation and grading by his fellow students." No procedure of this sort had been applied previously, nor was it mentioned in any school documents.²⁸ [4.2, inequitable treatment]

Susan M. v. New York Law School

A law student taking a final examination in a corporate law class was given a zero grade on one question which constituted 30 percent of the examination grade. The question called for a response under Delaware law, and the student gave such a response; however, she additionally gave information regarding how the response would be under New York law. According to the student, she indicated the second portion of her answer was for possible extra credit. The professor, however, interpreted her dual answer to indicate uncertainty about the proper response, and thus deserving of zero credit.²⁹ [1.3, accurate grading].

Wardlaw v. Peck

A professor at Rollins College was to give a talk at Erskine College. Mary Jo Wardlaw, a student at Erskine, was assigned to pick up Professor Peck at the airport on the afternoon before the convocation, and take him to the college. Ms. Wardlaw misunderstood or was confused about the time of the professor's arrival, and failed to meet him. He became upset and took a taxi to the college. During his talk the next day, Peck retaliated against the student, referring to her publicly as "Ms. Warthog," and likened her to a character in one of his children's books who was "built like a garbage truck." He performed an unflattering caricature of her walk on the stage, and later commented he had experienced

²⁸*Shuffer v. Trustees of California State University and Colleges*, 136 Cal.Rptr. 527 (Cal.App. 2 Dist.), 1977.

²⁹*Susan M. v. New York Law School*, 556 N.Y.S.2d 1104 (N.Y.App.) 1990.

a nightmare in which "Ms. Warthog" was "breeding under the sink" with another student. At the defamation trial later instituted by Ms. Wardlaw, he claimed he had intended only to "poke fun," not humiliate.³⁰ [5.2, denigration and ridicule; also: 1.1, irresponsible or unsupported claims; 2.1, emotional abuse; 4.1 abuses of power]

White v. Board of Trustees

A non-tenured assistant professor of music was dismissed prior to the end of his contract for allowing students participating in a band tour under his direction to consume alcohol and marijuana. The professor was specifically accused of supplying alcohol to students on these trips, even though some were below the state's legal drinking age of 19. The institution had an express policy outlawing consumption of alcohol at college-sponsored or supervised functions. The professor admitted he knew of the drug and alcohol use, but he refused to be a "gestapo" while conducting band tours.³¹ [2.2, physically unsafe teaching practices or learning environments]

Professor Terry Wilson

Two groups of students in a graduate marketing class undertook a project that involved surveying competitors of several heavy equipment dealers. The dealers had retained the professor who taught the class as a consultant. In the project, students asked competitors about a number of sensitive marketing-related topics, including inventory levels, sales volumes, potential new products, and advertising budgets. Students were told to identify themselves as students of the university. The professor also told them not to reveal their affiliation with his dealer-clients unless "someone asked them about it directly." According to contemporary reports in the media, "At least one group of students promised all the competitors confidentiality." But the students revealed sensitive information to their

³⁰*Wardlaw v. Peck*, 318 S.E.2d 270 (So.Car.App.), 1984.

³¹*White v. Board of Trustees of Western Wyoming Community College District*, 648 P.2d 528 (Wyo.Supr.Ct.), 1982.

professor's dealer-client. "They feared that because of [the professor's] consulting agreement, their grades might be affected if they alienated [his clients]."³² [5.3, self-serving actions; also: 1.4, dishonesty; 4.1, abuse of power]

"Laborious Rewards"

Students in an introductory marketing class were asked to undertake group projects in which they designed alternative merchandising layouts for frozen food items. As a result of their work, the professor promised, the group that produced the best layout would be "give[n] a few extra points." After the work was completed, however, the professor revealed that their activities were actually part of a pilot study he needed to help undertake a larger research project. It would not be possible, therefore, to actually evaluate which of their layouts were best, so he could not give extra points to any group.³³ [1.4, dishonesty; also: 5.3, self-serving actions]

"Persistence by Extension"

A student who was inadmissible to a university because of low grades in courses taken at previous institutions was nevertheless admitted to specific courses taught by the department in which he wanted to major. This was accomplished through the university's extension division, with the proviso that the student enrolled only on a space-available basis, and that he was nonmatriculated and therefore could not expect to complete a degree. However, there was hope that if he did well, his grades in these courses could be used to raise his overall GPA and perhaps qualify him for admission as a regular student. He continued in nonmatriculated status for nearly two years, performing adequately in his courses, but not well enough to raise his cumulative GPA sufficiently for admission. However, he could, if admitted, have completed degree requirements within the next two

³²Geiger, Bob. "Professor Acted Unwisely, Ethics Experts Say," *Charleston [W. Va.] Gazette*, April 5, 1988.

³³Payne, Stephen L. "Laborious Rewards," in Stephen L. Payne and Bruce H. Charnov, *Ethical Dilemmas for Academic Professionals*, pp. 39-40.

terms, and his university GPA (as well as his GPA overall) would have been above the 2.5 minimum required for completion of his chosen major. Thus, he submitted an appeal to a faculty committee responsible for approving special admissions. The faculty members on the committee knew that to admit him was to exclude other students from admission who had demonstrated better academic performance than he. However, the department he was seeking admission into did not exist in other regional institutions. [4.4, undeserved rewards; also: 4.2, inequitable treatment]

"The Assistant Consultant"

A new master's degree student was granted a 20-hour per week research assistantship. She had a brilliant potential, having graduated magna cum laude from her baccalaureate program. Her RA position was to be shared between two professors. The student worked diligently for each professor during her first month, but during the second month she barely saw the second professor. When she finally appeared, she apologized for her absence, but said it was due to an exciting project she had begun with the other professor: He "had assigned her to interview a number of employees in several client firms that were using [him] as a consultant. A retailing firm was reviewing the human relations skills of its retail clerks in all of its local outlets. [The student] had been collecting information from these clerks with questionnaires and interviews. She had also been asked to interview and collect information in two other client companies; one was a large, independently-owned motel and the other was a medium-size bank. Both firms were concerned about low employee morale and work performance." Although she had been so busy with this work she had to drop one of her courses, the other professor had paid her an outside salary much larger than her previous work had paid.³⁴ [5.3, self-serving actions; also: 2.4, harmful teaching practices]

³⁴Payne, Stephen L. "The Assistant Consultant," in Stephen L. Payne and Bruce H. Charnov, *Ethical Dilemmas for Academic Professionals*, pp. 125-126.

"The Biased Evaluator"

A professor serving on the admissions committee for a graduate program finds, on reflection, that she is more receptive to students "who are more articulate, who express interest in her specialty area, and who are physically attractive," and wonders in private moments whether she is behaving ethically.³⁵ [4.2, inequitable treatment; also: 1.3, accurate evaluation]

"The Blitz"

"By the period of final exams for the summer, Tim realized that there was no way that Ron White's grades would pass the sociology course based upon Tim's grading standards in previous semesters. Tim believed that Ron deserved a failing grade for his performance, and he had every intention of giving him the deserved grade. Before Tim had turned in his final grade report for his summer courses, he received a telephone call from [the college's athletic academic advisor]. ...

"Bad news, Tim. Ron White just checked his grade in the history course that he took in addition to your course. Ron told me that he got a C. Do you know what that means? According to university policy, he will be ineligible for the upcoming [football] season unless he has at least a D in your class."³⁶ [1.3, accurate evaluation; also: 4.2, inequitable treatment]

"The College Test"

Kathy and Joe were students in Hugh's undergraduate finance course. They were apparently close friends; Kathy was an excellent student, while Joe, although enthusiastic and friendly, was not. Furthermore, Hugh knew that Joe was receiving a hardship grant-in-aid, and that he needed to maintain a 2.5 semester GPA to remain on financial aid.

³⁵Canon, Harry J. "Ethical Problems in Daily Practice," p. 6, *NB*, Case 3.

³⁶Payne, Stephen L. "The Blitz," in Stephen L. Payne and Bruce H. Charnov, *Ethical Dilemmas for Academic Professionals*, pp. 45-46.

"On the first exam of the semester, Kathy scored the second highest grade in the class, and Joe failed the exam along with only one other student. The next and more heavily weighted mid-term was given the following month. Hugh noticed that Joe glanced over in the direction of Kathy's paper several times during the administration of this mid-term exam. Hugh could not be completely certain, but it disturbed him that Joe was probably cheating on the exam.

"When grading the non-essay part of the mid-term exam, Hugh saw that all 15 multiple choice items on Joe's and Kathy's exams were marked identically. Moreover, two of the 15 responses were identically incorrect."³⁷ [4.3, procedural justice; also: 1.3, accurate grading]

"The Human Relations Seminar"

A professor in a nursing program teaches a communications skills and human relations seminar to students about to enter their first practicum. She has "become concerned about the impact of some of the [seminar] exercises on a few participants, who leave the sessions either in tears or quite depressed."³⁸ [2.1, emotional harm]

"The Lead Author"

A master's degree student devoted six semester hours' worth of work to a research project that was entirely subsumed within the larger project of his thesis adviser. Upon its completion, his adviser agreed it was of sufficient importance to publish as a journal article, and agreed to do so, as primary author. The adviser further agreed that the

³⁷Cavanagh, Gerald. "The College Test," in Stephen L. Payne and Bruce H. Charnov, *Ethical Dilemmas for Academic Professionals*, p. 43.

³⁸Canon, Harry J. "Ethical Problems in Daily Practice," p. 10, *NB*, Case 14.

student's contribution would be acknowledged with a footnote.³⁹ [1.2, plagiarism; also: 4.1, abuses of power; 1.4, dishonesty; 5.3, self-serving actions]

"The Placement Program"

A professor of accounting established a consultation practice that included placement counseling for recent graduates of the department. When challenged about a possible conflict of interest, he replied that "he charges the firms only a modest placement fee and that he views this portion of his agency's activities as a service to the graduates of his department."⁴⁰ [5.3, self-serving actions]

"The Process Group"

Students in a professional program in counseling are required to take a core course in group process. In this course, students meet weekly in a seminar as a "process group;" this requirement is justified in that it will help them understand the group process and will provide for "personal growth." Students find that they must be careful not to underparticipate in self-revelatory interaction else they will be labeled "defensive." On the other hand, if they over-reveal personal information they may be advised they have "serious personal problems that have to be worked through in therapy" if they are to be continued in the professional program.⁴¹ [3.1, paternalistic disrespect for autonomy]

"The Umpire's Decision"

"Several of the twenty or so doctoral program candidates at Mann [Institute] were attractive women in their twenties or early thirties. ... Haskell Komarek had gotten to know both women on a casual basis, and his early impressions were both women were friendly and serious doctoral students. ... [However, b]oth women had openly admitted feeling a

³⁹Canon, Harry J. "Ethical Problems in Daily Practice," in Harry J. Canon and Robert D. Brown (eds.), *Applied Ethics in Student Services*, New Directions for Student Services No. 30. San Francisco: Jossey-Bass, 1985, p. 6, *NB*, Case 1.

⁴⁰Canon, Harry J. "Ethical Problems in Daily Practice," p. 14, *NB*, Case 26.

⁴¹Canon, Harry J. "Ethical Problems in Daily Practice," p. 6, *NB*, Case 2.

bit insecure and confused about their professional and personal goals.

"During the last semester, Komarek had noted that Sarah was increasingly in the company of [professor] Sal Harper and that Jessica was often seen with [professor and doctoral program advisor] Bruce Hardy. ... The relationship growing between Sarah and Sal had not seriously disturbed Komarek, since Sal was a thirty-year-old bachelor and assistant professor handling undergraduate courses. The probability though of a relationship between Jessica and Bruce Hardy did upset Komarek. Bruce Hardy had a very different position and reputation than did Sal Harper. ...

"The straw that broke the camel's back for Komarek came when one of the other doctoral students visited him in his office complaining about inequitable treatment given Jessica Crouse by Bruce Hardy in waiving one of her doctoral coursework requirements. ..."⁴² [4.2, inequitable treatment]

"Who Makes the Grade?"

Two business professors who taught at different universities were doctoral students together. At a chance reunion during a regional conference, they had occasion to discuss their respective teaching loads, and how they handled grading of the numerous cases they assigned their students. One was surprised, and a bit dismayed, to learn that the other occasionally used a "bright MBA" student to grade his undergraduates' case assignments, without advising his students of the practice. In the first professor's view, MBA students were not appropriately qualified to undertake this type of grading activity.⁴³ [1.3, accurate grading; also: 5.3, self-serving actions; 2.4, harmful teaching practices]

⁴²Payne, Stephen L. "The Umpire's Decision," in Stephen L. Payne and Bruce H. Charnov, *Ethical Dilemmas for Academic Professionals*, pp. 196-197.

⁴³Payne, Stephen L. "Who Makes the Grade," in Stephen L. Payne and Bruce H. Charnov, *Ethical Dilemmas for Academic Professionals*, pp. 41-42.

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