

HARVARD UNIVERSITY  
PROGRAM IN ETHICS AND THE PROFESSIONS  
ANNUAL REPORT 1989-90

--o0o--

# HARVARD UNIVERSITY

The Program in Ethics and the Professions

79 J.F.K. Street

Cambridge, Massachusetts 02138

Dennis F. Thompson  
*Director*

(617) 495-1336

June 30, 1990

President Derek Bok  
Massachusetts Hall  
Harvard University

Dear Derek:

I am writing to report on the activities of the **Program in Ethics and the Professions** during 1989-90. In my first report to you in 1987, I was able to mention virtually everything we had done in the first year — partly because in the beginning the "we" referred mostly to me. After four years, the Program is now a fully collaborative enterprise: many former Fellows and other faculty associated with the Program are taking the initiative in encouraging teaching and research on ethics throughout the university. Although the Program is in one way or another involved in most of these initiatives, I myself can no longer claim to have a direct hand in all of them. This report therefore describes only some of the highlights of what is now a widespread and still expanding movement at Harvard and other universities.

## The Current Fellows

The group of fellows this year, our most diverse yet in background and age, also turned out to be among the most successful in their intellectual interactions. The lawyers, the business professors, and the physician deepened their understanding of systematic moral reasoning, and the philosophers broadened their knowledge of the practice of law, medicine and business. This kind of mutual benefit has been our aim from the beginning, but this year the Fellows came closer to achieving it than I had thought possible. Their own reports (reproduced in Appendix V) describe some of the results they achieved in their own work. It is also evident that many of them made valuable contributions to the intellectual life of the university beyond the Program.

Although many of the most fruitful exchanges took place informally, the weekly seminar continued to form the core of our collective discussions. I found myself looking forward to this seminar every week, more than almost any other intellectual activity in which I have participated at Harvard. The only problem was that the

seminar, scheduled for three hours, often continued much longer, and played havoc with my appointment schedule on Tuesdays.

In the first semester, the seminar discussed the nature of practical ethics (how it differs from theoretical ethics), the status of professional ethics (whether it is a distinct kind of ethics), and the state of the art in business, legal, medical, and government ethics (including critiques of the typical work and the best work in each field). In the second semester, we turned to topics that raise issues common to the several professions — truth-telling, confidentiality, paternalism, informed consent, and distributive justice. We have received requests for the seminar syllabus from more than a dozen universities, some of which have established courses and programs modelled after ours.

The Fellows used some of the sessions to present their own research in progress. A paper that Frances Kamm presented to the seminar — on the role of philosophers in advising the government — identified some major ethical questions faced by all of us who try to apply ethics to public issues. The paper provoked much discussion here, and at conferences where it was also presented; it will be published next fall. The Fellows' reports describe other research they have been pursuing this year, all of it in my judgment likely to make important contributions to practical ethics, and indeed helping to define the field itself.

As the reputation of the seminar has grown, so have the requests from many faculty at Harvard and in the Boston area to attend. I have resisted these requests, fearing that large numbers or irregular participation would dilute the quality of the experience for the Fellows. Nevertheless, I decided to make an exception and issue an invitation to Joe Badaracco, an associate professor at the Business School, who has a long standing interest in ethics and is playing an important role in ethics teaching in the School. He moved into an office in the Fellows' building and participated fully in all of our activities. The results were mutually beneficial, and encourage me to consider making similar arrangements in the future.

Two of the Fellows will remain at Harvard next year, engaged in ethics teaching in their respective faculties. Linda Emanuel, now an assistant professor at the Medical School, will continue her work in the new Division of Medical Ethics, where she serves as assistant director and coordinator for ethics education in the affiliated hospitals. David Wilkins, one of the law school's most talented teachers, returns to teach legal ethics and to work to strengthen the Program on the Legal Profession there. It is worth noting that, of the 18 Fellows in the first three classes, eight are now teaching at Harvard.

Other Fellows in this year's class will carry the campaign to other universities. Oliver Avens will teach ethics and public policy at Brown next year. Frances Kamm returns to a senior position at New York University, leaving many faculty at Harvard

interested in trying to persuade her to return at some time in the future. Mark Osiel is leaving private legal practice in Boston to pursue an academic career teaching legal ethics at Tulane Law School. Alan Wertheimer (for personal reasons) declined an offer to head a new program at the University of North Carolina similar in some respects to ours; given his growing reputation, this will, I suspect, not be his last such opportunity. Peter Yeager will return to teach at Boston University, while continuing his research on business ethics.

### The New Fellows

Again this year every one of the eight candidates whom the Committee ranked in our first-choice group accepted. As the biographical descriptions in Appendix I indicate, the new class is outstanding, no less so than the class of '89 (whose quality I doubted we could ever duplicate). The new group is equally diverse. Two of the Fellows are women, again among the strongest Fellows in the class (and both are in business ethics); one fellow is black, a young law professor who, by the testimony of his former teachers at Yale and our colleagues here at Harvard, is a rising talent in legal theory. Geographically, the class reaches to Florida, and also for the first time to the West Coast (though admittedly our Stanford Fellow received her B.A. from Harvard). Two of the Fellows are M.D.'s (one with a master's degree in philosophy), three have law degrees (though one of them specializes in ethics and public policy, and another in business ethics), two are philosophers (both respected pioneers in applied ethics), and one has a doctorate in business. Their average age is 38.

We received about 20 fewer applications this year than last. This decline, our Faculty Committee believes, is not a reason for worry. Other indicators of interest in the Program remain strong. The numbers of inquiries, requests for information, partially completed applications, and interviews continue to rise. We spend almost as much time discouraging potential applicants who do not seem appropriate as encouraging those whom we wish to recruit.

The geographical diversity of the applications is still great. Completed applications came from faculty at some 40 different American colleges or universities and six foreign countries (Australia, Britain, China, Israel, Italy, and West Germany). The applicants ranged in age from 30 to 58, the average being 42. Fifteen women (33 per cent of the total), and at least two blacks and one native American applied. More applicants this year came from law (18) than any other field (as indicated by the terminal degree). Other fields with substantial representation were: philosophy (16), medicine (14), public policy (10), and business (9).

Most importantly, the quality of the applicants is impressive, and appears to be rising. Our Faculty Committee concluded that the finalists whom they discussed in depth (the top 20 applicants) were the strongest yet in the history of the Program.

### Graduate Fellowships in Ethics

Perhaps the most important new project we undertook this year was the establishment of a university-wide competition for graduate fellowships. In order to ensure that progress toward strengthening ethics in the curriculum will continue well into the future, it is essential to train younger scholars who are prepared to dedicate their careers to the teaching of practical ethics in a wide variety of subjects. Yet, like junior faculty interested in ethics, graduate students often receive too little support and encouragement for work on topics that sometimes challenge mainstream methods in their disciplines or professions. We are trying to identify the most outstanding of such students who are writing their dissertations (or, in the case of the professional students, equivalent research work), and offer them graduate fellowships in the Program. The students will share space in the Program offices, participate in some of the activities planned for the regular Fellows, and attend a weekly seminar run by the Program specifically for them. With the help of the American Express Fund, we are able to offer modest stipends. In addition to working on their dissertations, the Graduate Fellows will also be expected to teach in ethics-related courses in the College, and to contribute to various projects sponsored by the Program. Arthur Applbaum is serving as the director of this new venture.

We had planned to offer only two fellowships for 1990-91, but the quality of the applicants was so high that we decided to award four. The winners are listed in Appendix II. It is especially gratifying and somewhat surprising that the winners come from departments—Economics and Philosophy—that in the past have encouraged applied work of this kind less than some other departments and schools.

### Faculty Associates

This year we established a new position of Faculty Associate to recognize more formally the role of the growing number of Harvard faculty who regularly participate in the activities of the Program. We named eight new Faculty Associates, each for a three-year term. Most are former Fellows, who are now younger faculty members in the various schools at Harvard (see the list in Appendix III). Along with the Senior Fellows and members of the Faculty Committee, they constitute a formidable corps furthering the mission of the Program throughout the university. I think of the Faculty Associates as front-line guerrillas in our continuing battle to secure a homeland for ethics in the curriculum.

The position of Faculty Associate does not carry with it any specific duties (or, I hastened to add in my letter of invitation, any rights), but we hope that Faculty Associates will continue to make special efforts to contribute to the work of the Program. For example, we may from time to time call upon them to give advice to Fellows on their research, to help in recruiting and evaluating prospective Fellows, or give advice to graduate students associated with the Program. The Faculty Associates

are invited to all of the public events sponsored by the Program, as well as to some special events for those formally associated with the Program.

### **Faculty and Curricular Development at Harvard**

Our aim from the beginning has not been to try to direct ethics education at Harvard from the center, but to encourage each of the faculties to make its own appointments and to develop its own curriculum. The aim is not quite, as someone described it, to create a "thousand points of ethics." But our hope is that eventually all of the schools will have a critical mass of faculty and a coherent ethics curriculum; the Program would continue to provide advice and support, helping to train younger faculty and graduate students, encouraging interdisciplinary and cross-professional exchanges through university-wide seminars, lectures, and collaborative teaching and research. Especially in these early years, the Program also serves as a kind of intellectual refuge for faculty specializing in ethics, who still feel somewhat isolated in their own schools, and find the community of scholars affiliated with the Program a valuable source of collegial support.

The **Medical School** made the most dramatic progress this year in developing its own ethics group. This was the first year of the new Division of Medical Ethics, which resulted from recommendations of a medical school faculty committee (on which I sat), encouraged by the Dean and subsequently approved by the faculty of the School. The Ira DeCamp Foundation had the imagination to recognize that this was a critical moment in the history of medical ethics, and this fall gave a five-year grant of nearly a million dollars to inaugurate the Division. (Lynn Peterson, the Director of the Division, and I presented the proposal to the Foundation, but you should know that Jerry Nunnally in the University Development Office played the key role in this process.) The establishment of the Division, I think, indicates that the Medical School takes ethics seriously and is prepared to recognize teaching and research in ethics as a legitimate and significant part of the curriculum.

The Division has already offered an introductory presentation on ethics to all first-year students and has begun preparing curricular materials for eight sessions of the required third-year course on the patient-doctor relationship. Members of the Division are regularly teaching an elective course on ethics for second-year students, and offering sessions on ethics in the third-year Introduction to Clinical Medicine. The Division is also seeking to strengthen ethics teaching in a clinical setting in the hospitals. Under the leadership of Linda Emanuel (currently a Fellow in the Program), the highly successful monthly lecture series on ethics at Massachusetts General Hospital is being replicated at the other affiliated hospitals. This represents an important part of the Division's efforts to introduce ethics into medical education in the clinical setting at that critical stage when young physicians form the habits of hospital practice that will influence them throughout their careers. The Division has also initiated a monthly faculty seminar, open to all of its faculty members as well as

to the wider university community. (Frances Kamm was one of the first speakers at this seminar.)

By next year, the Division is expected to have some 17 faculty as members. The seven-member executive committee includes four faculty associated with the Program: in addition to Peterson, they are Linda Emanuel, who is serving as the coordinator of the hospital program; Lachlan Forrow, coordinator of medical student education; and Troy Brennan, coordinator of the fellowship program. Ken Ryan, a Senior Fellow of the Program and the chair of the Committee that proposed the Division, chairs the steering committee, on which I sit. Three other former or incoming Fellows in the Program are active in the Division.

In the **Business School**, a dedicated group of faculty continued to improve the ethics module, which was introduced for the first time last year and is now required of all M.B.A students. One mark of the success of this module, which consists of nine class sessions, is that students are now asking for more discussion of ethical issues in other courses. The teaching groups in several of the required mainstream courses — "Marketing," "Production and Operations Management," "Human Resource Management," and "Management Communication" — are devising methods to integrate ethical materials into their courses. A faculty committee, chaired by Tom Piper, is discussing the possibility of adding a required module on ethics toward the end of the second year to consolidate what students have learned earlier in their various courses. Joe Badaracco is revising the second-year elective course on ethics, and will teach it next year in a form that combines some of the philosophical literature he explored in the Fellows' Seminar this year with some of the management cases he and other business colleagues have developed. Greg Dees is introducing ethics-related cases and readings in his second-year course on "Entrepreneurial Management."

We are beginning to see the results of the efforts, led by Tom Piper, to build a group of faculty who can take responsibility for ethics education (of faculty as well as students) at the School in future years. Lynn Paine, an Oxford-trained philosopher and Harvard-trained lawyer who has taught business ethics at Georgetown for the past several years, will join the School faculty next year. (She is spending next year as a Fellow in the Program before assuming full-time teaching duties in the School.) Greg Dees, recruited from Yale after spending last year as a Fellow, has begun to play an important role in introducing ethics to our business school students in a wide range of courses. For the future, one of the most important goals should be to support these younger faculty, and to recruit others to join them.

In the **Kennedy School**, the new Dean announced that one of his priorities is to strengthen the teaching of ethics in the curriculum. He sees ethics as closely connected to democratic theory, a view shared by most of the School faculty who teach ethics-related courses. Two new courses already reflect this orientation — Arthur Applbaum's seminar on professional ethics; and Applbaum and Ted Lascher's course

on the accountability of public officials. My own course, "Political Ethics and Public Policy," addresses the moral choices that public officials face in the context of the democratic process.

All M.P.P. students were for the first time this fall required to take a new course on ethics, "The Responsibilities of Public Action." Led by Dutch Leonard and taught by five faculty members of varying degrees of preparation in the subject, the course received mixed reviews from the students. The lectures and the readings, negotiated by a group rather than planned by a few individuals, had less overall coherence than might be desirable, and some of the section leaders lacked experience in leading discussions on ethical issues. But some of the lectures and many of the sections were highly effective, and the less successful parts of the course are now undergoing significant revisions. Also, we are planning to offer all of the faculty teaching in the course the opportunity to attend an intensive seminar on ethics for several days before the beginning of term.

Although there is a growing number of faculty in the Kennedy School who have some competence in ethics, there is no one who is able to devote full time to the subject. Applbaum, Steve Kelman, Bob Reich, and Ken Winston (who will continue as a visiting professor) make important contributions, and Fred Schauer, the new Stanton professor, could play a major role in our efforts if he has the time. The appointment of a senior professor to the new chair in Ethics and Policy is essential not only for the School but also for the Program.

Another continuing activity that has stimulated work in ethics at the School is the Policy Values Seminar, initiated three years ago and sponsored by the Program. The seminar provides a forum for discussing papers by faculty members who are not primarily specialists in ethics but whose work has ethical implications. The seminar is also valued as an opportunity for people working in different specialities to engage in substantive discussion of policy problems. Bob Putnam used the seminar as the occasion to try out some of his ideas for giving democratic theory a more prominent place in the study of public policy. Other Kennedy School faculty who spoke this year at the seminar included: Ray Vernon on the underlying values of American Foreign Policy; Michael Barzelay on accountability in the "post-bureaucratic" age of administration; Ash Carter on the ethics of using nuclear weapons; Alan Altshuler on democracy and innovation; and Olivia Golden on democratic accountability and innovations in local government. Two faculty members from the Law School also presented papers: Martha Minow on "hate speech"; and Chris Edley on the ethical assumptions underlying administrative law. I gave the opening talk – on the "Revival of Political Ethics."

The School's Case Program added several new cases emphasizing ethical issues to their catalogue: "AIDS Testing in Washington, D.C.," "Defunding Organ Transplants in Arizona," "The Risks of Asarco" (on environmental ethics), and a series of historical



cases on the ethics of U.S. intervention in foreign countries. All of these were supported by the Program and the American Express Fund. The Program also supported, jointly with the Kennedy School and the Business School, research for a case about "The Ethics of RU-486" (on the abortion pill controversy in France). Some of these cases appear in what is now the most widely used casebook in political ethics, *Ethics and Politics: Cases and Comments*, edited by Amy Gutmann and me; the second edition, showing more influence of the Kennedy School, was published this year.

Our hopes for the **Law School** rest in part on the still tentative plans to strengthen and expand the Program on the Legal Profession. That Program, I believe, could serve as an institutional base for law faculty interested in legal ethics, much as the new Division of Medical Ethics serves as the focal point for the ethics faculty in the Medical School. David Wilkins, who, before he became a Fellow in our Program this year, turned "The Legal Profession" into one of the most highly rated courses in the School, is planning to devote attention to strengthening the Law School Program, and more generally to encouraging greater faculty interest in legal ethics.

For the future, the School could, in my view, benefit from appointing several senior faculty who would devote themselves primarily to legal ethics. It is desirable that at least one of these should be a philosopher, or someone with substantial philosophical training.

In the **College**, the Program administers the American Express Fund for Curricular Development, the primary aim of which is to support the introduction of systematic ethical discussion in a wide variety of undergraduate courses. This is the third year of a five-year grant, and we have prepared an interim report (a copy of which you have already seen) that describes the projects the Fund has supported so far. (I have also attached a list of the projects as Appendix IV.)

Looking at the record of the first three years, it now seems clear that we underestimated the potential interest of the Harvard faculty in teaching about ethical aspects of their subjects. Their response has exceeded our expectations in the number, range, and quality. The *number* of grants awarded to faculty to develop new courses or revise existing courses in the first three years alone — 22 so far — is greater than we had expected for the whole period of the grant. Also, at least five of these courses are under development for the Core. Although in the original proposal we did not set a specific target for the total number of courses, we estimated that the Fund would support only about three each year, and create two new courses in the Core during the whole period of the grant.

The *range* of projects also exceeded our expectations. We had expected that most of the proposals would come from faculty already teaching subjects closely related to traditional ethics (such as philosophy, theology, or political theory). While it is important to encourage ethics teaching in these fields, we knew that the greater

challenge (and the more distinctive contribution) would come from introducing ethical discussion in courses where it has been neglected, as in the sciences and humanities. Again the faculty in these areas surprised us with their creative proposals for teaching about ethical issues in a wide range of subjects. I draw your attention, for example, to courses on the biology of forest and trees (Pfister), the science of environmental quality (Butler), the literature of friendship (Ziolkowski), the literary treatment of childbirth and motherhood (Yaeger), changes in French language and culture (Mueller), the anthropology of human suffering (Kleinman), and the economics of risk (Green).

Finally, we have been pleased by the *quality* of the proposals and the faculty who presented them. The proposals were almost without exception imaginatively conceived, carefully planned, and well executed. In several cases in the first year, we had to ask faculty members to rewrite their proposals, which (as word got around) may have helped raise the quality of subsequent proposals. In our original proposal to American Express, we indicated that the Fund might have to rely substantially on visiting and part-time faculty to achieve its aims. This has turned out not to be so, as some of the most distinguished Harvard faculty have submitted proposals.

Among our **university-wide** activities this year, the University Faculty Seminar on Ethics, now in its second year, has achieved a faithful following, with representatives from the schools of business, government, law, medicine, and several departments in FAS. More faculty are interested in attending than we have been able to accommodate since we have found that a relatively small size—about 15—is optimal for sustaining serious discussion of these kinds of issues in a group of such diverse backgrounds.

The topic this year was "Adversary Ethics," which is intended to refer to a family of arguments that professionals use to justify actions that appear to violate ordinary morality but that they believe are required by their roles in a competitive system of some kind. We explored not only the familiar terrain of adversary excuses in the legal system, but the relatively neglected areas of similar moral excuses in business, government and medicine. Particularly lively sessions focused on the question of whether competitive pressures justify business executives in ignoring some principles of common morality. Our aim was not so much to undermine all such adversary arguments, but rather to understand better their nature and establish more clearly the limits of their application. Despite (or perhaps because of) some rather intense argument, most of the participants reported that they learned a great deal from the interdisciplinary and interprofessional exchanges that the seminar stimulated.

The seminar is also intended to help faculty develop materials for teaching ethical issues more effectively. On the basis of last year's seminar on truth-telling in management, the Program has prepared some teaching notes and cases for use in the various professional schools, and is planning to run some workshops that will introduce this material to other faculty. A teaching guide and casebook that collects

these materials will be available in the fall, and a similar volume will be prepared on the basis of this year's seminar. Arthur Applbaum, who planned all of the sessions of the seminar, is directing the preparation of these materials.

If the Program responded to all the requests we receive, we could become a full-time lecture bureau providing ethics speeches and statements for the university and the wider community, including state professional associations, commercial and public television, and talk shows on radio stations throughout the country. As the number of faculty and fellows associated with the Program has grown, we have a larger pool of talent to whom we can refer requests, and I have been better able to follow your advice to "just say no" to more invitations initially directed to me personally. One of the invitations that I did accept this year led to a talk on "Hospital Ethics," delivered at grand rounds at Massachusetts General Hospital; another to a panel discussion at Children's Hospital where I introduced and attempted to moderate a debate between the chief of medicine and the chief of surgery on the ethics of high-technology treatment of severely ill newborns.

### Public Lectures

The series of public lectures organized by the Program and supported by the gift of Obert Tanner continues to stimulate discussion about the relevance of philosophy for the study of practical ethics. We invited five speakers this year, all philosophers and all but one from abroad.

The striking title of the first lecture, "Denial and Breakthrough: Some Lessons for Professionals from the Nazi Period," attracted faculty and students throughout the university who are interested in either the role of professionals or in the Nazi period, or both. It is unusual for a moral philosopher to make such extensive use of historical materials, but **Jonathan Glover**, a Fellow of New College, Oxford, succeeded in illuminating both the historical events and the philosophical issues. He explained how the excuses of a professional role helped some doctors, lawyers, and bureaucrats evade moral responsibility for the consequences of their actions during the Nazi period, but he also showed how the ideals of professionalism served in some instances as support against the immoral demands of the regime. The importance of extending the moral responsibilities of doctors, lawyers and bureaucrats beyond the explicit duties of their roles was one of the "lessons for professionals" that Glover emphasized.

Another British philosopher, **Janet Radcliffe Richards**, a lecturer from the Open University and a well known feminist theorist, discussed the "Relativity of Discrimination." In a rigorously argued paper, she showed convincingly why many kinds of discrimination are morally wrong, and (more surprisingly and less convincingly) why several other kinds of alleged discrimination may not be wrong. Her refusal to condemn as discriminatory the exclusion of women from certain kinds of occupations provoked many members of the audience, not only the feminists but

also the philosophers who disputed her claim that intention is a necessary condition of discrimination.

Our most distinguished visitor of the year was **Bernard Williams**, then a professor of philosophy at Berkeley, who has now returned to England to be a university professor at Oxford. "Politics and the Idea of a Professional Ethic," his lecture prepared especially for the occasion, explored the general question of what constitutes a profession, and what moral implications follow from professional roles. Contrasting the calling of politics with the practice of medicine, he denied that the former could have a professional ethic in the way that the latter could. He seemed to be particularly concerned to make sure that politicians could not use a professional ethic to insulate themselves from moral criticism from the outside. Several members of the audience, including some physicians, pointed out that the medical profession ought not to be so insulated either. At the dinner seminar that followed the lecture, a formidable brood of philosophers — John Rawls, Tim Scanlon, Amartya Sen, Sissela Bok, Michael Sandel, and Judith Shklar — joined with fellows and leading faculty from the faculties of law, medicine and government to argue with Williams late into the evening.

The subject of **Norman Daniels'** lecture — "AIDS: Do Doctors Have a Duty to Treat?" — could not have been more topical. The significance of the lecture was not so much the affirmative answer that Daniels (a professor of philosophy at Tufts) gave to the question as the original justification he provided for it. He rejected standard arguments for a duty to treat based on consent and promise, proposing instead a variation of a contractarian argument that related professional duty to a general theory of justice. In approach, the lecture was nearly ideal: it had enough practical detail to engage the physicians, and enough theoretical analysis to interest the philosophers.

**Philippe Van Parijs**, Lecturer in Philosophy and Economics at the Catholic University of Louvain, introduced a dash of Continental philosophy into our series for the first time. In a lecture on "The Ethical Foundations of Basic Income," he argued that any acceptable theory of justice should require the state to provide citizens with a basic income, not only at a subsistence level but well above, and not conditioned by any work requirements. Even the Malibu surfer who simply prefers a life of leisure to work deserves a welfare check, he suggested. This example, drawn from a footnote in a recent paper of Rawls, provoked much argument. Rawls takes a much sterner view of the surfer, and in the ensuing discussion he (and later Sen), while expressing some agreement with the speaker, were not prepared to go so far in requiring, as a matter of justice, that the state provide a basic income unconditionally.

As in previous years, the lectures stimulated discussion of ethical issues in the professions among a wide range of faculty and students. The audiences were made up of faculty and students from diverse backgrounds, including persons from the schools of business, law, medicine, government, divinity, and education.

### Activities Beyond Harvard

The most notable event in our missionary work outside the university was the founding of the Association for Practical and Professional Ethics, intended to be a national organization for teachers of applied ethics in institutions of higher education. The idea and impetus for the Association grew out of discussions at a conference on ethics teaching last summer at Indiana University, attended by more than 50 professors from 20 schools in 13 states. It was sponsored jointly by our Program and the Poynter Center at Indiana University (with additional support from the American Express Fund).

The actual founding of the Association took place this spring at a second conference in Lincoln, Nebraska, where six of us met to draft the charter and form an executive committee. The executive committee includes representatives from Brandeis, Cornell, Dartmouth, Harvard, the Hastings Center, Illinois Institute of Technology, Indiana, Maryland, Michigan, Nebraska, Princeton, and Western Michigan.

We hope that the Association will provide teachers interested in ethical issues in many different fields with a national forum for discussing their common problems and for collaborating on curricular and research projects. The creation of the Association is a strong indication of the expanding interest in applied ethics in higher education.

The Program has become a national clearing-house for information about teaching and research in practical and professional ethics. We respond to dozens of inquiries each month from colleges and universities throughout the country, seeking advice about syllabuses, case studies, faculty recruitment and (of course) fund-raising. Several universities have established centers or programs, modelled to some extent after ours. Among them are Cornell University, University of Illinois, University of Nebraska, Virginia Commonwealth University, Yale, and Stanford (though the latter two appear not to have moved much beyond the planning stages). We have also received inquiries from a number of foreign universities, notably in China, England, Israel, Italy, and Spain. Last fall, I addressed the annual conference of a new institute for practical philosophy at the University of Pamplona. I also served on the international planning committee for a conference on Public Service Ethics in Jerusalem (though, alas, without being able to attend).

### Problems and Prospects

The litany of three problems that I have recited in each previous report—faculty, resources, and space—is for the moment shorter by one problem. The Program is in the process of moving to the fourth floor of the new Taubman Building delicately poised between the Kennedy School on one side and the Charles Hotel on the other.

For the first time, the Fellows, our staff, some of the faculty associated with the Program, and I will have our offices in the same place, not separated as some of us were before by two blocks of Harvard Square traffic. Although we were not able to secure the larger wing we sought in the new building and are already overflowing our assigned space, the advantages of contiguous space for the Fellows and the staff will mark a significant improvement in the quality of life of the Program. The new space will better encourage collegial discussion, and enhance the efficiency of the administration of the Program. Less tangibly but no less importantly, the existence of a single physical location for the Program will help establish the identity and visibility of the Program as an independent entity in the university.

The other two problems accompany us to the new space, however. The most urgent and most difficult is the need to appoint more faculty. Nothing is more important for the Program's aims than developing a strong group of faculty at all levels who are actively involved in the Program, in teaching ethics in the College and the professional schools, and in helping their colleagues to become better at teaching and writing about ethical issues in their own fields. We have seen some success at the junior level, as several of the professional schools have appointed some of our Fellows as assistant professors, and have recruited others from outside Harvard. But we have not yet had similar success at the senior level. The obstacle does not appear to be primarily financial: some positions are already available, and funds could probably be raised in those cases where chairs do not exist. The main problem is that there are still relatively few scholars of sufficient distinction in practical and professional ethics, and this magnifies the familiar problems of recruiting established professors.

I would be remiss if I did not mention the other recurring problem — resources. As befits an ethics program, we live frugally. The Program is able to accomplish as much as it does because everyone associated with it — especially our staff — is contributing much more than any job description suggests. Our administrator, Jean McVeigh, now firmly in charge after a year in the position, has recruited a talented and professional staff who care about the mission of the Program as much as I do. Jean (along with Helen Hawkins, our senior staff assistant) has made me appreciate how much difference first-class administration can make.

The Program is flourishing — beyond what its resources should lead one to expect — because of the dedication of our staff and the faculty associated with the Program. Although we benefit from generous financial support from sources within the University, we cannot expect this internal funding to continue indefinitely. Moreover, our plans for expanding the activities of the Program — described in my report to you last year — depend on securing new sources of funds. We have had some notable successes in fund-raising — this year the large gift from the Ira DeCamp Foundation, and earlier the grant from American Express. But the gifts generally go to activities that directly benefit other parts of the university. We are now giving high priority to raising funds that directly support the central activities of the Program. A

recent gift from Obert Tanner is an important step in this direction. As you know, I have already proposed some ways in which we might proceed, including a part the Program might play in the forthcoming campaign, and I hope to continue our discussions during the next few months.

When I come to the problem of resources, I know it is time to bring this report to a conclusion. If I have kept your attention this far, I suspect I will soon lose it if I keep singing this pauper's song. In any case, I do not want to dwell on this or the other problems the Program faces. They seem less important when I reflect instead on the achievements of the Fellows, faculty and staff of the Program, as (only partly) described in this report. We can all take satisfaction in knowing that ethics is closer to receiving the attention it deserves at Harvard and many other colleges and universities because of the work of everyone associated with the Program.

Yours sincerely,

Dennis F. Thompson

*Appendix I*  
**Fellows in Professional Ethics**  
**1990-91**

**Allan S. Brett**, 39, is Assistant Professor of Medicine at Harvard Medical School, and acting chief, Section of General Medicine, at New England Deaconess Hospital in Boston. He received his M.D. degree from the University of Pennsylvania, and has held previous faculty appointments at Georgetown University and Washington University (St. Louis). Throughout his academic career, he has maintained an active general medical practice and has taught at all levels of medical school and internal medicine residency training. Brett's work in bioethics and related fields has been published in major medical journals, including the *New England Journal of Medicine*. During the Fellowship year, he plans to use the context of risk factor intervention to explore perceptions of probability and risk in medical practice, and problems in balancing benefits and harms when interventions are applied to asymptomatic persons.

**Ross E. Cheit**, 34, is Assistant Professor of Political Science and Public Policy at Brown University, where he teaches several interdisciplinary courses including "Ethics and Public Policy." He received his J.D. from the University of California, Berkeley, in 1981, after which he clerked for Justice Hans Linde of the Oregon Supreme Court. Cheit later received his Ph.D. in Public Policy from Berkeley, where he conducted the research for *Setting Safety Standards: Regulation in the Public and Private Sectors* (University of California Press, 1990). He is the recipient of several awards for his contributions to undergraduate teaching, including the Outstanding Teaching Associate Award (Berkeley 1980), and the Barrett Hazeltine Teaching Citation (1989) and the Henry Merritt Wriston Fellowship (1990) at Brown. During his Fellowship year, he plans to study the conflict-of-interest problems faced by Certified Public Accountants, as well as cases in ethics and public policy.

**Anthony E. Cook**, 30, currently Associate Professor of Law at University of Florida Law School, will conduct research on the jurisprudential implications of Dr. Martin Luther King's theology. More generally, he will explore the commonalities and differences between the ethical and moral concerns of law and religion. Cook is the author of "Beyond Critical Legal Studies: The Reconstructive Theology of Dr. Martin Luther King, Jr.," *Harvard Law Review* (1990), in which he begins to explore the importance of King's work for those engaged in critical legal studies. The sequel will broaden the scope of analysis and consider the implications of King's work for law and jurisprudence in general. Cook received his J.D. from Yale in 1986, after which he was associated with the New Orleans law firm of Smith, Peragine and Redfearn where he practiced securities and corporate law. He joined the faculty of Florida (Gainesville) in the fall of 1987 where he is an associate professor of law of corporations, jurisprudence and constitutional law. He is also associate pastor of the Mount Carmel Baptist Church.



**Robert K. Fullinwider**, 47, is Senior Research Scholar at the Institute for Philosophy and Public Policy, University of Maryland. He was educated at the University of Kentucky (B.A. 1964) and Purdue University (Ph.D. 1970), and taught philosophy at universities in New York and Virginia before going to Maryland in 1979, where he has directed research programs on military manpower policy, affirmative action law, and civic and moral education. He is the author of *The Reverse Discrimination Controversy* (1980), and the editor of *Conscripts and Volunteers* (1983) and *The Moral Foundations of Civil Rights* (1986). Long interested in the challenge of training professionals to be morally serious about their vocations, each spring he teaches political ethics at the Graduate School of Political Management in New York City, whose students, guided, he writes, "principally by the star of political success, prove a rude and fertile laboratory for confounding most of [one's] deeply held prejudices about moral education." He will use his fellowship year to continue to think about professional education and moral learning.

**John I. Kleinig**, 47, is Professor of Philosophy in the Department of Law and Police Science, John Jay College of Criminal Justice, and in the Ph.D. Program in Philosophy at the Graduate Center, City University of New York. He took up his current position in 1986 after teaching for 20 years in universities in Australia, where he also received his degrees in philosophy and theology. His books include *Punishment and Desert* (1973), *Philosophical Issues in Education* (1982), *Paternalism* (1984), and *Ethical Issues in Psychosurgery* (1985). A forthcoming book, *Valuing Life*, will be published by Princeton University Press. Since joining John Jay College, Kleinig has edited *Criminal Justice Ethics* and developed undergraduate, graduate and doctoral courses in police ethics. During the period of his Fellowship, he will be writing on ethical problems in policing.

**Lynn Sharp Paine**, 40, is Assistant Professor of Business Administration, Adjunct Professor of Philosophy, and Senior Research Fellow at the Kennedy Institute of Ethics at Georgetown University. During the Fellowship year, she will continue research on the fiduciary concept and its implications for standards of commercial morality and begin a cross-cultural study of norms of fair competition in business. Paine earned a B.A. summa cum laude from Smith College, a D.Phil. in moral philosophy from Oxford University, and a J.D. from the Harvard Law School. Her scholarly publications have appeared in *Wisconsin Law Review*, *Business and Professional Ethics Journal*, and *California Management Review*, as well as collections such as *Enriching Business Ethics* (forthcoming 1990). Paine practiced law with the Boston firm of Hill & Barlow before embarking on an academic career. She joins the faculty of the Harvard Business School as an Associate Professor in the fall of 1990.

**Maureen Scully**, 30, of the Graduate School of Business, Stanford University, is conducting research on employees' beliefs in meritocratic ideology and how such beliefs can legitimate inequality. She is co-author of a study of the implementation of corporate ethics programs in the defense industry, and further research is forthcoming in the *Journal of Personality and Social Psychology*, and *The Employee Rights and Responsibilities Journal*. During her Fellowship year, she will continue her study of

how corporate ethics programs become institutionalized, and will also explore what "the workplace beyond meritocracy" might look like. She received her A.B. from Harvard in 1982, and will receive her Ph.D. in Organizational Behavior this fall from Stanford.

**Robert D. Truog**, 35, is Associate Director of the Multidisciplinary Intensive Care Unit and an Attending Anesthesiologist at Boston Children's Hospital. After receiving his medical education at UCLA, he completed subspecialty training in Pediatrics, Anesthesiology, and Critical Care Medicine at the University of Colorado and Harvard Medical School. He is currently concluding graduate work leading to a Master's Degree in Philosophy from Brown University. His academic interests center on the ethical issues that arise in critical care settings. His areas of research include the ethical implications of using anencephalic newborns as sources of transplantable organs, the philosophical foundations of the concept of brain death, and the moral dilemmas surrounding the withholding and withdrawing of intensive life support. His work has appeared in several medical journals including *The New England Journal of Medicine*.

*Appendix II*  
**Graduate Fellows in Ethics**  
**1990-91**

**Jonathan R. Cohen** is currently a Ph.D. candidate in Harvard University's Department of Economics and a J.D. candidate at the Harvard Law School. His dissertation, "On Reasoned Choice," attempts to develop a broad framework for analyzing moral choices and to apply this framework in economic, philosophical, legal, sociological, and policy settings. During his fellowship year, he will continue with this work, in part through examining some ethical aspects of the Federal Rules of Civil Procedure. He has worked as a consultant at the RAND Corporation and as a researcher at the National Bureau of Economic Research. He received his A.B. (1987) and A.M. in economics (1989) from Harvard.

**John H. Duvivier** is a Ph.D. candidate in Philosophy at Harvard University, where he has been working on problems in contemporary moral and political philosophy raised by the communitarian critics of liberalism. He was educated at Swarthmore College (B.A., 1982) and Harvard (A.M., 1988), and has been an Admissions Counselor and a Faculty Instructor in the Wilderness Program at Earlham College in Richmond, Indiana (1982-84). At Harvard he has served as a Teaching Fellow in a number of courses in moral and political philosophy and is the Head Teaching Fellow for Michael Sandel's Moral Reasoning course, "Justice." During the fellowship year, he plans to continue work on his dissertation by studying cases of apparent conflict between morality and patriotism, with the aim of illuminating issues of community values and loyalty in contemporary political philosophy.

**Andreas Føllesdal** is a Ph.D. candidate in the Philosophy Department. During his fellowship year, he plans to finish his dissertation on "International Distributive Justice." In it he explores the moral significance of national boundaries, in particular for claims to equality. While a graduate Fellow he will also pursue related academic interests, including the role of ethics and political philosophy in our day-to-day lives, e.g. in professional ethics and in individuals' obligations under unjust institutions. He studied social sciences and philosophy at the universities of Oslo and Bergen, Norway, as well as in Uppsala, Sweden, before coming to Harvard.

**Steve Johnson** is a doctoral student at the Kennedy School of Government, writing a dissertation entitled "Ties that Bind: Foundations of Trust in a Capitalistic Society," under the supervision of Richard Zeckhauser and Lawrence Summers. He received an A.B. in economics from the University of Southern California (with subspecialties in mathematics and Greek philosophy), and an M.P.P. from the Kennedy School. He has taught game theory and bargaining, statistics, finance, policy analysis, and microeconomics at the Kennedy School and also at the Boston University Graduate School of Management. He worked for several years as a computer consultant before coming to the Kennedy School, and continues to carry on research in educational applications of artificial intelligence.

### *Appendix III*

#### **New Faculty Associates 1990-1993**

**Arthur I. Applbaum**, a member of the first class of Fellows in the Program, heads the new graduate fellowship program. He serves on the faculty of the Kennedy School of Government, where he has taught courses in professional ethics, political ethics, managerial discretion in a democracy, political management, and negotiation analysis. Applbaum combines interests in moral reasoning with work on the strategy of bargaining under uncertainty. His current research explores the ethics of adversary roles and institutions in government, business, law, and medicine. Applbaum holds degrees from Princeton University and Harvard University, is a member of Phi Beta Kappa, and was a Fulbright Scholar in Jerusalem.

**Joseph L. Badaracco, Jr.** is an Associate Professor of Business Administration at Harvard Business School and a member of the School's General Management Area. He has taught courses on strategy and on general management in the MBA Program. Badaracco is a graduate of St. Louis University, Oxford University, where he was a Rhodes Scholar, and Harvard Business School, where he earned an MBA and a DBA. His research interests are in leadership, general management, the external relations of firms, and business ethics. He is the co-course head for the required first-year MBA course on business ethics and teaches the second-year elective on the subject. His first book, *Loading the Dice: A Five-Country Study of Vinyl Chloride Regulation*, compared business-government relations in five countries. With a colleague, he has written a book on business leadership, entitled *Leadership and the Quest for Integrity*, which was published in 1989 by the Harvard Business School Press. His current research concentrates on cooperative relationships among businesses — joint ventures, consortia, and so forth — which lead to a blurring of firms' boundaries. In 1990, the Press will publish his most recent book, *The Knowledge Link*, a study of strategic alliances among firms, labor unions, and government agencies in the U.S. and Japan.

**Troyen Brennan** is an Assistant Professor of Medicine at the Harvard Medical School and an Associate Physician at the Brigham and Women's Hospital. As a Rhodes Scholar, he received an M.A. in Philosophy at Oxford University. He received medical and public health degrees from Yale Medical School as well as a law degree from the Yale Law School, and trained in internal medicine at the Massachusetts General Hospital. Dr. Brennan's research interests concern legal and ethical issues in medicine and public health. His work has appeared in the *Annals of Internal Medicine*, the *New England Journal of Medicine*, the *Cornell Law Review*, the *Duke Law Journal*, and the *Harvard Law Review*. In addition to his duties at the Medical School, Dr. Brennan lectures at the Harvard Law School and the School of Public Health. He is also a member of the Chairman's Council of the Natural Resources Defense Council.

**J. Gregory Dees** is Assistant Professor at Harvard University's Graduate School of Business Administration, where he teaches in the School's new required module on Decision-Making and Ethical Values in the first year of the MBA program, and in the second-year elective on Entrepreneurial Management. Greg came to the Business School in the fall of 1989, after spending a year as a Fellow in the Program in Ethics

and the Professions. He has also taught at the Yale School of Management (1985-88), and worked as a management consultant at McKinsey & Company (1981-85). Greg's Ph.D. in philosophy is from the Johns Hopkins University. He also holds a Master's in Public and Private Management from Yale. His B.A. is from the University of Cincinnati. Greg has written on issues in managerial ethics, including the ethics of greenmail, and deception in negotiation. His current research centers on two general topics: the barriers to ethical decision-making in practice, and social entrepreneurship. Over the coming year, he will be developing cases and teaching materials on entrepreneurial responses to social problems, focusing on ventures that have adopted explicit social missions that go beyond the creation of wealth.

**Linda Emanuel** holds an American College of Physicians Teaching and Research Scholarship at Harvard Medical School and is an assistant in medicine at Massachusetts General Hospital. Her Ph.D. in neurophysiology is from University College in London. She received her medical school training at Oxford University in England and Harvard Medical School, and her residency training in internal medicine at Massachusetts General Hospital. She has conducted research on shared decision-making for advance care directives by patients and their primary physicians. The research, published in *The Journal of the American Medical Association*, makes use of a new concept of Advance Care Directives. She has also written a theory of death and dying which has implications for policy-making for terminally ill and permanently comatose patients. Emanuel also initiated a highly successful program of lectures in clinical ethics at Massachusetts General Hospital which has now expanded to Harvard Medical School and affiliated hospitals under the auspices of the Gay Lecture Series. In her capacity as assistant director of the Division of Medical Ethics at Harvard Medical School, she will continue to help develop ethics teaching programs for medical students and others at a more advanced level.

**Lachlan Forrow** is Instructor in Medicine at Harvard Medical School and a practicing general internist at Boston's Beth Israel Hospital. He received his M.D. from Harvard Medical School in 1983 and completed his residency training in primary care internal medicine at Rhode Island Hospital and Brown University. He is Coordinator of Medical Student Education for the HMS Division of Medical Ethics. He has served on the National Board of Directors of Physicians for Social Responsibility and on the Executive Advisory Board of International Physicians for the Prevention of Nuclear War, and he is Vice President of the Albert Schweitzer Fellowship of America. He currently chairs the Human Studies Committee at Harvard Community Health Plan, where he also serves as a medical ethics consultant in the HCHP Teaching Center. His published work has appeared in *The Journal of the American Medical Association*, *The Journal of Medical Ethics*, and *The Journal of Medicine and Philosophy*. His recent research has focused on the design of curricula for teaching medical ethics, assessments of competence, the use of advance directives, practical aspects of informed consent, and preventive ethics.

**Kathleen M. Sullivan** is Professor of Law at Harvard Law School. She teaches constitutional law and criminal law and is also an active appellant litigator in those fields. She has published articles about affirmative action, abortion, AIDS and the criminal law and, most recently, the problem of unconstitutional conditions on government benefits. She is currently studying the problems of political restrictions

on funding for the arts. She received a B.A. from Cornell University in 1976 with Distinction in All Subjects, and a second B.A. with First Class Honours in Philosophy, Politics and Economics in 1978 from Oxford University, which she attended as a Marshall Scholar. In 1981 she received her J.D., *cum laude*, from Harvard Law School. She serves on the Board of Directors of the Civil Liberties Union of Massachusetts.

**David B. Wilkins**, Assistant Professor of Law at Harvard Law School, is conducting research on the ethical implications of the growing stratification of the legal profession. He received his J.D. from Harvard in 1980, after which he clerked for Judge Wilfred Feinberg, Chief Judge of the United States Court of Appeals for the Second Circuit, and Justice Thurgood Marshall, Associate Justice of the United States Supreme Court. From 1982 to 1986, he was associated with the Washington DC firm of Nussbaum, Owen & Webster, where he devoted a substantial portion of his practice to prosecuting and defending claims of lawyer misconduct before various courts and administrative agencies. Since joining the Harvard faculty in 1986, his teaching and research have centered on the structure and ideology of legal practice. Wilkins is the author of "Legal Realism for Lawyers" (forthcoming *Harvard Law Review*, 1990); and "In Pursuit of Justice" (forthcoming *Law and Social Inquiry*, Summer 1991)

## *Appendix IV*

### **Faculty Grants Awarded by the American Express Fund 1987-90**

**James Butler**, Gordon McKay Professor of Applied Chemistry. Preparation of cases and lectures for his course General Education 180, "Environmental Quality and its Management." To his traditional treatment of the economic, political, and scientific aspects of environment, Professor Butler has added a unit devoted explicitly to ethical problems. Issues considered include toxic waste management, tropical deforestation, and global ocean and atmospheric pollution. (*Funded in 1988, 1989, and 1990*)

**Judith Beth Cohen**, Expository Writing Preceptor. Case studies for a section on "Social and Ethical Issues" in the required writing course for freshmen. The section, designed to help writers transform their opinions about controversial social and ethical problems into well-structured arguments, is one of the largest in Expository Writing. Case topics include the liability of tobacco companies for lung cancer deaths, the Boston Church of Christ's recruiting methods, and the NCAA's position on drug testing and college athletics. (*Funded in 1988*)

**Diana L. Eck**, Professor of Comparative Religion and Indian Studies. Preparation of a new course, potentially for the core, on "World Religions in New England." The course is developing a new approach to the study of the religious traditions of the world and the problem of religious pluralism. Students investigate specifically the presence of the world's religious traditions in the New England area and the ethical problems they raise. (*Funded in 1990*)

**Jerry R. Green**, David A. Wells Professor of Political Economy. Development of a new course on "Ethical Issues in High Risk Situations." The course deals with problems of risk faced by individuals (for example, choice of medical treatment), by groups and organizations (for example, job safety and environmental hazards), and national and international systems (for example, contagious diseases, and hazardous technologies). (*Funded in 1989 and 1990*)

**Stanley Hoffmann**, C. Douglas Dillon Professor of the Civilization of France. Preparation of materials for course on "Ethical Issues in International Relations." The materials are based on the popular course which he teaches in the Moral Reasoning section of the Core Curriculum. The course discusses ethical questions on such topics as the use of force, war crimes and terrorism, interventions, and human rights. (*Funded in 1988*)

**Herbert Kelman**, Richard Clarke Cabot Professor of Social Ethics. Preparation of a new course, entitled "Individual and Social Responsibility." Taking a social-psychological perspective on ethical decision-making, the course examines the conditions under which individuals are willing and able to take moral responsibility for their own actions, and the conditions under which they take responsibility for policies and practices of groups to which they belong. It also explores ways in which individual responsibility can be increased. Among the topics considered are guilt and

shame, conformity, "groupthink," group loyalty, altruism, crimes of obedience, and social experiments. (*Funded in 1989 and 1990*)

**Yuen Foong Khong**, Assistant Professor of Government. Revision of a course on "The Indochina Conflict." The course will now include a three-week section on "the ethical dimension" of the U.S. intervention in Vietnam. The section addresses questions about the justice of the war and the way it was fought, the moral responsibility of political leaders, military officers and ordinary citizens, and the moral responsibility of the U.S. for events in Indochina after 1975. A main objective is to provide students with conceptual and historical tools to make more carefully reasoned moral judgments about the conflict. (*Funded in 1989*)

**Arthur Kleinman**, Professor of Medical Anthropology in the Faculties of Medicine and Arts and Sciences. Preparation of new core course on "Varieties of Human Suffering." The course takes an anthropological approach to ethical issues raised by the personal experience and cultural meaning of human suffering. Among the topics considered are chronic illness, disability, natural disasters, torture, urban poverty, the Chinese Cultural Revolution, and the Holocaust. (*Funded in 1988*)

**Stephen Macedo**, Associate Professor of Government. "Public and Private Morality". A course in the Moral Reasoning section of the undergraduate Core Curriculum which deals with the relationship between public and private ethics. Using writings in political theory and case studies, the course addresses a set of moral questions in areas such as the secular humanism debate and problems connected with property and the family. (*Funded in 1988*)

**Mary McGee**, Lecturer in the Study of Religion. Preparation of new course on "Hindu Ethics." The course introduces students to non-Western ways of thinking about morality. It addresses such topics as the Hindu views on right and wrong, justice and retribution, individual responsibility and culpability; the influence of the concept of moral order (dharma) on ethical decision-making in both personal and public life; and the ethical basis of the caste system and non-violence. By comparing the Hindu ideas of ethics with Western ideas, the course is intended to encourage students to reflect on the basic values and assumptions underlying their own ethical judgments. (*Funded in 1989*)

**Marlies Mueller**, Senior Preceptor in Romance Languages. Production of bilingual (French/English) videotapes for training teaching assistants to teach ethical issues in several foreign language courses. The videotapes show class discussions on matters of public and private morality as well as positive and negative examples of conduct as provided by outstanding French literary masterpieces. (*Funded in 1988*)

**Frederick Neuhouser**, Assistant Professor of Philosophy. Development of two new courses: (1) "Autonomy and Alienation" enrolled 352 students this year, making it the seventh largest in the Moral Reasoning section of the Core Curriculum. The course raises such questions as: Can one be truly autonomous in any kind of society, or are there social conditions which must obtain in order for individuals to be self-determining? (*Funded in 1988*) (2) "Hegel's Ethical Thought" is an introductory course to Hegel's ethical and social philosophy. It examines issues of individual morality,



especially the central claim that individual autonomy is possible only within a rational social world. (*Funded in 1990*)

**Orlando Patterson**, Professor and Chairman of Sociology. Development of new core course on "Freedom." The course discusses the origins and nature of the concept of freedom and the social practices with which it is associated. It focuses on what Professor Patterson believes to be a basic but rarely asked question about freedom: how and why did it become a value in the first place, and later come to be such a dominant value in Western society? Slavery and civil war in ancient as well as modern period are among the topics considered. (*Funded in 1989 and 1990*)

**Donald H. Pfister**, Professor of Biology; Director, Harvard University Herbaria. Development of new course on "The Biology of Trees and Forests" (Science B-40). The course is intended to introduce biological principles to non-science concentrators; it emphasizes the development of scientific information about the biology of trees in relation to humans and ecosystems. General ecological concerns raising ethical issues are integrated with solid scientific training. (*Funded in 1990*)

**Michael Sandel**, Professor of Government. Production of 30-minute video tape, and compilation of curricular materials for distribution (including a guide for teaching fellows) for the widely praised "Justice" course in the Moral Reasoning section of the Core Curriculum. The thirty-minute tape, which shows Professor Sandel leading discussions with students on topics such as affirmative action, is available to teaching fellows and faculty interested in ethics teaching. (*Funded in 1988 and 1989.*)

**Amartya Sen**, Lamont University Professor. Preparation of curricular materials for his core course on "Facts and Ethics." The materials include a revision of syllabus, writing of a guidebook, study sheets, and other resources for teaching fellows. (*Funded in 1988*)

**Janet Farrell Smith**, Visiting Professor at Harvard Divinity School. Preparation of new course on "The Ethics of Property." The course uses readings in philosophy, religion, law, and political theory to examine ethical questions in the control of property, particularly the relationship between property and the family, and policy questions on new forms of property produced by modern technologies. (*Funded in 1988*)

**Philip J. Stone**, Professor of Psychology. Revision of course on "Psychology and Business." The course now includes a section on "Using Psychology to Produce Ethical Behavior in Business," which examines how business practices reinforce psychological traits that create special ethical problems, and how psychology can be enlisted to motivate socially responsive behavior. (*Funded in 1988*)

**Tu Wei-ming**, Professor of Chinese History and Philosophy. Development of a new course on "Confucian Ethics." The course examines Confucian views of the self, the family, society, education, and politics, and asks students to reflect on their own moral views in light of the virtue-centered approach of Confucianism. Special attention is given the interplay between the ideas of self-cultivation and moral community. (*Funded in 1989*)

**Isadore Twersky**, Nathan Littauer Professor of Hebrew Literature and Philosophy. Preparation of new core course on "Moderation and Extremism." The course examines the place of ethics in the philosophies and religions of a wide variety of cultures. It includes an analysis of Aristotle's theories of moderation and extremism (elaborated by Maimonides), and how the view of moderation is expressed in specific legal and ethical contexts. (*Funded in 1990*)

**Patricia Yaeger**, Associate Professor of English and Literature. Development of new course on "The Politics of Childbirth and Childhood." The course uses important works of English and American literature to raise ethical issues related to childbirth and childhood. It considers the ways in which literary works decipher and encode the changing ethical principles that affect our attitudes toward childbirth and childhood in modern life. (*Funded in 1988*)

**Jan Ziolkowski**, Professor of Medieval Latin and of Comparative Literature. Preparation of new core course on "The Ethics of Friendship." The course uses literature from several different periods and cultures to explore the moral dimensions of relations among friends. It considers a wide range of works — from Aristotle, Seneca, and Plutarch through Shakespeare, Montaigne and Bacon. Prominent among the themes are the tensions between friendship and other values — especially patriotism, love, and money. (*Funded in 1989*)

*Appendix V*

**Reports of the Fellows  
1989-90**

Oliver Avens  
Program in Ethics and the Professions  
Final Report  
June 1990

Although my experience with post-doctoral research arrangements is still somewhat limited, it seems to me that the Program in Ethics and the Professions offers its Fellows an environment that surely comes very close to being the Platonic ideal for promoting scholarly endeavor. Among other things, it has provided the company and stimulation of some extraordinarily probing minds, a regular forum to wonder aloud about their diverse viewpoints and concerns, the time and resources to read and to learn, and a wonderfully kind and reliable support staff. But for those (like me) who are starting to pursue new intellectual paths here, perhaps the most important element of all has been the encouragement and guidance of Dennis Thompson. His arguments for the distinctiveness of "practical reasoning" as an intellectual enterprise and his attention to the clarification of its conceptual apparatus will have a lasting impact on my own development as a political theorist. As it is, the past year has been an invaluable opportunity for me to deepen my thinking about the theory and practice of moral deliberation in business contexts.

Having spent the previous year as a Research Associate at the Harvard Business School working to integrate new ethics-related material into the first-year curriculum, I was struck by how distinctive patterns of reasoning more often than not determined how issues of right and wrong were being discussed in the classroom. What I most wanted to do as a Fellow in the Program was to begin to explore how these arguments -- about efficiency, productivity, competitiveness, and so forth -- actually enter into managers' discussion of business policies and on what normative grounds they serve to

legitimate such policies. To a certain extent, this research flowed directly from my ongoing work with the Human Resource Management group at HBS. During my year as a Fellow, I continued to assist HRM faculty in the first-year required course in developing new cases and teaching materials on ethical issues. Most of my field research here focused on situations in which managers used both economic and noneconomic considerations in their decision-making, primarily in the areas of compensation, safety, and workforce diversity policies. The information I gathered in my interviews formed the basis for numerous teaching notes that I wrote to accompany similar cases that were already being taught. I also researched and wrote one new case (on the aftermath of an industrial accident in a steel foundry) that may be used in the HRM course next year.

But it was only in the context of the Program that I could begin to work on the more normative aspect of this problem: how and in what terms are we to understand the social purpose of business in the contemporary world? Do efficiency-based arguments, for example, offer a sufficient basis for legitimating management actions? The notion that, for an ethical theory about business to be coherent, it needed to be tied to a clear idea of the substantive purposes of business, is one that I had begun to develop in my dissertation work. There I try to look at how political concepts may be used to articulate aspirations about the distribution of control inside the modern workplace. In our weekly seminar, the role of "social purpose" was prominent in several discussions and I found that the perspectives that my colleagues with expertise in the professions of law, medicine, and politics brought to the table were particularly helpful. So too were the readings that Dennis

Thompson suggested I look at in preparing an informal presentation during the fall.

During the course of the year, the seminar was for me the focal point for organizing my own thinking about business ethics and the topic that most concerned me. Although it was a terrific learning experience every week, in my case, its greatest value may have been sociological in nature. That is, I began to grasp how very different the starting points can be for ethical discussion in different professions. At the same time, these discussions made me realize that fundamental questions about whether business could even be treated as a profession, with concurrent social responsibilities, still needed to be adequately addressed. Equally important, from my point of view, were the lively discussions evaluating the role of "mother's knee" ethics in the development of professional norms. At a different level, those sessions in which the more abstract questions of applied ethics were raised were also very rewarding, particularly when it meant hearing a fresh reading of some well-known texts by men and women of shining intellect.

Outside of the Program seminar, I attended as many talks and seminars as I could short of becoming distracted from my own work. To mention a few of these: Derek Parfit's graduate seminar on ethics, the second-year elective in business ethics at HBS, the faculty seminars on policy values at the Kennedy School of Government, the political philosophy lecture series at the Center for European Studies, a faculty seminar series on the theory of the firm at HBS. In addition, I was in regular attendance at the first-year HRM course in the Business School as well as an active participant in the weekly teaching group meetings headed by D. Quinn Mills.

It is a bit difficult for me to assess what has been accomplished during the past year. On the one hand, I have made significant progress in my own attempt to unpack the moral concepts that serve to justify (and sometimes to limit) the power that managers typically exercise in modern society. Certainly, I feel better equipped than before to analyze and to grapple with the ethical problems that arise in the business world. On the other hand, I feel some uneasiness about how research that goes beyond "descriptive ethics" is likely to be received by management practitioners and educators. As it stands, if applied ethics is to have a link to policy making, it must address issues of practical implementation from a point of view that makes sense to the individual manager. That at least is the lesson I have learned from two years of practical involvement in management pedagogy. But managers-to-be also could be helped -- from a moral and practical point of view -- by a better understanding of what effect their actions have upon our broader social and political relations. My hope is that the gap between pragmatic problem solving and moral evaluation will narrow in the future. My fear, however, is that the idea of professional norms is likely to be an ineffective vehicle for such change in the business context. At the same time, the contact that I have had with other professional fields during my year in the Program has significantly sharpened my ability to pose such basic questions about the place of business in the realm of professional ethics.

REPORT OF 1989/90 IN THE PROGRAM IN ETHICS & THE PROFESSIONS  
Linda Emanuel

In some sense the year was spent to excellent effect in accordance with plans outlined in my original proposal. In some sense it has been spent in entirely unexpected albeit productive directions.

In terms of intellectual direction it became clear early in the year that in order to pursue my intended project I would need rather different forms of foundational thinking in addition to the formal learning that had been anticipated. The questions of balancing individual and community needs for medical policy that I had posed for myself I were going to need a theory of self for the individual and for the community. Such a theory is gradually gaining shape and draws its justifications from multiple disciplines, in particular the biomedical sciences and philosophy.

I started with a piece on death and dying, presenting a related, and I think quite original, theory of death. This theory implies an unusual theory of the human life entity and its relation to biological life, and indicates, I hope persuasively, the need for important changes in policy regarding care of the terminally ill, the cognitively impaired and the permanently comatose. This piece is being submitted for publication currently. I am hopeful that it will have significant impact on the policy dilemmas we now face including dilemmas concerning termination of medical intervention and organ donation.

A further piece on abortion and surrogacy that will explore the nature of the connection between a fetus and the biological mother, the surrogate mother and the biological father will make use of a more expanded theory of persons. It will seek to move the debate well away from the trodden grounds of rights to life (or lack thereof) and toward defining an area where self and other intermingle (that is the fetus is seen in some degree as part of the mother and father and in some degree as a separate individual). Autonomous rights of atomistic individuals will be seen to give way in part to a greyer zone where morally acceptable treatment of the 'shared' self also holds some sway.

Individuals are connected in very specific ways to their community as well as to their family. The developed theory of self and the connections of self will ultimately be brought to bear on the questions raised in my original proposal of how to balance the needs of individual and community in medical dilemmas. The historical and current examples raised in my original proposal are expected to fall into place around this theory. While I have not even begun to write this piece, some of the foundations for it have been put into place and I expect the coming year to be substantively devoted to it, although I may need more than one year to complete it.



In a somewhat different vein, I have almost completed a jointly authored piece on different models of the physician patient relationship which explored some different interpretations of patients' and physicians' morally appropriate roles. This piece will also be submitted shortly for publication.

In addition, during the 1989/90 academic year I have completed two data manuscripts on prior directives for patients. These manuscripts are being submitted for publication currently. Some of the early work is already published and has received enormous public attention. In addition to responding to more than 8.000 requests from hospitals, journals, lawyers, physicians, members of the public to use our particular Medical Directive, I have been invited to testify before three of the major American Medical colleges and the House Ways & Means Committee of the US Congress for a bill on prior directives being proposed by Congressman Sydney Levin. This prior directive is in many ways a concrete manifestation of the favored model of the physician patient relationship outlined in the above mentioned paper.

Finally, in addition to the learning I have received during this year, I have taught medical ethics to medical students in my capacity as Assistant Director at the new Harvard Medical School Division of Medical Ethics and have continued to run the Massachusetts General Hospital Clinical Ethics Lecture Series, expanding it to include four other major teaching hospitals of Harvard Medical School.

ANNUAL REPORT ON PROGRAM IN ETHICS AND THE PROFESSIONS -  
FRANCES KAMM

(A) WRITTEN WORK:

(1) An article, conceived and written while a fellow, entitled "The Philosopher As Insider and Outsider." It will be published in its long version (42 pp.) in Philosophy and Medicine, August 1990, and in a short version (18 pp.) in The Journal of Business and Professional Ethics.

(2) A review of The Limits of Morality by Shelly Kagan (Oxford University Press), to be published in a symposium on the book in Philosophy and Phenomenological Research.

(3) Completed a reworked version of a manuscript, Abortion, Support, and Creation (140 pp.). (It was originally part of a longer manuscript, Morality, Mortality, but it has been separated out for publication as a separate short book.)

(4) Reworked chapters of Morality, Mortality (800 pp.) and expect to finish reworking it in its entirety by end of July. It will be published as a two volume work by Oxford University Press in a series edited by Derek Parfit.

(5) Completed a draft of an article, "Point Systems for the Distribution of Organs for Transplantation," (20 pp.) which will serve as the basis for a DeCamp Lecture in Bioethics I shall give at Princeton University in November 1990.

(6) Completed a draft of an article on "Cost/Benefit Analysis in Living Donor Transplants" (10 pp.).

(B) PREPARED PRESENTATIONS AND CONFERENCE PARTICIPATION:

(1) Presentation, "The Trolley Problem," Boston University Law School, November 1989

(2) Talk, "Prerogatives and Constraints in Morality," Tufts University Philosophy Department, January 1990

(3) Presentation, "The Trolley Problem," The Austinian Society, February 1990

(4) Talk, "The Trolley Problem," M.I.T. Philosophy Department, March 1990

(5) Presentation, "The Philosopher as Insider and Outsider," Conference on Ethics and the Professions, University of Nebraska, March 1990.

(6) Official commentator on a paper by Sherrill Begres, "Imagination in Moral Thought," American Philosophical Association, Central Division, New Orleans, April 1990

(7) Official commentator on a presentation by Jules Coleman (Yale Law School) on "Corrective Justice and the Cost of Accidents," Colloquium in Politics, Philosophy, and Economics, Baruch College, City University of New York, April 1990

(8) Presentation, "The Acquisition and Distribution of Organs for Transplantation," Harvard Medical School, April 1990

(9) Attendance, American Philosophical Association, Eastern Division, Atlanta, Georgia, December 1989

(10) Invited participant at a working conference on "Impartiality and Ethics," organized by the editors of the journal Ethics, Hollins College, Roanoke, Virginia, June 1990

(C) OTHER WORK:

(1) Regular attendance at classes at Harvard University: Graduate Ethics Seminar (Parfit), Harvard Philosophy Department, Fall 1989; Graduate Seminar on Decision Theory and Morality (Nozick and Sen), Harvard Philosophy Department.

(2) Irregular attendance at Advanced Constitutional Theory (Tribe), Harvard Law School. (The class conflicted with my own at B.U. Law School.)

(3) Regular attendance at Faculty Luncheon Presentations, Harvard Law School

(4) Participation in Faculty Seminar in Adversary Ethics, Kennedy School

(5) Observation of classes at Harvard Business School; observation of medical practice in the emergency room, Beth Israel Hospital, the lung cancer clinic, Dana Farber Cancer Hospital; observation of private practice of internal medicine with Dr. Lewisohn, MGH; attendance at ethics colloquia, MGH. Scheduled for July is observation at the abortion clinic, Brigham and Women's Hospital.

(6) Taught a seminar on Life and Death at Boston University Law School, Spring 1990.

(7) Informal conversations of work with Professors Scanlon, Rawls, Parfit (Philosophy), Fallon, Minnow (Law), Badaracco, Dees (Business), Peterson (Medicine).

(8) Regular participation in weekly seminar in Ethics and the Professions Program.

(9) Attendance at Policy Value Seminar, Kennedy School

(D) HOW THE PROGRAM HELPED (OR HINDERED) MY WORK:

The Program helped by providing free time, research money, and research assistance. I was able to work on my book with my editor, Derek Parfit, in the Harvard Philosophy Department. It also provided me with the opportunity to meet regularly with a group of people - the other Program participants - who represented non-philosophers interested in ethics. It was a valuable opportunity to consider how our intellectual approaches and capacities differ as well as how we can contribute to each other's work. I was encouraged to find that my approach to ethics was considered relevant and useful to non-philosophers, and that I was stimulated to think about new topics by my colleagues. This is, in part, what has prompted me to begin an interdisciplinary Faculty Colloquium on Ethics at New York University. Professionals in Harvard-affiliated institutions have also been helpful in exposing me to hands-on practical work.

Has the program hindered my work? The variety of new experiences and approaches makes it somewhat more difficult to keep to the straight and narrow, but I believe in the long run these "distractions" were right for me. Indeed, I believe I now try harder, in my writing style and manner of expression, to make myself understood by non-philosophers and this improves the clarity of my work. However, I also discovered that the persistent, argumentative style typical of (what I consider) the best analytic philosophy may sometimes be a surprise to non-philosophers. I believe that they come to

like it, and doing moral theory in general, in the end, and this is a positive sign for the interaction between philosophers and the professions.

As a woman philosopher, I especially appreciated the fact that within the Seminar and at other Program activities I was accepted and encouraged, rather than dissuaded from doing the best I could do. This is still a somewhat rare atmosphere for women, and so one is especially grateful to have it. A special note in this regard was Dennis Thompson's encouragement. In general, his intellectual insights, generosity, and encouragement greatly facilitated the work of the Seminar.

June 1990

To: Dennis Thompson  
From: Mark Osiel  
Re: Annual Report  
Date: June 14, 1990

---

Although by temperament I'm more a "fox" than a "hedgehog," this entire year I burrowed away on a single issue without distraction: I spent most of the fellowship conceiving, researching and writing a lengthy article on the comparative historical sociology of lawyers and legal ethics, which appeared in this month's Harvard Law Review. This was a subject area with which I had little familiarity in September, so I devoted a great deal of time reading widely about the history and social structure of the bar and its ethics. My major concern was to explore the relation between the ethical self-understandings of American lawyers and their unique social prominence, as compared to lawyers in other Western industrial societies. For this reason, it was necessary to read virtually everything available in the languages I know about the social structure of the bar and the nature of its ethical standards throughout the modern West. The geographical scope of these inquiries was intended to help overcome the narrow Anglo-American parochialism of most sociological theorizing about the professions in general, and lawyers in particular. I also sought to show the need for philosophical discussions of legal ethics to take greater account of the obstacles to, and opportunities for ethical conduct presented by the nature of the organizations and institutions within which lawyers work. My reading left me convinced that a proper understanding of questions in legal ethics requires central recognition of cross-national differences in these social settings. In particular, I sought to show how the U.S. might stand to gain from examining how most Western European societies have done a better job in checking ethical abuse by attorneys.

The very brief period of time permitted me by the Law Review to formulate this commissioned project and bring it to fruition prevented my participation in as wide a range of ethics-related activities in the Harvard community as I had initially hoped. But I learned enormously from the weekly Program seminar and from ensuing discussions with the other fellows. The results of these stimulating conversations will, I'm sure, heavily influence for many years the way in which I approach the teaching of professional responsibility in the law school context. I will certainly make the central theme of such a course the (probably ineradicable) tension between "role morality" and "common morality," an approach which such

courses (when taught by non-philosophers) have rarely adopted. The deeper effects of the fellowship year on my way of thinking about legal ethics is more difficult to identify, but certainly resulted primarily from the opportunity to listen at length to some very good moral philosophers at work.

After completing the Law Review piece, I returned to reading and research on the problem of judicial responsibility under authoritarian regimes. This project seeks to determine whether different approaches to legal reasoning, when actually adopted by lawyers and judges within a professional community, affect the willingness and capacity of such communities to resist the directives of authoritarian rulers. Since the famous debate between Lon Fuller and H.L.A. Hart, a recurrent question in the philosophy of law has been that of whether legal positivism or natural law jurisprudence leads to greater capitulation in the face of demands from authoritarian rulers. My project attempts to answer this question by examining several incidents of judicial resistance to military rule in Latin America, in order to see what jurisprudential form this resistance has actually tended to take. As might be expected, I'm finding that both Hart and Fuller greatly oversimplified the nature of the problem, and that the impact of jurisprudential ideas on judicial conduct is very much affected by the jurisprudential form in which authoritarian rulers (and their legal apologists) have sought to justify their rule. The extraordinary resources on Latin American law at Harvard's International Legal Studies library made it possible for me to explore these issues in a way that I could have done almost nowhere else. In this research I have obtained invaluable assistance from the research librarians there, and from visiting legal scholars from Latin America at the Law School this year.

Annual Report  
Program in Ethics and the Professions

Alan Wertheimer

June, 1990

All in all, this has been a wonderful year, and I am grateful to the University of Vermont and to Harvard University for making it possible. If my past experience, such as my previous sabbatical leave at the Institute for Advanced Study (1984-85) and a summer institute on law and ethics (1977) is any guide, it will be many years before I know all the ways in which this year has been beneficial to me and, indirectly, to others. Indeed, I suspect that the ideas gained through study, seminars, and informal conversations and the help that will come from friendships and contacts established here will continue to pay intellectual dividends for many years to come. I've gotten to meet, talk with, and listen to many very smart and knowledgeable people this year and that, more than anything else, will be the most enduring effect of the program on me. I hope that I have been able to enrich my colleagues, but I fear that my gains have been greater than my contributions. My children are a bit perplexed that anyone should want to pay me to do what I'm doing here -- read, write, and talk -- an attitude which I think is healthy and which I try to keep in front of me.

I should say that the program has not provided the most ideal conditions for sustained work on a research project. This is distinctly not a criticism. Unlike the Institute for Advanced Study in Princeton, which raises the notion of a distractionless

environment to new levels, there's been a bit too much going on at Harvard! I have tried to balance the desire not to forego rare intellectual opportunities and the desire to make progress on my current research project. I do not know if I've always gotten the balance right. In addition to working on my research project, my principal activities this year were as follows: (1) preparation for and participation in the program's weekly seminar; (2) preparation for and attendance in three courses that I audited -- (a) a course on rational decision and moral decision offered by Robert Nozick and Amartya Sen, (b) a course on equality offered by Derek Parfit, (c) a course on bargaining and strategy offered by Thomas Schelling; (3) I attended 6-8 faculty workshops at Harvard Law School; (4) I participated in a seminar on modern political theory at the Center for European Study, (5) I participated in a seminar on adversary ethics; (6) I attended the policy values seminar; (7) in response to an invitation by Richard Zeckhauser, I commented upon several papers submitted for a festschrift for Thomas Schelling, participated in a discussion group, and presented and commented on a paper by Jon Elster at a conference in honor of Thomas Schelling. Professor Thompson's memorandum asks the fellows to describe what we have "accomplished during the year." I do not know that the foregoing constitute "accomplishments," but they have been enormously rewarding.

For much of the year, the program's seminar was the focal point of the week. I came to the program without much background



in professional ethics, per se. Although I was familiar with some of the background reading, I was also unfamiliar with much of it. Moreover, I previously had virtually no contact with faculty from medicine, law, or business. I am not ready to call myself an expert in professional ethics, but I have clearly learned a great deal. Indeed, I think the quality of discussion within the seminar was consistently higher than in any comparable group in which I have participated.

The University of Vermont has no law school, but does have a medical school, a small business school, a school of engineering, and a school of nursing. To the best of my knowledge, courses in professional ethics are practically non-existent at UVM, although there is an undergraduate course in the philosophical problems of medicine. I have spoken with John Hennessey, the Provost and interim president, who has an interest himself in professional ethics. We will be discussing just what might be done -- for both faculty and students -- to develop their sensitivity to and understanding of the problems of professional ethics.

With respect to my project on exploitation, I have made considerable progress although (as is often the case) not as much as I would have liked. The purpose of this project, which grows out of some earlier work on coercion, is to consider what, if anything, is wrong with what might be called mutually advantageous exploitation, situations in which one party is alleged to take unfair advantage of another, but in which both parties are better off as a result. My general strategy is to adopt a

"bottom-up" method. Rather than attempting to develop a theory of exploitation straight-off, I prefer to move from the particular to the general. Along those lines, I will examine (alleged) exploitation in a variety of contexts, for example, surrogacy, universities and athletes, pharmaceutical companies and AIDS patients, psychotherapists and patients, international relations, etc. I am also examining analogues to exploitation in the law, for example, unconscionability in contract law and what is known as the problem of "unconstitutional conditions" in constitutional law. I hope that I can then extract something reasonably general from these "micro" studies of exploitation. It is too early for me to say whether it will pan out.

In between my other activities, I spent most of the fall semester reading. During the spring semester, I have begun to work on the "micro" parts of the project. I recently presented a piece on surrogacy to the PEP seminar; they have led me to think that there might be something to this project. I have also completed (very) rough drafts of sections on unconstitutional conditions, and the alleged exploitation of student athletes by universities. I am now working on a chapter on unconscionability.



# HARVARD LAW SCHOOL

CAMBRIDGE · MASSACHUSETTS · 02138

June 1990

## ANNUAL REPORT 1989-90

David B. Wilkins<sup>1</sup>

Four years ago, during my first semester of teaching, Dennis Thompson came to the law school to meet with those members of the faculty who were either teaching or writing in the field of legal ethics. The purpose of the meeting was to discuss the newly inaugurated Program in Ethics and the Professions. I recall thinking at the time that the idea of creating a close knit intellectual community of diverse scholars interested in the structure, operation, and ideology of various professions was both exciting and daunting. It seemed to me that if the program succeeded, it could literally revolutionize the way scholars in all of the relevant disciplines taught and wrote about these important issues. But would there be sufficient commonality of interest, method, or orientation to sustain the kind of conversation necessary to make such a transformative enterprise viable? Quite frankly, some of my colleagues were skeptical. I decided to see for myself.

Three years later, I applied and was accepted into the Program. In the year that followed, all of the hopes that I had for the Program, and for my experience in it, have been met or exceeded. I am now quite convinced that the process of transforming (or perhaps more accurately, creating) the field of professional ethics is both possible and essential. And, there can no longer be any question that the Program is at the forefront of this effort. My personal experience over the past year provides ample support for this conclusion. In order to emphasize the many ways in which the Program contributes to the development of this new intellectual

---

1. Assist. Prof. of Law, Harvard Law School. Fellow in the Program in Ethics and the Professions, 1989-90.

agenda, I have divided my brief remarks into three categories: scholarship, collegueship, and support.

#### SCHOLARSHIP

One of the primary objectives of the Program is to encourage new directions in scholarship about the professions. That goal was certainly achieved in my case. By the end of my fellowship year, I will have completed two major projects; both of which were substantially influenced by my experience in the Program. The first piece, entitled "Legal Realism for Lawyers" is an examination of the significance of certain core jurisprudential insights associated with the Legal Realist Movement of the 1930s and 1940s on the foundational claim in legal ethics that zealous advocacy should never exceed the bounds of the law.<sup>2</sup> The paper rejects both the traditional view that legal rules provide clear, objective, and unproblematic constraints on lawyer conduct, and the ultra-realist argument that these same rules provide no meaningful guidance. Instead, I argue that the constraining effect of legal boundaries is, at least in part, a product of how we instruct lawyers to approach the project of interpretation. I conclude by suggesting that we should resolve this pivotal question in the light of our general commitment to democratic values, such as publicity, candor, and accountability.

Quite literally, this paper would not have been written -- at least not in its present form -- but for my experience in the program. The paper frames both the problem posed by legal realism and the potential range of solutions in terms that directly spring from my reading and discussions during the fellowship year. The rigorous exposure I received to the way in which concepts developed in political and moral theory can illuminate complex issues in professional ethics was the foundation upon which I constructed my analysis. Moreover, the Program's cross-professional focus encouraged me to think through the way in which similar tensions are resolved in other professional disciplines.

A similar story can be told about my other major scholarly project. This paper, entitled "In Pursuit of Justice," is an extended review of a recent development in the literature of legal ethics.<sup>3</sup> There, I argue that the in-

---

2. This article will be published in the December, 1990 issue of the Harvard Law Review.

3. This paper will be published in the Summer, 1991 issue of Law and Social Inquiry.

corporation by certain prominent theorists of insights gleaned from the social sciences (particularly philosophy, critical theory, and history) have contributed to an emerging paradigmatic shift in the scholarship of legal ethics. Whereas in the past this literature tended toward either the uncritical acceptance or the wholesale rejection of the framework assumptions underlying the traditional model of legal ethics (for example, assumptions about the virtues of adversary process), this new line of inquiry (which I call constructivism) attempts to graft a new conception of professional role on existing structures and institutions. I conclude by suggesting some ways in which this project, which I believe represents a step in the right direction, can be refined and advanced.

Again, this paper has benefited substantially from my experience in the Program. The importance of interdisciplinary work, and its ability to influence the trajectory of scholarly discourse is, of course, one of the central themes of the Program. Not surprisingly, Dennis Thompson was fully aware of the trend I was investigating; indeed, the primary author with whom I am concerned, David Luban of the University of Maryland, was prominently featured on the reading list for the seminar and was a prior participant in the speaker series. Needless to say, my thinking about the integration of social science and law represented by the work of Luban and others was greatly influenced by my discussions with Dennis and the other fellows.

To describe how these probing and productive conversations influenced my current projects, however, is to capture only one small aspect of the benefits that I derived from being a member of the scholarly community that the program creates. For the effects of membership in this community will surely extend well beyond any particular scholarly project.

#### COLLEAGUESHIP

By bringing together a diverse array of scholars, giving them all offices in the same place, and creating (via the seminar and the speaker series) a set of common reference points, the Program effectively establishes the kind of cosmopolitan intellectual community of which most academics can only dream. Membership in this community will undoubtedly be a major sustaining factor against the often uncomprehending and sometimes hostile environments in which many of us will pursue the project of making the study of professional ethics a rigorous and recognized part of the scholarly agenda.

The seminar was a great success. The readings were invariably comprehensive and thought provoking (though occasionally too long!). But it was the discussion that made the weekly event so thrilling. To put it simply, I do not think that I have ever been a party to a series of discussions that can match the rigor, insight, and creativity of these exchanges. I was continually amazed by the subtlety, sophistication, and raw intellectual power displayed by the other members of the group. Yet, while positions were always forcefully presented -- sometimes pointedly so -- I was equally impressed with the willingness of all concerned to listen and even to change their views. Though many differences remain, it was clear by the end of the year that the group had come together as an intellectually cohesive and supportive whole.

This process was further solidified by the several special events during the course of the year. Indeed, the feeling of being a part of a worldwide community of scholars, all of whom are struggling with the same general set of issues, was crystallized by the speaker series and dinners. The opportunity to meet and debate such internationally renowned scholars as Bernard Williams, Jonathan Glover, and Norm Daniels was certainly one of the highlights of the year.

As important as these formal exchanges were, however, the most important benefits of this unique intellectual community came at the coffee pot, in the halls, or over dinner. It is these informal exchanges of ideas about subjects as diverse as future selves, academic protest, and rap music that I will most treasure. This is the glue that binds.

#### SUPPORT

Finally, none of this marvelous mix of private scholarly achievement and collegial interaction would have been possible without the unstinting support provided by every member of the Program's staff. It is simply not possible to say enough about the efforts of Dennis Thompson. His extraordinary intellectual rigor, curiosity, and creativity are only matched by his tireless organizational skills, grace under pressure (even while being savagely attacked by one of the fellows!), and seemingly unbounded generosity (he read and commented on every draft given to him by every fellow, including two particularly long ones of mine). It is hard to imagine this Program existing without him.

Equally important, however, were the heroic efforts of the other members of the staff. In addition to all of her

regular duties for Dennis (not to mention planning her daughter's wedding!), Helen Hawkins was always ready to cheerfully provide any assistance that the fellows might need. Jane Marsh and Ted Aaberg provided invaluable research and secretarial help. Their concern for the success of the projects in which they assisted rivaled that of the authors. Last but certainly not least (since she practically runs the whole show!) is Jean McVeigh. To say that Jean is completely dedicated to the program would be to seriously understate the level of her commitment. There is literally nothing that Jean would not do to make the fellows' lives more comfortable or productive. (Just as one small example, I am told that she spent an entire weekend in July cleaning the fellows' offices because she was not satisfied with the job that had been done by the cleaning company!). And, what is even more remarkable, she manages to do it all (even in the face of personal tragedy) with more warmth and cheerfulness than the law should allow. If I were in charge, I would immediately sign Jean and the rest of the staff to unbreakable life-time, no-cut contracts before the rest of the world realizes what a gold mine we have here.

In closing, I can only say that if anyone is waiting for me to say something negative about the program, I am afraid that they will be disappointed. To restate what should now be obvious, this has been the most challenging, productive, and rewarding year of my fledgling intellectual career. My only complaint is that neither Dennis nor my Dean will allow me to stay for another year.

# HARVARD UNIVERSITY

The Program in Ethics and the Professions

79 J.F.K. Street

Cambridge, Massachusetts 02138

## ANNUAL REPORT

1989-90

Peter C. Yeager

June 15, 1990

My goal in this fellowship year has been to develop improved understanding of the fields of argument in moral theory and applied ethics, with a view toward deepening my conceptual and interpretive work in ongoing empirical research in business ethics. To a significant extent, I have accomplished this purpose. But an equally positive outcome, in my view, has been the stimulus to further pursue the conceptual and policy analytic materials to which I have been introduced by the Program, not only in respect of business ethics but also in connection with the other areas of professional ethics in which I am especially interested (law and medicine).

The readings and seminar discussions routinely proved to be rich introductions to the various problematics in both moral theory and professional ethics. For a nonphilosopher with little previous exposure to these materials, it was at once heady, fascinating, no small bit intimidating in places, but ultimately most helpful. I anticipate that the experience of



this year will not only improve my analyses of managerial ethics in large organizations, but will also enhance my teaching as I develop my own materials in professional ethics.

With respect to my research, I proceeded on two fronts. I used the large part of the research funds to have my graduate assistant continue work with me on the analysis of some 250 hours of taped interviews with corporate executives and managers. Working with my collaborator, Professor Kathy Kram of Boston University's School of Management, we are especially interested in the ways in which features of complex organizations shape managers' perceptions and handling of ethical dilemmas in their decision making, and the ways in which these may vary by such factors as individuals' rank in the hierarchy, professional identification, organizational responsibilities, and stage of career development.

In terms of conceptual and theoretical development, I have begun to develop arguments regarding the ways in which the division of labor in large organizations may segment moral requirements, "attaching" them variously to the separate organizational roles and responsibilities that individuals take on. In my first effort in this direction, I outlined the arguments and compared them to some of our empirical findings on managerial ethics in a paper for the seminar, "Realms of Reason: Notes on the Division of Moral Labor in Corporate Behavior." I took the opportunity to present this paper to an international conference on white collar crime in May, and a version of it will be published in 1991. I also revised an article on our research methods entitled, "Fielding Hot Topics in Cool Settings: The Study of Corporate Ethics," to be published in 1991.

Ultimately, Professor Kram and I will write a book on corporate ethics for both managerial and academic audiences. As book publishers have already shown

high interest in the project, we anticipate signing an advance contract in the next few months. The book will be heavily shaped by the empirical and conceptual progress I have made during the fellowship year, and by the further study the Program has induced me to undertake.

A small portion of my time was devoted to putting the finishing touches on another book, The Limits of Law: The Public Regulation of Private Pollution, to be published by Cambridge University Press in August. This is my analytic history of the federal government's efforts to control industrial water pollution, and the limits in political economy that constrain those efforts. The book addresses some core questions in both public policy and social theory, including the moral dimensions of environmental imperatives and governance.

Finally, I took the opportunity of the Program year to participate in a number of intellectual activities that are part of the University's richness, including the Policy Values Seminar and the Institute of Politics fall seminar on "The Politics of Ethics, The Ethics of Politics," both at the Kennedy School. I also attended seminars and classes at the Law and Business schools. In sum, the fellowship year has been a most valuable one for me, and has stimulated me to pursue my intellectual and applied interests along newer and deeper lines.