

Harvard University
The Program in Ethics and the Professions
Annual Report 1996-97

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HARVARD UNIVERSITY

The Program in Ethics and the Professions

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Subject: Annual Report of the Program in Ethics and the Professions

Date: July 10, 1997

Displayed on the first page of the annual report I submitted ten years ago was a *New Yorker* cartoon that pictured a large trash can, the kind found in hallways of universities, this one bearing a simple label: "Ethics." I commented that this captured what during that first year I often felt was the attitude toward the study of ethics at Harvard.

How far the Program and the University have come in this field since then is symbolized by the cover of the tenth anniversary booklet: there in the background supporting the title "Ethics at Harvard" can be seen the partial outlines of the word "Veritas," securely carved in stone. And just to show that we are not so arrogant as to suppose that we have actually discovered the moral truth, some of the letters are fractured, and the word is not quite complete. The cover is very much in the spirit of a comment

you made during your much appreciated remarks at our tenth anniversary celebration: the Program "has unleashed what promises to be a continual flood of ethical speculation upon us, in hardback and in paperback, and if we sometimes still feel somewhat muddled about life and all of its dilemmas, I at least feel much more intelligently muddled than before."

The anniversary celebration was reassuring on many fronts. The tributes that the speakers, including you, offered to the Program were gratifying, and the entertainment, including that now classic tune "Big Bad Dennis T," showed that though the annual report may no longer feature cartoons, ethics can still be fun. Seeing in person, all in one place, 63 of our Faculty Fellows and Graduate Fellows, and more than one hundred faculty and other friends of

the Program, including directors of many of our sister institutions throughout the country, provided visible evidence that ethics is flourishing. (Written evidence is also now available in the form of transcripts or tapes of most of the discussions.) The two days of discussions—beginning with the stimulating keynote address by Bernard Williams and commentary by Charles Fried and Cornel West and continuing with a series of distinguished panels on some of the most pressing issues in practical and professional ethics—demonstrated the high level of the contributions that scholars and practitioners are making in these fields. (The speakers and topics are listed in Appendix V.) The most enduring evidence of the value of the ethics initiative was to be found in the bibliography in *Ethics at Harvard* distributed at the conference. In that booklet, supplemented with an addendum, one can find a selective list of more than 40 books and 350 articles by the Faculty Fellows and Graduate Fellows written during or substantially influenced by their year in the Program. I have read enough of this work to appreciate that its impressive quantity is matched by extraordinary quality.

As the ethics initiative at Harvard has expanded, so has the length of my annual reports. Although I would like to think that this too is a sign of the health of the Program, I have tried to shorten somewhat this year's report in the hope that you and our other faithful readers will be able to devote more time to *Ethics at Harvard*, which

chronicles the first decade of the Program. In that booklet, as in this report, we rely on the information provided by the faculty associated with the Program, now active in nearly every school at Harvard. Ethics activities are now so extensive throughout the University that some school-based programs are now issuing their own annual reports.

In preparing this report, I benefited from not only the contributions of our fellows and faculty but also our dedicated staff, Jean McVeigh (Administrative Director), Adrienne Jones (Assistant to the Director), and Jennifer Sekelsky (Staff Assistant). With a move into new quarters, the preparation of the booklet and planning of the conference, and my own new duties in the Provost's office, our staff carried a larger than usual burden this year, but still performed with their usual high level of professionalism.

The Current Faculty Fellows

The Faculty Fellows of '97 rose to greater heights than any previous class. They came with me to our country house in New Hampshire in October, and climbed, every one of them, to the top of Mt. Monadnock. Although some grumbled and some threatened legal action, there was also much good ethics talk, at least on the way down. The physical and verbal abuse I suffered was worth it, if only for the reward of being dubbed a Democratic Moses, who "led us up to the mountain top, and guided us through the wilderness of professional

ethics." After meeting this mountaineering challenge, the difficulties of sustaining a successful interdisciplinary seminar were easier to overcome. The challenges might have seemed greater than usual: half of the group were lawyers, both of the philosophers took a curiously keen interest in business ethics, and the political theorist had doubts about my theory of deliberative democracy. But the lawyers turned out to be as different from one another as fellows from different professions have been in the past, and yet they shared a common broad ranging interest in the theoretical aspects of practical questions. The practical concerns of the philosophers were helpful in bridging the ever-present gap in our work between theory and practice, yet they never hesitated to bring to our attention, each in a different way, the rigorous arguments of Kant. And the political theorist not only showed all of us how deliberative democracy can be made more relevant to practical ethics, but also helped me see ways to improve my own understanding of it. Although the differences were as great as those of any group of fellows, the spirit of collegiality was among the best.

This group of fellows was also one of the most productive. You will find in Appendix III some references to the work they produced here, along with their own accounts of what the Program and Harvard contributed to their intellectual development. The range and the quality are quite remarkable, even in a Program that prides itself on encouraging both.

Each of this year's Faculty Fellows contributed in various important ways to the intellectual life of the University. Several spent considerable time with our Graduate Fellows, with mutually beneficial results. These interactions were facilitated by the luncheon seminars that brought together all the fellows and some of our faculty associates. (These are described in the section on "Graduate Fellows" below.) Each of the Faculty Fellows took part in the activities of at least one other department or program in the University. Norman Bowie attended classes in the Business School, the Philosophy Department, and participated in the workshop on moral and political philosophy for philosophy graduate students. Larry Lessig took part in the faculty workshop at our Law School and also taught a seminar there on what is coming to be called cyberlaw. Arti Rai presented a paper at the faculty seminar in the Division of Medical Ethics at our Medical School and also worked on a brief for Laurence Tribe on one of the assisted suicide cases argued this term before the Supreme Court. Tom Sorell participated in the Moral and Political Philosophy workshop and other activities in the Philosophy Department, as well as meeting with some of our faculty in the Business School. Carol Steiker, on leave from our Law School, maintained her ties there while participating actively in the Program's intellectual life.

As the Faculty Fellows return to full-time teaching and research, they will be leading efforts to give practical and

professional ethics a more prominent place on the agenda in their own disciplines and in their home institutions. Bowie continues as the senior professor in business ethics at the University of Minnesota, while playing an increasingly influential role in the community of scholars in this field. I am especially pleased to note that Lessig has accepted an offer of a professorship in our Law School, where he will teach and write on ethical issues in the law of cyberspace, and explore comparisons among regulatory regimes based on ethical norms, the market and law. Offered several attractive positions, her first time on the job market, Rai finally accepted an assistant professorship at the University of San Diego, where she will teach and write on ethical issues in law and medicine. Sorell returns to the University of Essex, where he directs the doctoral program in Ethics, Politics and Public Policy. He has become a leader in the U.K. and Europe in the study of the ethical issues in health insurance. Steiker is planning to teach ethics and professional responsibility at our Law School, along with her successful courses in criminal law. In addition to her courses on political theory at the University of Toronto, Williams will become more actively involved in the undergraduate program in ethics at Trinity College there. Both Lessig and Steiker, I am happy to report, have accepted our invitation to become Faculty Associates of the Program, beginning next year.

The New Faculty Fellows

Next year's class will have a more European accent—with one Fellow from Italy and another from Austria. The Italian Fellow, the leading philosopher of applied ethics in his country, has recently coordinated the drafting of an ethics code for the major national confederation of business firms there. The Austrian Fellow has also made important contributions to applied ethics, as well as to feminist moral theory. Two of the Faculty Fellows will be working on issues in medical ethics—one a physician/philosopher, the other a scholar of religious studies. A former Ph.D. from our Philosophy Department will spend his year reconsidering liberty, with special attention to public policies on drugs, prostitution and pornography. The lone lawyer next year is as interested in democratic theory as in the law, and will combine both in his study of the regulation of electoral politics. As always, the challenge of finding common ground amidst this rich variety of intellectual concerns is formidable, but the quality of the new Fellows and the intrinsic interest of their individual backgrounds and projects gives me ample reason to be optimistic. (For biographical notes on each of the new Faculty Fellows, see Appendix I.)

The new class was selected from a pool of 112 applicants, a 12 percent increase over last year, and the largest number in the history of the Program. Faculty from 51 different U.S. colleges and universities submitted applications. Forty-three applications

came from overseas, representing 21 countries (Australia, Austria, Belgium, Brazil, Canada, China, Czech Republic, France, Germany, Greece, India, Israel, Italy, Nigeria, Russia, Singapore, Sweden, Switzerland, Taiwan, Turkey, and the United Kingdom). The applicants ranged in age from 24 to 65, with an average age of 43. Thirty-three women applied (about 30 percent of the total). More applicants came from Philosophy (about 25 percent) than any other field. Among other fields represented were: Government including Political Science (17 percent), Medicine (about 13 percent), Law (11 percent), Education (10 percent), Business (about 9 percent), and Religion (5 percent).

The Graduate Fellows

The seventh class of Graduate Fellows included a political theorist and three philosophers (one of whom is a lawyer and another an economist). See Appendix IV for their individual reports. Under the leadership of Arthur Applbaum, the director of the Graduate Fellowships in Ethics, the seminar studied ethical problems in law, business, medicine, and government, and treated topics that cut across the professions, such as the morality of roles and the nature of moral dilemmas. The interests of the Graduate Fellows this year led to special emphasis on nonideal theory, group rights and multiculturalism, political legitimacy, and the law of peoples.

The Graduate Fellows also joined the Faculty Fellows in luncheon seminars with Amy Gutmann (on a chapter from *Color Conscious*), Christine Korsgaard (on her paper on "The Normativity of Instrumental Reason,"), and Michael Sandel (on a chapter from *Democracy's Discontent*).

All of the Graduate Fellows had a productive year and all have promising futures. Agnieszka Jaworska plans to defend her dissertation on practical identity in September; pursuing her growing interest in practical ethics, she will then take up a two-year Fellowship in Clinical Bioethics at the National Institutes of Health. Patchen Markell is nearing completion of a dissertation on political identity and recognition, and plans to be on the job market in political theory. Daniel Markovits has submitted his dissertation on tolerance and begins studies at Yale Law School in the fall. Alex Walen completed articles on gay marriage, on deontological restrictions, and on abortion rights. He has been appointed to an instructorship at the Kennedy School, where he will help teach the required ethics course while finishing his law degree at Harvard.

The five Graduate Fellows selected for 1997-98 are equally impressive. They include two political theorists, a philosopher, an economist, and a war correspondent studying to be a lawyer. See Appendix II for their biographies.

Former Graduate Fellows are now taking positions at leading institutions

around the world. Graduates of the Program have joined the faculties at the University of Michigan School of Public Health, Oxford University, University of Maryland Law School, University of Cologne, Colby College, Cambridge University, Tufts University, University of Virginia, and Williams College. Others hold research positions at the Research Council of Norway, the American Medical Association, the Free University in Amsterdam, University of Florence, the Harvard Society of Fellows, University of Michigan Business School, University of Amsterdam, and the University of Witwatersrand in Johannesburg.

Faculty and Curricular Development

As a result of connections made through the Program, as well as programs within each of the Schools, individual faculty and students come increasingly together for curricular development and research projects. The Program remains an important source for encouraging these collaborations, as well as for providing ethics education for faculty and students. At the same time, nearly all of the faculties have created their own programs and courses, and have their own group of faculty who specialize in ethics. Indeed, we now rely on faculty in each of the Schools, particularly members of our committee and associates, for advice and information to address the many inquiries we receive from individuals and programs outside of Harvard. In these ways, the Program and the related efforts in the Schools exemplify the kind of University-wide

cooperation you have been urging in many different areas of teaching and research at Harvard.

The Program continues to offer advice to the directors of other ethics centers, and to deans and faculty members who are planning to start centers—more than a dozen in the past year. Among the visitors were Count Giovanni Auletta Armenise of Italy, who is chairman of a foundation for advanced scientific research that helps to "improve the appreciation of both physicians and scientists about ethical issues;" Helen Lee, Deputy Executive Director of the Hong Kong Ethics Development Centre, "the first of its kind in Hong Kong which aims at promoting business and related ethics on a long term basis to ensure a clean and efficient business environment;" and Pablo Garcia-Ruiz, of the University of Navarra, in Pamplona, Spain, who is planning to establish an ethics center there. We also met with representatives from several corporations, professional associations, government agencies, and health care organizations.

The Faculty of Arts and Sciences

(based on reports from Michael Sandel and Tim Scanlon)

Ethics activities continue to thrive in the Faculty of Arts and Sciences. Both faculty and students demonstrate a strong commitment through their participation in the Ethics Program's lecture series, Graduate Fellowships, and other events. This year, three visiting lecturers in the Program's

regular series—Richard Rorty, Derek Parfit, and Jeremy Waldron—drew large audiences from the departments of Government and Philosophy, and provided the opportunity for cross-disciplinary discussions at the dinners following the lectures. Two graduate students from these departments, Agnieszka Jaworska and Patchen Markell, held Graduate Fellowships in the Ethics Program. A highlight of the year was the luncheon seminar with Sir Stuart Hampshire, the Oxford scholar who delivered the University Tanner Lectures on Human Values. Ten graduate students from Philosophy, Government, and the Kennedy School, who are working on ethics-related topics, spent a productive session with Hampshire.

The Philosophy Department has appointed a new assistant professor of moral philosophy, Melissa Barry, from the University of Notre Dame, adding to the roster of faculty teaching in the Moral Reasoning division of the Core Curriculum. Several of the College's most popular and substantial introductory courses were developed with the help of the Ethics Program's American Express Fund. Beyond their important contributions to undergraduate education, the large number of core courses give the many graduate students from several departments and schools who serve as teaching fellows a valuable opportunity for interdisciplinary collaboration.

The Philosophy Department this year awarded four Ph.D.s to students writing in moral and political

philosophy, including Scott Brewer, William Haines, Anthony Laden, and Leif Wenar. Tamar Schapiro, a former Graduate Fellow in Ethics, who will complete her Ph.D. this summer, was elected to a three-year Junior Fellowship in the prestigious Society of Fellows.

The Philosophy Department's Workshop in Moral and Political Philosophy (supported by the Graduate School of Arts and Sciences) met weekly throughout the year. Participants included fifteen graduate students working on dissertations in this area, as well as faculty participants Christine Korsgaard, Derek Parfit, Tim Scanlon, and Amartya Sen. The Workshop also sponsored visits by outside speakers, including Jerome Schneewind of Johns Hopkins and Elizabeth Anderson of the University of Michigan. As in the past, the speakers gave colloquia and held office hours for the students in the Workshop.

The Government Department continued its regular series of lectures on political theory primarily for graduate students but open to others in the University including our Faculty Fellows. Among the ethics-related presentations this year were papers by Richard Tuck, Pratap Mehta, Jack Knight, Shelley Burt, and Bernard Yack.

The Center for International Affairs sponsored a conference on "Ethics and International Relations: Challenges to Sovereignty," which attracted both scholars and policymakers. A variety

of issues were contained within the four main themes: "Universalism and Community: Ethical Systems and Human Rights," "The Ethics of Intervention," "Self-Determination, Secession, and Sovereignty," and "International Distributive Justice." In addition to presentations by Harvard faculty, papers were given by Charles Beitz (Bowdoin College), Lori Damrosch (Columbia University), Michael Doyle (Princeton University), Charles W. Maynes, (Editor of *Foreign Policy*), Marilyn McMorrow, (Georgetown University), Daniel Philpott, (University of California at Santa Barbara), Michael Smith (University of Virginia), Brian Urquhart, (former Under-Secretary General of the United Nations), and Ngaire Woods (University College, Oxford).

The Business School

(based on reports from Joe Badaracco)

The promotion of Lynn Sharp Paine to full professor capped a successful year in the area of ethics in the School. A former Faculty Fellow in the Ethics Program, Paine is an outstanding scholar and first-class teacher who will enable the School to maintain a leadership position in the field.

During the last academic year, Paine served as course head for the first year ethics module "Leadership, Values, and Decision Making." She will continue in this position next year while Joe Badaracco assumes responsibilities for the required, first-year "General Management" course.

As a result of these two assignments, all Harvard MBAs will begin and end their first-year in the degree program with courses that concentrate heavily on the ethical responsibilities of managers and their firms. This promises to give business ethics its most prominent role in the MBA curriculum in the history of the School. Also during the year, the business ethics group continued its work on course development and research planning, as well as organizing presentations to a variety of groups.

Several writing projects of the ethics faculty came to fruition. Paine's case book *Cases in Leadership, Ethics, and Organizational Integrity: A Strategic Perspective* was published in January 1997. Badaracco has nearly completed the first draft of a book on the personal aspects of ethical decision-making by business managers, tentatively entitled *Defining Moments: When Managers Must Choose Between Right and Right*, which is expected to be published during 1997.

The new Dean, Kim Clark, has indicated that he intends to encourage more teaching and research on health care management, and is welcoming collaboration with the Medical School. To further this work, he met with Dennis Thompson, MGH Chief of Medicine John Potts, and former Business School Dean John McArthur in the spring to discuss ways of bringing together his faculty with Ezekiel Emanuel, who is leading a major project on the ethics of managed care.

The Design School

(based on reports from Victoria Beach and Carl Sapers)

The Design School, appearing for the first time in our annual report, has recently begun a new course devoted to ethical issues in the practice of architecture. The course was taught by Carl Sapers and Mack Scogin, former chair of architecture in the School. This is one of the few courses of its kind in the country, and as far as we know, the only one to combine case studies with philosophical articles on ethics.

Some of the readings in the course were not only the same as those we use in the Fellows seminar, but several were actually written by former Fellows in the Program. The cases were prepared by Victoria Beach, an architect and Yale-trained political theorist, who served as teaching assistant in the course. The cases were based on actual episodes involving dilemmas faced by practicing architects, and raised issues such as ethical limits on soliciting work, the nature of responsibilities to clients and colleagues, and various conflicts among obligations to clients, professional standards, and the community. Students were assigned to task forces to do further research on each case, and report back to the whole class. The architect who was featured in the case then met with the class in person to discuss the issues the students wished to raise.

The Divinity School

(based on reports from Marcy Murningham)

The Divinity School made significant progress in several new and ongoing initiatives that examine the ethical and values realm of public policy and professional practice. In its courses, interfaculty seminars, special projects, executive education, and the Center for the Study of Values in Public Life (CSVPL), a common theme is the challenge of strengthening democratic civil society and public life in a changing world. The importance of religious ideas and institutions in contributing to public life, both domestic and worldwide, is being explored from a variety of perspectives, including discussions of environmental and economic values, human rights and international relations, faith communities, political rhetoric and public life, and media and communications.

Subjects receiving curricular attention include environmental values, changing patterns of international relations, economic decision making, cultural criticism and urban transformation, and civic renewal and political discourse. An interdisciplinary course entitled "Topics in Environmental Ethics" drew students from the Environmental Studies and Public Policy major as well as graduate students from the Design School, the Government and Anthropology departments of the FAS, the Kennedy School, and the Divinity School. This collaborative endeavor involves Tim Ford (School of Public Health), Bruce

Hay (Law School), and Lawrence Sullivan (Divinity School). The coordinator, Tim Weiskel of CSVPL, delivered lectures on the ethical dimensions of environmental public policy, drawing on his course "Ethical and Religious Dimensions of the Environmental Crisis."

Bryan Hehir, also a Faculty Associate in the Ethics Program, continued to offer his courses on the Catholic social tradition and social teaching, bioethics in Catholic theology, and the politics and ethics of statecraft, and, with Stanley Hoffmann, a course on political and moral criteria for the use of force. Other ethics faculty offerings included Arthur Dyck's "Ethics in Medical Practice," and his colloquium "Ethical Theories in Bioethics;" Ralph Potter's courses on the ethics of relationships, the role of moralists in society, and traditions of civility; Preston Williams' "The Ethical and Religious Thought of Martin Luther King, Jr.;" and Marcy Murnighan's course on the moral values in decision making in the business worlds of media/communications and financial services. Other ethics-related courses were taught by Harvey Cox, Evelyn Brooks Higgenbotham, Ronald Thiemann, and Cornel West (a Faculty Associate of the Ethics Program).

Two interfaculty seminars focused on ethics, values, and public policy during the academic year. The newly-launched Harvard Faculty Seminar on Public Life and Renewal of Democracy provided a forum for 25 University faculty members to share research on the health and future of

American democracy, and to identify common points of investigation. Presentations were given by Robert Putnam, Theda Skocpol, Martha Minow, Bryan Hehir, Constance Buchanan, and Mary Jo Bane. Plans are underway for a book based on the work in the seminar, tentatively entitled *Who Provides? Religion, Civil Society, and the Welfare State*.

At the Seminar on Environmental Values, co-sponsored with the University Committee on the Environment, faculty and practitioners shared their insights, experiences, and concerns about local, national, and global environmental matters. Bryan Hehir and Stanley Hoffmann co-chaired the conference "Ethics and International Relations," which was sponsored by the School, the Center for European Studies, and the Center for International Affairs.

Marcy Murnighan's corporate leadership and values project, which examines the spiritual and ethical values of a group of prominent chief executive officers, will come to fruition this summer with the publication of its results.

In the spring, the CSVPL hosted a series of Boston breakfast seminars for local business leaders, and the CSVPL Advisory Council approved the development, over the next year, of an executive education program on ethics and values. The new Fellows program, which supports scholars and practitioners in the area of civil society and democratic renewal, will bring together for 1997-98 a distinguished

group that includes Gar Alperovitz, a political economist and historian at the University of Maryland; Lawrie Balfour, a lecturer at Princeton University who will also be a visiting scholar at the Du Bois Institute; James Carroll, a journalist and novelist, and Kathleen Sands, associate professor of religious studies at the University of Massachusetts.

The Kennedy School

(based on reports from Arthur Applbaum and Mark Moore)

The Kennedy School's commitment to the required ethics course was reaffirmed by the faculty in a major review of the core curriculum. Jane Mansbridge joined Cary Coglianese and course head Arthur Applbaum in teaching it this year.

The School is fortunate to have Mansbridge join its faculty. Her teaching of the required ethics course was outstanding. While she takes a long-deferred sabbatical next year, she will be missed. Her recent ethics-related work includes "The Contested Nature of the Public Good," "Altruistic Trust," and "Using Power/Fighting Power: The Polity." Mansbridge is also working on two papers about democratic representation: "The Many Faces of Representation" and "When Blacks Should Represent Blacks and Women Represent Women: A Contextual Defense of Descriptive Representation."

Cary Coglianese will spend time this summer developing international case

materials, examples, and study questions for the core ethics course in an effort to further the Dean's goal of making the School a more self-consciously international institution. His article, "Implications of Liberal Neutrality for Environmental Policy," will appear this year in *Environmental Ethics*. Coglianese received the American Political Science Association's Corwin Award for his 1995 dissertation in Public Law.

Back from a productive leave at the Princeton University Center for Human Values, Arthur Applbaum is publishing widely in political philosophy and professional ethics. "Professional Detachment: The Executioner of Paris" appeared in *Harvard Law Review*; "Rules of the Game, Permissible Harms, and the Principle of Fair Play" in a festschrift for Howard Raiffa; and "Racial Generalization, Police Discretion, and Bayesian Contractualism," in *Handled with Discretion*, edited by former Ethics Fellow John Kleinig. "Are Violations of Rights Ever Right?" will appear in *Ethics*, and "Are Lawyers Liars?: The Argument of Redescription" in *Legal Theory*. "Doctor, Schmoctor," a lecture delivered at the American Medical Association's 150th anniversary conference, will be published in a volume edited by two Ethics Program graduates, Linda Emanuel and Stephen Latham. Applbaum continues to consult to the government about the ethics of espionage.

Fred Schauer continues to write and speak about questions of free speech

and political violence, and delivered lectures twice on the issue in Israel. He also pursues his work on legal authority: "On Extrajudicial Constitutional Interpretation," co-authored with Larry Alexander, appeared in a recent issue of the *Harvard Law Review*, and "Legal Positivism as Legal Information," co-authored with Virginia Wise, will appear in a symposium issue of the *Cornell Law Review* in the fall. The current issue of the *Notre Dame Law Review* is devoted to a Symposium about Schauer's work both on rules and on freedom of speech. Among the contributors are Dick Fallon of the Harvard Law School, a Faculty Associate of the Ethics Program, and Ken Greenawalt of the Columbia Law School, a former speaker in the Program's lecture series. Next fall the Quinnipiac College Law School will host a Symposium on Schauer's work on legal reasoning, with the papers to be published as a book. As of July 1, Schauer becomes Academic Dean of the Kennedy School, requiring him to put on hold for a few years his teaching of the core ethics course.

Having spent some years thinking through some important questions about management and leadership in government, Mark Moore has turned his attention to a similar set of questions in the nonprofit sector. He has recently been appointed the Faculty Chair and Acting Director of the newly established Hauser Center on Nonprofit Institutions at the School. Since the nonprofit sector is animated to a large degree by individual attitudes of public-

spiritedness, and since the sector claims some particular benefits from government by virtue of its public-spiritedness, a large number of important ethical issues arise, such as how much public-spiritedness has to be present in an organization for it to accomplish the goals and justify the special treatment that is reserved for charitable organizations; and what role does the nonprofit sector play in developing the habits of citizenship that form the basis of a strong civil and political society.

Kenneth Winston, a former visiting professor in the Ethics Program, and in the Kennedy School, will be returning in 1997-98 to teach "Ethics in Government," a case-based course on political ethics for mid-career students. Otherwise free of teaching obligations for the year, he will devote his time to a book on political ethics, consisting of seven case studies of ethical conflicts faced by public officials in various government agencies.

The Law School

(based on reports from David Wilkins and Martha Minow)

Ethics teaching and scholarship are now firmly established at the center of the Law School's intellectual life. As Dean Robert Clark recently commented, "...ethics has become an important area of study..and the School and the legal community will continue to benefit from further involvement with the [Ethics] Program."

The Program on the Legal Profession, directed by David Wilkins, facilitates interaction and discussion among faculty, students, visiting professors, and practitioners, and hosts a number of conferences and joint lectures each year, some attracting more than 200 academics, practitioners and activists from around the country. This year, current and former affiliates of the Ethics Program contributed to the roster of values-related courses. These included Ethics Faculty Fellow Larry Lessig who offered a course on "The Law of Cyberspace," and former Faculty Fellow in Ethics Moshe Halbertal, from Hebrew University, who taught on "Hermeneutics and Jewish Law." Among the year's visitors were Professor Giorgio Constantino who gave a lecture in the civil procedure class on the Italian legal profession, and Professor William Simon of Stanford University who taught a course on "Community Economic Development."

Last year's expanded curricular offerings continue to thrive. In addition to its standard complement of survey courses, the School offers students specialized ethics courses tied to particular substantive areas of practice. Under the general heading of "Legal Profession," Alan Dershowitz taught "Tactics and Ethics in Criminal Litigation;" Detlev Vagts, "Transnational Practice;" and David Herwitz, "The Legal Profession."

In the fall term, David Wilkins taught an introductory course on American Law and ethics to first year students in the L.L.M. course. His public debate

with Randall Kennedy on the ethical issues facing black professionals engaged the large audience it attracted. Wilkins also spoke to a meeting of the California Bar Association on "Why Are There So Few Black Lawyers in Corporate Law Firms?: An Institutional Analysis" and to an audience at Stanford on race, ethics, and the first amendment. In addition, he lectured on the ethics of contingency fees at a conference on plaintiffs' lawyers sponsored by De Paul University in Chicago, and on "Identities and Roles" as the keynote speaker at the annual meeting of the Association for Practical and Professional Ethics in Washington.

While on leave, Wilkins has completed (in addition to the works listed in Ethics at Harvard) several papers on ethics-related subjects, which will be published soon: "Everyday Practice Is the Troubling Case: Confronting Context in Legal Ethics," "Social Engineers or Corporate Tools? *Brown v. Board of Education* and the Conscience of the Black Corporate Bar," and "How Should We Determine Who Should Regulate Lawyers? Managing Conflict and Context in Professional Regulation." Wilkins will return to full time teaching next year.

Martha Minow, formerly acting director of the Ethics Program, continues to work on topics that raise ethical issues in law and more generally in society. She recently co-chaired and moderated a conference on "Collective Violence and Memory: Judgment, Reconciliation, Education." This spring she delivered the

Meredith Miller Memorial Lecture at Princeton University, entitled "Between Vengeance and Forgiveness." Her book, *Not Only for Myself: Identity, Politics, and the Law* will be published in August 1997.

The Medical School

(based on reports from Lynn Peterson)

According to the report by a distinguished committee of scholars from other universities who conducted a review last year, the Division of Medical Ethics has attracted an outstanding group of faculty, and has made important and impressive contributions to the teaching program of the School. However, the committee also recommended that the Division become more active in research and clinical service, and definitely should be given more secure and larger funding. As a result, after seven months of further discussions among faculty and Deans, the Division was merged with the Program in Medical History, creating the Program in Medical History and Medical Ethics, under Professor Allan Brandt. This gives the Division a secure academic home with a tenured Harvard Professor at the helm as its Director. Lynn Peterson, the former Director, is now the Director of Educational Programs and Clinical Ethics in the Division.

Student involvement in medical ethics continues to grow. The basic elective ethics course attracted the greatest interest—so far 75 students signed up

this year. Because our Fellowship Program has trained a number of our faculty over the past six years, we were able to have Gail Birnbaum, Dan Sullivan, and George Hardart join Lachlan Forrow, Ruth Fischbach and Lynn Peterson to teach this course in a seminar style. We divided the course into three sections with two faculty teaming up to lead each group of 25 students.

Harvard medical students published the first issue of the *Harvard Medical School Journal of Ethics* this year. This issue focused on genetics: articles followed by commentaries were all written by students. The journal was distributed to the entire student body and many of the faculty. This publication gives students a chance to write on important ethical issues, see their work in print, read work by fellow students, and respond to their critiques. Papers in the journal are also used for discussion in the monthly meetings of the Medical Student Journal Club. A second issue is due to come out this summer.

The pioneering course "Living with Life Threatening Illness" has now completed its third year. Co-directed by Susan Black, Andrew Billings, and Lynn Peterson, the course gives students an opportunity to meet one-on-one with patients facing life-threatening illnesses. By meeting with patients several times over three months and receiving feedback instruction from faculty, students develop their communication skills in these difficult situations, learn the fundamentals of palliative care, and

the importance of meeting religious needs.

Courses on pain, using literature to discuss moral issues in medicine and research ethics, continued successfully this year. In the month-long intensive seminar led by Ruth Fischbach, students learned about the physical and social science of pain as well as how to manage various pain problems. The literature course taught by Martha Montello, enrolling more than twenty students from the Health Sciences and Technology Division, read works by Kafka, Tolstoy and Percy. Fischbach's course on research ethics was the most successful in its six year history.

As in previous years, the three-year required Patient/Doctor course included substantial material on ethics. Most of it appears in the third year where nearly a third of the sessions explicitly deal with ethics. Lynn Peterson, Lachlan Forrow and Alex Flather-Morgan, all members of the Division, help plan the curriculum and teach in the course. Special ethics sessions this year dealt with ethics and managed care.

Our efforts in continuing medical education continue to grow. This year we offered two courses: one in the fall on "Professionalism and Ethics in Managed Care," taught by Ezekiel Emanuel, James Sabin, Steve Pearson and Lynn Peterson, and another in the summer, "Towards Excellence in Care Near the End of Life," conducted by Christine Mitchell and Lynn Peterson.

This year's medical ethics Fellows included four physicians, a psychologist, an investigative journalist and a former Rhodes Scholar. Walter Robinson led most of this year's seminars and will be the Director of the Fellowship Program for next year. Robert Truog and Ezekiel Emanuel served as Co-Directors; many division members as well as other Harvard faculty led individual seminars. Applications for next year significantly increased.

Faculty seminars were organized by Christine Mitchell. We had a late start due to the Division's restructuring and loss of key personnel. In addition to colleagues from the Medical School—Ned Cassem, Jeffrey Burns and Lynn Peterson—the seminar featured speakers Alan Stone from the Law School and Arti Rai, a Faculty Fellow in the Ethics Program.

This year saw the establishment of the new Center for Ethics and Managed Care, under the joint auspices of the Department of Ambulatory Care and Prevention and the Department of Social Medicine. The Center will help coordinate research and teaching in ethics and managed care, enabling scholars from many disciplines to collaborate and to raise funds for research projects. The Center will maintain a close relationship with the region's largest managed care organization, Harvard Pilgrim Health Care.

The Brigham and Women's Hospital will soon announce its new Ethics Service, to be directed by Lynn

Peterson. Along with the program at Children's Hospital, this will provide the Division with a second hospital site for teaching, research and clinical service. It will also assume the responsibility of the long-standing Ethics Committee which has been chaired by Ken Ryan. The new Service represents an important step in establishing a stronger clinical base for the Division's activities.

The Risk Management Foundation has awarded the Division a grant for the development of its first CD-ROM, to be used in student and physician teaching. It will present a case about the difficulties of giving patients adverse information on their condition, the role of advance directives, and the ethics of withdrawing care near the end of life. The project is scheduled to be completed by next year.

Daniel Callahan, co-founder of the Hastings Center, has been appointed chairman of the Division's new committee that is seeking to strengthen the development efforts in the area of medical ethics. Working with Allan Brandt, Division members, and the Medical School's Development Office, Callahan held a series of planning meetings this spring. Callahan also served this year as the School's George Gay lecturer in medical ethics, presenting a well received talk "Medicine and the Market."

Gail Birnbaum, Ezekiel and Linda Emanuel and Marcia Angell represented the Division on panels at

the Ethics Program's tenth anniversary celebration. Many other Division members attended the events. This celebration demonstrated the Program's effectiveness in enriching professional ethics by enabling professionals to talk across disciplines about issues they share.

The School of Public Health

(based on reports from Troyen Brennan)

The School was among the first of the professional schools at Harvard to require that its students take ethics courses, and the teaching efforts as well as research contributions in this area continue to expand. Michael Reich and Marc Roberts broadened and deepened their course, "The Ethical Basis of Public Health Practice," which is required for all Masters of Public Health students. A similar course is offered by Troy Brennan for public health students and participants in the Summer Institute. Brennan also teaches a course on ethical and legal issues in health care for students from both Public Health and the Medical School. The pedagogical influence of the School's efforts have spread to Europe, where Karl Lauterbach, a graduate of the School, and a former Graduate Fellow in Ethics, now teaches the ethics of public health at the University of Cologne in Germany.

The School also requires all trainees funded by the National Institutes of Health to participate in the course, "Research Ethics in Public Health." This course provides an overview of

the various moral dilemmas that can arise in the conduct of research on public health issues. Richard Cash now offers an additional course in research ethics, which examines how research is conducted in developing countries. We have found that the ethical issues arising in the research conducted in international public health are quite different than those in this country, and this course seeks to deal with those differences.

A new advisory group, led by David Hunter, has been established to examine ethical issues that arise in molecular epidemiology. Research in this area involves understanding the population genetics of disease; the research focuses mostly on genetics of cancer. The work of Hunter's group is intended to provide a set of ethical and legal principles for scientists who work in this challenging area of research.

Public Lectures

The Program's regular lecture series, supported by a fund established by Obert Tanner, has the aim of encouraging philosophical reflection on problems of human values in contemporary society. Our series continued this year in the spirit of the interfaculty collaboration you are encouraging throughout the University. As in previous years, it attracted overflow crowds from the University and the wider community.

The speakers in this year's series were: Richard Rorty (University of Virginia), "Justice as a Larger Loyalty," Jeremy

Waldron (Princeton), "Truth, Publicity and Civil Doctrine," Moshe Halbertal (Hebrew University), "Liberalism and Communitarianism in Israel," and Derek Parfit (Oxford University), "Reasons and Motivation." In addition, Brian Barry (London School of Economics) presented a seminar for invited students and faculty on "Liberalism and Multiculturalism."

The Program now shares, along with the President's office, responsibility for arranging the annual Tanner Lectures on Human Values. This year's lecturer, Stuart Hampshire of Oxford, spoke on "Justice is Conflict: The Soul and the State." As one of the leading philosophers of our time, he attracted many students and faculty from the philosophical community. But the audience for the lectures and the seminar that followed included students and faculty from many other parts of the University, notably the Schools of Business, Divinity, Law, Medicine, and Public Health. Commentators at the seminar that followed his lectures were Joshua Cohen (M.I.T.) and Martha Nussbaum (University of Chicago).

The extraordinary year of lectures was capped by the presentations at our tenth anniversary conference. The speakers and topics for that conference are listed in Appendix V.

Future Prospects

The tenth anniversary conference was not only a celebration of what the Program has accomplished during the past decade, but also an affirmation of

the importance of continuing its work in the future. The conference brought together not only former fellows and long-time supporters but also some new faculty and friends who told us later that they wished to help the Program as it goes forward.

The most significant new gift this year came from Eugene Beard, a New York businessman with a long-standing interest in ethics. His gift will fund a Graduate Fellowship in the Program for five years, a key element of our Program and one of our highest priorities in the campaign. In addition, we have received several other gifts this year which, though smaller in amount, are important because, as unrestricted grants, they express confidence in the general purposes of the Program. We are also continuing conversations with several other alumni and friends who have expressed a serious interest in the strengthening of ethics education and research at Harvard.

As we move now into the final phase of the campaign, we appreciate the increased attention that you and the Development Office are giving to the Ethics Program, along with the other four interfaculty initiatives. In particular, we are benefiting from the work of Diane Malcolmson, appointed this year as Director of University Campaign Projects. We are working with her to plan meetings with potential donors, presentations to alumni and other groups, and a proposal for an advisory council for the Program. I am pleased to report that John McArthur, former Dean of

the Business School, has agreed to help us plan some of our development efforts, including the formation of an advisory council.

Our campaign statement, approved by you and the Deans, sets a target of \$15 million, which includes term funds for the core activities, and endowment funds to continue these activities and to support our plans for expansion. In addition, we take an interest in the success of the Schools that are seeking funds for ethics because the health of our central Program depends on maintaining strong school-based ethics activities. The most important needs in this respect are additional professorships for faculty who specialize in ethics in several of the schools, especially the Medical School.

We are proud that you and the Academic Council have designated ethics as one of the five interfaculty initiatives in the campaign. This and the institutional support that has accompanied this recognition have given all of us associated with the Program in the past, as well as those who we hope may join us in the future, even greater confidence that we are engaged in an important mission for higher education. We look forward to working with you and other supporters of this mission to find the resources to maintain and expand teaching and research in ethics in the future.

Appendix I
Faculty Fellows in Ethics
1997-98

PETER DE MARNEFFE is Assistant Professor of Philosophy at Arizona State University, where he teaches courses in moral, political and legal philosophy. He received a B.A. in philosophy from the University of Massachusetts at Amherst, and a Ph.D. in philosophy from Harvard University. He has written articles on rights and liberty which have appeared in *Philosophy & Public Affairs*, *Ethics*, and other scholarly journals. During his Fellowship year he will work on a book, tentatively entitled *Liberty Reconsidered*, which will argue that taking rights to liberty seriously does not commit one to liberal policies on drugs, prostitution and pornography.

LISA LEHMANN is an internal medicine physician and graduate student in philosophy. She was a College Scholar at Cornell University where she studied philosophy, chemistry and near eastern studies. After receiving her B.A. she spent two years studying Talmudic texts and Jewish thought. She received her M.D. from the Johns Hopkins University School of Medicine and completed her training in internal medicine at the Johns Hopkins Hospital. She is currently working on her Ph.D. dissertation in philosophy. During her Fellowship year, she will explore the ethical issues raised by new genetic information and technology.

SEBASTIANO MAFFETTONE is Professor of Political Philosophy at the University of Palermo, Italy, and is also coordinator of a post-graduate program in ethics and social philosophy at the University of Suor Orsola in Naples. He received a M.Sc. at the London School of Economics. Professor Maffettone is editor of the journal *Filosofia e Questioni Pubbliche*, and has introduced the work of John Rawls and other American political philosophers to Italy. He is the author of ten books and many scientific articles on topics within political philosophy and applied ethics, including *Valori comuni*, *Le ragioni degli altri*, and *I fondamenti del liberalismo* (with Ronald Dworkin). He also edited the Italian edition of Rawls's *A Theory of Justice*. He was recently the coordinator of an Ethical Code for Confindustria, the agency that represents major Italian firms and factories.

RICHARD B. MILLER is a Finkelstein Fellow and Professor in the Department of Religious Studies at Indiana University. He teaches courses in ethical theory, the history of Christian ethics, and social and political philosophy. After receiving a B.A. in Religious Studies at the University of Virginia, he received a Master's degree in Theology from the Catholic University of America and a Ph.D. in social ethics from the University of Chicago. He has published *Interpretations of Conflict: Ethics, Pacifism, and the Just-War Tradition* and *Casuistry and Modern Ethics: A Poetics of Practical Reasoning*, along with numerous articles on casuistry, war and peace issues,

medical ethics, and the teaching of religion. During his Fellowship year, his research will focus on the moral culture of pediatric care.

HERLINDE PAUER-STUDER is Assistant Professor of Philosophy at the University of Vienna. She received an M.A. in Philosophy at the University of Toronto and a Ph.D. in Philosophy at the University of Salzburg. Her main areas of research are ethics and political philosophy. Her book, *Das Andere der Gerechtigkeit: Moraltheorie im Kontext der Geschlechterdifferenz* was published in 1996. During her Fellowship year, she will examine the connections between conceptions of equality and theories of the good.

RICHARD PILDES is Professor of Law at the University of Michigan Law School. He received his A.B. in physical chemistry from Princeton University and his J.D. from Harvard Law School. He then clerked for Judge Abner J. Mikva at the United States Court of Appeals for the District of Columbia Circuit, and for Justice Thurgood Marshall at the United States Supreme Court. After clerking he practiced law at Foley, Hoag, and Eliot in Boston. He has been a Visiting Professor of Law at the University of Chicago and the University of Texas. He has written on legal subjects such as voting rights, regulatory policy, and constitutional law, as well as on more theoretically oriented subjects such as rational-choice theory, social capital theory, and the theory of constitutional rights. During the Fellowship year, he will explore the relationship between general questions of democratic theory and more specific applications in areas such as the design of democratic institutions and the regulation of electoral politics.

Appendix II
Graduate Fellows in Ethics
1997-98

PETER CANNAVÒ is a Ph.D. candidate in government. His dissertation explores how environmental politics conceptualizes relations between human beings and nature, how such conceptual frameworks are rooted in Western political theory, and what implications they have for our notions of work and citizenship. Cannavò received an A.B. in Government from Harvard in 1986 and an M.P.A. from Princeton University's Woodrow Wilson School in 1992. While at Princeton, he initiated a redesign of the School's curriculum in science and technology policy. At Harvard, Cannavò has been awarded Mellon and National Science Foundation fellowships, and the Arthur Maass Prize Fellowship.

EVAN CHARNEY is a Ph.D. candidate in government, studying ethics and political theory. His dissertation examines the concept of political liberalism both as presented in the works of contemporary political theorists such as John Rawls, Brian Barry and Thomas Nagel, and as exhibited in American constitutional law and jurisprudence. He has an A.M. in classics and philosophy from Harvard and also attended Harvard Law School. As an undergraduate he won various awards in classics, and as a graduate student has held Andrew Mellon, Jacob Javits and Earhart Foundation fellowships, and was an Edward Banfield Fellow in Government. His article "Political Liberalism, Deliberative Democracy, and the Public Sphere" is forthcoming.

NIEN-HÊ HSIEH is pursuing a Ph.D. in economics. He seeks to evaluate the organization of economic activity not only with respect to efficiency, but more fundamentally with respect to the promotion of individual well-being as defined by personal autonomy and self-realization. As part of this project, he is currently analyzing the relationship among ownership structure, profitability, and worker control in the firm. Hsieh received his B.A. in Economics from Swarthmore College and an M.Phil. in Politics at New College, Oxford, with scholarships from the Harry S. Truman and Keasbey Foundations.

SAMANTHA POWER, a J.D. candidate at the Law School, has been named the Eugene P. Beard Graduate Fellow in Ethics. She graduated from Yale University in 1992 with a B.A. in History. As a journalist for *U.S. News and World Report* and the *Economist*, she covered the war in Bosnia-Herzegovina and, in 1996, joined the International Crisis Group as a political analyst. She is currently writing a book on international responses to genocide in the twentieth century, and is exploring the post-war development of a moral and legal right of military intervention, contrasting it with the empirical reluctance of outside powers to exercise that right. Power's publications include *Breakdown in the Balkans*, "Greater Serbs" in *Black Book of*

Bosnia, and "USA: The Reluctant Superpower" in *With No Peace to Keep: U.N. Peacekeeping and the War in the Former Yugoslavia*. Her commentary has appeared in the *New Republic*, *New York Times* and *Washington Post*. Power will serve concurrently as a fellow of the Joan Shorenstein Center on the Press, Politics and Public Policy.

ANGELA M. SMITH, a Ph.D. candidate in philosophy, is exploring the role of the active/passive distinction in shaping philosophical accounts of moral agency. Smith received her B.A. in Philosophy and Political Science from Williamette University in 1992 and received a Jacob K. Javits Fellowship to study philosophy at Harvard. In addition to teaching courses in ethics and ancient philosophy, Smith is Assistant Head Tutor in the Philosophy Department. Her first article, "Knowledge and Expertise in the Early Platonic Dialogues," will appear in the *Archiv fur Geschichte der Philosophie* in 1998.

Appendix III
Reports of the Faculty Fellows
1996-97

HARVARD UNIVERSITY

The Program in Ethics and the Professions

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Report on Fellowship Year 1996-97

Norman E. Bowie

The 1996-97 academic year marked my thirtieth year in higher education and my first full year's sabbatical. It has been worth the wait to spend that year as a fellow in The Program in Ethics and the Professions. I simply could not imagine a more stimulating and productive year than the year I have spent here.

In my fellowship application I had proposed writing a book in business ethics entitled "A Kantian Theory of the Firm." I am happy to report that a draft of that book has been completed in a form suitable for consideration by Oxford University Press. I am indebted to the seminar participants who provided critical comments on the most lengthy chapter in the book and especially to fellow Tom Sorell who read and provided extensive comments on all five chapters. Graduate fellow Alec Walden also commented most helpfully on several chapters. I also delivered a portion of that chapter as a keynote address for the 25th anniversary of the Society for Value Inquiry. Former fellow Ken Winston provided another opportunity for critical comment by asking me to discuss a chapter with the Austinian Society. I also benefitted greatly from the work of Chris Korsgaard and from a luncheon conversation with her. It is rare indeed to have the opportunity to receive such input on a work in progress.

A secondary project consisted in preparing my chapters of a new edition of a co-authored text with Robert L. Simon, The Individual and the Political Order. Three chapters have been completed. A new chapter on communitarian and feminist responses to Rawls has been deeply influenced by the fellows and guest speakers who have written widely on this issue. Melissa Williams was especially helpful in this regard. As a result of Dennis Thompson's and Amy Gutmann's work on deliberative democracy, I have been able to enrich our chapter on democracy.

In addition, the program has provided me the opportunity to revise two papers in business ethics that have been accepted at scholarly journals and to write two other papers which are being considered for international conferences. Finally I wrote a paper for presentation at a conference honoring the work in business ethics of Clarence Walton former president of Catholic University.

Although unrelated to my year here, I did take off a few days in January to attend a faculty development workshop at Iowa State University that focused on my book University/Business

Partnerships: An Assessment.

In addition to the program's impact on my written research, I benefitted greatly from the following:

1. Lynn Paine and Joe Badaracco were kind enough to allow me to sit in on several sessions of the business ethics course given to MBA's prior to the starting of their first year formal program. This provided me an opportunity to observe Harvard's well-known case method teaching method in practice. I came away impressed and with several ideas to improve my own teaching in business ethics.
2. Although I could not sit in on Chris Korsgaard's course on Kant's ethics because it conflicted with our Tuesday seminar, I did receive her syllabus and all her handouts. With Chris's permission I will teach a philosophy course on Kant's ethics at the University of Minnesota in the fall based on that syllabus.
3. As applied ethics has become more specialized, it has been extremely difficult to keep up in areas allied to one's own area of specialization. Early in my career I published pieces in both legal ethics and medical ethics. Lately I had become "dated" in these areas. The seminar provided an excellent opportunity to become familiar with the leading edge thinking in these areas and in broad themes in professional ethics, e.g., role morality. Required reading is better than good intentions for catching up.
4. At most universities, if you hear one or two illustrious speakers a year you have done well. During my year here I have heard over a dozen. I learned things of importance from some and it was a pleasure to see in the flesh some with whom I was acquainted through the written word alone.
5. In the fall I attended Philosophy Department's Workshop on Moral and Political Philosophy. That Workshop provided an opportunity to read and comment on the papers of Harvard PhD students in this area. I regret that time pressures kept me from participating in the spring.

As a former applied ethics center director and department chair, I know the importance and value of a highly skilled staff. This program is fortunate to have a superb staff. I have especially appreciated the support of Jean McVeigh and Adrienne Jones. I am especially indebted to Dennis Thompson who has provided sound advice on matters both intellectual and personal. He and Carol have been most hospitable and I have incurred a debt to Dennis that I could never repay.

Finally, my wife and I have taken advantage of the wonderful cultural and historical resources in the Boston area. It has been a pleasure to live in the largest historical district in the United States, to be members of the Boston Museum of Fine Arts and to dine at Olives. We will look back upon this year with fond memories.

MEMORANDUM

May 1, 1997

TO: Dennis Thompson
FROM: Larry Lessig
RE: The year

This has been the most valuable year I have had since I began teaching. As I indicated in my application, my primary aim was to work on a book about the regulation of cyberspace. I took it as a very good sign that it was obvious to you just how closely that issue ties to the core issues of the program. Over the year, I have found that the seminar and my colleagues have helped me enormously in that project. The discipline of the seminars, and the continuity of our conversations, have allowed me to work through questions that stand behind the direct topic of my work.

More significantly, I can also see that my interests over the year have shifted because of the program. I expect that after I have completed the projects I am presently working on, my work will turn to a topic quite directly tied to our conversations this year — namely, how to think about the competing regulatory regimes of ethics, or norms, as against the market, or law.

I list below the work I have accomplished during the year.

Books in Progress

Fidelity in Translation: I completed a draft of a book about constitutional interpretation. This draws together a number of articles that together develop an approach to constitutional fidelity, and that suggest the strengths and weaknesses in this approach. I expect to complete this book sometimes next year, after completing more research for the project.

The Regulation of Cyberspace: I have also completed a substantial part of the book about the regulation of cyberspace. The book offers a way to think about regulation in cyberspace, and a way to link that understanding to constitutional interpretation. I expect to complete the book by the fall.

Articles Completed or Substantially Complete

The Erie-Effects of Volume 110: An Essay on Context in Constitutional Theory,
110 Harvard Law Review (forthcoming 1997).

Lessons from a Line Item Veto Law
Case Western Reserve Law Review (forthcoming 1997).

The Puzzling Persistence of Bellbottom Theory: What a Constitutional Theory Should Be
Georgetown Law Journal (forthcoming 1997).

The Constitution of Code: Limitations on Choice-based Critiques of Cyberspace Regulation
CommLaw Conspectus (forthcoming 1997).

The New Chicago School
Journal of Law and Economics (forthcoming 1997).

Constitution and Code
27 Cumberland Law Review 1 (1997).

Fidelity and Constraint
Fordham Law Review (forthcoming 1997).

Essays

The Ideology of Code
Wired Magazine, forthcoming, July, 1997.

Making Sense of the Hague Tribunal
Eastern European Constitutional Review, Fall, 1996.

A Good Plan for a Bad Idea
OpEd, Wall Street Journal, 12/6/96.

Conferences and Papers Presented

B. U. Law School Faculty Workshop, April, 1997
Boston, MA

Vanderbilt School of Law, April, 1997
Nashville, TN

Local Values and Global Telecommunications, National Research Council, April, 1997
Washington, DC.

Stanford University Law School, April, 1997
Stanford, CA

Presidential Power, Case Western Reserve University Law
School, April, 1997
Cleveland, OH

Digital Library Initiative, University of Michigan, March,
1997
Santa Fe, NM.

Computers, Freedom, Privacy 1997, March, 1997
San Francisco, CA.

Media Institute, Catholic University, March, 1997
Washington, DC

G.W. U. Law School Legal Theory Workshop, March,
1997
Washington, DC.

Harvard Law School Faculty Workshop, February, 1997
Cambridge, MA.

Columbia Law School, February, 1997
New York, NY.

Quinnipiac School of Law, February, 1997
Hamden, CT

Hartman Institute, December, 1996
Jerusalem, Israel

Cordell Hull Speaker's Forum, Cumberland School of
Law, November, 1996
Birmingham, AL.

American Society of Comparative Law, September, 1996
Detroit, MI

Fidelity in Constitutional Theory, Fordham Law School,
September, 1996
New York, NY

Legal Theory Workshop, U. of Colorado at Boulder,
September, 1996
Boulder, CO

Report on 1996-97 Fellowship in the Program in Ethics and the Professions

Arti Rai

My experience as a fellow was an extremely positive one. The fellowship provided me with the freedom and the support necessary to refine existing works-in-progress and to develop new research directions. Dennis Thompson is a highly creative, energetic, and personable Director. The Program's staff members (Jean McVeigh, Adrienne Jones, and Jennifer Sekelsky) are also superb. In addition, the Program is interdisciplinary in the best sense of the word. Without sacrificing depth and rigor, it invokes the perspective of a wide variety of different disciplines. As someone who has, at various points in her life, studied law, medicine, ethics, and the history and philosophy of science, I thoroughly enjoyed the interdisciplinary aspects of the Program.

Projects and Presentations

1) I completed work on a law review article entitled "Rationing Through Choice: A New Approach to Cost-Effectiveness Analysis in Health Care." The article will be published in the June 1997 issue of the Indiana Law Journal. The article argues for a system of health care rationing that allows some role for individual choice; it illustrates arguments for choice through the example of cost-effectiveness as a rationing choice. The weekly seminar meetings strengthened various parts of the article, particularly the sections which propose a "reflective" model of choice and discuss the need for a balance between paternalism and choice. Comments on the article by several of my "fellow fellows" -- Larry Lessig, Tom Sorell, Carol Steiker, and graduate fellow Alec Walen -- also improved the piece significantly.

I presented portions of this article to a large number of law school faculties (too numerous to list here). I also presented the article at the Faculty Seminar Series of the Harvard Medical School's Division of Medical Ethics.

2) I completed a medical journal article (co-authored with two doctors/medical ethicists at the University of Chicago) entitled "The Physician as a Health Care Proxy." The article argues that, contrary to the laws of most states, individuals should be allowed to designate their physician as a proxy to make medical decisions in the event they are unable to make such decisions in the future. The seminar discussions enriched my understanding of the concept of autonomy, a concept which is central to the argument in this article.

3) During the year, I did considerable work on an article entitled (tentatively) "Property Rights and Basic Science: The Case of Genetics Research." The article argues that the regime of formal property rights in basic science should operate in a manner that reinforces the traditional norms and reward structures of scientific research. I presented a portion of this article at the weekly seminar meeting. The discussion at the seminar was extremely helpful to me in clarifying both the thesis and scope of the project.

4) I worked with Harvard Law School professor Laurence Tribe on the respondents' brief in *Quill v. Vacco*, one of the two assisted suicide cases that were argued before the U.S. Supreme Court in the 1996 term. Working on this brief complemented very nicely our discussion of assisted suicide in the weekly seminar as well as the discussion of assisted suicide that occurred at the 10th anniversary celebration of the Program in Ethics and the Professions.

The Seminar

As I have noted, the seminar had a significant influence on my research projects. Moreover, even when it didn't affect my research directly, the seminar demonstrated to me the virtues of deliberation and reflection. I generally left the seminar with a perspective that had shifted at least slightly from my initial perspective. At a minimum, the issues seemed to me more complicated than they had at the outset.

In addition, it is difficult to say too much about Dennis Thompson's abilities as a contributor to, and facilitator of, discussion. He is unfailingly thoughtful and civil. He also has a great sense of humor (as does everyone at the Program generally).

The Lectures and the Tenth Anniversary Celebration

I appreciated the opportunity to attend lectures by leading philosophers and to discuss the lectures (and other issues) with a wide variety of talented scholars during the dinners that followed. The wealth of intellectual resources upon which the Program can draw was evident at the lectures and dinners. Perhaps above all, however, the Tenth Anniversary celebration made it abundantly clear that the Ethics Program has succeeded in doing what is, by all accounts, a very difficult thing to do at Harvard: it has succeeded in establishing a vibrant and solid interdisciplinary community.

People

The people at the Program -- the fellows, the graduate fellows, the Program staff, Arthur Applbaum and Dennis Thompson -- deserve an especially enthusiastic thank you. "Collegial" is too understated an adjective to describe the year's interactions. Dennis Thompson set the tone early on in the year by inviting us to climb a mountain (Mount Monadnock) together. I very much appreciated the generous support of my colleagues in that (quite arduous!) physical task. Their support and good humor was equally forthcoming in the intellectual labors that arose during the year. As someone who is just beginning her academic career in law and ethics, I cannot imagine a better launching point than this fellowship.

Report on the Fellowship Year

Tom Sorell

When I applied to the Ethics Program I proposed to work on a book tentatively entitled *Moral Theory and Anomaly*. A complete draft of that book emerged by 11 April. I hope it will be under contract to a publisher in the near future. It was entirely written during my Fellowship year. The book considers in detail several supposed failures of application of moral theory --to business, to political office holding, to the relief of injustice toward women, to the environment-- and considers whether these supposed failures justify skepticism about moral theory more effectively than the general arguments against moral theory put forward by philosophers like Bernard Williams and Annette Baier. I argue that many of the supposed failures are not in fact failures, and that the recalcitrant puzzles for moral theory in the chosen areas are smaller than the critics suppose. Showing this is perhaps a more effective way of defending moral theory than producing an argument of the same level of generality as one gets from Williams or Baier. Some of the literature that turned out to be essential for my purposes was heavily discussed at the Fellows' seminar, and I had many opportunities to test in seminar interventions ideas about that literature that have been incorporated into the book.

By the end of the Fellowship year I will also have brought close to completion another publication project: namely, an edited collection on ethics and health insurance within a UK context. This collection will be published by Routledge.

Having a base in Cambridge made it possible to give many talks during my Fellowship year. I am grateful to McGill, Columbia, CUNY, University of Toronto, University of Western Ontario, University of Michigan, University of Wisconsin, University of Massachusetts at Amherst, and Virginia Tech for their invitations. I also had unexpected opportunities to talk at Harvard to the Austinian Society in February, and to present a seminar to the University of Bath in England in March.

I made a number of contributions to conferences during my Fellowship year. In November 1996, I spoke to the World Bioethics Conference in San Francisco on ethics and insurance underwriting issues; at the end of April 1997 I gave a paper on the ethics of privatizations at the Beijing conference on business ethics; and in June I spoke on ethical issues concerning commercial sponsorship in the UK National Health Service at a one day medical conference in London. In April 1997, my 'Morality, consumerism and the internal market in health care' appeared in the *Journal of Medical Ethics*. This paper was submitted last November, while I was a Fellow.

It is a pleasure to thank various people in the program for lots of good things. First, Dennis Thompson. I don't know a nicer guy, or a more good humored and helpful seminar leader, host, and food and wine expert. Then the entire Program staff: Jean, Adrienne, Jennifer, Tom (and (at the beginning of the year) Simone, and, before that, Marlene). I am very grateful to the Program staff for their exceptional helpfulness both before I got to Cambridge and while I have been here. As long ago as January 1996 the difficult task of finding a suitable place for me and my family to live was taken on by Marlene. Since arriving I have always got all the support I could want.

I should not leave out the other Fellows, who from beginning to end were extremely friendly and supportive colleagues. All of them slogged through four of my chapters for a seminar in February. Norm Bowie read those chapters and more!

Last, but not least, I should like to thank the Harvard philosophy dept., especially Chris Korsgaard, Tim Scanlon and some of the graduate students working on PhDs in moral philosophy, for inviting me into the Moral and Political Philosophy workshop during my Fellowship year, and including me in other events.

Report on Fellowship Year
Carol Steiker, 1996-1997
May 1, 1997

My year with the Program in Ethics and the Professions has been an intensely rewarding one. The time devoted to research and writing permitted me both to finish a number of projects that were at loose ends and to start -- and complete -- a new and more ambitious research project, which will be published this month. In addition, the weekly seminars were both enjoyable and enriching; my fellow Fellows and their questions and comments will be my intellectual companions for years to come.

When the fellowship year began, I was in the middle of a number of projects regarding the legal regulation of capital punishment. I gave a presentation in October, 1996, at a conference at the John Marshall Law School entitled "Furman, Felker, and Beyond: The Death Penalty in the United States," which was later published in the Winter, 1997, issue of the John Marshall Law Review. I also completed a draft of a book chapter, co-authored with my brother Jordan Steiker, on "Judicial Developments in Capital Punishment Law," for a book entitled America's Experiment With Capital Punishment: Reflections on the Past, Present, and Future of the Ultimate Penal Sanction, to be published next year by Carolina Academic Press. Finally, I published a review of sociologist Eric Rise's book, The Martinsville Seven: Race, Rape, and Capital Punishment that will appear this month in the Virginia Law Review (appropriately, as Virginia was the site of the famous Martinsville Seven prosecution in the 1940's and 1950's). My scholarship on capital punishment has culminated this year in an invitation to provide written and oral testimony before the Massachusetts State Legislature later this month regarding Governor Weld's recent attempt to re-institute the death

penalty in this state.

The scholarship year also permitted me to start and complete a new sort of project, one that attempts to bring the insights of moral philosophy to bear on the institutions of criminal justice. One of the central problems currently plaguing the criminal justice system is determining whether and when the special substantive and procedural restrictions we place on criminal punishment should apply outside of criminal trials. When the state incarcerates the dangerous mentally ill or the juvenile delinquent, or when it requires the forfeiture of property or the assessment of administrative fines, is it "punishing" so as to be properly subject to the specially protective regime? In attempting to answer this difficult question, which has puzzled many courts and commentators, I have turned to the literature on punishment theory within the broader field of moral philosophy. I use this literature to develop the retributive idea of blame as a way of describing the difference between state punishment and all other state action. My essay, "Punishment and Procedure: Punishment Theory and the Criminal-Civil Procedural Divide," will be published later this month as the Foreword to the Georgetown Law Journal's annual special issue devoted to criminal procedure. During the fellowship year, I presented this paper as a work-in-progress not only at the fellows' seminar, but also at Harvard Law School's Faculty Workshop Series and at the University of Virginia School of Law's Legal Theory Workshop.

This paper benefitted enormously from being read and discussed by the fellows in the Ethics Program. Perhaps more indirectly, I have benefitted, both in this paper and in my plans for future projects, from the mind-expanding interaction (formal and informal) facilitated by the Program. The weekly three-hour seminars have been tremendously provocative and enjoyable -- the time has

always flown by, and we always seem to leave with more to say in the hallways and over meals. It has been particularly fascinating for me to see and hear the perspectives of philosophers and political theorists approaching many of the same problems that lawyers and legal scholars do, but from a different angle, with a different set of assumptions and in a different intellectual context. Both the participants in the Program and the guest lecturers who came from within and from outside of Harvard have enriched and extended my perspective, and I hope and trust that their influence will be discernible in my work to come.

I am tremendously grateful to the Program for providing me with such interesting and challenging intellectual companionship and with the time and resources to pursue serious and sustained scholarly work. I hope to continue the work of the Program through my scholarship and through teaching ethics at Harvard Law School. It is my hope and expectation that I will be able to sustain my ties to Program in the future.

HARVARD UNIVERSITY

The Program in Ethics and the Professions

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Report on the Fellowship Year
Melissa S. Williams

When people ask me whether I'm enjoying my year, I think the response is self-evident: "What's not to like?" The Fellowship offers the awesome resources of this University, the leisure to read and to write, interesting and amicable colleagues, a warm and efficient staff, a pleasant office, and a research budget. What more could a scholar ask for? More of the same would be nice, but one mustn't be too greedy or learn to forget what a privilege it is to be here. I only wonder whether the Program's administration might do something to slow the passage of time for Fellows, as it all seems to be over much too quickly.

Dennis's sense of gustatory excellence clearly spills over into the Program's lecture series and seminars. The year was a continuous, sumptuous feast of intellectual delicacies. The seminar often took me into intellectual territory I would not otherwise have traveled, and I now wonder how I ever managed to get by without such concepts as "acoustic separation." I enjoyed the lectures tremendously, and always looked forward to the stimulating post-lecture *symposia*, whose format is very well-conceived. The special lunch-time discussions with Michael Sandel and Amy Gutmann were also pleasant and instructive. (Unfortunately, a child care crisis prevented me from attending the session with Christine Korsgaard.)

My main agenda for the year was to advance my research project, *Reconstructing Impartiality*. Revisions on my first book, *Voice, Trust and Memory: Marginalized Groups and the Failings of Liberal Representation*, had consumed the greater part of my research time during the preceding year, and I was eager to return to the questions raised in my article, "Justice Toward Groups: Political Not Juridical," published in *Political Theory* in 1995. It has been a tremendous benefit to have the time to work through a substantial backlog of reading as well as to study the important work on deliberative democracy and impartiality that has emerged in the last year or so. This work has laid the foundation for the further development of my work on impartiality.

During the course of the year I have written two papers as part of my impartiality project. The first, "Impartiality, Deliberative Democracy, and the Challenge of Difference," explores the relationship between theories of deliberative democracy and defenses of group representation. While deliberative democrats and defenders of marginalized group representation have generally regarded each other as allies -- as they should, in my view -- there are nonetheless important tensions between these two strands of democratic theory which remain to be worked out. In particular, deliberative democrats' standards of "reasonableness" tend to overstate the extent to which reason determines political

judgment, and to understate the importance of group-structured differences in judgments about what constitutes a "reason" for political action: what counts as a reason for some might not be recognizable as a reason for others. I presented this paper in the Program seminar, which yielded a very helpful discussion, as well as in the Political Theory Colloquium at Yale University and the Political Theory Workshop in Harvard's Government Department. I have also been invited to present it at Brown University, and hope to be able to do so before my return to Toronto.

The second paper relating to my impartiality project is titled "Juridical and Political Models of Impartiality," and it explores the differences between the impartiality of judges and the impartiality of juries. As it turns out, there are in fact several different models of jury impartiality, and the contrasts between them yield promise to be very fruitful. In the original conception and practice of juries, the impartiality of jury decisions arose from a combination of the virtues of individual jurors, community-based standards of justice, and respect for the rule of law. But the understanding of collective and impartial judgment that underlay early understandings of the jury was much more appropriate to culturally homogeneous communities in which the jury pool was limited to white propertied men of good reputation than it is to the pluralistic and mobile world we now occupy. The developing jurisprudence on cross-sectional requirements for jury selection, and the abolition of group-based challenges to prospective jurors (striking jurors based on race or gender, in particular), raise without fully answering the question of what an impartial jury decision must now be. In the paper, I argue that the most laudable conception of impartiality implicit in recent decisions is not only deliberative, but one in which the community whose standards of justice a jury expresses is as much a product as it is a presupposition of jury deliberations across group lines. I will be presenting this paper at the Canadian Political Science Association meetings in Newfoundland in June.

When I arrived at the Program in September, I was just a couple weeks short of completing the finishing touches on my manuscript, *Voice, Trust and Memory*. I had no intentions of working further on it, but later received comments on the manuscript from two leading political philosophers who work in the area of group rights. While their reactions to the manuscript were generally positive, they made suggestions and raised questions which, on reflection, I had to acknowledge as worthy of further attention. Reluctant as I was to divert my energies from my impartiality project, I decided that it was important to take this opportunity to improve the book. I completely rewrote the introduction, streamlined other sections of the manuscript, and cleared up several points of conceptual and terminological ambiguity. I think the book is much better as a result. I was especially grateful at that point to have the research budget, which I used to employ a Harvard graduate student to assist me in some of the editing and polishing. Although I had not expected to accumulate debts to the Program on this project, I am very grateful for the opportunity the fellowship gave me to improve my book.

Several other scholarly projects reached varying states of completion during the

Fellowship year. Two pieces written prior to my arrival in Cambridge were published: "Memory, History and Membership: The Moral Claims of Marginalized Groups in Political Representation," in Juha Räikkä, ed., *Do We Need Minority Rights?* (Amsterdam: Kluwer Law International, 1996); and a piece I co-authored with Joe Carens, "Muslim Minorities in Liberal Democracies: The Politics of Misrecognition," in Rainer Bauböck, Agnes Heller and Aristide Zolberg, eds., *The Challenge of Diversity: Integration and Pluralism in Societies of Immigration* (Aldershot: Avebury Press, 1996). I also received a contract from Dartmouth Publishing Company in England to co-edit a volume of essays with Professor Patrick Hanafin of the University of Sussex. The volume, titled *Identity, Rights and Constitutional Transformation*, grew out of a conference in Toronto last spring, and is part of an ongoing international program in comparative constitutionalism.

I have also begun work on several additional papers and hope to complete them over the summer. One of these, "The Place of Justification in Dirty Hands Dilemmas," is a direct outgrowth of the Program seminar. Another, "Political Stability and Religious Toleration," is based on reflections on the Conference on Law and Religion organized by Nancy Rosenblum at Brown University, in which I participated in April. Assuming the piece develops as planned, it will become a part of the volume of conference papers that Professor Rosenblum will edit. I have also begun work on a paper titled "Puzzling Through Pluralism: The Problematic Multiplicity of Group Rights," which I will present at the American Political Science Association Meetings in September.

In addition to these projects, I have taken time this year to perform some of the duties of scholarly review. I wrote a review of Seyla Benhabib's edited volume, *Democracy and Difference*, for the *American Political Science Review*. I also performed peer reviews of manuscripts for the University of Michigan Press, the *American Political Science Review*, and the *Canadian Journal of Political Science*.

Finally, I have continued to advise my doctoral students throughout this year, of whom four were actively producing chapters. I have also taken this year's relative leisure as an opportunity to give colleagues more extensive comments on papers and manuscripts than my teaching schedule often permits.

I know that this fellowship year will have enduring influences on my work, and also that I cannot now perceive what all of those influences will be. Some will be quite apparent, as in the case of the above-mentioned piece on "dirty hands" dilemmas. I am now both more inclined and better-equipped to become more actively involved in the existing (though currently quite small-scale) undergraduate program in ethics at Trinity College in the University of Toronto. Undoubtedly, my colleagues here in the Program have affected my thinking in varied and sometimes profound ways. Norm Bowie, together with Tom Sorell, have persuaded me that business ethics -- while anomalous -- is not an oxymoron. Arthur Applbaum's work on role morality had enduring resonance throughout the year, and I am

sure will continue to shape my thinking about ethics. Carol Steiker's film criticisms, not to mention her knack for telling extraordinarily illuminating stories and for seeing the patterns that others miss, will also stay with me. Arti Rai's work led me to reflect on the ethics of "self-ownership" from entirely novel angles. Larry Lessig's work on social meaning transformation is directly relevant to my own work on the ways in which the diverse social meanings of shared social practices complicate the project of democratic deliberation across the lines of group difference. I have also gained a great deal from many conversations with Graduate Fellow Patchen Markell, and have appreciated the written comments on my work that he, Daniel Markovits, and Alec Walen have generously provided. As for Dennis -- our "democratic Moses" who led us up Mount Monadnock and guided us through the wilderness of professional ethics -- well, Dennis's influence is too pervasive to pin down to one point or another.

To Dennis, to Arthur, to Jean, Adrienne, Jennifer, Simone Sandy, Tom Jones, and, not least, to the Selection Committee, I give my deepest thanks for the pleasures and the privilege of spending this year as a Fellow.

Appendix IV
Reports of the Graduate Fellows
1996-97

Report on the Fellowship Year
Agnieszka Jaworska
Graduate Fellow, Program in Ethics and the Professions
1996-97

I am very grateful to the entire staff of the Program in Ethics and the Professions for a successful and stimulating academic year. The program provided a supportive environment in which I was able to articulate and refine my evolving views in value theory, while also inspiring me to explore the relevance of these views to practical ethical questions. The financial support, the resources, and the time made available by the Graduate Fellowship allowed me to make progress on my dissertation while dealing with the pressures of an academic job search.

The graduate fellow seminar has been a model of how much can be accomplished in a well-organized classroom. Arthur Applbaum deserves much of the credit for designing a syllabus that incorporated the interests of all the fellows, and tied these interests to a variety of practical concerns. But what made the seminar particularly productive and unique was its unusually small size. Unlike an ordinary graduate seminar, in which the students don't have much control of the content, and in which their contributions are necessarily limited to occasional comments, this seminar was truly our own creation. We were able to shape the discussion around our own concerns and to have enough pressure-free "talking space" to gradually formulate our positions, to reformulate them to avoid misunderstandings, and, from time to time, even to reach a consensus.

The seminar discussions, the monthly lectures, and the occasional lunches with faculty provided a fertile source of ideas for my own work. During the year I revised three chapters of my dissertation and gave several presentations as part of my job search. I am currently in the process of fitting the chapters together into one sustained argument and I plan to defend my dissertation in September. All three chapters I was revising were subjects of the graduate seminar discussion at various times during the year, discussions which saved me from numerous errors and unclarities and sparked new lines of thinking. Arthur and the fellows were also a source of moral support and helpful advice during the trials and tribulations of my job search.

Practical ethics was not one of my main academic interests when I started my fellowship year. Now, however, I have learned enough and have developed enough informed respect for the subject to decide to take up a two-year Fellowship in Clinical Bioethics at the National Institutes of Health next fall.

Last, but not least, I would like to thank Jean Dombrowski, Adrienne Jones, and Jean McVeigh for responding with patience to many last-minute requests and for helping to make my year enjoyable and efficient.

Patchen Markell
Graduate Fellow in Ethics
Program in Ethics and the Professions

Report on Fellowship Year, 1996-97

What would we include on the list of basic needs for a doctoral student writing a thesis? Three items stand out: (1) financial support; (2) a room of one's own; and (3) a community of intellectually stimulating colleagues. Harvard is a rich place in many senses, and the resourceful student can usually piece together a patchwork of support: a little money from a fund here, a desk at an institute there, some colleagues back in one's home department. The Program in Ethics and the Professions, by contrast, has been a comprehensive source of support, and I am grateful for it all. The release from teaching for an academic year has enabled me to make substantial progress on my thesis; my space at the Program has ended four years of trying to get a little work done while wandering from café to café in search of a comfortable table; and my colleagues in the Graduate Fellows program, along with Arthur Applbaum, have helped advance and clarify my thinking.

At the beginning of the academic year, I had a proposal for a thesis on cultural identity and democratic citizenship that I knew was too broad and too vague to hold up for long, and a rough draft of one chapter. During the first six weeks of the Fall term, I completed the research for and produced a second chapter, entitled "Hegel, Jewish Emancipation, and the Politics of Recognition." This chapter reads the history of Jewish emancipation in Prussia as an instance of a Hegelian "struggle for recognition," and uses this example to draw attention to a phenomenon that contemporary theorists of the "politics of recognition" generally ignore: the implication of the sovereign state as a player in struggles for recognition rather than as a neutral, transparent intermediary among citizens. The chapter was well-received not only by my committee, but also at the Northeast Political Science Association meetings in November, where I presented it on a panel entitled "Historical Perspectives on Politics, Cultures, and Identities."

Once this chapter was completed, I discovered that my conception of the rest of my thesis had changed, and I took the opportunity to recast my plan for the project in more precise terms. Rather than tackling the very broad issues of identity, citizenship, and multiculturalism without further specification, the thesis now focuses on the concept of "recognition" as a component of these larger issues. This revision, I believe, has left me with a plan that will allow

me to complete the thesis on schedule during the next 1997–98 academic year.

By the end of April, I had finished a draft of a third chapter, entitled “Catastrophes of Recognition: Hegel and Greek Tragedy.” The purpose of this chapter is to introduce a conception of recognition that is relatively unknown within political theory, because it draws on the tradition of “recognition scenes” in tragedy, and also to show how this conception of recognition plays an important role in Hegel’s account of recognition, which political theorists *do* often invoke (and, I suggest, misunderstand) in contemporary discussions of the “politics of recognition.” One of the most important parts of the chapter is an extended reading of the theme of recognition in Sophocles’ *Antigone*, which may be able to stand on its own as an article.

The year has been productive in other ways as well. At the beginning of the year, I finished the final round of corrections on an article, “Contesting Consensus: Rereading Habermas on the Public Sphere,” which appeared in the January 1997 issue of *Constellations*. I also began to sketch plans for the remaining chapters of my thesis, and I assembled and submitted a panel for the 1997 meetings of the American Political Science Association in Washington, where I will present a paper on Habermas’s conception of “constitutional patriotism.”

Through all of this, the Graduate Fellows seminar has been a helpful complement to my own work, in both general and specific ways. First, more generally, the Graduate Fellows seminar has helped keep me in touch with the normative dimension of my own work. My thesis has a complicated methodology: I am trying to combine interpretation and redescription on the one hand with normative political philosophy on the other. Much of the work I have done this year has been part of the interpretive or redescriptive part of the project, and participating in a weekly seminar that asks straightforwardly normative questions has helped me to keep an eye on the rest of my project, and to clarify my methodology, both to myself and to others. Arthur Applbaum’s friendly, consistent prodding has been especially helpful here.

Specifically, of course, many of our seminar discussions have been substantively related to my own work. Our discussions of moral dilemmas, punishment, authority, political legitimacy, toleration across cultures, groups and rights, and nonideal theory bore the most closely on my thesis — but there were happy surprises, too: the literature on action, intention, and moral luck that I encountered over the course of the year has turned out to be important for my discussion of action and identity in Hegel and Greek

tragedy. Of course, the readings have almost always been so well-chosen, and my colleagues so insightful, that I have enjoyed and learned from the discussions even of issues I had thought held no interest for me.

I would like to express my particular thanks to the Director of the Program, Dennis Thompson; to the Program's wonderful staff past and present, including Jean Dombrowski, Adrienne Jones, Jean McVeigh, Simone Sandy, and Jennifer Sekelsky, who have helped make this a friendly and efficient institution; to Melissa Williams for her generous collegiality; to my colleagues in the Graduate Fellows seminar, Agnieszka Jaworska, Dan Markovits, and Alec Walen; and most of all to Professor Arthur Applbaum for his leadership, intelligence, integrity, and good humor.

Year End Report

Daniel Markovits, Graduate Fellow in the Program in Ethics and the Professions
May 1, 1997

This has been in all respects an extremely pleasant and productive year. The Program is extremely friendly and provides an absolutely excellent work environment. Jean and Adrienne and Jean (and Simone and Jennifer) make this absolutely the best-run institution I have ever worked in.

The other graduate fellows also contributed to making the year go so well for me. They are all capable and friendly, and our weekly seminar was useful and fun, striking just the right note between formal education and intellectual discussion among friends. The Program lectures were similarly successful, and Dennis' hard line about serious conversation with the lecturer over desert, although sometimes exhausting, was also much appreciated. The conversation following Derek Parfit's lecture was especially helpful.

I have not yet said anything about Arthur's contribution to the program, and this is because I want to give it particular emphasis. Arthur ran the graduate seminar in a way that was at once intellectually exacting and personally relaxed. This was critical to the seminar's success and remains much appreciated. (I also think it is not easy to run a seminar in this way.) Also, I spent a rewarding fall as a teaching assistant in Arthur's Kennedy School course. Teaching Kennedy School students taught me a lot about the approach to ethics that is characteristic of good-willed public servants who are nevertheless naturally sceptical of philosophical approaches to morality. It showed me what kinds of arguments and considerations convince them and what kinds do not, something which will improve my own ethical argument (and not just because it will make me better able to tailor what I say to suit my audience's cast of mind). Through his friendly presence and keen and probing mind Arthur made much of this possible. I shall miss him next year.

Throughout the year, the program has provided an excellent opportunity to do my own work. I've written the second half of my thesis this year and in the next month and a half I will put the whole thesis together and submit it. Last September I was stuck at the center of my argument, certain it wouldn't work and unclear about how to fix it. In December I saw the way forward and now I think I have a fairly convincing argument. I may still be wrong, but I'm no longer obviously wrong. In addition to working on my thesis, I've produced the next draft of a paper on moral disagreement.

Finally, thanks to Dennis whose steady influence has fixed the quality of the whole year. The tenth anniversary celebration last week gave him a jubilant thank you, to which I would here like to add my own voice.

This year has provided a marvelous respite from the frenetic demands of law school. I have been able to return to my first love, philosophy, and to work on marrying my interests in both law and philosophy. I started this year working on a short piece on the Defense of Marriage Act. It was a new kind of project for me, engaging in social critique as well as philosophical analysis. I was very gratified to have that piece accepted quickly in both Dissent and The William and Mary Bill of Rights Journal. And I doubt I could have given it the necessary sophistication if it had not been for the help of Grad Fellows Patchen Markell and Daniel Markovits, as well as Director Dennis Thompson.

I then moved on to a project that has been evolving through various incarnations for at least three years, a paper entitled "The Good Posterior to the Right." It was meant to put forward a view of value which would have many features of a consequentialist conception of objective value, but would not lead to certain consequentialist tensions with a Kantian conception of rights. I discovered with the help of comments and questions from the grad seminar participants that I had been barking up the wrong tree for three years. It was a painful discovery, but also welcome: better now than later or never.

In response, I turned to reconceiving that project and wrote a paper entitled "Dignity and Autonomy: Why Deontological Restrictions Are Not Puzzling." I now see the tension between consequentialism and Kantian rights as being driven by a naive view of value, one that does not recognize the role of moral principles in ordering otherwise incommensurable values. Again I received very valuable help from members of the Program, especially Norman Bowie and Daniel Markovits. That piece has recently been sent off to a journal.

As the year winds up I am moving into the more applied area of abortion rights. I am following in the footsteps of prior fellows Francis Kamm and Suzanne Uniacke. My goal is to show that a consent model, rather than a choice model, can provide a strong foundation for abortion rights, but not if framed as a matter of self-defense.

The seminar too, has been, I would say, surprisingly good. The topics were often well tailored to the work I was doing on my own, and I learned a lot from every person in the group. Arthur Applbaum deserves special praise for running a discussion in a way that keeps it on a very high level while at the same time letting it flow naturally. And discussions with him outside of seminar were challenging, stimulating, and fruitful.

The dinners too were stimulating, and it was a real privilege to have the chance to meet the speakers in person. And I was especially honored to have the job of summarizing Stuart Hampshire's Tanner lectures and participating in the lunch we had with him.

Finally, I want to thank Jean McVeigh, Adrienne Jones, and Jean Dombrowski for the way they not only kept the Program running, but made it a warm, hospitable place. The space, the time, the intellectual and personal interactions have been truly wonderful.

Appendix V
The Program in Ethics and the Professions
Tenth Anniversary Event
April 25 and 26, 1997

Friday, April 25, 1997

The Role of Philosophy in the Professions and Public Life

Dennis F. Thompson	Introduction
<i>Director, Program in Ethics and the Professions, Harvard University</i>	
<i>Alfred North Whitehead Professor of Political Philosophy</i>	
Bernard Williams	Keynote Speaker
<i>Monroe Deutsch Professor of Philosophy, U.C. Berkeley</i>	
<i>White's Professor of Moral Philosophy, Emeritus, Oxford University</i>	
Martha Minow	Moderator
<i>Professor of Law, Harvard Law School</i>	
Charles Fried	Commentator
<i>Associate Justice, Supreme Judicial Court of Massachusetts</i>	
<i>Carter Professor of General Jurisprudence, Emeritus, Harvard Law School</i>	
Cornel West	Commentator
<i>Professor of the Philosophy of Religion, Harvard Divinity School</i>	
<i>Professor of Afro-American Studies, Faculty of Arts and Sciences</i>	

Saturday, April 26, 1997

Business Ethics - Ethics in Organizations: Theory v. Practice

Joseph L. Badaracco, Jr.	Co-moderator
<i>John Shad Professor of Business Ethics, Harvard Business School</i>	
Lynn Sharp Paine	Co-moderator
<i>Professor of Business Administration, Harvard Business School</i>	
Gail Birnbaum, M.D.	
<i>Internist, Health Centers Division, Harvard Pilgrim Health Care</i>	
<i>Senior Fellow, Division of Medical Ethics, Harvard Medical School</i>	
Barbara Ley Toffler	
<i>Partner, Arthur Andersen and Company</i>	
<i>Director, Ethics and Responsible Business Practices</i>	

Legal Ethics - Changing Roles, Changing Sides

David B. Wilkins	Moderator
<i>Kirkland and Ellis Professor of Law, Harvard Law School</i>	
Robert S. Bennett	
<i>Senior Partner, Skadden, Arps, Slate, Meagher and Flom</i>	
<i>Former Special Counsel to the U.S. Senate Ethics Committee</i>	
Sanford Levinson	
<i>W. St. John Garwood and W. St. John Garwood, Jr.</i>	
<i>Centennial Chair in Law, University of Texas Law School</i>	
Margaret Marshall	
<i>Associate Justice, Supreme Judicial Court of Massachusetts</i>	

Medical Ethics - Euthanasia: Ethics in the Public Debate

Ezekiel J. Emanuel, M.D.	Moderator
<i>Associate Professor of Medical Ethics</i>	
<i>in the Department of Social Medicine, Harvard Medical School</i>	
Marcia Angell, M.D.	
<i>Executive Editor, New England Journal of Medicine</i>	
<i>Lecturer in Social Medicine, Harvard Medical School</i>	
Daniel J. Callahan	
<i>Director of International Programs, The Hastings Center</i>	
Linda L. Emanuel, M.D.	
<i>Vice President for Ethics Standards, American Medical Association</i>	
Thomas M. Scanlon, Jr.	
<i>Alford Professor of Natural Religion, Moral Philosophy, and Civil Polity,</i>	
<i>Faculty of Arts and Sciences</i>	

