

**HARVARD UNIVERSITY**



**The Center for Ethics and the Professions**

**ANNUAL REPORT 1999-2000**



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To: President Neil Rudenstine  
Provost Harvey Fineberg

From: Dennis Thompson

Subject: Report of the Center for Ethics and the Professions, 1999-2000

Date: July 2000

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Each class of Fellows leaves its mark on the Center, but this year's class left the Director scarred for life. During our annual pilgrimage to Mt. Monadnock in the fall, we were climbing a challenging new trail where no Fellows had dared go before. Trying hard to keep up with this competitive group, I lost my footing and banged my head against a tree, producing an ugly gash on my forehead and not insignificant quantities of blood. Most of the group continued up the trail. It was the Business Ethics Fellow who came to my rescue. Sacrificing his chance to reach the top first, he opened his well-equipped first aid kit and went to work on my wound. His timely intervention, according to the doctor who later applied the stitches, saved

me from possible infection if not further disfigurement.

In the end, as you can see, we all made it to the top of the mountain. Was the climb worth it? Definitely. First of all, we demonstrated to our satisfaction that not all



business ethicists are ruthless competitors. Second, we accumulated more than enough case material for our lively seminar on the



Duty to Rescue held later in the year. And finally, I was moved to take a different view of "The Parable of the Sadhu," the classic Business School case in which the climbers could choose either to continue their once-in-a-life-time climb in the Himalayas, or to stop and help an ailing Sadhu on a pilgrimage.

What surely will come to be known as the "Parable of Mt. Monadnock" was not an account of the most notable event of this noteworthy year. The rest of this report chronicles many of the splendid achievements of the Fellows, the Center and others active in ethics at Harvard and elsewhere, but a few highlights can be mentioned here.

Our Advisory Council, still incomplete in number but substantial in distinction, met together for the first time in the spring, and helped set a promising agenda for the future. In honor of the respected international banker, Edmond J. Safra, the Hong Kong Shanghai Bank endowed four new Graduate Fellowships. The first course developed with the support of the Paul Z. Josefowitz Fund for Ethics Education—"The Ethics of Everyday Life: Work and Family"—was taught this spring in the College by Russ Muirhead.

Our faculty are to be credited with some of the most noteworthy developments of the year. The Kennedy School concluded a year long national search for an ethics chair by choosing two scholars—Frances

Kamm, a moral philosopher at NYU and our own Arthur Applbaum. Ashish Nanda, our Business Ethics Fellow, was promoted to Associate Professor, and Bob Truog, former Faculty Fellow and now a major leader in our Division of Medical Ethics, was promoted to Professor in our Medical School. Two faculty members agreed to join us as Faculty Associates: Elaine Scarry, Walter M. Cabot Professor of Aesthetics and the General Theory of Value; and Lisa Lehmann, formerly a Faculty Fellow in Ethics, now an Assistant Professor of Medical Ethics in the Medical School and Instructor in Medicine at Brigham & Women's Hospital.

Two of our original Senior Fellows received yet more honors. Amartya Sen was chosen as the speaker at this year's commencement at Harvard and was awarded an honorary degree. (He also spoke to a smaller but no less attentive audience at one of the Center's public lectures.) John Rawls, an honorary degree recipient in an earlier year, was awarded the Rolf Schock Prize in Logic and Philosophy by the Royal Swedish Academy of Sciences. In the Law School, our Faculty Associate Richard Fallon received the Sacks-Freund Award for Teaching Excellence. Michael Sandel, Professor of Government and member of our Faculty Committee, won a Carnegie Corporation Fellowship to support his work on markets and morals.

The year was also touched with sadness. Lester Kissel, a generous alumnus of the Law School and a devoted supporter of the Center from its beginning, died in April in his 98<sup>th</sup> year. He was a friend of many of us in the Center as well as in the Law School. Kissel traveled from New York to many of our events even after he became disabled, and he welcomed us into his apartment in

New York for long discussions on ethics and related matters (such as oenology). A graduate of the Law School class of '31, Kissel enjoyed a long and rewarding life, pursuing wide ranging interests as diverse as Hindu philosophy, evolutionary biology, cosmology, and classical ballet. The Center, the Law School and Harvard have lost a friend, but his legacy will live on. A chair in legal ethics will bear his name, and we expect to announce soon the establishment of a major fund in the Center for the study of ethics, named in his honor.

### *The Faculty Fellows*

Anticipating the arrival of this year's class, I wrote in last year's report: "With four lawyers, the class may seem too generously supplied with legal talent." I was wrong, but only partially. We were supplied with more talent than any program could reasonably expect in one year—but not necessarily legal. I leave open the question of whether I would ask any of our lawyers this year to represent us in litigation. But I have no doubt that the collective talent they displayed in the seminar and more generally in the intellectual life of the Center ranged more widely than that found in the typical law school faculty. As you can see from the individual reports of the Fellows (Appendix IV), the lawyers differed from one another as much as from the other Fellows, and all learned from

one another as much as from the rest of us.

Long-time observers of the Fellows Seminar know that I am usually in despair at the start of the year, doubting that such a disparate group can ever be brought to interact intellectually in productive ways. This year I had good reason: who would have thought that four lawyers, an architect, an Israeli philosopher, a Spanish analytic philosopher, an Indian business school professor, and a psychiatrist practicing in an HMO, could find fulfillment in an ethics seminar? Somehow they did, and in intellectually productive ways. Bob Gordon, one of the more senior members, explicitly describes in his report how his fellow Fellows contributed to his own work. I know that other Fellows could supply their own honor roles of their colleagues. I also know you will want to read the Fellows' own reports.

On the most important test—how much Applbaum and I learned—this class deserves an A. Certainly, I can say that Applbaum learned, or should have learned, much. I, too, found our discussions more enlightening than usual. Looking over the syllabus we developed together I was struck by the number and the significance of the papers titled with questions: "Are Lawyers Liars?" "Is Business Bluffing Ethical?" "Is Multiculturalism Bad for Women?" "Can a Liberal State Support Art?" "If You're an Egalitarian, How Come You're so Rich?" "Can Lawyers Produce the Rule of Law?" "Can Ethics be Taught?" and "Is Multiculturalism Bad for Animals?"

The answer to most of these questions is, of course: "it all depends...." But the more important question is "on what?" And for answers to that kind of query this class of

Fellows, with their combination of theoretical sensitivity and practical knowledge, could be counted on for uncommon enlightenment.

Not the least of the Fellows' contributions to the research of **Victoria Beach**, our architect, was to encourage her to be less esthetic. Not in her prize-winning designs but in her theories. Less (esthetics) is more (ethics), we thought. Beach is one of the few, and surely among the most talented, architects teaching ethics. The strength of the course she created for our Design School can be seen in its sensible blend of well-informed cases and middle-level ethical analysis. As one Fellow commented, her case studies on "architects faced with pressures from conflicting constituencies provided wonderful examples of how committed professionals think their way through ... such dilemmas." Beach will return to our Design School to teach what is, for the first time, a required course in ethics for all architecture graduate students.

We should not have been surprised that **Paula Casal** is giving a seminar on ethics to 30 marine biologists in Lisbon this summer. Few philosophers can work at such a high level of analytic sophistication (witness her writing on equality) and yet at the same time move so comfortably in down-to-earth environments (note well her field trips to the Santeria in Cuba, and the Great Apes in Africa). She may have thought that sitting next to Amartya Sen at one of our

seminar dinners at the moment she was writing about his views of equality was an accident. If so, she underestimates the cunning of our staff. In any case, it was a felicitous seating, not only for her but for Sen. We are all pleased that she will be able to stay another year on campus, before she returns to the University of Keele.

As we discussed the ethics of teaching ethics in one of our seminars, we realized that one of our group, **Sharon Dolovich**, would soon start her first teaching job, as Acting Professor of Law at UCLA. This seemed an opportunity to test our pedagogical theories on another human subject. Her broad interests and lively mind left no doubt that she will be a success in the classroom, but we wondered whether any of the many pieces of lessons the seminar offered would be helpful. She has promised to report back next year. In her own research during the year, she began with an important but relatively narrow project on private prisons and gradually and fruitfully developed it into a broader and even more significant study of the ethics of punishment in a liberal democracy.

In his application for the Fellowship, **James Fleming** laid out four specific goals—to write two articles, organize a major conference, and make substantial progress on a book—and he accomplished them all. In the history of the Center, this is almost unprecedented, and possibly undesirable. We encourage Fellows to strike out in new directions, which often results in short term delays but (we would like to think) long term productivity. In Fleming's case, however, there is no cause for concern because he is already moving in the right direction—toward a theory of deliberative democ-

racy. Fleming returns to teaching law at Fordham, and to continue writing with an increasingly influential voice steeped as before in political theory and informed now by practical ethics thanks to several of his fellow Fellows.

We knew that **Robert Gordon** was a eminent academic lawyer and a leading legal historian, but we did not know he was an epic poet. The evidence of this talent is presented in the Epilogue. Although perhaps not conclusive beyond a reasonable doubt, it should be sufficient to qualify him as the poet laureate of the Center. Gordon said he wanted a "reclusive year." I dare not imagine what a "sociable year" would have been. No Fellow was more generous with his time and ideas—not only with the other Fellows (including our junior colleagues), but also with visitors and colleagues in several of our Faculties. (He even taught two classes in our Business School.) Gordon returns to Yale, where he will finish what will be a major book on the practice of law as a public profession.

**Linda McClain** took advantage of intellectual opportunities in other parts of the University, including not only the Law School but also the Divinity School and the Kennedy School. As with so many of our Fellows over the years, she gave as much as she received. (One of the great benefits of the Ethics Center is the contribution that the Fellows make to Harvard while they are

here.) It should not detract from her many other contributions to note that the distinctive liberal feminist perspective that she brought to our discussions helped many of us understand better the social context of a wide range of ethical issues in policies relating to welfare, family, child care, discrimination, and the a capacity for self-government (the subject of her book in progress). She returns to teach law at Hofstra University.

It is a brave junior faculty member who invites David Wilkins and Bob Gordon to guest teach in his class, as did **Ashish Nanda**, the Fellow from our Business School. But when I had the opportunity myself to watch him teach, I could see that he can hold his own with the best. (He did hedge his bets by inviting *me* to guest teach, so that the students would have, as he politely put it, exposure to a "different approach.") As we hoped, Nanda brought to the seminar a wide familiarity with contemporary business, including the less familiar but increasingly important sector of professional services. But his penetrating questions on the wide range of topics covered in the seminar, including theoretical issues, proved equally valuable. In his own research during the year, Nanda added to his already fine talent for examining case studies a strong capacity for conceptual analysis—notably on the problem of conflict of interest.

"Cooperation Despite Disagreement," the label **Noam Zohar** applies to his very interesting research project on toleration and pluralism, could also describe his role in the seminar. But if so, "cooperation" has to be understood as more than mere toleration: Zohar engaged constructively with the

views of all the members of the seminar, showing us how to improve them if—sometimes contrary to his firm advice—we were foolish enough to continue to hold them. His deep understanding of bioethics—in Jewish as well as secular literature—added a welcome dimension to our discussions. Zohar returns to Israel where he will teach and write about bioethics as well as Jewish political thought.

**James Sabin**, Associate Clinical Professor of Psychiatry, who has been active in ethics education at our Division of Medical Ethics, joined the seminar this year as our visiting faculty member. The role we hoped he would fill was to inform the rest of us about recent developments in the theory and practice of clinical ethics. He fulfilled that hope, plus more. His reactions to much of the non-medical literature including philosophy proved most enlightening to all of us. I am also pleased to know that he himself benefited from the experience. He reports that the year in the seminar “solidified my own commitment to making ethics activities the core of my professional life from here on.” He continues his important work in our Division of Medical Ethics, and will take on a new responsibility as director of the corporate ethics program at Harvard Pilgrim Health Care.

## ***The Graduate Fellows***

This year the Graduate Fellowship Program graduated its tenth class of fellows, which included a German cardiologist, a British scholar of Stoicism, a pair of international lawyers (one German, one American), an Israeli scholar of law and economics, and an American moral philosopher working on the implications of evolutionary biology. Outdoing last year’s two marriages and two faculty placements, this year’s class generated one engagement, two baby girls, and three faculty placements. (See Appendix V for the fellows’ individual reports.)

**Chris Brooke**, a political theorist, managed to show the other fellows how the arguments of the early modern neo-Stoics are relevant to disputes in contemporary political philosophy. The other fellows reciprocated. Chris will begin teaching at Magdalen College, Oxford, in the fall.

**Oona Hathaway** came to the Center from a Supreme Court clerkship, and served concurrently as a Eugene P. Beard Graduate Fellow and a fellow in the Carr Center for Human Rights Policy. During her fellowship she initiated an empirical study of why nations comply with human rights treaties and customary law. She also gave birth to Ava. Oona will begin teaching at Boston University Law School in the fall.

**Mattias Kumm** is an SJD candidate at the Law School. He made substantial progress on a theory of the standing of supranational law in constitutional democracies. Mattias will begin teaching European Law at NYU Law School in the fall.



**Soeren Mattke**, also a Eugene P. Beard Graduate Fellow, is a cardiologist completing a doctoral dissertation at the School of Public Health. He developed an economic model of the competing influence of ethical norms and financial incentives on the practice of medicine and empirically tested it with data on German physicians. He also became the father of Anissa. Soeren has taken a consulting position with Abt Associates.

**Sharon Street**, a philosopher, worked on the question of whether evolutionary biological explanations for our moral capacities undermine our commitment to the normativity of morality. She completed two core chapters and is on track to complete her dissertation in the coming year.

**Eli Wald** is an SJD candidate at the Law School. In his dissertation, he combines an empirically-informed economic model of existing legal practice with a moral critique of that practice. Eli won a Byse Fellowship at the Law School for the coming year.

Our hope, in starting the Graduate Program a decade ago, was to influence the careers of promising students who would take up prominent positions in academia, forming a global community of scholars committed to the study of practical and professional ethics. Two recent anecdotes are measures of our success. We have already noted that Chris Brooke will begin teaching politics at Oxford in the fall. His senior colleague at Magdalen, Stewart Wood,

was a graduate of the second class of fellows.

Applbaum, director of graduate fellowships, recently gave a series of lectures in the Norwegian Research Council's Ethics Program. The invitation was initiated by a philosophy professor in Oslo, Andreas Follesdal, who was a graduate of the first class of fellows.

In the past two years alone, our graduates have been appointed to faculty positions at Budapest, Boston University, University of Chicago, Duke, Harvard, Oxford, NYU, Stanford (2), Toronto (2), UCLA, University of Baltimore, and University of Washington.

The incoming class of seven fellows contains a philosopher, an economist, a scholar of health policy and law, a talmudic scholar and lawyer, and three political theorists. (See Appendix III for their biographies.) Four of the fellows will be funded by a new gift from the Hong Kong Shanghai Bank and Lily Safra, in honor of Edmond J. Safra, philanthropist and founder of the Republic National Bank of New York. Two fellows will be funded through the continuing generosity of Eugene P. Beard, a member of the Center's Advisory Council.

### **The Joint Seminars**

The Faculty and Graduate Fellows joined forces four times this year to take on some of the most formidable local faculty, including several of our Faculty Associates. These sessions provide another opportunity for the two groups of Fellows to interact, but also often help our Faculty Associates improve their work in progress. This year's

series of seminars turned out to be as lively and enlightening as ever.

Two seminars featured faculty from our Philosophy Department: Tim Scanlon on "Intention and Permissibility" and Bob Nozick on "The Genealogy of Ethics." Russ Muirhead from our Government Department presented a paper on "The Ethics of Work." Joshua Cohen of MIT's Philosophy and Political Science Departments offered three papers, but we spent all of our time on one, "Money, Politics, and Political Equality," giving us an excuse to invite him to return at least twice in the future.

### *The Public Lectures*

Now in its fourteenth year, our public lecture series continues to attract overflow crowds. In addition to members of other institutions, and the wider Cambridge-Boston community, the audience represents a wide cross section of Harvard faculty and students, contributes to our efforts to encourage interfaculty collaboration, and sometimes even serves as a kind of intellectual reunion. On several occasions this year former faculty and graduate fellows traveled to Harvard to attend the lectures and participate in the dinner seminars that followed the lectures. The public lecture series, which promotes philosophical reflection on problems of human values in contemporary society, is supported by a

fund established by the late Obert Tanner.

The most dramatic event in the series this year was a lively and illuminating debate between two of the leading scholars on the role of religion in public life. Michael McConnell, Presidential Professor at the University of Utah College of Law, is known as a leading proponent of a greater role for religion in public life. Just the day before our event, he had argued a religion case in the Supreme Court. Amy Gutmann, the Laurance S. Rockefeller University Professor and Director of the Center for Human Values at Princeton, is known as a trenchant critic of the philosophical and constitutional arguments that McConnell and other proponents have presented. The speakers engaged sharply but constructively with each other, converging in their views more than one might have expected in advance. Father Bryan Hehir, a Faculty Associate of the Center, moderated the discussion with his customary grace and intelligence. Several veterans of the "religious wars" in intellectual life remarked that this was the most intellectually productive encounter on the subject they had witnessed.

The solo lectures in the series were in their ways no less worthwhile. David Luban, the Frederick Haas Professor of Law and Philosophy at the Georgetown University Law Center, began the series, with his paper, "Just Following Orders: The Ethics of Wrongful Obedience." Stephen Macedo, who had just joined the Princeton Center as the Laurance S. Rockefeller Professor of Politics, spoke on "Civic Education in a Multicultural Democracy." Our former Senior Fellow, Amartya Sen, now Master of Trinity College Cambridge, returned to speak on "Other People: Reason Before

Identity." At the end of the year, Meir Dan-Cohen, who holds the Milo Reese Robbins Chair in Legal Ethics at Berkeley, presented a paper on "The Priority of Dignity."

The Center also hosts, along with the President's office, the annual Tanner Lectures on Human Values. Their purpose is to advance scholarly and scientific learning in the entire range of moral, artistic, intellectual and spiritual values. This year's lecturer, Wolf Lepenies, Rektor of the Institute of Advanced Studies in Berlin, spoke on "Exile and Unification: The End of German Culture in the 20<sup>th</sup> Century."

At a seminar which concluded the three-day public event, the lectures provoked a thoughtful commentary by Stanley Hoffmann, the Paul and Catherine Battenwieser University Professor. Maria Tatar, the John L. Loeb Professor of Germanic Languages and Literature, skillfully moderated the session. At a lunch following the seminar, Professors Lepenies, Hoffmann, and Tatar engaged a group of graduate students in a discussion that further explored the issues raised during the event. (See the report by our Graduate Fellows, Mattias Kumm and Soeren Mattke, in the Center's newsletter [Summer 2000])

### ***Ethics Beyond Harvard***

Three of us—Jean McVeigh, Applbaum, and I—represented the Center in April at the gala celebration

of the tenth anniversary of our sister institution, the Princeton University Center for Human Values. Several of our current and former Fellows also attended, along with more than a hundred colleagues from many colleges and universities. All were treated to an intellectually stimulating day-and-a-half of panels on a variety of important ethical issues. It was reassuring to know that the ethics movement has progressed so well, and especially to see in person the great success that the Princeton Center has achieved in its first decade. We would like to take credit for some of that success: their founding Director spent a year in our Center before returning to Princeton to start her own. But that would be wrong.

Our Center continues to respond to dozens of requests each year from other universities throughout this country and abroad for advice and collaboration. This year faculty and administrators from Germany, Italy, and Australia, as well as several U.S. universities visited here to talk about starting centers or programs similar to ours. During the year our staff and faculty in the Center also met with representatives from numerous corporations, professional associations, government agencies, and health care organizations. Fortunately, we are able to call on colleagues in each of the schools, particularly members of our Committee and Faculty Associates, to help respond to these requests for advice.

Although my various local responsibilities limit my own travel, I did venture to Japan to speak on ethics at two campuses of Keio University, and addressed a large group of leading Japanese journalists and politicians including 15 members of the Diet in Tokyo. I also spoke to a group of British physicians

and health policy experts at a seminar at the King's Fund in London, and participated in a conference on "Connecting Ethics and Health Policy," sponsored by the National Institutes of Health in Washington, the proceedings of which are soon to be published.

Our faculty and former Fellows continue to play an important role in the Association of Practical and Professional Ethics, the international organization that we helped establish. It will be celebrating its tenth anniversary this coming year. I continue to serve on the organization's executive committee.

No doubt the most important link to the outside world is to be found in the work of our former Fellows. In the early years, the alumni were small in number and close in location. But in this, the second decade of the Center, there are more than 100 former fellows and graduate fellows located in over 40 universities in the United States and many other countries (including Australia, Austria, Canada, England, Germany, India, Israel, Italy, Norway, The Netherlands, South Africa, and Switzerland).

Through these links and others we are developing, the Center is reaching increasingly large numbers of students, faculty and future leaders of society. Nevertheless, we continue to hope to expand our "outreach" activities as more resources and more faculty become available.

### *The New Faculty Fellows*

Next year's Faculty Fellows were selected from a large pool of applicants from 48 different colleges and universities. Forty-six applications came from overseas, representing 22 countries (Australia, Brazil, Canada, China, Columbia, Cyprus, France, Germany, Greece, Iceland, India, Israel, New Zealand, Nigeria, Philippines, Poland, Slovenia, South Africa, South Korea, Spain, the United Kingdom, and Venezuela). The applicants ranged in age from 26 to 66 years, with an average age of 40. Twenty-one women applied (just over 25 percent of the total). More applicants came from philosophy (about 40 percent) than any other field. Among other fields represented were: government including political science (11 percent), medicine (about 9 percent), law (17 percent), education (7 percent), business (9 percent), and religion (7 percent).

The new class is professionally, as well as geographically, diverse. Four of the Fellows are from overseas (Greece, Germany, Israel, and the United Kingdom). One is a political philosopher, another, a political theorist, and two are lawyers, one of whom teaches medical ethics. The other two Fellows are physicians, both from Harvard. One helped establish the University's Center for Ethics in Managed Care.

The group's research interests cover a wide spectrum of topics, including medical law and ethics, constitutional law and theory, feminist legal issues, theories of justice, the nature and limits of informed consent, and individual and collective responsibility. (For biographical notes on the new Faculty Fellows, see Appendix II.) I am pleased that the Fellows will be joined in the weekly

seminar by Catherine Elgin, Professor of the Philosophy of Education in our Ed School. She will be the visiting professor in the Center next year.

The Faculty Fellows were selected by our University Committee, which I chair. The members of the Committee, who represent several of our professional schools and the Faculty of Arts and Sciences, are Martha Minow (Law School), Tim Scanlon (Philosophy), Lynn Peterson (Medical School), Michael Sandel (Government), and Joseph Badaracco (Business School). Arthur Applbaum (Kennedy School of Government) has now joined the committee as a full member.

### *The Advisory Council*

The opportunity to showcase the ethics initiative at Harvard to the COUR Committee last year raised the profile of the Center in ways that strengthened previous contacts, and helped identify potential members for a new Advisory Council for the Center. In the Spring, with the help of the Development Office, we invited seven potential members of the Advisory Council to Harvard for an exploratory session. (See Appendix I.) Five of the invitees were able to attend. The group was supplemented by three members of our University Committee —Badaracco, Minow, and Sandel—as well as Applbaum and representatives from the Faculty Fellows and Graduate Fellows in

Ethics. We were pleased that both of you were also able to participate.

To stimulate some substantive discussion of ethical issues, we asked Bob Truog, Professor of Pediatrics, and former Fellow in the Center, to present one of the case studies he had developed. The study concerned a set of difficult decisions faced by doctors in the intensive care unit of Boston Children's Hospital, a case in which Truog himself had been involved. The question in the end was (to put it crudely): which baby should be saved? The presentation and discussion that followed showed well how to think about ethical dilemmas about which reasonable people may disagree (we noticed that the President and Provost did not reach the same conclusion), and demonstrated vividly some of the pedagogical challenges of teaching ethics.

The lunch discussion and business meeting that followed, led by the Provost, generated a great many thoughtful comments and promising suggestions for future initiatives. The faculty and several current Fellows spoke about the impact of the Center on their own work, and on other students and faculty in the University who may not have had direct contact with the Center. The examples they cited also confirmed the positive effects that this interfaculty initiative has had on teachers working across disciplines.

The new Council members seem to be impressed with what we have done so far, but some are eager to move the Center forward into new areas as well. One concrete proposal is now likely to come to fruition next year. With the help of some of the Council members, we are planning a conference in



the spring on the social and ethical responsibilities of the new media, especially television.

I was pleased by the constructive tone and broad vision that characterized the discussions with the Council, and gratified by the genuine interest in our activities and programs shown by the members. As the Provost remarked, we are fortunate to have recruited a group of such "candidly critical, but friendly advisers"—with the kind of experience and interest that will help us plan and move forward more successfully in the future.

### *Plans and Prospects*

While the campaign may have ended, the Center's supplications have not. We continue to need term funds to strengthen our core activities, and endowment funds to support our plans for expansion. The most important needs in this respect are additional professorships for faculty specializing in ethics. We have had some discussions with a friend of the Center and are hopeful that a new chair may be given next year to address this need. In addition, we take an interest in the success of the Schools that are seeking funds for ethics. The health of our Center depends on maintaining strong school-based ethics activities.

Our graduate fellowship program received a welcome boost with the recently established Edmond J. Safra

Fellowships in Ethics. Supported by the Hong Kong Shanghai Bank in memory of the distinguished international banker, Edmond J. Safra, the one million dollar fund will support several Graduate Fellowships each year. Safra was a committed philanthropist who supported a number of charitable institutions and universities, including Harvard, where he established the Jacob E. Safra Professorship of Jewish History and Sephardic Civilization, and the Robert F. Kennedy Professorship in Latin American Studies. Safra and his wife, Lily, were also benefactors of AIDS research at the Harvard School of Public Health.

We have long believed that the opportunities presented by the Center's work and by the Harvard experience generally can greatly benefit those who are in the early years of their careers. For that reason and also because the quality of the Graduate Fellows has been especially impressive in recent years, we have given increasing emphasis to this part of the Center's activities. Together with the Safra gift, the Eugene P. Beard Graduate Fellowships have helped us take a major step toward full support for this important program.

I am more pleased than I can express in the sober prose of an annual report that Martha Minow has agreed to serve as Acting Director of the Center next year. (I shall be taking a long-postponed sabbatical at the Center for Advanced Study in the Behavioral Sciences at Stanford.) Minow's reputation as a distinguished professor of law and her extensive collaboration with students and faculty in several different schools, as well as her experience as a charter member of our University Committee, make her

eminently suitable for taking on this responsibility.

As you know, Minow served as Acting Director in 1993-94 and led a most lively and challenging seminar for the Fellows. She presided over all of our activities that year with her customary judiciousness and characteristic imagination. I am confident that the Center will be in good hands next year. She will be ably assisted by our invaluable Administrative Director, Jean McVeigh, who has assembled the most competent and cooperative staff (Sowmya Bharathi, Jennifer Sekelsky and Allison Ruda) that any center or department could possibly desire.



### **Ethics in the Schools**

Every single one of the Schools has now created its own programs and courses, and has developed its own faculty who specialize in ethics. Most of these faculty have spent time in the Center in the past, and all find a friendly home away from home in the Center in the present.

As a result of connections made through the Center, individuals and programs within each of the Schools are increasingly joining together in curricular development and research projects. The Center, we believe,

continues to exemplify the kind of university-wide collaboration that you have inspired.

### **Arts and Sciences**

*(reported by Tim Scanlon and others)*

Ethics and political theory continue to be active topics of interest in many parts of the Faculty of Arts and Sciences. The year's achievements include the appointment of Nancy Rosenblum of Brown University as Professor of Government. Her appointment will bolster the ranks of tenured political theorists in that department, and (more importantly from our parochial perspective), strengthen the cadre of FAS faculty with serious interests in the intellectual agenda of the Center.

In the Core curriculum, Michael Blake's course "Morality and Law," given for the first time this spring, attracted a large enrollment and excellent reviews.

Also this spring, Russ Muirhead launched his Core course on work and family, "The Ethics of Everyday Life: Work and Family." It is the first course to be developed with the support of the Paul Z. Josefowitz fund for ethics education in the College. It investigates the moral reasons that inform the ideals and practices of everyday life, with a focus on the central arenas of work and family. With readings selected from classical and contemporary political and moral philosophy, the course explores the ideals of self-reliance and the work ethic, the duty to work and work's service to others, conceptions of family and marriage, and the problem of work-family boundaries.

The Philosophy Department's Workshop in Moral and Political Philosophy continues as one of the most valuable elements not only of the department's program but also of the Center's extra-programmatic opportunities. Several of the Center's Fellows join the department's graduate students and faculty members over the course of the year to discuss students' presentations and to argue with visiting speakers. This year's guests included Peter Railton of the University of Michigan, and G. A. Cohen of Oxford University.

The Workshop in Political Theory, a seminar open to the wider University community as well as a regular credit course for Government graduate students, more often than not features speakers who discuss ethical issues in the context of political theory, historical and contemporary. The sessions include discussion of students' work in progress and papers by invited speakers from both inside and outside the University.

The third annual Judith N. Shklar Memorial Lecture was given by Michael Walzer, senior scholar at the Institute for Advanced Study, Princeton. His subject was "Politics and Passion," and his conclusion on the whole was in favor of passion. This lecture series honors the memory of Judith N. Shklar, a Senior Fellow of the Center for Ethics from its beginning until her death in 1992, and a distinguished scholar and beloved teacher at Harvard for 36 years.

Because John Rawls was not able to travel to accept the Royal Swedish Academy award mentioned earlier, Tim Scanlon accepted it on his behalf. These awards are relatively new and cover the fields of mathematics, art, music, and logic and philosophy. This is the fourth prize to be awarded, and the first time that the logic and philosophy prize has been presented to a scholar in moral or political philosophy. A symposium on Rawls's work was held on the day following the ceremony. The speakers were Tim Scanlon, Sam Scheffler, and Philip Pettit.

Some felicitous news about former Graduate Fellows should be noted: Alyssa Bernstein, Peter Cannavo, Evan Charney, and Nien-hê Hsieh completed all the requirements for their Ph.Ds this year. Also, Pamela Hieronymi has accepted an assistant professorship in philosophy at U.C.L.A.

The seminar series "Ethics and International Affairs" at the Weatherhead Center continued this year under the leadership of Kira Foerster, a graduate student in government, and David Bosco, a student at Harvard Law School. This seminar brings together students and faculty from a variety of fields, from within and outside Harvard, and from academia and the policy world. This year's program included presentations by David Luban on intervention and civilization, Richard Butler on rogue states, Stanley Hoffmann and Nancy Kokaz on Rawls's *The Law of Peoples*, Gary Bass and Theodor Meron on developments in international criminal justice, Martha Finnemore and Sarah Sewall on humanitarian intervention, David Little on religion and human rights, and Andrew Hurrell on the ethics of international boundaries.

## **Business**

*(reported by Joe Badaracco)*

During the past year under the leadership of Lynn Paine, the ethics effort at HBS branched out in an important new direction. This new approach was reflected in two important hiring decisions. One involved Joshua Margolis, a former Graduate Fellow of the Ethics Center, and currently an Assistant Professor at the University of Michigan. He will become an Assistant Professor in the Organizational Behavior unit at HBS, effective July 1, 2000. The other decision was to appoint Nien-hê Hsieh, a Graduate Fellow in Ethics in 1998-99, as a post-doctoral fellow in the Negotiation, Organization, and Markets unit. Our hope is that Nien-hê's fellowship will evolve into a faculty position.

It is important to note that, while both Joshua and Nien-hê will be associated with the ethics interest group, they will be working directly in other parts of the School. The same is true for Ashish Nanda, who after completing his year as a Faculty Fellow in the Center will be returning full-time to the Negotiation, Organization, and Markets unit. Joe Badaracco will be joining the Competition and Strategy unit and teaching one section of the strategy course next year.

All these decisions reflect a new strategy for integrating teaching and research on business ethics into the MBA program. We will be continuing our traditional efforts—teaching

the Leadership, Values, and Decision Making (LVDM) module to all incoming students, offering several elective courses, and holding faculty seminars. With the new approach, however, we will now have "missionaries" working directly with colleagues throughout the School, developing teaching materials, and influencing the design of courses. In addition, we will have a larger group of colleagues with training in professional ethics and a serious commitment to the field. This expanding critical mass will enhance both our individual and common efforts.

Our other efforts followed the pattern of past years. Four new colleagues joined the LVDM teaching group, Paine published two articles, and Badaracco has now completed most of a first draft of a book manuscript tentatively entitled "Quiet Moral Leadership." We taught short electives in the School's principal executive programs, and roughly 220 of 900 second-year MBA students took ethics electives. We are also discussing the possibility of holding a conference some time next year that would focus on business ethics in the "new economy," but this plan is in an embryonic stage.

## **Design**

*(reported by Victoria Beach)*

Ethics is receiving much more attention than before in the Design School. The visiting committee from the National Architectural Accrediting Board made a point of expressing approval of our principal ethics course, "Issues in the Practice of Architecture," suggesting that it should become a model for schools nationwide. The course was first given in 1996-97, and has been jointly taught by Carl Sapers, adjunct pro-

fessor, Mack Scogin, former chair of Architecture, and Victoria Beach, lecturer, architect, and Yale-trained theorist, and of course a Faculty Fellow in Ethics this past year. Beginning this coming year, the course will become a requirement for Masters in Architecture candidates. It will also undergo a change in format: from a weekly discussion to a semi-weekly lecture and seminar.

The course is taught primarily from materials developed by its instructors. Beach prepares the case studies, which are based on actual episodes involving dilemmas faced by practicing architects. They raise issues such as the ethical limits on soliciting work, the nature of responsibilities to clients and colleagues, design quality in circumstances of diminished project control, the effects of professional specialization on fiduciary responsibilities, and various conflicts among duties to clients, professional standards, and the community. Issues surrounding international work were introduced and explored this year through a case on the reconstruction of central Berlin by non-German architects.

Students are appointed to task forces and assigned further research on each case, after which they report back to the class. The architect featured in the case (typically a well known and respected professional) then meets with the class in person to discuss the issues the students wish to raise. In preparation for next year's format changes, the course will be

redesigned to have a more comprehensive on-line presence, more short problem-solving exercises, and more general ethics readings beyond the architectural materials.

Other current HDS courses that explore the ethical dimensions of architecture and its practice include: "Green Modern: A History of Environmental Consciousness in Architecture from Patrick Geddes to the Present," taught by Hashim Sarkis; "Introduction to Architectural Theory," taught by Michael Hays; and "Development of Professional Practice," taught by Paul Nakazawa.

### Divinity

*(reported by Nancy Nienhuis)*

The Divinity School is engaged in the teaching of theologically-informed ethics and in research on the ethical dimensions of public policy and professional practice. In its courses, interfaculty seminars, and executive and public education efforts, as well as in the programs of the Center for the Study of Values in Public Life, the Center for the Study of World Religions, the Women's Studies in Religion Program, and the Urban Ministry Fellowship Program, the School has focused on the importance of religious ideas and institutions in contributing to public life from a variety of perspectives.

Subjects receiving curricular attention in the area of ethics include international relations, economic decision making, the environment, medicine, and civic renewal and political discourse. A large number of faculty teach courses on or closely related to ethics. Bryan Hehir, Chair of the Executive Committee, continued to offer courses on political and moral criteria for the use of force,



with Stanley Hoffmann, and on Catholic social teaching, social ethics, and bioethics in Catholic theology. Preston Williams offered courses on human rights and on the ethical and religious teachings of Martin Luther King Jr., while David Little, Director of the Values Center, taught on the meaning and significance of conscience. Tim Weiskel, Visiting Lecturer on Religion and Society, offered "Topics in Environment Ethics" with affiliated faculty member Tim Ford of the School of Public Health, as well as "Ethical and Religious Dimensions of the Environmental Crisis." Arthur Dyck taught a course on ethics in medical practice, as well as a "Theological Perspectives in Clinical Ethics and Health Policy" seminar with Judith Kinley and Richard Norton, visiting lecturers.

Affiliated faculty member Charles Hallisey taught courses on Buddhist views of suffering and on comparative religious ethics, and Ralph Potter taught courses on moralists and practical wisdom. Ann Mongoven, a visiting scholar in the Women's Studies in Religion Program, taught "Just Love: Directions in Feminist Ethics," and Laura Nash, Director of the Institute for Values-Centered Leadership, taught a course on religion and economic society. Harvey Cox taught a course on religious values and cultural conflict. Brent Coffin, Executive Director of the CSVPL, offered a course on "Theology, Public Policy, and the Pursuit of Justice" and affiliated faculty Wei-ming Tu taught a course on Confucian ethics.

Adjunct lecturer Jim Wallis offered a course called "Faith, Politics and Society," while adjunct lecturer Richard Parker taught in the area of religion, public policy, and politics.

**The Center for the Study of Values in Public Life** is an educational, research and teaching institute at the School, involved in executive and public education on key moral issues. It was founded to examine and clarify competing value commitments in public debates, policies, and institutional practices, both domestic and international, with special attention to the role and influence of religion and religious institutions. Its major objective is to promote conscientious and responsible participation in public life at home and abroad, particularly in regard to mitigating violent conflict, developing democracy and civil society, and humanizing the economy.

The new Director, David Little, came to Harvard in the fall, having been a senior scholar with the US Institute of Peace in Washington, D.C. He plans to continue the work begun there on religion, nationalism, and intolerance, with a focus on the role of religious institutions in mitigating ethno-religious conflict. A series of conferences, extending into the spring of 2002, will examine cases such as Sri Lanka, Sudan, Israel, Bosnia and South and North Korea, and will bring together international scholars, practitioners, and policymakers.

In the area of education and domestic moral issues, the third annual Summer Leadership Institute hosted forty-five participants from across the country for a series of lectures, case discussions, seminars, and forums with nationally recognized experts, designed to

sharpen the skills of clergy and lay leaders involved in local church-based community and economic development. Directed by Preston Williams, this program builds on two decades of collaboration between the Divinity School and its African-American alumni and communities of faith.

The Fellows program supports scholars and practitioners in the area of civil society and democratic renewal. The 1999-2000 Fellows were Mary Jo Bane, Professor of Public Policy and Management at the Kennedy School; Sylvia Ann Hewlett, the founder and President of the National Parenting Association and co-author of *The War Against Parents*; Young Hoon Kwaak, the chair and CEO of World City Network; Samuel M. Kobia, the Executive Director of the Cluster on Issues and Themes at the World Council of Churches; and Lucie White, Professor at our Law School.

The Fellows for 2000-2001 are: Pumla Gobodo-Madikizela, Director of Reconciliation at the Institute for Justice and Reconciliation in South Africa, a post she will take up at the end of her fellowship year; Mary Hunt, the co-founder and co-director of the Women's Alliance for Theology, Ethics and Ritual in Maryland; Bill McKibben, a writer and activist who has been a leader in the environmental movement for the past 10 years; and Julie Nelson, an associate professor of economics at the University of Massachusetts.

Two interfaculty seminars focused on ethics, values, and public policy. For three years the Seminar on Public Life and the Renewal of Democracy drew more than 25 scholars from seven faculties. In 1999-2000 twelve papers from the seminar were published under the title *Who Will Provide? The Changing Role of Religion in American Social Welfare*. This collaborative effort will continue through a research program on the social role of faith-based organizations co-sponsored with the Hauser Center for Non-profit Organizations.

Co-sponsored by the University Committee on the Environment and coordinated by Tim Weiskel, the Seminar on Environmental Values examines research on the environment and the ethical implications of related public policy. This year the seminar explored what is required to move from "lone voices of outrage, protest and judgment to effective public policy that could foster a collective sense of a meaningful land ethic."

**The Center for the Study of World Religions** engages in the study of religious life in communities throughout the world and human history, and seeks to understand the meaning of religion with sympathetic insight, and to analyze with scholarly integrity the role of religion in a global perspective. Through its fellowships, conferences, public lectures, research, and publications, the Center encourages multi-disciplinary approaches to religious expressions. An example is the Religions of the World and Ecology conference series. Between 1996 and 1998, some 700 scholars, religious leaders and environmental specialists collaborated or participated in conferences on the relationship between ecology and the religious traditions of Buddhism, Confucian-

ism, Shinto, Hinduism, Indigenous Traditions, Judaism, Christianity, Islam, Taoism, and Jainism.

**The Women's Studies in Religion Program** fosters critical inquiry into the interaction between religion and gender in world religions. This year's Research scholars and their projects included Amy Hollywood: "Mysticism, sexual difference, and the political and ethical dimensions of history"; Ann Mongoven: "Conceptions of civic virtue implicit in feminist interpretations of Christian neighbor love"; Susan Sered: "Jewish women, religious experience, and feminist theology"; Gail Sutherland: "Religion and identity among Hindu women in Houston"; and Ulrike Strasser, who examined the effect of the impact on religious reform and Catholic state-building from the mid-16<sup>th</sup> to the mid-18<sup>th</sup> centuries.

The new WSR scholars include Sidnie Crawford: "Making Women Visible: What the Dead Sea Scrolls Say about Women"; Sue Houchins: "Conjuring Identities: Religious Representations of Black Lesbian Women"; Oyeronke Olajubu: "Veritable Vehicle of Traditions: Women in Yoruba Christianity and Indigenous Religion"; Tracy Pintchman: "Guests at God's Wedding: Hindu Women Celebrating the Marriage of Krishna and Tulsi"; and Traci West: "Locating Our Worth: Moral Discourse, Spiritual Consequences and Black Women's Lives."

## Education

*(reported by Catherine Elgin)*

Concern with ethics pervades the Graduate School of Education, for it is impossible to venture far into the study of education without encountering issues pertaining to equality, respect for individual differences, and the distribution of scarce resources. Several of our students are writing doctoral dissertations that focus on ethics. Among their subjects are: "Communitarianism and Public Education"; "Professional Ethics of Teaching"; and "Dewey's Ethical Theory."

Over the past few years, the number of courses focusing on ethical issues has increased dramatically. Julie Reubin's "The Elusive Quest for Equality" considers how conceptions of equality have evolved in the United States, and how those changes affect education. Fernando Riemers' "Education, Poverty, and Inequality in Latin America," and Emily Hannum's "Education and Social Inequality in Comparative Perspective" look at issues of equality and education cross-culturally.

Howard Gardner's "Creativity and Morality: Need They Be Disjunct?" and Janine Bempechat's "Social and Moral Development," focus on moral psychology. Catherine Elgin's "Philosophy of Education" considers such questions as: Why is education a good? Who is entitled to an education? How should scarce educational resources be distributed? Is moral education possible?

Eileen de los Reyes' new course "Introduction to Critical Theory and Pedagogy" introduces students to the perspective of the Frankfurt School. Judah Schwartz teaches a course on "Ethical and Philosophical Issues

Arising from the Use of Technology in Education." Gary Orfield regularly teaches courses on civil rights.

The Asquith Education Forum sponsored several presentations dealing with ethics and education this year. Ted and Nancy Sizer discussed their new book *The Students are Watching: Schools and the Moral Contract*, and Sissela Bok spoke on "Youth Violence and the Media." The Office of International Education and the Principals' Center also hosted symposia on ethical issues in education.

**Government (Kennedy School)**  
(reported by Arthur Applbaum and others)

The most noteworthy progress in Ethics at the Kennedy School this past year has been in faculty appointments. Arthur Applbaum was promoted to Professor of Ethics and Public Policy, Archon Fung, an MIT-trained democratic theorist, was appointed to an assistant professorship, and a search is underway for the Carr Professor of Human Rights, who will direct the new Carr Center for Human Rights Policy.

The search for a senior person in Ethics and Public Policy began almost two years ago. The job description sought an individual who was "an experienced teacher skilled in engaging a wide range of students, from pre-career degree candidates to senior professionals," and included the fact that the professor would "play a major role in the School's

teaching and research on issues where public action involves substantial questions of philosophy, ethics or democratic theory." In addition, he or she would be expected "to help lead the activities of the University's Center for Ethics and the Professions, which focuses on questions of moral choice in business, government, law and public life generally."

Three finalists were invited for interviews, and in the end the faculty recommended and the Dean and the President approved two appointments: Applbaum, who developed the School's required ethics course and has led the Center's graduate program from the beginning; and Frances Kamm, one of the leading moral philosophers of her generation. She is currently at NYU where she teaches students in law, medicine and philosophy. Kamm has not yet decided whether to accept our offer.

The decision to make two offers represents a recognition of the central importance that ethics now enjoys in the School's curriculum. The major ethics course in the School is part of the required core curriculum and has become one of the courses most appreciated by the students. In addition to the core course, there is a demand for ethics offerings for mid-career students and in the executive programs, as well as for more specialized electives (for example, on international ethics). The School has been a pioneer in the field of ethics and policy, which is now recognized as fundamental in most other schools of public policy.

Even without a permanent director, the Carr Center has quickly become one of the most active operations at the Kennedy School. At the initiative of Samantha Power,

Executive Director and former Graduate Fellow in Ethics, the Center has hosted over fifty lectures, panels, lunch seminars, and films in the past year. The Center is concentrating its efforts on responses to mass atrocity and transitional justice, the accountability of nongovernmental organizations, and human rights in America. A collected volume, whose contributors include Kofi Annan, Jimmy Carter, Louis Henkin, Wei Jingsheng, and Mary Robinson, is forthcoming. The Center also has launched a public education campaign with the Association of Idaho Cities to combat intolerance in that state.

The recently founded Women and Public Policy Program, chaired by Professor Jane Mansbridge and directed by Ambassador Swanee Hunt, is also running at full speed. The Program hosts weekly invited speakers and a number of Forum events. Among its major initiatives, the Program has launched Project Protection, which monitors legislative treatment of the commercial sexual exploitation of women around the world, and Gender Research in Conflict Analysis and Resolution, which studies the role of women in grassroots political movements and nongovernmental organizations. A conference on Women, Religion, and Public Policy, hosted jointly with the Divinity School, examined how religion shapes public policies that affect women's lives and how religion motivates women to seek changes in public policy.

An event supported in part by the Ethics Center was the workshop: "Rethinking ELSI: Science and Social Responsibility in the Post-Genomic Age." The discovery of genetic differences among human populations poses challenges to existing concepts and practices in biomedical ethics, which are based largely on the rights of individual patients and research subjects. This workshop explored a number of issues bearing on the rights of genetically identifiable groups, including expertise, representation, consent, property, and identity. Panels brought together scientific researchers, policymakers, activists, and scholars of science and technology. Follow-up activities are planned for next year through the Program on Legal, Political, and Cultural Studies of Science at the Belfer Center for Science and International Affairs.

For a second year, Ken Winston led the university-wide seminar on "International Ethics and the Professions." The group, which was supported by the Provost's Fund for Interfaculty Collaboration, brought together faculty from FAS and many of the professional schools. Plans to publish the fruits of this seminar in a collected volume are underway. Winston also co-chaired a KSG-sponsored executive program on "Ethical Issues in International Health Research" in Durban, South Africa.

Introductory course offerings in ethics at the Kennedy School are strong and well-established: Applbaum, Mansbridge, and Cary Coglianese teach the Core political ethics course required of the Master of Public Policy students, and Winston teaches "Ethics in Government," primarily for mid-career students. Notable electives include Fred Schauer's course on the First Amend-



ment, Archon Fung's courses on participatory and deliberative democracy, and Bryan Hehir's course on use of force.

### Law

*Reported by David Wilkins (and others)*

The Law School's Program on the Legal Profession, under the direction of Professor David Wilkins, has begun a major initiative to study "Ethical Infrastructure in Large Law Firms." This project is the first of its kind to study and evaluate the policies and practices that large law firms and similar institutions use to address ethical problems and to reinforce professional norms. In addition, the Program is undertaking a study of black Harvard Law School graduates in conjunction with the forthcoming Celebration of Black Alumni to be held at the Law School in September. One of the issues addressed in the survey is how black lawyers deal with moral conflict in their professional lives.

Wilkins is chairing the Advisory Committee for the Open Society Institute's Program on Law and Society. One major issue before the Committee is finding effective ways to discuss and reinforce professional values among lawyers. He also coordinates a study of third year law students that is designed to investigate, among other things, how law students' values affect their career choices; he is also on the advisory board for a national ten year study of lawyers' careers. His recent publica-

tions include "Do Clients Have Ethical Obligations to Lawyers?" and "The Professional Responsibility of Professional Schools to Study and Teach About the Profession."

Wilkins continues to work with the Dean and with the School's alumni to raise the visibility of ethics issues in the School. As evidence of the School's growing commitment to ethics, the Program on the Legal Profession has hired a full-time Research Director and a part time administrator to facilitate the Program's work. In addition, discussions continue with the Dean and concerned faculty members to create a solid financial base for the Program through alumni contributions in the next capital campaign.

A strong group of ethics faculty, including former Faculty Fellows and Faculty Affiliates of the Ethics Center, offer a variety of courses and seminars, including several jointly taught with ethics faculty from other departments and schools. The latter includes collaboration between Richard Fallon and Fred Schauer (Kennedy School), who jointly teach the Constitutional Law Course "The First Amendment's Speech and Press Clauses"; and a seminar offered by Michael Sandel (Government) on "Markets, Morals, and Law."

This year's awards to Faculty include the Sacks-Freund Award for Teaching Excellence, given to Fallon by the graduating class; and the American Society of International Law Certificate of Merit awarded to Martha Minow for her book *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence*. The ASIL Committee on Annual Awards called her work "...a powerful and persuasive critique of

the conventional international law wisdom concerning criminal trials as the 'optimal' response to major atrocities." In a related event in June, Minow addressed the appellate judges of Massachusetts on "Law, Trauma and Memory."

The Constitutional Law and Legal Theory Colloquium, now in its second year, hosted six speakers this year. Presentations on ethics related issues by Cass Sunstein, Anthony Appiah, Akhil Amar, Larry Sager, Jeremy Waldron, and Martha Nussbaum attracted faculty and students from the Law School and across the University. The Colloquium is organized by Martha Minow, Richard Fallon, Larry Lessig, and Frank Michelman.

Carol Steiker, Associate Dean for Academic Affairs, and former Faculty Fellow in Ethics, taught the first-year required course on Criminal Law as well as an elective seminar for upper-level students on "Thinking About Law Teaching" with Todd Rakoff. She also spoke at several conferences, and published her work in several Law Reviews, including *George Washington*, *Michigan*, and *Harvard*.

Fallon, a Visiting Professor in Ethics in the Center in 1995-96, continues to include ethics-related issues in his courses on the Federal Courts and the Constitution. For example, his course on Constitutional Theory focuses on how judges do and should decide cases. And issues of role and

ethics recur in the course on Free Speech, mentioned above. Professor Fallon continues to publish his research, most recently on the issues of constitutional rights. His latest book *Implementing the Constitution* (which discusses the role-based and other ethical obligations of public officials, as well as judges) will be published by Harvard University Press in 2001.

### Medicine

(reported by Joel Roselin and others)

This academic year has seen tremendous activity in medical ethics at the Division of Medical Ethics and throughout the Medical School. New initiatives for student learning, interfaculty dialogue, and community outreach joined an established roster of educational and research efforts to expand the depth and scope of the Division's programs. As this report demonstrates, the Division is dedicated to increasing the role of ethics on the medical school campus and beyond.

### Undergraduate Medical Education

The Division is committed to educating HMS students on a wide range of issues in ethics and values in medicine by introducing them to the complex social issues confronting medical professionals today and laying the groundwork that will prepare students to handle the ethical challenges they will encounter throughout their medical careers. Through a broad range of course offerings and a very active program of extra-curricular events, HMS students are exposed to a wide variety of issues and provided with the skills to systemically address moral and ethical dilemmas.

The Division offered three popular selectives this year: the first-year introductory

course "Moral Aspects of Dilemmas in Medical Practice," led by Lynn Peterson; "Living with Life-Threatening Illness," led by Susan Block and Andy Billings, in which students are paired with patients to learn about such topics as responses to suffering, symptom control, grief and loss, spiritual concerns, and ethical dilemmas; and "Literary Narratives and Ethical Issues," a month-long course led by Lynn Peterson and Martha Montello, which uses classic literary texts as cases for moral reflection about ethical issues in medicine. In addition, ethics plays an important role in other Social Medicine courses, such as "Medicine, Human Rights, and the Physician," led by Carola Eisenberg and Kris Heggenhougen; and "Social Studies of Bioscience and Biotechnology," led by Byron Good and Mary Jo Good.

Several new initiatives are planned for the coming year to expand ethics education. As part of the new Social Medicine Commons, the Division will present one of several orientation programs designed to introduce incoming students to the methods of ethical case analysis. Under the direction of Lisa Lehmann (former Fellow in the University's Ethics Center) the Division is launching a longitudinal Medical Ethics Track to make available to interested HMS students a variety of courses, clinical experiences, and research opportunities to pursue throughout their four years at HMS.

For students interested in pursuing clinical ethics, Lynn Peterson and Robert Truog are developing a hospital-based clerkship in consultation ethics for fourth-year students. And beginning in Spring 2001, the Division will offer a month-long course for fourth-year students, "Pain and Palliative Medicine: From Basic Science to Clinical and Ethical Concerns," a unique integration of basic science, cutting-edge research, clinical practice, and social and ethical issues around a critical medical topic.

Recognizing that the formal curriculum provides limited time to address ethical issues, the Division has developed an extensive program of events in the "informal curriculum." Taking advantage of the Division's flexibility to create innovative programs, activities are targeted to students at different stages in their education while addressing issues of professional, clinical, personal, and social growth, and are planned to coincide with and enhance students' educational tracks and development.

One new program this year, "Anatomy and Meaning Making," was created to help first-year students understand and manage the complex thoughts and feelings brought up by human dissection. And working with the group Medical Students for Choice, the Division helped mount a student-initiated program on "Genetic Testing and Reproductive Decision Making."

The Division continued its popular monthly film screenings and discussion, "Cinema Veritas: The Social Medicine and Medical Ethics Film Series." Among this year's films and guest speakers were *A Midwife's Tale* with historian Laurel Thatcher Ulrich; *Gattaca* with molecular biologist Jonathan

Beckwith; and *Children of a Lesser God* with philosopher Adrienne Asch.

Other on-going educational programs for students include a series of lunchtime seminars led by Senior Fellow Daniel Callahan and Joel Roselin; the *HMS Student Journal of Ethics* (written and edited by our students); the annual Henry K. Beecher Prize for the best student essay in medical ethics; and the Ethics in the Clerkships program, which gives first- and second-year students the opportunity to discuss the ethical dilemmas that arise in the clerkship experiences of their third- and fourth-year counterparts.

### **Public Programs**

The Division's Public Programs engender a vigorous public debate and educational agenda around the critical social and ethical health issues of our time. Headed by Joel Roselin, the programs provide a model for airing important discussions among many constituencies, fostering dialogue and debate, and leading to deeper engagement, more sophisticated analyses, and better public understanding of the complex issues within medical ethics. These constituencies include students, HMS- and hospital-based faculty, members of the Harvard University community, and members of the public at large.

One example of the efforts to bring educational events to disparate communities is the Harvard-Fox Hill Village Medial Ethics Series, a pilot

program that has taken Division faculty and others to a local assisted-listing facility for afternoon lectures. The program's novel approach for bringing ethical debate out of the academy and into the community will be expanded in the coming year.

The Division's active schedule of lectures brought to the campus a wide range of individuals who addressed ethical and moral issues from truly diverse perspectives. These included children's advocate Marian Wright Edelman, this year's George W. Gay Lecturer in Medical Ethics, who encouraged students and faculty to work to improve the lives of America's children; philosopher Peter Singer, who spoke on "Brain Death, PVS, and the Sanctity of Human Life" as protesters marched outside the Medical Education Center; and philosopher Daniel Callahan and his wife, author Sidney Callahan, who debated "Pro-Life, Pro-Choice: A 30-Year Marital Dispute" at the Lawrence Lader Lecture on Family Planning and Reproductive Rights. Other speakers included author William Styron, economist and philosopher Amartya Sen, and historian Kenneth Ludmerer.

The Division remains aggressive in its responsiveness to emerging events and ideas by creating programs that address critical issues of the day. To discuss "The Impact of Managed Care on Medical Education," the Division invited a panel of educators and critics to debate the changes brought on by the managed care revolution; HMS Dean for Medical Education, Daniel Federman, moderated the discussion. At the forum "A Tangled Web: Medical Information, Ethics, and the Internet," the editors of two of the largest medical web sites (Medscape and WebMD) jousted with Internet observers

and critics over the value of medical information on the Internet. And, in response to the growing interest in proposed changes to the Medical School's guidelines for researchers' relationships with industry, the Division and the PPSI invited researchers, members of the review committee, and others to discuss equity issues at the public forum "Undue Influence? Equity Interests in Biomedical Research"; the program was moderated by Dennis Thompson, Director of the University Ethics Center.

#### **Fellowship in Medical Ethics**

Under the leadership of Walter Robinson, the Fellowship in Medical Ethics seeks to broaden the scope of education and research in medical ethics to include not only the normative insights of philosophy but also the descriptive power of the social sciences and humanities. Toward that end, the fellowship brings together clinicians and nurses, lawyers, social scientists, and academics from diverse fields such as religion and literature, to examine the fundamental moral, social, political, and historical forces that shape contemporary medical practice. The structure of the Fellowship, with time commitments that can be tailored to the needs of both full-time clinicians and academics on sabbatical, reflects the Division's view that education and research in medical ethics should build upon previous academic and clinical work.

The Fellowship seminars reflect this commitment to a broader scope of

topics in medical ethics. Recent seminar topics have included the use of cochlear implants in pre-lingual deaf children, the meaning of sexuality in the context of new technologies for assisted reproduction, and the historical contexts of brain death and organ transplantation.

The Fellows draw on experts in clinical ethics from the surrounding Harvard-affiliated hospitals as advisors and mentors, and each develops a specific research project for which a manuscript is completed by the end of the year. In recent years, the Fellowship has grown into a nationally and internationally recognized program for education and research in the social, historical, and philosophical aspects of medical practice, and both the number and quality of the applicants has steadily increased.

Graduates of the fellowship program have taken leadership roles in developing clinical ethics programs at the Harvard-affiliated hospitals and other clinical centers, thus furthering the Division's reach and influence. Several Fellows have continued their work in ethics during fellowships at the University Ethics Center. In addition to the fellows who are working in HMS departments, affiliated hospitals, and the Harvard School of Public Health, former fellows now are appointed in the medical ethics sections of the University of Connecticut School of Medicine, RAND corporation, Gadjah Mada University School of Medicine in Yogyakarta, Indonesia, and Medecins Sans Frontieres-Holland in Amsterdam, Netherlands, as well as the philosophy departments at Amherst College and Drew University. In the past two years alone, papers written by fellows based on work during the fellowship year have appeared in the *New England*

*Journal of Medicine, The Journal of the American Medical Association, The Journal of Clinical Ethics, The Journal of Law and Medicine, Federal Practitioner, Ethics and Disability, and The Medical Journal of Australia.*

### **Program in Scientific Investigation**

Established in 1990 by the Division of Medical Ethics, the Program in the Practice of Scientific Investigation is intended to fulfill federal mandates for training in the responsible conduct of research. Under the new leadership of former Fellow in Ethics Stephen Behnke, the Program has expanded beyond its original mission and now serves researchers from throughout the School and the affiliated hospitals. This year, Dean Joseph Martin made attendance at the Program's sessions mandatory for all trainees and post-doctoral fellows in the Medical School Quadrangle, not only those covered by the federal guidelines. Many sessions were also attended by other members of the wider Medical School community and the general public. Program faculty are national and international leaders in their fields and are chosen because of their expertise in particular areas of relevance to the responsible conduct of research.

The Program seeks to increase understanding of how established guidelines and ethical standards apply to actual research situations facing investigators. Programs offered during this academic year included "Who's on First: Disputes over Scientific Authorship," a panel discus-

sion designed to examine the Medical School's new guidelines governing authorship; "Undue Influence? Equity Interests in Biomedical Research," a forum that explored the issue of how financial conflicts of interest affect the conduct of research; and "Ethical Issues in Gene Research and Therapy," a discussion of the ethical and social implications of genetic testing and research.

### **Collaboration Beyond the School**

An important goal for the Division is the fostering of communication and collaboration in medical ethics among faculty at the affiliated hospitals and among members of the faculties of other Harvard Schools. Several new and continuing programs contribute to that effort, including the Clinical Ethics Consortium, the Faculty Seminar, and the Pettus-Crowe Seminars.

For the second successful year, the Harvard Clinical Ethics Consortium has provided opportunities for collaboration between the clinical ethics programs in each of the affiliated hospitals. The Consortium meets monthly for a luncheon conference to discuss and critique recent ethics consultations. Members from the ethics committee of one hospital present the case, after which members from the ethics committee at another hospital comment upon the case and discuss how the case might have been handled at their institution.

During the past year, cases have raised issues such as: the principles that should govern the separation of Siamese twins when one child must be sacrificed to give the other a chance at survival; whether a Saudi Arabian princess should be allowed to pay for and receive special treatment during her hospitalization; the principles that should

guide the development of a fetal surgery program; whether tube feedings can ever be withheld from a neurologically devastated newborn; whether recipients of blood from donors who subsequently die from Creutzfeldt-Jakob Disease should be notified of this fact; and the principles that should guide hospitals in deciding whether to resterilize and reuse devices that were designed to be single-use only.

The Medical Ethics Faculty Seminar, under the direction of Marcia Angell, continues to be an important forum, bringing together physicians, nurses, chaplains, and others involved in medical ethics from the Medical School and the affiliate hospitals to engage with national figures in the field of ethics for discussion and debate.

This year's speakers included Tom Inui on "Academics and Managed Care"; Tom Murray on "Ethics and Genetics"; Dan Brock on "Ethical Issues in Health Resource Priorities"; Ruth Macklin on "Public Perceptions of Clinical Research"; Christine Cassell on "Professionalism in Medicine"; Peter Singer on "The Medical Practice of Voluntary Euthanasia"; Leon Eisenberg on "Is Teaching Medical Ethics Providing a Fig Leaf to Cover Flawed Institutional Practices?"; and Ed Pellegrino on "The Ethics of Professional Societies".

A new seminar series on the relationship between ethics and the social sciences brought together members

of the Harvard faculties of Medicine, Arts and Sciences, Divinity, Government, and Public Health to discuss such topics as universal healthcare, medicine and the market, and the physician/patient relationship and end-of-life care. The program was made possible by a generous grant from the Petrus-Crowe Foundation and was organized by Dan Callahan and Allan Brandt.

### Research

As part of our ongoing responsibility to further the understanding of the social and moral aspects of health care, the Division directs a vigorous scholarly program of research in ethics, values, and the medical culture, providing support and encouragement to researchers from throughout the Medical School and the affiliate hospitals. Current research projects, applying both empirical and theoretical research methods, include ethical issues in clinical research (examining the function of institutional review boards, and special issues in research with children); issues in law, ethics, and mental health care; enhancing family-centered care of children living with life-threatening conditions; a University-wide project on medical futility; understanding cultural differences in end-of-life care; the concept of "race" in clinical medicine and medical research; informed consent and medical student "practice;" and a national survey of medical ethics education.

Other research activities include the Center for Ethics in Managed Care, a joint project of the Division and the Department of Ambulatory Care and Prevention at Harvard Pilgrim Health Care, which has been focusing on physician attitudes towards managed care; mental health benefits; and the consumer's voice. In addition, research is

underway on a major collaborative study, the "BEST" project (Best Ethical Strategies for Managed Care), with site visits completed and preliminary reports forwarded to approximately half of the 12 participating managed care plans.

The Division's summer research program, led by Lisa Lehmann, provides medical students from HMS and elsewhere the opportunity to spend the summer pursuing supervised research projects and participating in an advanced ethics seminar. Last summer students undertook research into "Pelvic Exams on Anesthetized Patients for Practice," "Disclosure of Financial Incentives in Managed Care," "Genetic Testing," and "Informed Consent for Phase I Cancer Trials." Students also have the opportunity to work on faculty-sponsored projects.

### **Public Health**

*(reported by Barry Bloom)*

Through both basic science and community-based research, students and faculty are presented with the ethical challenges confronting today's scientists. That is why education around the ethical conduct of research remains a high priority at the School of Public Health. In addition to formal classroom training, the School provides numerous opportunities to learn about and discuss various aspects of research ethics. Many campus lectures, seminars, and symposia include an ethics related topic.

A new and exciting opportunity for ethics education has arisen through a three-year NIH training grant awarded to Richard Cash, which began last year. The first intensive one-week program on ethical issues in international health research held last summer received rave reviews from participants and course faculty. A second session is underway here this summer. In addition, the first international session took place in South Africa this summer during the week following the AIDS conference.

Besides traditional classroom activities, the grant also provides funding for a related website and the production of CD ROMs with case studies to accompany the workshop. A discussion of "Ethical Issues in International Health Research" was presented this spring via the internet. This five-week series introduced a new case each week encouraging people from around the world to weigh in with questions and opinions.

The individual departments and centers embrace the need to include topics on ethics in their programming as well. For instance, in February, the FXB Seminar Series included a lecture by Jennifer Leaning on "Ethical and Human Rights Dilemmas in Humanitarian Aid." More recently, the Departments of Biostatistics and Health and Social Behavior included ethics in their daylong program titled "Researching Social Inequalities in Health." Bill Jenkins, an epidemiologist from the national Center for Disease Control, spoke on "Implications of the Tuskegee Study for Public Health Scientists of the 21<sup>st</sup> Century."

Our core course offerings around ethics education remain:



- Michael Reich and Marc Roberts continue to teach "Ethical Basis of the Practice of Public Health," a course required of all Masters of Public Health students.
- Troyen Brennan offers a similar course for public health students and participants in the Summer Institute, with a special focus on the application of ethical analysis to contemporary health policy.
- Medical Area faculty members provide an overview of the various moral dilemmas that may arise in the conduct of research on public health issues in the spring lecture course, "Research Ethics in Public Health." This course is designed to fulfill the National Institutes of Health mandate to provide all NIH trainees with instruction in the ethical conduct of research, but is open to all.
- Richard Cash examines how research is conducted in developing countries and explores ways of dealing with the different ethical issues that arise in international public health research in his spring seminar course "Ethical Issues in International Health Research".

With support from the Provost's office, the School has recently convened a search committee to seek a tenured professor of ethics who would join the School's faculty. The search committee has representation

from the Faculty of Arts and Sciences and the Medical School, and it is the intention that this professorship will play an active role in the University Ethics Center. The successful candidate will have expertise in the philosophical bases of ethical theory and the public health dimensions of ethics, and should bring experience applying ethical analysis to public health policy issues and questions of health equity from both the domestic and international perspectives. We expect that the School's active research and teaching program in the area of ethics will be greatly enhanced by the appointment of a new professor in this field.



**APPENDIX I**  
***Planning an Advisory Council***

*Meeting Agenda and Biographies of Participants*  
*March 3, 2000*



## **PLANNING AN ADVISORY COUNCIL FOR THE UNIVERSITY CENTER FOR ETHICS**

Friday, March 3, 2000  
Taubman Conference Center, Fifth Floor  
John F. Kennedy School of Government

### **A G E N D A**

- 11:00 a.m.      Introductory Remarks  
NEIL L. RUDENSTINE, President
- 11:15 a.m.      CASE STUDY: "Allocating Scarce Resources in the Intensive Care Unit"  
Discussion led by ROBERT TRUOG, M.D., Associate Professor of Anesthesia and Pediatrics  
Director, Pediatric Intensive Care Unit, Boston Children's Hospital  
Faculty Associate of the Center  
Fellow in Ethics 1990-91
- 12:30 p.m.      LUNCH: Discussion with HARVEY V. FINEBERG, Provost, and members of the Center's  
Faculty Committee:
- JOSEPH L. BADARACCO, John Shad Professor of Business Ethics  
MARTHA MINOW, Professor of Law  
MICHAEL SANDEL, Professor of Government
- 1:45 p.m.      Break
- 2:00 p.m.      Business Meeting with HARVEY V. FINEBERG and DENNIS F. THOMPSON
- Future directions for the Center  
Purpose and Structure of the Advisory Council  
Possible new members
- 3:00 p.m.      Meeting concludes

**ADVISORY COUNCIL MEMBERS**  
**MARCH 2000**

**EUGENE P. BEARD** is Vice Chairman, Finance and Operations, at The Interpublic Group of Companies, a worldwide advertising and marketing communications group with over 400 offices in 120 countries. He is also a member of the board of Brown Brothers Harriman, 59 Wall Street Fund; Bessemer Trust Company Old Westbury Funds, Wharton Entrepreneurial Advisory Board, and Listed Company Advisory Committee to the New York Stock Exchange Board of Directors. Mr. Beard is a graduate of Duquesne University, where he established the Beard Center for Leadership and Ethics in Business. At the University Center for Ethics and the Professions, Mr. Beard has been supporting the Eugene P. Beard Graduate Fellowships since 1996.

**LAURENCE BELFER**, BA '88, is Director, Vice-Chairman and Chief Operating Officer of Belco Oil & Gas Corporation. He is also co-founder and Chairman of Harvest Management, a money management firm specializing in risk arbitrage situations. Mr. Belfer received a BA with Honors from Harvard University and a JD from Columbia University Law School. He is a member of the New York State Bar. He studied international relations in Great Britain, Russia, Germany, China and Japan. He serves on the Board of Directors for the Belfer Foundation and The Housing Enterprise for the Less Privileged, and is a member of the International Studies Advisory Committee 1999 at Harvard University. Mr. Belfer is married to Carolyn Belfer, and has two children, Arthur and Daniel.

**BRADLEY BLOOM** is a 1975 graduate of Harvard College and of the Graduate School of Business. He is a founding partner and currently Managing Director of Berkshire Partners, a venture capital firm that specializes in middle market investments. Prior to co-founding Berkshire Partners in 1984, Mr. Bloom was a partner of the Thomas H. Lee Company. He is currently Treasurer and a member of Executive Committee of the Combined Jewish Philanthropies. Mr. Bloom is married to Terrie Fried Bloom, also a member of the class of 1975.

**NONNIE STEER BURNES** is a circuit judge of the Massachusetts Superior Court, appointed by the Governor in 1996. Among the many newsworthy cases over which Judge Burnes has presided is the 1997 suit in which she ruled that men may have access to Healthworks, a formerly "women-only" gym. Judge Burnes was formerly a trial attorney and partner with the Boston firm of Hill & Barlow, where she was a member of the Management and Compensation Committees. In 1994, she was appointed to one of five seats on the Massachusetts State Ethics Commission. Judge Burnes is married to Richard M. Burnes, Jr., a general partner at Charles River Ventures. The couple has three children.

**MICHAEL A. COOPER**, AB'57, LL.B.'60, is a litigation partner with the New York law firm of Sullivan & Cromwell, one of the country's preeminent firms. He has extensive experience in business-related litigation, including antitrust and securities claims, investigations by antitrust, securities and banking regulators, and representation of law firms. His responsibilities include advising his firm on ethical issues and coordinating the firm's extensive pro bono activities. Mr. Cooper is a member of the Harvard Committee on University Resources. He is also President of the Association of the Bar of the City of New York, former President of the Legal Aid Society and Co-Chair of the Lawyers' Committee for Civil Rights Under Law, and is a Fellow of the American College of Trial Lawyers. He is married to Nan Rothschild Cooper, and has three children.

**ROBERT W. DECHERD**, AB '73, is Chairman, President and CEO of Belo, one of the fastest growing and largest multi-media companies in the nation. He is also a director of Kimberly-Clark, a leading global manufacturer of personal care and health products. At Harvard, Mr. Decherd's affiliations include Vice Chair of his Class Steering Committee, on which he previously served from 1989 to 1992. From 1989 to 1993, he was a member of the Visiting Committee to the College and the Graduate School of Arts and Sciences. He has been a member or officer of The Harvard Crimson Graduate Board since 1973 and co-chaired The Crimson's national capital campaign from 1987 until 1991. Mr. Decherd is married to Maureen Decherd, and the couple has two children, William '01, and Audrey.

**ROBERT D. JOFFE**, AB '64, J.D. '67, is Presiding Partner at the New York law firm of Cravath, Swaine & Moore. He has extensive litigation and counseling experience in the areas of antitrust, copyright, contract and the First Amendment, and with pro bono work in the area of civil rights and international human rights. His early work included public service with the Government of Malawi. Mr. Joffe has argued several high profile cases, including in the U.S. and Delaware Supreme Courts. His publications include co-authored articles on the First Amendment and the Media, and on antitrust law. He is a member of the Harvard Law School Dean's Advisory Board. Outside activities include membership of the Council on Foreign Relations, and the Board of Directors, Lawyers Committee for Human Rights. Mr. Joffe is married to Virginia Ryan Joffe and has two children and two stepchildren.

**JEFFREY F. SAGANSKY**, AB'74, MBA'76, is President and CEO of Paxson Communications Corporation. In 1996, he was appointed co-President of the entertainment division of SONY, focusing on television activities and international business. He is the former President of CBS' entertainment division (1990-1994), TriStar Pictures (1988-1989), and David Gerber Productions (1979-1981). He worked in programming at NBC from 1981 to 1986 to develop shows such as Cheers, St. Elsewhere, Family Ties, and Remington Steele. Mr. Sagansky holds an MBA from Harvard Business School, and as part of his 25<sup>th</sup> reunion, he established the Albert and Charlotte Sagansky Scholarship Fund in the Faculty of Arts and Sciences. He has been a member of the Committee on University Resources since 1996.



**APPENDIX II**  
***Faculty Fellows in Ethics 2000-2001***





**FACULTY FELLOWS IN ETHICS**  
**2000-2001**

**MARIA CANELLOPOULOU BOTTIS** holds two LL.M degrees (from Cambridge University Law School and from Yale Law School). She also received an LL.B. (Rotary Award) and an honors Ph.D. in medical law and ethics from Athens Law School, where she directed the *Athens Law Review*. Her Ph.D., which focused on informed consent in civil and common law, was published in February 2000. She currently teaches law at Ionian University, Corfu, Greece, and is the editor of the *Ionian Law Review*. In the future, she hopes to establish an institute of international medical law and ethics in Corfu. Her main areas of interest are medical law and ethics, constitutional law, torts, and feminist legal issues. During the Fellowship year, she plans to research ethical and legal issues related to organ and tissue transplants, and hopes to complete a book on transplants.

**STEVEN JOFFE** holds an AB in Fine Arts from Harvard College and an MD from the University of California at San Francisco, where he also trained in pediatrics. He also received a Master of Public Health from the University of California at Berkeley. He held a fellowship in pediatric hematology and oncology at Dana-Farber Cancer Institute and Children's Hospital, and was a Fellow in the Division of Medical Ethics at Harvard. He is currently completing a Fellowship in the Program in Clinical Effectiveness at Children's Hospital. His work in biomedical ethics blends theory with empirical research, with particular focus on areas such as the nature and limits of informed consent in the ethics of research with human subjects, and the similarities and differences between respect for persons and respect for autonomy, two principles that have been advanced as central to the doctor-patient relationship. During the fellowship year he plans to complete a study of the relationships between trust, autonomy and respect in determining patients' evaluations of care.

**LUKAS H. MEYER** is a Wissenschaftlicher Postdoctoral Fellow in Political Theory at the University of Bremen, Germany. He studied philosophy, political theory, and public international law at, among others, the universities of Oxford and Tübingen, and at Yale Law School, and received a D.Phil. in political philosophy from Oxford. He has contributed to books and journals in the fields of public international law, normative theory of international relations, and the theory of intergenerational relations. During his fellowship year, he plans to complete a book on historical justice, with special attention to a normative theory of the individual and collective responsibilities of presently living people based on what they have inherited from past people. A current project is his work, as co-editor and contributor, on a book of essays tentatively titled *Rights, Society, and the Law. Essays after Joseph Raz*.

**STEVEN D. PEARSON** is a general internist and Assistant Professor of Ambulatory Care and Prevention at Harvard Medical School and Harvard Pilgrim Health Care. He received his BA from Stanford University, his MD from the University of California at San Francisco, and a Master of Science degree in Health Policy and Management from the Harvard School of Public Health. In 1996 he spearheaded the effort to create the Center for Ethics in Managed Care, a joint center with Harvard Medical School. He teaches courses on

professionalism and ethics for physicians, and he has published articles on doctor-patient communication about rationing, generalist-specialist relationships in medicine, and on ethical guidelines for physician compensation agreements. During his fellowship year, he will complete a book describing the results of an investigation on exemplary ethical policies of health plans in managed care. He will also pursue work on evolving types of conflict of interest for physicians.

**AMNON REICHMAN** holds an LL.B. from the Hebrew University in Jerusalem, an LL.M. from the University of California at Berkeley, and an SJD. from the University of Toronto. Prior to pursuing graduate work, he clerked for Justice Ahron Barak of the Israeli Supreme Court. His main areas of interest are constitutional theory, communication between the media and the courts, theories of adjudication, and aspects of globalization in constitutional law. He is co-author of *The Israeli Discourse on Torture: Domestic and International Aspects*, forthcoming in a collection of essays on torture as tort. Current projects include "Overlooking the Common Law," a law review article which develops a framework to analyze discrimination under the common law, and "A Charter-Free Domain," which investigates the interplay between the different legal regimes that comprise the "law" and, in particular, between the common law and the Constitution. He plans to complete a book examining the practice of constitutional adjudication as a site of professional discourse, and the relationship between the professional discourse and other forms of political deliberation.

**ANDREW D. WILLIAMS** teaches moral and political philosophy at the University of Warwick, England, where he is a Research Fellow in Public Philosophy, and Co-Director of the Masters program in Philosophy. Educated at the University of Oxford, he has taught at the University of York, England, and Yale University. His research lies at the intersection of philosophy, politics, and economics, and has been published in international journals. He has recently written on economic incentives, unconditional basic income, and political liberalism, and co-edited a collection of essays: *The Ideal of Equality* (with Matthew Clayton). He is especially interested in liberal egalitarian theories of justice, and their capacity to deal with problems within international and intergenerational ethics. During his Fellowship year, he will work on "Procreative Justice," a monograph examining how the benefits and burdens produced by individual reproductive decisions should be distributed.

**APPENDIX III**  
***Graduate Fellows in Ethics 2000-2001***



**GRADUATE FELLOWS IN ETHICS**  
**2000-2001**

**BRYAN GARSTEN** has been named an **Edmond J. Safra Graduate Fellow in Ethics**. He is a Ph.D. candidate in government and his dissertation investigates the place of political rhetoric in contemporary, ancient and modern conceptions of politics. It asks whether rhetorical speech can play a legitimate role in public deliberations about justice, and focuses on the discrediting of rhetoric since Hobbes and on its implications for our views about politics today. Garsten graduated *summa cum laude* in government and philosophy from Harvard, where his thesis on Plato earned the Philo Sherman Bennett Prize for an outstanding essay discussing the principles of free government. As an Eben Fiske scholar at Trinity College, Cambridge, he earned an M.Phil. in Political Thought and Intellectual History, and first class honors for his dissertation on the concept of dialogue in contemporary political thought. Since returning to Harvard he has taught constitutional government and moral reasoning, and he recently participated in the Writing Fellows Program at the Bok Center for Teaching and Learning.

**JILL HORWITZ** is a Ph.D. candidate in health policy, concentrating in ethics. She will serve concurrently as a **Hauser Center Fellow for Doctoral Studies in the Nonprofit Sector**. Horwitz's dissertation explores the behavioral, ethical, and legal implications of corporate organizational form of American hospitals. In part, she examines whether behavioral differences between not-for-profit and for-profit hospitals are legally or ethically justified and, if so, whether such justifications arise from the good hospitals provide or from the form of incorporation. Her publications include works on hospital conversions, medical malpractice liability, and Medicaid managed care. Horwitz, who is a member of the Massachusetts Bar, holds an MPP from the Kennedy School of Government, a JD *magna cum laude* from Harvard Law School, and a BA in history from Northwestern University. Following graduation from law school, she clerked for Judge Norman Stahl of the U.S. Court of Appeals for the First Circuit. She has taught history at Phillips Academy and was the Director of Public Affairs at a Planned Parenthood affiliate..

**AARON JAMES**, a Ph.D. candidate in philosophy, has been named an **Edmond J. Safra Graduate Fellow in Ethics**. His dissertation concerns the objectivity of normative judgments. It first proposes an account of what it is for a judgment about practical reasons to be objectively correct, and then defends a view about practical reasons that explains how judgments about them could be objective in this sense. James has side interests in philosophy of mind and philosophy of religion, and is increasingly turning his attention to issues in political philosophy. He graduated *summa cum laude* with a B.A. from Westmont college, Santa Barbara, and came to Harvard having been awarded a multi-year fellowship from the Pew Younger Scholars Program. James has also been a teaching fellow for courses in moral philosophy for Harvard's Department of Philosophy and Core Program.

**MADELINE KOCHEN** has been named an **Edmond J. Safra Graduate Fellow in Ethics**. She is pursuing a Ph.D. in Political Philosophy, Ethics and Jewish Law at the Graduate School of Arts and Sciences, and is exploring the ethical issues surrounding the

commodification of actions and property that might be considered sacred. Using the sale of human organs for transplant as her starting point, she is examining the desacralizing effect (if any) of monetary exchange in the obligations-based Jewish legal system. Kochen has a JD from Cardozo Law School and a BA *magna cum laude* in Judaic Studies from Yeshiva University. After graduating from law school, she worked for several years as a public interest lawyer in New York, and later as Director of Public Interest Law and Acting Dean of Students at Stanford Law School, where she also taught a course in Talmudic Law.

**TAMARA METZ**, a Ph.D. candidate in government, has been named a **Eugene P. Beard Graduate Fellow in Ethics**. Her dissertation aims to clarify and critically assess the challenges posed by marriage as a political institution in a liberal democratic polity. Starting with contemporary debates and policies, the dissertation draws on American legal and Western political thought to explain the central but unappreciated importance of the distinct functions of public recognition of marriage. In so doing, this project recommends an alternative conception of the relationship between marriage and liberal political life. Tamara graduated *summa cum laude* from Brandeis University with a BA in political science, receiving the L. Martin Award for Best Thesis in Legal Studies for her project on divorce law reform. At Harvard, she was awarded the Judith Shklar Memorial Fellowship. She has been a teaching fellow for courses in moral reasoning, political theory and American Government, and served as an academic advisor to undergraduates in government. She received a Certificate of Distinction from Harvard's Derek Bok Center for Teaching and Learning.

**JOHN M. PARRISH**, a Ph.D. candidate in government, has been named an **Edmond J. Safra Graduate Fellow in Ethics**. His research focuses on problems at the intersection of ethics and political theory, especially the so-called problem of "dirty hands" in early modern political thought. His dissertation explores the connection between, on the one hand, ancient and Renaissance concerns about the moral hazards of political action, culminating in the *raison d'état* tradition, and, on the other, the emergence of the "private vices, public benefits" argument in 17<sup>th</sup> century Catholic theology and 18<sup>th</sup> century moral philosophy and political economy. He previously studied political thought and intellectual history at Cambridge University, where he was awarded the Master of Philosophy degree with distinction. At Harvard he has taught courses on the history of modern political thought as well as American political thought and contemporary political theory. For two years he coordinated Harvard's graduate workshop in political theory and he presently serves on the Government Department's graduate student committee.

**PETER SPIEGLER**, a Ph.D. candidate in Economics, has been named a **Eugene P. Beard Graduate Fellow in Ethics**. His research focuses on the ethical implications of economic theory and practice. In his dissertation, he is attempting to construct an account of the manner in which economic theory and practice may constrict the ethical debate, to explore the consequences of such a constriction, and to offer a prescription for a more ethically transparent economics and a more constructive relationship between economics and the normative social sciences. During his fellowship year he will examine the legitimacy of the claim that economics can and should be a purely positive science, as well as the implications of malleable preferences for the content and meaning of revealed preference utility theory. He graduated *magna cum laude* from Princeton University with an AB in

Economics, receiving the John Glover Wilson Memorial Award (second prize) for his senior thesis. He spent three years in investment banking and venture capital at Morgan Stanley before earning a Master's degree in Public Policy from the Kennedy School of Government, where he was a Kennedy Fellow.





**APPENDIX IV**  
***Faculty Fellows in Ethics 1999-2000***  
***Reports on Fellowship Year***



Victoria E. Beach—Report on 1999-2000 Fellowship Year

*I thought being a philosopher was difficult...until I tried architecture.*

—Ludwig Wittgenstein

As an architect attempting to be an ethicist for a year, I was simultaneously outpaced and inspired by my accomplished colleagues. Our weekly discussions managed to be both broad and profound and I felt truly indulgent, enjoying such a regular diet of scintillating interactions. The skilled direction of Dennis Thompson, along with the skilled counter-direction of Arthur Applbaum, certainly provides one of the most genuine intellectual forums I have had the privilege to experience.

The fellowship exposed me to a host of wonderful writers and readings, which I can now plunder for my own teaching. However, it also afforded me the time to satisfy a great deal of other reading needs I had accumulated. I read extensively theories on morality in the arts, histories of the professions in general, histories of architectural practice, accounts of the transition of architecture into professionalism and theories of professional power.

Based partly on this reading, I produced a written framework for my own account of the tensions inherent architecture as an art and as a profession. This includes examinations of duties to the public, patrons, and principles, if any, of artists, of architects, and of other professionals; as well as an inquiry into the exceptional qualities, if any, of the medium of architecture versus the media of other disciplines. One thing this writing has revealed to me is that I would like to pursue in more depth a few spin-off topics, such as the nature and duties of architectural clients.

In addition to discussing, reading and writing, I also spent time pontificating at various emerging conferences on ethics in architecture and managed to expound my way into organizing yet another ethics conference for this fall. Meanwhile, I again co-taught our ethics seminar at the Harvard Architecture Department, which has suddenly been upgraded to a required lecture course for next year – just in time to benefit from the lessons of this fellowship. Others may also benefit, as I have been recruited to design the curriculum for the local American Institute of Architecture ethics committee and to consult on ethics curricula at other architectural schools.

I am certain that none of the above would have been possible without this fellowship. At the very least, the fact of the fellowship brings validity to a discipline that has had a muted presence in the field of architecture. The willingness of this university to grant importance to independent efforts in ethics education is creating a cycle of legitimacy – the more it is studied the more important it becomes. Architects have a great deal to gain from this cycle. Though they have always perceived their work in ethical terms, architects have not always had the assurance that they are welcome to aim their public discourse at ethical matters.

In meeting both with practitioners and students, it is clear to me that my participation in the fellowship has had a perceptible effect on their understanding of the importance of our ethical discourse. But furthermore, this fellowship has significantly sharpened my own tools to help build this discourse.

For sustaining all this I am very grateful to the entire staff of the Center. As we venture forth, my one fear is that I will understand all too clearly that the outside world works a little less well because Dennis has corralled all the wonderful and the talented for himself. Nonetheless, I am deeply indebted to Dennis, Arthur, my fellow Fellows, and the Center's supporters for this incomparable year. In all manners possible, I hope to extend the experience of my year as an ethicist into the years ahead.

-Victoria Beach

CENTER IN ETHICS. HARVARD UNIVERSITY  
REPORT ON FELLOWSHIP YEAR, 1999-2000.

Paula Casal

I thought this was going to be the best year of my life, and I was right. The Fellowship is likely to make a greater difference to those of us who come from afar than those who already work nearby. But, whatever one's origins, I find it difficult to imagine better conditions to work on ethics and political philosophy. The Center possesses a rare combination of virtues, ideal for discussion and cooperation. It provides constant intellectual stimulation alongside a very peaceful and harmonious research environment. It offers easy access to a wealth of resources without being overwhelming. It poses deep philosophical challenges every week, which keep its members alert and highly motivated but never tense or stressed. I definitely found the high academic standards I had expected, but had not imagined that everybody would be so friendly and keen to talk long after the scheduled activities had finished. We were spoiled by having both Dennis and Arthur for three hours every week. They make a great team. Their seminars were so enjoyable that I wish they had lasted longer. (I shall use some of the readings in a seminar I am giving in Lisbon, in July, for thirty U.S. marine biologists). I am also glad to have shared the year with the other Fellows, all of whom I like very much, and hope to keep in touch with in the future. Jean, Jennifer, Sowmya and Allison are all really wonderful, and it was also great to have a research assistant like Judy.

My main project was to work on a book on egalitarian theories of distributive justice, entitled *Just Equality*, which is due for submission to Oxford University Press in September, 2001. I am still on schedule to complete my first draft by the end of this year, something which appeared unlikely until I began work here. I had a clear plan, but not a single article I could recycle into a chapter. Partly because I was starting from scratch, there were moments when I became painfully aware of how difficult it would be to achieve my ambitions for the book. I hoped to cover an extensive and complex set of issues in a way which was very accessible and concise, but feared that at least one of my ambitions would have to give way. I worried that without abandoning some topics, thereby damaging the book's structure and systematic character, it was bound to be either too long or too dense. Being here gave me the confidence and determination to stick to the original plan, and overcome these obstacles. The book discusses three debates. The first concerns whether *equality* (and not *utility*, *priority*, or *sufficiency*) is the correct principle of distribution. The second concerns how to decide which individuals are relevantly worse off than others and, whether *welfare* (and not *resources* or *capabilities*) is what should be distributed equally in a just society. The third concerns the appropriate scope for equality (from individuals and families, to international and intergenerational relations). I have drafted the chapters of the first two parts, which forced me to find and defend my own position. I am now applying my view to the different contexts, hoping that my own principles will still give acceptable results in all of these spheres.

It was tremendously useful to attend Harvard seminars, and be able to knock on the doors of some of the philosophers I was writing about. Derek Parfit was extremely

generous with his time and brilliant insights. I also learned much from Tim Scanlon at seminars and papers. I even had the exceptional good fortune of sitting next to Amartya Sen at dinner, just when I was dealing with the objections to his capability approach.

Though, ideally, I would have worked only on the book, for various reasons I had to complete some other projects. On arrival, I made the final revisions to "Environmentalism, Procreation, and the Principle of Fairness?" which appeared in *Public Affairs Quarterly*, vol. 13, no. 4, 1999. I then wrote a short article on "The Philosophy of Peter Singer", forthcoming in Joy A. Palmer and Peter Blaze Corcoran (eds.), *Environmental Philosophers*, Routledge, 2000, and the entry "Peter Singer" for John Barry's *International Encyclopaedia of Environmental Politics*, also forthcoming with Routledge in 2000. I also co-authored two articles with Singer: "The Great Ape Project and the Concept of Personhood", forthcoming (with responses from various Spanish philosophers) in *Laguna*, a Spanish philosophy journal, in July 2000; and "Human and Simian Rights". (After years working as a volunteer for The Great Ape Project, I could finally replace emails for proper working lunches with the President (Singer) and Executive Director, Paul Waldau, a Professor at the Divinity School). In addition, I revised and submitted four short articles "Dilema del Prisionero", "Tragedia de los Comunes", "Marxismo Analítico", and "Determinismo Tecnoecológico", forthcoming in Román Reyes (ed.) *Terminología Científico-Social. Aproximación Crítica-Anexo*, Anthropos, Barcelona, 2000. Thanks to Sowmya, who converted my tree diagrams, there is also a complete electronic edition in CD, and in <http://www.ucm.es/info/eurotheo/terminog.htm>. Finally, I wrote a paper on whether religious or cultural minorities should be granted exemptions from laws prohibiting cruelty to animals. In October, another Fellow, Noam, introduced me to Susan Okin, the feminist scholar I admire the most, at a debate on her *Is Multiculturalism Bad for Women?* I called my paper "Is Multiculturalism Bad for Animals?". I presented a preliminary version of it at Princeton's Center for Human Values, and then developed it into a draft, which the Fellows read. Following their advice, I transformed it into two articles. The first, now optimistically submitted to *Ethics*, deals with the Santeria religion, and criticizes religious and egalitarian arguments for exemptions to anti-cruelty legislation. The second, better suited to a law journal, deals more generally with multiculturalism, feminism and animal rights, and discusses various other cases, such as bullfighting, indigenous whaling, dhabh and kosher meat. During the Winter break, I did some of my research on Santeria in Cuba, where I gave a seminar and a paper on Equality at a Philosophy conference in Havana. It was also very useful to discuss the relevant U.S. legislation with two experts on animal law, Professors Gary Francione (Rutgers) and Steven Wise (Harvard), whom I met in September at a conference on this subject in New York.

I have been sending my drafts to my colleagues at the Politics Department at the University of Keele, where I hold a tenured position, and have been granted permission to stay in Cambridge for another year. Since I would not want this very happy and stress-free period to end, ever, I really look forward to spending another year here.

## **Report on Fellowship Year 1999-2000**

**Sharon Dolovich**

This year has been an incredibly rewarding one for me, both in terms of the work I have been able to do and the interactions – both in the seminar and more informally – that I have had with others at the Center. I can't say enough about how grateful I am to the Center, and to Dennis Thompson and Arthur Applbaum in particular, for giving me the opportunity to participate in the program, and to Jean McVeigh, Sowmya Bharathi, Jennifer Sekelsky, Allison Ruda, and Judy Kendall for their considerable support and assistance over the course of the year.

In my original application for the fellowship, I suggested to Dennis that the Center (then a Program) was the perfect place for me, because my interest in several areas of applied ethics as well in professionalism and professional ethics seemed to overlap with those of the Center at so many different points. I can't, of course, say what part this somewhat audacious claim played in bringing me here. But I can categorically say that, as I had hoped, the broad overlap between my own interests and those to which Dennis and the Center are committed added significantly to the richness of my experience this year.

To put the point another way, this year I learned a whole lot about a whole lot of things that interest me a lot. I learned in the seminar, in which we collectively dissected a range of ethical issues; in our weekly fellows' lunch, during which, under Dennis's firm hand, we confronted many of the ethical issues of the day; and during the lectures as well as the dinner conversations that followed the lectures as regularly as the dessert follows the entrée. I was struck at each of these meetings not only at how insightful were many of the contributions, but in particular at how fruitful it was to have so many different perspectives represented. When I extol the virtues of the Center (which I do not infrequently) it is perhaps this feature that I mention most: the way that getting philosophers and political theorists and doctors and lawyers and architects and business types together in a room really does enrich the discussion for everyone.

In terms of my research, the year took a slightly different turn than I had anticipated. I arrived intending quickly to complete a paper (then in progress) on the ethics of private prisons, in which I address ethical issues arising from this one particular corrections policy, after which I expected to turn immediately to related (and, I mistakenly thought, broader) questions at the level of an individual offender's responsibility for his or her offense. As it happened, however, the private prisons paper proved to herald a much larger project than I had bargained for, and I wound up spending my time this year thinking about criminal justice ethics writ large. The bad news – and a source of considerable frustration for me – is that I don't have a completed paper (much less several!) to show for myself. The good news, however, is that I have two major papers on the go, entitled, respectively, "The Ethics of Private Prisons" and "Ethical Punishment in Liberal Democracy," as well as the groundwork for thinking about the normative



foundations of criminal law and criminal punishment, the fruits of which I expect to harvest over the next several years.

During this year, in addition to our regular fellows' seminar and other Center programming, I:

- participated in a monthly reading group on professionalism organized by Professor David Wilkins at Harvard Law School
- attended a 3-day conference at Yale Law School on "Women, Justice, and Authority"
- was an invited participant in a small, one-day workshop, also at Yale Law School, on non-profit private prisons
- presented my work in Professor David Charny's legal theory seminar, "Rationality," a class for upper-year students at Harvard Law School
- attended several sessions of the Constitutional Law & Legal Theory Colloquium at Harvard Law School
- will present a paper at the June 2000 meeting of the National Policy History Association at Bowling Green State University in Bowling Green, Ohio, on a panel on prison privatization.

In addition, in my quest for a teaching job, I presented my work to many law faculties around the country. This last pursuit in particular took me away from the Center much more than I would have liked. It did, however, provide with me tremendous feedback on my work, not to mention affording me innumerable opportunities to publicize the Center.

All in all, it has been a great year. Thank you to Dennis and Arthur, to Jean, Sowmya, Jenn, and Allison, and thanks in particular to my fellow fellows. As I have had cause to remark more than once this year, you have, through your insight, support, and encouragement, taught me a lot about the true meaning of fellowship.

## Report on Fellowship Year 1999-2000

### Harvard University Center for Ethics and the Professions

James E. Fleming

I began my year as a Faculty Fellow in Ethics with high expectations: that it would be one of the best years of my life! And so it has been in many respects. First, thanks to Dennis Thompson and Arthur Applbaum, the Center is intelligently conceived and capably executed. Thanks to them and to all of the Faculty Fellows this year, the weekly seminars were enjoyable, stimulating, and informative. Moreover, the lectures were of a very high caliber, and the dinner discussions were invariably pleasant, probing, and illuminating. Second, Jean McVeigh, Judy Kendall, Sowmya Bharathi, Jennifer Sekelsky, and Allison Ruda are the best support staff with whom I have ever worked. They provided a wonderful atmosphere in which to work. And third, it has been terrific to come back to Harvard and Cambridge, where I was a law student in the 1980s, and to experience them anew as an adult scholar, a spouse, and a parent.

In my fellowship application materials, I sketched four undertakings for the 1999-2000 year. All four have borne fruit, although much work lies ahead before they reach full fruition. First, I sketched an article on civil society, in particular, the role that the institutions of civil society (such as the family and voluntary associations) play in constituting selves and citizens in our constitutional democracy. This year, I have completed two articles concerning civil society, both of which are co-authored with my wife and fellow Fellow, Linda C. McClain. One, *Some Questions for Civil Society-Revivalists*, has been published at 75 Chicago-Kent Law Review 301 (2000). Linda and I were invited to edit a symposium in *Chicago-Kent Law Review* (which follows a symposium-only format, and invites outside scholars to edit the symposia). We chose as our topic "Legal and Constitutional Implications of the Calls to Revive Civil Society." The symposium includes essays by a number of leading figures in political and constitutional theory, including prominent proponents of reviving or renewing civil society. Linda and I assigned portions of our article in the Center Seminar on "Family." The other article, *Foreword: Legal and Constitutional Implications of the Calls to Revive Civil Society*, has been published at 75 Chicago-Kent Law Review 289 (2000). It introduces the foregoing symposium by raising the issues to be addressed and previewing the papers.

Second, I sketched an article on the idea of taking the Constitution seriously outside the courts, that is, by legislatures, executives, and citizens generally. During the year, I have completed two pieces on this subject. One, *The Constitution Outside the Courts*, is to be published in 86 Cornell Law Review (forthcoming 2000). *Cornell Law Review* commissioned me to write a review essay on Mark Tushnet's important book, *Taking the Constitution Away from the Courts*. The essay both assesses Tushnet's book and develops the implications of my prior work for the issue of taking the Constitution seriously outside the courts. I presented drafts in the Fordham Faculty Workshop Series and in the Center Seminar. The other piece,

*The Canon and the Constitution Outside the Courts*, is to be published in 17 Constitutional Commentary (forthcoming 2000). It is co-authored with Professor Sotirios A. Barber of University of Notre Dame. We prepared the piece for a conference on "The Canons of Constitutional Law" at Georgetown University Law Center. Many of the participants were authors of constitutional law casebooks (Barber and I are co-authors with Professor Walter F. Murphy of a casebook, *American Constitutional Interpretation*), and we were asked to reflect upon the canons of constitutional law in light of what we include and do not include in our casebooks. The papers for the conference are being published as a symposium in *Constitutional Commentary*.

Third, I mentioned in my fellowship application materials that I would be writing an article for a conference that I would be organizing on "The Constitution and the Good Society," to be held at Fordham University School of Law on September 22-23, 2000 (and to be co-sponsored by the Committee on the Political Economy of the Good Society (PEGS)). This year, I have spent considerable time in conceiving and planning the conference, which will consist of five panels: The Constitution of Civic Virtue for a Good Society; The Constitution of Equal Citizenship for a Good Society; The Constitution and the Obligations of Government to Secure the Material Preconditions for a Good Society; The Constitution Outside the Courts and the Pursuit of a Good Society; and Constitutional Interpretation and Aspirations to a Good Society. The panelists include a number of important scholars in constitutional and political theory. This summer, I will be completing an article on "Constitutional Interpretation and Aspirations to a Good Society."

Fourth, I stated that I would be working on a book entitled *Securing Constitutional Democracy*. The book builds upon and partially incorporates several published articles as well as the articles mentioned above. I hope to submit the book to a university press for consideration for publication during the coming year.

I also completed the revisions for two articles drafted before the fellowship year began. The first, *Fidelity, Basic Liberties, and the Specter of Lochner*, has been published in 41 William and Mary Law Review 147 (1999). I presented the piece at a conference on "Fidelity, Economic Liberty, and 1937" at William and Mary College of Law. The second, *The Parsimony of Libertarianism*, is to be published in 17 Constitutional Commentary (forthcoming 2000). I prepared the paper for a panel on Randy Barnett's provocative libertarian book *The Structure of Liberty* at the Annual Meeting of the Association of American Law Schools.

Besides the conferences mentioned already, I attended the splendid Tenth Anniversary Symposium on "Questioning Values, Defending Values" at Princeton University Center for Human Values. I also took part regularly in the excellent Harvard Law School Constitutional Law and Legal Theory Colloquium, which is run by Professors Frank Michelman, Richard Fallon, and Martha Minow.

Robert W. Gordon—Report on 1999-2000 Fellowship Year.

I am very grateful to have had this year at the Center, and sad that the year is coming to an end. It is hard to imagine a more congenial setting than this one for thinking about work on ethics and professions and actually getting the work done. Harvard's library collections are unparalleled. The Center's staff -- Jean McVeigh, Judy Kendall (for part of the year), Sowmya Bharathi, Jennifer Sekelsky, Allison Ruda, Judy Hensley -- were unfailingly helpful and supportive and fun to be around. As leaders of the weekly seminars, and as presiding spirits of the fellowship, Dennis Thompson and Arthur Applbaum have provided a model of how to lead and facilitate collegial interchange. They always seemed to know exactly what every one of a very motley group of Fellows was trying to say, and how to help each of us say it better, or if it were foolish not say it again. Their guidance and probing kept the weekly seminars moving briskly and productively. And I can't say enough in appreciation of the other Fellows. We have been fortunate and happy in the cohesion of our group and in the ties we've formed from dialogue and friendship.

For my own projects, the year has been a great boost in several ways. I have not quite finished the book I hoped to finish on law as a public profession, but have written two more chapters, and feel I have a much better understanding of the project and its central arguments than I have ever had before. (I delivered a very compressed version of a piece of the project as a lecture at Vanderbilt and a paper to the Center's Seminar in April.) The year at the Center has been of great help in helping me to sharpen and clarify the project. My book's main thesis is that lawyers have an obligation to respect, further and if need be reform the law, in order to give effect to and better serve its underlying purposes, as well as to serve the interests of their clients. But in a pluralistic society like ours, in which groups pursue diverse and often conflicting interests and ideas of the good, which result in very different responses to and interpretations of law, how should lawyers go about construing legal purposes? I discovered this year that some moral and political theorists, not least among them my colleagues at the Center, had done some very useful thinking on kindred subjects. To be specific, Thompson's work on democratic deliberation, and Applbaum's on the superior presumptive legitimacy of rules enacted with a broad democratic base, have greatly helped me to think my way through this bramble-bush. Paula Casal's seminar on "partial compliance" clarified my attempts to address the problem faced by many professionals in practice, of how to behave ethically when your competitors are all cutting corners or outright cheating. Jim Sabin's materials and reflections on the dilemmas of doctors in HMO practices with incentives to limit patient treatment, and Victoria Beach's case studies of and comments on architects faced with pressures from conflicting constituencies, provided wonderful examples on how committed professionals think their way through and around such dilemmas. Ashish Nanda's seminar was valuable for helping me transpose theories of the "intrinsic morality of the marketplace" to legal practices. The influence on my particular project of discussions with the other Fellows, Sharon Dolovich, Jim Fleming, Linda McClain, and Noam Zohar, has perhaps been more diffuse, but utterly pervasive. "I am a part of all that I have met," has rarely seemed more true.

Given the richness of the stimuli, my actual accomplishments seem a little meager. (1) I spent the first weeks of the fellowship finishing a long article on the ethics of Kenneth Starr's Office of Independent Counsel's investigation of the President; this was published as "Imprudence and Partisanship: Starr's OIC and the Clinton-Lewinsky Affair," (in a Symposium on the Starr investigation) in the *Fordham Law Review* 68: 639-722 (December 1999). (2) I wrote another essay on broader implications of the impeachment controversy – that it illustrated a pervasive tendency in our culture to channel moral outrage through the forms of law, and the perils and perverse effects of that tendency: this was delivered at a conference at the University of Wisconsin-Madison in February, and will appear as "Legalizing Outrage" in a book to be called *Aftermath: Lessons of the Impeachment Scandal* (New York University Press, forthcoming). (3) As previously mentioned, I wrote two more chapters of my book on the history and present prospects of law as a public profession, and gave an abbreviated version of an extract of this work ("Can Lawyers Produce the Rule of Law?") as a lecture at Vanderbilt University in March, and as a paper for the Center's Seminar and a workshop at UCLA Law School in April. (4) I funneled some of the other research I have done for the book into a compact (100-page) history of the American legal profession in the 20<sup>th</sup> century. This manuscript was delivered in May to the editors and will appear as part of a multi-volume retrospective on law in the 20<sup>th</sup> century to be published by the American Academy of Arts & Sciences as *Law 2000*. (5) I prepared some fairly lengthy written testimony to the American Bar Association's Commission on Multidisciplinary Practice, which is considering whether to change the professional rules that currently forbid lawyers to practice and share fees with or under the supervision of other occupations.

I gave several other lectures and conference papers, including a lecture called "Is Professionalism Worth Saving?" at the centennial of the University of Toronto Faculty of Law in September; and a paper on "Liberalism's Constitution of Order" at the American Society for Legal History meeting in October. And some of my time this year also went to helping the Open Society (Soros) Institute design and plan to set up an Institute for Justice to serve as an independent watchdog, critic and reformer of the legal profession.

I wanted a reclusive, as opposed to a sociable, year; and apart from the wonderful seminars and dinners at the Center mostly got one. I did attend regularly the International Ethics Seminar that Ken Winston runs at the Kennedy School, and led a session on ethical problems in international arbitration practice. An ad hoc study group on the legal profession led by David Wilkins and Elizabeth Chambliss was formed at the Law School this year; and I regularly attended (and gave a talk to) that. I also sat in on Bernard Wolfman's Law School seminar on Multidisciplinary Practices. I was brought in as a guest lecturer to several Law School classes and (along with Dennis Thompson) to one at the Business School. And several Harvard graduate students interested in legal history and the legal profession found me and talked about dissertation projects with me.

This is a fine program, expertly run, with what seems to me exactly the right mixture of formal structure and laissez-faire. The year was a memorable one, with what I am certain will be lasting effects of intellectual influences and new friendships.

**Harvard University Center for Ethics and the Professions**  
**Report on Activities as Faculty Fellow, 1999-2000**

Linda C. McClain

I was excited and enthusiastic when Dennis Thompson offered me a position as a Faculty Fellow in Ethics at Harvard's Center for Ethics and the Professions. I have felt that same sense of excitement nearly every day as I have come to work here at the Center. Now, faced with the assignment to sum up my year, I experience a sense of dismay that the year is drawing to a close. Being here at the Center, enriched by its intellectual life and that of the Kennedy School and other parts of Harvard University, has been a splendid way to spend my first sabbatical.

My primary goal for my Fellowship year was to make progress on a book, which has the working title, *Fostering Self-Government: Rights, Capacities, and Responsibilities*. Because I intend the book to link theory and practice by arguing for governmental responsibility to foster the capacities for democratic and personal self-government in the context of a range of contested issues of law and policy, I have found the Center's emphasis upon "practical ethics" most helpful. I have worked on the general theoretical framework of the book and the applications, which include family law and policy, reproductive rights and responsibilities, and civic education. The very richness of intellectual resources at Harvard not only helped me but also made my tasks more complicated, for it tempted me with yet more ideas, questions, and information to consider.

For example, one of the issues that I will address in my book is child care, both as a component of welfare reform and of family policy and as part of the broader ideal of instantiating care as a public value. Within our weekly seminar, I presented a draft chapter, "Care as a Public Value: Linking Responsibility, Resources, and Republicanism," the normative framework of which rests on feminist and liberal principles, but also draws on certain reconstructed civic republican ones. The feedback from the other Fellows and from Dennis Thompson and Arthur Applbaum valuably engaged my work on its own terms and challenged me to go further. When I co-led our seminar session on "Family," and included some of my own work about family policy, I again benefited greatly from my colleagues' challenges. Generally, a number of seminar sessions directly bore on my own project and I found the readings and the discussion enormously helpful. Moreover, one of the great pleasures of the seminar is that sessions that touched on topics less familiar to me or central to my own project nonetheless provoked my interest and broadened my own understanding of ethical inquiry.

Similarly, I benefited greatly from participating in the broader intellectual life available at Harvard, even as that engagement seemed to lead to more work to do. Here I include the terrific Weiner Inequality & Social Policy Seminar, in which I heard work presented by leading social scientists and policy experts; wonderful events sponsored by the Harvard Divinity School in connection with Mary Jo Bane's fellowship there; participation in a splendid Colloquium on Care, Women's Work, and Development Policy convened by Lucie White (of Harvard Law School), as well as less formal occasions in which I had a chance to explore ideas with Lucie and other scholars; and attending the Constitutional Law and Legal Theory Colloquium at Harvard Law School. Over the course of the year, I have also had a chance to deepen my professional relationships and friendships with other faculty at the Harvard Law School. Teaching "Feminist Jurisprudence" at the Law School during the Winter Term was a great pleasure, and engaging with the students about many of the difficult debates within feminist jurisprudence set the stage for leading our seminar session (here at the Center) on "Feminist Ethics."

I am currently working on a book proposal, which I expect to submit to publishers soon. The several writing projects that I have done this year will contribute to the book: (1) I finished up co-

editing (with fellow Fellow Jim Fleming)—and co-authored a short *Foreword* for—a symposium entitled *Symposium on Legal and Constitutional Implications of the Calls to Revive Civil Society*, just published in 75 Chicago-Kent Law Review 289 (2000); (2) for that Symposium, I completed an article (also co-authored with Jim), *Some Questions for Civil Society-Revivalists*, 75 Chicago-Kent Law Review 301 (2000); (3) I presented a paper, *Toward a Formative Project to Secure Freedom and Equality*, at Cornell Law School, for a symposium on “Discrimination and Inequality: Emerging Issues,” and then in a Faculty Workshop at Boston University School of Law; the finished article will appear this summer in Volume 85 of Cornell Law Review; (4) returning to Cornell, I presented a working draft of my paper (referred to above), “Care as a Public Value: Linking Responsibility, Resources, and Republicanism,” at a Feminism and Legal Theory Workshop on the topic, “Children: Public Good or Individual Responsibility;” the finished article will appear in a symposium on “Approaches to Care Work,” to be published next year in 77 Chicago-Kent Law Review; (5) in progress is a paper on civic virtue, sex equality, and government’s formative project, which I will present at a conference, “The Constitution and the Good Society,” to be held at Fordham University School of Law in September, and which will appear next year in a symposium in the Fordham Law Review; (6) an essay in progress, *U.S. Welfare Reform, the Third Way, and the Political Economy of Citizenship*, will be published next year in a book, *The Progressive Challenge* (edited by Henry Tam, Polity Press). Finally, I organized and chaired a panel on “Civic Property: Constructing the Political Economy of Citizenship” at the Working Group on Law, Culture & Humanities conference, held at Georgetown University Law Center in March. Earlier this month, I participated in a splendid conference, “Women, Justice, and Authority,” held at Yale Law School.

Finally, as I reflect on my year as a Fellow, I am most impressed by how the Center manages to foster community and a sense of continuity. This comes through not only in daily interactions between the Fellows and the Center’s supportive, friendly staff and in interchange among the Fellows, but also in the weekly seminar and in the lectures and dinners sponsored by the Center. Even though there is an element of intended humor in Dennis’s never missing an opportunity to identify an author or speaker as a former Fellow, it is also comforting to think that participating this year as a Fellow is the beginning of a longer affiliation with the Center and its concerns. My time as a Fellow has also deepened and broadened my interest in the subject of practical ethics, and I suspect that this will continue to shape both my writing and my teaching.

**Report on the 1999-2000 fellowship year  
Center for Ethics and the Professions**

Ashish Nanda

I enjoyed the fellowship year and learned a lot. Fellowship abounded in the program thanks to Dennis, Arthur, and the fellows. I looked forward every week to the Tuesday seminars. They provided food for the mind and the soul. The topics were thought provoking, the discussions were lively and enlightening, and the camaraderie within our group was warm and nourishing. Learning about the overarching commonalities as well as critical differences of ethical concerns across the professions of law, medicine, teaching, architecture, and business was very educative. But I learned not only about the content of the topics, so many of which were new and intriguing to me, but also about the approach to use to explore these subjects. Dennis, with his witty, understated style, taught me the art of effective discussion leadership sans rhetorical flourishes. Arthur's penetrating observations reinforced the power of exploring issues through critical enquiry and devil's advocacy. The fellows' engagement in serious, thoughtful discussion on important topics taught me the power of reflective deliberations in addressing complex problems. Several of the discussions we had during the seminar will stay with me for a very long time.

The special lecture series were great treats. They provided the opportunity to engage the leading exponents of professional ethics in discussions on some of the subjects of their current interest. I also had the opportunity to interact with some of the center's graduate fellows, brilliant students following intriguing ideas. Among the seminars I enjoyed active participation in during the year was the international ethics seminar organized by Ken Winston. Overall, it was a year of learning and exchanges that I will treasure and draw upon in the future.

I came to the program with two objectives. One, I wanted to learn about the relation between professional ethics and professional services, the subject on which I focus at the business school. Participating in the program has deepened my understanding of the field of professional ethics and helped me understand better the importance of ethics to professional service. I developed, and taught in my MBA course on professional services, two case studies that explore the importance of ethical considerations to professionals [1,2]. Two, I wanted to develop some case studies to study how professional service providers manage conflict of interest. During the year, I have developed three case studies (two fully, the third is in progress) on organizations facing potential conflicts [3,4,5]. Additionally, I developed a note that studies how different conflict rules affect competition between professions that offer overlapping services [6].

The program yielded an additional, unanticipated benefit. In response Dennis' gentle coaxing, I resolved to also develop a conceptual note that focuses on the various dimensions and implications of managing conflict of interest. The note has burgeoned, thanks to Dennis' and Arthur's comments and thoughtful inputs from my fellow fellows, especially Bob Gordon, into a formidably large document that I am quite pleased with and proud of [7]. I continue to work on the document as the fellowship year draws to a close. I have presented sections of this note in my MBA class session, Harvard Business School ethics seminar, and in an Association of Management Consulting Firms executive forum.

The fellowship year gave me the wonderful opportunity to bring some of my colleagues in the program across the river to my MBA classroom. I and my MBA students benefited greatly from Dennis, Bob Gordon, and emeriti fellows David Wilkins and Lynn Paine visiting our MBA class and sharing their insights and observations on particular case studies.



Case studies, notes, and articles related to professional ethics developed during the fellowship year

1. Tim Hertach at GL Consulting, (A), (B), (C), (D), with Tom DeLong and Scot Landry, HBS case numbers 800-153, 800-382, 800-383, and 800-172.
2. Professionals' Quandaries, with Tom DeLong, Scot Landry, and Boris Groysberg, HBS case number 800-371.
3. The Saga of Prince Jefri and KPMG, (A), (B), (C), (D), HBS case numbers 899-266, 899-267, 899-268, 899-269.
4. Venture Law Group, (A), (B), with Tom DeLong and Scot Landry, HBS case numbers 800-065, 800-191.
5. The Livent Drama, in progress.
6. Competition between the Professions: Law Firms vs. Accounting Firms, HBS case number 899-301.
7. Conflict of Interest, in progress.

### My 1999-2000 fellowship year

I started this year with a rather full agenda, consisting first and foremost of my “Testing the Limits of Toleration and Pluralism” project along with my ongoing work on the (by now decade-long) “Jewish Political Tradition” enterprise. Even before the mailings of papers-from-last-year from my home university in Israel trickled down, I discovered I had a third major project: coming prepared for the challenging weekly seminar at the program (nay, center).

Thus it is hard to describe this year as restful. It has been very busy, but also highly satisfying. I took on the commitment to our weekly seminar wholeheartedly, and the effort was richly repaid. In the first term, it was an advanced seminar on professional ethics, a welcome corrective to my usual primary focus on bioethics. The second term was equally enriching, discussing each other’s work-in-progress as well as favorite topics (duly selected, of course, through deliberation and a series of votes!).

My project has now evolved into a three-pronged exploration, with the foundational part – now featuring a special acronym, CDD (=Cooperation Despite Disagreement) – on its way to completion in the light of the fierce but friendly critique at the seminar. I have also been able to devote some time to exploring the brain death debate, including a fruitful discussion with Robert Truog over at the medical complex, and a series of text-reading meetings with a Harvard graduate student (Raquel Ukeles) with a keen interest in rabbinic responsa.

In early May, I was also able to share with everyone here the receipt of an advance copy of *The Jewish Political Tradition: Authority*, (Volume 1 of 4), whose official publication date (from Yale UP) is the 1<sup>st</sup> of June. My work here on that project, together with that of my co-editors at the IAS in Princeton, has brought volume 2 almost to completion.

The Harvard environment in general, and that of the Center in particular, has furnished a very supportive setting for academic pursuits and enrichment. With so many high-quality lectures, panels and encounters organized within the Center, it was very difficult to choose among the host of other events – a blessed predicament...

The support of the Center staff was exceptionally efficient and warm, and I am most grateful to them all.

Noam Zohar



REPORT FOR ANNUAL REPORT 1999-2000  
JIM SABIN, VISITING PROFESSOR

Being able to participate in the Center's seminar with the Faculty Fellows in Ethics was a once in a lifetime opportunity. My own work is decidedly at the junction of ethics and (my) profession, and the breadth of interests and activities on the part of the group was a horizon-expanding piece of education in itself. The seminar topics often involved new questions for me or new approaches to familiar questions. The readings were well chosen and provocative of thought. For me, many were new so, in the same way that contact with Dennis Thompson, Arthur Applbaum and the Fellows expanded intellectual horizons, so too did the seminar readings.

In terms of impact--the experience certainly solidified my own commitment to making ethics activities the core of my professional life. The fortuitous occurrence of being asked to direct the Harvard Pilgrim Health Care corporate ethics program came in the middle of the year. The fact that my clinical practice didn't slow down until the summer (I stopped taking new referrals in January when I took on the corporate ethics program role) meant it was a very busy winter and spring. However, with the new program and the outside projects on which I am working (with close colleagues Norman Daniels, Zeke Emanuel and Steve Pearson) I have a wide range of application sites on which to draw, thanks to my participation in the Ethics seminar.



**APPENDIX V**  
***Graduate Fellows in Ethics 1999-2000***  
***Reports on Fellowship Year***



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**Chris Brooke**

**14 May 2000**

**Center for Ethics and the Professions Final Report**

Those who have never had to do their work in a Government Department graduate student carrel in the joyless, airless basement of the Littauer building will never wholly understand what just how satisfying it is to be translated to the sunny uplands and modern facilities of the University's Center for Ethics and the Professions. And, as an early modernist whose work has little to do with Ethics and still less with the Professions, the satisfaction levels are ratcheted up still further, for I remain acutely conscious of and deeply grateful for the privilege I have enjoyed in having been invited to participate in the life of the Center this academic year.

Contemporary liberals don't like anything to be too teleological, and so this report will necessarily disappoint. For my academic year has ended with the exciting news that I will be returning home to England in the Autumn to be the new -- take a deep breath -- Official Fixed-Term (Five Year) Tutorial Fellow in Politics at Magdalen College, Oxford (where my senior colleague will be Dr. Stewart Wood, himself a Graduate Fellow in Ethics once upon a time, a fine political scientist, and a fellow admirer of the Boston Red Sox). This happy and unexpected outcome has given a striking retrospective coherence to the course of the year, which it otherwise might have lacked, and which now inevitably shapes my retrospective evaluation of my year at the Ethics Center, for as the Owl of Minerva begins to flap her wings, I can now see very clearly how the different parts of my life here came to contribute to my success in landing this position.

Over the course of the year, I have continued to work on my Ph.D. dissertation, on the history of arguments about Stoicism in seventeenth- and eighteenth-century political thought, nudged along by deadlines for job applications and presentations for the Graduate Fellows' Seminar. I may have ended the year with a little less writing done than I had hoped to produce at the start of the year, but a great deal of useful work has been done to restructure the project -- more politics, French and Rousseau; less theology, Latin and metaphysics of free will -- with the result that I end the year with a work-in-progress whose overall purpose and architecture are much more sound than they have ever been in previous years. A small amount of research and a large amount of writing remains to be done for the dissertation,



which I shall be taking back to England to complete in Oxford's Bodleian library. (A suitable location for my research, indeed, for Thomas James, 1573-1629, was Fellow of New College, Bodley's Librarian and translator of works by the French Neostoic writer Guillaume du Vair!).

After four years or so of trying not to think too hard about contemporary political philosophy, Arthur Applbaum's Graduate Ethics Seminar was a splendid way of easing myself back into the field -- and an invaluable one, since much of the teaching I will be doing over the next few years will be for the Oxford PPE "Theory of Politics" paper, with its resolute orientation towards the present and its focus on contemporary liberalism. I always enjoyed the discussions, ethical and metaethical, and learned much from all the participants in the seminar, in return for whose thoughtful wisdom and learning I was only able to provide my dogmatic opinions and historical trivia in exchange. I especially appreciated the way the second half of the Seminar came to be structured around the themes and concerns of John Rawls's new book, *The Law of Peoples*, which I greatly enjoyed and which I might otherwise have entirely ignored: thanks to the remarkable quintet of Arthur Applbaum, Alyssa Bernstein, Nancy Kokaz, Pratap Mehta and Sharon Street this semester, my understanding of Rawls's philosophy has been substantially deepened, with the curious result that I can now take great *pleasure* in reading his philosophical prose, which never used to be the case.

There have been other side-benefits and unintended consequences of participating in the world of the Graduate Fellows. I know much more about the psychology of lawyers, for example. And owing to the recent breeding habits of my peers, my Small Child Awareness levels are higher than they have been for quite a while. I suspect, finally, that I have eaten more chocolate cake in the last three weeks than in the last three years taken together, and very fine cake it was, too.

Thanks are therefore due to many people for a very happy year, which has of course turned out to be my last of five years in the United States. Above all to Jean and Arthur for their magnificent management of the programme; to Sowmya, Jennifer, Allison and Judy for administrative competence far in excess of what we deserve; to Soeren, Oona, Eli, Sharon and Mattias for their welcome intellectual companionship at the Center-- you're all lovely people, and you all have my very best wishes for your very bright futures.

YEAR END REPORT  
OONA A. HATHAWAY—EUGENE P. BEARD GRADUATE FELLOW, 1999-2000  
HARVARD UNIVERSITY CENTER FOR ETHICS AND THE PROFESSIONS

My year at the Center for Ethics and the Professions has been extremely rewarding. The Center's Eugene P. Beard fellowship not only provided significant support for my scholarship but also gave me a vital and engaging intellectual home for the year. I am very grateful for the opportunity to participate in the program and wish to express my appreciation to Dennis Thompson, Arthur Applbaum, Jean McVeigh, Sowmya Bharathi, Jennifer Sekelsky, and Allison Ruda, who all worked hard to make the Center an inviting and productive place to work.

As a joint fellow with the Carr Center for Human Rights Policy, much of my work during the year has concerned issues of human rights. In addition to participating in regular seminars and discussions at the Carr Center, I have begun work on a project that seeks to explain why nations subscribe to and comply with international human rights obligations. This is a fundamental puzzle for all students of international law and politics—and, indeed, for all those concerned about the humane treatment of citizens. Yet, despite the proliferation of human rights treaties in the last several decades, this puzzle has not been answered and, in fact, has been only rarely addressed by scholars and practitioners. My project seeks to address this gap in understanding by examining state ratification and compliance with international human rights treaties. The project relies on both qualitative and quantitative evidence and uses the methodological tools of international law, political economy, and rational choice theory.

The question of why nations comply with international human rights law involves two separate but overlapping inquiries: why do nations comply with human rights *treaty* law and why do nations comply with human rights *customary* law.<sup>1</sup> The two phases of my research address each question in turn. In the first phase of my research, I seek to understand why nations comply with human rights treaty law. The initial step in this inquiry is, of course, to understand why nations agree to be bound by human rights treaties in the first place—that is, why they sign and ratify them. In the second stage of my research, I seek to understand why nations comply with international customary human rights law. In the final stage of my study, I will examine the tension between customary law, which can require the invalidation of popularly chosen laws but does not itself have its roots in any democratic or representative institution, and legal legitimacy.

My second project examines how history shapes the law. I argue that in a system of law that requires adherence to the doctrine of *stare decisis*, it is impossible to understand the law as it is today without understanding what it has been in the past. Reliance upon binding precedents leads courts to begin every new case with an examination of the past. The resolutions that arise in turn form a foundation for future cases. Yet despite the importance of history in legal development, legal scholars still know surprisingly little about the specific ways in which history shapes the law. My

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<sup>1</sup> Treaty law is, of course, law that is formed through negotiated written instruments, and it binds only those countries that sign and ratify the provisions of a particular treaty. Customary law, on the other hand, results from a general and consistent practice of states followed by them from a sense of legal obligation and is considered by most scholars to be binding on all states regardless of whether they have subscribed to the particular norm.

research seeks to fill this void. I have already completed the first of what will be a series of articles on this topic (the article has been accepted for publication by several law journals and will be published in fall 2000). In the article, I use a set of tools developed in the social sciences and evolutionary biology—grouped together under the broad rubric of “path dependence theory”—to explore the influence of history in our common law system. In broad terms, “path dependence” means that an outcome or decision is shaped in specific and systematic ways by the historical path leading to it.

The application of path dependence theory to the law leads to both striking insights and troubling conclusions. It reveals, for example, that the early resolutions of legal issues by courts can become locked-in and resistant to change. This lock-in or inflexibility can lead to inefficiency, as legal rules fail to respond to changing underlying conditions. Path dependence theory also indicates that legal outcomes are difficult to predict in advance, because final outcomes are highly dependent upon early decisions. The theory suggests, too, that the opportunities for significant legal change in a common law system are brief and intermittent, occurring during critical junctures when higher courts or Congress intercede or new legal issues arise. And it leads to the unsettling conclusion that the order in which cases arrive in the courts can have a significant effect on the specific legal doctrine that ultimately results.

This project applying path dependence theory to the law thus has relevance for both legal scholarship and practice. It helps legal practitioners better understand how to concentrate their resources to maximize their chances of successfully altering the path of the law. In doing so, it helps practitioners better understand how to protect and further civil and political rights. And it provides a new basis for scholars to question and refine the doctrine of *stare decisis*, which creates the law’s path-dependent character.

The Center for Ethics and the Professions has contributed immensely to these research projects not only by supporting my work but also by providing me with interested and immensely helpful critical readers at a crucial stage. The weekly seminar with the graduate fellows, the joint seminars with the faculty fellows, and the regular talks by guest speakers also helped me gain a familiarity with a wide variety of issues relating to professional ethics. This, in turn, has given me a broader perspective on the issues of legal ethics with which my own work is concerned. I expect that these experiences will long enrich my scholarship, teaching, and professional life. It is for that, more than anything else, that I am grateful to the Center and its staff and fellows.

Mattias Kumm  
Graduate Fellow, Center for Ethics and the Professions  
SJD candidate, Harvard Law School

## Annual Report

During my year as a Graduate Fellow I was able to make substantial progress on a project provisionally entitled "Liberal Democratic Constitutionalism and the Judicial Enforcement of Supranational Law", part of which will ultimately be used to fulfill the requirements of an SJD degree at Harvard Law School. This project addresses the question how a liberal constitutional democracy should conceive of the relationship between the legal order established by its constitution and supranational legal orders. More specifically it examines in which way and to what extent supranational law should be incorporated into the national legal order and enforced by its judiciary.

The project consists of two parts. The first operates on the level of constitutional theory. It starts by providing a description, analysis and critique of the dominant approaches to these questions, the first of which I call "Statism" and the second of which I call "International Idealism". Then it goes on to develop a new approach, that I call "Principled Pragmatism". At the core of this approach is an analytical framework consisting of three liberal democratic principles. The three principles are, first, expanding the rule of law to the supranational level, second, increasing democratic legitimacy, and third, dealing effectively with the problem of reciprocity. Under this approach the best set of prescriptions for the management of the interface between potentially competing legal orders within a particular institutional context at a particular time is the one that addresses these issues most convincingly, all things considered. A substantive part of my work focuses on giving content and highlighting the significance of these principles for the purposes of my project.

The second part of the project aims to undertake a series of constitutional case studies and demonstrates how this approach plays out and compares to others in particular constitutional contexts. These case studies will focus on the European Union, the United States and the Federal Republic of Germany.

A significant amount of time has gone into and will continue to go into working out and refining the theoretical framework I tend to propose. As far as progress regarding the second part is concerned, two major articles co-authored by myself and Joseph Weiler dealing with the relationship between national law and the law of the European Union as adjudicated by national courts will appear in major European publications later this year.

During my year with the Program I thoroughly enjoyed and have learned significantly from the many discussions both within the seminar and outside with my fellow Fellows and, of course, with Arthur Applbaum. It has been a challenging and productive year. I feel well prepared for my move to New York to take up a tenure track position as an Assistant Professor at NYU School of Law in Fall. To all at the Center a great 'Thank You' for their support.



*Soeren Mattke*  
*Eugene P. Beard Graduate Fellow in Ethics 1999-2000*  
*Report on Fellowship Year*

My year at the Center for Ethics and the Professions has been as stimulating as productive. The weekly graduate seminar exposed me to a wide variety of readings in moral and political philosophy. The discussions with the other fellows and especially Arthur Applbaum's intellectual guidance provided me with better understanding of the theories and their implications and helped me to become more structured and rigorous in my approach to philosophy. Given the wide variety of background among the fellows, discussing original work in progress was broadening my horizon and proved to be both challenging and fascinating.

The support of the Center allowed me to focus on research and reading over the semester and to make substantial progress in my dissertation. Under the tentative title "The Influence of Professional Ethics and Financial Incentives on Physician Behavior", I explore how physicians balance their obligations to their patients with the financial pressure that current cost containment approaches create. My main argument is that physicians will take advantage of the substantial degree of discretion that they command over the use of medical services as long as this does not endanger the well-being of their patients.

In the first chapter of my dissertation, I formalize this argument in the framework of the neoclassical economics model and argue that the existence of professional ethics is a rational second-best solution, as the substantial information asymmetry between providers and patients precludes an efficient first-best solution. As society is unable to monitor the quality of physicians' work directly, this task is delegated to the profession itself, which ensures through intense socialization that its members comply with its ethical code. This allows patients to develop the necessary trust in physicians. In exchange, the profession is granted societal prestige and above-average incomes. I argue that this implicit social contract is rational not only for the profession as a group but also for the individual physician so that no incentive to defect from it exists: Given the enormous uncertainty involved in medical decisions, it would be very costly for the individual physician to assess the cost and benefits that she could theoretically derive when violating the ethical code on a case by case basis. Thus, it is in fact more efficient not to question the engrained ethical principles but to act according to them. A draft of this

chapter was presented at the graduate seminar. I greatly benefited from the questions asked and suggestions made, and I am now working on finalizing this chapter.

In the second chapter, I attempt to test some predictions of my theoretical model empirically. The two hypotheses that I test are that physicians will be more likely to increase volume of procedures with high profit margins and that physicians are less likely to increase volume of procedures that are either dangerous or painful to their patients. To test these hypotheses, I use a cross-sectional data set from Germany that covers a period in which reforms of the payment system lead to enormous increases in service volume. Using statistical modeling, I show that procedures with high profit margins are up to 75% more responsive to price changes than the average procedure. I also find that procedures that impose risk on patients show nearly no reaction to changes in price. This chapter was also discussed in the graduate seminar and is now completed after incorporating all the helpful comments that I received.

In addition, I had the opportunity to write an invited review article entitled "Cardiology and Cost Control. The Ethical Challenge for the New Millennium" for the *German Journal of Cardiology*. In this article that will appear later this year, I analyze the problems of health care cost containment for a physician audience and discuss the consequences of various policy options for the profession.

In summary, this has been a great year for which I am very grateful to the Center and its members. I also want to thank the Center's staff, Jean McVeigh, Jennifer Sekelsky, Sowmya Bharathi and Allison Ruda for creating such a pleasant work atmosphere and in particular for organizing all those wonderful Center events.

## REPORT ON FELLOWSHIP YEAR

Sharon Street  
Graduate Fellow, 1999-2000  
Harvard University Center for Ethics and the Professions

I am pleased to report that my year as a Graduate Fellow at the Center for Ethics and the Professions has been wonderful: productive, stimulating, broadening, and fun.

One of the greatest things that this fellowship gave me was the simple but precious gift of time. Had I not been fortunate enough to hold this fellowship this year, I would have had to teach two sections each semester, rather than just one in the spring, and I would never have made anywhere near as much progress on my dissertation as I was able to make this year. This benefit alone was invaluable to me, allowing me to finish my fifth year of graduate studies with my progress toward my Ph.D. in philosophy directly on schedule. Thanks to the time freed up by the fellowship, I was able to draft two core chapters of my dissertation, and gain a momentum with my writing that I am confident will carry me through this summer and the coming year.

The weekly seminar with Arthur Applbaum and the other Graduate Fellows was also extraordinarily beneficial to me. First of all, we worked our way through a formidable pile of important readings, many of which I might never have been exposed to were it not for this seminar. And in cases where the material was already familiar to me, our seminar meetings always made me look at it afresh, with the interests and perspectives of the others unfailingly deepening my understanding. Which brings me to the following point: Much more important than working my way through any stack of readings was the sheer privilege of spending three hours a week in the company of Arthur and my "fellow Fellows," Chris, Eli, Mattias, Oona, and Soeren. To my mind, the greatest feature of the graduate seminar is the way it brings together a group with diverse academic training, expertise, and experiences, and focuses our various minds and perspectives on problems of interest to all. It can sometimes happen, as one pursues a degree in philosophy, that one's academic interactions end up mostly confined to conversations with other philosophers, and I therefore found it extraordinarily broadening and invigorating to spend a year engaging in intensive discussions with such talented representatives of the fields of law, economics, medicine, government, and international relations. This was undoubtedly the greatest benefit of the seminar for me. I was introduced to many interesting philosophical puzzles that arise in the contexts of these other more practical subject areas, and whenever it came time to talk about philosophy, I benefited enormously from the challenge of trying to explain as best I could some of the insights my own discipline has to offer. I found the occasions on which we presented our own work very useful as well: it was extremely helpful to get the input of non-philosophers on my work; there was a refreshing and challenging focus on the "big issues" raised by my work that really pushed me in my thinking about the broader outline and implications of my dissertation project. I cannot imagine anyone more well-suited to lead this seminar than Professor Applbaum: with his remarkably ability to penetrate directly to the core of an issue or discussion that has grown murky, and his seemingly inexhaustible grip on so many different subject areas, he was the unifying force, the one with the skill to lead our diverse group to clarity and common understandings. His incisiveness, energy, humor, supportiveness, and good cheer were the catalysts that made our wonderful year of discussions possible.

Yet another highlight of the year was the series of lectures sponsored by the Center for Ethics and the Professions. It was a great opportunity to be able not only to listen to but also talk and dine with the interesting and distinguished set of speakers brought to Harvard by the Center. Equally enjoyable and stimulating was the series of *ad hoc* luncheons, where the Graduate Fellows and Faculty Fellows met over lunch with prominent Harvard professors to discuss their works-in-



progress. At all of these events, it was a pleasure to interact with and learn from not only the invited speakers, but also Dennis Thompson and the Faculty Fellows.

I also want to thank Sowmya Bharathi, Judy Kendall, Jean McVeigh, Allison Ruda, and Jennifer Sekelsky for their remarkable skill in operating the office and organizing all of the Center's activities: the office and these events could not be more professionally run. Even more importantly, I want to thank them all for creating, from the very first day I arrived, such a warm, welcoming, friendly atmosphere in the halls and at all the events of the Center.

It would be hard to overstate how impressed I am with the Center for the Ethics and the Professions: its mission is a crucial one and it fulfills that mission with the utmost skill and seriousness, not to mention style. I am enormously grateful for having had the opportunity to be a part of the Center this during this past academic year. Many thanks to everyone who helps to make the Center and its Graduate Fellowships possible.

Eli Wald

Graduate Fellow, 1999-2000

May 15, 2000

The Fellowship at the Center for Ethics and the Professions has contributed a great deal to my scholarly work and to my development as a legal theorist. I applied for the fellowship hoping to advance my knowledge of moral theory and applied ethics and ground my legal research in a deeper and richer theoretical foundation. During the past year at the Center I achieved a lot more. The Center's unique intellectual resources consisting of the weekly seminar, the lecture series, sponsorship of conferences and the valuable opportunities for informal interaction with the other fellows introduced me to the challenging world of practical ethics. Not only did the fellowship allow me to examine relevant topics in moral theory, but it also helped me to explore the connection between moral theory and professional life and better understand ethical issues in public life.

I would like to thank the Graduate Fellows: Mattias Kumm, Soeren Mattke, Sharon Street, Oona Hathaway and Chris Brooke for an exciting weekly seminar. Our seminar struck a perfect balance between an in-depth analysis of specific issues and a comprehensive overview of topics in practical ethics providing a stimulating environment that led to a challenging rigorous engagement. The seminar also offered excellent opportunities to discuss our own work-in-progress. It allowed me to test ideas that I have developed at the Law school and the department of economics against different methods of reasoning and I benefited greatly from comments I received during our discussions. A special word of appreciation to Arthur Applbaum for his role in leading and guiding our seminar. Arthur demonstrated a remarkable ability to gently lead the discussion without dominating it and yet always make sure we focus on the hard and demanding questions. Thanks to Arthur our weekly seminar amounted to more than a scholarly exercise. It was also an effective seminar on teaching, on thinking and on engaging in a discourse.

Among the many people I had the pleasure of working with this past year I would like to thank David Wilkins for his support of my research. A true role model, he provided me throughout the year both sharp critical insights and a warm enthusiastic guidance. His scholarship, teachings, character and demeanor are a source of inspiration inside and outside the academic sphere. I benefited greatly from my conversations with Robert Gordon about the decline in legal idealism and the connection between the problems lawyers face and the economic, social and political structures in which they practice law. Ashish Nanda assisted me in thinking in context about the conflicts within lawyers' professional roles arising from competing understanding of the purposes and limits of the profession. I would also like to thank Tim Scanlon for the opportunity to teach at his moral reasoning course in ethics. His guidance and advice in and out of the class room during the fall semester were extremely helpful in allowing me to develop my own teaching skills.

Finally, I would like to thank Dennis Thomson for his direction of the Center. Jean, Jennifer and Sowmya deserve special recognition. Their hard work and efforts made

my year so much more enjoyable. In a range of fields they provided excellent support and always came up with a helpful suggestion at the right time.

My dissertation is a study in applied ethics – an analysis of the connection between the problems lawyers confront and the political, cultural, economic and social structures in which they practice law. In particular, I explore the conflicts within theories of lawyers' professional roles and ideals arising from competing understandings of the purposes of the legal profession: on the one hand, law as a calling and lawyers as gatekeepers of the public good; on the other, law as a private good, a service for sale on the market and lawyers as servants-knights who pursue the private goals of their clients.

The thesis consists of two parts. The first part, which I completed during the fall term and presented at the seminar, explores the existing theories of professional legal roles, theories based upon the commitment of the profession to the public good, which are as of late under sustained political, cultural and social attacks. In chapter one I study the nature of these attacks. Legal practice is undergoing a profound transformation. Once a profession of law, legal practice driven by market forces is adopting business features. Responding to the changing character of the demand for legal services and the increased competition for the provision of their expertise lawyers redefine their forms of organizations and the nature of their practice. I argue that this transformation is caused by underlying changes in the political, economic and social structures surrounding legal practice. These fundamental changes to the practice of law render the existing underlying principles of the profession, their professional ideals and the professional roles they entail unattainable, resulting in what some legal scholars have described as a crisis.

In chapter two I construct an analytical framework to evaluate the recent "crisis literature" in the practice of law. After identifying the different kinds of claims this literature consists of, I explain why current theories of legal professional roles fail to offer a useful setting within which one can explore the recent changes in the practice of law. Existing legal role theories have in common a public good based understanding of the purpose of legal practice, an understanding that does not fit the changing political, social and cultural structures in which lawyers currently practice. The problem is therefore not merely that current role theories and professional ideals do not fit changing practice realities. This gap is only a symptom of the underlying tension between role theories and professional ideals that are based on a public good conception of law and emerging political, economic and social structures that are based on a market driven understanding of the purpose of the legal profession. The comments I received from the graduate fellows and Arthur have significantly improved this chapter and helped clear deep confusions I experienced last year in thinking about and developing it.

The second part of my dissertation develops a competing account of lawyers' professional role and ideals based on understanding of law as a market for legal services and of lawyers as servants of private ends rather than knights of the public good. In chapter three, which I completed during the spring term, I investigate the meaning of professional ideals under a market oriented theory. I argue that ideals should be thought of

as an instrument of social intervention at the level of legal practice in an attempt to mitigate the divergence between the private and social incentives to practice law.



*EPILOGUE*  
*A Thompsoniad*



### *A THOMPSONIAD*

Lines Composed on the Occasion of Dennis Thompson's Sixtieth Birthday,  
and the Final Dinner of the Fellowship in Ethics and the Professions, May 15, 2000.

Pray silence, friends, while we propose a toast  
To our Director, mentor, friend and host  
Who came into this world of war and woe  
In Hamilton, Ohio. Sixty years ago  
Before the stars on the horizon sank  
They blazed the birth of THOMPSON, DENNIS FRANK.

All the histories account our hero  
Precocious from the age of zero:  
Young DENNIS, as soon as he was able  
Brought talk of substance to the dinner table,  
Gave evidence of his future talents  
Doing polished introductions of his parents,  
And showing them what being three meant  
For democracy and disagreement.  
He wouldn't sleep until he had his fill  
Of readings from the works of *J.S. Mill*  
(His favorite being, in a signal portent,  
The tract *On Representative Government*).  
Savants marveled at the little boy,  
No schmoralist, but the real McCoy:  
DENNIS when only 40 inches long  
Found new distinctions between right and wrong  
In discourse could confound the sophists  
On political ethics and public office,  
And plainly show them the futility  
Of arguments based solely on utility.

Inspired by Orange *William* and his Queen  
He weds his beautiful and accomplished Dean --  
(They go out for a soda, coupla beers;  
Next thing you know they're married forty years) --  
And then contrives a more improbable alliance  
Of democratic theory and social science,  
While sojourning at Balliol in Britain  
He writes *The Democratic Citizen*;  
Arrives at Harvard as a rising star  
Under the critical eye of *Judith Shklar*.  
Dispatched to Princeton for a little while  
To pass the hours in pleasant exile,  
He tosses off another book or two  
Is made department chair at thirty-two,  
Then's summoned back to Baghdad-by-the-Charles  
To fortify high politics with morals,  
And teach the crafty Princes of the lands  
To govern well with slightly cleaner hands.



To our good fortune, one of his obsessions  
 Became the Program on Ethics and Professions –  
 Today a Center, tomorrow something more,  
 Going boldly where no program went before,  
 An *Enterprise* still soaring without fears  
 Beyond the finitudes of all frontiers.

Last year, the Fall of '99  
 Began our days of roses and of wine  
 (Or rather I should say our seasons  
 Of salads, sandwiches and reasons).  
 Assembled, we met DENNIS and his deputy;  
 The Graduate Fellowship; and *Jean McVeigh*,  
*Sowmya*, *Jennifer*, *Allison* and *Judy*  
 The *sine qua nons* of our felicity.

Sing next of *Applbaum*, the original tree  
 Of knowledge (whence the letter 'E'  
 Was pilfered to make mother *Eve*); the brilliant bloke  
 We watched from sapling grow to tenured oak.  
 Will he now hide his zeal for *veritas*  
 Beneath a cloak of pompous *gravitas*?  
 We doubt it, for we know his goal's  
 To keep integrity unaltered by his roles:  
 As doctor, schmector, scholar, father,  
 At bottom he'll be always *Arthur*.

Now let us raise a valedictory hand  
 To the dissolving Fellows of our band:  
 Our bioethics rabbi *Noam Zohar*  
 Who'd never toss a dwarf, or toss one far  
 Enough to hurt; who wouldn't harm a fly,  
 Either by killing or by letting die.  
 Our business guru *Ashish Nanda*  
 Somewhat resembling a Giant Panda<sup>1</sup>,  
 Who quotes *Sun-Tzu* but likes to maximize  
 Sweetness and light and cerulean skies;  
 Of all the climbers he's the one who's  
 Likeliest to pause and pick up fallen *sadhus*.  
 If asked to shoot an Indian our *Dr. Jim*  
*Sabin* would ask the Indian to shoot him,  
 Though first would empathetically inquire  
 If such should be the Indian's true desire;  
 If forced to choose twixt Babies A, and B, and C,  
 He'd save them all and throw in D and E.  
 Our legal partnership of *Fleming & McClain* --}  
 Composed alike of beauty and of brain -- }  
 Oft spoken of as one, are really twain: }

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<sup>1</sup> This isn't strictly true, but sometimes  
 One simply can't pass up the obvious rhymes.

*Linda* wants law to form republicans (small-r's)  
While *Jim* sets straight constitutional scholars.  
*Paula Casal* our vegan philosophic Queen  
A friend to animals and to all that's green,  
Who draws the line between the *vera* and the *falsa*  
As energetically as she can salsa,  
Whose charts bring to the chaos of reality  
A blessed calm of order and utility.  
Our brilliant *Sharon Dolovich*, now off to teach  
(In the City of the Angels and the beach)  
That privatizing prisons should be made a crime  
And officials who support it doing time.  
Let's not leave out *Bob Gordon* up from Yale,  
The chronicler of this epic tale.  
And last we come with some euphoria  
To our architectural *Victoria*  
No Station, in this instance, but a *Beach*  
Whose grasp invariably exceeds her reach,  
A friend to buildings and the conjunction  
Of elegance, aesthetics and of function.

Now drink our toast! Let all the church bells ring!  
Bang drums, blow trumpets! Let the harpers sing!  
From turrets, minarets and steeples  
Proclaim the liberal law of peoples!  
Now let us celebrate the birth  
Of one who's done no harm to this poor earth,  
But brought it joy and warmth and laughter,  
And left it better for hereafter,  
Wherever kindness, wisdom and sweet reason  
Integrity and intellect are still in season.

Whenever maiden Truth must leave her bower  
Of innocence to tame and take on power,  
When Theory must endure the thorny cactus  
That wounds her purity applied to practice,  
On all such perilous errands we will DENNIS send  
To be their guide, philosopher and friend.

This year, we've learned that we are each "a part  
Of all that [we] have met", and in each heart  
Is DENNIS THOMPSON, mingled with the rest.  
But of all our hearts' stuff, he's among the best.

Robert W. Gordon  
May 15, 2000  
Cambridge, Massachusetts



