

Harvard University

Ethics@Harvard.Edu



Program in Ethics and the Professions

1998-99 LECTURES

Fall 1998

The lecture series seeks to encourage philosophical reflection on problems of human values in contemporary society. This series has a long-standing history of bringing together faculty and students from all over the university for discussion of ethical issues of many different kinds.

October 1, 1998

Ethics of Ethnicity

Henry Louis Gates

Director, W.E.B. DuBois Institute
for Afro-American Research
Harvard University

November 4-5, 1998

Rethinking Power

Lani Guinier

Professor of Law
Harvard University Law School
(Tanner Lectures on Human Values)

December 10, 1998

Robert Post

Professor of Law
University of California at Berkeley
(jointly sponsored
with Harvard Law School)

February 11, 1999

Samuel Scheffler

Cosmopolitanism
Professor of Philosophy
University of California

March 11, 1999

Martha Nussbaum

Ernst Freund Professor
of Law & Ethics
University of Chicago

April 8, 1999

Robert George

Professor of Politics
Princeton University

Eugene Beard Adds to Graduate Fellowship Fund

With support from the American Express Foundation, Graduate Fellowships in Ethics were established in 1990 to train young scholars who plan to dedicate their careers to the study of practical ethics. The more recent generosity of Mr. Eugene P. Beard has resulted in the funding of two Graduate Fellowships. Awards are given to talented graduate students enrolled in doctoral or advanced professional degree programs at Harvard. The Graduate Fellowships component is directed by Arthur Applbaum, As-

sociate Professor of Public Policy at Harvard's John F. Kennedy School of Government. ♦

"The Beard fellowship supplied funds that enabled me to conduct extensive research over the last nine months; and it placed me in an edifying and challenging environment that expedited the writing and enhanced the vision of my project."

*-Samantha Power
Beard Fellow in Ethics (1997-98)*

Harvard Program on the Legal Profession Co-Sponsors Lecture on Discrimination

On December 10, 1998, Robert Post will give a lecture at Harvard Law School addressing the issue of discrimination on the basis of appearance. He is the Alexander F. and May T. Morrison Professor of Law at the University of California, Berkeley. After clerking for several prominent judges, Post practiced law at the Williams and Connolly firm in Washington D.C. He is a specialist in First Amendment theory and constitutional jurisprudence and has published widely in those areas. He is currently writing volume X of the *Oliver Wendell Holmes Devise History of the U.S. Supreme Court, 1921-30*.

From 1992 to 1994, Post was general counsel of the American Association of University Professors, and in 1994 chaired the Section on Constitutional Law of the Association of American Law Schools. Recent publications include "Recuperating First Amendment Doctrine," *Stanford Law Review*; and "Racist Speech, Democracy, and the First Amendment," *William and Mary Law Review*. The lecture is jointly sponsored by the Program in Ethics and the HLS Program on the Legal Profession and will be held at 4:30p.m. in Austin North. Other Law School faculty attending will be Martha Minow, Larry Lessig, Carol Steiker, and Richard Fallon. ♦

For more information, please contact the Program office or access the Web site.

The Mission...

Accolades

*William G. McLoughlin
Teaching Award*

Ross Cheit

(Fellow in Ethics 1990-91)
Associate Professor of Public
Policy and Political Science
Brown University

*Miriam and Peter Haas
Centennial Professorship in
Public Service*

Gregory Dees

(Fellow in Ethics 1988-89)
Stanford University

*Myers Center Award for
Outstanding Work on
Intolerance in North America*

Andrew Koppelman

(Fellow in Ethics 1994-95)
Assistant Professor of Law
and Political Science
Northeastern University
School of Law

*Opporman Research Scholar
& Medical School Merit Award*

Susan M. Wolf

(Fellow in Ethics 1992-93)
Associate Professor of Law
and Medicine
University of Minnesota
School of Law

Message From the Director

The *Program in Ethics and the Professions* has been a pioneer in practical and professional ethics but, until now, we have lagged behind in information technology. We have certainly discussed the ethics of cyberspace, but we have not collectively dared to go there, boldly or otherwise. With our new Web site, the Program enters the cyber age.

The Web site has two main purposes. First, it provides information for prospective applicants, and others who are simply curious about what the Program and its associates are doing. Second, it serves as a way for all who have been associated with the Program to stay informed about one another's activities and scholarship.

In the early years, the alumni were small in number and close in location. But as we enter the second decade of the Program, there are more than 70 former fellows located in 37 universities in the United States and many other countries, including Australia, Austria, Canada, England, Germany, India, Israel, Italy, Norway, The Netherlands, and South Africa. The newsletter, which will be featured on the Web site, also offers a collegial link for these widely dispersed former fellows.

The *Program in Ethics and the Professions* has been an exciting and productive enterprise from its very beginnings in 1987. The intellectual ferment that has characterized the life of the Program is reflected in the many **collaborative projects** within the professional schools and around the University, the **publications** of the former fellows and graduate fellows, the number of **ethics courses** developed or revised with the support of the Program, and the list of guest **lecturers**.

We hope you enjoy this, the first edition of **Ethics@Harvard.Edu**. We also hope that you will seize this new cyber opportunity to exchange ideas and discuss topics of current interest. If you have any thoughts about the newsletter and Web site and how they might serve our mission, or if you would like to submit an item, please contact Judy Kendall. Our Web site address is: <http://www.ethics.harvard.edu>. ♦

Dennis F. Thompson

Maureen Scully Conducts Ethics Session

A group of 35 Radcliffe undergraduates began the academic year with the annual week-long conference on Women and Leadership. This year, the program included a session on Leadership and Ethics, conducted by Maureen Scully (an alumna both of the *Program in Ethics and the Professions* and Radcliffe). Professor Scully focused

on leadership at all levels of an organization or profession, emphasizing the collaborative aspects of leadership and the responsibility of leaders to share power and enable multiple stakeholders to articulate and act upon their interests; this approach contrasts with the hero models that can captivate students of leadership. She challenged the

group to consider the tradeoffs between "voice" and "exit" as responses when they have ethical objections to the actions or policies of their organizations. To keep the lessons experiential and vivid, she tapped participants to come to the front of the room to do some "role plays" of everyday ways of engaging in "moral activism." ♦

*To encourage teaching and research about ethical issues
in public and professional life...*

1998-1999

Faculty Fellows in Ethics

STEPHEN H. BEHNKE

*Instructor in Psychology, Department of Psychiatry, Harvard Medical School
Chief Psychologist, Day Hospital Unit, Massachusetts Mental Health Center*

Dr. Behnke has published on the criminal responsibility of individuals with multiple personality disorder, and is the editor of a multi-volume series on state mental health laws. His current research interests include the legal and ethical dimensions of working with individuals who suffer from severe psychiatric disturbances. Dr. Behnke's plans for the Fellowship year include writing about how the law views the autonomy interests of these individuals, and how mental health professionals address ethical dilemmas they encounter in their day-to-day practice.

LEORA Y. BILSKY

*Lecturer, Faculty of Law, Tel Aviv University
Research Fellow, Van Leer Institute of Research, Jerusalem*

Professor Bilsky's main areas of interest are procedural law, feminist legal theory, child law, and narrative and rhetoric in law. In recent articles, she has revisited two trials pivotal to the understanding of the history of Israeli law and the legacy of the Holocaust: those of Kastner and Eichmann. In this context and others she has studied the work of Hannah Arendt. During the Fellowship year, Bilsky will further pursue these directions in a book tentatively titled, *The Ethics of Memory: The Struggle for Israeli Collective Identity in the Trials of the Holocaust*.

ANNABELLE P.F. LEVER

*Assistant Professor in Political Science
University of Rochester*

Professor Lever is completing a book for Oxford University Press, tentatively titled, *A Democratic Conception of Privacy*. During the Fellowship year, she will continue work on *Privacy, Property and Democracy*, a book examining the philosophical relationship between privacy rights and property rights and its implications for current debates on the patenting of genetic materials.

WALTER M. ROBINSON

*Faculty Associate of the Program; Pediatric Pulmonologist, Children's Hospital
Director, Fellowships in Medical Ethics, Division of Medical Ethics
Harvard Medical School*

Dr. Robinson is involved in clinical case consultation and policy formation at Children's Hospital, where he serves as associate ethicist in the Office of Ethics and ethicist for the institutional review board. He is associate director of the Pediatric Lung Transplantation Program and associate director of the General Clinical Research Center. A Faculty Scholar in the Project on Death in America, Robinson's academic interests focus on the ethical dilemmas that arise in chronic illness, organ transplantation, and clinical research. His articles on chronic pain and terminal care in cystic fibrosis have appeared in the *Journal of Pediatrics*.

WALTER P. SINNOTT-ARMSTRONG

*Professor of Philosophy
Dartmouth College*

Professor Sinnott-Armstrong's books include *Moral Dilemmas, Understanding Arguments* (with Robert Fogelin), *Contemporary Perspectives on Constitutional Interpretation* (with Susan Brison), *The Philosophy of Law* (with Frederick Schauer), and *Moral Knowledge?* (with Mark Timmons). He has published numerous articles in moral theory and applied ethics, including works on abortion, the insanity defense, and nuclear deterrence. During the Fellowship year, he plans to complete a book defending limited moral skepticism and to explore its practical implications.

JOHN O. TOMASI

*Assistant Professor of Political Science
Brown University*

Professor Tomasi's articles have appeared in a variety of journals, including *Ethics* and *The Journal of Philosophy*, on topics as diverse as abortion, anarcho-capitalism, and Plato as a writer of fiction. He will spend the Fellowship year completing a book on citizenship, *Liberalism Beyond Justice*, which examines the role of the concept "justice" within the scope of contemporary liberal theory.

*To bring together those with competence in philosophical thought
and those with experience in professional education...*

1998-99 Graduate Fellows in Ethics

SUJIT CHOUDHRY received the LL.M. from Harvard Law School in June 1998. During the Fellowship year, he will examine the relationship between different ways of conceptualizing problems of justice –the paradigms of recognition and distribution –in the context of the interpretation and application of anti-discrimination legislation.

MARY CLAYTON COLEMAN is a Ph.D. candidate in philosophy. In her dissertation, she explores the relationship between reason and motivation and is developing an account of how having a good reason to act can motivate one to act.

PAMELA HIERONYMI (*Eugene P. Beard Graduate Fellow in Ethics*) is a Ph.D. candidate in philosophy exploring issues of moral motivation. Her attention has been captured by the possibility of “imitation virtue” and its implications not only for moral theory but also for moral life and practice.

RICHARD KATSKEE (*Eugene P. Beard Graduate Fellow in Ethics*) is a Ph.D. candidate in government. His dissertation explores the relationship between education and liberal citizenship.

NANCY KOKAZ is a Ph.D. candidate in government studying political theory and international relations. In her dissertation, she explores alternative conceptions of sovereignty that would be compatible with the ethical understanding of foreign policy and international politics.

NICHOLAS PAPASPYROU, an S.J.D. candidate at Harvard Law School, is exploring the normative foundations of the allocation of interpretive authority in American public law.

Graduate Fellowships are open only to Harvard graduate students. For Fellowships beginning September 1999, the deadline date for receipt of materials is Thursday, February 11, 1999. Application packets are available at the Program office.

Beard Fellow Lands Human Rights Position

The Belfer Center at Harvard’s Kennedy School of Government recently named Samantha Power Project Director of its newly launched Human Rights Initiative. She was a foreign correspondent for several years and covered the war in the Balkans for major news magazines before becoming a *Beard*



Graduate Fellow in Ethics in 1997. Power is enrolled in the J.D. program at Harvard Law School and is writing a book on U.S. responses to genocide. She credits her year in residence at the Kennedy School of Government, which she owes to the Beard Fellowship, with playing a significant role in helping her secure this new position. The Human Rights Initiative plans to publish a volume of essays on the subject and to host a major conference which will reflect on the U.N. Declaration on Human Rights. ♦

Why I Am Not A Cyberdemocrat

Arthur Isak Applbaum

When Edmund Burke argued that a legislator should not be bound by the instructions of constituents, he invoked the logistical difficulties of direct democracy. “But government and legislation are matters of reason and judgment, and not of inclination; and what sort of reason is that, in which the determination precedes the discussion; in which one set of men deliberate, and another decide; and where those who form the conclusion are perhaps three hundred miles distant from those who hear the arguments?” (“Speech to the Electors of Bristol”). The Internet has robbed Burke of one argument for legislative independence, because the new information technologies make possible widespread popular participation in both political discussion and decision making. Whether three hundred or three thousand miles are no longer barriers to instantaneous, interactive communication among voters and between voters and politicians. Does cyberspace therefore make the institutions of mediated, representative democracy obsolete? Not on a view of political legitimacy that requires that citizens be guaranteed the equal political liberties.

The test of the legitimacy of political coercion is not wholly procedural, but is in part substantive. Legisla-

*To help meet the growing need for teachers and scholars
who address questions of moral choice ...*

...Cyberdemocrat

(cont'd)

tive majorities elected properly under fair procedures can still act illegitimately, and so, tyrannically. They do so most clearly when they deprive a minority of the equal political liberties for irrelevant reasons, and so fail to treat all citizens as moral equals. The guarantee of at least some political liberties is a conceptual or practical precondition of legitimate democratic rule. No regime that disenfranchises, silences, or enslaves a minority counts as a legitimate democracy. This is why the constraints on majoritarian law-making that a bill of rights imposes make a constitutional democracy more, not less, legitimate than a regime with no constraints on majority rule. For the same reason, a representative democracy is more, not less, legitimate than a direct democracy if it does a better job of protecting political freedom. James Madison held that a representative democracy in which legislators had considerable discretion did do a better job. He feared the unmediated passions and factional interests to which direct majoritarianism is prone, for men are not angels, and one cannot judge one's own cause without bias. In my view, Madison got it right.

The claim that the greater participation of all entails the greater freedom of all suffers from a fallacy of composition. True, if coercive government were more responsive to *my* will, *I* would be more free. I cannot tyrannize myself. But it does not follow that if the government were more responsive to the *majority* will, *we all* would be more free, because we can—and do—tyrannize each other. There is nothing to the view that direct democracy is intrinsically more legitimate than representative and constitutional democracy.

It is often claimed that checks on the will of the majority, such as representative government and judicial review, are paternalistic, and so disrespectful to a competent and mature people. It is paternalistic to restrict your liberty to keep you from harming yourself; it is not paternalistic to restrict your liberty to keep you from harming others. Constitutional constraints on majoritarianism aim at the second, not the first, and it is a dangerous romanticism to suppose, in the United States today, that “We The People” need more protection from “Them The Government” than we need from each other. Unjustly treated minorities can be forgiven if they reject a reified account of “we” under which their injuries are self-inflicted.

Because democratic legitimacy is in part a substantive notion, no demo-

cratic procedure alone can solve the puzzle of legitimate political coercion. Therefore, in evaluating various changes to the directness of the democratic process and the levels of political participation that information technology might bring about, we must look to the effects these technological innovations will have on realizing, protecting, or violating the equal political liberties. If Madison is right about the tyrannical tendencies of popular majorities, the prospect of direct electronic democracy should be greeted with more dread than enthusiasm. ♦

Arthur Applbaum, associate professor at the Kennedy School of Government, is PEP's director of graduate fellows. For an article by Applbaum on this topic and an e-mail reply from James Madison, go to: <http://www.ksg.harvard.edu/visions/bw3.htm>.

Wilkins Earns Class Honors



David B. Wilkins (*Faculty Associate and Fellow in Ethics 1989-90*), was awarded the Albert M. Sacks-Paul A. Freund Award for Teaching Excellence by the 1998 Harvard Law School graduating class. Wilkins is the Director of the Program on the Legal Profession, and his class on professional ethics is among the most popular at the Law School. Professor Wilkins continues to write and speak extensively on ethics related topics. His recent public lectures include the W.M. Keck Lecture at Georgetown Law School entitled “Black Lawyers and Justice: Ethical Reflections on an Empirical Study”; “Identities and roles: Race Recognition and Professional Responsibility,” delivered at Yale Law School; and “Partners Without Power: A Preliminary Assessment of Black Partners in Elite Corporate Law Firms,” delivered at Hofstra Law School. In addition, Wilkins was the keynote speaker at a retreat for leaders of the Association of the Bar of the City of New York.” ♦

And to promote a perspective on ethics informed by both theory and practice.

Publications Spotlight

SOLOMON BENATAR Professor/Chairman of Internal Medicine
University of Cape Town
Chief Physician, Groote Schuur Hospital
Fellow in Ethics 1994-95

“Global Disparities in Health and Human Rights: A Critical Commentary,” *88 American Journal of Public Health* (1998).

ROSS CHEIT John Hazen White Ethics Fellow
University of Rhode Island
Fellow in Ethics 1990-91

“Consider This: Skeptics of Recovered Memory,” *Ethics & Behavior* (Fall 1998).

JONATHAN COHEN Senior Fellow
Program on Negotiation
Harvard Law School
Graduate Fellow in Ethics 1990-91

“Reasoning Along Different Lines: Some Varied Roles of Rationality in Negotiation and Conflict Resolution,” *3 Harvard Negotiation Law Review* (Spring 1998).

LESLIE GRIFFIN Visiting Assistant Professor
Georgetown University Law Center
Fellow in Ethics 1993-94

“The Relevance of Religion to a Lawyer’s Work: Legal Ethics,” *6 Fordham Law Review* 1253 (1998).

ANDREW KOPPELMAN Assistant Professor of Law & Political Science
Northwestern University School of Law
Fellow in Ethics 1994-95

“Sexual and Religious Pluralism,” in *Sexual Orientation and Human Rights in American Religious Discourse* (M. Nussbaum and S. Olyan, eds.) (Oxford University Press).

“Is Marriage Inherently Heterosexual?,” *42 American Journal of Jurisprudence* (1998).

SUSAN M. WOLF Associate Professor of Law and Medicine
University of Minnesota
Fellow in Ethics 1992-93

“Pragmatism in the Face of Death: The Role of Facts in the Assisted Suicide Debate,” *82 Minnesota Law Review* 1063 (1998).

Forward: “Facing Death,” *82 Minnesota Law Review* 885 (1998).

Ethics for Adversaries: The Morality of Roles in Public and Professional Life Princeton University Press, Spring 1999

Ethics for Adversaries is a philosophical inquiry into arguments that are offered to defend adversary roles, practices, and institutions in public and professional life. The adversary professions of law, business, and government typically claim a moral permission to violate others in ways that, if not for the role, would be morally wrong. Applbaum argues that the claims of the adversary professions are weaker than supposed, and do not justify much of the violation that professionals inflict. Arthur Applbaum is Associate Professor of Public Policy at the John F. Kennedy School of Government and Director of Graduate Fellowships in the *Program in Ethics and the Professions*. He was a fellow in ethics in 1987-88.

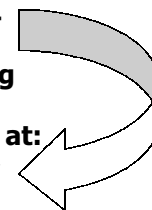
Secularism and its Critics New Delhi: Oxford University Press, 1998

Rajeev Bhargava is Associate Professor at the Center for Political Studies at Jawaharlal Nehru University, India. He was a Fellow in Ethics in 1995-1996. Edited by Bhargava, *Secularism and its Critics* is a volume in the *Themes in Politics* series which outlines important issues in Indian political science and politics and attempts to answer the question of whether modern secularism has the cultural and philosophical resources to enable people with differing faiths to co-habitate. The collection includes, among others, articles by Program affiliates Thomas Scanlon, Amartya Sen, Michael Sandel. Bhargava is currently a visiting senior fellow at the Centre for the Study of Developing Societies, Delhi.

Killing the Black Body: Race, Reproduction, and the Meaning of Liberty Pantheon Books, 1997

Dorothy Roberts examines the battle for reproductive rights through the history of the social and governmental control of African American women’s bodies. Roberts was a Fellow in Ethics during the 1994-1995 academic year and is a professor of law at Rutgers University.

For a current list of Fellows’ publications as well as information about the history of the Program, upcoming events, and a directory of Program affiliates, log onto our new Web site at:
<http://www.ethics.harvard.edu>



Program in Ethics and the Professions



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