

APA Newsletters

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LETTER FROM THE EDITORS

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We welcome readers to the spring 2013 edition of the *APA Newsletter on Teaching Philosophy*. This edition offers two articles, a review, and a list of books received for possible review.

The first article is by John Kleinig of John Jay College of the City University of New York and Centre for Applied Philosophy & Public Ethics, CSU. Professor Kleinig proposes a general procedure for teaching practical ethics to undergraduates. He then applies this procedure in a course on police ethics to students pursuing a career in police work, but he believes it could be easily adapted to courses in other areas of practical or professional ethics.

Students are first presented with real-life scenarios found in reports, newspapers, and other media from which they must isolate morally significant conflicts arising from them. A second assignment requires students to find by themselves similar media reports on specific cases of police work that, given some reflection, reveal ethically challenging conflicts that were perhaps not immediately apparent. Professor Kleinig uses the image of a wheel to describe the assignment and the process of inquiry it requires. The hub of the wheel is the action, decision, or situation identified as the focus of moral assessment, the spokes represent the points raised in its moral analysis, and the rim represents the necessity of some practical constraint on how far the analysis may be taken. Large normative theories are considered to be beyond the rim; the focus is upon the case, its moral implications, and its possible practical consequences for public policy.

Half of the paper contains examples of such scenarios taken from real life, in which the instructor guides his students in asking questions about the situation, and identifying places where “hard questions” may arise, that is, places where there are good reasons for deciding an issue in more than one way, and where negotiations between them is a matter not of applying some algorithm, but of good judgment, requiring such skills as empathetic awareness of the situation and a fair assessment of the interests of the agents.

The second paper, “Grading Plagiarism as a Moral Issue,” is by Philip Jenkins of Marywood University and Joan Forry of Linfield College. Drawing on extensive literature concerning plagiarism (the paper contains an extensive bibliography), the authors discover a difficulty in using a purported moral failing

on the part of student plagiarizers as a ground for assigning a grade of failure. Such a procedure makes the instructor a kind of policeman, judge, and jury, for which he or she is perhaps ill suited; but, more importantly, such downgrading for moral failure sidesteps the generally accepted belief that a student should receive a grade based on a demonstration of competence alone. True, by plagiarizing, a student has failed to demonstrate competence in the assignment, and may for that reason deserve failure. But the authors note two further problems here. What if only a small part of the assignment was plagiarized? What if the student was confused about the assignment, and had no intention of cheating? The authors try to find a way out of these difficulties that will maintain both the necessity of assigning grades only for demonstrated competence, and the conviction that the moral turpitude represented by plagiarism needs to be fairly addressed by the grading process.

We offer one book review, Arnon Cahen on Yuval Lurie’s *Wittgenstein and the Human Spirit*. The book takes up some of Wittgenstein’s writing on extra-philosophical topics such as his *Culture and History*, and tries to understand them from the standpoint of the philosopher’s technical philosophy.

As always, we encourage our readers to write for our publication. We welcome papers that respond to, comment on, or take issue with any of the material that appears within our pages. We welcome papers that reflect on some aspect of teaching philosophy or offer a new technique for teaching the process or content of philosophy.

A list of **Books Received** appears towards the end of this edition. Most of the books listed here and in our previous edition are still open for review. We encourage readers to suggest themselves as reviewers of books and other materials that they have found especially good for classroom use. When writing a review of material for our newsletter, please remember that our publication is devoted to matters of pedagogy and not to theoretical discussions of philosophical issues.

The following guidelines for all submissions should be followed:

- The author’s name, the title of the paper, and full mailing address should appear on a *separate* page. Nothing that identifies the author or his or her institution should appear within the body or within the notes of the paper. Only the title of the paper should appear at the top of the first page of the paper.
 - Both electronic and paper copies of papers are acceptable.
 - Authors should adhere to the production guidelines that are available from the APA and that are available from the [APA’s website](#).
 - In the case of electronic copies, in writing your paper to disk, please do not use your word processor’s
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footnote or endnote function; all notes should be added manually at the end of the paper.

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ARTICLES

Applied Ethics Teaching and Unfolding Scenarios

John Kleinig

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There are good reasons for giving the discussion of scenarios—ethically challenging narratives—a significant place in applied and professional ethics courses, especially if those courses include actual and aspiring occupational and professional practitioners.¹ Although this essay focuses on issues in police ethics, it might have just as easily concerned business or medical ethics.² Relevant scenarios, particularly realistic ones, engage students with ethical challenges at a place at which they are more likely to encounter them; they make students aware of the complexities involved in moral decision making; they encourage students to develop their judgmental skills in a way that more formalistic approaches to professional ethics teaching do not; and, if tackled in a classroom setting, they reveal to students the benefits of bringing multiple perspectives to bear on challenging ethical problems.³ This is not to deny that students should engage with some of the more general and formal issues and questions as they proceed with their courses—for example, broad discussions of deception or consent or privacy or coercion. But in working with scenarios it is recognized that just as there is a big gap between a study of anatomy, physiology, microbiology, and biochemistry and the day-to-day challenges of medical decision making there is also a significant gap between the so-called mid-level discussions that are often included in professional and applied ethics courses and the actual decisions with which practitioners are likely to be confronted.⁴

In teaching a 300-level police ethics course over the years, I have usually made engagement with extended scenarios a significant part of the course—and often a major part of assessing students' engagement with the issues. In a first written assignment, the students are given an extended scenario

containing many substantive and strategic decision points and are asked to identify those points at which ethical questions arise (ordinarily, points at which decisions are or should be made because of their impact on others). They are then asked to indicate how they would/should respond to these questions. After marking the papers, I go through the scenario with the class indicating to the students where I think important ethical questions were involved, and I then suggest the pros and cons of responding to these questions in one way rather than another. The students are often surprised to see how incidents they had glossed over in the story pose quite significant ethical challenges. In addition to the earlier-mentioned benefits of scenario-enriched teaching, students also become aware of the way in which decisions taken at an earlier part of a narrative bear on the kinds of ethical decisions that are encountered later on. Ethical decision making is seen to be relevant not only as a feature of static or isolated situations but also as an element in the unfolding of an ongoing human story.

In a second assignment, the students are asked to create or develop a scenario of their own choosing and then to engage in a similar exercise—identifying ethically relevant points in their story, considering and weighing the ethical options at these points, including determining their relevance to later decision points in the narrative. Preparation for this second assignment is aided by class discussions in which we review a diversity of cases that show students how many different ways there are of raising and responding to ethical questions. The broadest lesson that students are encouraged to take away from these discussions is that whenever humans engage with each other, individually, collectively, or through institutional mechanisms, an ethical dimension to that engagement will be implicit.

In both assignments, there is a particular focus on what are termed “hard questions”—so-called primarily because the points at which these questions arise are such that there are good reasons for deciding in more than one direction. A tension is generated between or among values, with one value needing to be traded off against another. I see the challenge of learning how to negotiate these tensions as an important part of the exercise. I want students to come to appreciate that this “negotiation” is not formulaic or algorithmic but judgmental—the skills involved are not simply rational skills as they are often promoted in the moral-decision-making literature, but skills involving empathy or what Paolo Freire spoke of as “conscientization.”⁵ A certain type of sensibility is required as well as a capacity for what is more regularly referred to as “critical thinking” (not that I see any rigid bifurcation here).

The cases presented by scenarios may be not only morally but also psychologically hard—that is, they may require not simply the discernment and perceptive handling of moral conflict but also moral courage—say, the sort of courage that a police officer may need when confronted with the legally (and presumably morally) questionable behavior of someone who is also his or her friend.

Students are also encouraged to distinguish between “Monday morning quarterbacking” and live decision making in which there is no benefit from 20/20 hindsight. Because scenarios often provide a god's-eye view of events, students need assistance in seeing how real-world decision makers do not have the luxury of knowing actual outcomes, but must make choices under conditions of uncertainty. The challenge of making decisions under such conditions then becomes a problem in its own right, to be explored in discussion.

This year I added a further dimension to the consideration of scenarios in my course: exploration of currently unfolding scenarios. I did this partly in response to student requests for more up-to-date materials, but also as a way of connecting the

course materials with the world of “breaking news.” Although I have tried to update the basic discussion materials—adding, for example, discussions of taser use to that of intermediate force, material on “noble cause” corruption⁶ to the more basic materials on corruption, and explorations of the use of various new surveillance technologies to discussions of deception and privacy—some students (a minority, alas) have asked for materials that engage with what they daily encounter or see portrayed in the news media. Despite some hesitations (grounded in what I see as the knee-jerk reactions of both media and students) I have experimented with a response to this request.

Each week I scour the media—particularly the *New York Times* but also other generally reputable news sources on the Internet—for current items that involve tough or controversial police decisions or responses to situations that I judge to raise ethically significant issues. (I have found that newspapers do not always capture what I myself find to be of ethical interest in a story.) I am rarely disappointed in my search. Teaching in New York, I find that the *Times* and the NYPD are cornucopias of usually well- or well-enough researched police stories involving hard decisions of some kind or other—though I have no problems about stories from farther afield. For each class I preselect one student (or seek a volunteer), and provide that student with a news article (or two or three articles) on some current case, asking him or her to make a presentation at the following class in which she or he outlines the basic “facts” of the case, identifies the ethical issues that appear to be involved, and then makes reasoned suggestions about how those ethical challenges might be (or might have been) resolved. If s/he so wishes, the student who is to make the presentation is encouraged to do further research on the case. After the brief presentation—no more than a few minutes—other students are encouraged to respond to the presentation. For some it will be the first time they have thought about the case (even though I will have mentioned it in the previous class); others will have encountered it on TV or elsewhere and will already have some idea concerning its contours and normative dimensions.

Among the general lessons that might be learned from this way of proceeding are the following: (a) recognition that news stories are often partial and unfolding—that it takes time for “facts” to “clarify” and that even when they do, there are often disputes as to what those facts are.⁷ This is particularly so where the stories have had a “racial” dimension—say, an African-American is shot by a Caucasian police officer; and (b) an awareness that individual cases need “ethical backgrounding” if they are to be fruitfully discussed. In other words, a productive discussion of a situation in which police have engaged in intelligence gathering (say, by infiltrating Muslim groups in search of terrorism-related information) works best if the students have thought about the ethical dimensions of such notions as privacy, legitimate police powers, accountability, and profiling, and perhaps even of the extent to which ends may justify means. As it happens, my course syllabus explicitly includes discussions of these more general topics, and so the unfolding scenarios provide opportunities to look back at and forward to some of the more abstractly discussed course materials.

Over the semester we explored approximately twenty cases of considerable diversity and usually of great interest to the students. What follows are a few examples of the news items we discussed, and that in form if not substance might be apposite to the teaching of other courses in professional or applied ethics.

Early in my last semester’s course, a prominent news item concerned a police shooting in which two on-duty police

officers at the Empire State Building (ESB) were warned by shouts from construction workers that a well-dressed man had just shot someone in the next street and was now walking past the ESB.⁸ The officers approached him, at which point the man in question reached into a bag, took out a pistol, and pointed it at them. Between them, the officers fired sixteen shots, of which seven hit the gunman (who died). But nine bystanders were also wounded either directly or as a result of ricochets. The case raised several issues with ethical import, including: how best to address the risks associated with firearm use in crowded areas; morally viable and practical alternatives to an immediate confrontation; the level of risk to which police should expose themselves in trying to apprehend someone believed to be dangerous; the types of ammunition to which police ought to have access;⁹ and, more generally, whether police departments provide adequate training for firearm use and for firearm use in public areas.¹⁰ The case in question highlighted issues that were shown even more dramatically in some other cases that arose later in the semester—that police are notoriously bad shots, hitting their targets on average about one-third of the time, and often endangering others.¹¹ This fact drew attention to an important disconnect between movie portrayals of police work and real-world policing, and reminded students to beware of importing unrealistic expectations into police-citizen encounters. The Empire State Building shooting case was soon followed by another one in which police, alerted to an armed bodega robbery, rapidly converged on it.¹² Unbeknown to the police, the robbers had fled into the rear of the shop, and two employees, seeing their opportunity for escape, rushed out through the front door. The first gestured in a way that indicated that the robbers were inside/behind, and the second, following soon after, collided with an officer and was “accidentally” killed. Given the speed at which events unfolded in this latter case, and the fact that an innocent person was first the victim of a robbery and then the victim of a lethal “accident,” questions were raised about how best to ensure responsible split-second decisions, how one should responsibly respond to ambiguous situations, and, in general, the ways that police should deploy themselves in emergencies. To emphasize the “accidental” nature of the shooting, the NYPD posted to the web a “collage” of tapes from security cameras, and students were able to review the cameras’ perspectives again and again. It was interesting how, despite the visual record, students, police, and other commentators had divergent interpretations of the “facts.”

Two rather different cases highlighted issues of privacy: first, following a tipoff, a trained police dog was brought to the front door of a house in Florida in which it was suspected that marijuana production was taking place.¹³ On sniffing at the base of the door, the dog detected the drug and a warrant to enter the house was then obtained. Did this strategy for obtaining the warrant violate legitimate privacy rights? The second case involved a truck driver who was stopped because of expired plates. Noticing the driver’s anxiety (and subsequent refusal to allow the vehicle to be searched), an accompanying police dog was given what is referred to as a “free air sniff.” Alerted by the dog’s interest in the driver’s door handle, officers subsequently found drugs and drug-making materials on board. *Inter alia*, class discussion of the two cases focused on the distinction made in U.S. law between a home and vehicle as private space, prompting a consideration of an ethically defensible “zone of privacy”—kinds of information, or kinds of spaces (an issue about which there are strong E.U.-U.S. disagreements). On October 31, 2012, the two cases were argued before the U.S. Supreme Court. Because of the appearance of earlier news items, as well as because of discussions of these cases in class, students in my course had the opportunity to think about the cases before and after the Supreme Court date, and to predict,

on the basis of the latter, how the court might decide them (though the decision is not expected until 2013). In addition to focusing on how cases of these kinds can challenge the ethical lines we draw between legitimate and illegitimate demands for privacy, we were led by the court debate and its appeal to an earlier precedent¹⁴ to consideration of the privacy implications of various surveillance technologies, to the distinction between privacy and secrecy, and even to consideration of the extent to which privacy rights should be preserved in an age of terrorism.

In a classroom situation there are significant constraints on how far afield such discussions can and should go, but some latitude gives students an opportunity to get a feel for the larger web of important issues that may be opened up by something as specific as the circumstances in which drug-sniffing dogs are used.

The issue of the ethical legitimacy or illegitimacy of privacy violation was presented for class discussion via another news article that was published during the semester. According to it, the NYPD had expended considerable resources infiltrating Islamic organizations and mosques in an endeavor to gain “terrorist-related intelligence.”¹⁵ The years-long investigation yielded no tangible leads and, when made public, did little to sustain the already-fragile relations that the Muslim community has had with city and federal authorities. The social costs of such profiling harkened back to the lively debate that existed just prior to 2001, when an incident involving police profiling on the New Jersey Turnpike generated considerable police soul-searching with regard to the offense of DWB—“Driving While Black.”¹⁶ Students in the course—mostly minorities—were encouraged to ask whether there were any significant differences between the earlier and discredited profiling and the more recent terrorism-related cases. The news story gained added poignancy and relevance when a news item (and subsequently a letter from the president of our college) indicated that the college’s Muslim Students Association had been among those infiltrated (by a Muslim student from another college at the same university).¹⁷

In classes devoted to the issue of intermediate (less-than-lethal) force it has regularly been my view that the less likely an intermediate force strategy will cause visible or permanent damage the greater will be the temptation for police to misuse it. Some years ago I pointed to what I deemed the overuse of capicum spray to illustrate my contention: rather than argue with either a crowd or passive protesters to get them to move, or go to the trouble of arresting and carrying away “dead weight bodies,” police resorted to the easy (but questionable) option of using the spray to move people to where they wanted them. Nowadays we have an explosion of taser use within police departments. Several stories involving questionable taser use appeared during the semester and provided students with an opportunity to see how well (or badly) departmental “continuum of force” policies work,¹⁸ and to consider why so many tasers have come to be deployed within a relatively short period of time. The question, of course, is how—using technological and training strategies—tasers may be used more accountably.¹⁹

Police are expected to use their considerable discretion wisely, though experience and professional common sense may sometimes be better guides to its use than training admonitions. Several of the cases that we examined manifest the testing of officers’ discretionary skills, sometimes in surprising ways. One case involved a truck parked on the median strip of an Ohio highway, containing a very inebriated driver.²⁰ Two officers found themselves unable to communicate with him—they spoke no Spanish—and on video they decided to remove him and leave him at a nearby Taco Bell in the hope that a Spanish speaker would assist him to call for someone to pick him up.

They left, and the driver later wandered out on the highway where he was killed by oncoming traffic. Was this a case where humane discretion and good will went wrong? Was this a case of laziness on the part of the highway patrolmen? Or mere bad luck? I encourage my students to probe different aspects of the story, including quotations from a recording of the officers’ conversations between themselves, to assess whether discretion had been appropriately exercised.

Discretionary judgments were also involved when a New York cyclist, irate that a police car pulled into a cycle lane ahead of him, got into a shouting match that escalated to the point at which, before he was taken into custody, the cyclist slapped an officer and the officer punched the cyclist back.²¹ When the officers learned the cyclist’s identity—he was the eighty-four-year-old editor of a local newspaper—they realized that they might have a public relations problem on their hands, and informed the commanding officer. The latter asked the arrestee for his version of what went on, and then set up a meeting at which he informed the editor that although he was wrong to slap the officer and needed to be held accountable for it, the officer was also wrong to punch him back, and that he too would be held accountable. The editor left not only with a sense that he had acted foolishly, but also that his “new best friend” had responded in a fair manner. Discretion well exercised, albeit at a very high level.

In another case—or, to be accurate, series of cases—a recent *New Yorker* article highlighted the problems posed when young people, arrested for drug offenses, are offered the following deal by police: work as confidential informants and in return not have criminal charges pressed against them.²² The article highlights the risky bargain involved for those who take the deal; the exploitation that is encouraged; and, in some cases, the tragic consequences for naive young adults who are asked to participate in hazardous undercover operations with little idea of the dangers that they are exposing themselves to.

The above cases also tie in with a large theme in the course: the use of deceptive tactics by police. Students must grapple with general questions of truthfulness and deception, and then the various moral and social costs that are involved when governmental agents deploy deception in order to “fight crime.” The assumption by police is that the deception and/or manipulation of the truth is justified by the ends they serve. Some of the cases we discuss point to a much more nuanced understanding.

The foregoing represent a small sampling of the current and unfolding cases that we reviewed in the course of the semester. What this meant is that students were engaged with the ethical assessment of cases that were—quite often—appearing on their TV and in other news-sources. They were thus provided with background and framing materials that helped them to see these events within a larger framework, and they were encouraged to become more informed and interested critics of their everyday world (too often circumscribed by music groups and fashion trends rather than by social issues²³).

Notes

1. Even if many of the students are not actual or aspiring occupational/professional practitioners, they are likely to be users of services and thus have a significant interest in how those services are provided.
2. One reviewer suggested that police scenarios may have an immediacy that those in business and medical ethics do not. That may sometimes be the case, though in some of the cases we considered the newspaper reporting was current whereas the issue reported had occurred sometime previously—it took a while for it to reach the newspapers (or reappear as “current news”). My sense is that papers such as the *New York Times* regularly report ethically interesting cases in their

- business, science, and magazine sections. In addition, there are regular trade magazines in business and medicine that report on recent cases.
3. I have endeavored to develop these ideas and others at greater length in “Reflections on Teaching Police Ethics with Scenarios,” in *Practical Policing Practice*, ed. P. A. J. Waddington, Martin Wright, and John Kleinig (Oxford: Oxford University Press, in press 2013), 25–42.
 4. There is an even bigger gap between grand moral theory—deontological, consequentialist, contractualist, and virtue—and the kinds of ethical considerations that are likely to be relevant to the particular cases that we discuss. Although the students are alerted to grand theory and may even have studied it in earlier courses (they are normally expected to have completed a general philosophy course—“Knowing, Being, and Doing”—prior to entering the Police Ethics course), I make no more than occasional gestures toward such grand theory—partly to discourage their simplistic “reading off” moral judgments from such theories, partly because I do not believe that any grand theory has a monopoly on the “truth,” and partly because many of the ethical considerations likely to be advanced in particular cases might be accommodated within more than one grand theory. I sometimes analogize the process of scenario inquiry as a wheel in which the hub comprises a particular action or decision whose appropriate evaluation generates a variety of questions that need to be addressed (the spokes), and the rim as a practical constraint on how far back the inquiry can be expected to go (for the purposes of a course). Grand theory normally lies outside the rim.
 5. Paolo Freire, *Education for Critical Consciousness* (New York: Seabury, 1973).
 6. A term coined by Edwin Delattre and based on Plato’s support for “noble lies” in the Republic. For a review of the literature, see John Kleinig, “Rethinking Noble Cause Corruption,” *International Journal of Police Science and Management* IV, no. 4 (2002): 287–314.
 7. Breaking news stories often give accounts of “what happened” that are amended over the next several days. Nevertheless, even with such amendments there can be ongoing disputes about motives and care.
 8. See Joseph Goldstein and Wendy Ruderman, “Decision by 2 Officers to Open Fire in Busy Midtown Leaves Bystanders Wounded,” *New York Times*, August 25, 2012; Michael Wilson, “After Bystanders Take Bullets, Questions on Police Protocol,” *New York Times*, August 26, 2012.
 9. J. B. Brady, “The Justifiability of Hollow-Point Bullets,” *Criminal Justice Ethics* 2, no. 2 (1983): 9–18.
 10. It is not uncommon for police actions to generate a concern with the adequacy of departmental policies and training practices. A notable example was the Amadou Diallo case. For the *New York Times* coverage, see http://topics.nytimes.com/topics/reference/timestopics/people/d/amadou_diallo/index.html.
 11. In one other case we discussed, police fired eighteen shots, hitting the target once in the buttock, but also wounding his innocent girlfriend. See Moriah Balingit, “Pittsburgh Police Officer OK after Being Shot in Stanton Heights,” *Pittsburgh Post-Gazette*, October 12, 2012. Another case featured a Texas practice in which police attempt to bring high-speed pursuits to a conclusion by shooting at the tires of “fleeing vehicles,” sometimes with unintended effects. See Manny Fernandez, “Texas Chase and Shooting by Officers Under Inquiry,” *New York Times*, November 10, 2012.
 12. Colin Moynihan and Nate Schweber, “Police Fatally Shoot a Man Outside a Bronx Bodega,” *New York Times*, September 7, 2012.
 13. Jonathan Stempel, “Will Police Dogs Pass Supreme Court Sniff Test?” NBC News, October 28, 2012. http://www.msnbc.msn.com/id/49587699/ns/us_news-crime_and_courts/; Lyle Denniston, “Argument Recap: If You Lose Scalia . . .,” SCOTUSblog, October 31, 2012. <http://www.scotusblog.com/2012/10/argument-recap-if-you-lose-scalia/>.
 14. *Kyllo v. United States*, 533 U.S. 27 (2001), in which a heat sensor was used on the outer wall of a house to determine whether a heat-lamp-aided internal marijuana crop might have been growing.
 15. Adam Goldman, “NYPD: Muslim Spying Led to No Leads, Terror Cases,” Associated Press, August 21, 2012; Ryan Devereaux, “NYPD Intelligence Chief Wanted Sources in Every Mosque within 250 Miles,” *The Guardian* (UK), February 23, 2012.
 16. David A. Harris, “Driving While Black: Racial Profiling on Our Nation’s Highways,” An American Civil Liberties Union Special Report June 7, 1999. <http://www.aclu.org/racial-justice/driving-while-black-racial-profiling-our-nations-highways>.
 17. Jeremy Travis, Letter to the John Jay Community, October 25, 2012.
 18. These policies are designed to match the level of legitimate force with a presenting situation, and are often represented diagrammatically. Among the cases that came to our notice were Janice Morse, “CPD Changes Taser Policy After Study Finds They Can Cause Death,” Cincinnati.com, September 18, 2012; Denise Callahan, “Taser Use Drops in Many Ohio Police Departments,” Officer.com, September 24, 2012; Helen Carter, “Police Taser Blind Man Mistaking his White Stick for a Samurai Sword,” *The Guardian* (UK), October 17, 2012, <http://www.guardian.co.uk/uk/2012/oct/17/police-taser-blind-man-stick>; and Isabel Mascarenas, “Man Tasered by Police Calls it ‘Brutal,’” *Pinellas Park News*, November 14, 2012, <http://pinellaspark.wtsp.com/news/news/151640-man-tasered-police-calls-it-brutal>.
 19. I had already provided students with a general article of my own: “Ethical Constraints on Taser Use by Police,” *Policing* (September 2007): 284–92, doi:10.1093/polic/pam037.
 20. See Ally Marotti, “On Video, Deputies, Trooper Discuss Man,” *Columbus Dispatch*, September 1, 2012; Ally Marotti, “Deputies, Trooper Charged with Failure to Arrest Drunk They Left at Taco Bell,” *Columbus Dispatch*, September 15, 2012.
 21. George Capsis, “Beyond the Letter of the Law,” *WestView News*, June 2012, <http://westviewnews.org/2012/06/westview-letter-june-2012-beyond-the-letter-of-the-law/>.
 22. Sarah Stillman, “The Throwaways,” *The New Yorker*, September 3, 2012.
 23. I estimated that in a college of criminal justice probably no more than 15 percent of my students kept abreast of news items relating to their course materials.

Grading Plagiarism as a Moral Issue

Phil Jenkins
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Introduction

At one time or another, teachers must deal with the problem of plagiarism, a kind of academic cheating in which a student presents the written work of others as her own. “Plagiarism, a type of cheating, is claiming the ideas or words of others to be one’s own, [even] if just passively by not referencing their true source—in short, theft of intellectual property.”¹ Plagiarized work presents itself in a variety of forms. Some students may too closely paraphrase someone else’s material without citing the source of that material, while others may take small or large chunks of others’ written work and submit it as their

own writing. Such actions may be intentional, in which case a student understands that she is plagiarizing and does so to gain an unfair advantage, or unintentional, in which case a student does not understand the methods for the proper citation of sources. While it is clear that plagiarism is a big problem, what is not so clear is the basis on which teachers should grade plagiarized assignments. Honor codes—the first of which, in America, appeared in 1779 at William & Mary—often explicitly cast plagiarism, and academic cheating in general, as *ethical* violations. However, honor codes stop short of justifying why *grades* should be the means by which the moral failings of students should be addressed.² That is, even when honor codes and policies, implicitly or explicitly, present plagiarism as a moral or ethical transgression, the most comprehensive of these do not address the question: What is the justification for using *grades* to punish plagiarism?³

Many, perhaps most, professors at the college level regard plagiarism as a moral wrong. They see plagiarism as an offense to the discipline, to the institution, and perhaps even to intellectual integrity itself. These teachers punish perpetrators, usually by giving a plagiarized paper a significantly lower grade or a zero, on either deontological or consequentialist grounds. If they judge plagiarism as wrong on deontological grounds, plagiarism is wrong because the student has violated a duty to present oneself truthfully, and the teacher may lower the plagiarizing student's grade as retribution for the student's unjust act. If plagiarism is judged as morally wrong on consequentialist grounds, its wrongness is seen to consist in its negative consequences. Such consequences might include contributing to a culture of misrepresentation, intellectual theft, and suffering by those that might depend on the knowledge of those who had cheated some part of their way into a profession. For the deontologist, the low grade is given as retribution. For the consequentialist, it is intended as a deterrent to future plagiarism.

However, some professors have argued that giving students grades based on anything but course mastery is itself unethical. In his essay "Fair Grades," Daryl Close claims, "Grading should be [solely] based on the student's competence in the academic content of the course."⁴ On Close's view, plagiarism must be seen as a failure of the student to demonstrate mastery of the course content, and the work should be graded according to *this* failure only. Determining grade consequences for a plagiarized essay, then, requires taking into account how much of that paper was plagiarized and how much of the paper demonstrates the student's competence in the subject matter. The moral *wrongness* of the act of plagiarism should not be factored into the calculation of the plagiarizing student's grade. Indeed, on this view, teachers who assign grades based on immoral conduct are themselves committing a moral wrong.

The goal of this article is to propose a basis for grading plagiarism that does not factor in the moral views of the teacher. We consider whether a grade given for a plagiarized paper should be intended as punishment for immoral conduct. This is an important issue, and of particular concern to philosophy teachers. Sometimes, despite all best efforts painstakingly and creatively to instruct students on plagiarism and academic cheating and how to avoid it, the most conscientious teachers will encounter plagiarism. Philosophy teachers, perhaps more than teachers in some other fields, pride themselves on the bases upon which their educational practices spring. As such, we ought to be especially clear about the grounds on which we grade plagiarized work and the messages we communicate through the practice of grading. Additionally, our justifications for grading plagiarized work ought to be consistent with a clearly articulated statement of the purpose of grades.

We shall begin by detailing some purposes and principles of grading. Our aim here is to call into question some commonly held assumptions about the practice of grading to highlight the problems that arise when teachers use grading as a way to deal with plagiarism as a moral wrong. Second, we shall present and discuss two different approaches to evaluating plagiarism. We refer to the first approach as the "Moral Violation" view, a view that maintains that plagiarized work ought to be penalized by punitive grading because the student has committed an ethical violation. We refer to the second approach as the "Course Mastery" view, drawing from Daryl Close's arguments in his 2009 article, "Fair Grades." This view holds that a plagiarized paper should be graded according to the level of mastery over course material that it exhibits rather than on ethical considerations concerning the construction of the paper. Third, we shall consider an additional approach to grading plagiarism, one we will propose after an examination of the crucial elements that make plagiarism undesirable in the first place. Our hope is that this paper will spark discussion about this difficult issue around which so many awkward and sometimes even strained teacher-student relations revolve.

Purposes and principles of grading

Evaluating whether, when, and to what extent student learning has occurred is one of the most important duties of a teacher. Such evaluation culminates in the practice of assigning grades. Unfortunately, college teachers do not get much teaching instruction in their graduate (or other professional) training, and they receive even less training on how to evaluate, and thus *grade*, student work. Most teachers approximate the practices and justifications of the college instructors who graded *them*. Instructors tend to think they know what grades are for and have a rudimentary view on the ethics of evaluation. However, often, important questions regarding the assumptions underlying the practice of grading are left unasked. This is, in our view, unfortunate, as grades *matter* in that they serve broader socio-cultural functions. Francis Schrag, in "From Here to Equality," argues that "[G]rading practices convey norms students are expected to internalize."⁵ In other words, grades are society's way of letting students and their transcript readers know how their abilities rank compared to others, a quantitative way of evaluating qualitative dimensions of student performance and behavior. What, then, is the purpose of grading? And, what are we doing when we perform this activity of grading?

The purpose of grading, according to Daryl Close, is to provide "the student and other transcript readers with an expert assessment of the student's knowledge or skills in the course subject matter."⁶ Steven Cahn agrees: "A grade is intended to represent an expert's judgment of the quality of a student's work within a specified area of inquiry."⁷ Robert Paul Wolff claims that what we call "grading" refers to a hybrid process in which we, as teachers, may engage in three very different kinds of activities. According to Wolff, there are three "species" of grading: criticism, ranking, and evaluation.⁸ Criticism refers to "the analysis of a product or performance for the purpose of identifying and correcting its faults or reinforcing its excellences,"⁹ while ranking is a "relative comparison of the performances of a number of students, for the purposes of determining a linear ranking of comparative excellences."¹⁰ Evaluation is the "measuring of a product or performance against an independent and objective standard of excellence. It issues in some sort of *grade* which expresses the teacher's judgment of the absolute merit of the student's performance."¹¹ For Wolff, the function of criticism is educational, as learning requires one to "submit oneself to the discipline of a standard" and to engage in the process of criticism is to do just that.¹² Criticism is, on this view, *internal* to the process of education. Evaluation,

on the other hand, serves not an educational function, but a *professional* one. The arbiters for admission into a profession look to grades for information on a person's qualifications to perform the duties demanded by that profession.¹³ In this way, evaluation is *external* to the process of education. This characterization of evaluation is consistent with, and echoes, Close's view of the purpose of grading.¹⁴

The distinctions that Wolff calls our attention to are important because (as we will show) there are ethical considerations that need to be taken into account if the activity of grading performs an external and professional function as opposed to a function that is solely internal to the educational enterprise.¹⁵ Further, if grades do perform some professional function external to that of communicating to the student the level at which he or she has demonstrated mastery of course content, then the assignment of grades based upon unclear criteria is ethically suspect. Close defines a fair grade as follows:

A summary mark of an accurate, expert evaluation of student academic work that (1) is normally made by the course instructor, (2) appraises a student's knowledge and/or skills in the subject matter of the course, and (3) is permanently recorded in a uniform way by the instructor in the student's institutional record.¹⁶

Close details three models of grading, each of which presents grades as instruments for appraising student knowledge of course content, albeit for different ends in each case. Close rejects the first model, which presents grades as rewards or punishments for learning or failing to learn course content or institutional values.¹⁷ He also rejects the second model, which presents grades as "the goal in the classroom," that is, as the valued true objective of learning. In this model, obtaining a favorable grade represents the achievement of the currency that students can subsequently use to obtain other goods (such as entrance to a graduate school).¹⁸ Close rejects both of these models because while the grades that are issued in accordance with these models may indeed be a sign of student knowledge, the true purpose of grading is nonetheless distorted if that purpose veers away from directly assessing that knowledge.

According to Close, only the third model is acceptable: the student's knowledge and/or skills *and nothing else* is to be considered in the determination of grades. He argues against the practice of using criteria such as attendance, participation, or effort in the determination of grades. For example, the amount of effort a student puts forth in completing a course assignment should not be reflected in the grade given for that assignment because effort is not directly relevant to how much a student has actually learned. A student may work very hard on writing a paper but still produce a mediocre piece of writing. Of course, effort may be correlated with learning course material. But given that correlation is not causation, Close argues that grading on the basis of behaviors that *correlate with* but are not necessarily *constitutive of* learning has the unfortunate result of making it permissible for a teacher who is assigning grades to take into consideration such factors as whether students buy the textbook or not, attend class or not, or behave or fail to behave respectfully in the classroom—all of which are behaviors that may correlate with learning but do not actually indicate whether learning has taken place. According to Close, "[C]ontaminating the grade with information beyond the academic content of the course makes the transcript unreliable, even useless, in determining levels of knowledge and competence."¹⁹ We agree with this claim and hold that philosophy teachers should avoid grading practices that make transcripts unreliable in relaying information about student knowledge and competence. Such

grading practices may be as ethically problematic as would a practice of assigning grades at random.

There is an appealing sober-mindedness and refreshing logic to the insistence that grades should be based *solely* on demonstrated knowledge of course content. We ourselves hold that this principle of grading should be an ideal of ethical grading. However, its application may not be as straightforward as Close seems to think, especially when it comes to the problem of plagiarism. In what follows, we give two grounds upon which grades for plagiarized papers may be assigned.

Two approaches to grading plagiarism

Many teachers and institutional honor codes hold the view that plagiarism is a moral wrong because it is an act of deceiving the instructor into thinking that the student possesses mastery over course content that he or she does not actually possess. In plagiarizing, the student gives a false impression, an impression that may or may not be the result of intentional deception on the student's part. One of the main problems with downgrading a piece of academic work that one believes has been plagiarized is ascertaining whether the act of using another's work without attribution was done with intent to deceive. Indeed, intention to deceive has, in the view of some, generally been decisive for determining whether what seems to be an act of plagiarism is truly an act of plagiarism rather than, say, an act of academic incompetence. If judged the latter, some instructors may be more lenient when assigning a grade for the work. If judged an intentional act to deceive, then some instructors, believing that they have an obligation to deter immoral behavior and encourage moral behavior, downgrade the plagiarized paper.

Let us start from the premise that plagiarism is an act of academic misconduct that arises either from an attempt to deceive or from an unintentional failure to provide complete and honest information about the sources of the material used in one's work. We question whether, even in the case where there has been an intentional attempt to deceive by plagiarizing material, grades ought to be used to communicate values or make statements about morally problematic behaviors. In saying this, we do *not* mean to cast doubt on the fact that plagiarism is a serious problem that often involves morally problematic behaviors. Our view is simply that judgments about the morally problematic aspect of such behaviors should not be the basis for the grades we assign.

The moral violation view

On the moral violation view, intentional plagiarism is an immoral act and the imposition of grade-based consequences, say, the significant lowering of the grade of the plagiarized paper or giving a failing grade for the course in which the paper has been submitted, constitutes a morally justified response to the plagiarism. Grade-based consequences for plagiarism, on this view, are essentially punishments that are intended either as penalties for wrongdoing or to deter future plagiarism (and perhaps both). There are two problems with this approach. The first is an epistemological problem of knowing the intention of another person; the second is that basing grades on any moral presumptions circumvents the purpose of fair grading. Toward this end, we present two ethical perspectives upon which to base the grades for plagiarism: a deontological view and a consequentialist view. While there are certainly many other ethical bases for assigning grades, the problems with these two approaches will also have implications for some of them.²⁰

When a teacher uses grades to punish plagiarism as a moral wrong, she assumes the role of moral arbiter. Indeed, honor codes may *require* the teacher to assume this role by characterizing plagiarism as a moral violation or as a failure to exhibit virtues of honesty and integrity. Honor codes frequently

require the teacher to submit evidence to an honor council and to assign a punitive grade to the offending student. The teacher is thus placed in the position of amateur detective who may, for example, call a plagiarizing student in for a conference in an attempt to determine (1) whether the student understood the assignment and its accompanying expectations and (2) whether the student's intention in submitting the plagiarized work was to misrepresent the submitted work as entirely his or her own. Cast in this role, according to a deontological perspective on plagiarism, the teacher's key concern is to find out whether the student *intended* to plagiarize.

Imagine that Professor Malcolm Meriweather has two students, Sally and Bert, who have each submitted plagiarized papers. Both students have been notified that Professor Meriweather is going to give them a zero for the assignment in which the plagiarism occurred. Sally comes to talk with the professor, says she did not mean to plagiarize, and makes a persuasive case that she did not understand how to go about citing sources, but was just afraid to ask questions in class. Bert, in his interview, also claims that his plagiarism was unintentional, that he did not understand citation practices, etc., and states that he certainly did not mean to cheat in any way. Let us further imagine that Sally convinces Professor Meriweather but Bert does not. Sally's story is delivered with apparent sincerity and satisfies the professor's "truth-sensor," so to speak; it has "truthiness." However, Bert has an odd, socially awkward demeanor that, in the best of circumstances, makes his stories sound disconnected. His self-doubt, which his close friends and family recognize is actually a form of internal critical examination, often gives others the unfortunate impression that he does not believe what he himself is saying. In the end, the professor has no trouble believing Sally and not believing Bert.

But, let us imagine, that Sally *is lying* and Bert *is actually telling the truth*. Sally is articulate while Bert second-guesses himself. If we see plagiarism as the breaking of a moral principle that requires punishment, we need to know what a person *intended* to do and not merely what the person did. However, intent is not something teachers should have to determine in order to assign a grade. Of course, teachers, like most people, often think they can tell when someone is lying and when they are telling the truth. But if such a scenario ever actually happens (and we think it does), a teacher could end up rewarding a student who is a good liar and punishing a student who is a bad truth-teller. Since this outcome would obviously be unfair, any grading system that depends on knowing the intentions of the student would be unfair as well.

But what if the basis for punishing a plagiarized paper with a low grade is meant to deter students from plagiarizing? If acts of plagiarism were to become common, the consequences would, generally speaking, be socially deleterious. In this consequentialist basis for grading plagiarism, it is unimportant whether the plagiarism was intended or not and so the teacher need not examine the contents of a student's mind. The epistemological problem, then, does not apply. However, the problem is that there may be a few students who, in Close's words, are thrown "to the unfairness wolves."²¹ Grading in this way is not fair to those students whose act, in the absence of being caught, would not have had any deleterious effects on anyone. The result is that even if plagiarism could be diminished by taking a consequentialist grading approach, it would not be fair. Each student should be treated as an individual, not as an unfortunate casualty of the attempt to promote greater good.

It is the belief of the authors that *any* moral grounding for penalizing plagiarism through grades is morally suspect. A student may behave in an obnoxious or otherwise morally repugnant manner, but to assign a grade for anything other

than competence in the course material would be wrong. On the one hand, teachers should not use grades to punish, or reward, intentions to break or follow moral rules. Because it is often impossible to determine motivations or intentions, to assign grades based upon speculation regarding a student's motives is epistemologically suspect. On the other hand, to give a low grade or a zero to a plagiarized paper as a punishment to deter future acts places deterrence ahead of fairness; it is to use grades instrumentally to achieve an outcome that the teacher deems morally desirable rather than assign grades as an expert evaluation of course mastery. Setting up the teacher as a moral arbiter who will punish or reward behavior based on moral ideals seems fraught with presumptions about the moral rectitude of teachers in general. If we do assign a lower grade to plagiarism, we should do so because of some other feature of the situation, such as the student's failure to exhibit course mastery. In order to be fair, only academic relevance should determine our grading practices.

The course mastery view

In the course mastery view, plagiarism is viewed as evidence of a failure of the student to demonstrate mastery of the course content. No other factors are to be considered in grading plagiarized work. Regardless of the morality of cheating, someone who has plagiarized only a small part of her paper may still have exhibited a mastery of the course content sufficient to warrant a grade comparable to work that has not been plagiarized. Gary Chartier agrees:

The PAE [principle of academic exclusivity] does not license an instructor to withhold all credit for an assignment unless she reasonably believes the entire assignment is not the submitting student's work or cannot reasonably and conveniently determine which part is and which part is not the student's work."²²

It may seem counterintuitive that a plagiarized paper ought to get, say, a "B," while another paper that has *not* been plagiarized at all should get the same grade. However, on this view, such a result is not only possible but also warranted and justified.

To illustrate how this view works, consider the following scenario. A student, George, writes a paper in which he copies several sentences from a well-known website to help him explain a concept. He fails to cite the sentences that were not his own and submits the paper. Professor Meriweather recognizes the plagiarized sentences. Rather than giving the paper a zero, Professor Meriweather reads the remainder of the paper and judges it according to whether the un-plagiarized portions of the paper show that George has mastered the course material, even though the paper certainly would have been stronger had he been able to fully explain the concept in his own words. Professor Meriweather could speak to George about the plagiarized sentences, and explain that the paper would have been stronger had George not plagiarized. Professor Meriweather might then coach George on how to explain the concept in his own words, and then coach him on how to cite properly. What is important here is not George's intentions but whether and to what extent the paper demonstrates course mastery.

Let us consider another scenario. A student, Maura, writes a paper for another student, Patrick. Patrick submits the paper as his own but carefully reads the paper Maura has written for him (after all, he paid her for her work and wants to ensure that the paper is of sufficiently high quality). In reading the paper, he commits to memory the claims and arguments of the paper. Professor Meriweather suspects that Patrick has cheated and questions Patrick about the paper, not to determine his motives, but to test him on his knowledge of the material, which Patrick

purports to have demonstrated in the paper. Patrick details the claims and arguments of the paper in his conversation with Professor Meriweather and seems to have a clear knowledge of the subject with which the paper deals. On the course mastery view, Patrick's intentions are not important but what is important is that he seems to have learned that part of the content of the course relevant to the assignment of the paper. If we take mastery of course content alone to be the determining factor in deciding Patrick's grade, then the professor should grade Patrick's/Maura's paper as equal to other papers in the class about which there was no suspicion regarding their authors' possible cheating. However, one could object that Patrick's memorizing does not really count as learning, or that the product being evaluated was, in fact, not his paper but his conversation with his professor. But such objections do not effectively refute the course mastery view; rather, they raise questions about what constitutes learning and which products demonstrate course mastery.

Close does not say much about how to deal with academic honesty except to argue that it should not be graded punitively, and should be dealt with at the institutional level rather than at the course level. As a result, we are confronted by two sets of conflicting intuitions: (1) that grading on course mastery seems right but is insensitive to misrepresentation and (2) that the common practice of grade-based punishment for morally bad behavior addresses misrepresentation, but corrupts the purpose of fair grading. In short, even though it does seem counterintuitive that we should treat Patrick and Maura's paper as equivalent to other students' papers, factoring moral aspects into the grading seems wrong. The result seems to be an impasse. In the following section, we shall try to break this impasse by presenting a view that preserves the benefits of the course mastery view, while at the same time staying true to our intuitions that plagiarized work should receive a low grade.

Plagiarism and skill-based grading

As teachers, most of us would like to think we are teaching our students the difference between right and wrong as well as teaching them course content. We believe that we perform an important social function and that it is crucial to this social aim that our students learn to present themselves honestly. Since grades are what teachers deal with on a daily basis, it seems intuitively correct that grades are an appropriate basis by which to encourage academic honesty and discourage academic dishonesty (though, as we have shown, this may not be the case upon further examination). Additionally, writing is a fundamental skill relevant to the course work of many college classrooms, especially those in the humanities. And necessary to the learning of this skill is the practice of producing *one's own written work*. In other words, learning to write is learning to write in one's own words and learning how, when one wants to make use of others' works and words, to use references and citations according to the standards of accepted convention. These concerns are important in trying to reconcile the moral violation view and the course mastery view.

We are left with the question of how best to treat cases of plagiarism when they occur. Institutional structures are often in place. However, such structures, and the measures they require, may do little to lessen the burden on teachers, and, as we noted at the beginning, do not offer adequate responses to difficult questions regarding grading plagiarism. The process of meeting students individually, implicitly pressuring them to admit to an ethical violation, seems unnecessarily confrontational and time-consuming, the latter of which is particularly ironic, given that an instructor will be expending time and effort on a student who has not even properly done the assignment. Conversely, immediately referring offenses, however small in scale, to

an honor council may not be considering the student's best interests. Such actions may have a chilling effect and students and professors may miss opportunities to cultivate skills of questioning and dialogue in helping students understand appropriate citation of others' ideas.

What, besides the immorality of plagiarism, could justify either giving no credit for a particular assignment, or failing a student for the entirety of a course, no matter how much of a paper that student has copied? In a court of law, if a litigant lies once, the judge might very well decide to throw out all of the person's testimony. How can you believe someone who has lied once? A judge's disregarding all of someone's testimony who has only lied a little bit is not so much a moral issue as it is a practical one. In a court of law, it is crucial that people tell the truth because the judge and jury were not present at the time of the events in question, and so must rely on the truth of what someone says, and presume judicial honesty as an essential element in the court proceedings. Similarly, when a student presents the work of another as his or her own, would a teacher be justified in doubting the veracity of all of the work? Just as we might reasonably doubt *all* of a litigant's testimony if that litigant lied once, perhaps we are justified in giving a zero to a paper that has even a relatively small amount of plagiarism.²³ Such a view might seem to collapse back into the moral violation view, for it seems to place a moral value or character trait, namely, honesty, at the apex of our concern when grading plagiarism. But this view does not justify penalizing plagiarized work because the fabric of trust has been compromised and is a moral wrong. Rather, it is based on the view that it is the job of a teacher to give grades based on a demonstration of course mastery. The dishonesty involved in the downgraded plagiarized work is not in and of itself condemned as such, nor is the condemnation moral in nature.

Fair grades should reflect the assessment of course mastery, and this includes the assessment of writing skills. Thus, in determining a grade for a paper a teacher should consider whether the student has demonstrated competence in writing a paper. Such competence can be judged highly only if the writer has written his or her own words. The evaluation of such competence is independent of how, morally, one views the presenting of someone else's work as one's own. Failure to demonstrate competence in writing *could* result in disqualification by way of a zero on the paper in the same way an athlete may be disqualified for not performing some basic task in an athletic event, such as using a baseball bat to hit the ball in a baseball game (as opposed to using one's hands). In other words, we might use grades to penalize the failure to master the skill of writing in one's own words, which may be reflected by one's plagiarism, provided that we do not penalize *because* we judge the act of plagiarism to be immoral.

How does this bear on the problem of Patrick and Maura? Though Patrick seems to have mastered some elements of the course content, he has not mastered what is arguably the most important skill of writing a paper: to write it in his own words and give credit according to convention, as is appropriate. Thus, giving Patrick's paper a low grade, or even withholding all credit, may be justified. But the reason for the down-grading of the plagiarized work is the failure of the student to exhibit a skill that is a legitimate part of the course in which the work is done—the skill of presenting views that are one's own while at the same time exhibiting the skill of source attribution regarding the incorporation of any material in the work that is not one's own.²⁴

We have presented a basis upon which to grade plagiarized work, one that does not depend upon a moral judgment. We have argued that using grades to penalize plagiarism may

be justifiable provided that those grades are not assigned according to judgments concerning the morality of the act of plagiarism but rather according to the judgment of whether the plagiarized material reflects, on the part of the student who has handed in that material, his or her mastery of one of the skills we consider to be essential to most courses that we teach: the skill of presenting one's own academic work. Our ultimate aim has been to question the grounds upon which we base our decisions when we assign grades to plagiarized work. We hope this paper provokes further thought and discussion on grading practices and plagiarism.

Notes

1. Linda B. Nilson, *Teaching at Its Best: A Research-Based Resource for College Instructors*, 3rd ed. (San Francisco, CA: Jossey-Bass, 2010), 82.
2. See *History and Traditions*, The College of William & Mary, <http://www.wm.edu/about/history/index.php> (November 29, 2012).
3. To appropriately characterize honor codes and the use of grades in relation to academic dishonesty, we surveyed the policies at our own institutions and the twenty-eight honor codes/integrity systems and policies listed as "Featured" (and thus identified as model policies for academic integrity) by the International Center for Academic Integrity. <http://www.academicintegrity.org>.
4. Daryl Close, "Fair Grades," *Teaching Philosophy* 32, no. 4 (December 2009).
5. Francis Schrag, "From Here to Equality: Grading Policies for Egalitarians," *Educational Theory* 51, no. 1 (Winter 2001): 68.
6. Close, "Fair Grades," 368.
7. Steven Cahn, *Saints and Scamps: Ethics in Academia*, 25th Anniversary Edition (New York: Rowman & Littlefield Publishers, Inc., 2011).
8. Robert Paul Wolff, "A Discourse on Grading," *Philosophy of Education: An Anthology*, ed. Randall Curren (Malden, MA: Blackwell Publishing, 2007), 459–64.
9. Wolff, "A Discourse on Grading," 459.
10. *Ibid.*, 461.
11. *Ibid.*, 460.
12. *Ibid.*, 461.
13. *Ibid.*, 462.
14. See Close, "Fair Grades," 368, where he discusses the informational nature of grades. See also Gary Chartier, "Truth-Telling, Incommensurability, and Ethics of Grading," *Brigham Young University Education and Law Journal* 37 (2003).
15. Whether grades do indeed serve a valuable professional function and can effectively communicate information about a person's abilities and professional qualifications is an open question. The perception that grades function in this way is what is at stake here.
16. Close, "Fair Grades," 363.
17. *Ibid.*, 365.
18. *Ibid.*, 367.
19. *Ibid.*, 369.
20. Of course, plagiarism can be judged morally wrong on deontological grounds, and yet assigned a grade on consequentialist grounds. In the paper, we are assuming that assigning a low grade as retribution for a moral wrong can be called a "deontological" basis for determining the grade, and assigning a grade in order to deter plagiarism is a "consequentialist" basis for determining the grade.
21. Close, "Fair Grades," 367. The quote is actually making a different point about consequentialist grading, but the phrase is apt in this case as well.
22. Gary Chartier, "Truth-Telling, Incommensurability, and Ethics of Grading," *Brigham Young University Education and Law Journal* 37 (2003): 18. The PAE, Chartier says, "requires that,

as far as possible, all nonacademic factors be excluded from consideration when instructors determine grades."

23. A court of law is relevantly *different* from a classroom because in the former a great deal more is at stake than in the latter. For one thing, in a court of law, an oath of honesty is taken that is absent in a classroom situation. However, the analogy we present in the paper points to the relevance of misrepresentation in both cases, not the importance of trustworthiness *per se*. Just as presenting testimony presumed true in a court of law implicates the believability of a story about events, so presenting work presumed to be the student's own in a paper implicates the believability of the rest of the paper containing the student's own work. In short, just as a judge would be reasonably justified in doubting the veracity of testimony that contained only one established lie, a teacher would be reasonably justified in doubting that the rest of a paper that contained only a small amount of plagiarism was in fact the student's own work; work that is essential to the evaluation of that student's level of course mastery.
24. There is some analogy here to the performance theory of art that defines an artwork according to the quality of its performance as much as on its aesthetic properties. Denis Dutton has argued that what makes forging an artwork wrong is that it misidentifies the performance of the work. Sherrie Levine has re-photographed photographs taken by other photographers, such as Edward Weston and Walker Evans, toying with the concept of art as *performance*, the effect of which was in part to highlight its importance. Similarly, we believe that a definition of academic writing should include—at least implicitly—the idea that the writer has *performed* the act of writing consistent with practices indicative of intellectual integrity.

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BOOK REVIEW

Wittgenstein on the Human Spirit

Yuval Lurie (Amsterdam: Rodopi, 2012). Soft cover. 276 pp. ISBN: 978-90-420-3517-1.

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To many contemporary readers, Wittgenstein's remarks on culture, civilization, value, character, spirit, myth, magic, and religion are highly obscure, contentious, and outdated, and his comments about Jews are straightforwardly offensive. It is tempting then to dismiss these remarks (e.g., in *Culture and Value*) as of little interest or value beyond the potential light they may shed on Wittgenstein's somewhat unconventional

psychology and the unfortunate period of human history in which he wrote—a period of dramatic social and political upheaval rife with anti-Semitism. Others who are familiar with Wittgenstein’s significant contributions to analytic philosophy—philosophy of language, mind, mathematics, etc.—may find his musings about such topics altogether tangential and devoid of philosophical import.

It is therefore a significant accomplishment, and one of the central contributions of his book, that Lurie manages to provide an engaging and insightful philosophical elucidation of Wittgenstein’s rather opaque remarks in a way that dispels such misconceptions. Throughout his text, Lurie repeatedly demonstrates significant cross-pollination between Wittgenstein’s thoughts about these relatively obscure topics and his more familiar and debated contributions to analytic philosophy. Lurie suggests that major transformations in Wittgenstein’s philosophical methodology (e.g., his transition from engaging in philosophical analyses to providing conceptual clarifications) as well as in his philosophical thinking (e.g., his dismissal of prototypes in favor of family resemblance and his rejection of his earlier “picture theory” of meaning in favor of a notion of “meaning as use”) can all be better understood in light of developments in his thinking about culture, society, and the human spirit, as well as his evolving confrontation with his own Jewish identity. Thus Lurie validates von Wright’s assurance, in the foreword to *Culture and Value*, that “these notes can be properly understood and appreciated only against the background of Wittgenstein’s philosophy and, furthermore, that they make a contribution to our understanding of that philosophy” (Georg Henrik von Wright, Forward to the first edition, 1977, p. x).

Beyond successfully dispelling the misconception that Wittgenstein’s remarks about these topics are independent of his general philosophical work and revealing their philosophical value, two additional aspects of Lurie’s work are particularly noteworthy. First, the book provides an intimate examination of some of Wittgenstein’s deepest existential concerns and struggles, their interrelations, and their philosophical significance. Chief among them is Wittgenstein’s concern that “a spiritual state of disintegration and mellowing . . . has overtaken the high and great culture of the West” (125), and his accompanying fear that he has been left behind—as a mere vestige of this great culture—thus, bound to be misunderstood and incapable of experiencing the practices, innovations, and creative endeavors of the modern world as in any way spiritually meaningful. He is deeply suspicious and even resentful of the West’s growing obsession with science, intellect, and progress, which he perceives as threatening to disenchant nature and hollow out all of human value. It is a threat with which he is intimately familiar as he struggles to reconcile his wish to live a religious and deeply spiritual life while also adopting a modern scientific worldview. An additional source of anxiety is Wittgenstein’s conflict, guilt, and self-deprecating attitudes towards his “Jewish spirit”—a spirit that, he believes, prevents him from attaining true genius and forces him to remain, at most, a great talent. Throughout the book, Lurie emphasizes the profound ways in which these personal concerns were shaped by his philosophical methodology and his thinking about a wide range of topics, from perception, to meaning, aspect- and meaning-blindness, rule-following, and much more.

The second noteworthy aspect of the book is the perspective it provides on the tumultuous events of the early twentieth century—the devastating fallout of the First World War, the dissolution of the Austro-Hungarian Empire, the spread of fascism and of anti-Semitism, and the rise of modernism as expressed in industry, science, and the arts—all this through

the eyes of one of the greatest thinkers of the time. Again, the degree to which these developments affected Wittgenstein’s general approach to philosophy is striking.

The book is organized into three sections, each containing an insightful discussion of themes that Lurie identifies in Wittgenstein’s writings: (1) Wittgenstein’s rather disparaging, anti-Semitic comments on the spirit of Jews, (2) Wittgenstein’s quasi-Spenglerian comments on the contrast between culture and civilization, and (3) Wittgenstein’s remarks on magic, myth, and religion in reaction to Frazer’s *The Golden Bough*. Lurie helpfully opens each section with a general introduction of the issue along with a selection of relevant quotations. Each of the sections can be read independently, and each provides sufficient material for extensive reflection. Nonetheless, a common thread runs through the book so that its full power can be most appreciated when having the three sections jointly in view. To use Wittgenstein’s phraseology, Lurie is engaged in “clarification” and is providing us a “perspicuous representation” of this central theme by introducing us to three of its distinct expressions.

The emerging sense is that Wittgenstein’s seemingly disjointed reflections are different attempts to express his anxiety in the face of modernity and his personal longing for, and mourning of the loss of, both traditional ways of life and spiritually meaningful attitudes toward the world. He does so by drawing a distinction between two creative spiritual forces, one of which is in decline while the other is in ascent. The first spiritual force he variously describes as artistic, creative, authentic, natural, courageous, expressive, and soulful. It is expressed in innovations and practices that aspire to the “lofty and eternal” and that form, preserve, and bring about the advancement of a culture. It is a spiritual force that, he maintained, is essentially non-Jewish. It underlies our natural and authentic sense of awe and wonder at the mysterious nature of the world and the enigmatic meaning of life. It is also a spiritual force that we share with other human beings and underlies our ability to grasp the cultural practices of the ancients and of members of different cultures as spiritually meaningful. It is this spiritual force that Wittgenstein perceives as being under threat.

The second spiritual force is described by Wittgenstein as intellectual, abstract, inauthentic, contrived, uninspired, lacking in soul and character, purely instrumental, and is expressed in the pursuit of science, the development of technology, and the continuous quest for *progress*. This force is, Wittgenstein maintains, also essentially Jewish and underlies culturally meaningless and spiritually void creative efforts consisting of mere elaborations, refinements, and clarifications of what is already present. It promotes a disenchanting attitude toward nature and the world and the establishment of a civilization rather than a culture.

Thus, in the first section of the book, “The Spirit of Jews,” Lurie identifies the distinction between these two spiritual forces in Wittgenstein’s particularly disturbing and denigrating comments on the spiritual nature of *Jews* as contrasted with the spiritual nature of *non-Jews*. Wittgenstein describes the Jewish spirit as unpoetic, cunning, secretive, intellectual, and inauthentic rather than as artistic and cultured. “[I]n all contexts of reflection on Jews, Wittgenstein describes the Jews’ involvement in cultural affairs as a parasitic intellectual intrusion by a people lacking a genuine spiritual nature of their own, and therefore lacking powerful creative abilities” (29). Furthermore, this “intrusion” is seen as having profound adverse effects: “Works of art become more sophisticated, refined, titillating, and abstract, but also less spiritually inspired, uplifting, powerful, and profound. They no longer manifest the ability or

even a desire to reach out to something lofty and eternal” (135). Such is the impact of the Jewish spirit that Western society as a whole “begins to mirror the attributes of intellect, becoming more universal and more abstract, and thus also less powerful, less deep, and more divorced from Nature” (ibid.). The Jewish spirit, then, is the force underlying the disintegration of the high and great culture of the West.

In the second section, “The Spirits of Culture and Civilization,” Lurie argues that, circa 1931, Wittgenstein came to realize the harmful nature of his remarks, and the contemptible company for whom they resonated, and abandoned further commentary on the spirit of Jews. Nonetheless, he retained a distinction between two opposing spiritual forces having the same characteristics as before. Influenced by Spengler’s popular *The Decline of the West* (which came out shortly after World War I) he expressed the distinction as between a spirit giving rise to *culture* (formerly the non-Jewish spirit) and a spirit giving rise to *civilization* (formerly the Jewish spirit). He sympathized with Spengler’s view that Western culture was at its final stage—progressively transforming into a civilization. “The spirit of modern human beings is that of civilized human beings. It is at once contrived and sophisticated, lacking in depth and lofty inspiration, removed from both nature and God. It is a spirit that is all intellect and no soul” (98)—one that Wittgenstein sees both as foreign to himself, and as imposing itself on Western culture with deleterious effects.

In the final section, “The Common Spirit of Human Beings,” Lurie exemplifies Wittgenstein’s distinction between the two spiritual forces by attending to Wittgenstein’s remarks on Frazer’s *The Golden Bough*. The distinction is now drawn between the spirits underlying *instrumental* practices, which are amenable to theoretical scientific explanation, and purely *expressive* practices, the significance of which can only be “shown.” Wittgenstein rejects Frazer’s attempt to characterize the rituals of the ancients as “faulty ways of reasoning” and those observing them as ignorant peoples. Rather, he contends, the practice of magic, the telling of myths, and the observance of religion are expressive practices. As such, they can no more be in error than is crying in response to pain. They are not based on reasoning and, *a fortiori*, cannot manifest faulty reasoning. Those observing these rituals are no more ignorant than is an angry Wittgenstein beating the ground with his stick. His beating the ground is an *expression* of his anger. It is an instance of what he calls “instinct-actions,” and he thinks all expressive rituals and practices are elaborations on such actions. “They arise from natural inclinations on our part to express what concerns us” (173).

In missing this point, Frazer personifies the spirit of cultural decline that Wittgenstein so abhors. For Wittgenstein, not only does Frazer mischaracterize the nature of such rituals and practices but, in doing so, he also shows himself blind to the common human spiritual nature that is expressed in these practices. He is mesmerized by the deceit of modernity (and civilization) that sees the world through scientific spectacles. He is therefore “meaning-blind”—blind to the expressive and spiritual significance of these practices—a blindness that, Wittgenstein worries, will overcome us all as culture disappears altogether.

In sum, not only has it been a great pleasure to read Lurie’s book, I found its themes to be as relevant today as they were to Wittgenstein during his own lifetime. Lurie’s discussion of Wittgenstein’s obscure remarks is not only a significant contribution to Wittgenstein scholarship but it manages to bring to life questions about culture, value, myth, religion, and science in a way that can and should inform our *personal* attitudes toward these deeply meaningful topics.

The book is very clearly written and does not require prior acquaintance with Wittgenstein’s philosophy. As a result, it should be accessible to a wide audience, both of academics and of the general public interested in deepening its understanding of philosophy, Wittgenstein, and early twentieth-century thought and culture. Finally, I recommend Lurie’s book as a useful supplement to both undergraduate and graduate level courses on any aspect of Wittgenstein’s philosophy as it provides rare insight into the underpinnings of his philosophical worldview.

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