

Morality and Education

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Introduction

After considering several high-profile examples of educated people making egregious moral decisions, I wondered about two questions: (1) Does education have an effect on moral behavior? (2) Does more education makes people less moral? First, I present some recent examples of egregiously immoral conduct by educated people. Second, beginning at page 12 below, I discuss these issues and then answer these questions.

As used in this essay, *immoral* behavior is either criminal, intentionally tortious (i.e., wrongful), fraudulent, coercive, unfairly taking advantage of another person, or unethical. The standards for criminal law are written in statutes. The standards for torts are written in the common law and in the conscience of jurors. The standards for professional ethics are written in codes adopted by professional societies. In addition, religions have written codes of behavior, which form the basis for society's standards in criminal law and tort law. In short, morality is following accepted standards for conduct that is lawful, nonwrongful, and ethical.

Examples

1. Tuskegee Experiment

Physicians continued to do research on the natural progression of untreated syphilis for more than 25 years after a cure for syphilis was available. I discuss this experiment, and other nonconsensual medical experiments, in my essay at <http://www.rbs2.com/humres.htm> . Not only was the immorality of this experiment invisible to both the several generations of physicians who participated in it and to the government employees who funded this research, but the immorality was also invisible to thousands of physicians who read the published reports of this research in medical journals.

To become a physician in the USA requires a bachelor's degree (4 years of full-time college) plus 4 years of medical school and *at least* 2 or 3 years of postgraduate training in an internship or residency. Therefore, physicians are amongst the most highly educated professionals in the USA.

Ethics is particularly important for the medical profession, because patients are especially vulnerable to exploitation because of their pain or mental illness. Moreover, patients who are ignorant of science and medicine must simply *trust* their physician not to harm them.

2. Richard Nixon and Watergate

The burglary of the Democratic Party office in the Watergate Building and the ensuing cover-up by Richard Nixon dominated the news in the USA from June 1972 until late 1974. Because most of the students in college today were not yet born when Nixon was president, and many older people have forgotten the details, I tersely describe some of the events.

Archibald Cox, the special prosecutor who had been appointed by the Attorney General, was seeking the tape recordings of conversations in the Oval Office. Nixon ordered Elliot Richardson, then Attorney General, to dismiss Cox as special prosecutor. Richardson courageously refused and resigned. Richardson's deputy, William Ruckelshaus, then refused to dismiss Cox, and Nixon summarily fired Ruckelshaus. Nixon then appointed Robert Bork, then Solicitor General, to be Acting Attorney General. Nixon ordered Bork to fire Cox, and Bork obeyed. This incident was known as the Saturday night massacre, because it occurred on Saturday, 20 Oct 1973. Leon Jaworski was appointed as the successor special prosecutor on 1 Nov 1973 and the investigation of Nixon continued.

Articles of impeachment were passed by the House Committee on the Judiciary on 27 July 1974. The Articles recommended impeachment of Nixon on the following charges:

- obstruction of investigation of Watergate break in,
- misuse of powers and violation of oath of office, and
- failure to comply with House subpoenas.

Nixon shrewdly resigned as president on 9 August 1974. If Nixon had not resigned, it is a certainty that he would have been impeached by the full House. Nixon was subsequently disbarred in New York state.¹

More information is available from the following websites:

- The U.S. Government National Records and Archives at <http://www.nara.gov/education/teaching/watergate/chronolo.html>
- the Washington Post at <http://www.washingtonpost.com/wp-srv/national/longterm/watergate/> the newspaper that first revealed (on 19 June 1972) the story of the burglary of the office at the Watergate.
- Dr. Janann Sherman at the History Department at the University of Memphis has posted a chronology of Watergate: <http://cas.memphis.edu/~sherman/chronowatergate.htm> .

¹ *in re Nixon*, 385 N.Y.S.2d 305 (App.Div. 1Dept. 1976)(Obstruction of justice warrants disbarment; Nixon refused to respond to his disbarment proceeding.), *in re Nixon*, 385 N.Y.S. 373 (App.Div. 2Dept. 1976) (Nixon's offer to resign rejected by a different court.). Nixon subsequently resigned from both the California bar and the bar of the U.S. Supreme Court.

Nixon was more than an ordinary politician. He was:

- B.A. in history summa cum laude, ranked second in a class of 85 students at Whittier College, a small Quaker college in California.
- a graduate of Duke University Law School. Nixon was academically ranked third in his class when he graduated in the year 1937.
- an attorney in a prominent New York law firm who had argued *Time v. Hill*, 385 U.S. 374 (1967) before the U.S. Supreme Court.

Beyond Nixon's personal misconduct, many of his close advisors also committed serious crimes while serving President Nixon. For example:

- John N. Mitchell, U.S. Attorney General under Nixon, convicted² of conspiracy, obstruction of justice, and perjury; spent 19 months in prison before being paroled for medical reasons. Mitchell was disbarred in New York state³ for perjury, and also disbarred at the U.S. Supreme Court.⁴
- John W. Dean III, the president's counsel, pled guilty to obstruction of justice; spent four months in prison, and was disbarred at the U.S. Supreme Court.⁵
- G. Gordon Liddy, convicted⁶ of conspiracy, burglary, wiretapping, and electronic eavesdropping; spent 4½ years in prison, disbarred in New York state.⁷
- Harry R. Haldeman, convicted of conspiracy and obstruction of justice; spent 18 months in prison. (Incidentally, Haldeman is the only person in this list who was *not* an attorney.)
- John D. Ehrlichman, convicted⁸ of obstruction of justice, conspiracy, and perjury; spent 18 months in prison, disbarred at the U.S. Supreme Court.⁹

² The trial was particularly complex, with many motions. The verdict was affirmed, *U.S. v. Haldeman, Ehrlichman, & Mitchell*, 559 F.2d 31 (D.C. Cir. 1976), *cert. den.*, 431 U.S. 933 (1977).

³ *in re Mitchell*, 370 N.Y.S.2d 99 (A.D. 1975), *aff'd*, 351 N.E.2d 743 (N.Y. 1976).

⁴ *In the Matter of Disbarment of John Newton Mitchell*, 434 U.S. 917 (1977).

⁵ *In the Matter of Disbarment of John W. Dean, III*, 421 U.S. 984 (1975).

⁶ The guilty verdict was affirmed in *U.S. v. Liddy*, 509 F.2d 428 (D.C.Cir. 1974), *cert. den.*, 420 U.S. 911 (1975).

⁷ *In re Liddy*, 343 N.Y.S.2d 710 (App.Div. 1973).

⁸ The guilty verdict was affirmed in *U.S. v. Ehrlichman*, 546 F.2d 910 (D.C.Cir. 1976) *cert. den.*, 429 U.S. 1120 (1977).

⁹ *In the Matter of Disbarment of John Daniel Ehrlichman*, 434 U.S. 917 (1977).

- Charles W. Colson, pled guilty to obstruction of justice in the burglary of Daniel Ellsberg's psychiatrist; spent seven months in prison, disbarred.¹⁰
- Egil Krogh, pled guilty to conspiracy in the burglary of Daniel Ellsberg's psychiatrist; spent six months in prison, and disbarred.¹¹

This collection of criminals suggests that either (1) Nixon surrounded himself with unethical people,¹² or (2) Nixon created an environment that encouraged unethical conduct. The above list is not complete, at least eight other attorneys in the Nixon administration were disciplined by the bar.¹³

John Dean observed that many of the participants in the Watergate scandal were attorneys.¹⁴ Because of the egregious behavior of these attorneys (including Richard Nixon, John Mitchell, and John Dean), the American Bar Association began to require all graduates of accredited law schools to pass a one-semester class in Professional Responsibility¹⁵ and state bars required candidates after 1980 to pass the Multistate Professional Responsibility Examination (MPRE) before being licensed to practice law.

One law professor noted in passing “that many of the heroes of the Watergate investigations and prosecutions are also lawyers: Cox, Jaworski (former American Bar Association president), Richardson, Rukleshaus, [Judge] Sirica, [Senator] Ervin and other members of the Senate

¹⁰ *In re Colson*, 412 A.2d 1160 (D.C. 1979).

¹¹ *In re Krogh*, 536 P.2d 578 (Wash. 1975); reinstated contingent on again passing the bar exam, 610 P.2d 1319 (Wash. 1980).

¹² In that context, recall that Nixon selected Spiro Agnew as his vice president. Agnew was famous for his flamboyant speeches that denounced liberals and opponents of the Vietnam war. In October 1973, one year into the second term of Nixon and Agnew, Spiro Agnew was charged with taking bribes while governor of Maryland and while Vice President of the USA. Agnew resigned as vice president and then pleaded no contest in federal court to income tax evasion, for failing to list the bribes or kickbacks as income. He was fined \$10,000, given three years probation, and subsequently disbarred in Maryland. *Maryland State Bar Ass'n. v. Agnew*, 318 A.2d 811 (Md. 1974).

¹³ Kathleen Clark, “The Legacy of Watergate for Legal Ethics Instruction,” 51 *Hastings Law Journal* 673 (April 2000).

¹⁴ Donald T. Weckstein, “Watergate and the Law Schools,” 12 *San Diego Law Review* 261, 261 (March 1975); John W. Dean, III “Watergate: What Was It?,” 51 *Hastings Law Journal* 609, 611-12 (April 2000) (In his 1973 testimony to the U.S. Senate Watergate committee, Dean listed ten attorneys who had committed crimes during the Watergate scandal. In the year 2000, Dean wrote that “not less than 21 lawyers found themselves on the wrong side of the law.”)

¹⁵ See, e.g., Roger C. Cramton and Susan P. Koniak, “Rule, Story, and Commitment in the Teaching of Legal Ethics,” 38 *William and Mary Law Review* 145, 148 (Oct 1996); Bruce A. Green, “Less is More: Teaching Legal Ethics in Context,” 39 *William and Mary Law Review* 357, 360 (1998).

Watergate and House Judiciary Committees.”¹⁶ While this law professor is clearly correct in his observation, it should be mentioned that *only* attorneys can become judges, prosecutors, or independent counsels, and that nearly all members of the judiciary committees in the U.S. House of Representatives and U.S. Senate are attorneys. I suggest that they were heroes, *not* because they were attorneys, but because they had the personal courage to behave with integrity. And it took little courage to zealously oppose Evil, after the public became aware of how corrupt the Nixon gang really was. In short, the Watergate scandal offers little for which the legal profession can be proud.

Finally, in the year 1973, John Dean asked himself “How in God’s name could so many lawyers get involved in something like this?”¹⁷ Twenty-seven years later, Dean gave three answers: (1) arrogance toward the law: either “an arrogant belief that the law did not apply to them or that they could cheat and get away with it”, (2) incompetence and (3) loyalty.¹⁸ Teaching professional responsibility and ethics to law students probably will not avoid future scandals like Watergate. Indeed, Dean himself often boasted that he received the highest grade in the ethics class at Georgetown University Law School.¹⁹

¹⁶ Donald T. Weckstein, “Watergate and the Law Schools,” 12 San Diego Law Review 261, 262 (March 1975).

¹⁷ Donald T. Weckstein, “Watergate and the Law Schools,” 12 San Diego Law Review 261, 261 (March 1975) (Quoting Dean’s testimony before the U.S. Senate Watergate Committee.); John W. Dean, III “Watergate: What Was It?,” 51 Hastings Law Journal 609, 611 (April 2000).

¹⁸ John W. Dean, III “Watergate: What Was It?,” 51 Hastings Law Journal 609 (April 2000).

¹⁹ Lynne Reaves, “Ethics in action,” 70 American Bar Association Journal 35 (August 1984).

3. Bill Clinton

Paula Jones sued Bill Clinton for sexual harassment that allegedly occurred in a hotel room in May 1991. As part of the discovery in *Jones v. Clinton*, plaintiff's attorney repeatedly asked Bill Clinton about other sexual relationships that he had since 1986. Clinton denied the existence of other relationships in both his written responses to Interrogatories and in his testimony at a deposition on 17 Jan 1998. Incidentally, Judge Susan Webber Wright granted summary judgment to Clinton and dismissed Jones' litigation as lacking in merit.²⁰ While the case was on appeal, Clinton paid \$ 850,000 to Jones in a negotiated settlement and Jones withdrew her appeal.²¹

In proceedings by Independent Counsel Kenneth Starr, Clinton testified before a grand jury on 17 Aug 1998 about his relationship with Monica Lewinsky, a 23 y old intern in the White House. In a report on 9 Sep 1998, Starr described evidence of Clinton's semen on Lewinsky's blue dress, and mentioned graphic details of what Clinton had euphemistically characterized as an "inappropriate relationship" with Lewinsky.²² Starr concluded that Clinton made false statements under oath both to a grand jury and in his deposition, and encouraged others to offer perjured testimony. As a result of Clinton's efforts to cover up this scandal with Lewinsky,²³ President Clinton was impeached by the U.S. House of Representatives,²⁴ but not convicted by the U.S. Senate.

²⁰ *Jones v. Clinton*, 990 F.Supp. 657 (E.D.Ark. 1 Apr 1998).

²¹ *Jones v. Clinton*, 161 F.3d 528 (8th Cir. 2 Dec 1998). The amount of the settlement is stated in *Jones v. Clinton*, 36 F.Supp.2d 1118, 1123 (E.D.Ark. 12 Apr 1999) and was greater than the damages that Jones originally sought.

²² The Starr Report, U.S. House of Representatives Report 105-310, 9 Sep 1998. HTML versions at <http://thomas.loc.gov/icreport/2toc.htm> , <http://icreport.access.gpo.gov/report/2toc.htm> and <http://www.cnn.com/starr.report/> , among many other websites.

²³ Note that Clinton's impeachment was *not* because of his adulterous sexual activities, but because of his unlawful efforts to conceal them. Many apologists for Clinton have argued that his relationship with Monica Lewinsky was consensual relationship between adults: she was a willing partner. These apologists gloss over a difficult ethical issue of whether Monica was capable of consent, given the gross disparity in rank between the President of the United States and a 23 year old intern in the White House. These apologists also gloss over the emotional injury to Bill Clinton's wife.

²⁴ The U.S. House of Representatives passed two articles of impeachment: (1) Clinton "willfully provided perjurious, false and misleading testimony" during his testimony to a grand jury on 17 Aug 1998, and (2) Clinton "prevented, obstructed and impeded the administration of justice" in seven specific instances during the *Jones v. Clinton* civil litigation.

After the conclusion of the impeachment proceedings, Judge Susan Webber Wright found Clinton in contempt of court for failure to obey discovery orders and she ordered Clinton to reimburse plaintiff's attorneys \$ 89,484, as compensation for their time and expenses.²⁵ Judge Wright also referred the matter to the Arkansas Bar's Professional Conduct panel for investigation, because Clinton was licensed to practice law in Arkansas and attorneys are required not to engage in such misconduct. On 19 Jan 2001, his last day as President, Bill Clinton agreed to a deal:

- he publicly admitted "he knowingly gave evasive and misleading answers, in violation of Judge Wright's discovery orders"
- he paid a \$ 25,000 fine to the Arkansas bar,
- he was suspended from the practice of law in Arkansas for five years²⁶ (instead of being permanently disbarred) and
- the special prosecutor ended his investigation of Clinton without indicting Clinton for perjury or other crimes.

This deal was only a slap on the wrist, because Bill Clinton was already planning to move to New York, and not return to practice law in Arkansas. Moreover, in a press statement issued on 19 Jan 2001, Bill Clinton effectively repudiated his admission of wrongdoing:

In this consent order, I acknowledge having knowingly violated Judge Wright's discovery orders in my deposition in that case. I tried to walk a fine line between acting lawfully and testifying falsely, but I now recognize that I did not fully accomplish this goal and that certain of my responses to questions about Ms. Lewinsky were false.²⁷

Despite what Bill Clinton said, there is no "fine line" between lawful conduct and perjury.

"I did not fully accomplish this goal" seems to say that it was difficult for him to tell the truth, the whole truth, and nothing but the truth. When most people would have been humiliated, Bill Clinton was still spewing circumlocutions, euphemisms, and evasions.

Bill Clinton was even more distinguished than Nixon:

- bachelor's degree in international relations from Georgetown University.
- study (Rhodes Scholarship) at Oxford University in England during 1968-70.
- graduate of Yale Law School, arguably the most prestigious law school in the USA.
- professor at the University of Arkansas Law School during 1973-76.
- Attorney General of Arkansas during 1976-78.

However, this extraordinary education and legal experience was apparently not adequate to give Bill Clinton decent moral judgment.

²⁵ *Jones v. Clinton*, 36 F.Supp.2d 1118 (E.D.Ark. 1999)(finding of contempt), 57 F.2d 719 (E.D.Ark. 1999)(ordering compensation to plaintiff's attorneys). Long quotations from these judicial opinions are posted at <http://www.rbs0.com/Clinton.pdf> , to remind readers of the seriousness of Clinton's misconduct.

²⁶ *Neal v. Clinton*, 2001 WL 34355768 (Ark.Cir. 19 Jan 2001).

²⁷ See, e.g., http://www.presidency.ucsb.edu/docs/transition2001/clinton_lewinsky0119.php .

Fortunately, Nixon was a Republican and Clinton was a Democrat, so we don't need to listen to propaganda about how one political party is better than the other. It is revealing to read the old speeches and press releases from Nixon and Clinton from the viewpoint of history, and to see that they were not only liars when they professed their innocence, but also either corrupt or sleazy.

4. Sexual Abuse by Catholic Priests

Many thousands of children were sexually abused by Catholic priests from the 1950s through the 1990s. When abuse was reported, the Church administration typically sent the priest to another parish, with good recommendations. There are two distinct problems here: (1) the sexual abuse by priests and (2) the cover-up by Church administration.

The scandal in Boston was exposed during tort litigation against priests and the Catholic Church beginning in January 2002, and continuing until September/October 2003, when the Boston Archdiocese offered to pay \$ 85 million to approximately 540 victims and the victims accepted the settlement. (That is in addition to more than \$ 18 million paid by the Boston Archdiocese to settle claims of 402 victims during the years 1994 to 2000.) Cardinal Bernard Law, the Archbishop of Boston, resigned in disgrace in December 2002.

To avoid paying full compensation to all victims of abuse by Catholic priests, several Catholic dioceses in the USA have filed for bankruptcy:

- Portland, Oregon archdiocese filed on 6 July 2004.
- Tucson, Arizona diocese filed on 20 Sep 2004.

The U.S. Catholic Church commissioned a report by personnel at the John Jay College of Criminal Justice of the City University of New York.²⁸ That nationwide study found allegations of sexual abuse that were neither withdrawn nor known to be false against 4392 priests during the years 1950 to 2002, which was approximately 4% of all active Catholic priests during these 52 years. These allegations were made by a total of 10667 children. Therefore, the size of the scandal is astounding.

More detail is available from the following websites:

- The *Boston Globe* newspaper, <http://www.boston.com/globe/spotlight/abuse/>
- Report issued on 23 July 2003 by Thomas F. Reilly, the Attorney General of Massachusetts, said "According to the Archdiocese's own files, 789 victims have complained of sexual abuse by members of the clergy; the actual number of victims is no doubt higher." Reilly said at a press conference that the actual number of victims in Massachusetts probably exceeded one thousand. Reilly reported that 237 Catholic priests were accused of sexual abuse during the years 1946 to 2002. <http://www.ago.state.ma.us/filelibrary/archdiocese.pdf> and http://www.boston.com/globe/spotlight/abuse/investigations/ag_report_072303.pdf
- The U.S. Conference of Catholic Bishops, <http://www.usccb.org/comm/restoretrust.htm>

²⁸ Report posted at <http://www.usccb.org/nrb/johnjaystudy/> .

One would certainly expect a parish priest to have good moral judgment and to know that it was *wrong* to sexually abuse children. One would expect Church administrators, including bishops and cardinals, to have moral judgment that was *at least* as good as a parish priest. But, instead of reacting to abuse by defrocking priests and reporting them for criminal investigation,²⁹ the Church administration reacted to this moral issue as a public relations problem to be “solved” by a cover-up. In the end, the Truth was revealed and several Catholic dioceses in the USA each paid tens of millions of dollars to many victims of sexual abuse by priests, rather than litigate the claims.

The idea for this essay came from conversations with my barber, while I was getting a haircut. My barber, who never attended college, is absolutely certain that it is wrong for priests to sexually abuse children. Cardinal Law, who has a B.A. in history from Harvard University plus education in a Catholic seminary, was apparently not certain that it was wrong.

5. Prof. Al-Arian and University of South Florida

Prof. Al-Arian was a tenured professor of computer science at the University of South Florida in Tampa. He was allegedly also active in pro-Palestinian political movements, allegedly including raising money for a Palestinian terrorist organization. The University administration put Prof. Al-Arian on paid leaves during 1996-98 and again during 2001-03. The Board of Regents ordered the termination of Al-Arian’s employment in December 2001, but the University continued to keep Al-Arian on paid leave until he was arrested in February 2003. I discuss this complicated episode in my essay at <http://www.rbs0.com/alarian.htm> .

Apparently, the highly educated chancellor of USF vacillated between (1) wanting to terminate the employment of a tenured professor who was a public relations nightmare and (2) fear of sanctions by the American Association of University Professors and the labor union that represented the USF faculty. The situation was resolved for the chancellor when the U.S. Government arrested Prof. Al-Arian, although an arrest is *not* evidence of criminal activity.

This episode is typical of many examples of *inability* to make a decision by highly educated people, who are continually torn between what they see as good reasons for and against a particular decision.

²⁹ A nearly “zero tolerance” policy was adopted by the U.S. Conference of Catholic Bishops on June 2002, during a meeting in Dallas, Texas, in their document titled *Charter for the Protection of Children and Young People*. The Vatican refused to approve that policy and the U.S. Conference of Catholic Bishops amended the policy in November 2002.

6. Executive Businessmen in the USA

Since the year 1980, there have been an appalling number of scandals in businesses in the USA, in which a company's executives looted the company with their exorbitant salaries, generous bonuses, and lavish expense reimbursement, while the company lost money, laid off thousands of employees, and the value of its stock plummeted. What is obvious is that many senior businessmen see employment only as a scheme in which to maximize their personal income, while ignoring any obligation or responsibility that they might have to the company's customers, employees, or stockholders. The lack of ethics amongst senior businessmen is not only a disgusting spectacle, but sends a pernicious message to young managers and students in business colleges that "business ethics" is an oxymoron.

I can not resist comparing (1) physicists doing experiments to find the value of the charge on an electron accurate to eight decimal digits³⁰ and (2) businessmen who perpetrate billion dollar frauds (i.e., nine decimal digits of fraud). The physicists are meticulous, precise, and concerned with Truth. The businessmen are cheating on a colossal scale, in order to be more successful than an honest and nongreedy businessman.

There is not space here to recognize *all* of the examples of such bad conduct by businessmen. However, the following examples are particularly egregious.

- The collapse of many Savings & Loan institutions during the 1980s. These failures cost U.S. taxpayers more than \$132 billion, because investments in S&Ls were guaranteed by an agency of the U.S. Government.
- Michael Milken, the so-called "junk bond king", who touted investments in low-grade (i.e., high-risk) commercial bonds during the early 1980s. Milken pled guilty in federal court to securities fraud, mail fraud, conspiracy, and several other charges. He served two years in federal prison and paid \$200 million in fines, in addition to paying \$400 million to establish a fund for reimbursing defrauded investors.
- Enron stock was worth \$ 80.00/share in January 2001, but only \$ 0.36/share on 29 Nov 2001. Enron declared bankruptcy on 2 Dec 2001. Enron's employees were not only unemployed, but also held worthless retirement accounts, which were invested in Enron stock.
- WorldCom stock was worth \$ 60.00/share in mid-1999. But the business (and accounting fraud) began to unravel in April 2002, and WorldCom stock was selling for \$0.09/share on 26 June 2002.

Attorneys and accountants played a prominent role in many corporate scandals. The Dean of the Villanova University School of Law began an article about the involvement of lawyers in corporate scandals:

³⁰ Fundamental physical constants, <http://physics.nist.gov/cuu/Constants/>.

People steal. People cheat. Then they lie about it. When they can steal, cheat and lie in a big way, they do it. When people can steal, cheat and lie behind the protective facade of the corporation, they *really* do it. The concentration of wealth and power in public corporations, when combined with the separation of ownership and control and the consequent diminishment of accountability, creates, almost by definition, a gigantic moral hazard. This is nothing new. So why should we be startled or even particularly troubled by the wave of corporate scandals for which the word “Enron” is a convenient shorthand?

Mark A. Sargent, “Lawyers in the Perfect Storm,” 43 Washburn Law Journal 1, 1 (Fall 2003).

Discussion

In these examples, physicians, prominent attorneys (Nixon and Clinton), Catholic bishops, and university administrators were not able to avoid blatantly immoral conduct, despite their above-average education and despite their apparently superior experience. Why did their education fail to prevent this immoral conduct? I suggest three reasons.

First, education is directed at developing intellectual skills: both knowledge of facts and ability to analyze those facts. With the exception of an ethics class in a philosophy department, secular education is *not* about morality. Therefore, more education should not be expected to produce better morality. If education assists students in developing morality, it is probably through seeing good examples of moral behavior from professors, rather than from students reading an ethics textbook.

Second, some immoral conduct is basically cheating. People cheat for two reasons: (a) because cheating is an *easier* path to success and (b) because cheaters believe that their cheating will not be detected. When cheaters are caught, they may whine that they did not *know* their cheating was wrong, but that is not only a specious excuse,³¹ but also usually a false statement.³²

Being tempted by cheating has nothing to do with education, with the possible exception that some marginally competent people in an intensely competitive environment of highly educated people may find themselves overwhelmed by performance expectations, and therefore cheat in order to survive. This is *not* a criticism of either high standards or competitive environments, but simply a recognition that marginally competent people do not belong in such environments. An honorable person would either work more diligently or resign, while a dishonorable person cheats.

³¹ “Ignorance of the law is no excuse.” Furthermore, it is obvious that cheating gives the cheater an *unfair* advantage over honest, moral people. Life is too complicated to have an explicit rule that prohibits *every* criminal, wrongful, or immoral act. One must make personal decisions by considering general principles.

³² Cheaters usually knew that what they were doing was wrong, but they chose to ignore their moral conscience and cheated to gain some advantage. It is additionally shameful to later sanctimoniously claim they “did not know” cheating was wrong.

Third, education gives people intellectual skills that enables them to see “shades of gray” in issues that uneducated people see as “black or white”. Educated people who choose to cheat can use their education to provide specious reasoning to “justify” their immoral choice. Further, I have seen many highly educated colleagues be paralyzed, *unable* to make a decision, because of conflicting facts and reasons, which they can not resolve in a definitive way.

There is no denying that managers and politicians tend to have more education than the average citizen. For example, senior business executives in the USA often have a bachelor’s degree (4 years of full-time college) plus an MBA degree, for a total of 5 years of full-time college education. Many politicians were educated as an attorney — to become an attorney in the USA requires a bachelor’s degree, plus 3 years of law school, for a total of 7 years of full-time college education.

However, I am not certain that educated people are more (or less) moral than uneducated people. Because educated people tend to occupy positions of power in business and politics, their misconduct is more likely to be reported as nationwide news than an uneducated person who, for example, robs a store of \$500. There are two components here: (a) people in positions of power have the opportunity to accomplish larger crimes, such as multibillion dollar frauds (e.g., Enron and WorldCom) or misuse of governmental power (e.g., Nixon), and (b) people who are famous (e.g., the President of the USA) receive more news coverage than other people.

While it may be that education has no effect on morality of people, there is still an appalling amount of immoral conduct by educated people. Society ought to consider ways of avoiding such immoral conduct, as discussed in the remainder of this essay.

comment about litigation

Litigators for defendants are particularly skilled at justifying reprehensible conduct — otherwise many defendants in criminal or tort cases would get little or no substantive defense, but only a trial that is procedurally fair.

I suggest that this is more than a problem for litigators and the legal profession. There are several functions of litigation, among them:

- (1) litigation is society’s acceptable way of deciding how to punish criminals or resolve disputes.
- (2) judicial opinions state the common law and interpret statutory law.
- (3) publicity from trials reminds people not to misbehave (i.e., punishment deters crime, large tort awards deters torts).
- (4) publicity from trials presents a moral lesson: trials show that certain acts are wrong and explain the harm to victims, so that the public understands the consequences of criminal or tortious conduct.

A vigorous substantive defense is important to the first two functions, by ensuring that all motivations and reasons are openly considered, before making a decision. However, a vigorous substantive defense may attenuate the third and fourth functions of trials. Such a moral lesson gets dulled by publicity given to specious defense arguments that blur what would be otherwise a clear

moral lesson. We see examples of this blurring when some people claim that either Nixon or Clinton was persecuted by politicians of the opposite political party.³³

Nonetheless, both statutory and common law contains simple definitions of crimes or wrongs. Any conduct that satisfies the definition is either unlawful or tortious, unless the conduct was done with some specific, acceptable justification. In this way, the law reflects a simple, “black and white” moral sense.

institutions

There is an additional complication in some examples of immoral conduct by educated people: their desire to protect an institution.

When such managers are faced with a moral problem, they may see more than just the moral issue that affects individual people. There is also a potential threat to the institution (e.g., business, corporation, government agency, etc.) that they control. In my view, many managers went astray when they devoted more effort to protecting the institution than to doing the right thing and making a moral decision.

For example, both Nixon and Clinton complained about how review by the courts, as well as use of the impeachment process specified in the U.S. Constitution, would erode the power of the presidency. The bishops in the Catholic Church were surely concerned that the sexual abuse scandal would taint their Church’s reputation, hence they engaged in cover-up and denial, instead of decisively addressing the problem. The administration at the University of South Florida was horrified at the public relations problem created by the continuing presence of Prof. Al-Arian on the faculty, which might cause problems with future appropriations to the University from the state legislature, and which might cause a decrease in financial donations from alumni. With these examples in mind, I suggest that protecting an institution is a diversion from making moral choices.

Ambitious people who want to be promoted learn to follow the wishes of their manager, instead of following professional ethics.³⁴ And people who want to be promoted learn *not* to be whistleblowers who report crime, corruption, immoral behavior, etc. to outsiders, thus endangering the institution. In other words, loyalty to their manager is more important for successful employees than morality. After years of being immersed in this immoral (or amoral) culture, it is not surprising that senior managers are able to ignore moral issues.

³³ There are a substantial number of apologists for either Nixon or Clinton, who insist that one (but *not* both!) of those presidents was persecuted by their political opponents. Such a position is simply ludicrous! The wrongdoing and criminal conduct by both presidents was amply demonstrated.

³⁴ Ronald B. Standler, *Professional Ethics and Wrongful Discharge*, June 2000, <http://www.rbs2.com/ethics.htm> .

Finally, I point out that most individual people do not ask an attorney for advice *before* undertaking some act. Therefore, for most individual defendants, attorneys are hired to try to clean up a mess that has already been made. In contrast to individual people, large corporations and high-level politicians readily obtain legal advice from in-house counsel before undertaking a project. Getting legal advice before acting is analogous to a physician preventing disease by educating patients or by using immunizations. However, for such precautionary legal advice to be useful, that attorney must have the courage to say what the client does not want to hear, and that attorney must be persuasive.

What is more important?

The honor code for cadets at the U.S. Military Academy at West Point, NY is simple. It says “A cadet will not lie, cheat, or steal, nor tolerate those who do.”

Some commentators have criticized this terse rule as damaging friendships or being disloyal to colleagues. This criticism misses the essential lesson: loyalty to ideas (e.g., ethics, morality) is *more important* than loyalty to people (e.g., following illegal orders, looking the other way when friends or colleagues misbehave, etc.).

As long as people behave properly, there is no conflict with being loyal both to ideas and to people. The duty to report misconduct is a feature of professional codes of both the American Medical Association and the American Bar Association. In practice, a person who reports misconduct is often referred to as a snitch, tattletale, stool pigeon, squealer, or other derogatory terms. Society needs to reconcile these two divergent views: (1) the ethical duty to report misconduct and (2) the swift and sure retaliation against those who actually report misconduct, including ostracism, loss of employment, and also being a pariah who few will employ.

The conflict between reporting misconduct and remaining silent has been around for a long time. Dante tells us that the hottest place in Hell is reserved for those people who, during a moral crisis, remained neutral.

preventing immoral conduct

When a scandal occurs, there is naturally a desire to “do something” that will prevent a similar scandal in the future. Because, as described above at page 12, people who cheat commonly say that they did not know their conduct was wrong, it is tempting to require students to take an ethics class.

For example, as described above at page 5, the legal profession responded to the scandal of more than twenty lawyers in the Nixon administration who were involved in illegal conduct by requiring law students to take a class in professional responsibility and candidates for the bar to pass the MPRE exam. In responding to an epidemic of plagiarism in colleges in the USA, colleges often explicitly train their students how to make quotations and paraphrases, which is something that I would expect students to learn on their own by reading numerous scholarly books and technical papers. In responding to incidents of hacking into other people’s computer files and writing malicious computer programs (e.g., viruses and worms), some people in the computer science community have called for all undergraduate computer science majors to take an ethics class.

The problem is *not* that people are ignorant of ethics. The fundamental problem is that immoral behavior is a human trait, and there seems to be no way to completely avoid immoral behavior. Punishing people for crimes, intentional torts, and ethics violations serves several purposes:

- (1) to express the outrage of society,
- (2) to remind people not to misbehave (i.e., teach a moral lesson), and,
- (3) to remove untrustworthy people from professions, through revocation of licenses to practice law or medicine or by termination of employment because of *un*professional conduct.

But the threat of punishment has never deterred all immoral conduct, because those guilty people did not intend to be caught, or because those guilty people gave no thought to consequences of their acts.

In an institution (e.g., business, corporation, government), Americans have encouraged immoral results by making obedience to managers more important than morality. Immoral behavior might be reduced in institutional environments by:

- (1) hiring trustworthy people after a background check,
- (2) establishing a fundamental rule that no one will be punished for questioning a manager’s order on grounds of law, ethics, or conscience. A person who questions an immoral order should be seen as helping an institution avoid a mistake or scandal, and *not* seen as a disobedient or disloyal person.³⁵

³⁵ Ronald B. Standler, *Value of Dissent*, <http://www.rbs0.com/dissent.htm>, (Nov 2001).

- (3) abolishing at-will employment³⁶ for learned professionals (e.g., physicians, nurses, attorneys, scientists, engineers, professors, etc.).
- (4) prohibiting retaliation (i.e., termination of employment, demotions) against whistleblowers for reporting illegal conduct to police or prosecutors.³⁷

Because such a proposal upsets the traditional notions of rank and authority, managers of companies in the USA are *unlikely* to adopt this proposal. However, the third and fourth proposals could be imposed by state statute.

While it is hopeless to prevent *all* immoral conduct by individuals, one could design institutions that would encourage moral behavior, by having colleagues and subordinates act as a check on employees, including managers, who contemplate immoral acts. Further, routine use of outside consultants for review, independent auditors, and independent counsels helps avoid mistakes caused by internal corruption or by an internal culture that is stifled by consensus.

Conclusion

In the introduction of this essay, I asked two questions: (1) Does education have an effect on moral behavior? and (2) Does more education makes people less moral?

I conclude that education has no effect on moral behavior, because secular education is directed at developing intellectual skills: both knowledge of facts and ability to analyze those facts.

However, it may *appear* that more education makes people less moral for three reasons. First, educated people tend to see “shades of gray” instead of simple “black and white” issues, which may cause them to be paralyzed, unable to make a decision. Second, managers (who are mostly people with above-average education) tend to protect their institutions, instead of making a moral choice about individuals. Third, people in positions of power or responsibility (who are mostly people with above-average education) have the opportunity to make large mistakes that receive extensive coverage from journalists, unlike the uneducated person who commits a crime with a smaller impact on society.

Finally, I am certain that requiring students to take classes in ethics during college will have little or no effect on the amount of cheating or immoral conduct by these people later in life, because the ability to do a formal ethical analysis has no effect on the desirability of cheating. People cheat for two reasons: (1) because cheating is an *easier* path to success and (2) because cheaters believe that their cheating will not be detected. When cheaters are caught, they may whine that they did not *know* their cheating was wrong, but that is not only a specious excuse, but also usually a false statement.

³⁶ Ronald B. Standler, *History of At-Will Employment Law in the USA*, <http://www.rbs2.com/atwill.htm> , (July 2000).

³⁷ Ronald B. Standler, *Professional Ethics and Wrongful Discharge*, <http://www.rbs2.com/ethics.htm> , (July 2000).

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