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HIGHER EDUCATION, CORRUPTION, AND REFORM

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ABSTRACT. Educational corruption is a problem in every country, particularly at the college and university level. With illustrations drawn from the United States, this article considers what “basic principles” should shape efforts to deter, expose, and penalize corruption in academic institutions. The article then identifies “best practices” that should be followed by colleges and universities aspiring to high standards. The discussion explores the role that ethics codes and ethics education can play in fighting corruption. More specifically, the article addresses what types of substantive rules and systemic procedures are essential parts of effective higher education ethics codes. Mindful of the fact that reformers are fighting educational corruption in countries around the world, the article notes difficulties that may arise in transplanting American “best practices” to other cultures.

Keywords: ethics, corruption, honor code, higher education

1. The Continuing Challenge of Ethics in Academia

In every educational institution, in every country and generation, there is a struggle between corrupt practices and the continuing quest for high ethical standards. In many instances the problems are blatant, as where bribes are taken by college or university officials in exchange for academic favors; fraudulent invoices are submitted for payment; or funding is wasted on lavish or unauthorized spending, or on private, rather than institutional, purposes. In other cases educational corruption is subtler. This is true where conduct that is neither criminal, fraudulent, nor a breach of fiduciary duty nevertheless undercuts the moral foundations of the educational enterprise. For example, if academic honors, such as membership in a learned society, are con-

ferred based not on merit, but on political loyalty, the process is arguably corrupt. Such an award, like giving grades to athletes for little or no work, helping students to cheat on exams, or changing grades for money, erodes the intellectual integrity of the institution. When that happens, the educational enterprise is diminished in a very real sense.

Just as a country is poorer overall if corruption levels are high, so too an educational institution is poorer if its members engage in corrupt practices. Such misfeasance wastes limited resources, demoralizes participants, and adversely affects productivity.

Educational corruption comes in many forms. A distinction may be drawn between widespread institutional corruption and the corruption of renegade individuals within an otherwise ethically sound educational program. The latter is as morally repugnant as the former, with the caveat that such individual corruption may be easier to correct (e.g., through prosecution or expulsion) and may cause harm that is less far ranging. Institutional corruption is not only ethically odious and difficult to remedy, but also socially dangerous, for it strikes at the very core of democratic institutions.

The terms “corrupt” and “unethical” are synonymous. All corrupt practices are unethical, but not all unethical practices are corrupt. For example, certain forms of university medical research – such as embryonic stem cell studies – may or may not be unethical, but so long as that research is carried on honestly and fairly within the bounds of the law, corruption is not a problem. Similarly, a professor’s biased editing of digital video clips or a university’s retailing of apparel made in low-wage countries may be unethical, but those practices are not necessarily corrupt.

Corruption in education entails (1) serious criminal conduct, (2) tortious conduct in the nature of fraud or intentional breach of fiduciary duty, or (3) conduct that betrays the values that form the moral basis for the educational process, foremost among those being intellectual honesty. In order to constitute educational corruption, conduct must relate to the performance of educational duties. Persons associated with colleges or universities may engage in criminal conduct in their private lives that has no direct connection to the work of the educational enterprise. That conduct is not properly viewed as corruption, even though the misconduct may indirectly reflect adversely on the educational institution. If a professor is charged with spying on a foreign government, the charges do not raise an issue of edu-

cational corruption unless the alleged spying involved the performance of university duties. The same is true if a university administrator is alleged to have molested a student or obtained a teaching or administrative position by presentation of fraudulent credentials. To be corrupt, conduct must also harm or tend to harm, in a significant way, either the educational institution, its constituents, or its beneficiaries. Conduct that neither causes, nor is likely to cause, harm is not “corrupt.”

Corrupt educational practices often relate to the work of college and university employees, such as faculty members and administrators. However, cheating by students is also a form of corruption because it betrays the values that underlie the educational process and relates to students’ performance of their duties as members of the academic community.

Corruption in education must be distinguished from both incompetence and imprudence. An educational institution that employs inept teachers or fails to prepare its students adequately for their chosen careers is incompetent in those respects because the institution fails to possess or exercise the knowledge and skills that its programs require. However, that institution is not inevitably corrupt. Further, a school that wastes the time and money of students on the study of insignificant subjects may be imprudent, but that lack of wisdom does not automatically signal the malignancy of corruption.

2. Educational Corruption in the United States

In the United States, many educational institutions appear to operate in accord with high ethical principles and to be free of significant corruption. Yet, the news media frequently report blatantly wrongful conduct. For example, in one case, a former college president pleaded guilty to embezzling \$3.4 million in student loans and Pell grants and using “the funds in part to cover . . . school debt and . . . operating costs.”¹ In another case, a community college lost its accreditation and was “effectively closed” when it was “unable to produce a budget due to lack of accounting systems,” and one of its trustees, who was accused of setting up a sham company to offer bogus classes, pled guilty to misappropriating more than \$1 million and was “sentenced to four years in prison, ordered to pay . . . restitution and agreed to never again hold public office in California.”² In a third case that attracted national headlines, directors of financial aid at three major

universities “held shares in a student loan company that each of the universities recommends to student borrowers, and in at least two cases profited handsomely.”³

Other corrupt practices in American higher education include no-show jobs that deplete university budgets, over-billing of the government, prohibited payments to athletes, obstruction of justice, over-payments as a result of no-bid contracts, improper gifts, kickbacks related to student loans, and, occasionally, even bribery of college or university officials.

Some observers of higher education allege that wealthy Americans buy their children’s way into the most prestigious colleges and universities by making lavish donations to those institutions, such as endowed scholarships, study centers, and buildings. Such practices have a long history in the United States, and are sometimes found abroad, too. Lavatory facilities for the first women to enter the Yale School of Medicine in 1916 were funded by an alumnus whose daughter wanted to apply to the school, and who was soon thereafter admitted and graduated.⁴

Critics also allege, armed with abundant facts, that the growing influence of corporations that results from new financial arrangements between the business sector and higher education imperils “the ideal of disinterested inquiry.”⁵ For example, one university granted a billionaire “the right to screen all medical inventions at the university and pick the best ones to be developed, rather than leaving the decision to university professors and patent officers.”⁶

Athletic scandals regularly mar the reputation of great colleges and universities. In the worst cases, the conduct amounts to “essentially fraudulent academic programs whose only function is to keep athletes who could never survive in a real college classroom eligible to play [college sports].”⁷ Academic pampering of athletes takes many forms, including the simple failure to apply customary standards for admission or class attendance.

In the United States, as in other countries, there are continuing efforts to fight educational corruption, although these efforts are sometimes not as strong as they should be. State attorneys general regularly investigate and prosecute corrupt practices that harm students. One particularly hopeful sign in the battle for high ethical standards is the increased willingness of colleges and universities to self-impose penalties when academic fraud is discovered in athletic programs.

3. Basic Principles for Promoting Ethical Conduct

Basic principles for structuring a legal regime to fight corruption in education can be drawn from other fields of endeavor raising important issues relating to ethics in public life. In particular, the normative standards and practices which have emerged during the past forty years to promote ethics in the legal profession,⁸ in the judiciary,⁹ and in government¹⁰ offer a useful starting point. A review of those sources suggests the following:

First, it is as important to fight the appearance of corruption as corruption itself, for perceived unfairness, dishonesty, or unequal treatment threatens public confidence in, and indeed the survival of, important institutions. To avoid bad appearances, public entities must operate transparently, as far as possible.

Second, corruption should be fought with a combination of legal and ethical tools, including (a) prohibitions of clearly improper conduct, (b) disclosure requirements that expose questionable practices to public scrutiny, and (c) clear statements of aspirational principles. None of these tools – prohibitions, disclosure requirements, or aspirational principles – is as effective when used without the others to fight corruption. For example, mandating disclosure of, but not prohibiting, certain bad practices, sometimes amounts to little more than requiring a person to post “price lists for the cost of doing business.”¹¹ This would be true, for example, if a university administrator were required to disclose gifts from applicants or students, but not prohibited from accepting them. Similarly, prohibitions alone are less than optimal for sometimes they are too severe. In cases where conduct is not inevitably improper but raises ethical questions, disclosure may be sufficient to dispel any appearance of impropriety or to ensure neutral scrutiny of a transaction, relationship, or other facts. In addition, prohibitions and disclosure requirements are more effective when backed up by clear statements of aspirational principles. Such principles guide the interpretation of rules of conduct, and encourage persons to surpass legal or ethical minimums.

Third, ethics codes, accompanied by ethics training and enforcement mechanisms, can perform an important role in fighting corruption in education. When codes of conduct identify impermissible practices, require disclosure of pertinent information, or articulate aspirational objectives, they reaffirm the moral basis of the educational process. If well-drafted, codes of conduct provide an important

resource for ethics instruction. When framed in precise legal terms, codes also supply a standard by which to judge and punish errant practices. Importantly, the attention focused on corrupt practices in the process of drafting or revising an ethics code often clarifies which types of conduct are or are not permissible.

Fourth, it is important to recognize that corruption in education and many other contexts is not only a question of bad conduct, but of unequal treatment that calls into question the moral integrity of an enterprise. For example, in the educational arena, when one applicant, student, or employee is treated differently than another in important respects without good reason, there is a risk of actual or perceived unfairness. The difference in treatment may be viewed as a variety of corruption. Consequently, fighting educational corruption entails not only rooting out bad practices, but putting in place measures that ensure a certain level of predictable and reasonably equal treatment and consumer protection in admissions, grading, expulsion, and other important actions of educational institutions.

Fifth, it is not sufficient merely to state, however prominently, key ethical principles. Rather, those principles ultimately must be enforceable, sometimes through internal disciplinary processes within educational institutions (such as honor code hearings into plagiarism charges) and sometimes through the courts (such as civil or criminal actions to redress misappropriation of funds). Enforcement must be regular, not selective; independent, not manipulated; and adequately resourced, not underfunded. Procedures must encourage the reporting of alleged wrongdoing, and assure its investigation, while at the same time discouraging the filing of frivolous charges.

Sixth, ethical leadership is essential. Those in top positions must act in a manner that is consistently fair and honest and avoids any reasonable suspicion of corruption. More specifically, leaders must set an example, punish corrupt practices, support those who seek to act ethically in the face of countervailing pressures, and urge compliance with legal and ethical principles. For example, when the government investigates a university for allegedly fraudulent conduct, it is important for the university president to write a letter to the faculty and staff urging them in the strongest possible terms to provide complete and truthful replies to questions about those matters. In the college and university context, ethical leadership sometimes means that administrators must resist market pressures that trench upon good educational practices. Although students in a sense are

customers, they are not always right. Thus, thoughtful observers have decried the willingness of colleges and universities, focused on the economic bottom line, to make excuses for student plagiarism and other bad practices.¹² Good education requires a firm commitment to high moral principles even when that may place an academic institution at a disadvantage in the market place. Because ethical leadership plays a vital role in fighting corruption, it is important that those in high offices be held accountable for their misconduct. This is especially true at the college and university level because higher education institutions play a key role in preparing graduates to fight corruption in the public sector.

Seventh, it is important to differentiate ethical principles from budgetary practices. As a matter of principle, the total elimination of corruption is an appropriate goal – perhaps *the only* appropriate goal. However, insofar as expenditures on constructing and enforcing an ethics regime, a goal of zero corruption is no more realistic in academia than in other contexts. At a certain point, the rules and practices that must be implemented to further fight bad practices are so rigid, burdensome, and expensive that the benefits they produce are outweighed by the costs they impose. An ethics regime should seek to eliminate corruption in education as far as possible, mindful of the fact that perfect enforcement of ethical principles should not be the objective. This course also offers practical advantages beyond optimizing institutional expenditures on ethics. Rules that are too stringent may have the opposite effect by inducing violations because compliance is too costly.

Finally, alternative dispute resolution (ADR) may have a role to play in ethics enforcement, as it does in many other contexts. For example, in the American civil litigation system, most cases are resolved not by trial and appeal, but by negotiation, arbitration, and mediation. This reality does not mean that civil-liability rules and related legal procedures are a sham. Rather ADR mechanisms recognize that sometimes public and private interests are better served by less formal dispute-resolution processes. Of course, there is a critical difference between efficiently and informally resolving ethics charges, on the one hand, and sweeping unethical conduct “under the rug,” on the other hand. In some cases, informal resolution is not appropriate. But in other cases, the contrary is true. Thus, it is not surprising that some higher education institutions permit a dean to exercise discretion by resolving a complaint of unethical conduct informally, or that

some cases of alleged attorney misconduct are resolved by streamlined procedures and imposition of a “private” reprimand, rather than by a plenary trial and appeal process and public sanction. Few ethics regimes could function well if full compliance with elaborate procedures were insisted upon in every case.

4. Best Practices in Higher Education

A. Job Security and Benefits

Within an educational enterprise, persons who lack security of position or benefits are more susceptible than others to pressure by their superiors. If managers are corrupt, such subordinates may lack the ability to resist demands that they engage in illegal conduct or accord unqualified persons preferential treatment. Vulnerable subordinates may also be unwilling to expose corruption within their institutions for fear of retaliation. Consequently, reasonable provisions for job security, like the tenure system common in most American universities and comparable regimes, can play an important role in fighting corrupt practices.

Many types of educational corruption, such as embezzlement, misuse of funds, misappropriation of property, and bribery, are rooted in economic needs and wants. Workers who are underpaid may be tempted to engage in these types of improper conduct to make up the deficiencies in their salaries or wages. In addition, ill-compensated employees are likely to be unmotivated in their performance of duties, and persons who interact with the educational institution through those workers may be willing to propose and pay bribes or confer other pecuniary benefits in order to receive more efficient service or preferential treatment. Moreover, adequate pay plays an important role in the efficacy of sanctions, for unless teachers and others are adequately paid, the threat of losing one’s job as a result of corruption may inflict little pain, and may therefore not deter bad practices. Consequently, under-compensation produces multiple disincentives, which increase the risk of corruption. While no one would suggest that ethical conduct can be expected only from the economically comfortable, or that high pay can eliminate the risk of corruption, adequate compensation of those who work in education can help to

eliminate corrupt practices. This is why conventional civil service systems pay career officials appropriate salaries.

B. Codes of Conduct

At every educational institution, there should be codes of conduct that govern the behavior of students, faculty members, administrators, and other college or university representatives. Codes of conduct (sometimes called “honor codes” or “codes of ethics”) can be traced back in the United States to the 18th Century, when students at the College of William and Mary introduced an honor code which addressed deception, cheating and theft. A code of conduct should clearly identify the types of conduct proscribed, the disclosures required, the procedures observed to investigate complaints, and the sanctions used to punish violations. Of course, ethics codes should be clearly written. Codes of conduct must afford rudimentary due process by providing fair notice of what is prohibited or required and specifying reasonable procedures for resolving alleged violations. In particular, institutional codes of conduct should define what level of culpability gives rise to liability (e.g., intent, recklessness, negligence, or strict liability), who bears the burden of proof (presumably the institution), and how convincingly guilt must be established before a sanction may be imposed (i.e., whether a violation must be proved by a “preponderance” of the evidence,¹³ by “clear and convincing” evidence,¹⁴ or “beyond a reasonable doubt”¹⁵). Under the terms of the code, investigative and adjudicative personnel should be sufficiently independent and immune from retribution as to allow the process to enjoy the confidence of relevant stakeholders. Normally, an initial determination by a factfinding body regarding the merits a complaint should be subject to some form of appellate review that ensures that required procedures were followed and normative standards were correctly interpreted and applied.

In drafting the procedural provisions of an ethics code, a careful decision must be made as to whether there should be a rule prohibiting *ex parte* communications. In the United States, the rule against *ex parte* communications plays a vital role in the adversarial court system. The rule prohibits one side of a case (or persons outside the litigation) from communicating secretly with a judge about the merits of the dispute. This restriction ensures that each party has the opportunity to learn what another party or third person says and

to challenge those statements either through cross-examination, opposing testimony, or argument. Interestingly, many American educational institutions have disciplinary procedures, which do not prohibit *ex parte* communications. Yet, it is easy to see how secret communications can prejudice decision-makers and taint the fairness of an adjudicatory process. University procedures could often be improved by the adoption of a rule against *ex parte* statements. In American educational institutions, this drafting choice would not be surprising, for it would be consistent with fundamental tenets of the American justice system. However, it is less clear whether the same type of rule would be as appropriate in other countries that have an “inquisitorial,” rather than “adversarial,” justice system. At a minimum, the issue should be addressed, for disciplinary fairness in any legal system requires that decisions not be based on secret information or irrelevant considerations. It is essential to minimize the distorting influence of such factors.

It is also important to consider under what circumstances a potential decision maker must step aside from the decision making process because of bias or prejudice relating to the complainant or the accused. Most American educational institutions operate, quite appropriately, with a level of formality considerably less demanding than the procedures followed in a court of law. It would be unreasonable to expect colleges and universities to adopt the same rules on recusal that are applicable in civil and criminal court proceedings. In the United States, that complex matrix of rules requires a judge to step aside whenever his or her impartiality “might reasonably be questioned.”¹⁶ Those rules include very specific provisions dealing with a multitude of circumstances where recusal may be required. Yet, even if educational institutions operate with less formality than courts, recusal rules of some form should still be followed. For example, misconduct charges against a student or faculty member should be decided by someone who is not closely related to the complainant or the accused, and probably by someone who was not involved in the underlying facts. The recusal provisions of the Code of Judicial Conduct and related precedent offer a useful checklist for thinking about situations where recusal might be appropriate in academia.

Educational institution codes of conduct need not be all encompassing for they operate against a backdrop of other control mechanisms, such as laws imposing criminal and tort liability and employment

personnel rules. Nevertheless, it is essential that student and faculty honor codes address important topics, which are otherwise unregulated. Some college or university ethics codes apply to students, faculty members, and administrative personnel alike. However, the conduct issues relating to students (e.g., for disruptive partying or cheating on exams) are different than the issues that arise with respect to employees (e.g., improper economic benefit from official duties or conflicting outside employment). Therefore, it may be appropriate to be different codes for students and faculty members. Many of the faculty code provisions should also govern the conduct of college and university administrators, staff members, and trustees. There is little reason to exempt members of these latter groups from a rule, applicable to faculty members, prohibiting the misuse of official power or position to secure economic benefits for close family members. These types of issues arise in many cases, such as where a member of a law school's board of directors pressures faculty members to appoint her husband to a tenure track position.

1. Student Codes

The most critical provisions in a student honor code are those which define what constitutes academic misconduct, including, for example, cheating on examinations or using prohibited sources when writing research papers. Such infractions¹⁷ are clearly harmful, for the "cheater is a free rider and therefore gets higher marks than he or she deserves," while the "efficiency of the country's educational system is reduced, because cheating distorts competition, diminishes the student's incentive to study, and leads to inaccurate evaluation of the student's abilities."¹⁸ However, academic misconduct is frequently neither described nor proscribed by normative standards other than a student ethics code. While academic misconduct may take many forms, the connecting thread is that such actions give offenders an unfair advantage over other students in obtaining academic opportunities or fulfilling academic requirements.

It is important for "academic misconduct" to be defined broadly by a student ethics code because the varieties of such malfeasance multiply as technology and business practices change. Not long ago, no one would have thought of text messaging or other cell phone use during an examination as a form of potential academic misconduct, but they certainly are today. Yet, defining academic misconduct only

in broad terms – for example, as all acts or omissions that confer on one student an „unfair advantage” over others in satisfying degree requirements – would be undesirably vague. A good ethics code serves not only as a basis for enforcement, but as a tool for education. As far as possible, the definition of academic misconduct should place students clearly on notice of what is forbidden. Consequently, it is desirable in writing a student code of conduct to couple a general rule against academic misconduct with specific examples, presumably in an “including, but not limited to” drafting format. This type of rule may afford a college or university flexibility in adapting the prohibition to new technologies and other developments while nevertheless offering concrete examples of forbidden conduct that can be useful in educating students about their obligations. An example is set forth in the margin.¹⁹

Some honor codes impose a duty on students to report knowledge of a violation of the code by others. The feasibility of such a provision presumably varies greatly depending on the country, for in many countries attitudes with regard to cheating differ considerably.

2. Faculty Codes

A dedicated effort to articulate enforceable ethics standards for college and university faculty members would do well to borrow principles from the government ethics field. While American government ethics codes vary greatly in their scope, coverage, and enforcement mechanisms, certain principles of good conduct have emerged with clarity and enjoy widespread acceptance. Among these principles are basic rules against using official power for improper economic benefit, unfairly advancing or impeding private interests, trading reciprocal favors, accepting inappropriate gifts, and engaging in conflicting outside employment or business activities. These topics are as relevant in higher education as in other areas of public life.

C. Preventing and Prosecuting Financial Corruption

The United States and other countries have used basic civil and criminal laws to address financial wrongdoing and other forms of corruption in education. The New York Attorney General’s wide ranging investigation of student lending abuses was based on state consumer protection laws that are intended to penalize deceptive trade

practices. In another recent American case, the top educator in the state of Georgia was sentenced to eight years in prison after pleading guilty to charges of embezzling \$600,000 to fund her failed campaign for governor and cosmetic surgery.²⁰

In the United States, there are civil remedies for certain types of educational corruption. An aggrieved person or institution can sue for conversion, fraud, and tortious interference with contract or prospective advantage, among other things. It is important for public officers to pursue these remedies aggressively. This often means insisting on collection of a court ordered judgment, rather than entering into a compromised settlement. A newspaper editorial in one major American city praised a local school board for refusing an offer to settle for \$10,000 a civil court judgment for \$380,000 against an architect who had overbilled the district and was later sentenced to two years in prison as the “central figure in a . . . bid-rigging and bribery scandal.”²¹

It is possible to address some forms of corruption, such as financial mismanagement, quite specifically through procurement procedures or other business-conduct requirements. A New York grand jury investigating financial wrongdoing in public schools recommended creating a state inspector general for education to investigate and report on corruption and other criminal activity in local school districts.²² The grand jury further recommended passing new laws:

- requiring public school employees, school board members and persons doing business with a local district to report information about possible criminal conduct;
- creating compensation committees, including at least one local resident, to oversee and report to local school boards on all proposed contracts and make recommendations regarding proposed fringe benefits;
- requiring school boards to post on their websites or otherwise publish all employment contracts and any amendments at least one month before any board vote;
- requiring school business administrators in large districts to have at least a master’s degree in accounting or finances; and
- requiring the state Department of Education to provide mandatory continuing education every two years in accounting principles, fraud prevention, and fiscal management for every superintendent,

assistant superintendent for business or business manager in a local school district.²³

These are appropriate legal responses to the problem of the financial corruption in the public sector. Some college and university ethics codes already address related issues. For example, the *Howard University Code of Ethics and Conduct* quite sensibly provides that:

The accounts and records of the University are maintained in a manner that provide for an accurate and auditable record of all financial transactions in conformity with generally accepted accounting principles, established business practices, and all relevant provisions of controlling law. No false or deceptive entries may be made and all entries must contain an appropriate description of the underlying transaction. To the extent not needed for daily operating transactions, all University funds must be retained in the appropriate University accounts with appropriately designated financial institutions and no undisclosed or unrecorded fund or asset shall be established or maintained for any purpose. All reports, vouchers, bills, invoices, payroll information, personnel records, and other essential business records must be prepared with care and honesty.²⁴

Presumably, these types of ethical provisions will proliferate in the United States since nonprofit educational institutions, including private colleges and universities, have begun to follow as “best practices” the type of institutional integrity guidelines that were mandated for certain public-sector business entities by the federal Sarbanes-Oxley Act.²⁵ One expert concluded that “no college or university can afford not to adopt the ‘spirit’ of Sarbanes-Oxley”²⁶ and listed ten “best practices” that colleges and universities should consider: “1. Background checks for new hires; 2. Annual disclosure of conflicts of interest, required of employees and trustees alike, pursuant to a written conflict of interest policy or bylaw provision; 3. Code of conduct for employees and trustees that includes sanctions for non-compliance and a credible system for investigating and responding to allegations of improper conduct; 4. Written whistleblower policy and procedures that provides confidentiality and protects the caller from retaliation; 5. Periodic ‘risk assessments’ by outside consultants; 6. Annual audit of financial statements by an independent certified public accountant (and, if the institution is

large enough, hire an internal auditor); 7. At least one ‘financial expert’ on the board; 8. An audit committee of the board, with a written charter specifying its jurisdiction and detailing its authority; 9. A nominating committee of the board, to ensure board independence from the president and senior management; and, 10. Standing instruction to legal counsel to notify general counsel, president, chair of board audit committee, and/or chair of board of wrongful conduct that is material to the institution.”²⁷

5. Plagiarism

Plagiarism is a worldwide problem, which has been greatly aggravated by the availability of virtually endless text to “cut-and-paste” from the Internet into research papers and scholarly publications. The failure to properly attribute information not only gives some students an unfair advantage in satisfying academic requirements, but, when exposed, reflects badly on innocent students by calling their own academic integrity into question merely as a result of their association with a college or university where plagiarism occurs.

The key dispute with respect to penalizing plagiarism concerns culpability. Some argue that only intentional appropriation of the words of another should give rise to liability; others argue that any failure to attribute sources violates the ethical principles against plagiarism. Of course, there is a middle ground between intentional wrongdoing and strict liability, which is to require evidence of lack of care (negligence or recklessness). However, there is great dispute as to whether culpability (intent, recklessness, or negligence) is an element of the offense of plagiarism, or whether culpability bears only upon the issue of what sanction is appropriate. These concerns can be addressed by a well-draft ethics code, but many codes of conduct fail to do so.

Aside from cut-and-paste plagiarism is the related problem of customized papers purchased from vendors who frequently operate over the Internet. This form of academic fraud is vastly more blatant than the type of misattribution that results from an erroneous understanding of the rules on citation or simple inadvertence. A student who submits a paper that is nothing more than customized plagiarism normally should be subject to stringent sanctions.

6. A Battle Never Finally Won

The quest for high ethical standards in education is a goal never permanently achieved. New students, faculty members, and administrators replace their predecessors, and these changes in personnel, along with new technologies and business practices, multiply the opportunities for corruption. Often, it is necessary for one generation of academicians to re-conquer ethical territory firmly held not long before. But, comfortingly, it is also possible for a new group of actors in higher education to successfully fight corruption where their earlier counterparts had failed.

The key to success in this never ending battle against the forces of corruption is to draw upon the insights and tools that have been developed in other similar contexts where progress has already been made. The wisdom that has emerged from efforts to foster ethics in government or ethics in the professions offers valuable insights for crafting a regime composed of ethical principles and legal restrictions to promote ethics in higher education. Prudent use of these resources for formulating „basic principles” and „best practices” can provide reformers with the firm ethical footing and moral support that they need for minimizing the harm caused by corruption in education.

NOTE

Professor Johnson [B.A. and LL.D., St. Vincent College; J.D., University of Notre Dame; LL.M., Yale University] has served as a Fulbright Senior Scholar in China and Romania and a Fellow at the Supreme Court of the United States. He has taught in law reform programs in Moldova, Mongolia, Russia, Serbia, and Ukraine. Currently an Advisor to the American Law Institute’s Government Ethics Project, Professor Johnson is the author of several books, including most recently: *Legal Malpractice Law in a Nutshell* (West 2011); *Advanced Tort Law: A Problem Approach* (LexisNexis, 2010); *Studies in American Tort Law* (Carolina Academic Press, 4th ed. 2009) (with Alan Gunn); and *Mastering Torts: A Student’s Guide to the Law of Torts* (Carolina Academic Press, 4th ed. 2009).

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14. Clear and convincing evidence is evidence "indicating that the thing to be proved is highly probable or reasonably certain . . . This is a greater burden than preponderance of the evidence, . . . but less than evidence beyond a reasonable doubt." *Id.* (defining "evidence").
15. Reasonable doubt is the "doubt that prevents one from being firmly convinced of a defendant's guilt, or the belief that there is a real possibility that a defendant is not guilty." *Id.* (defining "reasonable doubt").
16. See Code of Judicial Conduct Rule 2.11 (2010).
17. See Stanley B. Chambers, Jr., *34 Duke Students Accused of Cheating*, News & Observer, Apr. 28, 2007 (discussing the "largest cheating scandal" in the history of a business school).
18. See, e.g., Jan R. Magnus, Victor Polterovich, Dmitri L. Danilov, & Alexi V. Savvateec, *Tolerance of Cheating: An Analysis Across Countries*, J. Econ. Educ., Mar. 22, 2002, at 2125, 2002 WLNR 11015586.

19. Section 2.02 of *The Student Handbook* of St. Mary's University School of Law provides in relevant part:

(a) An academic matter is any activity which may offer or in any way contribute to the satisfaction of requirements for graduation. Academic matters include, but are not limited to, examinations, research, or other class assignments.

(b) It is a violation of the Code for any student to engage in conduct which tends to gain that student or another an unfair advantage in an academic matter. The following applications of this rule . . . are illustrative, not exhaustive.

1. In an examination, a student shall follow all instructions concerning its administration, shall not use any materials other than those specifically authorized by the professor, and shall not converse or communicate with any person(s) other than the person(s) administering the exam.

2. In research or other writing assignments, a student shall not use materials specifically forbidden by the instructor and must fairly identify passages or ideas from the work of others. The student shall make attribution by proper use of quotation marks, citations, or other forms of reference.

3. A student shall not submit or have submitted as his or her own, the work of another. Nor, except by permission of the instructor after full disclosure, shall a student submit in fulfillment of an assignment any work prepared, used, or submitted in another course or for a law journal, clinic, law firm, government agency, or any other organization.

4. A student shall not hide, mutilate, deface, or remove, without permission, library materials or the materials of another student.

5. A student shall not breach the security maintained for the preparation and storage of exam materials. . . .

6. A student shall not discuss an examination he or she has already taken with a student scheduled to take a deferred examination in the same course or with any other person under circumstances likely to endanger the security of examination questions.

7. During the course of and prior to the completion of any examination, research, or other assignment, a student shall not provide to, compare with, or obtain from another student any answer or part of an answer, unless authorized by the professor.

20. Assoc. Press, *Former Schrenko Campaign Manager Seeks Bush Pardon*, Macon Telegraph (Ga.), Nov. 27, 2006, 2006 WLNR 20506493).

21. *See* Editorial, *Harlandale Right to Reject Offer*, San Antonio Express-News, Mar. 15, 2007, at 6B

22. *See* Eden Laikin & Karla Schuster, *Calling for a Watchdog*, Newsday, Sept 26, 2006, at A07, available at 2006 WLNR 16646855.

23. *See id.*

24. Howard Univ., Code of Ethics and Conduct art. IV-D (Aug. 1998).

25. Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (2002).

26. Carl Oxholm III, *Sarbanes-Oxley in Higher Education: Bringing Corporate America's Best Practices to Academia*, 31 J.C. & U.L. 351, 372 (2005).

27. *Id.* at 375.