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## **The Quality of Mercy, the Public Trust, and Ethical Issues in Higher Education**

Elise Bickford Jorgens

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Presented September 13, 2000 for the Center for the Study of  
Ethics in Society

Mike Pritchard asked me last year if I would make a presentation to this group on the occasion of the fifteenth anniversary of the Center for the Study of Ethics in Society. He said I could talk about most anything I wanted to, related to higher education or not. I said, "Of course; I would be delighted," thinking somehow that I would put together a little scholarly paper, something more or less literary, I guess. But I have been an academic administrator for going on nine years now, and the ethical issues raised in my day-to-day business are what keep me awake at night. It became obvious to me as I set to work on what I might say that those issues were what I have to talk about.

Prior to becoming an administrator, I had spent my career primarily in the English Renaissance, doing scholarly work and teaching on literature and music. It was an "arts and humanities" career, and my subject was sufficiently in the past (in the 16<sup>th</sup> and 17<sup>th</sup> centuries, to be exact) that I never had to worry much about the impact of my research on life decisions today. Nor did I have "human subjects" to be concerned with. I had, of course, discussed ethical issues as they came up in works of literature I had assigned to my classes, but overall, you might say I had the quintessential ivory tower job and I did not think much about ethics per se. From my present perspective, however, it is patently clear that every faculty member and every administrator faces ethical issues all the time, and I am going to muse on some of those situations this afternoon.

But let me pause here to point to a few people who have tackled this subject before me. Last Spring, President Floyd spoke to this group, highlighting some ethical issues that face a university president (such as conflict of interest in dealing with a donor). Former Dean of Arts and Sciences Douglas Ferraro spoke on the occasion of the tenth anniversary of the Ethics Center in September 1995, talking primarily about the place and role of ethics centers; I will want to return to his comments briefly at

the end of this talk. And Former President Diether Haenicke addressed the Center in April 1986 on "Ethics in Academia" (in the typed copy of this address that Mike Pritchard kindly dug out and sent to me, it was headed "Ethics *is* Academia," a title that seems to have been incorrect but that might make good sense after all). Diether, in his inimitable fashion, spoke very directly about ethical issues as they affect faculty members under three bold subheadings: Sex, Money, and Personal Power. His remarks are worth repeating, and I hope the Ethics Center will consider re-issuing his paper. Finally, I note that ethics in academe is a current hot topic in the Chronicle of Higher Education. Just last week, the "Chronicle Review" section published some excerpts from *The Academic Ethicist* by Lawrence Douglas and Alexander George, both faculty members at Amherst College. In the mode of a "Dear Abby" column for troubled academics, they attempt to answer letters such as this one:

Dear Academic Ethicist: Though already in my late 50's, I consider myself still in the prime of life, as both a scholar and a man, if you know what I mean. Unfortunately, my marriage has been deteriorating for years. Recently, I have been conducting a clandestine affair with a first-year student in one of my courses. She wants to "go public," but I know that would destroy what's left of my marriage, not to mention my job and reputation. So I told this girl I'd flunk her if she opened her mouth. Was this the proper thing to do?

The Academic Ethicist responds in the negative, advising that the professor should *never* threaten but should, instead, promise the student an A if she keeps her mouth shut. [The other two excerpts are actually more interesting, though no less outrageous. I did not want to take the time to read them to you, but they are worth looking at.]

Obviously, we in academe are ripe for parody on a number of fronts. But I want to spend my remaining time with you this afternoon considering some concerns for the ethical practice of the academic enterprise in a more serious way. I am not an ethicist. But in my years in academic administration I have now had many opportunities to consider the ethical nature of my own decisions as well as to ponder the choices some of us make that get us into trouble.

The first part of my title is an allusion to Shakespeare's *The Merchant of Venice*. That play, to my mind, is so fraught with questionable actions and ethical dilemmas as to be nearly incomprehensible from that perspective. Fortunately for you, I am not doing a literary paper and therefore will not try to untangle those dilemmas today. The quotation, however, does serve as an overarching motto for my comments. These familiar lines are spoken by Portia, disguised as a judge, in her effort to secure the release of Antonio—the real merchant of Venice—from his unusual and potentially lethal bond to Shylock. (The situation is that Antonio has had to borrow money from Shylock against the successful return of his merchant ships. Shylock has, as if in jest, required a bond of a pound of flesh. When the ships appear to have been wrecked at sea, Shylock reveals that he will exact as payment of his bond a pound of flesh “nearest the heart.”) The full passage is as follows:

The quality of mercy is not strain'd;  
It droppeth as the gentle rain from heaven  
Upon the place beneath. It is twice blest:  
It blesseth him that gives and him that takes.  
'Tis mightiest in the mightiest, it becomes  
The throned monarch better than his crown.  
His sceptre shows the force of temporal power,  
The attribute to awe and majesty,  
Wherein doth sit the dread and fear of kings;  
But mercy is above this sceptred sway,  
It is enthroned in the hearts of kings,  
It is an attribute to God himself;  
And earthly power doth then show likest God's  
When mercy seasons justice.

There is no particular reason for Shylock to be merciful, except that he has been pretty mean-spirited. He has not broken the law, but most of us would probably say that it would be ethical, all the same, for Shylock not to take Antonio's life just because the law entitles him to do so. The point of Portia's statement is that ethical action, unlike legal action, is freely determined. It cannot be coerced. If the judge were to order Shylock to release his bond, it would be a legal action, not an ethical one.

The granting of mercy, then, is an ethical decision, as I understand the term.

In the environment of higher education, of course, many decisions are not simple nor simply made, and a "free" decision is not always possible. What is legal is not always what is ethical, and establishing laws or rules does not always determine the ethical course. Furthermore, we are subject to any number of forces that lead us to compromised positions. As educators, we make daily decisions that will affect the lives of our students. Some of these are individual decisions; some are collective decisions that set academic policy. And it is sometimes questionable whether the principal factors affecting those decisions are ethical ones. Too often, I suspect they are based on other, less laudable, factors such as expediency, popularity, or personal aggrandizement or gain.

The second part of my title, "the public trust," refers to something that I consider another essential component in ethical decision-making in higher education. Particularly as employees of a public institution, we are all, faculty, staff, and administrators alike, "entrusted" with the future of the nation. It is no longer fashionable to talk about educating for the "common good," but it seems to me that we should remind ourselves occasionally that a commonweal remains, and must remain if we are to sustain a healthy society, a basic goal of the philosophy of "education for all" that has shaped this country. Without a commitment to fulfilling the public trust placed in us, we fall prey to caving in to what is easier or contains personal gain as the basis for decisions in the workplace of academe.

But how do we define the common good? Precisely what has the public entrusted us to do? Does the public trust refer to what the public *wants*, or are we entrusted also to decide what is best for society? My guess is that it is questions like these that underlie the widespread *distrust* that we often feel from other segments of society. In the very decisions we make every day (Johnny gets an A; Charlie gets a C; and Michael gets an E) we throw ourselves directly into such questions.

Let me invent an example here. Suppose a student has received a failing grade and comes to the professor to plead for mercy. What will hurt the professor to give this student a passing grade? Probably nothing other than a blemish on her academic integrity which no one but she is likely to know about. He's a nice kid; he deserves another chance. But she has undertaken a trust that the grades she assigns are duly earned and

testify to what the student has learned. That trust is given not only by the institution she works for but by a "public" comprised of parents; future employers, legislators, and others who have a stake in the credibility of the degrees we grant; and certainly not least of the students themselves. So while it might be easier, facing our pleading student, to say okay to a passing grade, even this everyday sort of decision for a faculty member cannot meet Portia's test for mercy, let alone professional ethics.

The academic mission, in other words, is complicated and ethically charged at almost every turn. We educate—we instruct—but we also certify, and we cannot easily shirk that responsibility. Furthermore, in our professorial wisdom, we also determine *what* will be taught and what we will certify has been learned.

In my opinion, one of the most serious ethical dilemmas we face in higher education is the one occasioned by the shift in our business toward what has been called a consumer—or customer—mentality. I know you are all familiar by now with what this means, and I trust we can agree that there are many areas in which we have not, historically, thought seriously enough about our students and *their* needs, focusing as we often have on our needs as faculties and institutions. For the moment, though, I want to pass over all that to the essence of this shift in institutional culture (and I mean "institutional" here in the very broadest terms—that is, not WMU as an institution but the social institution of academe or higher education).

As soon as we think of our students as customers, rather than, say, clients, we put the power to purchase—or not to purchase—in their hands. Students, and their parents, would of course argue that that's where it has been all along. But we have not behaved as though that were the case. At least not until fairly recently.

Some other things have changed, however, that have made this position more viable. For one thing, the real cost of a university education has escalated dramatically due to the infusion of technology into virtually every aspect of what we do, higher costs of maintaining buildings and facilities, demand for more "amenities," the need for faculty and administrative salaries to keep pace with salaries in other professional areas, and a host of other factors. In that atmosphere, the coin of the realm is students. Universities across the country are competing ferociously for students, because it is students who pay the bills, not only

through their tuition dollars, but in the case of public institutions, through per-student state allocations as well.

At the same time, as employees and agents of the state, it is incumbent on us to provide our service at the lowest possible cost. In the competitive environment, we also need to keep the cost to students as low as possible.

In other words, we have become a big business like any other. Our bottom line is students, translated into dollars. We must now compete for them and that means we must attract them and *please* them as well as educate them and certify that they have been duly tested and have, in fact, learned.

Let me go back to my earlier example. Suppose this student says to the professor that he just couldn't do any better in the class because it was at an inconvenient time for him; he has a strange condition that makes it impossible for him to think clearly before 10:00 a.m., and the fact that this required class is only offered at 9:00 a.m. means that, well, he just couldn't hack it. He tells her further that if he does not get a C in the course he will not be able to continue in his major, causing him to lose his financial aid. Then, he tells her, he would be forced to transfer to another institution so he could live at home to save money. Now she has a *real* ethical conundrum before her.

The professor's dean and department chair have made a big issue of retention and of not, at all costs, sending students away without going out of her way to help. She could, she figures, give him an incomplete, even though technically he does not meet the University's criteria for an incomplete, and then she could ask him to sit in on her class the next semester (i.e., take the course again without paying for it—also technically not allowed); she could give him special help outside of class if he needs it and arrange special exam times for him after 10:00 a.m. Her student-customer would like it; probably his parents would like it; her chair and dean would like it because it would keep this tuition-paying student on the books and in good standing; his major department would like it because it would keep their number of majors up; institutional research would like it because it would keep the retention rate high without adding to average class size (since he would not be registered for her class), and that would make the provost and the president happy because then our rankings in U.S. News would stay higher.

But what about the public trust? What will our professor be certifying at the end of the semester? Will this student be ready to go out into the world and hold a position of responsibility in his job and in society? Has our professor, or indeed the university, given up any notion of guardianship? Here is the ethical dilemma: If our public tells us it does not want us to be guardians of academic integrity, should we say, "Okay, tell us what you want and we'll give it to you, so long as you spend your tuition dollars here."

But, of course, it's more complicated even than that. The public *does* want us to guard academic integrity. The public wants that very much. And they want it to start with us.

The fact is that faculty and administrators, despite that we all feel increasingly hemmed in by rules and restrictions, have an enormous amount of latitude in many, many areas, and consequently are bearers of an unusual amount of public trust. Academic ethics, I believe, begins with acceptance of the burden of that public trust in every aspect of our professional lives. We must all consider, every day, with every real decision, just what that trust entails and endeavor to act accordingly.

Make no mistake: I am an academic administrator. As my faculty friends and colleagues have ceased to remind me (having by now given up), I have sold out to the enemy. I think and act like an administrator; I pursue the bottom line. But I believe there is an ethical conundrum implicit in the "student as customer" mode that we have only begun to fathom. Pursuit of the bottom line may not always be consistent with acting in the interest of the common good.

And there are other ethical issues we need to consider. What *should* we be doing about affirmative action? The courts are telling us that we should not have programs and quotas. What would the ethical solution be? To return once more to Portia, the ethical choice, at this stage in our history, perhaps needs to be the free volitional option. We make the effort—the special effort—to include underrepresented groups in our student recruitment or hiring pools not because we have an affirmative action program in place but because, simply, it is the ethical thing to do.

Distance education. How will we manage that without betraying the trust placed in us by the public that we do our very best to educate? The ethical choice, in my opinion, will require much discussion and very careful planning. There are, without question, many courses that will serve many students exceptionally well through the internet. But not all



courses, and not all students—and that would include some students who think they can take a web-based course, never come to campus, and learn everything they need. Do we adopt the attitude that it's their problem? I don't think so. Not if we are principled in our academic decisions.

For better or for worse, an enormous amount of power and influence is entrusted to institutions of higher education and those who operate them, both faculty and administrators. In my present position, I have many opportunities to witness the best of this system—faculty who take these responsibilities very seriously indeed. Unfortunately, I must occasionally tend to the worst as well. Faculty members and administrators are, after all, mere mortals and subject to the same lapses of wisdom and judgment as other mortals.

On those rare occasions when such behavior violates a law or an institutional rule or policy, choices are limited and my course of action is relatively clear. Far more often, however, I am confronted with a situation in which someone has made a questionable decision and a complaint about it comes to my office. Then I am forced to make an ethical decision too, and believe me, the complications are no less puzzling.

I would like to conclude by referring again to the comments of two of my predecessors at this podium, Diether Haenicke and Douglas Ferraro. Diether closed by noting that "it is time to turn our critical abilities to our own affairs. We have to begin defining ethical standards for the university and its members, and we must develop not only the mechanisms but also the courage to hold all practitioners of our profession to these standards." Douglas took this call directly to the Ethics Center itself, asking "Will it be enough that ethics centers support discussion and scholarship about professional ethics or will they need to be more affirmative in generating ethical codes of conduct? Could we challenge our Ethics Center, for example to draft a detailed code of ethics for professors and administrators at WMU?"

Our profession *is* governed by a code of ethics. It is far less explicit and detailed than comparable codes developed by some other professions (such as the medical profession, or psychological/psychiatric professions), yet it does provide guidelines for professional conduct. I am referring to the AAUP code quoted in our faculty contract. [see reprint at end of article] In my opinion it is a good statement, and as a starting point, it would be good for all of us, faculty and administrators, to re-read it occasionally and think about its implications. A code like this,

however, refers to personal, individual conduct and will not answer the ethical questions that face the broader practice of higher education such as those I have raised here.

On this fifteenth anniversary of the Center for the Study of Ethics in Society, I would like to thank the Center members and their guest speakers through the years for thought-provoking and enlightening presentations on any number of ethical issues; their accumulated force goes a long way toward leading us to the refinement of ethical judgment that is asked for. Would a fully-developed manual or code of academic ethics take care of the wide range of ethical issues in academe? My guess is that it would not (as much as such a code might simplify *my* life). For one thing, a decision to violate a rule or code is not usually an ethical choice; it is a willful violation, most often for some *unethical* purpose. But more fundamentally, I think it is in the nature of many of the ethical dilemmas surrounding the academy that they are not subject to codification. They will remain judgment calls, which I hope we will make freely, without inappropriate constraints, and ever mindful of what is entailed in the public trust in our enterprise.

#### BIOGRAPHICAL PROFILE ELISE B. JORGENS

Elise B. Jorgens received her Bachelor of Arts in English from Carleton College and her Ph.D. in Musicology from the City University of New York. After a year on an Andrew Mellon Post-doctoral Fellowship in the Humanities, she came to Western Michigan University in 1977, teaching first in the School of Music and then in the Department of English where she was tenured and promoted. She became Director of the Graduate Programs in the Department of English in 1989, Associate Dean in the College of Arts and Sciences in 1992, and Dean of the College in 1996. Her scholarly research and publication has focused primarily on relations between music and literature in the English Renaissance.