

UNINTENDED CONSEQUENCES AND RESPONSIBILITY¹

Daniel E. Wueste
President, Society for Ethics Across the Curriculum
Clemson University

INTRODUCTION

Unintended consequences are familiar. They're also a source of difficulty, not only because they are often unwelcome, but because people invest an enormous amount of energy and effort trying to find the person who is responsible for them. Mounting such a search is a good idea, but, sadly, quite often the search compounds the difficulty presented by the unintended consequences.

The difficulty is often greater than it should be because the search is misdirected. Of course, that a search is misdirected does not mean that it will not be completed. The trouble isn't that the search never ends, it's that it ends in the wrong place. We have found someone to blame, perhaps, or better, we've found someone who is responsible for the unintended consequences in the sense of having been their cause and/or of being properly positioned for the assignment of liability (as, for instance, with so-called liability without fault), but the problematic consequences remain; or worse, they are fruitful and multiply.

Now, "responsible" is a word with more than one sense. Legal philosopher H.L.A. Hart distinguishes four. He introduces them with a short story:

As a captain of the ship, X was responsible for the safety of his passengers and crew. But on his last voyage he got drunk every night and was responsible for the loss of the ship and all aboard. It was rumored that he was insane, but the doctors considered that he was responsible for his actions. Throughout the voyage he behaved quite irresponsibly, and various incidents in his career showed that he was not a responsible person. He always maintained that the exceptional winter storms were responsible for the loss of the ship, but in the legal pro-

ceedings brought against him he was found criminally responsible for his negligent conduct, and in separate civil proceedings he was held legally responsible for the loss of life and property. He is still alive and he is morally responsible for the deaths of many women and children.²

Hart's classificatory scheme is very useful, though as he is quick to note, surely some "varieties of responsibility to which reference is constantly made, explicitly or implicitly, by moralists, lawyers, historians, and ordinary men" fall outside of its scope.³

As Hart has it, there are four types of responsibility:

1. Role-responsibility
2. Causal-responsibility
3. Liability-responsibility
4. Capacity-responsibility

We are all familiar with the second and third—causal and liability responsibility. They are, after all, the stuff of television crime dramas as well as real-life adjudication, politics, and much of day-to-day living. These two senses of responsibility are intimately connected. We only rarely hold someone responsible for a state of affairs in the sense of culpability or liability without having first determined that the individual is linked causally to that state of affairs. The connection here is rather like that between the liability and capacity senses of responsibility: liability presupposes capacity. Or, put another way, capacity is a necessary condition of liability. Of course, capacity is also a necessary condition of obligation (ought implies can), which brings to mind the linkage between talk of responsibility in the liability sense and obligation. These ideas are woven together tightly.

Role responsibility is, as it were, the odd ball here. Of the four senses Hart distinguishes, its connection to culpability is the weakest. It's not that there is no connection to blameworthiness. Persons are held to account/blamed for failing to fulfill role responsibilities, most often, perhaps, because a failure of this sort marks the beginning of a causal sequence that has unwelcome consequences. What's noteworthy in this case is that unlike the other senses of responsibility—causal, liability, and capacity—the most salient feature of role responsibility is the way that it looks to the future rather than the past. In what we might call the "first-response mode," it is responsive to the question, "Who is supposed to

clean up this mess?” while the others are responsive to a very different question, which directs attention to the past: “Who created this mess?”

Our first response to unintended consequences tends to be retrospective; we want to find the person or persons responsible, in a causal sense, for the mess we confront. Given how tightly woven together the ideas of causation and liability are it is hardly surprising that the next order of business is usually the ascription of blame and/or liability.

Ordinarily, that the consequences were unintended speaks to the question of fault, and, absent fault, again in the usual sort of case, an ascription of blame or liability will fail. What lawyers call strict liability is unusual, an exception. Vicarious liability, where one person, for example a parent, is liable for the acts of another, is another exception; any no-fault arrangement, usually justified in terms of efficiencies, is an exception to this general rule. But one need not look to extraordinary legal devices like strict or vicarious liability to find exceptions. The damage drunk drivers do to property or person is unintended. So too, teen pregnancies, sexually transmitted diseases, and what military men call collateral damage. In the last case, the extent of the damage can be calculated in advance; in fact, predictions of great collateral loss may constitute a decisive reason not to proceed. But not always—Hiroshima and Nagasaki come to mind. The dimension of predictability in the case of collateral damage is something we find in the other examples—drunk driving, teen pregnancy and the sexual transmission of disease. In each case, though unintended, the unwelcome consequences are foreseeable. Indeed, it is precisely their foreseeability that undergirds ascriptions of liability to those who are causally connected to them. Such ascriptions often include the observation that the agent should have known better. In fact, at least in the case of drunkenness, that which explains the lack of intention to cause the unhappy consequences does not excuse, by showing no fault, but compounds the wrong the drunk has done (Bentham to the contrary notwithstanding⁴) and markedly increases the opprobrium that accompanies the liability ascription.

What if first responders were disposed to think in terms of role responsibility rather than the more familiar notions of causal and liability responsibility? In that case, rather than asking or launching an investigation to answer the question “Who created this mess?” they would begin by asking a very different question, namely, “Who is supposed to clean up this mess?” The approach would be rectificatory rather than inculpatory.

TWO TYPES OF RECTIFICATORY RESPONSIBILITY

In the face of unintended consequences that are unwelcome (i.e., a mess), supposing one's aim is not the proper ascription of blame, there are at least two sorts of forward-looking rectificatory responsibility. One might be called "Personal." The other one falls under the rubric of "Role" responsibility.

The basic idea of *personal rectificatory responsibility* can be expressed in this way:

You unintentionally created this mess—it's yours, you own it. That's why cleaning it up is your responsibility.

What we've got here is straightforward and not far removed from the usual cause-liability line up. In this case, one's rectificatory responsibility, much like compensatory responsibility (liability), is grounded in a causal connection to an unwelcome state of affairs.

The "Role" variety of *rectificatory responsibility* does not involve a causal connection. If the role agent "owns" the mess, that is, if there is a sense in which it is hers, it isn't because she created it. Thinking in terms of this sort of responsibility is most appropriate when the unwelcome state of affairs has *systemic roots* rather than being the upshot of action by an individual. We'll consider an example in the context of education in a moment. Here's the basic idea:

Even though (we) I/you did not create the mess, (we) I/you have to deal with it. It's (our) my/your responsibility. Failure to act jeopardizes the enterprise (we) I/you have undertaken.

This sort of responsibility is entailed by one's role in an undertaking and commitment to its success. It is inherently, indeed, profoundly, practical. Given that the undertaking is not morally repugnant, as for instance running a concentration camp or human trafficking is, the legitimate expectations associated with the success of the enterprise also have some moral force, which is why responsibility language is appropriate.⁵ Occupying the role is a necessary and sufficient condition of responsibility in this sense. (It is presupposed here that one is committed to the success of the enterprise.) Illustrations of what this comes to are ready to hand.

Think of actors dealing with dropped lines or a missed cue, for example, or baseball players recovering from an error in the infield, or an ensemble of musicians in mid-jam coping with the failure of the lead guitarist's wireless connection to his amplifier. Three things are worth noting

here. First, in each of these cases, what is done in dealing with the mess may be done well, very well, or badly; second it is not supererogatory, rather, it is expected; and third, this expectation is the upshot of a sense of shared commitment and reciprocal reliance.

A RECTIFICATORY ROLE RESPONSIBILITY OF EDUCATORS

Teachers have role responsibilities in the sense I've been trying to articulate. Facing a mess not of their own making, for instance the high incidence of cheating among college students, they have a forward-looking rectificatory responsibility to, as it were, clean it up. This is the example in the context of education that I spoke of earlier.

As many of you know, the Center for Academic Integrity⁶ has moved from Duke to Clemson and is now a program center within the Rutland Institute for Ethics. Last month, about a week after CAI's annual conference, Don McCabe, the founding president of the Center, and now a Senior Fellow of CAI, came to Clemson to help announce and celebrate the move. He gave a couple of talks in which he presented findings from his extensive survey work about cheating. The textboxes below present some of the findings he shared with his Clemson audiences and has given me permission to share with you. These findings and others discussed below reveal something of the character and magnitude of the mess we are facing and need to clean up.

McCabe's High School Surveys 2001-2007

Over 24,000 students have been surveyed. They represent 70 schools: 21 public schools, 32 private schools and 17 parochial schools.

Self-reported Cheating

	<u>Public</u>	<u>Parochial</u>	<u>Private</u>
Test/exam	72%	68%	49%
Plagiarism	59%	63%	47%

Data from over 24,000 students at 70 schools across the United States.

Academic Dishonesty: Written		
Undergraduates (United States)		
	<u>1999</u>	<u>2002 -2007</u>
Written 'cut & paste'	40%	38%
Written plagiarism	16%	6%
Internet 'cut & paste'	10%	37%
Internet plagiarism (e.g., paper mills)	5%	3%
1999: N = 2,232		
2002 – 2007: N = 82,186		

College and University Surveys						
Do Honor Codes Help?						
	<u>1990</u>		<u>1995</u>		<u>2005</u>	
	<u>Test</u>	<u>Written</u>	<u>Test</u>	<u>Written</u>	<u>Test</u>	<u>Written</u>
Traditional	23%	33%	30%	42%	14%	43%
No code	47%	56%	45%	58%	21%	51%
1990: N = 6,096						
1995: N = 4,273						
2005: N = 4,119						

It is generally agreed that William J. Bowers conducted the first large-scale study of college-level cheating in the United States. In the spring of 1963 Bowers sent surveys/questionnaires to samples of 75 to 100 students at each of 99 schools; 5,422 students returned the surveys. According to Bowers, the “data show that at least half the students sampled [had] engaged in some form of academic dishonesty since coming to college.”⁷ In 1993, Donald McCabe and Linda Treviño replicated this study at 9 of the schools included in Bowers’ study.⁸ In 2001, reporting on a decade of research in this field, McCabe, Treviño, and Butterfield note that while the McCabe/Treviño study revealed “only a modest

increase in overall cheating, significant increases were found in the most explicit forms of test or exam cheating.” In addition, “[d]isturbing increases were also found among women and in *collaborative cheating* (unpermitted collaboration among students on written assignments).”⁹ The modest increase was 7 percent— from 75% to 82%. The significant increase was 25 percent—from 39% to 64%.¹⁰

Academic Dishonesty		
	1963	1993
■Serious test cheating	39%	64%
■Serious cheating on written work	65%	66%
■All cheating	75%	82%

McCabe, D.L., Trevino, L.K., & Butterfield, K.D. (2001). “Cheating in academic institutions: A decade of research,” *Ethics and Behavior*, 11(3) 2001: From Table 1 at page 223.

What of graduate school? Reporting the results of their study of academic dishonesty at the graduate level, Wajda-Johnson, Handal, Brawer, and Fabricatore write that when “graduate students were asked broadly if they had ever cheated in graduate school, the majority (73.1%) responded that they had not. However, when asked if they had engaged in specific dishonest acts, only 24.8% reported that they had not engaged in anything dishonest at some point during graduate school.”¹¹ They go on to say that “[i]t appears that the percentage” of graduate students in their study “who have behaved [in] academically dishonest [ways]” falls within the same range as “[e]stimates of academic dishonesty at the undergraduate level, [which] have ranged from 20% to over 90% (Sims, 1995).”¹² According to a more recent study by McCabe, Butterfield, and Treviño, “56% of graduate business students” admitted to cheating one or more times in “the past academic year”; the same was true of “47% of their non-business peers.”¹³

For many faculty the problem of student cheating elicits only instrumentalist calls for more policing and harsher sanctions. Trouble is, on campus, as in society, there is quite a lot of evidence that an instrumentalist approach to understanding such a problem (i.e., a compliance problem) and addressing it adequately falls short of the mark. Tom Tyler summarizes the point with respect to the larger society:

The instrumental perspective is clearly insufficient to explain people’s views about the legitimacy of authority and

their behavioral compliance with the law...The instrumental conceptions of the person that have recently dominated discussions of legal issues are incomplete. Explanations based on the image of people as entirely rational beings who maximize utility are insufficient to account for their behavior in social groups.¹⁴

On the basis of a major study in Chicago, Illinois, which is the subject of his book, *Why People Obey the Law*, Tyler recommends a normative perspective as a supplement to the instrumental. What he has in mind here is an understanding of “what behavior is appropriate.” In this case, behavior is governed not by calculations of expected reward or punishment, but by “‘internalized obligations’ that is, obligations for which [an individual] has taken personal responsibility.”¹⁵ This recommendation is well taken not only with respect to compliance with the law, but in our efforts to develop a culture of integrity and commitment on campus that does not rely on aggressive policing to achieve compliance.

Jim Lancaster, another former president of the Center for Academic Integrity, speaks of three “Ps” in campus efforts to deal with academic integrity problems: *policing, prevention and promotion*.¹⁶ The first two are instrumentalist in Tyler’s sense. The latter, promotion, is normative. (CAI has been a champion of the third P from the beginning.) Promotion efforts are clearly forward-looking; moreover, their promise extends beyond the immediate task of cleaning up the cheating mess, particularly if we are able to create a culture of integrity on campus that is like the one that ought to exist in the organizations our students will be part of after graduation.

Policing (more aggressive proctoring, for example) and prevention (by means of test design, or seating arrangements, for example) are important, but as Tyler’s research shows, what we’re aiming at is more likely to be achieved if students embrace the norms of the academic enterprise and internalize the obligations they impose. Put another way, we’re more likely to succeed in cleaning up the cheating mess if students recognize the ethical dimension of academic integrity; if they move beyond merely knowing that cheating is wrong to knowing *why* it is wrong. Suppose a student asked this why question. What can we provide in the way of an answer?

We might begin by addressing a common claim, namely, that cheating is a victimless crime. That’s not true, of course; cheating has unhappy consequences for

- *Other students*, as when, for example, grading is done on a curve;

- *Employers and their customers or clients*; they've been misled and believe that the cheater knows how to do the job;
 - Consider, for example, an accounting or EMS student who cheated his or her way through school; the employer believes that he/she knows how to do the job, but, in fact, he/she doesn't;
- *A school*, if, for instance, there were a cheating scandal that received attention in the press. Such a scandal has far reaching effects; it may tarnish not only the reputation of the school but also that of its graduates, past, present and future; and with this we're back to the consequences for other students.
- An additional result is the effect cheating has on *the character of the cheater*.

There's more to say, of course. Quite apart from the consequences, cheating is wrong because it is *unfair*; cheaters have an unfair advantage—they get the benefits of others abiding by the rules as well as the payoff of cheating (in, say, a high score on an exam) without bearing the burden (of being “law abiding”) that other students carry. Cheating is also *unjust*, because it undermines good faith efforts by faculty to see to it that students get what they deserve—i.e., the grades they have earned. In addition, cheating violates student *rights* that arise from the implicit (if not explicit) social contract students are party to when they *voluntarily* become a member of the college community. Moreover, cheating *thwarts the aspirations for genuine excellence* of individual students and the college or university they attend.

PUTTING THE PUZZLE TOGETHER

What we have said here in making the case for the wrongness of cheating points to three things.

- The damage that will be done
- The unfairness, injustice and violation of rights that cheating entails
- The fact that cheating thwarts aspirations to genuine excellence.

Considerations from three distinct ethical perspectives converge in support of this judgment of wrongness. Cheating is wrong because it has bad consequences, violates the rights of others, and sets us back in our quest for excellence. I'm sure you see where I'm headed with this: it's precisely at this juncture that academic integrity intersects, or better, merges with ethics across the curriculum.

I firmly believe that as educators it is our responsibility—a forward-looking rectificatory responsibility—to help students understand that *and* how ethics is important now, in the context of their academic work, as well as later, after graduation, in the context of their career or profession. I think that the best place to start is with a serious, genuine, non-instrumentalist commitment to academic integrity that includes exploration of its ethical foundation. It is worth noting, if only for those inclined to think strategically, that by starting with academic integrity it may be easier than it would be otherwise to initiate or expand an ethics across the curriculum program. After all, recruiting is easiest when those you're recruiting have no doubt about the value and importance of the cause. Moreover, if I'm right, we can appeal to a sense of professional responsibility in our recruitment efforts. There's a mess here, and though we did not make it, because we are committed to the success of the educational enterprise, it's our responsibility to clean it up.

I'll close by inviting attention to something that is both foreseeable and welcome, namely, a greater good beyond the academy. If our cleanup efforts succeed and we are able to create a culture of integrity on campus that is like the one that *ought* to exist in the organizations our students will be part of after graduation, they will be well positioned to create and sustain a culture of integrity in the communities and organizations where they live and work.

NOTES

¹ This article was originally presented as the Presidential Address to the 2008 meeting for the Society for Ethics Across the Curriculum in Dublin, Ireland.

² H.L.A. Hart, "Postscript: Responsibility and Retribution," in Hart, *Punishment and Responsibility* (New York: Oxford University Press, 1968), p. 211.

³ *Ibid.*

⁴ Jeremy Bentham, "Introduction to the Principles of Morals and Legislation" Ch XV § 3 IX 3 in *The Works of Jeremy Bentham*, Volume 1, ed., John Bowring (New York: Russell and Russell Inc., 1962), pp. 84-85. As Bentham has it, intoxication is a case "unmeet for punishment," because it is an instance in which "punishment must be inefficacious." It is like insanity. One who is insane, like an infant, is not in "that state or disposition of mind in which the prospect of evils so distant as those which are held forth by the law, has the effect of influencing his conduct." While an infant "has not yet attained" this state, an insane person, though he may have attained it "has since been deprived of it through the influence of some permanent though unseen

cause.” In intoxication a person “has been deprived of it by the transient influence of a visible cause” such as alcohol or drugs. His condition, Bentham writes, “is neither more nor less than a temporary insanity produced by an assignable cause.”

⁵ The basic idea here, that the principles internal to an enterprise have moral force and create moral responsibilities for those who are part of the undertaking, is central to the legal theory of Lon Fuller. It was not especially well received when Fuller first presented it in his book *The Morality of Law*. I discuss the objections and mount a defense of the idea in Wueste, “Fuller’s Processual Philosophy of Law,” review of *Lon L. Fuller*, by Robert S. Summers, *Cornell Law Review* 71 (1986): 1214-1217; and Wueste, “Morality and the Legal Enterprise—A Reply to Professor Summers,” *ibid.*, 1252-1263. The idea is a key element in my critique of David Luban’s position respecting what he calls “organizational excuses.” Wueste, “Role Moralities and the Problem of Conflicting Obligations,” in *Professional Ethics and Social Responsibility*, ed. Daniel E. Wueste (Lanham, MD: Rowman and Littlefield, 1994.) Christopher McMahan develops an idea similar to Fuller’s in McMahan, “Morality and the Invisible Hand,” *Philosophy and Public Affairs*, Vol. 10, no. 3. (Summer, 1981), 247-277.

⁶ The Center for Academic Integrity: www.academicintegrity.org

⁷ William Joseph Bowers, “Student Dishonesty and Its Control in College,” Ph.D. diss., 1966, Columbia University, In *Dissertations & Theses: Full Text* [database on-line]; available from <http://www.proquest.com> (publication number AAT 6709326; accessed February 24, 2009).

⁸ Donald L. McCabe and Linda Klebe Trevino, “Individual and Contextual Influences: A Multicampus Investigation on Academic Dishonesty,” *Research in Higher Education*, Vol. 38, No. 3, 1997.

⁹ Donald L. McCabe, Linda Klebe Treviño, Kenneth D. Butterfield, “Cheating in Academic Institutions: A Decade of Research,” *Ethics & Behavior* 11(3) (2001): 219–232, 220-221.

¹⁰ *Ibid.* 223. The table from which these data are taken includes the following by way of definition: “Serious test cheating includes...copying on an exam—with or without another student’s knowledge—using crib notes on an exam, or helping someone else to cheat on a test or exam. Serious cheating on written work includes...plagiarism, fabricat[ing] or falsify[ing] a bibliography turn[ing] in work done by someone else or cop[y]ing a few sentences of material without footnoting them in a paper.”

¹¹ Valerie A. Wajoda-Johnson, Paul J. Handel, Peter A. Brawer, Anthony N. Fabricatore, “Academic Dishonesty at the Graduate Level,” *Ethics and Behavior*, 11(3) (2001), 287-305, 301.

¹² *Ibid.* 302. The citation in the quotation is to R.L. Sims, “The Severity of Academic Dishonesty: A Comparison of Faculty and Student Views,” *Psychology in the Schools*, 32 (1995), 233-238.

¹³ Donald L. McCabe, Kenneth D. Butterfield, Linda Klebe Treviño, “Academic Dishonesty in Graduate Business Programs: Prevalence, Causes, and Proposed Action,” *Academy of Management Learning and Education*, vol. 5, No. 3 (2006), 294-305, 298.

¹⁴ Tom Tyler, *Why People Obey the Law* (New Haven CN: Yale University Press, 1990), 165.

¹⁵ Ibid. 24.

¹⁶ James Lancaster, "The Challenges of Our Current Practice," in James Lancaster and associates, *Exercising Power with Wisdom: Bridging Legal and Ethical Practice with Intention*, (Asheville, N.C. : College Administration Publications, 2005.) 2. And see Sally Cole and Elizabeth Kiss, "What Can We Do About Student Cheating?", *About Campus*, May-June (2000), 5-12.

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