

# TEACHING BEHAVIORAL ETHICS

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by

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## **Abstract**

Teaching ethics is challenging and a teacher needs as many arrows in the quiver as possible. This article explains one approach to teaching behavioral ethics, a new and promising way of thinking about and teaching ethics. This approach focuses on helping good people minimize the number of bad things that they do by understanding how and why people make the ethical (and unethical) decisions that they do. The article goes into detail regarding the author's idiosyncratic pedagogical approach, but contains lengthy discussions of recent research to serve as a resource for those seeking more familiarity with behavioral ethics so that they can form their own approaches. The article also highlights "Ethics Unwrapped," a *free* ethics education resource that contains several videos that can be usefully applied to teaching behavioral ethics, as well as other ethical concepts.

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## INTRODUCTION: APPROACHES TO TEACHING ETHICS

There are many ways to make unethical choices, and probably just as many ways (or even more) to try to teach people how not to make unethical choices.

### Philosophy

One traditional method of teaching ethics focuses on philosophy. By teaching people various philosophical approaches to resolving ethical issues, such as deontology<sup>1</sup> or teleology,<sup>2</sup> this approach seeks to improve moral reasoning and thereby ethical behavior.<sup>3</sup>

Because people run into difficult ethical issues from time to time, teaching moral reasoning is definitely a valuable part of an ethics education. Unfortunately, while moral reasoning ability should lead to better ethical decision making,<sup>4</sup> it may not lead to better ethical *behavior*. If moral reasoning ability were the key to ethical behavior,

...then moral philosophers—who reason about ethical principles all day long—should be more virtuous than other people. Are they? The philosopher Eric Schwitzgebel tried to find out. He used surveys and more surreptitious methods to measure how often moral philosophers give to charity, vote, call their mothers, donate blood, donate organs, clean up after themselves at philosophy conferences, and respond to emails purported from students. And in none of these ways are moral philosophers better than other philosophers or professors in other fields.

Schwitzgebel even scrounged up the missing-book lists from dozens of libraries and found that academic books on ethics, which are presumably borrowed mostly by ethicists, are more likely to be stolen or just never returned than books in other areas of philosophy. In other words, expertise in moral reasoning does not seem to improve moral behavior, and it just might make it worse (perhaps by making [the mind] more skilled at post hoc justification). Schwitzgebel still has yet to find a

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<sup>1</sup> Deontology is a rule-based approach to deciding what the ethical thing to do is. Think law, think the Ten Commandments, or think Kant who says that we should never use others as objects to achieve our own ends and that acts are moral only if they are *universalizable*. For a discussion of the Kantian perspective, see RUSS SHAFER-LANDAU, *THE FUNDAMENTALS OF ETHICS* 144-75 (2010).

<sup>2</sup> Teleology is a consequentialist approach to decision-making focusing upon which choice would produce the greatest good for the greatest number. Think utilitarianism. Think John Stuart Mill and Jeremy Bentham. For a general discussion of the pros and cons of consequentialism in its various forms, see *id.* at 112-43.

It has been said that “[f]or many cases, perhaps even the overwhelming majority, consequentialist and deontological theories yield the same prescriptions.” Robert H. Frank, *The Status of Moral Emotions in Consequentialist Moral Reasoning*, in *MORAL MARKETS* 43 (Paul J. Zak, ed. 2008).

<sup>3</sup> Although there are reasonable grounds for not doing so, in this article I use the terms “ethics” and “morals” interchangeably.

<sup>4</sup> Another point, soon to be addressed, is that most of our ethical judgments are made intuitively with little input from cognitive faculties. While this seems scary on its face, and it is, it is also probably a good thing overall. As David Brooks recently pointed out, “[i]f we had to rely on deliberative moral reasoning for our most elemental decisions, human societies would be pretty horrible places, since the carrying capacity of that reason is so low.” DAVID BROOKS, *THE SOCIAL ANIMAL: THE HIDDEN SOURCES OF LOVE, CHARACTER, AND ACHIEVEMENT* 285 (2011).

single measure on which moral philosophers behave better than other philosophers.<sup>5</sup>

Empirical research further indicates “that the strength of the association between moral reasoning and moral action is small or moderate, meaning that other mechanisms must be involved in moral functioning.”<sup>6</sup> It is therefore unsurprising that when one looks at the ethical scandals of the day, it is clear that insufficient education in moral philosophy is seldom the underlying cause. Jennings observed after the Enron-era scandals that “[n]o one within the field [of ethics] looks at Jack Grubman [the scandal-ridden former telecom industry stock analyst]..., the fees structures, the compensation systems, and the conflicts [of interest] and frets, ‘These were very nuanced ethical issues. I never would have seen those coming.’”<sup>7</sup>

The bad acts of businesspeople Ken Lay, Jeff Skilling, Bernie Ebbers, Martha Stewart, Frank Quattrone, Dennis Kozlowski, Bernie Madoff, Allen Stanford, Jack Abramoff, Raj Rajaratnam, Rajat Gupta, and Fabrice Tourre; of athletes Lance Armstrong, Aaron Hernandez, Barry Bonds, Roger Clemens, and Alex Rodriguez; of politicians Eliot Spitzer, Anthony Weiner, Bob McDonnell, Dominique Strauss-Kahn, and Mark Sanford; and of others recently in the headlines did not result from their inability to understand the intricacies of Kant’s writings or Aristotle’s or Bentham’s.

## Character-Building

A second primary method of teaching business ethics attempts to instill desirable character traits. Aristotle and other Greeks “focused on the *character* of a person and asked what kind of person we each should aim to become focused on being the right kind of person.”<sup>8</sup> Like sharpening moral reasoning, this *virtue ethics* approach to teaching business ethics surely must help.<sup>9</sup> It has been said, perhaps optimistically, that “[t]he best insulation against being drawn into dubious practices is a strong inner moral compass, supplemented by

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<sup>5</sup> JONATHAN HAIDT, *THE RIGHTEOUS MIND: WHY GOOD PEOPLE ARE DIVIDED BY POLITICS AND RELIGION* 89 (2012) (hereinafter, HAIDT, *RIGHTEOUS MIND*). See generally Eric Schwitzgebel et al., *Ethicists’ Courtesy at Philosophy Conferences*, 35 *PHILOSOPHICAL PSYCHOL.* 331 (2012); Eric Schwitzgebel & Joshua Rust, *The Moral Behavior of Ethics Professors: Relationships Among Self-Reported Behavior, Expressed Normative Attitude, and Directly Observed Behavior*, \_\_\_ *PHILOSOPHICAL PSYCHOL.* \_\_\_ (forthcoming); Eric Schwitzgebel & Joshua Rust, *Do Ethicists and Political Philosophers Vote More Often than Other Professors?*, 1 *REV. OF PHIL. & PSYCHOL.* 189 (2009); Eric Schwitzgebel, *Do Ethicists Steal More Books?*, 22 *PHILOSOPHICAL PSYCHOL.* 711 (2009); Eric Schwitzgebel & Joshua Rust, *The Moral Behavior of Ethicists: Peer Opinion*, 118 *MIND* 1043 (2009).

<sup>6</sup> Ruodan Shao et al., *Beyond Moral Reasoning: A Review of Moral Identity Research and Its Implications for Business Ethics*, 18 *BUS. ETHICS Q.* 513, 513 (2008).

<sup>7</sup> Marianne M. Jennings, *Ethics and Investment Management: True Reform*, 61 *FINANCIAL ANALYSTS JOURNAL* 45 (June 2005) (hereinafter, Jennings, *True Reform*).

<sup>8</sup> JONATHAN HAIDT, *THE HAPPINESS HYPOTHESIS* 163 (2006).

<sup>9</sup> See Ajay K. Singh & Sakshi Vasudeva, *Do Building Up Values Matter? An Analysis of Ethical Values of Accounting Professionals and Unethical Reporting Practices in Accounting*, 2 *GLOBAL eLEARNING J.* (No. 3, 2013) (surveying an extensive literature providing decidedly mixed evidence as to whether building up values in business people will lead to more ethical behavior with the authors providing a new study providing evidence supporting the affirmative view). See also JONATHAN GLOVER, *HUMANITY: A MORAL HISTORY OF THE TWENTIETH CENTURY* 26 (2d ed. 2012) (noting that a person’s “sense of identity has a moral charge when it is not a matter of style or personality but is of deeper character...[u]nder extreme duress, a sense of moral identity can give courage and strength.” However, Glover’s book gives innumerable examples of character being overwhelmed by circumstances that led normal people to engage in torture and genocide.).

trusted advisors or counselors outside the organizations.”<sup>10</sup> But as with moral reasoning, there is evidence that developing strong character, while certainly important, is far from sufficient to avoid ethical failings.

Ask yourself how many times you have read about white collar criminals recently, and how often their family and friends testified in the strongest terms to their moral character—loyal friend, faithful husband, loving father, regular worshipper, etc.<sup>11</sup> To teach only character education is to overestimate the impact of character and to underestimate the impact of context on human behavior. When people read about others doing bad things, they tend to tell themselves: “He did a bad thing. He must be a bad person.” Then they often quickly reassure themselves: “I am a good person. I would not do such a bad thing.” Unfortunately, fifty years of psychological research indicates that *the situational often dominates the dispositional*.<sup>12</sup> In other words, even someone with the desire to be a good person may be overwhelmed by the tendency to be obedient to authority, the tendency to conform to the beliefs of others in their in-group, or several other situational, societal, and organizational pressures that psychologists and others have begun to explore in detail over the past decade.

When people tend to conclude that others did good things because they had good character or bad things because they had bad character, they are committing the *fundamental attribution error*, which is the tendency to attribute “causes of behavior to actors (i.e., internal, dispositional factors) rather than the situation (i.e., external, environmental factors).”<sup>13</sup>

People’s character is simply not a stable fixture, though to them it seems that it is.<sup>14</sup> Instead, character is “constantly oscillating to adjust to our needs, situations, and priorities. And the direction in which it shifts in any given moment is determined by the outcome of the struggle between dueling mechanisms in our minds.”<sup>15</sup> The simple fact is that “[m]orality, contrary to popular belief, can’t be controlled simply by strength of will and reason.”<sup>16</sup>

## Behavioral Ethics

Sharpening one’s moral reasoning and reinforcing one’s character are certainly beneficial courses of action for those who wish to be better people and those who wish to

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<sup>10</sup> Paul Brest, *Quis Custodiet Ipsos Custodes? Debiasing the Policy Makers Themselves*, in THE BEHAVIORAL FOUNDATIONS OF PUBLIC POLICY 481, 490 (Eldar Shafir, ed., 2013 (hereinafter BEHAVIORAL FOUNDATIONS)).

<sup>11</sup> Consider what insider trading defendant Thomas P. Flanagan’s attorney said about him before sentencing: “Mr. Flanagan’s insider trading represents an aberration from an otherwise exemplary life of devotion to family, church, community and charitable endeavors.” Andrew Harris, *Ex-Deloitte Partner Gets 21 Months for Insider Trading*, ACCT. TODAY WEB CPA, Oct. 29, 2012, at <http://www.accountingtoday.com/news/Ex-Deloitte-Partner-Gets-21-Months-Insider-Trades-64462-1.html?zkPrintable=true>. See also Dave Harmon & Shonda Novak, *New Details Emerge in Dead Investment Manager’s Financial Dealings*, Austin American-Statesman, June 20, 2013 (family friend describing Mark Powell, who had embezzled millions before committing suicide as “a friend and an incredible family man...just a quality dad, he loved his kids.”).

<sup>12</sup> JOHN M. DORIS, LACK OF CHARACTER 2 (2002) (“...situational factors are often better predictors of behavior than personal factors”); CORDELIA FINE, A MIND OF ITS OWN: HOW YOUR BRAIN DISTORTS AND DECEIVES 73 (2006) (“When we ignore the power of circumstances to overwhelm personality, we wind up misguidedly looking at a person’s character to explain their failure to uphold an ideally high standard of conduct...”).

<sup>13</sup> William D. Casebeer, *The Stores Markets Tell*, in MORAL MARKETS 3, 10 (Paul J. Zak, ed. 2008).

<sup>14</sup> DAVID DESTENO & PIERCARLO VALDESOLO, OUT OF CHARACTER: SURPRISING TRUTHS ABOUT THE LIAR, CHEAT, SINNE R(AND SAINT) LURKING IN ALL OF US 8 (2011).

<sup>15</sup> *Id.* at 12.

<sup>16</sup> *Id.* at 55.

teach others how to act more ethically. They are likely essential for people to reach their full potential as ethical beings. Because the empirical evidence indicates that the potential of these two approaches to transform is generally limited, however, many people interested in researching and teaching ethics have recently focused on a new field called *behavioral ethics*. This is the body of research that focuses on how and why people make the decisions that they do in the ethical realm. The findings of this research demonstrate, among other things, that context matters—that people of good character, even if they are skilled at moral reasoning, may do bad things because they are subject to psychological shortcomings or overwhelmed by social pressures, organizational stresses, and other situational factors. Behavioral ethics is primarily descriptive rather than normative. It describes why psychological heuristics and situational pressures can cause good people to do bad things.<sup>17</sup>

Behavioral ethics is arguably the “next big thing” in ethics teaching and research.<sup>18</sup> It has become the hot new item because its research agenda has produced much knowledge about how and why people choose and act when facing ethical issues that was previously unknown.<sup>19</sup> The work of Dan Ariely, Max Bazerman, Daylian Cain, David De Cremer, David DeSteno, Francesca Gino, George Loewenstein, David Messick, Lamar Pierce, Ann Tenbrunsel, Piercarlo Valdesolo, and many, many others has put ethics teachers in a position to describe more accurately than ever before the ethical decision making processes that people tend to use. And the flaws in those processes.

## PAVING THE WAY

Behavioral ethics can be taught in a multitude of ways; in this paper I describe my approach. It is a moving target. I have taught behavioral ethics for well over a decade and

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<sup>17</sup> See Joshua Margolis & Andrew Molinsky, *Three Practical Challenges of Moral Leadership*, in *MORAL LEADERSHIP* 77, 92 (2006) (“Social science has illuminated just how vulnerable we human beings are to act in unethical ways. Breathtaking findings sober us to just how much human behavior can be influenced by organizational features, social pressures, and cognitive tendencies.”).

<sup>18</sup> Although it is not quite that new, see Robert A. Prentice, *Teaching Ethics, Heuristics, and Biases*, 1 *J. BUS. ETHICS EDUC.* 57 (2004), it is still the most promising approach to improving ethical behavior.

After writing his 400-page moral history of the Twentieth Century, philosopher Jonathan Glover wrote that if we wish to avoid future atrocities of the types inflicted by Hitler, Stalin, Mao, Pol Pot, Charlie Company at My Lai and the like, “[i]t is to the psychology that we should now turn.” GLOVER, *supra* note 9, at 414. See also DORIS, *supra* note 12, at 146 (“Rather than striving to develop characters that will determine our behavior in ways substantially independent of circumstances, we should invest more of our energies in attending to the features of our environment that influence behavior outcomes.”); John Walsh, *The Convergence of Ethics and Compliance*, Corp. Counsel, July 9, 2013 (noting that “[t]he ultimate promise of behavioral ethics is that it provides pragmatic tools that have been demonstrated to work.”).

<sup>19</sup> See generally DAN ARIELY, *THE (HONEST) TRUTH ABOUT DISHONESTY* (2012); MAX H. BAZERMAN & ANN E. TENBRUNSEL, *BLIND SPOTS* (2011); DAVID DE CREMER, ED., *PSYCHOLOGICAL PERSPECTIVES ON ETHICAL BEHAVIOR AND DECISION MAKING* 2009); DAVID DE CREMER & ANN E. TENBRUNSEL, EDs. *BEHAVIORAL BUSINESS ETHICS: SHAPING AN EMERGING FIELD* (2012); DESTENO & VALDESOLO, *supra* note 14; JOHN DIENHART ET AL., EDs. *THE NEXT PHASE OF BUSINESS ETHICS: INTEGRATING PSYCHOLOGY AND ETHICS* (2001); FRANCESCA GINO, *SIDETRACKED: HOW OUR DECISIONS GET DERAILED AND HOW WE CAN STICK TO THE PLAN* (2013); MARGARET HEFFERNAN, *WILLFUL BLINDNESS: WHY WE IGNORE THE OBVIOUS AT OUR PERIL* (2011); DAVID M. MESSICK & ANN E. TENBRUNSEL, EDs., *CODES OF CONDUCT: BEHAVIORAL RESEARCH INTO BUSINESS ETHICS* 1996); DEBORAH L. RHODE, ED., *MORAL LEADERSHIP: THE THEORY AND PRACTICE OF POWER, JUDGMENT, AND POLICY* (2006); PATRICIA WERHANE, LAURA HARTMAN, ET AL., *OBSTACLES TO ETHICAL DECISION-MAKING: MENTAL MODELS, MILGRAM AND THE PROBLEM OF OBEDIENCE* (2013).

tinker with my approach every new semester. But this is how I do it currently. What I describe is a portion of the combination business law and business ethics class that I teach and it could play a role in any pure ethics course. A behavioral ethics unit could contain only part of what I describe in this article, or it could contain much more.

I teach behavioral ethics in a three-hour course that is one-third business ethics and two-thirds business law. It is, therefore, the equivalent of a single one-hour ethics course. I have experimented with different approaches--teaching behavioral ethics in a block at the beginning, in a block at the end, and also just scattered throughout the semester. My experience is that the behavioral ethics material has been best received when I taught it in a block at the end of the course. By the time we get to the ethics material, I have in several ways attempted to pave the way for a smooth transition into the material.

First, I work very hard to teach my class as well as I can, to demonstrate that I care about the students and to induce them to like and trust me to the extent possible. Ethics is sensitive material for many students and to the extent that I have earned their trust, they seem more receptive to the ethics material.

Second, I make it clear throughout the course that my goal is not to foist my personal opinions about the ethical issues of the day off onto the students. My goal is not to induce them to adopt my point of view on ethical issues. It is to help enable them to live up to their own ethical values to as great an extent as possible. This approach mitigates at least one reason why some students actively resist ethics education.

Third, I repeatedly point out throughout the first two-thirds of the semester during which I teach the law of business that there is substantial overlap between legal and ethical standards. If people are following legal rules, they are usually acting ethically. If people are violating legal rules, they are usually acting unethically. There are definitely situations where legal and ethics principles are not coextensive (think fugitive slave laws),<sup>20</sup> but in a civilized and democratic society they tend to be relatively few.

Fourth, early in the semester, I give students a few surveys. At the time, the reason for the surveys must seem pretty obscure to the students. But there is method to my madness. Our knowledge about behavioral ethics comes largely from studies in behavioral psychology. The results of some of the studies are surprising, to say the least. In order to help me later convince the students of the plausibility of the study results, I administer these surveys early in the semester. Eventually, I will use them to show that the students themselves will reliably give the same answers as the subjects in the studies we discuss at the end of the course.

For example, one of the most important points I hope to get through to students is that they probably are not as ethical as they think they are. *Humility* should be the word of the day in ethics classes. So in written surveys I ask half of the class to answer "true" or "false" to this statement: "I am satisfied with my moral character." And I ask the other half to answer similarly to this statement: "I am more ethical than my fellow students."

Surveys show that 92% of Americans are satisfied with their own moral character<sup>21</sup> and that 75-80% of Americans think themselves (against all statistical odds) more ethical than

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<sup>20</sup> Fruitful discussions today may be had regarding whether Julian Assange and Edward Snowden's conduct might raise similar issues.

<sup>21</sup> Marianne M. Jennings, *Ethics and Investment Management: True Reform*, FINANCIAL ANALYSTS JOURNAL, May/June 2005, at 45.



their peers.<sup>22</sup> Semester after semester, I receive similar results in my surveys. It is one thing for me to report to the students later in the semester that the average American is overly optimistic about his or her ethicality. It is a more persuasive thing to demonstrate to a classroom full of students that they have shown themselves to be similarly ill-calibrated.

Another key point that I try to get across ultimately is that when it seems to people that they are reasoning through to a conclusion regarding what is the moral course of action, often they are simply rationalizing a conclusion that the emotional parts of their brains have already reached. This is Daniel Kahneman “System One/System Two” stuff.<sup>23</sup> There is a mountain of evidence that people often make ethical judgments intuitively and nearly instantaneously (System One) and only later does the cognitive portion of their brains (System Two) activate. The cognitive centers may, but more commonly do not, overrule the judgment already made intuitively.<sup>24</sup> Among the strongest evidence for this conclusion is the concept of “moral dumbfounding,” the fact that people often reach strong ethical judgments that they cannot rationally defend.

To set this up, early in the semester I present the students with two of the famous trolley problem scenarios—half receive the “Denise scenario” and half the “Frank scenario”:

1. Denise is standing next to a switching lever near some trolley tracks when she sees an out-of-control trolley. The conductor has fainted and the trolley is headed toward five people walking on the track; the banks are so deep that they will not be able to get off the track in time. The track has a side track leading off to the left, and Denise can flip the switch and turn the trolley on to it. There is, however, one person on the left-hand track. Denise can turn the trolley, killing the one; or she can refrain from flipping the switch, letting the five die. *Is it morally permissible for Denise to flip the switch, turning the trolley onto the side track?*
2. Frank is on a footbridge over the trolley tracks. He knows trolleys and can see that the one approaching the bridge is out of control, with its conductor passed out. On the track under the bridge, there are five people; the banks are so steep that they will not be able to get off the track in time. Frank knows that the only way to stop an out-of-control trolley is to drop a very heavy weight into its path. But the only available, sufficiently heavy weight is a large person also watching the trolley from the footbridge. Frank can shove the large person onto the track in the path of the trolley, resulting in his death; or he can refrain from doing this, letting the five die. *Is it morally permissible for Frank to push the large person onto the tracks?*

Fairly reliably the great majority of my students will say that it is ethical for Denise to flip the switch (taking one life in order to save five) while a similarly large majority will say that it is *not* ethical for Frank to push the large man onto the tracks (taking one life in order to

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<sup>22</sup> Jeffrey R. Cohen et al., *An Exploratory Examination of International Differences in Auditors' Ethical Perceptions*, 7 J. ACCT. RES. 37 (1996).

<sup>23</sup> The trolley problem has been used by many scientists to study the human mind, but it traces back to Philippa Foot in 1967. Philippa Foot, *The Problem of Abortion and the Doctrine of the Double Effect*, in VIRTUES AND VICES AND OTHER ESSAYS IN MORAL PHILOSOPHY 19 (1978). See also Judith Jarvis Thomson, *The Trolley Problem*, 94 YALE L.J. 1395 (1985).

<sup>24</sup> See HAIT, RIGHTEOUS MIND, *supra* note 5, at 25.

save five).<sup>25</sup> My students have had numerous lengthy discussions in many different semesters and I have yet to hear a logically satisfactory reason why it is ethical for Denise to kill one to save five but not ethical for Frank to do so. But to me, as to most of my students, the two situations *feel* different. Indeed, the best explanation for the different conclusions that most people around the globe reach in these scenarios seems to be that different parts of their brains are activated when they envision somewhat impersonally pulling a switch as opposed to placing their hands upon a real person.<sup>26</sup> The latter is more direct and personal and therefore impacts people's emotions more significantly.<sup>27</sup> People cannot logically explain the difference, exhibiting "moral dumbfounding."<sup>28</sup>

## WHY IT IS IMPORTANT TO BE ETHICAL

### Class #1

When I finally turn my attention to ethics as a discrete topic, I spend most of an entire class period asking the students why anyone should care to act ethically. My experience is that virtually all of my students express a desire to act ethically and, for the most part, appear to mean it. They have little difficulty generating a multitude of reasons why they should act ethically. They don't want to be arrested. They don't want to do the perp walk on TV. They don't want to go to jail. They don't want to get fired. They don't wish to embarrass themselves or their parents. They produce innumerable reasons *not* to act *unethically*.

But there are many positive reasons to act ethically, as well. Students seem to have a good sense that ethical actions breed trust and that trust in a society is a key to economic growth.<sup>29</sup> They understand that by acting ethically they can contribute to the social capital that

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<sup>25</sup> My students' answers mirror those of people from every walk of life. See John Mikhail, "Moral Grammar and Human Rights: Some Reflections on Cognitive Science and Enlightenment Rationalism," available at <http://ssrn.com/abstract=1924915> (2011), p. 15 (finding that these moral intuitions are widely shared by people of different races, genders, ages, religions, national origins and levels of education).

<sup>26</sup> JESSE PRINZ, *THE EMOTIONAL CONSTRUCTION OF MORALS* 24-25 (2007) ("If I am right, we deliberate about moral dilemmas by pitting emotions against emotions. Conflicting rules have different emotional strength, and the stronger emotions win out....If subjects are told that they have to push the man off the bridge, only 31 percent say it is permissible, and if they are told they just need to pull a lever that opens a trap door, 63 percent think it's permissible. Diminishing the emotional intensity of the method of killing doubles the approval rating.").

<sup>27</sup> See Piercarlo Valdesolo & David DeSteno, *Manipulations of Emotional Context Shape Moral Judgment*, 17 *PHYSICAL SCI.* 576 (2006) (demonstrating impact of emotions on ethical judgments in the trolley scenario by demonstrating that changing people's moods by showing them a humorous video before asking them to judge the trolley scenario greatly affects their conclusions).

<sup>28</sup> See HAIDT, *RIGHTEOUS MIND*, *supra* note 5, at 24-25 (giving examples of studies where his subject "seemed to be *morally* dumbfounded—rendered speechless by at their inability to explain verbally what they knew intuitively."). See also NEIL LEVY, *NEUROETHICS: CHALLENGES FOR THE 21<sup>ST</sup> CENTURY* 312 (2007) ("Across all demographic groups, levels of education, ethnicities and both genders, people judge moral dilemmas similarly....However, across all demographic groups subjects were remarkably bad at *justifying* their reasoning....Even a majority of subjects who reported exposure to moral philosophy were unable to provide a sufficient justification of their actions."). However, Levy does find that people with more training are better at justifying their conclusion than those without.

<sup>29</sup> See Frank B. Cross, *Law and Trust*, 93 *GEO. L.J.* 1457, 1478 (2005) ("Trust itself is critical to economic success."); Philip Keefer, *Does Social Capital Have an Economic Payoff? A Cross-Country Investigation*, 112 *Q. J.*

makes societies and economies flourish.<sup>30</sup> It is always pleasing when students seem to appreciate this relationship.

What students sometimes do not already realize, but seem to quickly accept, is that doing good feels good.<sup>31</sup> Acting ethically is also a long-term strategy for success.<sup>32</sup> In many ways, acting ethically is its own reward.

Students can also easily generate reasons to act unethically, but these are all patently selfish rather than noble, short-term rather than long-term, shallow rather than thoughtful, and overall unattractive and often repellent. As the semester progresses, I frequently remind the students of the compelling case for doing the right thing that they themselves have constructed.

I also spend some time during this class period helping the students to construct a vision of the kind of moral person they wish to grow up to be. It is never too early for people to begin to construct their moral identity. The Socratic method for eliciting people's beliefs and values "is, even today, the best thing in philosophy."<sup>33</sup>

## THE SOURCE OF ETHICAL JUDGMENTS

### Class #2

A key lesson derived from research in the behavioral ethics field is that our ethical judgments are more emotion-based than we tend to realize.<sup>34</sup> As I explained earlier, I use the Frank and Denise trolley scenarios and the notion of moral dumbfounding to illustrate this

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ECON. 1251 (1997) (finding a relationship between trust and economic growth in countries); PIPPA NORRIS, DEMOCRATIC PHOENIX: REINVENTING POLITICAL ACTIVISM 156 (finding that trust is associated with socioeconomic development); Paul F. Whiteley, *Economic Growth and Social Capital*, 48 POL. STUD. 443, 444-452, 460 (2000) (finding trust closely related to economic growth in surveyed countries from 1970 to 1992); Paul J. Zak, *The Physiology of Moral Sentiments*, 77 J. ECON. BEHAV. & ORG. 1, 29 (2011) ("...trust reduces transaction costs, and we have shown that trust is a powerful force to impel economic growth through this route. Low trust, driven by social, political, and economic instability, obstructs growth."). *But see* Raymond H. Brescia, *Trust in the Shadows: Law, Behavior, and Financial Re-Regulation*, 57 BUFFALO L. REV. 1361, 1377 (2009) (arguing that the U.S. had too much trust that led in part to the recent financial crisis).

<sup>30</sup> See generally John S. Coleman, *Social Capital in the Production of Human Capital*, 94 AM. J. SOC. S95 (1988) (introducing and illustrating the concept of social capital and its importance).

<sup>31</sup> FRANS DE WAAL, THE BONOBO AND THE ATHEIST: IN SEARCH OF HUMANISM AMONG THE PRIMATES 49 (2013) ("...when normal people aid others, brain areas associated with reward are activated. Doing good feels good."); RICHARD LAYARD, HAPPINESS: LESSONS FROM A NEW SCIENCE 101 (2005) (noting that MRI scanners reveal that behaving well makes people feel good); PETER SINGER, THE LIFE YOU CAN SAVE (2009) (noting psychological studies finding that donating blood, volunteering and doing other good acts makes people feel good about themselves).

<sup>32</sup> ADAM GRANT, GIVE AND TAKE: A REVOLUTIONARY APPROACH TO SUCCESS (2013) (providing plentiful evidence that "givers" often gain more success in numerous endeavors in life than "takers").

<sup>33</sup> GLOVER, *supra* note 9, at 27.

<sup>34</sup> Joshua Greene et al., *An fMRI Investigation of Emotional Engagement in Moral Judgment*, 293 SCIENCE 2105 (2001) (finding significant emotional explanation for differences in people's reaction to different trolley scenarios).

point. As another example, consider these two scenarios which I often include in early-semester surveys:

1. Tilly is a pathologist. Late one night she was alone in the lab performing an autopsy. She was extremely hungry, but wanted to finish her work before she left for the evening. She notices some strips of flesh left from an earlier autopsy. She cooked the flesh on a Bunsen burner and ate it, then finished her work. *Did Tilly act immorally?*
2. Rex and Sarah were brother and sister, both in their late 20s. They had always been close. One evening after they watched a movie in Rex's apartment, they decided to have sexual relations, reasoning that it would make their relationship even closer and more special. They took all necessary precautions. They never chose to have sex again. *Did they act immorally?*

These scenarios tend to produce more moral dumbfounding.<sup>35</sup> Most students feel adamantly that Tilly, Rex, and Sarah have acted immorally. However, because there is no victim in either situation, they have huge difficulty producing a rational reason to support their emotionally-driven conclusion. After lengthy discussion, most students become receptive to the view that many of their moral judgments are not cognitively-based.

Among the emotions that help people act ethically are the inner-directed emotions of guilt (which they tend to feel when they act immorally) and shame (which they tend to feel when others discover that they have acted immorally). Outer-directed emotions include anger and disgust, which people tend to feel toward others who violate accepted moral standards.<sup>36</sup>

It is the emotion of disgust that is triggered in both the cannibalism and incest scenarios. When those emotions are triggered, moral condemnation often follows. Daniel Kelly argues that disgust evolved to keep people from eating poison and from exposing themselves to germs (contained in rotting meat, for example),<sup>37</sup> and was later co-opted to morals:

There is an increasingly convincing case to be made that social norms are a crucial ingredient in humans' ability to cooperate on a large scale. Moreover, many theorists have argued that humans are equipped with dedicated cognitive machinery associated with social norms. Indeed, research has shown that disgust is the relevant emotion in certain types of norms, including table etiquette rules, meat taboos, and incest taboos.

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<sup>35</sup> See Jonathan Haidt, *The Emotional Dog and Its Rational Tail: A Social Intuitionist Approach to Moral Judgment*, 108 PSYCHOL. REV. 814 (2001) (reporting research supporting the view that moral judgment is generally the result of quick, automatic evaluations).

<sup>36</sup> Pinker is a little more detailed in this passage:

The other-condemning emotions—contempt, anger, and disgust—prompt one to punish cheaters. The other-praising emotions—gratitude and an emotion that may be called elevation, moral awe, or being moved—prompt one to reward altruists. The other-suffering emotions—sympathy, compassion, and empathy—prompt one to help a needy beneficiary. And the self-conscious emotions—guilt, shame, and embarrassment—prompt one to avoid cheating or to repair its effects.

STEVEN PINKER, *THE BLANK SLATE: THE MODERN DENIAL OF HUMAN NATURE* 271 (2002).

<sup>37</sup> DANIEL KELLY, *YUCK! THE NATURE AND MORAL SIGNIFICANCE OF DISGUST* 102 (2011).

Cultural psychologists have also identified an important class of norms [called purity norms] that are linked to and follow the logic of disgust.<sup>38</sup>

As noted earlier, when people feel that they are reasoning to a moral conclusion, often times they are simply trying to develop rationalizations for conclusions that their minds' System One has already intuitively reached. Studies indicate that "reason is a fairly weak instrument compared to the Stradivarius of our emotions."<sup>39</sup>

It is critical for students to understand the role of emotions in moral judgments, especially because the judgments that emotions produce are not always correct. While anyone would be foolish to simply ignore that feeling people get in the pits of their stomachs when they are considering breaking a rule, Matousek notes that "the moral sense, though hardwired, is not always right."<sup>40</sup> Kelly is emphatic that "the fact that something is disgusting is not even remotely a reliable indicator of moral foul play."<sup>41</sup> Only if students are aware that their emotional responses may lead them to inaccurate judgments and inappropriate actions can they guard against this widespread tendency. Thoughtful analysis and decision making is not always second nature to people, but it can be practiced and implemented.<sup>42</sup>

A big part of the reason to teach the role of emotions in ethical decision making is to begin to plant the seed for students to ultimately reach a conclusion that is very hard for them to reach: their ethical judgments and actions are not nearly as reason-based as it seems to them, a fact which has very important implications for the person who wishes to act ethically.

## **BREAKING DOWN DEFENSES: PART ONE**

Class #3

Behavioral ethics research reveals not only how people make ethical (and unethical) decisions, but also how they think they make these decisions, which turns out not to be at all how they actually make them. That people's decision making processes are relatively opaque

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<sup>38</sup> *Id.* at 144.

<sup>39</sup> MARK MATOUSEK, *ETHICAL WISDOM: THE SEARCH FOR A MORAL LIFE* 99 (2011). *See also* JOHN MIKHAIL: *ELEMENTS OF MORAL COGNITION* 319-50 (2011) (reporting the results of seven studies that "constitute significant evidence that adults possess intuitive or unconscious knowledge of complex moral principles...[and one study providing] some evidence for inferring that the same may be true of children ages 8-12.)."

<sup>40</sup> MATOUSEK, *supra* note 39, at 86.

<sup>41</sup> KELLY, *supra* note 37, at 148. He goes on to note that "the moral significance that should be assigned to the fact that people are disgusted by [something] is: none." *Id.* at 149.

<sup>42</sup> MAHZARIN R. BANAJI & ANTHONY G. GREENWALD, *BLINDSPOT: HIDDEN BIASES OF GOOD PEOPLE* 70 (2013) ("Although our focus has been on the power of the unconscious mind, we do not mean to suggest that such thoughts cannot be overruled. When it comes to seeking change, the reflective, conscious side of the brain—the side of the brain—that is unique to humankind—is more than capable of doing the necessary work. Its power derives from its ability to observe itself and to use those observations to guide conscious action. The reflective aspects of our mind allow us to imagine a future that improves on the present state of affairs, and to achieve settled-upon and consciously chosen goals and values.").

to them presents a problem for those who wish to act ethically. For the ethics professor, convincing students of their vulnerability to ethical lapses is often a significant hurdle.

As noted, when I teach ethics I always emphasize the word “humility,” for if there is one major finding in business ethics research over the past decade it is that most people want to and do think of themselves as ethical people and yet simultaneously often lie a little and cheat a little to advantage themselves in ways that are inconsistent with their mental vision of themselves.<sup>43</sup> Francesca Gino observes: “The empirical evidence seems to point to the conclusion that we lie and cheat much more often than we care to admit. At the same time, we strive to maintain a positive image of ourselves, and moral values are a central component of our self-image.”<sup>44</sup> Reporting on a number of experiments he had done, Dan Ariely agreed: “Essentially, we cheat up to the level that allows us to retain our self-image as reasonably honest individuals.”<sup>45</sup> Matousek adds:

Evolution prepared us humans to be devious, self-serving, and only half-honest, inclined to grab the lion’s share of goodies without being thrown out of the group. Homo sapiens became wired for truthfulness only to the extent that it suited us, pleased others, and preserved our reputations. We are willing to break rules to benefit ourselves, but only within limits we can justify. We are good and fair, most of the time—at least in our own minds—but that doesn’t exactly make us straight shooters. ....Our internal cop stops us only when we contemplated big transgressions.<sup>46</sup>

How is that people can simultaneously do bad things, yet think of themselves as good people? Their accomplice is their brain, which manipulates frames of reference, compartmentalizes thoughts and actions, conjures up rationalizations, manufactures memories, and otherwise shades perceived reality in self-serving ways.<sup>47</sup>

To make the point vivid and credible, I demonstrate how the mind can fool our visual sense via optical illusions. My favorite, often called the Shepard’s tabletop illusion, is a picture of two table surfaces, one of which appears to be nearly a square and the other appears to be much more rectangular. However, when people are asked to put a piece of paper over each and trace the shapes, they learn that the two table surfaces are exactly the same shape. The tabletops simply appear dramatically different because of how our brains process them because of the different perspectives from which they were drawn.<sup>48</sup>

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<sup>43</sup> GINO, *supra* note 19, at 11 (“Virtually all of us have a strong desire to behave morally and to be viewed by others as honest. That’s our plan: we want to choose the right path when facing complex ethical choices. And yet, as the results of these experiments indicate, subtle factors can lead us astray.”)

<sup>44</sup> *Id.* at 203.

<sup>45</sup> ARIELY, *supra* note 19, at 23.

<sup>46</sup> MATOUSEK, *supra* note 39, at 112-13.

<sup>47</sup> See generally *id.*, at 94-113.

<sup>48</sup> There are many examples of this illusion on the Internet. See, e.g., [http://www.google.com/imgres?imgurl=http://www.moillusions.com/wp-content/uploads/1.bp.blogspot.com/\\_cxmptAPYR-s/RwQtJZIUW2I/AAAAAAAAABak/ps0\\_IjwMCA0/s400/tables1.jpg&imgrefurl=http://www.moillusions.com/2007/10/win-tables-optical-illusion.html&h=242&w=400&sz=26&tbnid=OQvIz9ezyFrCLM:&tbnh=90&tbnw=149&prev=/search%3Fq%3Doptical%2Billusion%2Btable%2Btops%26tbm%3Disch%26tbo%3Du&zoom=1&q=optical+illusion+table+tops&sg=\\_\\_tcz3Ju5STNPosrGcDZXMQBc6Q0Q=&docid=wdYQRILnEHZCAM&sa=X&ei=Isa5UbXABZH8AT2rIDQAg&ved=0CFMO9QEwAg&dur=4861](http://www.google.com/imgres?imgurl=http://www.moillusions.com/wp-content/uploads/1.bp.blogspot.com/_cxmptAPYR-s/RwQtJZIUW2I/AAAAAAAAABak/ps0_IjwMCA0/s400/tables1.jpg&imgrefurl=http://www.moillusions.com/2007/10/win-tables-optical-illusion.html&h=242&w=400&sz=26&tbnid=OQvIz9ezyFrCLM:&tbnh=90&tbnw=149&prev=/search%3Fq%3Doptical%2Billusion%2Btable%2Btops%26tbm%3Disch%26tbo%3Du&zoom=1&q=optical+illusion+table+tops&sg=__tcz3Ju5STNPosrGcDZXMQBc6Q0Q=&docid=wdYQRILnEHZCAM&sa=X&ei=Isa5UbXABZH8AT2rIDQAg&ved=0CFMO9QEwAg&dur=4861).

I also show the students an aural illusion in the form of the McGurk effect, which is created when someone is filmed saying, for example, “ga, ga, ga,” but a soundtrack is inserted in which the person is saying “ba, ba, ba.” A person’s eyes, which are watching the speaker’s lips, signal the brain that the person is saying “ga, ga, ga.” But the ears are signaling the brain that he is saying “ba, ba, ba.” If people close their eyes, they will definitely hear “ba, ba, ba.” But if their eyes are open, they may well hear “da, da, da” or, sometimes, some garbled sound that the brain has simply made up in the face of the conflicting signals that it received.<sup>49</sup>

There are even tactile illusions that one can demonstrate in class,<sup>50</sup> paving the way for me to argue to my students that if the brain can fool people’s visual, aural, and tactile senses, it can probably fool their moral sense as well. While the mechanisms by which these various illusions occur obviously vary dramatically by type, I am simply trying to open the students’ minds to the notion that in the realm of ethical judgments, as in so many others, things are not always as they seem.

## **BREAKING DOWN DEFENSES: PART TWO**

I know from experience that it is difficult to convince students that they are not as ethical as they think they are, so I launch a second assault upon the illusions that their brains construct that assure most people that their moral sense is intact and unerring. I again begin with a survey that asks two true/false questions:

1. T F  
I have solid, well-considered ethical beliefs that can be altered only by reasoned arguments or new evidence.
  
2. T F  
I have character and integrity that will carry me through when I face difficult moral choices.

My experience with audiences of up to 200 is that a few people may abstain when asked this question, but almost everyone else will answer both questions as true. And that is what it seems to them. They believe these statements to be true. And, I concede, they are mostly true for most people most of the time. Very few of them will have taken candy from a baby or mugged a little old lady that day. But for most people, the statements are almost surely false enough times to create a meaningful gap between their actual behavior and their view of themselves as moral beings.

### **Ethical Beliefs and Judgments**

Envision a scale running from One to Ten, rating actions on a range from very unethical to very ethical:

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<sup>49</sup> Again, there are several examples of the McGurk effect available online for viewing. See, e.g., <http://www.youtube.com/watch?v=aFPtc8BVdJk>.

<sup>50</sup> See, e.g., <http://www.newscientist.com/special/tactile-illusions>.

← 1---2---3---4---5---6---7---8---9---10 →  
**Very Unethical** **Very Ethical**

It seems to most people that their ethical beliefs and judgments are based on reason rather than emotion and that if asked about the ethicality of insider trading or tax evasion or adultery, they would undoubtedly rate the activity as a “2” or a “7” or some other number any time they were asked. However, a psychologist can move people’s judgments up and down this scale quite easily by changing psychological influences and situational factors. I could give many, many examples, but in class I typically settle for just a few.

Consider the *self-serving bias*, which is the tendency people have to gather, process, and even remember information in such a way as to serve their perceived self-interest and to support their preexisting beliefs. In a February 2013 lecture, I suggested that a person’s views on gay marriage might well change if his or her child came out of the closet, sliding from the very unethical end of the scale toward the other end. Within a month of that lecture, Senator Rob Portman (R-Ohio) announced that he had switched from opposing gay marriage to supporting it because his son had announced that he was gay.<sup>51</sup> When we think about Senator Portman’s changed factual world, people are not surprised that he changed his ethical beliefs regarding gay marriage. But they are still slow to see how they themselves might be similarly affected.<sup>52</sup> But studies show that they likely will be. For example, studies show that people’s views as to the unethicality of a chain store sourcing its clothes from suppliers using child labor will tend to moderate if they find some cute clothes that they really want to buy.<sup>53</sup>

Emotions play a big role in people’s ethical judgments, yet they tend not to realize it. I have already noted the role that disgust plays, for example. Studies show that by simply treating a room with “fart spray”<sup>54</sup> or even just leaving used tissues around,<sup>55</sup> one can trigger the disgust emotion and thereby make people’s ethical judgments harsher than they otherwise would be. On the other hand, one can dramatically change people’s answers in the trolley scenario by the simple expedient of having them watch humorous videos before they are presented with the ethical dilemma.<sup>56</sup> When subjects’ moods are altered, their judgment as to what is morally permissible is often also altered.<sup>57</sup> As with the self-serving bias, it is unlikely that people will even notice the impact of emotions on their ethical judgments.

<sup>51</sup> *All Politics is Personal* (editorial), WASH. POST, Mar. 19, 2013, at A12.

<sup>52</sup> Tigran W. Eldred, *Prescriptions for Ethical Blindness: Improving Advocacy for Indigent Defendants in Criminal Cases* 31 (Sept. 2012), available at <http://ssrn.com/abstract=2153869>. (noting that people have a stubborn belief that they will not be influenced by the self-serving bias, even though others will be). See also LEONARD MLODINOW, *SUBLIMINAL: HOW YOUR UNCONSCIOUS MIND RULES YOUR BEHAVIOR* 199 (2012) (“Ironically, people tend to recognize that inflated self-assessment and overconfidence can be a problem—but only in others.”).

<sup>53</sup> Neeru Paharia & Rohit Deshpande, “Sweatshop Labor is Wrong Unless the Jeans are Cute: Motivated Moral Disengagement,” (2009), available at <http://ssrn.com/abstract=1325423>.

<sup>54</sup> Dimone Schnall et al., *Disgust as Embodied Moral Judgment*, 34 *PERSONALITY & SOC. PSYCHOL. BULL.* 1096, 1099 (Aug. 2008) (No. 8).

<sup>55</sup> DESTENO & VALDESOLO, *supra* note 19, at 50 (“...the participants who made their decisions in the messy room overwhelmingly rated each possible moral transgression as far more reprehensible than did their counterparts in the clean condition.”).

<sup>56</sup> See *id.*, at 476.

<sup>57</sup> See Michaelis Drouvelis & Nattavudh Powdthavee, “Are Happier People Less Judgmental of Other People’s Selfish Behaviors? Laboratory Evidence from Trust and Gift Exchange Games,” available at



Consider *role morality* and *framing*. How people judge the morality of an action often depends substantially upon the role they perceive that they are playing while making the decision. Consider this scenario:

ABC Drug Company's most profitable drug, its internal studies indicate, causes 14-22 "unnecessary" deaths a year. Competitors offer a safe medication with the same benefits at the same price. If regulators knew of the internal study, they would ban sale of the drug.

*Is it ethical for ABC to continue to sell the drug?*

In the original study, ninety-seven percent of people asked this question judged that it was unethical for ABC to continue to sell the drug.<sup>58</sup> My students typically agree, nearly unanimously. However, when subjects were told that they were on the ABC's board of directors and they were presented with these facts and asked what they would do, not one of 57 control groups in the original study was willing to remove the drug from the market, and 80% chose to hire lawyers and lobbyists to ensure that ABC could continue to sell the drug.<sup>59</sup> When playing the role of evaluators of ABC's actions, people framed the issue as an ethical one, and judged with near unanimity that it was an unethical course of action. But when playing the role of ABC directors, they framed the issue as a business decision and were more than happy to plunge ahead with this unethical action.

The in-group/out-group phenomenon is another factor that can change people's ethical judgments without their being aware of it. When people judge the actions of people they perceive to be in their in-group a different part of the brain is used than when they judge the actions of perceived out-group members. People will not be consciously aware of this difference, but it will cause them to tend to judge the actions of perceived out-group members more harshly than those of perceived in-group members.<sup>60</sup>

And it is surprising how easily people can identify others as being part of their in-group or out-group. In one experiment, participants who arrived one at a time at the lab were told that the experimenter needed two tasks done. Another participant (let's call him "Sam")

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<http://ssrn.com/abstract=2296302> , p.17 (July 2013) ("...moral judgments appear to be themselves functions of positive emotions...induced positive affects moderate the moral judgments of other people's selfish behaviors in a certain direction: They lead subjects to make less negative moral appraisals.").

<sup>58</sup> J. Scott Armstrong, *Social Irresponsibility in Management*, 5 J. BUS. RES. 185, 197 (Sept. 1977).

<sup>59</sup> *Id.* at 200.

<sup>60</sup> See PO BRONSON & ASHLEY MERRYMAN, TOP DOG: THE SCIENCE OF WINNING AND LOSING 195-96 (2013):

Researchers have put participants in fMRIs to see if being on a team changes brain function. They found that it does, even if you are just a spectator. If you're a Red Sox fan, watching a Sox game, you're [196] using a different region of the brain to judge if a runner is safe than you would if you were watching a game between two teams you didn't care about. When it's neutral teams, you are a rational being, using the decision-making parts of the brain. When it's your team, obviously emotional parts of the brain are active. But those neutral decision-making areas disengage and, instead, you're using the inferior parietal lobe (IPL), which governs 'mirror processing.' Your brain is functioning as if it were you doing the action. On a neurological level, it isn't your teammate but you yourself who is sliding home.

See also BANAJI & GREENWALD, *supra* note 42, at 138 ("The brain, it turns out, engages two different clusters of neurons in thinking about other people, and which cluster gets activated depends on the degree to which one identifies with those others.").

had already arrived, the participants were told, and had been given a more difficult and time-consuming task. Participants were told that when they finished their assigned task, which was easier and less time-consuming than Sam's, they could, if they chose, stay around to help Sam. Because the participants did not know Sam and were not rewarded for helping him, only 16% stayed around to help.

But in another iteration of the study, the subjects were first asked to estimate the distance between two cities. They were then told that they had either overestimated or underestimated the distance and that, by the way, Sam also overestimated (or underestimated) the distance. Then the subjects were told about the two tasks and that they could hang around to help Sam when they finished. Just believing that they and Sam were both "overestimators" (or "underestimators") was enough for more participants to perceive Sam as part of their in-group and to raise the percentage of subjects who stayed around to help Sam from 16% to 58%.<sup>61</sup>

Again, there are many other examples, but these should make the point that although it seems to people that their moral views are rational and fixed and subject to change only upon exposure to new evidence or persuasive new arguments, in truth all manner of factors can move people's beliefs up and down the scale.

## **Ethical Decisions and Actions**

Similarly, while it seems to most people that they have rock solid character that will carry them through difficult ethical dilemmas, in fact the same types of factors that affect people's judgments and beliefs naturally affect their moral decisions and actions as well.

### **Environmental Factors**

Subtle differences in the environment can cause people to act either more or less ethically (depending). And they likely will not even notice the difference.

### ***Time Pressure***

Consider a very simple situational factor—time pressure. In a very interesting study, psychologists told seminary students that they needed to go across campus to give a talk to a group of visitors, perhaps about the parable of the Good Samaritan. As they crossed campus to give the talk, the students happened upon a fellow lying by the sidewalk in obvious distress—in need of a Good Samaritan. If they were not under time pressure, almost all the seminary students stopped to help this fellow (who had, of course, been placed there by the experimenters). If students were placed in a "low-hurry" condition, only 63 percent offered help. If they were put in a "medium-hurry" condition, only 45 percent helped. And if asked to

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<sup>61</sup> *Id.* at 136-37. See also ARIELY, *supra* note 19, at 207 ("More generally, these results show how crucial other people are in defining acceptable boundaries for our own behavior, including cheating. As long as we see other members of our own social groups behaving in ways that are outside the acceptable range, it's likely that we too will recalibrate our internal moral compass and adopt their behavior as a model for our own. And if the member of our in-group happens to be an authority figure—a parent, boss, teacher, or someone else we respect—chances are even higher that we'll be dragged along.").

really hurry and put in a “high-hurry” condition, only 10 percent stopped to help.<sup>62</sup> Certainly the students involved in the study did not consciously realize how the time pressure they were under dramatically affected their ethical conduct, but it clearly did.

### ***Transparency***

Or consider another situational factor—transparency. Studies by Francesca Gino and colleagues indicate that conditions creating what she calls “illusory anonymity” will increase cheating. In one study, the experimenters gave two similar groups of people tasks to perform and then allowed them to self-report their results and claim rewards. One of the rooms was dimly lit. About 24 percent of the participants in the well-lit room cheated, whereas almost 61 percent of the participants in the dimly lit room cheated.<sup>63</sup> Other studies by Gino and colleagues showed that the illusion of anonymity conferred by wearing sunglasses also increased morally questionable behavior.<sup>64</sup>

It is clear that people will act more ethically when they are being observed.<sup>65</sup> They will also act more ethically, as the Gino sunglasses study demonstrates, if they have the feeling that they are being observed. One clever study involved a lounge where employees could help themselves to tea and coffee and had the option to pay for them (or not) via an “honesty box.” In months when drawings of eyes were on the wall near the drinks, the feeling that they were being watched motivated the employees to pay three times as much on average for their drinks as they paid in alternative months when the eyes were replaced by a picture of a flower.<sup>66</sup>

**Class #4**

### **Psychological, Cognitive and Other Factors**

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<sup>62</sup> John M. Darley & C. Daniel Batson, “From Jerusalem to Jericho”: A Study of Situational and Dispositional Variables in Helping Behavior, 27 J. PERSONALITY & SOC. PSYCHOL. 100 (1963).

<sup>63</sup> GINO, *supra* note 19, at 201.

<sup>64</sup> *Id.* at 202-03.

<sup>65</sup> See Robert Kurzban, *The Social Psychophysics of Cooperation: Nonverbal Communication in a Public Goods Game*, 25 J. NONVERBAL BEHAV. 241 (2001) (finding that eye contact led to more prosocial behavior). See also Keise Izuma et al., *Insensitivity to Social Reputation in Autism*, 108 PNAS 17302 (Oct. 18, 2011) (finding that subjects were more generous when observed by others, unless they had autism); Jennifer Jacquet et al., *Shame and Honour Drive Cooperation*, 7 BIOL. LETT. 899 (2011) (finding that announcing which two members of a group gave the most (honor) motivated greater giving than in an anonymous setting, but announcing which two member gave the least (shame) motivated even more giving).

<sup>66</sup> Melissa Bateson et al., *Cues of Being Watched Enhance Cooperation in a Real-World Setting*, 2 BIOL. LETT. 412 (2006). See also Kevin Haley & Daniel M.T. Fessler, *Nobody’s Watching? Subtle Cues Affect Generosity in an Anonymous Economic Game*, 26 EVOLUTION & HUM. BEHAV. 245 (2005); Terence Burnham & Brian Hare, *Engineering Human Cooperation: Does Involuntary Neural Activation Increase Public Goods Contributions?*, 18 HUM. NAT. 88 (2007) (finding that human-like eyes located in a robot were sufficient to cause subject to increase prosocial behavior); Daniel Nettle et al., *The Watching Eyes Effect in the Dictator Game: It’s Not How Much You Give, It’s Being Seen to Give Something*, 34 EVOLUTION & HUM. BEHAV. 35 (2013) (finding that images of eyes caused a higher percentage of people to give, but the average amount they gave did not rise). But see Ernst Fehr & Frederic Schneider, *Eyes Are on Us, But Nobody Cares: Are Eye Cues Relevant for Strong Reciprocity?*, 277 PROC. ROYAL SOC. B 1315 (2009) (not finding strong prosocial effect from drawing of eyes staring at subjects).

Studies from behavioral ethics, behavioral psychology, cognitive science and related fields make it clear that people are not the rational thinkers often modeled by economists. I noted above that changes in emotions can change people's moral judgments; they can also change people's moral actions.<sup>67</sup> Indeed, a raft of psychological factors often affect people's decision making, including their decision making about moral and ethical issues. When I use the following hiccups in rational thinking to explore with students how their moral decisions and actions might not align with their overall desire to be good people, the discussion tends to resonate with them. Virtually all students have already had experiences that enable them to relate to these psychological points. In class I often go through several, but not all of these. I often supplement my discussion with viewings of the free ethics education videos available at [Ethicsunwrapped.utexas.edu](http://Ethicsunwrapped.utexas.edu) website (also easily accessible through YouTube) that illustrate these concepts. For those I do not discuss in class, I typically assign the students to watch the relevant videos at the [Ethicsunwrapped](http://Ethicsunwrapped) website.

### ***Obedience to Authority***

Many successful students realize that they are “pleasers,” so they can understand how strong the motive to please authority can be. A description (perhaps through a video<sup>68</sup>) of the “Milgram experiment” is a good place to start.<sup>69</sup> Many students are already familiar with at least the rough outlines of this experiment which Milgram used to study whether Americans might be as obedient to authority as the German people seemed to be under Hitler. The question addressed was whether subjects would deliver apparently painful electric shocks to another person who had missed a question in a supposed test of whether negative reinforcement through electric shocks would improve memory, just because some guy in a lab coat told them to. Although people predicted before the experiment was run that very few American subjects would show excessive obedience to authority, in actuality:

*All of Milgram's participants—who were well-adjusted, well-intentioned people—delivered electric shocks to victims who seemingly were in great pain, complaining of heart problems, or even apparently unconscious. Over 60 percent of participants delivered the maximum shock.*<sup>70</sup>

Perhaps this should not have been too surprising. The pleasure centers of human brains light up when they please authority.<sup>71</sup> People are conditioned from childhood to please authority figures—parents, teachers, and the police officer down the block. It is well for

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<sup>67</sup> See Georg Kirchsteiger, *Your Morals Might Be Your Moods*, 59 J. ECON. BEHAV. & ORG. 155 (2006) (reporting results of experiment showing that differences in mood create large differences in generosity and cooperative behavior).

<sup>68</sup> See, e.g., [http://www.youtube.com/watch?v=pdb20gcc\\_Ns](http://www.youtube.com/watch?v=pdb20gcc_Ns).

<sup>69</sup> STANLEY MILGRAM, *OBEDIENCE TO AUTHORITY* (1974).

<sup>70</sup> GINO, *supra* note 19, at 206-07.

<sup>71</sup> See MATOUSEK, *supra* note 39, at 179 (“Unfortunately, we’re hardwired to follow the leader, even when the leader is cruel or damaged, or intoxicated by being on top. Obedience can be a beautiful thing when leaders are trustworthy and conscientious. But when they’re arrogant, greedy, aggressive people, evil is unleashed in the world. ‘We may not be certain what is at the heart of darkness, but we do know what keeps it beating—obedience,’ wrote Iris Makler.”).

societal order that people are generally interested in being obedient to authority,<sup>72</sup> but if that causes them to suspend their own independent ethical judgment, problems can obviously result.<sup>73</sup>

Sometimes people suspend their own ethical standards in order to please authority as a matter of conscious self-interest. The authority figure has their future in his or her hands and so they ignore their own ethical standards in order to advance their careers. A classic example of this is probably Henry Blodget and other stock analysts during the dot.com boom. Their private e-mails indicated that they were recommending stocks that they did not believe in. Although they were uncomfortable doing so, they did it to advance their personal careers that could easily be derailed if they did not “play ball” with their superiors who were trying to drum up investment banking business.<sup>74</sup> It is easy for people to rationalize that they are not truly responsible for the misdeeds they commit if they do them in service of an authority figure.<sup>75</sup> The desire to please authority is probably the reason CFOs are more likely to be involved in manipulating earnings when it benefits their CEO than when it benefits themselves.<sup>76</sup>

More worrisome is the subordinate who focuses so intently upon pleasing a superior that he or she doesn't even see the ethical issue involved because the ethical aspect of the question seems to fade into the background. Egil “Bud” Krogh, who worked in the Nixon White House and headed the “Plumbers Unit” as its members broke into the office of Daniel Ellsberg's psychiatrist, provides a good example. Krogh was so intent upon pleasing his superiors that he never activated his own independent ethical judgment.<sup>77</sup> Only later, when people started being indicted, did Krogh look at what he had done through an ethical lens.<sup>78</sup>

### ***Conformity Bias***

It is likely an evolutionarily sound strategy for people to take their cues for behavior from those around them, but they can take this too far, especially when they suspend their own independent ethical judgment and defer to the crowd. Students are usually interested in the famous Solomon Asch study, in which he asked people which line out of three lines of varying length, was the same length as a fourth line nearby.<sup>79</sup> The answer was easy. It was right there in black and white. Virtually everyone got it right, except under one of Asch's experimental conditions in which several confederates gave an obviously wrong answer which prompted 65%

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<sup>72</sup> GLOVER, *supra* note 9, at 335.

<sup>73</sup> In his studies of Hitler, Stalin, Mao, and Pol Pot, Glover demonstrates with terrifying clarity that “[t]here is a widespread human willingness to obey even terrible orders.” *Id.* at 332.

<sup>74</sup> FRANK PARTNOY, *INFECTIOUS GREED: HOW DECEIT AND RISK CORRUPTED THE FINANCIAL MARKETS* 288-91 (2003) (exploring examples of situations where analysts recommended stock they did not believe in so that they could please their bosses).

<sup>75</sup> See Pamela R. Murphy & Brian W. Mayhew, “The Impact of Authority on Reporting Behavior, Affect, and Rationalization,” available at [ssrn.com/abstract=2026449](http://ssrn.com/abstract=2026449) (2013).

<sup>76</sup> Mei Feng et al., “Why Do CFOs Become Involved in Material Accounting Manipulations (2010), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1260368](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1260368).

<sup>77</sup> EGIL “BUD” KROGH, *INTEGRITY: GOOD PEOPLE, BAD CHOICES AND LIFE LESSONS FROM THE WHITE HOUSE* 136, 137, 187, 188, 196 (2007).

<sup>78</sup> To his credit, once Krogh took a sober look at his actions, he realized his serious mistakes and set about to remedy them. *Id.* at 129-138.

<sup>79</sup> There are several videos about this experiment on YouTube, including: <http://www.youtube.com/watch?v=TYIh4MkcfJA>.

or so of subjects in the experiment to give at least one obviously wrong answer just to fit in with the crowd.<sup>80</sup>

In a later study involving brain scans, Berns and colleagues found not only a similar effect, but also that those who gave wrong answers in order to conform to a group's wrong decision "showed less activity in the frontal, decision-making regions and more in the areas of the brain associated with perception. Peer pressure, in other words, is not only unpleasant, but can actually change one's view of a problem."<sup>81</sup> Subjects were not hiding their true beliefs in order to fit in. Rather, the answers of the experimenter's confederates actually changed the subjects' beliefs.

As Sunstein has noted, "social norms have an independent effect; whether people smoke cigarettes, exercise, buckle their seat belts, text while driving, eat healthy foods, or enroll in a retirement plan is significantly influenced by the perceived norm within the relevant group."<sup>82</sup> The pull to conform to the group can be extremely strong:

Ostracism makes individuals feel they lack purpose, have less control over their lives, are less good moral beings, and lack self-worth....

This is so fundamental a part of our evolutionary makeup that it is strong enough to make us give the wrong answers to questions, as in Asch's line of experiments, and *strong enough to make us disregard the moral lessons we've learned and absorbed since childhood*. The carrot of belonging and the stick of exclusion are powerful enough to blind us to the consequences of our actions.<sup>83</sup>

People who join new workplaces look to their co-employees for cues as to appropriate work behavior,<sup>84</sup> and, unsurprisingly, if they perceive coworkers acting unethically, they will be more likely to do so themselves.<sup>85</sup> When people believe that their peers are predominantly untruthful in a given situation, they often tend to be untruthful as well; dishonesty is contagious.<sup>86</sup> When officials at the Petrified Forest attempted to discourage pilfering by posting a sign regarding the large amount of pilfering that was occurring, pilfering tripled because it now seemed the norm.<sup>87</sup> One of the most striking studies for college students involves an experiment where students seeing cheating by another student were *more likely* to cheat themselves if that

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<sup>80</sup> Solomon Asch, *Studies of Independence and Conformity: I. A Minority of One Against a Unanimous Majority*, 70 PSYCHOL. MONOGRAPHS 31 (No. 9, 1956).

<sup>81</sup> Gregory S. Berns et al., *Neurobiological Correlates of Social Conformity and Independence During Mental Rotation*, 58 BIOLOGICAL PSYCHIATRY 245 (2005). See also GREGORY S. BERNs, *ICONOCLAST: A NEUROSCIENTIST REVEALS HOW TO THINK DIFFERENTLY* 59-81 (2008) (describing Asch and Berns experiments); SUSAN CAIN, *QUIET: THE POWER OF INTROVERTS IN A WORLD THAT CAN'T STOP TALKING* 91-92 (2012) (same).

<sup>82</sup> Cass R. Sunstein, "Empirically Informed Regulation," (2012), available at <http://ssrn.com/abstract=2128806>, p. 14.

<sup>83</sup> HEFFERNAN, *supra* note 19, at 133 (emphasis added).

<sup>84</sup> Albert Bandura, *Self-efficacy: Toward a Unifying Theory of Behavioral Change*, 84 PSYCHOL. REV. 191 (1977).

<sup>85</sup> Sandra L. Robinson & Anne M. O'Leary-Kelley, *Monkey See, Monkey Do: The Influence of Work Groups on Antisocial Behavior of Employees*, 41 ACAD. MGMT. J. 658 (1998).

<sup>86</sup> Innes Robert & Mitra Arnab, *Is Dishonesty Contagious*, 51 ECON. INQUIRY 722 (2013). See also Steven Huddart & Hong Qu, "Rotten Apples and Sterling Examples: Moral Reasoning and Peer Influences on Honesty in Managerial Reporting," (August 20, 2012), available at SSRN: <http://ssrn.com/abstract=2132709> (finding in an experiment that honesty is contagious, but dishonesty is even more so).

<sup>87</sup> IAN AYRES, *CARROTS AND STICKS: UNLOCK THE POWER OF INCENTIVES TO GET THINGS DONE* 79 (2010).

student was wearing a sweatshirt from their school, and *less likely* to cheat if the cheating student was wearing a sweatshirt from a rival school.<sup>88</sup>

Albus Dumbledore told Harry Potter: “It takes a great deal of bravery to stand up to our enemies, but just as much to stand up to our friends.”<sup>89</sup> My students, being college students, easily relate to the potentially toxic effects of the conformity bias.<sup>90</sup>

### ***Overconfidence***

Remember the Milgram study? In a class at the Harvard Business School, the professor described the experiment and then asked students how far they thought they would go in administering shocks when told to do so by a guy in a lab coat, and how far they thought the average person in their class would go. *Every single student* in the class thought he or she would stop at a lower voltage than the average member of the class.<sup>91</sup> I have surveyed groups I have taught and received exactly the same response. These results highlight how confident, indeed how overly confident, people are regarding their moral character.

As I noted earlier, I often survey my students regarding whether they are satisfied with their moral character and/or whether they think they are more ethical than the average student. The results that I receive semester after semester illustrate the point that most people tend to be overconfident in their own character. Other studies show that the people surveyed thought that they were twice as likely to follow the Ten Commandments as others<sup>92</sup> and that they were more likely to go to heaven than Mother Teresa.<sup>93</sup>

If people “just know” that they are more ethical than others in business and are satisfied with their moral character, this overconfidence may lead them to make decisions without proper reflection upon the assumption: “I am a good person, so I will do good things.” This may be part of the reason that Enron employees were so shocked when the house of cards they had built came tumbling down. They thought of themselves as the smartest guys in the room.<sup>94</sup> They had been repeatedly told that they were the most innovative company in America.<sup>95</sup> They had their widely-respected RICE (respect, integrity, communication, excellence) code of ethics.<sup>96</sup> No wonder when the scandal started to become public, their initial tendency was to tell critics that they just didn’t “get it.”<sup>97</sup>

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<sup>88</sup> ARIELY, *supra* note 19, at 205-06 (reporting results).

<sup>89</sup> J.K. ROWLING, HARRY POTTER AND THE SORCERER’S STONE 306 (1997).

<sup>90</sup> It is important to note that “[p]ressures to obey and to conform can reinforce each other.” GLOVER, *supra* note 9, at 333. A classic example happened in the WorldCom scandal when a 40-something grandmother in the CFO’s office, Betty Vinson, felt that she had to fudge the numbers in order to please her superiors. CYNTHIA COOPER, EXTRAORDINARY CIRCUMSTANCES: THE JOURNEY OF A CORPORATE WHISTLEBLOWER 363-64 (2008). Those superiors also appealed to her sense of loyalty to the WorldCom team. *Id.* at 7 (perpetuating the fraud was described as helping the team to land a plane (the company) on an aircraft carrier). A photo of Betty doing the perp walk is easily accessible on the Internet and presents a powerful image to students.

<sup>91</sup> MAX ANDERSON & PETER ESCHER, THE MBA OATH: SETTING A HIGHER STANDARD FOR BUSINESS LEADERS 117 (2010).

<sup>92</sup> DAVID HALPERN, THE HIDDEN WEALTH OF NATIONS 113 (2010).

<sup>93</sup> MICHAEL SHERMER, THE SCIENCE OF GOOD & EVIL 174 (2004).

<sup>94</sup> BETHANY MCLEAN & PETER ELKIND, THE SMARTEST GUYS IN THE ROOM: THE AMAZING RISE AND SCANDALOUS FALL OF ENRON (2003)

<sup>95</sup> LOREN FOX, THE RISE AND FALL OF ENRON 308 (2003).

<sup>96</sup> BRIAN CRUVER, ANATOMY OF GREED: THE UNSHREDDED TRUTH FROM AN ENRON INSIDER 5 (2002).

<sup>97</sup> Jennings, *True Reform*, *supra* note 21, at 58 (noting that anyone who challenged Enron was told by its leaders that they “just didn’t get it”).

## ***Framing***

Psychologists often say that they can dramatically change people's answers to questions simply by reframing them.<sup>98</sup> That is likely true. Just by relabeling a hamburger as "75% fat-free," one can induce consumers to prefer it and even to believe that it tastes better than an identical hamburger labeled "25% fat."<sup>99</sup>

A classic example of how framing can affect choices with ethical implications involves the tragic space shuttle *Challenger*. Engineers, who had been looking at the question as a safety issue, decided that the shuttle should not be launched. However, many believe that when Morton Thiokol's general manager asked the engineers to put on their "managers' hats," he reframed the issue as a business decision which caused the engineers to make a different (and disastrous) decision.<sup>100</sup> When a day care center added fines when parents picked up their children after the deadline, tardiness *increased* as the parents reframed their choice to arrive late from ethically-tinged to a purely economic decision.<sup>101</sup>

The ABC Drug Co. scenario presented earlier makes the point that if a choice is framed as a business decision, people will tend to make dramatically different (and less ethical) choices than if the same decision is framed as an ethical decision.<sup>102</sup> Because Enron linked so many things—debt covenants, bonuses, etc.—to stock price, it is no wonder that its executives tended to frame decisions in terms of the impact on stock price. However, given that frame of reference, they made different decisions than they would have made if ethical considerations had been in the decision frame. For that reason, Enron is no longer with us.<sup>103</sup> It is so easy to focus on keeping the stock price high, on hitting sales quotas, on keeping the boss happy, on fitting in with the team that the ethical dimensions of a decision can simply fade away.<sup>104</sup> If people do not consciously keep ethical issues in their decision-making frames, they will make different (and less ethical) decisions than if they do.

## ***Loss Aversion***

Related to framing is the notion of loss aversion, the fact that people hate losses more than they enjoy gains of equal size.<sup>105</sup> Because of this fact, Kahneman and Tversky's famous

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<sup>98</sup> For example, people's preferences for adopting two different approaches to preparing for an outbreak of an unusual Asian disease can be dramatically altered by simply restating the problem. See Editorial, *Neuroethics Needed*, 441 NATURE 907 (2006); SAM HARRIS, THE MORAL LANDSCAPE: HOW SCIENCE CAN DETERMINE HUMAN VALUES 100 (2010). By simply reframing a question from looking at survival rates to looking at mortality rates, one can significantly affect the choices that patients and doctors make regarding treatment options. See *id.* at 143.

<sup>99</sup> Irwin P. Levin & Gary J. Gaeth, *How Consumers are Affected by the Framing of Attribute Information Before and After Consuming the Product*, 15 J. CONSUMER RES. 374, 378 (1988).

<sup>100</sup> BAZERMAN & TENBRUNSEL, *supra* note 19, at 16.

<sup>101</sup> Uri Gneezy & Aldo Rustichini, *A Fine Is a Price*, 29 J. LEGAL STUD. 1 (2000).

<sup>102</sup> See *supra* note 58. See also Vidya N. Awasthi, *Managerial Decision-Making on Moral Issues and the Effects of Teaching Ethics*, 78 J. BUS. ETHICS 207, 221 (2008) (reporting results of studies).

<sup>103</sup> For a brief behavioral autopsy of Enron, see Robert A. Prentice, *Enron: A Brief Behavioral Autopsy*, 40 AM. BUS. L.J. 417 (2003).

<sup>104</sup> See *e.g.*, BAZERMAN & TENBRUNSEL, *supra* note 19, at 71-72 (discussing concept of "ethical fading").

<sup>105</sup> Robert B. Cialdini, *The Science of Persuasion*, SCIENTIFIC AM. (special edition) 70 (2004).



prospect theory posits that people often will make riskier and even less ethical decisions to avoid a loss than they would have taken to secure an equivalent gain.<sup>106</sup>

This widely documented fact has several implications for ethical decision making that students can easily grasp. In one experiment, subjects were more likely to be in favor of gathering illicit insider information and more likely to lie in a negotiation if facing a loss rather than a potential gain.<sup>107</sup> In real life, loss aversion means that people who have made mistakes and perhaps even violated the law through carelessness or inattention often will, upon realizing that fact, take their first consciously wrongful step in order to attempt to ensure that the mistake is not discovered and they do not lose their job or their reputation. They will lie, they will shred, they will obstruct justice. Martha Stewart was not convicted of insider trading, but of obstructing justice to prevent financial, reputational, and other losses that would come from an insider trading conviction.<sup>108</sup> Frank Quattrone was not convicted of securities fraud but of inducing subordinates to destroy e-mails that would have created the loss that follows such a conviction.<sup>109</sup> Stewart was perhaps the most high profile female entrepreneur in America and Quattrone was likely the most influential investment banker on Wall Street. Neither would have wished to lose their positions and it seems likely that both acted atypically in the face of potentially significant losses.

It is doubtful that former Baylor University basketball coach Dave Bliss would have acted so unconscionably as to have tried to pin a drug dealing rap on a former player who had been murdered in order to get his coaching job in the first place. But in order to avoid the loss of that same job, Bliss seems to have done exactly that.<sup>110</sup>

Loss aversion also means that firms that are performing well, but not as well as they expected to or as others expected them to, may engage in unethical behavior because they frame their act of profiting (but not profiting as much as expected) as a loss rather than a gain.<sup>111</sup>

### ***Incrementalism***

Cynthia Cooper, whistleblower in the WorldCom fraud, has accurately observed that typically “[p]eople don’t wake up and say, ‘I think I’ll become a criminal today.’ Instead, it’s often a slippery slope and we lose our footing one step at a time.”<sup>112</sup> Often, it turns out, people

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<sup>106</sup> Daniel Kahneman & Amos Tversky, *Prospect Theory: An Analysis of Decision Under Risk*, 47 *ECONOMETRICA* 263 (1979).

<sup>107</sup> Mary C. Kern & Dolly Chugh, *Bounded Ethicality: The Perils of Loss Framing*, 20 *PSYCHOLOGICAL SCIENCE* 378 (2009).

<sup>108</sup> See Joan MacLeod Heminway, *Was Martha Stewart Targeted?*, in *MARTHA STEWART’S LEGAL TROUBLES* 3 (J.M. Heminway, ed. 2007) (noting that Stewart was jailed for conspiracy, obstruction of justice, and making false statements rather than for insider trading)

<sup>109</sup> See Jeffrey Pfeffer & Christina T. Fong, *The Business School ‘Business’: Some Lessons from the US Experience*, 41 *J. MGMT. STUD.* 1501 (Dec. 2004) (noting that Quattrone was convicted of urging subordinates to destroy incriminating e-mails). The conviction was later overturned on appeal.

<sup>110</sup> Mike Wise, *College Basketball: Death and Deception*, *NEW YORK TIMES*, Aug. 28, 2003, at D1.

<sup>111</sup> See Yuri Mishina et al., *Why “Good” Firms Do Bad Things: The Effects of High Aspirations, High Expectations, and Prominence on the Incidence of Corporate Illegality*, 53 *ACAD. MGMT. J.* 701, 703, 716 (2010) (arguing and generally finding that “high-performing firms may engage in corporate illegality in order to maintain their performance relative to unsustainably high internal aspirations and external expectations and that these pressures may be greater for prominent firms”). finding the effect only for prominent firms).

<sup>112</sup> COOPER, *supra* note 90, at 1.

make business mistakes and then, unable to admit to them, start making larger and larger ethical mistakes as a consequence.<sup>113</sup>

Tenbrunsel and Messick have elaborated on how this process works, blinding people to the unethicity of what they are doing.<sup>114</sup> In the workplace, people are repeatedly exposed to the same ethical dilemmas—for example, should I stretch the truth in order to make this sale? After a while, this repetition leads to “psychic numbing.”<sup>115</sup> An extreme example comes from Police Battalion 101, a behind-the-lines force of older men used by the German military to keep the peace during World War II. One day, their duties were expanded to executing Jews. It was a terrible day. The men cried and vomited as they carried out the executions. They did so, it appears, largely because of the conformity bias.<sup>116</sup> For current purposes, the important point is that after a few episodes, it became routine to spend their days trying to wipe fellow human beings out of existence.<sup>117</sup> The same process was used by the Nazis to convert physicians who had taken the Hippocratic Oath into willing participants in Hitler’s death machine.<sup>118</sup>

After a while, say Tenbrunsel and Messick, what begins as unusual becomes routine, as people perceive that if fudging \$100 is okay, fudging \$150 must also be okay, if killing 10 Jews is okay, then killing 15 Jews must be okay.<sup>119</sup> This “routinization” of bad behavior was illustrated in the Abu Ghraib prison debacle.

But after four or five nights of running the M.I. block of the Abu Ghraib hard site, Davis said, “I just wanted to go home.” He felt that what he did and saw there was wrong. “But it was reaffirmed and reassured through the leadership: We’re at war. This is Military Intelligence. This is what they do. And it’s just a job,” he said. “*So, over time, you become numb to it, and it’s nothing. It just became the norm. You see it—that sucks. It sucks to be him. And that’s it. You move on.*”

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Sabrina Harman also said she felt herself growing numb at Abu Ghraib, yet she kept being startled by her capacity to feel fresh shocks. “In the beginning,” she said, “you

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<sup>113</sup> Constance Bagley noted in this connection:

It starts small. Perhaps there is a shortfall in orders that will cause the company to miss analysts’ quarterly earnings estimates. The stock price will get hammered and the company may lose its best engineers if their stock options are underwater. So the VP of marketing persuades a customer to accept an early shipment of goods not needed until the next quarter. The manager robs Peter to pay Paul, assuming that he or she can make up the shortfall the next quarter. But the economy takes a downturn and orders are down again. So this time the manager ships a product to an independent warehouse and invoices a nonexistent customer. Before you know it, the company is doing what computer disk drive maker Miniscribe did: shipping boxes filled with bricks instead of disk drives to nonexistent customers.

CONSTANCE E. BAGLEY: WINNING LEGALLY 65 (2005).

<sup>114</sup> Ann E. Tenbrunsel & David M. Messick, *Ethical Fading: The Role of Self-Deception in Unethical Behavior*, 17 SOCIAL JUSTICE RES. 223 (2004).

<sup>115</sup> *Id.* at 228, quoting SISSELA BOK, LYING (1989).

<sup>116</sup> CHRISTOPHER R. BROWNING, ORDINARY MEN: RESERVE BATTALION 101 AND THE FINAL SOLUTION IN POLAND 71 (1992).

<sup>117</sup> *Id.* at xix (1992) (noting that “mass murder and routine had become one. Normality itself had become exceedingly abnormal.”).

<sup>118</sup> ROBERT JAY LIFTON, THE NAZI DOCTORS: MEDICAL KILLING AND THE PSYCHOLOGY OF GENOCIDE 194-195 (1986).

<sup>119</sup> Tenbrunsel & Messick, *supra* note 114, at 228-29.

see somebody naked and you see underwear on their head and you're like, 'Oh, that's pretty bad—I can't believe I just saw that.' And then you go to bed and you come back the next day and you see something worse. Well, it seems like the day before wasn't so bad."<sup>120</sup>

Tenbrunsel and Messick give the example of Bernard Bradstreet, co-CEO of Kurzweil Applied Intelligence. He was known as a “straight arrow,” but he once allowed sales representatives to post sales that were not actually signed a few days in advance just so the firm could meet financial targets. Over time, he came to approve posting of sales that were even more days in advance of being signed, and then some that were not sure to be signed but probably were going to be, and on and on.<sup>121</sup>

One study has argued that most financial frauds inside companies start off as honest, yet overly optimistic financial projections by corporate officers. When the companies do not make the projections, the officers start fudging numbers in a modest way hoping to turn things around (loss aversion), but as the firm misses its future targets by larger and larger amounts, the fudging must grow and grow to continue to hide the shortfalls.<sup>122</sup>

It is easy to find other specific examples in real life scandals. Consider famed rogue trader Nick Leeson who sank the Baring's Bank:

“The thing that I wanted ...was success” [Leeson] told the BBC. His motivation was not, he said, to get rich, but to continue to be seen as a success. When his first trading mistake threatened that perception, he started down the path that was going to lead him all the way to a Singaporean jail cell. He had no way of knowing that's where it was going to end, but as soon as he took that first step, there was no longer a boundary where it suddenly made sense to turn around. The next step is always a small one, and given what you've already done, why stop now? Leeson described the feeling of walking down this dark road: “[I] wanted to shout from the rooftops...this is what the situation is, there are massive losses, I want to stop. But for some reason you're unable to do it.”<sup>123</sup>

I have repeatedly pointed to evidence that people often lie a little bit and cheat a little bit. It is incrementalism that often turns these small slip-ups into major ethical blunders. Ultimately, the slippery slope is a powerful phenomenon, and one that students can easily relate to.

### ***The Tangible and the Abstract***

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<sup>120</sup> Philip Gourevitch & Errol Morris, *Exposure: The Woman Behind the Camera at Abu Ghraib*, NEW YORKER, March 24, 2008 (emphasis added).

<sup>121</sup> Tenbrunsel & Messick, *supra* note 119, at 229.

<sup>122</sup> See Catherine M. Schrand & Sarah C. Zechman, *Executive Overconfidence and the Slippery Slope to Financial Misreporting*, 53 J. ACCT. & ECON. 311 (2012) (for three-fourths of earnings misstatements, we show that the misstatement amount in the initial period of alleged misreporting is relatively small, and possibly unintentional. Subsequent period earnings realizations are poor, however, and the misstatements escalate.”). See also Robert Libby & Kristina M. Rennekamp, *Self-Serving Attribution Bias, Overconfidence, and the Issuance of Management Forecasts*, 50 J. ACCT. RES. 197 (2012) (explaining how optimism can lead to faulty financial forecasts).

<sup>123</sup> CLAYTON M. CHRISTENSEN, HOW WILL YOU MEASURE YOUR LIFE? 188 (2012).

Decision making is naturally impacted more by vivid, tangible, contemporaneous factors than by factors that are removed in time and space.<sup>124</sup> People are more moved by relatively minor injuries to their family, friends, neighbors and even pets than to the starvation of millions abroad.<sup>125</sup> This perspective on decision making can cause problems that have ethical dimensions.

Consider a corporate CFO who realizes that if she does not sign false financial statements, the company's stock price will immediately plummet. Her firm's reputation will be seriously damaged today. Employees whom she knows and likes may well lose their jobs tomorrow. Those losses are vivid and immediate. On the other hand, to fudge the numbers will visit a loss, if at all, mostly upon a mass of nameless, faceless investors sometime off in the future.<sup>126</sup> This puts substantial pressure on the CFO to go ahead and fudge. The farther a person is located from the impact of the consequences of his or her actions, the easier it is to act immorally. Glover points out that "[t]he close-up psychology of atrocity is very different from the psychology of killing at a distance."<sup>127</sup> Because capital markets supposedly are so efficient that individual players can have little direct impact, they often feel very distant from the potential victims of their misdeeds.<sup>128</sup>

The abstract nature of creating imaginative derivative securities can be so far removed from the tangible impact they have on other's lives that people have difficulty coming to terms with the actual ethical implications of their actions.<sup>129</sup>

The story of Noreen Harrington, a Goldman Sachs veteran who was the whistleblower in the mutual fund late-trading scandal, illustrates how depersonalizing the victims of our unethical behavior allows such behavior to be perpetrated. [The scandals involve late trading and market timing.] Harrington has said that prior to blowing the whistle on these practices, she viewed them as part of 'a nameless, faceless business...in this business this is how you look at it. You don't look at it with a face.' That view changed, she said, when her older sister asked her for advice on her 401(k) account. Her sister, whom Harrington characterized as one of the hardest workers she knew, was worried that the losses she saw in her retirement account would prevent her from retiring. Suddenly, Harrington 'thought about this from a different vantage point,' she explains. 'I saw one face—my sister's face—and then I saw the faces of everyone whose only asset was a 401(k). At that point I felt the need to try and make the regulators look into [these] abuses.'<sup>130</sup>

Again, the tangible and the abstract is a concept that students can easily understand. The point is to help them appreciate how this phenomenon might lead them to make unethical decisions.

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<sup>124</sup> SCOTT PLOUS, *THE PSYCHOLOGY OF JUDGMENT AND DECISION MAKING* 125-27 (1993).

<sup>125</sup> HARRIS, *supra* note 98, at 69 (referring to studies by Paul Slovic).

<sup>126</sup> George Loewenstein, *Behavioral Decision Theory and Business Ethics: Skewed Trade-Offs Between Self and Others*, in *CODES OF CONDUCT*, *supra* note 19, at 214.

<sup>127</sup> GLOVER, *supra* note 9, at 43. *See also id.* at 66, 78, 82.

<sup>128</sup> *See* Jean-Michel Bonvin & Paul H. Dembinski, *Ethical Issues in Financial Activities*, 37 *J. BUS. ETHICS* 187 (2002).

<sup>129</sup> ARIELY, *supra* note 19, at 83-85.

<sup>130</sup> BAZERMAN & TENBRUNSEL *supra* note 19, at 98-99.

## *Self-Serving Bias*

The self-serving bias is an “umbrella term”<sup>131</sup> with many related meanings. Earlier in this article it was used to refer to people’s tendency to gather, process, and even remember information in ways that support positions already taken or that benefit themselves.<sup>132</sup> It has been defined as “conflat[ing] what is fair with what benefits oneself.”<sup>133</sup> It can refer to people’s tendency to attribute to themselves more skill, intelligence, or contributions to a successful outcome than is objectively justified.<sup>134</sup> When used in this latter way, the self-serving bias overlaps with the closely related concepts of confirmation bias and motivated reasoning. The *confirmation bias* is “the seeking or interpreting of evidence in ways that are partial to existing beliefs, expectations, or a hypothesis in hand.”<sup>135</sup> *Motivated reasoning* is the “tendency for individuals to utilize a variety of cognitive mechanisms to arrive, through a process of apparently unbiased reasoning, at the conclusion they privately desire to arrive at all along.”<sup>136</sup>

While people obviously make conscious decisions to advance their self-interest all the time, the self-serving bias can cause them to unconsciously do the same thing, often in ways that are difficult for objective third parties to understand. Kahneman’s intuitive System 1 often quickly makes ethical judgments based upon the decision maker’s well-being, leaving the more rational but effortful System 2 to rationalize the unconsciously-made self-serving choice.<sup>137</sup> Again, the literature is vast and terms are not always used consistently, but one recent paper notes:

Self-interest remains hidden, lurking behind the scenes but influencing the result.

Three factors are primarily responsible. The first is the speed with which the different processes occur. Because self-interest is processed fast [by the brain’s System 1], it tends to occur prior to controlled processes associated with ethical deliberation. Thus, when there is a conflict between self-interest and professional duties, automatic processes can be expected to exert significant power over rational deliberation [by System 2]....

The second factor contributing to the power of self-interest is the biased way that people tend to both seek out and interpret information when making decisions [which involves both the confirmation bias and motivated reasoning]...

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<sup>131</sup> Timothy F. Malloy, *Corporate Decisionmaking: Disclosure Stories*, 32 FLA. ST. U. L. REV. 617, 651 (2005).

<sup>132</sup> See Donald C. Langevoort, *Organized Illusions: A Behavioral Theory of Why Corporations Mislead Stock Market Investors (and Cause Other Social Harms)*, 146 U. PA. L. REV. 101, 135-39 (1997).

<sup>133</sup> Linda Babcock & George Loewenstein, *Explaining Bargaining Impasse: The Role of Self-Serving Bias*, 11 J. ECON. PERSPECTIVES 109, 110 (1997).

<sup>134</sup> See Ward Farnsworth, *The Legal Regulation of Self-Serving Bias*, 37 U.C. DAVIS L. REV. 567, 569 (2003).

<sup>135</sup> Raymond S. Nickerson, *Confirmation Bias: A Ubiquitous Phenomenon in Many Guises*, 2 REV. GEN. PSYCHOL. 175, 175 (1998).

<sup>136</sup> Jon D. Hanson & Douglas A. Kysar, *Taking Behavioralism Seriously: The Problem of Market Manipulation*, 74 N.Y.U. L. REV. 630, 631 (1999).

<sup>137</sup> Eldred, *supra* note 52, at 30 (“...behavioral ethicists argue that because self-interested goals are generated automatically, they occur before effortful and slower process of deliberation gets underway. This starts a cascade reaction, in which the decision that is ultimately reached will often be based on self-interest rather than the dictates of professional responsibility”).

Third, and finally, people work to maintain a positive view of their own ethicality, resisting the notion that they can be corrupted by their own self-interest. Driven by a need to maintain a positive self-image, there is a tendency to perceive the self in a positive light, even when evidence suggests otherwise. ... One manifestation of this phenomenon is the stubborn belief held by most people that they will not be influenced by self-interest, even when believing that others will be.<sup>138</sup>

As this excerpt notes, people are generally quick to recognize the impact of the self-serving bias on others, but very slow to see its impact on themselves.<sup>139</sup> “What is perhaps most surprising ... is not that people are so biased but that they are so inclined to claim that they are objective.”<sup>140</sup> It is the self-serving bias that causes academics to accept princely sums to write academic papers that support positions favoring those who write their paychecks and yet believe their conclusions to be uninfluenced,<sup>141</sup> that causes physicians to believe that their judgment is immune to gifts they accept from drug companies when study after study shows that physicians’ treatment and drug prescription decisions are affected by monetary incentives,<sup>142</sup> and that causes academics to unconsciously evaluate the methodologies underlying studies based on whether the studies’ conclusions fit their preexisting beliefs.<sup>143</sup>

It was probably the self-serving bias that caused a top official in the American Institute of Certified Public Accountants (AICPA) to testify before the SEC in 2000 (just before a wave of busted audits ushered in the Enron-era scandals) that “[w]e are professionals that follow our code of ethics and practice by the highest moral standards. *We would never be influenced by our own personal financial well being....*”<sup>144</sup> A more plausible assessment is that:

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<sup>138</sup> *Id.* at 31-34.

<sup>139</sup> MLODINOW, *supra* note 52, at 199 (citing three studies).

<sup>140</sup> Emily Pronin & Kathleen Schmidt, *Claims and Denials of Bias and Their Implications for Policy*, in BEHAVIORAL FOUNDATIONS, *supra* note 10, at 196, 196.

<sup>141</sup> David Segal, *Romney’s Go-To Economist* N.Y. TIMES, Oct. 14, 2012, p. BU1 (relating incident involving economist Glenn Hubbard and \$150,000).

<sup>142</sup> MLODINOW, *supra* note 52, at 205 (citing studies). *See also* HEFFERNAN, *supra* note 19, at 185 (quoting internationally renowned orthopedic surgeon David Ring for the well-documented fact that doctors who own financial interests in testing labs order more tests than doctors who do not or than they themselves did before they acquired those interests); Pronin & Schmidt, *supra* note 140, at 197 (“...most doctors deny that such gifts [from pharmaceutical companies] affect their *own* patient-care decisions. As a result, they fail to shield themselves from bias, while also feeling disenchanted with their colleagues whom they view as influenced by it.”).

<sup>143</sup> Charles G. Lord et al, *Biased Assimilation and Attitude Polarization: The Effects of Prior Theories on Subsequently Considered Evidence*, 37 J. PERSONALITY & SOC. PSYCHOL. 2098 (1979) (reporting results of study indicating that people’s assessments of the methodology of a study on the deterrent effects of capital punishment were driven not by the methodology’s merits but by whether the conclusion it reached coincided with their preexisting beliefs).

In one interesting study, authors gave their subjects, tax managers of major accounting firms, incentives to report aggressively and then varied the specificity of the professional standards to determine whether that variation would affect their actions. The authors discovered that because of the self-serving bias, when the tax accountants were incentivized to report aggressively, they did report more aggressively than their peers who were not so incentivized and the specificity of the professional standards did not matter. If the standards were vague, the accountants used the vagueness to justify their aggressiveness. If the standards were specific, they changed their assessments of the factual situation to justify aggressive reporting. *See* Andrew D. Cuccia et al., *The Ability of Professional Standards to Mitigate Aggressive Reporting*, 70 ACCT. REV. 227, 240 (1995).

<sup>144</sup> Gary Shamis, Hearing on Auditor Independence (SEC, Sept. 13, 2000), *available at* <http://www.sec.gov/rules/propose/s71300/testimony/shamis1.htm> (Gary Shamis, Chairman of the Management of an Accounting Practice of the AICPA), *quoted by* Daylian Cain et al., *Coming Clean but Playing Dirtier*, in

...the majority of professionals are unaware of the gradual accumulation of pressures on them to slant their conclusions, a process we characterize as moral seduction. Most professionals feel that their conclusions are justified and that they are being unfairly maligned by ignorant or demagogic outsiders who raise concerns about conflicts of interest. Given what we now know generally about motivated reasoning and self-serving biases in human cognition, and specifically about the incentive and accountability matrix within which auditors work, we should view personal testimonials of auditor independence with skepticism.<sup>145</sup>

To reiterate, sometimes the impact of the self-serving bias is quite conscious. People can easily see that if they choose Choice A over Choice B they will profit at the expense of others who are more deserving and they happily take Choice A. But the more insidious aspect of the self-serving bias is that people's brains can fool them so that the ethical aspects of decisions can virtually disappear from view. The self-interest bias affects moral reasoning because "psychological research suggests that ethical decision making is influenced by a strong unconscious bias towards maintaining our self-interest."<sup>146</sup> But it can do so, in part, by inhibiting moral awareness through psychological processes known as *moral disengagement* (Bandura's term),<sup>147</sup> *ethical fading* (Tenbrunsel and Messick's term),<sup>148</sup> and *moral myopia* (Drumwright and Murphy's term).<sup>149</sup> According to de Cremer:

In a way moral disengagement can thus be seen as a buffer that allows people to free themselves from feeling guilty and uneasy with the idea that they may have violated accepted ethical standards. Moreover, moral disengagement is particularly successful to reduce feelings of dissonance that would normally occur if an individual has strong moral awareness when harming the interests of others (i.e., then a moral conflict would be very salient). Overall, the psychological influence of processes such as bounded ethicality and moral disengagement impact on individual's tendency to experience less conflict in the

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CONFLICTS OF INTEREST: CHALLENGES AND SOLUTIONS IN BUSINESS, LAW, MEDICINE AND PUBLIC POLICY 104, 119-120 (Donald A. Moore et al., eds. 2005) (emphasis added).

<sup>145</sup> Don A. Moore et al., *Conflicts of Interest and the Case of Auditor Independence: Moral Seduction and Strategic Issue Cycling* (2005).

<sup>146</sup> Kath Hall, *Why Good Intentions are Often Not Enough: The Potential for Ethical Blindness in Legal Decision-Making*, in REAFFIRMING LEGAL ETHICS: TAKING STOCK AND NEW IDEAS 213 (Reid Mortensen et al., eds. 2010).

<sup>147</sup> Albert Bandura, *Moral Disengagement in the Perpetration of Inhumanities*, 3 PERSONALITY & SOC. PSYCHOL. REV. 193, 194 (1999). Moral disengagement has been defined as "an individual's propensity to evoke cognitions which restructure one's actions to appear less harmful, minimize one's understanding of responsibility for one's actions, or attenuate the perception of the distress one causes others." Celia Moore, *Moral Disengagement in Processes of Organizational Corruption*, 80 J. BUS. ETHICS 129, 131 (2008).

<sup>148</sup> David Messick, *Ethical Judgment and Moral Leadership*, in MORAL LEADERSHIP, *supra* note 19, at 95 (2006) (noting that "[l]anguage euphemisms, the gradual slippery slope of may practices, and our ability to find causal links in complex situations can lead to the inference that a situation is devoid of ethical content."); Tenbrunsel & Messick, *supra* note 114, at 223 (arguing that one of the main causes of unethical decisions are psychological forces like the self-serving bias that promote self-deception). Ethical fading has been defined as the "tendency to interpret the situation so that it does not implicate one's ethical or moral duties." Andrew M. Perlman, *Unethical Obedience by Subordinate Attorneys: Lessons from Social Psychology*, 36 HOFSTRA L. REV. 451, 470 (2007).

<sup>149</sup> Minette E. Drumwright & Patrick E. Murphy, *How Advertising Practitioners View Ethics: Moral Muteness, Moral Myopia, and Moral Imagination*, 33 J. ADV.7 (Summer 2004).

case of a moral dilemma (i.e., moral awareness is reduced). Or, in other words, these psychological processes clearly activate the phenomenon referred to as “ethical fading.” As Tenbrunsel notes, ethical fading is “a process that removes the difficult moral issues from a given problem or situation, hence increasing unethical behavior.” The moral implications of one’s decisions thus fade away because of the underlying dynamics of people’s self-serving and self-deceiving perceptions.<sup>150</sup>

Thus, in its extreme form, the self-serving bias can defeat moral awareness and cause well-meaning people to make unethical decisions because their mind tricks them into not clearly seeing the ethical issues involved in the decision (ethical fading or moral myopia) or unconsciously distancing themselves from the unethical implications of a choice (moral disengagement). All this evidence is usually sufficient to induce students to at least begin to accept the notion that the self-serving bias may affect their own ethical decision making.

### ***Other Factors***

There are other factors that are worthy of discussion, but I typically run out of time in class. Therefore, as noted above, I often have students watch the *free* videos on the McCombs School of Business’s website: [Ethicsunwrapped.utexas.edu](http://Ethicsunwrapped.utexas.edu). These are also easily available on YouTube.

The offerings include several of the topics that I have discussed here, including: Conformity Bias, Framing, Incrementalism, Loss Aversion, Obedience to Authority, the Overconfidence Bias, and the Tangible and the Abstract. There are also videos on related behavioral ethics topics I have not discussed on these pages, including:

- ***Bounded Ethicality.*** Bounded ethicality is the notion that it is difficult, even for people who truly wish to act ethically, to be completely ethical because various organizational pressures and psychological tendencies — many of which are the subject of videos in this series — make it challenging for anyone to always act ethically. Just as people are generally rational, but boundedly so, they are also generally ethical, but with limits.<sup>151</sup>
- ***Ethical Fading.*** As noted in the self-serving bias discussion above, when people act unethically, they tend to distance themselves from the ethical dimensions of their actions so that they can continue to think of themselves as good people. Often times the psychological processes involved cause the ethical aspects of a decision to fade from view.

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<sup>150</sup> David De Cremer, *Psychology and Ethics: What It Takes to Feel Ethical When Being Unethical*, in PSYCHOLOGICAL PERSPECTIVES, *supra* note 19, at 3, 6, quoting Ann E. Tenbrunsel, *Commentary: Bounded Ethicality and Conflicts of Interest*, in CONFLICTS OF INTEREST, *supra* note 19, at 96.

<sup>151</sup> Herbert Simon won the Nobel Prize in economics by introducing the notion of bounded rationality. See, e.g., Herbert A. Simon, *Search and Reasoning in Problem Solving*, 21 ARTIFICIAL INTELLIGENCE 7 (1983). Dolly Chugh and her colleagues are among others who have emphasized that just as we are boundedly rational, we are also boundedly ethical. See Dolly Chugh et al., *Bounded Ethicality as a Psychological Barrier to Recognizing Conflicts of Interest*, in CONFLICTS OF INTEREST, *supra* note 19, at 74.



- **Fundamental Attribution Error.** As also noted earlier, the fundamental attribution error is people's tendency to attribute others' character to their actions without adequately taking into account the situational factors that might have affected that conduct. When people see someone doing the perp walk on TV, they tend to say to themselves: "He did a bad thing. He must be a bad person." But then they tend to reassure themselves: "I am a good person. I would not do a bad thing."
- **Moral Equilibrium.** Moral equilibrium is the tendency people have to keep a running scoreboard in their heads that compares their self-image as ethical people to their actual behavior. People who realize they have not lived up to their own standards often seek opportunities to make up for those departures ("moral compensation"), while people who have done something good and are running a surplus in their ethical account sometimes grant themselves permission to not live up to their own standards ("moral license"). Moral licensing can lead to very serious consequences.
- **Role Morality.** Role morality is the tendency many people have to use different moral standards as they play different roles in society. For example, people may take ethically questionable actions in their role as loyal employees at work to advance their company's profit goals that they would never take at home to put money in their own pocket.

## BREAKING DOWN DEFENSES: PART THREE

### Class #5

The mind's ability to believe what it wants to believe ("I have solid moral character that will carry me through difficult ethical dilemmas") is very strong and very persistent, which is why I usually take a third run at convincing the students that it is harder for them to live up to their own ethical standards than they might imagine. This lesson is heavily based on research by Tenbrunsel, Diekmann, Wade-Benzoni, and Bazerman.<sup>152</sup>

### Two Minds

A key notion here is that people are of two minds. Think of an angel on one shoulder whispering into one ear telling people to do as they should. And think of a devil on the other shoulder whispering into the other ear telling them to do as they want. People know that they have wants (food, drink, sex, recognition, etc.), but it is also clear that most people want to be good people, doing the right thing. The evidence related above indicates that people tend to be very good at thinking of themselves as good people who do as they should while simultaneously doing as they want.

### A Temporal Explanation

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<sup>152</sup> Ann E. Tenbrunsel et al., *The Ethical Mirage: A Temporal Explanation as to Why We Aren't as Ethical as We Think We Are*, 30 RES. IN ORG. BEHAV. 153 (2010) (hereinafter, Tenbrunsel et al., *Temporal Explanation*).

Tenbrunsel and colleagues offer a temporal explanation for how people are able to think these contradictory thoughts.

### **Predicting Future Actions**

When people predict how they will act when they face an ethical issue in the future, they naturally tend to think that they will handle it ethically. After all, they are confident (or, more likely, overconfident) in their character. Most people are largely if not completely unaware of their “bounded ethicality,” of how obedience to authority, the conformity bias, the self-serving bias, framing, incrementalism, and all the other factors mentioned earlier make it difficult to be as ethical as they wish to be.

In addition, as they think about how they will act, they are focusing on the ethical dimension of the issue. They do not realize that when it is time to act they might not clearly see the ethical dimension of the issue as they focus on pleasing the boss or fitting in with the team or meeting a sales quota, or how they might frame the question as a business issue rather than an ethical issue.

To illustrate yet again how students will likely be overconfident in how ethically they will act, I talk about a fascinating series of studies by Epley and Dunning.<sup>153</sup> The authors note that “[r]esearchers have repeatedly demonstrated that people on average tend to think they are more charitable, cooperative, considerate, fair, kind, loyal, and sincere than the typical person but less belligerent, deceitful, gullible, lazy, impolite, mean, and unethical—just to name a few.”<sup>154</sup> The authors then performed four experiments that produced consistent results—people are generally good at predicting how generous, cooperative, and kind other people will be in given situations but consistently overestimate how generous, cooperative, and kind they themselves will be.<sup>155</sup>

In the most interesting iteration of the experiment, Epley and Dunning described a scenario and gave subjects an opportunity to predict how generous other subjects would be and how generous they themselves would be. Consistent with previous results, subjects predicted that others would give an average of \$1.93 while they themselves would give an average of \$2.84. When told that in an earlier study people had given only \$1.53 on average and given an opportunity to revise their estimates, subjects revised their estimates downward for the average subject (\$1.66), but felt no need to review their initial estimates regarding their own behavior.<sup>156</sup> These findings supported previous evidence that “people seem to chronically feel ‘holier than thou,’”<sup>157</sup> even when they have been warned against this tendency.

### **Remembering Past Actions**

In order for people to be able to simultaneously think of themselves as ethical people and yet lie a little and cheat a little, they must be able to remember their actions selectively. Their

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<sup>153</sup> Nicholas Epley & David Dunning, *Feeling “Holier Than Thou”: Are Self-Serving Assessments Produced by Errors in Self- or Social Prediction?*, J. PERSONALITY & SOC. PSYCHOL. 861 (2000).

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at 862-868.

<sup>156</sup> *Id.* at 869-870.

<sup>157</sup> *Id.* at 861.

brains help them out with this. When people are young they tend to think of their memories as movie cameras. It seems to them that their brains record all their experiences as they happen and then when they remember, their brains simply play these events back for them. In reality, their minds reconstruct their memories.<sup>158</sup> And they do so in such a way as to enable people to generally continue to think of themselves as good people, even if they have not always acted that way. As Tenbrunsel and her colleagues note:

The main significance of selective memory is its potential to sustain positive self-perception in the face of frequent disconfirmation of such perceptions. Notably, this phenomenon appears to be quite adaptive. Greater memory selectivity is related to higher self-esteem, lower social anxiety, and less depression. It seems clear that selective memory can help us to maintain higher self-esteem, and enable us to believe we generally behave in ethical ways over time despite our past behavior that contradicts this self-perception. While convenient for our self-esteem (and even our happiness), the selective memory mechanism represents a barrier to an accurate understanding of our ethical selves and thus impedes our ability to strive for higher levels of ethics in our everyday lives.<sup>159</sup>

Evidence of this phenomenon comes from the fact that if you ask people to reconstruct their ethical lives they will tend to think of bad things they did a long time ago and good things they did more recently, which allows them to think of their lives as moving in an arc toward improvement.<sup>160</sup> If you survey your students, you will likely receive similar results.

### **When It Is Time to Act**

So, people tend to predict that they will act ethically and to remember that they have generally done so. But in between prediction and memory, when it is time to actually act, people often act in ways that are not as ethical as they predicted they would act (and likely not as ethical as they will ultimately remember that they did act). Why this disconnect? The main reason is that the “want” self comes to the fore. When it is time to act, people often are not thinking of the ethical dimensions of a choice. That dimension has faded into the background and they are thinking of pleasing the boss, getting along with the team, making the production quota, etc., so that they can get what they want—the job, the promotion, the raise.

As examples that often resonate with students, consider the following:

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<sup>158</sup> Nancy K. Steblay & Elizabeth F. Loftus, *Eyewitness Identification and the Legal System*, in BEHAVIORAL FOUNDATIONS, *supra* note 10, at 146, 146; DESTENO & VALDESOLO, *supra* note 14, at 39-40 (quoting psychologists Daniel Bernstein and Elizabeth Loftus as saying that “all memory is false to some degree. Memory is inherently a reconstructive process, whereby we piece together the past to form a coherent narrative that becomes our autobiography. In the process of reconstructing the past, we color and shape our life’s experiences based on what we know about the world.”).

<sup>159</sup> Tenbrunsel et al., *Temporal Explanation*, *supra* note 152, at 164.

<sup>160</sup> See Benedict Carey, *Why All Indiscretions Appear Youthful*, N.Y. TIMES, Oct. 5, 2010, p. D1 (noting that studies show that when people reconstruct their ethical lives, they think of bad stuff they did a long time ago and good stuff they did more recently, allowing them to construct the image of a person who is getting better and learning from mistakes.).

- In one of the Epley and Dunning studies noted earlier, 83% of student surveyed predicted that they would buy at least one flower for a charitable event (indeed, the average prediction was that they would buy two flowers). When it came time to actually buy, only 43% did and they averaged only 1.2 flowers.<sup>161</sup> When predicting how they would act, the students no doubt focused on how generous they thought themselves to be. When it was time to act, the alternative uses to which they could put the money likely came to the fore.
- In a study by Hofling and colleagues, thirty-three nurses were asked what they would do if a doctor they did not know called them and asked them to give an obviously excessive dose of a medicine that was not cleared for use at their hospital. Thirty-one of thirty-three nurses said that they would not give the medication. But when twenty-two nurses were actually asked to do give medicine under these circumstances, twenty-one were prepared to do so. When predicting how they would act, the thirty-one nurses focused on their professional responsibility. When actually acting, the twenty-one nurses focused, as people often do, upon pleasing the authority figure—the doctor who made the request.<sup>162</sup>
- In a study by Batson, et al., participants were asked to assign one of two tasks to another person and to assign one to themselves. One of the tasks was a positive task and the other was neutral. They were told that they could simply make a choice, or that they could flip a coin. Most people believed that flipping the coin was the fairer, more moral procedure. Those who before the experiment self-reported themselves as less moral were more likely to simply assign the tasks without flipping the coin. Ninety percent of them assigned themselves the positive task. Those who self-reported as more moral and therefore presumably would have predicted that they would act in a more moral fashion if given the chance, were more likely to flip the coin to assign the task. Of those who flipped the coin, ninety percent assigned the positive task to themselves, meaning either that it was a very odd coin or that they made themselves feel more moral by flipping the coin but, when faced with an undesirable result simply ignored it and took the positive task for themselves.<sup>163</sup> Again, their estimate of how they would act departed substantially from how they did act and, as is typically the case, in an unfortunate direction.
- In a recent study, accounting students were asked whether they would return the money if they found that their employer accidentally overpaid them. Not long thereafter the students were given too many points on an exam. Some called the error to the professor's attention. Some did not. The important point of the study was that there was no correlation between those who predicted that they would return the unearned money to the employer and those who actually did return the unearned points to the professor.<sup>164</sup>
- In another study, some young women were asked how they would react if they were subjected to sexual harassment in a job interview. Virtually all said that they would take action to confront the harasser or complain about his actions. Other young women who

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<sup>161</sup> Epley & Dunning, *supra* note 153, at 861.

<sup>162</sup> Charles K. Hofling et al., *An Experimental Study in Nurse-Physician Relationships*, 143 J. NERV. MENTAL DISEASE 171 (1966).

<sup>163</sup> C. Daniel Batson et al., *In a Very Different Voice: Unmasking Moral Hypocrisy*, 72 J. PERSONALITY & SOC. PSYCHOL. 1335 (1997).

<sup>164</sup> Sanjay Gupta et al., *A Study of the Effect of Age, Gender and GPA on the Ethical Behavior of Accounting Students*, 12 J. LEGAL, ETHICAL & REG. ISSUES 103 (2009).

thought they were in a job interview were actually subjected to such harassment. None confronted the harasser in any serious way; those who expressed concern did so politely so that they would not “jeopardize[e] their chances for employment.”<sup>165</sup> The predicting group arguably focused on the proper way to react to such harassment. Women in the group actually subjected to harassment, however, focused on the job that they wanted to attain and that pushed ethical considerations into the background.<sup>166</sup>

- When people predict how they will act sexually, they make completely different predictions if they are unaroused than if they are aroused.<sup>167</sup> Before starting out on a date, high school students may predict that they will not sleep with their boyfriends or girlfriends, or certainly won’t sleep with them without protection. When sexually aroused, they often make different decisions than they had predicted.<sup>168</sup>
- In yet another study, about half of students surveyed said that they would object if someone made a sexist remark in their presence. But when such a remark was made, only 16% actually objected.<sup>169</sup>

These examples generally are sufficient to bring home to my students that people have a pervasive tendency to predict that they will act more ethically than they actually do when push comes to shove.

## HOW STUDENTS CAN BE THEIR BEST SELVES

### Class #6

Up until this point, most of the lessons derived from behavioral ethics have been somewhat deflating. The ethical world people tend to think that they live in is ruled by logic and rationality. But this is a mirage. People’s minds fool them. They think that they are ethical, but often they are not. It can be depressing to learn how hard it can be for people to live up to their own ethical standards. Students must be reminded that to be the best tax accountant they can be, they will have to study tax law the rest of their lives. To be the best financial analyst they can be, they will have to study the latest valuation techniques for the rest of their lives. And to be the most ethical person they can be, they will have to give that aspect of their professional career continuous attention as well.

Fortunately, behavioral ethics has some lessons to teach that can give people a chance to better live up to the mental image that they have of themselves as ethical beings. Behavioral ethics can help people strive toward (though probably never meet) their goal of being their “best selves.” Much of what I talk about on what is typically the last day of class for the semester derives from two sources. First, it comes from Tenbrunsel and her colleagues, who sensibly point out that if a big problem for ethical behavior is that when it is time to act people’s “want”

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<sup>165</sup> Julie A. Woodzicka & Marianne LaFrance, *Real Versus Imagined Gender Harassment*, 57 J. SOCIAL ISSUES 15, 28 (2001).

<sup>166</sup> *Id.* (noting that women predicted they would feel anger when harassed, but tended to feel fear instead).

<sup>167</sup> See DESTENO & VALDESOLO, *supra* note 14, at 185.

<sup>168</sup> See Christopher K. Hsee & Reid Hastie, *Decision and Experience: Why Don’t We Choose What Makes Us Happy?*, 10 TRENDS IN COGNITIVE SCIENCE 1, 3 (2006).

<sup>169</sup> See DAVID G. MYERS, INTUITION: ITS POWERS AND PERILS 83 (2004).

selves can overwhelm their “should” selves, then a good way to be a better person is to find ways to increase the influence of the “should” self at action time while simultaneously minimizing the influence of the “want” self.<sup>170</sup> It also comes from materials created by Prof. Mary Gentile of Babson College, Prof. Minette Drumwright of the University of Texas, and Prof. Steven Tomlinson, formerly of the University of Texas, for an MBA ethics program that I co-taught many years ago. Professor Gentile’s “Giving Voice to Values” program is also a huge influence in all that I do in business ethics.<sup>171</sup>

## **Recognizing Multiple Selves**

Before students can take effective action to be their best selves, they must realize the conflicts between the “should” self and the “want” self and take to heart the lesson that because of all the factors that create bounded ethicality, it is hard for every well-intentioned person to lead the type of ethical life that most people hope to lead.<sup>172</sup> Students cannot address the problem until they are aware of the problem, and that is the purpose of the bulk of the behavioral ethics material that I teach that tries to bring home to students in a credible way the obstacles they face.

## **During Prediction, Incorporating the Needs of the Want Self**

Students without a background in behavioral ethics tend to fall victim to the fundamental attribution error. They see others err, and assume that it is because they are bad people. Confident in their own character, they assume that they will easily and correctly dispatch the ethical challenges they face during their careers. Students educated in behavioral ethics have a better chance of being prepared to respond successfully to ethical challenges because they better understand what they are up against. A realistic world view offers a better chance for success than one based on an illusion.

Students heading into the real world can aid their chances of acting ethically by incorporating the needs of their want self in advance.<sup>173</sup> They can take to heart the studies described above indicating that when it is time to act they may not be focusing upon the ethical issue but instead upon pleasing someone in a position of authority (as nurses sought to please doctors), upon getting the job they are interviewing for, upon keeping the points they need to get an “A” in the class, and on and on.

Wondering why some people act heroically, perhaps by running into a burning building to save a child while others are milling around out on the sidewalk, psychologists interviewed a number of people who had been heroes. The most consistent answer they received was that those who acted the hero had thought about the situation before and already made up their mind as to what they would do if the situation presented itself. While other bystanders’ minds were racing, these people already had an action plan. “The people who said that they had found ways to act on their values had at an earlier point in their lives, when they were young adults, with

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<sup>170</sup> Tenbrunsel et al., *Temporal Explanation*, *supra* note 152, at 165-68.

<sup>171</sup> MARY GENTILE, GIVING VOICE TO VALUES: HOW TO SPEAK YOUR MIND WHEN YOU KNOW WHAT’S RIGHT (2006). See also the GVV website which contains useful exercises, helpful supplemental material, videos and much more: <http://www.marygentile.com/>.

<sup>172</sup> Tenbrunsel et al., *Temporal Explanation*, *supra* note 152, at 166.

<sup>173</sup> *Id.* at 166.

someone they respected, a senior person—a parent, a teacher, a boss, a mentor—they had had the experience of rehearsing out loud ‘what would you do if,’ and then various kinds of moral conflicts.”<sup>174</sup>

Mary Gentile strongly recommends that students “prescript,” as these heroes have done.<sup>175</sup> For this reason, I have for many years had my students write a paper describing an ethical challenge they anticipate that they will run into in their careers—whether they are going to be accountants, investment bankers, marketers, or something else. Students seldom have difficulty conjuring up an ethical challenge, especially if they have already interned in their chosen field. Then I ask them to write thoughtfully and carefully about how they would like to handle that ethical challenge should they actually run into it. I ask them to be realistic and sometimes the students admit that they will probably lack the moral courage to stand up to a superior strongly urging them to act inappropriately. But most students demonstrate a determination to live up to their professed ethical standards. Students many years after the class have told me that they actually faced the ethical dilemma they wrote about in their essays and that their having prescribed a response helped them get it right in the real world.

Sometimes I also use an exercise that I borrowed from Prof. Marianne Jennings at Arizona State. As I frame it, this exercise asks students a series of questions focused on: “Assuming that you would not get caught, what would you be willing to do to advance your career?” Would you murder a business rival? Would you lie to an FBI agent? Would you steal the credit for an idea that actually came from a recently-deceased colleague? Would you inflate your performance numbers by 50%? By 10%? Would you help your boss cover up insider trading that he had committed? Would you help him hide his adultery from his wife? From most students, I get mostly “no” answers to most of these questions. I then ask them to write down on a piece of paper some other things that they would *not* do to advance their careers.

Professor Jennings for many years asked students to write down on a small card that they can carry with them a list of things that they would *not* do to advance their careers. And she has had students tell her that the exercise prevented them from acting unethically when they found themselves about to do something that they had, many years before in her class, told themselves they would *never* do to get ahead.<sup>176</sup>

The purpose of both of these exercises is to set off alarm bells in a student’s head should they find themselves facing an ethical challenge that they have previously thought about or hear themselves saying that they are about to do something that they said they would never do. They are preparing their “should” selves to take control during action time.

### **During Action, Increasing the Influence of the “Should” Self**

As Tenbrunsel and her colleagues note, no matter how much preparation people undertake during the prediction phase of things, their biggest need is to increase the influence of the “should” self when it is time to take action in the face of an ethical challenge.<sup>177</sup> Most importantly, they must realize that they are facing an ethical challenge. If they are focusing too much on pleasing the boss, being part of the team, meeting production quotas, etc. and allow the

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<sup>174</sup> See <http://www.carnegiecouncil.org/studio/multimedia/20110426/index.html#section-21474> (Mary Gentile citing research by Douglas Huneke and Perry London).

<sup>175</sup> GENTILE, *supra* note 171, at 74-76, 173-75.

<sup>176</sup> I verified this recollection in a personal meeting with Professor Jennings on August 8, 2013.

<sup>177</sup> Tenbrunsel et al., *Temporal Explanation*, *supra* note 152, at 166-67.

ethical issue to fade into the background, their chances of screwing up skyrocket. Studies demonstrate that people are more likely to make poor ethical choices when they are barely aware that a decision has an ethical aspect...when “moral intensity” is low.<sup>178</sup> Well-intentioned people must keep their ethical antennae up. They must always be looking for the ethical aspect of a decision so that their ethical values can be part of the frame through which they examine the problem. My students (and their parents and possibly their grandparents) are too young to remember the Ray Walston character on the 1960s television show “My Favorite Martian,” but I always show a picture of him with his rabbit-ears-like antennae apparently protruding from his skull to exhort my students to keep their ethical antennae up. Their bosses will be hammering them to meet production quotas. Their co-workers will be exhorting them to go-along and get-along. Only they can ensure that every day they are striving to be their best version of themselves. Only they can try every day to look for ethical dilemmas with a determination to handle them in a way of which they can be proud.

If they can keep ethical dimensions in their decision-making frames, their chances of acting properly are much higher. Experiments in behavioral ethics demonstrate that just reminding people that they should act ethically improves ethical conduct.<sup>179</sup> Ariely found that reminding students of their honor code right before they took an exam drastically reduced cheating.<sup>180</sup> If people are asked to sign a pledge to tell the truth before they fill out a form, rather than after they have filled it out, they will tend to be more truthful.<sup>181</sup>

I also urge my students to always strive to act consistently with the ethical codes established by their companies and/or their professions, as these typically provide excellent guidelines for resolving ethical dilemmas and are frequently framed to prevent temptations and conflicts of interest.

I exhort my students to monitor their own rationalizations, because rationalizations are the means by which people give themselves permission to depart from their own ethical standards. I usually ask my students to read Anand, Ashforth & Joshi’s article on rationalizations in which they categorize and give examples of the most common rationalizations:<sup>182</sup>

| <u>Strategy</u>                 | <u>Description</u>   | <u>Examples</u>   |
|---------------------------------|--|---|
| Denial of Responsibility        | The actors engaged in corrupt behaviors perceive that they have no other choice than to participate in such activities | “What can I do? My arm is being twisted.”<br>“It is none of my business what the corporation does in overseas bribery.” |
| Denial of Injury <sup>183</sup> | The actors are convinced that no one is  | “No one was really harmed.”   |

<sup>178</sup> Bruno F. Frey, *The Impact of Moral Intensity on Decision Making in a Business Context*, 26 J. BUS. ETHICS 181 (2000).

<sup>179</sup> ARIELY, *supra* note 19, at 40.

<sup>180</sup> *Id.* at 213 (“In other words, when we are removed from any benchmarks of ethical thought, we tend to stray into dishonesty. But if we are reminded of morality at the moment we are tempted, then we are much more likely to be honest.”).

<sup>181</sup> See GINO, *supra* note 19, at 221.

<sup>182</sup> Vikas Anand, et al., *Business as Usual: The Acceptance and Perpetuation of Corruption in Organizations*, 18 ACAD. MGMT. EXEC. 39, 41 (2004).

<sup>183</sup> In his popular book about his brief career in the securities industry, Michael Lewis gave an excellent example of the “denial of injury” type of rationalization. After “blowing up” a client by inducing it to buy securities that his employer was trying to dump out of its inventory, Lewis rationalized: “There was a convenient way of looking at this situation ... Anyway, who was hurt besides my German? ... The German’s bank had lost sixty thousand dollars. The bank’s shareholders, the Austrian Government, were therefore the losers. *But compared with*



|   |   |   |
|---|---|---|
|   | harmed by their actions; hence the actions are not really corrupt   | “It could have been worse.”   |
| Denial of Victim                          | The actors counter any blame for their actions by arguing that the violated party deserved whatever happened.                                   | “They deserved it.”<br>“They chose to participate.”   |
| Social weighting                          | The actors assume two practices that moderate the salience of corrupt behaviors: 1. Condemn the condemner, 2. Selective social comparison       | “You have no right to criticize us.”<br>“Others are worse than we are.”   |
| Appeal to higher loyalties <sup>184</sup> | The actors argue that their violation is due to their attempt to realize a higher-order value.”   | “We answered to a more important cause.”<br>“I would not report it because of my loyalty to my boss.                                  |
| Metaphor of the ledger <sup>185</sup>     | The actors rationalize that they are entitled to indulge in deviant behaviors because of their accrued credits (time and effort) in their jobs. | “We’ve earned the right.”<br>“It’s all right for me to use the Internet for personal reasons at work. After all, I do work overtime.” |

Few things could be more important in keeping the “should” self in the picture than monitoring one’s own rationalizations. If people hear themselves saying: “I know I shouldn’t do this, but my boss is making me” or “I know I shouldn’t do this, but no one will really be hurt” or “I know I shouldn’t do this, but my competitors do even worse,” then alarm bells should go off in their heads and maybe they can prevent themselves from making a big mistake.<sup>186</sup> I repeatedly remind my students: “Only you can monitor what you are saying to yourself inside your head.”

### **During Action, Decreasing the Influence of the “Want” Self**

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*the assets of the nation as a whole, sixty thousand dollars was a ridiculously small sum.*” MICHAEL LEWIS, *LIAR’S POKER* 169 (1989) (emphasis added).

<sup>184</sup> Hoyk and Hersey give a good example of this type of rationalization. B.F. Goodrich was trying to sell brakes for fighter jets to the Air Force, but they kept flunking safety tests. An engineer (Vandivier) went to see his boss (Gretzinger) who went to his superiors. “An hour passed and Gretzinger returned. Looking dejected, he said to Vandivier, ‘I’ve always believed that ethics and integrity were every bit as important as theorems and formulas, and never once has anything happened to change my beliefs. Now this...*Hell, I’ve got two sons I’ve got to put through school...*’” ROBERT HOYK & PAUL HERSEY, *THE ETHICAL EXECUTIVE: BECOMING AWARE OF THE ROOT CAUSES OF UNETHICAL BEHAVIOR: 45 PSYCHOLOGICAL TRAPS THAT EVERY ONE OF US FALLS PREY TO* 58 (2008) (emphasis added).

<sup>185</sup> In his book about his scandal, disgraced lobbyist Jack Abramoff noted that he was giving a large percentage of his earnings to charity, and in his mind this seemed to justify his actions—a classic example of the metaphor of the ledger. See JACK ABRAMOFF, *CAPITOL PUNISHMENT: THE HARD TRUTH ABOUT WASHINGTON CORRUPTION FROM AMERICA’S MOST NOTORIOUS LOBBYIST* 214 (2011).

<sup>186</sup> Tenbrunsel and colleagues, thoroughly mining the psychology literature, suggest several other means for increasing the influence of the “want” self, including:

- 1) Focus on the high-level aspects of a situation (e.g., remember that a firm’s failure to conserve not only uses up resources unnecessarily today, but also creates an intergenerational trade-off that will hurt today’s children)
- 2) Change the temporal distance between a decision and its consequences (e.g., judging an employee’s merit using a three-year performance window will reduce that employee’s temptation to fudge the numbers in any given quarter)
- 3) Evaluate options simultaneously rather than sequentially (e.g., envision the ethical choice and the unethical choice simultaneously, which should help prevent ethical fading)

Tenbrunsel et al., *Temporal Explanation*, *supra* note 152, at 166-67.

It can be very helpful for the person who wishes to be ethical to decrease the influence of the “want” self when it is time to act. Use of pre-commitment devices may be helpful because, as Tenbrunsel and colleagues note, people who have publicly committed to do something are much more likely to actually do it (good or bad).<sup>187</sup> So I urge my students to loudly declare to their parents, to their friends, to their mentors, and to everyone who will listen, that they intend to lead an ethical life and have the type of career that they can be proud of.

The classic pre-commitment device occurred when Odysseus ordered his men tie him to the mast so that he could resist the sirens’ calls.<sup>188</sup> This is a good model to follow. John Doris recommended it with this example:

Think again about sexual fidelity. Imagine that a colleague with whom you have had a long flirtation invites you to dinner, offering enticements of interesting food and elegant wine, with the excuse that you are temporarily orphaned while your spouse is out of town. Let’s assume the obvious way to read this text is the right one, and assume further that you regard the infidelity that may result as an ethically undesirable outcome. If you are like one of Milgram’s respondents [to his survey], you might think that there is little cause of concern; you are, after all, an upright person, and a spot of claret never did anyone a bit of harm. On the other hand, if you take the lessons of situationism to heart, you avoid the dinner like the plague, because you know that you are not able to confidently predict your behavior in a problematic situation on the basis of your antecedent values. You do not doubt that you sincerely value fidelity; you simply doubt your ability to act in conformity with this value once the candles are lit and the wine begins to flow. Relying on character once in the situation is a mistake, you agree; the way to achieve the ethically desirable result is to recognize that situational pressures may all too easily overwhelm character and avoid the dangerous situation. I don’t think it wild speculation to claim that this is a better strategy than dropping by for a ‘harmless’ evening, secure in the knowledge of your righteousness.<sup>189</sup>

Another way to decrease the influence of the “want” self is to save money early and often. To set aside some “screw you” funds is to buy some freedom to do the right thing. People who are in over their heads financially and owe money all over town will have much more difficulty saying “no” when their superiors ask them to act unethically. People who have money in the bank to tide them over during a job search will feel that they have much more practical freedom to do the right thing by telling the superiors to “stick it” and marching out the door.

## **The Power of One**

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<sup>187</sup> *Id.* at 167, citing JOEL BROCKNER & JEFFREY RUBIN, ENTRAPMENT IN ESCALATION SITUATIONS: A PSYCHOLOGICAL ANALYSIS (1985); Barry Staw & Jerry Ross, *Understanding Escalation Situations: Antecedents, Prototypes, and Solutions*, in 9 RESEARCH IN ORGANIZATIONAL BEHAVIOR 39 (Barry Staw & L.L. Cummings, eds. 1987).

<sup>188</sup> HOMER, THE ODYSSEY (1967) (Richmond Lattimore translation).

<sup>189</sup> DORIS, *supra* note 12, at 147.

I am decidedly not the heroic type, and I don't urge my students to be, at least not in the general run of things. I don't ask them to grow up to be police officers, fire fighters, or soldiers where they might regularly risk their lives to save others. I do not ask them to emulate Mother Teresa and spend their entire lives in the service of others. I don't ask them to follow Peter Singer's request and commit to give certain percentages of their annual incomes to the poor.<sup>190</sup> But I do ask them to try to live up to their own moral standards and to consider that they may have more power to effect change than they think. I ask them to remember the "power of one."

Solomon Asch's experiment with the lines demonstrated that a very high percentage of people can be induced to give an obviously wrong answer just to go along with the crowd. But when only one confederate of the experimenter gave the right answer, errors by the subject of the study dropped by 75%.<sup>191</sup> And in one iteration of Stanley Milgram's experiments, he arranged for two of his confederates to refuse to administer shocks when the dial was turned into the dangerous range. That caused 92.5% of the subjects to defy the experimenter's orders.<sup>192</sup> In other words, it just takes one or two people with a little courage to save organizations from terrible mistakes. Public companies, investment banks, law and accounting firms need employees with the courage to raise their hands and speak their minds when ethical errors are about to be made. One person can have a major impact.

Mary Gentile studied more than a thousand essays written by MBA applicants to the Columbia University MBA program. They were asked if they had in their professional lives been asked to do something that made them uncomfortable and how they had handled the situation. According to Professor Gentile:

The first and largest bucket was people who said, "Yes, I encountered this kind of a conflict, and it really bothered me. It didn't just roll off my back. But I didn't really think I had any option. So I just sucked it up and I did what they told me to do. I thought it was wrong, but I didn't feel like I had a choice." That was the largest group, a little less than half.

Then there was a small group who said, "Yes, I encountered this kind of conflict. It bothered me so much I couldn't do it. But I also couldn't think of anything else to do. So I removed myself from the situation." Some of these people quit. Some of these people got themselves transferred to another work group. But that was a very small group.

About a third of the people were saying, "Yes, I encountered this. It bothered me, and I tried to do something." A small group of those said, "I tried and I failed." *But about a quarter of the whole group said, "I tried and, by my lights, I was successful."*<sup>193</sup>

The lesson here is that one person can, even in the face of peer pressure or instructions from a superior, turn things in an ethical direction if only they will try. Not always. But often.<sup>194</sup>

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<sup>190</sup> PETER SINGER, *THE LIFE YOU CAN SAVE: ACTING NOW TO END WORLD POVERTY* 151-73 (2009).

<sup>191</sup> Solomon E. Asch, *Opinions and Social Pressure*, in *READINGS ABOUT THE SOCIAL ANIMAL* 17, 22 (Elliott Aronson ed., 1995).

<sup>192</sup> EYAL PRESS, *BEAUTIFUL SOULS: SAYING NO, BREAKING RANKS, AND HEEDING THE VOICE OF CONSCIENCE IN DARK TIMES* 36 (2012).

<sup>193</sup> See <http://www.carnegiecouncil.org/studio/multimedia/20110426/index.html#section-21474> (emphasis added).

<sup>194</sup> See Ervin Staub, *The Psychology of Rescue: Perpetrators, Bystanders, and Heroic Helpers, in RESISTERS, RESCUERS, AND REFUGEES: HISTORICAL AND ETHICAL ISSUES* 137, 144 (John Michalczyk, ed. 1997)

Egil “Bud” Krogh believes that if only he had asked a few questions of his colleagues, perhaps just one simple question to White House Counsel John Dean, he could have prevented creation of the Plumbers’ Unit that broke into both the office of Daniel Ellsberg’s psychiatrist and, eventually, the Watergate Hotel.<sup>195</sup> Many of President Kennedy’s advisors at the time of the disastrous decision to invade Cuba at the Bay of Pigs claimed that they “had severe qualms about the invasion, but [each] thought that he might be the only person present with such hesitations, because everyone else appeared confident, which then led him to believe that he must appear confident at well.”<sup>196</sup> Had just one spoken up, he would likely have had company almost immediately and this huge foreign policy mistake might have been avoided.

## CONCLUSION

Behavioral ethics helps to explain why good people do bad things, why people in general find it difficult to be as ethical as they would like to be. As they study behavioral ethics, students should repeatedly be reminded that “explaining is not excusing; understanding is not forgiving.”<sup>197</sup> Yes, psychological factors, organizational and societal pressures, and various situational factors make it difficult for even well-intentioned people to realize their own ethical aspirations, but we must all try. Students who take these lessons to heart and remember them and practice them in the business world will not lead perfect lives, but they will reduce the odds that they will someday be doing the perp walk on the evening news.

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(concluding, after studying rescuers of Jews in World War II that “[e]ach of us has the power not only to make decisions about what we shall do but to influence others.”).

<sup>195</sup> KROGH, *supra* note 77, at 197.

<sup>196</sup> ROBYN M. DAWES, *EVERYDAY IRRATIONALITY* 152 (2001).

<sup>197</sup> BROWNING, *supra* note 116, at xx.

## **APPENDIX A: ETHICS UNWRAPPED EDUCATIONAL ETHICS VIDEO SERIES**

Ethics Unwrapped is an award-winning<sup>198</sup> free educational video series that covers many aspects of ethics education, but most particularly behavioral ethics. I am second to no one in enjoying listening to myself talk, but today's students are of the YouTube generation and they are comfortable learning from videos. EthicsUnwrapped makes videos easily and freely available to anyone interested in learning about or in teaching business ethics.

These videos are available on the EthicsUnwrapped website: [Ethicsunwrapped.utexas.edu](http://Ethicsunwrapped.utexas.edu). They are also easily accessed via YouTube. And, as noted, they are free.

The videos are relatively brief, usually 5 to 7 minutes. They are accompanied by teaching notes that suggest discussion questions and provide additional source material.

Most of the videos contain academic content provided by a professor who teaches ethics, entertaining illustrations to keep the videos lively, and commentary from students that provides food for thought and fodder for discussion.

Film maker Cara Biasucci is a talented artist and has a deep commitment to ethics education.

I am the content provider for most of the behavioral ethics videos, but other content providers include:

- Professor Lamar Pierce, a leading behavioral ethics researcher at The Olin School at Washington University-St. Louis.
- Professor Mary Gentile of Babson College and creator of the “Giving Voice to Values” program.
- Professor Minette Drumwright who formerly taught at Harvard Business School and is now at the University of Texas, specializing in media ethics.
- Professor Deni Elliott, the Eleanor Poynter Jamison Chair in Media Ethics and Press Policy at the University of South Florida-St. Petersburg.

One set of “Concepts Unwrapped” videos focus on behavioral ethics concepts, most of which were discussed in varying degrees of detail earlier in this paper, including:

- Behavioral Ethics Introduction
- Bounded Ethicality
- Conformity Bias
- Framing
- Ethical Fading
- Fundamental Attribution Error
- Incrementalism
- Loss Aversion
- Moral Equilibrium
- Obedience to Authority
- Overconfidence

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<sup>198</sup> In the first year of their existence, the Ethics Unwrapped videos won two CASE Awards and two TELLY awards. The CASE Awards honor best practices in video education. [http://www.case.org/Award\\_Programs.html](http://www.case.org/Award_Programs.html). The Telly Awards recognize the finest in video production. <http://www.tellyawards.com/>.

- Role Morality
- The Self-Serving Bias
- The Tangible and the Abstract

Additionally, EthicsUnwrapped contains a longer (25-minute) video about disgraced lobbyist Jack Abramoff entitled “In It to Win.” The video is very interesting and is accompanied by six short videos that use “In it to Win” to illustrate six topics that are very relevant to behavioral ethics:

- Framing
- Moral Equilibrium
- Overconfidence Bias
- Rationalizations
- Role Morality
- Self-serving Bias

In August 2013, EthicsUnwrapped added eight videos related to Professor Mary Gentile’s excellent *Giving Voice to Values* program.<sup>199</sup> The focus of these videos is helping people who believe they know the right thing to do to find the courage to do it and the tools to do it effectively.

Professor Drumwright has provided the content for three videos with content very relevant to a behavioral ethics approach to ethics education that will be posted on EthicsUnwrapped in January 2014:

- Moral Myopia
- Moral Muteness
- Moral Imagination

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<sup>199</sup> Earlier in the text, I mentioned Prof. Gentile’s book, *GIVING VOICE TO VALUES* (2010), and her GVV website: <http://www.babson.edu/faculty/teaching-learning/gvv/Pages/home.aspx>.

## **APPENDIX B: A SUMMARY OF SIX CLASSES**

After introductory class lectures, discussions, and surveys that note the importance of law, illustrate the inter-weaving of law and ethics, and gather responses from the students that will be used later to add credibility to the psychological studies to be discussed, I follow with six 75-minute classes that aim to address the following questions.

### **Class #1: Should individuals and companies act ethically or unethically?**

--I ask students to answer this question and to give detailed reasons as to why. Rather than preach to them myself, although I have that tendency, I put the students in the position to decide and to produce rationales. My suspicion is that they will listen to themselves and to their peers more than they will listen to me on these matters. I also spend time having the students describe the sort of ethical person they hope to grow up to be.

### **Class #2: Where do our moral standards come from?**

--The primary purpose of this class is to get students accustomed to the idea that when they think about ethics, there is a whole lot more going on in their heads than it seems. While it often appears to people that they are simply reasoning from premise A to conclusion B, more commonly people make ethical judgments quickly and intuitively and to the extent that they seem to be reasoning to an ethical conclusion they are instead merely rationalizing decisions that their subconscious brain made nearly instantaneously. Using the trolley scenario and other examples, it is not too difficult to vividly illustrate moral dumbfounding.

### **Class #3: Why do good people do bad things? (Part One)**

--If people are not aware that they have an ethics problem, then they have an ethics problem. And most people, research shows, are pretty firmly convinced that they are good people. The most important contribution behavioral ethics can make to an ethics education is to convince people that despite their best intentions and excellent character, they are, like everyone else, vulnerable to making ethical mistakes. This is very hard for people to accept. So I make three different attempts to get this message across. In this first one, I begin with the premise, easily confirmed by a survey of any classroom, that most people believe that they have firm ethical beliefs that can be changed only by new evidence or reasoned arguments and that they have solid character that will help them do the right thing when faced with ethical choices. I then demonstrate to students that both of these beliefs are at least somewhat wrong for most people by discussing large numbers of experimental studies demonstrating how easy it is to shift people's moral judgments and their moral actions simply by changing the context in which they make decisions.

### **Class #4: Why do good people do bad things? (Part Two)**

--Studies show that people readily accept that conflicts of interest affect the judgments of other people, but tend to believe that they themselves are largely unaffected by such conflicts. When subjects are shown how the judgments of many people have been affected by

psychological biases, they tend to react in ways demonstrating that they now accept that other people will be affected by these biases but do not believe that they themselves will be so affected. Therefore, in round two of trying to convince students of their vulnerability to ethical missteps, I run through a large number of psychological shortcomings, organizational and societal pressures, and seemingly innocuous situational forces that can cause good people to do bad things. People's desire to please authority or fit in with the crowd can cause problems. They can frame decisions in such a way as to omit its ethical dimensions, often because they see themselves playing a particular role (such as "loyal employee"). They can fall victim to incrementalism (the slippery slope). And on and on. Students usually can relate to all these concepts. There are both anecdotal examples and studies by psychologists to support all of them.

Because I typically cannot cover all of them well in a single class period, I typically use EthicsUnwrapped video explanations of many of the topics. These videos are free and easily available on [EthicsUnwrapped.utexas.edu](http://EthicsUnwrapped.utexas.edu) and on YouTube. These videos are entertaining and easy for students to relate to. They are short, but contain quite a bit of content. Teaching notes and additional resources are included.

### **Class #5: Why do good people do bad things? (Part Three)**

--In my third attempt to get through to students regarding their vulnerability to ethical mishaps, I use Tenbrunsel et al.'s temporal explanation for why people often screw up.<sup>200</sup> When people project forward, they tend to conclude that they will act correctly when faced with an ethical issue because they just know that they are "good people" and that's what good people do. All their concentration is on the ethical issue. However, when it is actually time to act, they might not even notice the ethical issue because they might be intent upon pleasing the boss, fitting in with the crowd, hitting production quotas, etc. When people think back, they tend to exaggerate in their own minds how ethically they have acted because it is important to them to view themselves as ethical people and memories are extremely malleable and subject to self-interested influence. When it is actually time to act, people often act less ethically than either they projected that they would (or might sometime remember that they did). I flood the students with examples of studies where subjects projected they would act ethically in a given set of circumstances, and then failed to do so when push came to shove.

### **Class #6: How can people be their best selves?**

--Up to this point, the message of these ethics lectures has been fairly sobering. It *is* hard for people to be as ethical as they wish to be. But this last lesson gives several suggestions for how well-intentioned people can approach being their best selves. Now that they are available, I will likely have students watch videos relating to Mary Gentile's Giving Voice to Values program that are posted on [EthicsUnwrapped.utexas.edu](http://EthicsUnwrapped.utexas.edu) and available on YouTube. The concepts underlying GVV are important to my message as to how students can act more ethically.

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<sup>200</sup> Ann E. Tenbrunsel et al., *The Ethical Mirage: A Temporal Explanation as to Why We Aren't as Ethical as We Think We Are* 30 RES. IN ORG. BEHAV. 153 (2010).



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