APPLYING THE FRAUD TRIANGLE TO HIGHER EDUCATION: ETHICAL IMPLICATIONS

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I. Introduction

Admittedly, some population of students has cheated consistently for years; however, over the last few decades academic cheating appears to be on the rise.\(^1\) Recent technological advances in online education have made it even easier to cheat.\(^2\) What is the responsibility of the academy given the ease at which test question answers are readily available and plagiarized papers abound on the Internet? Certainly, faculty will ask students to put away their electronic devices when they take a test in class, as well as their smart watches. But what about out-of-class assignments, online assignments, research papers, and courses offered completely online? Staying one step ahead of resourceful students, who seem to thrive on putting more effort into figuring out how not do the assignment themselves rather than just doing it, can be as arduous to faculty as teaching more courses. What is faculty responsibility in this conundrum? This paper will examine academic dishonesty, apply the fraud triangle from the auditing literature of accounting to this situation, and conclude the academy and higher education has an ethical responsibility to minimize cheating, even in the absence of legal constraints.

II. Cheating in the Academy

Cheating scandals are not new to higher education.\(^3\) Research suggests that most students cheat at some point in their college careers, with 66% of students at prestigious colleges and universities reporting they cheated, and 70% at state colleges and universities reporting they cheated on tests (84% reported cheating on homework assignments).\(^4\) The International Center for Academic

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Integrity puts the number at 68% of undergraduate students admitted to cheating on written assignments or tests, while 43% of graduate students admitted to the same.\(^5\)

The Internet and the availability of online classes further facilitates academic dishonesty for students predisposed to taking an easy route.\(^6\) A 2013 report revealed that 6.7 million students took online courses that year and the proportion of all students taking at least one online course reached an all-time high of 32.0 percent.\(^7\) Commensurate with the growth of the online education market are websites not only offering to assist with term papers and research projects,\(^8\) but also offering to take an entire online class for students for a fee.\(^9\) One such website, TakeYourClass.com, suggests, “[L]ife Is too Short to Spend on Classes You Have No Interest In. Focus on what’s really important in your life.”\(^10\) Another service, BoostMyGrades.com, promises to “take your exams, quizzes, and complete your assignments. We do all your homework for you; so you can relax easily…” Let us take your stress away, so you can enjoy life while we take your online classes.”\(^11\) NoNeedToStudy.com, “America’s No. 1 academic assistance firm,” claims that their experts are taking online classes every day “and getting straight A’s for students like you.”\(^12\)

Students do not need to turn to outside for pay firms to cheat successfully in online classes or on assignments. Group cheating strategies include, for example, “picking a rotating ‘sacrificial lamb’ to take the online test first and bring back the questions back to the group” and coordinating members of a collaborative Google Doc, with a test question matrix that provides peer review answers to every possible test question.\(^13\) One IT savvy student, who tested in an online open source system, created a computer program to procure the correct answers to the test.\(^14\) Given the present propensity of students to cheat and the shortcuts available, what is the responsibility of the academy and institutions of higher education, and what should be their response?

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8 See, e.g., Prescott Papers: Professional Custom Writing Service, https://www.prescottpapers.com/index.php (last visited Jan. 12, 2017). This service offers professional-quality custom academic writing, editing and revision, and academic assistance, including free revisions and a 100% plagiarism free guarantee. Id. See also Ed Dante, The Shadow Scholar, CHRON. HIGHER EDUC., Nov. 12, 2010, at---- (chronicling the story of a man who makes his livelihood writing papers for a custom-essay company); Darby Dickerson, Facilitated Plagiarism: The Saga of Term-Paper Mills and the Failure of Legislation and Litigation to Control Them, 52 VILL. L. REV. 21, 24-44 (2007) (discussing the history and operation of term paper mills).


10 Take Your Class.com, https://www.takeyourclass.com/ (last visited Jan. 11, 2017). OnlineClassHelpers.com seems to be affiliated with this website as well, offering a 100% Money back guarantee, a deadline guaranteed and same day help when needed. OnlineClassHelpers.com, https://www.onlineclasshelpers.com/ (last visited Jan. 11, 2017).


14 The 10 most inventive cheating attempts on online exams, ECAMPUS NEWS (Jan. 7, 2014), http://www.ecampusnews.com/top-news/exams-online-cheating-400/. His efficiency and proficiency let to his demise. Id.
III. The Fraud Triangle

The Fraud Triangle in the accounting profession is a model that explains the factors that cause someone to commit occupational fraud. Its three required components consist of a 1) perceived unshareable financial need, 2) perceived opportunity and 3) rationalization. In his book from which the concept originated, author Donald Cressey hypothesized that “[T]rust violators when they conceive of themselves as having a financial problem which is non-shareable, are aware this problem can be secretly resolved by violation of the position of financial trust, and are able to apply to their own conduct in that situation verbalizations which enable them to adjust their conceptions of themselves as trusted persons with their conceptions of themselves as users of the entrusted funds or property.” The theory’s application has expanded from occupational embezzlement to fraud examination in accounting. Research also suggests the three fraud triangle factors are interrelated. In other words, if situational pressures and opportunities are both significant and personal integrity is low (i.e., rationalizations abound as justifications), then fraud is more likely to occur, and the converse is true as well.

How do the three components of the fraud triangle manifest themselves in cases of financial fraud? First, what factors can precipitate individuals to perceive an unshareable financial need? Typically, the perceived unshareable financial need translates into some form of financial pressure. For example, for an individual who commits fraud, the pressure could stem from debt, addictions which require financial resources (drugs or gambling), an unquenchable thirst for status linked to possessions, or pressure at work for greater productivity. Pressure also can arise from other stress issues such as alcoholism, health issues or loss of employment. Additionally, financial demands related to tuition, hospital bills, child support, illicit affairs, or unaffordable high lifestyle might lead to the perceived need to access resources in dishonest ways. In extreme circumstances, the dire financial straits may just center more on survival. For example, after the recession of 2008, a report by the Association of Certified Fraud Examiners (ACFE) found that embezzlement increased significantly in response to employees’ financial pressures.

Second, how do opportunities arise of which individuals may take advantage? A breakdown in internal controls, which allows the perpetrator to misappropriate funds and to conceal those activities successfully, provides opportunities for fraud. Opportunities also arise if individuals are given authority, but their work is not reviewed, or if too much responsibility is placed in one

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16 Id. (citing DONALD R. CRESSEY, OTHER PEOPLE’S MONEY 30 (1973). Subsequent researches identified twenty-five personal characteristics and seventy-five organizational environmental factors that had an impact on occupational fraud. JOSEPH T. WELLS, FRAUD EXAMINATION 21-22 (4th ed. 2014).
18 This dynamic is known as the fraud scale. WELLS, supra note 16, at 23-24 (referencing Dr. Albrecht’s research).
23 Rosten, supra note 20, at 24-25.
employee, and there is no separation of duties or checks and balances. Proper supervision of the actions and functions of individuals is crucial to minimizing the opportunity to commit fraud.

Third, how can these individuals rationalize or justify their fraudulent activities? Excuses offered to that characterize the behavior as acceptable or justifiable include a perception that the individual is underpaid and entitled to the unauthorized payment or that the individual did not intend to keep the funds, but was only borrowing the money. Concluding that fraud is excusable because everyone else is doing it is another rationalization. Taking these factors together, in cases in which “situational pressures and perceived opportunities are high and personal integrity is low, occupational fraud is much more likely to occur than when the opposite is true.”

IV. Applying the Fraud Triangle to Academia

At its essence, cheating is a type of fraud. Like ramifications witnessed by society as the result of financial fraud, academic dishonesty also has ripple effects. Cheating deceives not just the professor, but fellow students (particularly if there is a curve), the institution, scholarship donors, government financial aid providers, prospective graduate programs and prospective employers. For example, if academic dishonesty is prevalent, then assumptions that employers make about job applicants based upon a comparison of the grade point average is flawed because the grades awarded are skewed and an inaccurate measurement.

The components of the fraud triangle, therefore, translate well into the arena of academic dishonesty. First, students perceive some urgency about their grades; in other words, they perceive that they must attain a certain grade and will not be successful in that quest without resorting to academic dishonesty. Second, students are afforded an opportunity to cheat; these opportunities may present themselves in a variety of formats. Third, students rationalize that it is acceptable to take advantage of these opportunities to cheat for any number of reasons.

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24 Suleik, supra note 21, at 1.
25 Rosien, supra note 20, at 25.
26 Suleik, supra note 21, at 1.
27 Luky Patricia Widianingsih, Students Cheating Behaviors: The Influence of Fraud Triangle, 2 REV. INTEGR. BUS. ECON. RES. 252, 254 (2013) (referencing the Fraud Scale and citing JOSEPH T. WELLS, PRINCIPLES OF FRAUD EXAMINATION (2005)).
30 Happel & Jennings, supra note 4, at 184-85.
31 Patsy G. Lewellyn & Linda C. Rodriguez, Does Academic Dishonesty Relate to Fraud Theory? A Comparative Analysis, AM. INT’L J. CONTEMP. RES. (June 2015), http://www.aijcrnet.com/journals/Vol_5_No_3_June_2015/1.pdf. See also Widianingsih, supra note 27, at 259 (concluding that academic dishonesty does not occur without some kind of pressure and that opportunities can be eliminated by having good internal controls; therefore, cheating can be reduced if the institution actively communicates value or ethical behavior to all members); Jack Little & Stephanie Handel, Student Cheating and the Fraud Triangle, BUS. EDUC. FORUM (Feb. 2016), https://www.sheehancpa.com/pdf/student-cheating-and-the-fraud-triangle.pdf (modifying the fraud triangle for academic dishonesty to the elements of leadership, control, and effective follow-up).
Each of these fraud triangle elements is a predictive factor in student cheating behavior, and modifying the presence of elements in the fraud triangle can alter cheating behaviors. Moreover, each of the three fraud triangle factors has an influence on a student’s propensity to cheat, and all three factors together jointly have an impact a student’s propensity to cheat. This dynamic is similar to financial fraud and embezzlement cases. The subsequent sections will look at each component of the academic fraud triangle in more depth by examining each factor from the students’ perspectives, as well as articulate an appropriate faculty or institutional response to counter the issue.

A. Perceived Need to Cheat

1. Student Perspective

In a series of studies from the 1960s to today, researchers have examined numerous variables and their influence on student engagement in academic dishonesty, and have found that the pressures motivating student cheating are consistent and predictable. Their findings support an understanding of student cheating that directly informs the perceived need to cheat required of the first component of the fraud triangle. In this research, several variables that satisfy this component of the fraud triangle consistently had a statistically significant correlation with student cheating.

Some of the variables influencing student cheating included internal pressures that arose from Type A behavior, competitive achievement striving. Other variables included external pressures that were created by the time demands of extracurricular activities, lower GPAs, academic entitlement, family pressures, and laziness-induced pressures (e.g., waiting until the last minute to do homework). Some students even may resort to taking cognitive enhancers improve their

32 D’Arcy et al., supra note 4.
33 Freddie Choo & Kim Tan, The Effect of Fraud Triangle Factors on Students’ Cheating Behaviors, in ADVANCES IN ACCOUNTING EDUCATION 9, 205-20 (Bill N. Schwartz & Anthony H. Catanach, eds. 2008)
34 See supra note 18, and accompanying text (referencing the fraud scale).
40 Id. at 1202.
41 Id. (exploring grade inflation as a precursor of expectations of higher grades for less work).
mental performance when there is no medical need, which arguably is a form of academic cheating. \(^{42}\)

Sometimes students cheat because they believe there is no other way to pass the class and they either do not wish or cannot afford to take it again; thus, their goal of graduation supplants the goal of staying honest. \(^{43}\) The perceived need to cheat may arise out of a perceived need to stay on the curve, as well. In other words, while a student may have confidence in his or her ability to pass, if everyone is cheating then students who may not be pre-disposed to cheat feel pressured to cheat in order to stay competitive. \(^{44}\) Students also claim that pressure from peers and adults to be the smartest and the demands of competing responsibilities are other the sources of the pressure to cheat. \(^{45}\) An Arizona study found that students who were most likely to cheat were those who were facing dire circumstances, such as disqualification from the university or program of study, the loss of a scholarship or the expiration of the allotted time for an assignment. \(^{46}\)

2. Faculty or Institutional Response

Faculty should create reasonable expectations concerning grades, establish a culture that recognizes and reinforces that a final grade of an “A” is not the norm, but rather is the exception. The focus on actual learning rather than grades should be at the forefront. Researchers have found that the way in which students are motivated to learn is a key: for example, students who driven by extrinsic motivation and seek external rewards for their learning (praise from the teacher, good grades, honors and awards) are more likely to perceive a need to cheat than students who are driven by intrinsic motivation (desire to understand the course material because it is interesting, useful, or meaningful to their lives) are less likely to cheat. \(^{47}\) Therefore, a premeditated strategy by which the professor demonstrates that learning the material is important for their success, rather than to achieve a certain grade, shifts the focus to a more relevant goal.

Celebrating collective success instead of individual success is another strategy to diminish the stress associated grades and assessments. Creating safe spaces where students can learn by making mistakes, such as having multiple low stakes assignments instead of only a few tests, is another way to discourage the temptation to cheat. Assigning multiple exercises and assessment not only provides feedback and learning opportunities for students, but also performs a diagnostic function so that students can learn from their mistakes and improve. \(^{48}\) Provide ongoing, consistent, and

\(^{42}\) Kelline R. Linton, Comment, Scholastic Steroids: Is Generation Rx Cognitively Cheating?, 39 PEPP. L. REV. 989 (2012) (concluding that medicinal cognitive enhancement abuse is not ethically appropriate in the higher-educational setting of medical and law schools and is equivalent to academic cheating).


\(^{44}\) See Donald D. Carpenter, et al., Engineering Students’ Perceptions of and Attitudes Towards Cheating, 95 J. ENGINEERING EDUC. 181, 191 (2006) (reporting that a study of engineering undergraduates suggested that students would cheat if it seemed everyone else was cheating).

\(^{45}\) Goldman, supra note 43.

\(^{46}\) Allie Grasgreen, Who Cheats, and How, INSIDE HIGHER ED. (March 16, 2012), https://www.insidehighered.com/news/2012/03/16/arizona-survey-examines-student-cheating-faculty-responses. Cheating to maintain a grade point average is another motivator. \(Id.\)


\(^{48}\) Fiona Martin, Using a Modified Problem Based Learning Approach to Motivate and Enhance Student Learning of Taxation Law, 37 THE LAW TEACHER 55, 68 (2003).
constructive formative feedback on small, ungraded assignments or in-class exercises increases a students’ self-efficacy, or their ability to exert the level of effort and persistence needed to succeed.49

Group work (not just team projects) can diffuse the stress associated with individual performance,50 and assist students in their comprehension of the material, as well. Indeed, peer mentoring and peer tutoring is an effective learning methodology that can increase formative assessment, provide students with additional feedback and improve student learning.51 Collaborative learning measures employed in student work groups can enhance problem-solving and critical thinking skills, communication skills, the willingness of students to attempt new and difficult tasks, as well as to understand the values and cultures of other individuals and groups.52 Group research projects can enhance academic success, and strategies are available to neutralize common student complaints concerning working in teams.53 However, apart from substantial group projects, simply permitting student to collaborate within established boundaries on low stakes classroom exercises or homework assignments can mitigate feelings of isolation, reduce panicked impulses to cheat and open the door to learning and not just earning a grade.

Faculty also can abate the pressure to cheat by providing detailed instructions so that students know what is expected; faculty also should provide examples of exemplary work so that students will be inclined to work hard to achieve success because they know the expected outcome.54 Ensuring that students understand citation requirements and know when and how to cite sources may help to prevent plagiarism.55 Steps faculty can take to teach students about plagiarism include 1) discussing the two-tier aspect of plagiarism: acknowledging the source by providing a citation and enclosing copied material in quotation marks, 2) explaining the ethical reasons for attribution and the ethical aspects of plagiarism, 3) providing a clear statement regarding plagiarism on the course syllabus or particular writing assignment which also references the honor code, 4) providing examples of the ways in which to avoid plagiarism, 6) explaining what kinds of citations are


50 For a discussion of the implementation of group projects and team-based learning see, e.g., Robert S. Adler & Ed Neal, Cooperative Learning Groups in Undergraduate and Graduate Contexts, 9 J. LEGAL STUD. EDUC. 427 (1991); Susan W. Dana, Implementing Team-Based Learning in an Introduction to Law Course, 24 J. LEGAL STUD. EDUC. 59 (2007); Larry K. Michaelson, Robert H. Black, & L. Dee Fink, Problems with Learning Groups: An Ounce of Prevention, 17 J. LEGAL STUD. EDUC. 91 (1999); George W. Spiro, Collaborative Learning and the Study of the Legal Environment, 10 LEGAL STUD. EDUC. 55 (1992).


52 Joan E. Camara, B. Nathaniel Carr & Barbara L. Grota, One Approach to Formulating and Evaluating Student Work Groups in Legal Environment of Business Courses, 24 J. LEGAL STUD. EDUC. 1, 3 (2007) (citations omitted).


55 Ecarlous Y. Spearman, Citing Sources or Mitigating Plagiarism: Teaching Law Students the Proper Use of Authority Attribution in the Digital Age, 42 INT’L J. LEGAL INFO. 177, 203 (2014).
expected, 7) disclosing what steps will be taken to detect plagiarism, and 8) warning students of the consequences of plagiarism.\(^{56}\)

Celebrating the research requirement in any writing assignment, as well as the accompanying citation requirements, reinforces the notion that students must research and study the work of other authors and attribute their authorship in order to succeed on the assignment.\(^{57}\) Students otherwise might feel that they are responsible for creating a thought-leader masterpiece in an undergraduate assignment, creating unnecessary pressure to claim the work of another as their own.

**B. Opportunity**

1. **Student Perspective**

Students likely will take advantage of an opportunity to engage in academic dishonesty if the risk of getting caught is low.\(^{58}\) In contrast, students are less apt to engage in behaviors that they define as being wrong when they are perceived to carry risks of punishment.\(^{59}\) Students report that the decision to cheat is influenced by the probability of being caught, the availability of opportunities either because of the available technology or the absence of safeguards, the social acceptability of cheating among peers, the likelihood of sanctions if caught, and the instructor’s tolerance or intolerance of academic fraud.\(^{60}\) Against that backdrop, multiple avenues to cheat exist.

In a seated class, only a student’s ingenuity limit the opportunities to cheat.\(^{61}\) Students are ingenious about concealing information in various ways so that they may to consult it during a test.\(^{62}\) Some of the 50 Ways Technology Can Help You Cheat in School include the electronic dictionary method, the earpiece method, the Facebook Method, the bathroom i-pod method and the mobile phone picture method.\(^{63}\) For students with challenges conceptualizing how to employ cheating strategies, there are YouTube videos available to assist.\(^{64}\) In an online environment, supervision can be even more challenging; as a result, students may use materials they are not

\(^{56}\) Linda B. Samuels & Carol M. Bast, Strategies to Help Legal Studies Students Avoid Plagiarism, 23 J. LEGAL STUD. EDUC. 151, 159-62 (2006).

\(^{57}\) See Kim D. Chanbonpin, Legal Writing, the Remix: Plagiarism and Hip Hop Ethics, 63 MERCER L. REV. 597, 637 (2012) (asserting that “hip hop music and legal writing are at their best when they demonstrate the author’s depth of knowledge of the subject matter by showcasing the author's skill at weaving existing sources with new, innovative ideas and arguments.”)

\(^{58}\) Id. at 605 (citation omitted). “In polls, students say that they know plagiarism is wrong, but they cheat because they know they will not get caught.”

\(^{59}\) Carpenter, supra note 44 at 241.


\(^{62}\) Peter M. Edelstein, What Every Professor Should Know About Cheating in the Classroom, 14 J. LEGAL STUD. EDUC. 215, 216-17 (1996).


permitted to use, pay someone to do work or to take a test, consult specialists on the Internet, or surf the web for answers while testing.

2. Faculty or Institutional Response

Like financial and occupational fraud, academic dishonesty can occur if there is an absence of internal controls for cheating, and students’ work is not reviewed for the possibility of cheating; proper supervision is crucial to minimizing the opportunity to commit academic fraud. There are several suggestions for enhancing academic integrity and in turn reducing the opportunities afforded to cheat. As an overview, authors have suggested that the academy “1) educate students on what constitutes academic dishonesty, 2) make cheating more difficult, 3) change the climate of acceptance of dishonest behavior, 4) increase the probability of being caught and punished, and 5) increase the penalties.”

Through consistent policies college administrations should foster peer pressure in opposition to cheating and reinforce social norms that acknowledge the likely detection of attempts to cheat. One study concluded that whatever strategies the institution employs to deter academic dishonesty and to punish infractions, consistent and unwavering enforcement of the rules is crucial to success.

Resources are available for faculty and institutions to assist them in their quest. There are some common sense approaches to help faculty detect digital cut and paste plagiarism. For example, faculty should be alert to inconsistent formatting (such as different font sizes, style or color), a mixture quotation mark styles, inconsistent layout (such as margins, page numbers, headings or citation formats, awkward page and line breaks), changes in writing style, incoherent text or problems with thought-flow, and a lack of recent references, unusual references, or even fake references.

Additionally, companies, which have successfully deflected copyright infringement allegations, provide services for the detection of plagiarism, as well. For example, Turnitin compares 62 billion web pages including 160 million content items from publishers, scientific journals and 700 million student papers to provide an originality report to determine the likelihood of plagiarism and what parts of a paper could be plagiarized. SafeAssign, a software package

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65 See supra notes 23-24, and accompanying text (discussing opportunities which make the environment ripe for financial fraud).
66 Stallings & Hoseck, supra note 1, at 100. For a further elaboration of these suggestions see id., at 100-04.
68 Happel & Jennings, supra note 4, at 208.
70 The Fourth Circuit found in favor of such a service against copyright violation claims. A.V. v. Iparadigms, LLC, 562 F.3d 630 (4th Cir. 2009) (holding that IParadigms’ use of the student works was “fair use” under the Copyright Act). For a discussion of the case see Jonathan Gingerich, A.V. ex. rel. Vanderhye v. Iparadigms, LLC: Electronic Databases and the Compartamentalization of Fair Use, 50 IDEA 345 (2010). The service, however, is not without its critics. See Stephen Sharon, Comment, Do Students Turn Over Their Rights When They Turn in Their Papers? A Case Study of Turnitin.com, 26 TouRO L. REV. 207 (2010).
71 Turnitin for Higher Education, TURNITIN.COM, http://turnitin.com/en_us/higher-education (last visited Apr. 18, 2017) (discussing the various uses of the program). See also Cory Turner, Turnitin And The Debate Over Anti-Plagiarism Software, NPR.ORG. (Aug. 25, 2014), http://www.npr.org/sections/ed/2014/08/25/340112848/turnitin-and-the-high-tech-plagiarism-debate. The company, while not the only one to provide such services, is the largest with more than half of all higher education institutions in the U.S. utilizing its services. Id.
included in the learning management system Blackboard, uses a text-matching proprietary algorithm “capable of detecting exact and inexact matching between a submitted paper and source material.” However, papers submitted by students who have purchased a service, which prepares original works, would fly under the radar because the writer is not plagiarizing; the writer is just not the student receiving the credit.

In an online environment, access to assignments and quizzes can be password protected, while tests can be proctored at testing centers that require identification verification. Software solutions can act as remote proctors, scan identification, capture a 360-degree view of students, monitor students by web cameras and record keystrokes. For example, Procture U offers assistance with at-home test proctoring by providing “digital solutions, including identity management and exam management.” The company claims to be used by 1,000 institutions and serving test-takers in countries all around the world, administering “over 2 million exams for test-takers in 129 countries.” Arguably, these monitoring strategies work, but are costly and can offset the cost savings from online delivery. Whatever monitoring resources are available, it is important to ensure that all faculty, including adjunct faculty members, have access to academic dishonesty detection resources.

Faculty also can structure assignments to generate natural impediments to unauthorized collaboration. Assignments that require individual analysis are more difficult to plagiarize. Strategies to frustrate would-be cheaters on papers or projects include 1) breaking the assignment into parts or requiring drafts so that procrastination will be less likely to cause desperation cheating, 2) designing a unique project or controlling the research topics from which students can choose to diminish the availability and use of online canned projects, 3) changing assignments every semester, requiring students to hand in samples of their research sources and 4) mandating a signed acknowledgement that they understand academic dishonesty and have not committed any infractions. Research suggests that signing a moral code can “drastically change behavior points to the malleability of moral self-regulation” and reduce the likelihood of cheating.

Because publishers’ test banks with answers are readily available on the Internet, faculty should be skeptical about using them unmodified, especially in an online environment where students can consult the answers as they take the test. For an online environment, professors can develop java script codes to prevent students from copying or printing any assessment content.

76 Id. For a discussion about the company’s services see Steve Kolowich, Behind the Webcam’s Watchful Eye, Online Proctoring Takes Hold, CHRON. HIGHER EDUC. (Apr. 15, 2013), http://www.chronicle.com/article/Behind-the-Webcams-Watchful/138505/.
77 Ryesky, supra note 67, at 150-51.
78 Sharon, supra note 70, at 240.
79 Samuels & Bast, supra note 56, at 162-65.
limit the time for each assessment question, release grades only after the deadline ends, and present questions and multiple choice answers randomly.  

Faculty also should treat every online or take-home exam as if it were an open-book test; in reality, it likely is an open book test for a number of the students, whatever the instructions state. Test questions in an online environment should focus on the application and analysis of information, rather than upon definitions that are readily available. For a seated environment faculty should observe students as they test, scramble questions and vary exams between semesters and sections.

Of course, monitoring alone is insufficient. If faculty members detect fraud, then they should follow procedures for reporting academic dishonesty. To encourage reporting violations, faculty members, including adjunct faculty members, should never feel that their employment will be threatened because they pursued a claim of academic dishonesty. Unfortunately, evidence indicates that faculty members generally tend to ignore academic misconduct.

Many researchers have surveyed faculty and consistently found that close to half of the faculty surveyed “had never referred a suspected case of cheating to the chair, a dean, or another administrator or body.” What are the disincentives to reporting academic integrity violations? One researcher found that of those surveyed the following reasons were given (with the percent of surveyed respondents listed in parenthesis after each reason): insufficient proof (95.2%), the cheating was trivial (19.3), they simply did not have enough time to deal with the cheating (12.1%), a lack of support from administration (8.4%), the faculty member felt partially responsible for the actions of the students (8.4%), a belief that the student is the one that will ultimately suffer (6.0%), because it was too stressful (6.0%), that their college or university’s academic integrity system is too bureaucratic (4.8%), and they felt intimidated or fearful (1.2%).

Faculty also may sense that there is insufficient support for the pursuit of academic integrity violations from the administration, which often is pre-occupied with retention and graduation rates and are equally dissuaded by the combative and cumbersome nature of most systems. Further, the somewhat adversarial process often also allows multiple avenues for appeal which is time-consuming and stressful. Finally, faculty may consider the ultimate punishment doled out by the responsible tribunal to be too weak to merit the investment of time. While this last reason does not appear in the literature as often as the other reasons for faculty inaction, it is supported by the fact

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83 While it is tempting to put students under the honor code, even ethical students are pressured to cheat in order to stay on the curve because of the reality that some students will cheat.
84 The strategy is laudable as this type of examination challenges students to think critically, beyond simple recall. Bloom’s taxonomy ranks the higher order thinking skills as being analysis, synthesis, and evaluation. Benjamin S. Bloom, Taxonomy of Educational Objectives: The Classification of Educational Goals 201–207 (1984).
86 Ryesky, supra note 67, at 150-51.
87 McGill, supra note 60, at 255.
88 See Arthur Coren, Turning a Blind Eye: Faculty Who Ignore Student Cheating, 9 J. Acad. Ethics 291, 300 (2011) (finding that “47.8% of the faculty surveyed had never referred a suspected case of cheating to the chair, a dean, or another administrator or body”).
89 Id.
that, among faculty member who have reported cheating, the rate of future reporting is significantly less than those who have not participated in the system previously.\textsuperscript{90}

In other words, university offices of student conduct may be inclined to over-emphasize the \textit{teachable moment} of the violation instead of need for consequences relating to the student’s wrongful conduct. This over-emphasis on the \textit{teachable moment} may have a rehabilitative component, but without teeth of punishment, it is unlikely to have a deterrent impact on the conduct of other students. Furthermore, such emphasis may reinforce to the student that their actions were justified in that the potential cost is so low and the potential reward so high. Lastly, such an approach does nothing for the constituents affected by the act of dishonesty: fellow students, alumni, scholarship donors, prospective employers and taxpayers.

An academic integrity program should be able to articulate a clear purpose and mission along with clear policies and provide orientation and training of faculty.\textsuperscript{91} The institution should implement a realistic process for addressing violations, owned in part by students who are empowered by its enforcement.\textsuperscript{92} The refinement of an ethics curriculum also is important, as is the maintenance of a dialogue with stakeholders, including the administration, faculty and students.\textsuperscript{93} Finally, the institution should monitor enforcement of its academic integrity process, document its results, evaluate its outcomes and communicate the results to relevant stakeholders.\textsuperscript{94}

C. Rationalizations

1. Student Perspective

Because of an individual’s sense of right and wrong, maintaining, one’s self-image typically requires a person either to do the right thing or to sanction oneself when a wrong action is taken. There is, however, a third option: rationalization. For example, students may assert that the responsibility to limit cheating belongs to the instructors and the institution, and not them.\textsuperscript{95} The owner of \textit{Wetakeyourclass.com} explained that he did not think such websites were a problem; instead, the problem was that “education is structured in a way that makes it easy to cheat.”\textsuperscript{96} Unfortunately, as technology facilitates academic dishonesty it commensurately becomes “easier to rationalize when it is accomplished through what have become simple and routine actions.”\textsuperscript{97} The motivation behind such self-deluding behavior arguably is to maintain our self-worth and thereby protect ourselves because we want to believe that we are good.

The mechanisms of rationalization employed by students can be understood through the moral agency theory of moral disengagement.\textsuperscript{98} In this theory, people rationalize to disengage their moral
self-sanctions from their unethical conduct, thereby preserving their self-image without taking the, often more difficult moral rout.\footnote{Id at 364.}

The eight cognitive mechanisms of moral disengagement as applied to some examples from academia include 1) moral justification (e.g., “I didn’t have the time to study. I stayed up all night taking care of my roommate who was sick. Glancing at a friend’s answers during a quiz is better than leaving your roommate to suffer alone.”); 2) euphemistic labeling (e.g., “I did not copy my friends work, we just worked on it together. I’d call it teamwork at the worst, but not cheating.”); 3) advantageous comparison (e.g., “At least I didn’t look up the exact answers online like many of my classmates did. I work hard in this class and I just used the book to look up a few answers as insurance.”); 4) displacement of responsibility (e.g., “Why would the professor give us an online test that had all the answers online already? That is his fault, not mine!”); 5) diffusion of responsibility (e.g., “Everyone is cheating and this class is graded on a curve. I need to cheat to stay competitive.”); 6) distortion of consequences (e.g., “Seriously, whom am I harming by using my friends essay from last semester? He willingly gave it to me! No one, that’s who.”); 7) dehumanization (e.g., “Screw my classmates! It is every man for himself.”); and 8) attribution of blame (e.g., “It’s not my fault that Jim didn’t look up the answers online and ended up getting a bad grade. I told him that he should have done it because he was going to get hammered on the curve unless he did. His bad grade is his own fault, not mine.”).\footnote{Id. at 364-366}

Such self-deception makes the immoral defensible, even praiseworthy, thereby short-circuiting the moral corrective mechanism of self-sanction.

2. Faculty or Institutional Response

In financial fraud cases, many commentators agree that the “tone at the top” or the ethical atmosphere created by the organization’s leadership will have an effect on everyone; in other words, if the tone upholds ethics and integrity, then those values will permeate the organization.\footnote{Tone at the Top: How Management Can Prevent Fraud in the Workplace, ASSOC. OF CERT. FRAUD EXAMINERS, http://www.acfe.com/uploadedFiles/ACFE_Website/Content/documents/tone-at-the-top-research.pdf (last visited Jan. 15, 2017).}

Therefore, if ethical behavior is valued throughout educational institutions starting at the top, the rationalization of unethical behavior should become more difficult for everyone. Higher education can create a zero tolerance policy towards fraudulent behavior, remind students of this policy on a regular basis and aggressively enforce violators. Institutions also can ensure that students know the cost of fraud, and what constitutes academic dishonesty. Students identify the importance of having both an academic integrity honor code and an awareness of institutional policies as key factors in the decision not to cheat.\footnote{McGill, supra note 60, at 253 (discussing the integration academic integrity education into a business law course).}

The combination of multiple prevention strategies, modeled like plans to deter alcohol and drug use on campuses, can be instructive, as well.\footnote{Dickerson, supra note 8, at 61-64.}

For example, a multi-level approach to counter academic dishonesty could include: 1) educating students about the importance of life-long learning and the long-term consequences of academic dishonesty, 2) educating faculty about current and emerging types of academic dishonesty, 3) infusing ethical lessons about academic dishonesty into the curriculum and 4) working with campus constituencies to combat student
consumerism so that students will view college as a cherished opportunity instead of simply an obstacle to overcome.104

Faculty members also can take advantage of opportunities to enhance the students’ understanding of academic integrity requirements by using actual violations in an experiential manner to highlight ethical issues and familiarize students with institutional policies.105 Improving the student–instructor relationship also could have a positive influence on the ethical choices of students.106 One study found that students who admitted to acts of academic dishonesty had lower overall evaluations of instructor behavior than students who reported not committing academic dishonesty.107 Replacing a faculty versus them mentality with a culture of mutual trust and demonstrated faculty commitment to student success could have a positive effect on issues of academic integrity, as well.108

V. Legal and Ethical Implications

A. The Fraud Triangle and Legality

The criminal justice system imposes significant penalties for perpetrating accounting or financial fraud. Embezzlement is a prosecutable crime that violates a fiduciary relationship in which the employee/agent converts the property of her employer/principal that previously was lawfully in her possession.109 The Foreign Corrupt Practices Act requires companies with securities listed in the United States to meet the accounting provisions of the Securities Exchange Act of 1934, which requires corporations covered by the provisions to make and keep accurate books and records as well as to maintain an adequate system of internal accounting controls.110 The Sarbanes Oxley Act of 2002 established higher standards for corporate responsibility, including director and officer liability for misleading reports and financial statements.111

Perpetrators of fraud also could face civil lawsuits as well as criminal prosecution under the Racketeering and Corrupt Practices Act112 or federal securities laws.113 Directors and officers of corporations owe fiduciary duties of care and loyalty to their shareholders.114 If there are insufficient internal accounting controls that result in a financial loss for shareholders, officers

104 Id. at 64-66.
107 Id. at 281-83.
109 26 AM. JUR. 2d Embezzlement § 1 (2016). Convictions generally require that defendant was the agent of the prosecutor, received the property according to the terms of employment and in the course of employment, and converted it to his personal use, knowing he was not the owner. Id.
111 For an overview of the statute as enacted see GUY P. LANDER, WHAT IS SARBANES OXLEY? (2004).
could be liable civilly for a breach of the duty of care. Officers and directors who violate their fiduciary duties can be subject to a derivative suit, which is similar to a class action lawsuit by the shareholders. In sum, while the prospect of fraud may be lucrative financially, the disincentives to perpetrating occupational or financial fraud range from civil damages to criminal prosecution.

**B. The Legal Framework for Academic Fraud**

Most institutions have established internal procedures for dealing with the academic dishonesty of students. Unlike financial fraud, however, academic dishonesty does not usually involve either the criminal or civil justice systems, although sometimes the validity of the disciplinary action imposed is litigated. Nevertheless, there is no real external punishment threat for cheaters or facilitators. For example, consider the websites that guarantee to achieve a statute or facilitate performance in the student’s name or provide term papers available for purchase. Are they illegal? Is offering such a service a crime? Some states have enacted statutes that prohibit the preparation, sale or distribution of written academic material for another person; however, neither the penalties nor the attempts at enforcement are sufficiently threatening to be effective deterrents.

Under state law, agreements to commit academic fraud may be considered illegal bargains and against public policy. To be enforceable as a contract, an agreement between the parties must be legal in its formation and in its proposed execution. An agreement may fail to qualify because it is either contrary to a statute or to public policy. In states without a statute making the service illegal, is it against public policy to pay a service to defraud an educational institution? Is it against public policy for employees to contract with the entity to be paid commit this type of fraud? If the answers to these questions are yes, then the underlying contract would be unenforceable and the parties are in pari delicto and without remedy. As a result, the employment contract might be illegal and unenforceable, and students could not sue for breach of contract if the service breaches its warranties or fails to perform as promised. The likelihood of such litigation being a sufficient threat to impact the business model, however, is slim at best, particularly because the service collects payments in advance. Indeed, students simply might receive poor grades and lose money because they are in pari delicto. Because these business entities are engaged in interstate commerce, the federal government could exercise its power to regulate such services. To date, no specific regulations are in place.

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118 See sources cited id. (discussing due process and other legal constraints on internal procedures).
119 Dickerson, supra note 8, at 44-51.
120 17A AM. JUR. 2d Contracts § 216 (2016).
121 Id. § 223 (2016).
122 Id. § 231 (2016).
123 Factors to consider include whether or not the agreement is patently offensive to the public good and against good morals. Id. § 238 (2016).
124 Id. § 305 (2016).
Institutions of higher education, however, are subject to pertinent regulations. The Higher Education Opportunity Act of 2008 (HEOA)—provides for accrediting agencies to seek recognition from the U. S. Secretary of Education as reliable authorities on the quality of education provided by the institutions of higher education that receive Title IV funding. The statute and the regulations passed pursuant to the statute provide that an agency granting or renewing accreditation or pre-accreditation must apply and enforce all of the required standards. For example, with respect to distance education, institutions must demonstrate they have “processes in place through which the institution establishes that the student who registers in a distance education or correspondence education course or program is the same student who participates in and completes the course or program and receives the academic credit.” The regulations further provide that an institution can satisfy this obligation by requiring a secure login and pass code, proctored examinations or other technologies and practices that are effective in verifying student identity, at the institution’s option.

Clearly, the identity verification standard for distance courses and programs permits compliance methods that range from lenient to strict. Students can give their secure login and pass code to anyone to complete a test or assignment. Even the use of a Human Interactive Proof (HIP) process, whereby students must select specific answers to a posed question to verify private, personal information based upon response to questions previously answered by the student, allows the student to permit access by others. Even if questions are extensive and complex, HIP systems typically are designed for the person who does not want other people to access information, not for situations in which the person is willing to share the information necessary for access. In addition to virtual proctoring and testing centers, biometric analysis methods, such as keystroke recognition, can verify identity quite accurately. Unfortunately, as the accuracy in verification

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126 An accrediting agency must meet basic eligibility requirements to proceed with the initial recognition process and remain eligible for continued recognition. 34 C.F.R §§ 602.10-602.13 (2016). In fiscal year 2015, the Department of Education provided $128.7 billion in Title IV funds to 11.9 million students. Federal Student Aid, U.S. DEPT. EDUC., https://www2.ed.gov/about/reports/annual/2015report/fsa-report.pdf (last visited Feb. 8, 2017).


128 34 C.F.R § 602.17(g) (2016).

129 Id. § 602.17(g) (1) (i-iii) (2016) (emphasis added). One example of a regional accreditation requirement states: “An institution that offers distance or correspondence education documents must demonstrate that the student who registers in a distance or correspondence education course or program is the same student who participates in and completes the course or program and receives the credit by verifying the identity of a student who participates in class or coursework by using, at the option of the institution, methods such as (a) a secure login and pass code, (b) proctored examinations, or (c) new or other technologies and practices that are effective in verifying student identification.” The Principles of Accreditation: Foundations for Quality Enhancement, So. ASSOC. C. & SCH. COMM’N ON COLLEGES (5th ed. 2011), at 40, http://www.sacscoc.org/pd/f2012PrinciplesOfAccreditation.pdf (last visited Feb 2, 2017) (Standard 4.8.1).


131 See discussion supra note 74-76, and accompanying text.

increases so too does cost. Because the standards permit rather simplistic methods of identification, there is little incentive from a regulatory perspective to spend more money for better identification systems.

In sum, in contrast to financial and occupational fraud, the deterrent to cheating for students is much less onerous. Incidents of suspensions and expulsions, the most Draconian punishments for academic dishonesty, do not even approach the close to 70% of students who admit to cheating. There also is no real external threat or impetus for policing academic dishonesty by faculty or institutions. It is unlikely that institutions will terminate faculty for the failure to monitor academic fraud closely. Beyond the simple difficulties in regulating such behavior is the issues of academic freedom and other academic pressures like publishing. Regulations do not incite institutions to go the extra mile to prevent cheating, at least in an online environment. In the absence of a strong external threat for cheating and lax monitoring, is there an internal ethical obligation to ensure academic integrity and to take the actions suggested by the suggested responses to the three components of the Fraud Triangle?

C. Ethical Obligation of the Academy: Cheating or Permitting Cheating is Not an Option

1. Ethical Framework

The theory of planned behavior suggests that the stronger the actor’s intention to engage in a behavior, the more likely should be its performance, providing the behavior in question is under volitional control.\(^\text{133}\) In the academic context, certainly, the decision to report cheating is within the faculty member’s control, but the costs associated with reporting may compromise any intentional decision to police the unethical behavior. Some faculty view the behavior of reporting cheating as being negative because it is “stressful, emotionally charged, and socially uncomfortable.”\(^\text{134}\) Faculty members are less likely to report student cheating if their community neither supports nor values the behavior of reporting. As a result, their avoidance is unlikely to be successful in its goal of reinforcing positive social norms. But from a moral perspective, is looking the other way an option?

It is not solely the student who has moral responsibility concerning academic dishonesty. As distinguished from legal responsibility, moral responsibility includes having of a moral obligation and deserving punishment or reward for a morally significant act or omission, assuming that the actor is able to distinguish right from wrong and of behaving accordingly.\(^\text{135}\) From a deontological perspective, moral responsibility assigns autonomous moral agents responsibility (blame or praise) for their actions or omissions that either meet their moral duties or deviate from such duties regardless of the consequences of the actions or omissions or their intent.\(^\text{136}\)

Because it is immaterial whether or not the current social norms of moral agent’s community or recognized legal standards supports or rejects the action taken, moral responsibility as used herein denotes a philosophical view of responsibility from a deontological perspective.\(^\text{137}\)


\(^{134}\) Coren, *supra* note 88, at 301.

\(^{135}\) Marth Klein, *responsibility*, OXFORD GUIDE TO PHILOSOPHY 815 (Ted Honderich, ed. 2005).

\(^{136}\) *Id.*

\(^{137}\) “Normative ethical theory concerns itself with explaining the morality or the rightness/wrongness of specific actions. Three somewhat competing major theories are associated with normative ethical theory: consequentialist
Deontology focuses whether or not the acts of individuals are ethical, requiring individuals to look at the act, not the consequence, and judge it from a moral perspective. In contrast, teleology examines whether or not an act is ethically right or wrong in light of the consequences that will stem from the act.

A singular focus on the student’s behavior, without addressing the corresponding responses of administrators, staff members, and faculty, however, fails to account for the moral responsibility of these moral agents as they relate to the causes and outcomes of student cheating. Hence, any thorough analysis of the problem of student cheating must assess and allocate fairly the moral responsibility for all moral agents’ deviations from right actions before a full analysis of causes may be applied to craft a comprehensive solution.

To guide this analysis, two descriptive frameworks are useful: 1) social norm activation theory and 2) The Four Component Model of Morality. Generally, social norms are constraints imposed “through the many slight and sometimes forceful sanctions that members of a community impose on each other… A norm governs socially salient behavior, deviation from which makes you socially abnormal.” Social norm activation theory further informs us that “two different expectations influence our choice to obey a norm: what we expect others to do (empirical expectations) and what we believe others think we ought to do (normative expectations).” If both the empirical expectations and normative expectations of administrators, faculty, and staff are not aligned with the prescriptive responses advocated previously to address the three components of the fraud triangle, then the goal of deterring such behavior will remain unmet. In other words, if the social norms of an institution do not 1) address the perceived need of students

ethics, deontological ethics, and virtue ethics. … Deontological ethics … focuses solely on the action itself and not the consequences of the action or the intent of the actor.” Gary Miller, Grade Inflation, Gate Keeping, and Social Work Education: Ethics and Perils, 11 J. SOC. WORK VALUES & ETHICS 12, 16 (2014).


This approach is often labeled consequentialism since the consequences control the act. O.C. Ferrell, John Fraedrich & Linda Ferrell Business Ethics: Ethical Decision Making and Cases 150 (8th ed. 2013).

See Jennifer Hornsby, agency, OXFORD GUIDE TO PHILOSOPHY 18 (Ted Honderich, ed. 2005). At the core of agency is action in situations where the agent possess (1) “a capacity to choose between options” and (2) an ability “to do what one chooses” (i.e., free will). “Agency is then treated as a causal power.” Moral agency focuses our understanding of “agency” as this causal power of human action impacts morally significant situations and creates moral responsibility on behalf of the moral agent. Only moral agents are ascribed moral responsibility.

See Christophe Bredillet et al., What is a Good Project Manager? An Aristotelian Perspective, 33 INT’L J. PROJECT MGT. 255, 256 (2015). In this context, right action is synonymous with the deontological term duty.


See Lawrence Lessig, CODE 2.0, 340 (citing Robert Cooter, Expressive Law and Economics, 27 J. LEGAL STUD. 585 (1998)).


Bicchieri & Mercier, supra note 142, at 40.
to cheat, 2) work to minimize opportunities to cheat and 3) reinforce ethical behavior to defeat rationalizations for unethical behavior, then faculty expectations will remain unchanged and faculty will not be motivated to create a moral culture that praises academic virtue and sanctions academic vice.

Along with social norm theory, much of the research and theory of moral development has built upon James Rest’s Four Component Model (FCM) of Morality. 147 The FCM proposes that there are four necessary aptitudes for consistent and effective moral agency: 1) moral sensitivity (“interpreting the situation as moral … and identifying how various actions affect self and others”), 2) moral judgment (“judging which of the available actions are most justified”), 3) moral motivation (“prioritizing the moral over other significant concerns … that may be incompatible with moral choice, such as career pressures and established relationships”), and 4) moral action (“being able to construct and implement actions that service the moral choice”). 148

The moral disengagement which is supported by the current social norms, can be understood through the application of the FCM. This analysis is vital to establish the baseline from which the shift in social norms must begin and the means of accomplishing that shift. It is not enough, however, simply to identify moral responsibility and to assign blame or punishment. It is important to understand the process that is failing and how those failures are resulting in moral lapses. Then, and only then, can corrective measures be applied to incentivize proper conduct.

As demonstrated by the sheer number of faculty who ignore cheating, 149 the current social norms influencing the behavior of college and university administrators, staff, and faculty are misaligned with any framework or prescriptive approach to curb student cheating. Unfortunately, “as cheating companies expand their reach, colleges have little incentive to slow their growth. There’s no money in catching the cheaters. But there’s a lot of money in upping enrollment.” 150 Without addressing the moral responsibility associated with such misaligned social norms, no amount of resources or attention that is myopically focused on the moral responsibility of students will change the culture of cheating.

In the tradition of moral philosophy, it is instructive to explore the boundaries of the possible moral lapses in such situations with a thought experiment. 151 Consider an assistant professor at a large state university, Professor Jane Smith. Professor Smith is aware that 1) her university has a student honor code, (2) the university’s Office of Student Conduct and Discipline employs staff to facilitate the enforcement of the honor code, (3) student cheating is a violation of the honor code, and (4) professors can report students who cheat to the Office of Student Conduct and Discipline.

Beyond this knowledge, Professor Smith also is aware that a certain student in one of her classes has a particular urgency about his grade in her class (the student is on academic probation and has become academically ineligible to participate on the university’s baseball team). Professor Smith recognizes that the student has an opportunity to cheat (the student sets next to his best friend in her very large class, which provides opportunities for the student to cheat during exams). Lastly, Professor Smith has a nuanced understanding of the moral disengagement of his likely

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147 Christensen, supra note 143, at 2.
148 Id.
149 Coren, supra note 88, at 300.
151 See E. J. Lowe, thought experiments, OXFORD GUIDE TO PHILOSOPHY 919 (Ted Honderich, ed. 2005). “Thought experiments are employed both by philosophers and by theoretical scientists to examine the implications of theories and to explore the boundaries of concepts. They are controlled exercises of the imagination in which test cases are envisaged with a view to establishing their conceptual coherence or their compatibility with some proposed theory.”
rationalization (“My roommate and I studied together and there’s no curve in this class, so I’m not harming anyone by glancing at his answers”).

Despite this information, Professor Smith also knows that other faculty members rarely report cheating and that no one else believes she ought to report a student for cheating. The system is not set up to incentivize such behavior; no administrator or senior faculty member has ever advised her to take such actions in her reappointment, promotion, and tenure review. In fact, she has read in the Honor Code that assigning consequences for student cheating is “entirely at the discretion of the instructor.” Finally, Professor Smith knows that reporting cheating will set in motion a series of events designed to protect the student’s due process rights. These events include meetings with the student, her department chairperson, and possibly her college dean not to mention the hearing in the Office of Student Conduct. This increased workload likely will go unrewarded by the university.

Therefore, neither Professor Smith’s empirical expectations nor her normative expectations are likely to inspire moral motivation that translates to moral action. This fact, however, does not relieve Professor Smith or her colleagues of moral responsibilities as a moral agent. She should not simply point to the misaligned incentives and justify her actions by employing the cognitive mechanism of moral disengagement and using a displacement of responsibility to escape her moral responsibility. This thought experiment demonstrates that college and university personnel should recognize their responsibility, as moral agents, to align their social norms with appropriate responses to the components of the fraud triangle, discussed previously, in order to curb student cheating. Applying the FCM as an ethical framework to understand the social norms that influence the empirical and normative expectations of administrators, faculty, and staff leads to such a deontological approach that is not unlike some of the duty-based standards of fiduciary relationships.

2. The Voluntary Adoption of a Moral Paradigm

A fiduciary relationship under the law, in which one person has an obligation to act for another, requires the exercise of exceptional trust, good faith and honesty. The fiduciary standard lends itself to be the catalyst of the moral shift in social norms at both the empirical and normative expectations level. Learned professions, which historically included law, medicine and theology, typically share fiduciary relationships with clients, and because of their public calling adhere to an ethical code. However, while most academicians are professionals, their fiduciary responsibility is not clearly established in that context as a member of the academy. Agents have a fiduciary duty to act loyally for the principal’s benefit in all matters connected with the agency relationship. To the extent faculty or administrators act in an agency capacity on behalf of the university, a fiduciary duty attaches. But agency law and contract liability does not define responsibility to report academic dishonesty.

155 RESTATEMENT (THIRD) OF AGENCY §8.01 (2006).
Courts have rejected holding universities or their employees liable to students in any number of circumstances on a theory that they are fiduciaries.\footnote{See Childers v. New York and Presbyterian Hosp., 36 F. Supp. 3d 292, 306 (S.D.N.Y. 2014) (a typical student-university relationship does not, without more, establish a fiduciary relationship between student and university). See also Hazel Glenn Beh, Student Versus University: The University's Implied Obligation of Good Faith and Fair Dealing, 59 Md. L. Rev. 183 (2000) (arguing that while universities do not stand in a fiduciary relationship with students, it would be wise to recognize the implied obligations of good faith and fair dealing to allow the right mix of discretion and accountability); Daniel Yeager, Fiduciary-isms: A Study of Academic Influence on the Expansion of the Law, 65 Drake L. Rev. 179, 210-16 (2017) (discussing cases about higher education and fiduciary duties).} For example, courts typically do not recognize the student-faculty relationship to be fiduciary in nature.\footnote{See, e.g., Shapiro v. Butterfield, 921 S.W.2d 649, 651 (Mo. App. 1996) (affirming trial court’s dismissal of the claim based on prior law recognizing fiduciary relationship between students and faculty and the petition containing “only bare allegations supporting such a relationship”); Ho v. Univ. of Texas at Arlington, 984 S.W.2d 672, 692-693 (Tex. App. 1998) (holding that the prerequisite confidential-relationship does not exist between students and professors, and, therefore, there can be no finding that a fiduciary relationship existed between a doctoral student dismissed from the program and her professors); Univ. W. Va. Bd. of Trustees v. Van Voorhies, 278 F.3d 1288, 1299-1300 (Fed. Cir. 2002) (finding no fiduciary relationship existed with regards to patent dispute and refusing to make a determination that a relationship of trust existed between Ph.D. student and faculty advisor); Rossi v. Univ. of Utah, No. 2:15-cv-00767, 2016 U.S. Dist. LEXIS 82608, at *24-25 (D. Utah June 24, 2106) (recognizing that imposition of a fiduciary duty by a professor to a graduate student is not imposed by state statutory or case law). For a discussion of case law on this topic see Barbara A. Lee, Student-Faculty Academic Conflicts: Emerging Legal Theories and Judicial Review, 83 Miss. L. J. 837 (2014).} Interestingly, one court reached the conclusion that faculty do not owe a fiduciary duty to students because the faculty instead owe a duty to advance the school’s academic standards and to report suspected violations of those standards.\footnote{Swenson v. Bender, 764 N.W.2d 596, 602 (Minn. Ct. App. 2009).} The court did not clarify the exact nature of that duty, although it seems that such a responsibility exists by virtue of the employment relationship and the role of faculty members. Statistics on academic dishonesty, however, demonstrate that this responsibility may not be treated by the institution with the sincerity it merits.

The unique and special role the academy plays in American society, a role supported by billions of dollars of taxpayer and donor contributions,\footnote{Nat’l Ctr. for Educ. Stat., https://nces.ed.gov/fastfacts/display.asp?id=75 (last visited May 1, 2017). See Paul Campos, Do or Should Universities Have Fiduciary Obligations Toward Their Students?, http://www.lawyersgunsmoneyblog.com/2014/04/universities-fiduciary-obligations-toward-students (last visited March 9, 2016).} often is buoyed with the argument that institutions of higher education in fact provide a public good by “enhancing-human-capital.”\footnote{Moy v. Adelphi Inst., 866 F. Supp. 696, 708 (E.D.N.Y. 1994). See Paul Campos, Do or Should Universities Have Fiduciary Obligations Toward Their Students?, http://www.lawyersgunsmoneyblog.com/2014/04/universities-fiduciary-obligations-toward-students (last visited March 9, 2016).} Therefore, the education-as-a-public-good argument inherently recognizes that students and benefactors are in a special relationship with the university. The Higher Education Act and its implementing regulations creates a fiduciary duty between the institution and the government agency supplying the federal funding to ensure that funds are properly dispersed.\footnote{Swenson v. Bender, 764 N.W.2d 596, 601 (Minn. Ct. App. 2009). The complaint alleged that the advisor stole the advisee’s ideas and falsely accused her of plagiarism. Id. at 598.} Arguably, that duty should extend to ensuring the authenticity of the degrees and certifications awarded to students. Indeed, the identification of a special relationship is at the heart of the fiduciary duty “in light of moral, social, domestic, or merely personal factors.”\footnote{Swenson v. Bender, 764 N.W.2d 596, 601 (Minn. Ct. App. 2009). The complaint alleged that the advisor stole the advisee’s ideas and falsely accused her of plagiarism. Id. at 598.} 

The ethical obligations of moral agents may exceed the legal minimum thresholds set by the law. In the context of higher education, those moral obligations can be operationalized through
applying a deontological duty that is similar to being fiduciary in nature. While a legal fiduciary obligation may not exist, ethics is not concerned with our legal duties as much as the question of how ought we treat others. The academy should voluntarily assume the duty, if not the role, of a fiduciary and place the best interests of our students, alumni, donors, prospective employers, taxpayers, and other stakeholders above its own. If such a duty were embraced, then moral motivation and moral action would be driven by very different influences. Realigned incentive structures would act as motivation for faculty to report cheating and for administrators and staff members to provide support.

According to the law, a fiduciary is “a person who is required to act for the benefit of another person on all matters within the scope of their relationship.” It is here where a moral deontological duty may be identified which challenges university employees to act in the best interests of students and other stakeholders. Such a commitment is not the equivalent of a legal duty of establishing a fiduciary standard of care that would create legal risk and potential liability. Instead, the legal fiduciary duty may serve as a model for the moral deontological duty. This commitment should become part of the empirical and normative expectations of the academy, as well as of accrediting agencies.

The fraud triangle responses discussed previously provide insight on how to operationalize this paradigm shift. An operationalized moral fiduciary duty rooted in deontology requires the institution to emphasize true learning over grades and degree completions. A moral commitment akin to that of a fiduciary duty challenges the institution to create a faculty reward structure and instructional model that provides ongoing formative feedback to students to decrease their perceived need to take short cuts. An institution with an operationalized moral fiduciary duty provides ongoing support for student research, including how to properly attribute sources. Institutions which operationalize a moral fiduciary duty commit resources to limit opportunities for cheating by investing in effective plagiarism detection services and choosing an aggressive cheating detection system to ensure the integrity of online assignments and testing. An institution with an operationalized moral duty boasts a reward system for faculty that incentivizes them to design assignments which create natural impediments to unauthorized collaboration or online cheating.

An institution’s commitment to adhere to a moral fiduciary duty ensures that students understand what constitutes dishonesty and seriously addresses violations of academic integrity as enunciated in the honor code. It facilitates the process for pursuing violations and ensures that bureaucratic impediments to prosecuting academic fraud are minimized. The university guided with a moral compass acknowledges that when a student cheats, that act of academic fraud undermines the student’s learning because the student is robbed of proper feedback in which to understand what constitutes dishonesty.

164 See Gregory Mellema, Business Ethics and Doing What One Ought to Do, 13 J. BUS. ETHICS 149, 151 (1994) (exploring the heightened moral obligations of ethical behavior that are beyond simply observing basic duties).
165 “It seems likely that the concept of fiduciary duty will play a growing role in the legal and moral assessment of educational relationships in the future.” Scharffs & Welch, supra note 152, at 164.
167 See supra notes 47-57, 65-94, and accompanying text (discussing institutional responses to two aspects of the fraud triangle, a perceived need to cheat and opportunities to cheat).
168 See supra notes 101-108, and accompanying text (discussing institutional responses to the rationalization component of the fraud triangle).
take action. When a student cheats, it also undermines the financial support from benefactors because their money should be supporting the core mission of the university, responsibly educating students.

To understand the result of the adoption of such a moral fiduciary duty, consider once more the thought experiment with Professor Smith. This time, however, envision that Professor Smith is employed by a university that has, at its core, a commitment that the university and all of its employees have a moral duty to place the interests of both its students and its benefactors above other competing interests. Different outcomes would result if the university takes affirmative actions to activate social norms that aligned properly with this fiduciary understanding of a deontological moral duty. For example, assume that Professor Smith’s university requires faculty to attend their college’s scholarship awards ceremony every year. At this ceremony donors are in attendance and the dean speaks at great length about the connection between these individual acts of beneficence, the mission of educating students, and the moral duty the university has to ensure right actions in the stewardship of these gifts.

Faculty also are required to discuss in their teaching narrative for reappointment, promotion, and tenure how they are fulfilling their moral duty in regards to academic integrity. Prophylactic actions to head off student cheating are preferred, but the university also embraces corrective measures as being worthy of praise. There is a sense of shared social responsibility that Dr. Smith is well aware. She has witnessed other faculty report students for cheating and witnessed administrative support for the faculty actions. She has witnessed fair and proportional sanctions for students who have been caught cheating. Also, she knows that others view it as her duty to monitor and report student cheating. The fall semester faculty meeting each year has a program on best practices to combat student cheating and faculty are asked to renew their commitment to their duty.

Professor Smith’s empirical and normative expectations are likely to create moral motivation that translates to moral action. Take for example the student athlete who was on academic probation discussed previously. If social norms are aligned properly with the appropriate institutional responses, Professor Smith might discuss studying strategies with the student that will decrease the urgency he perceives to resort to cheating. She is likely to take action to frustrate any attempts to cheat by risk managing her testing practices to minimize opportunities to cheat, for example, by using multiple versions of the exam. She may discuss with him her concern for his academic wellbeing, the value of learning and the importance of developing a personal code of ethical conduct. Lastly, she is likely to report him if he cheats.

Applying the FCM, Professor Smith is more likely in these well-aligned social norms to take morally proper action. The social norms in her social environment have helped her to exercise the four necessary aptitudes for consistent and effective moral agency. She has 1) interpreted the situation as moral and identified how her actions affect herself and others, 2) judged which of the available actions are most justified, 3) prioritized her duty as a moral agent over other significant concerns that may seem incompatible with moral choice, and 4) constructed and implemented right actions that bring about moral ends.

The change in Professor Smith’s behavior is nothing more than a consistent compliance with the social norms at play in either scenario. With the changed circumstances in this second scenario, Professor Smith expects that her colleagues proactively would attempt to dissuade cheating and

169 See Christensen, supra note 143, at 2 (discussing Rest’s Four Component Model of Morality).
170 Id.
report cheating when it occurs. Furthermore, she knows they expect her to do so as well. Both her empirical and normative expectations are aligned with the University’s goals.

Therefore, it is evident that in an academic community all moral agents including students, faculty, administrators, and staff have a moral obligation to protect the integrity of the institution, and the ultimate endeavor is to serve the public good. The path to praiseworthy moral action requires the development of the four necessary aptitudes for consistent and effective moral action: 1) moral sensitivity, 2) moral judgment, 3) moral motivation, and 4) moral action. The development of these attributes are more likely in an environment where the social norms of empirical and normative expectations are properly aligned with ethical goals. To align the social norms and corresponding expectations of administrators, faculty, and staff with the ethical ideal of academic honesty, a deontological moral duty requires members of the academy to act like a fiduciary for the benefit of the academy’s stakeholders on all matters of academic integrity.

VI. Conclusion

Academic dishonesty is not a victimless activity. Unchecked, it compromises the investment made by taxpayers and donors, cheapens the degrees held by alumni, misleads employers, diminishes the moral integrity of the next generation and is fundamentally unfair to students who do not engage in such conduct. Academic dishonesty is well-suited to a fraud triangle analogy. An examination of the perceived need, opportunity and rationalizations illuminate the context of the students’ actions in the academic market. Each of the three elements also prompts appropriate responses for the institution to employ to combat the temptation to cheat. While a legal remedial imperative is lacking, the moral imperative is apparent. The development of appropriate institutional responses to the three corners of the fraud triangle can help to operationalize this moral imperative. Admittedly, millions of faculty members, community ethics officers and administrators throughout the country are vigilantly dedicated to maintaining the integrity of teaching and learning in the academy. Nevertheless, the statistics on cheating remain staggering. As previously discussed, there are methods to diminish the occurrences of such fraud, but they not without costs, either in monetary terms or in the commitment of time. It is imperative that institutions of higher education renew a serious moral commitment to academic integrity, and aggressively dedicate sufficient resources to support faculty, community ethics officers and administrators as they employ these strategies to combat the factors that cause students to commit academic fraud.