

Fall 2009

Observations on Leadership: Moral and Otherwise, 43 J. Marshall L. Rev. 159 (2009)

William Arthur Wines

Follow this and additional works at: <https://repository.law.uic.edu/lawreview>



Part of the [Civil Law Commons](#), [Judges Commons](#), [Law and Philosophy Commons](#), [Law and Politics Commons](#), [Law and Society Commons](#), [Legal Ethics and Professional Responsibility Commons](#), [Legal Profession Commons](#), and the [President/Executive Department Commons](#)

Recommended Citation

William Arthur Wines, Observations on Leadership: Moral and Otherwise, 43 J. Marshall L. Rev. 159 (2009)

<https://repository.law.uic.edu/lawreview/vol43/iss1/5>

This Article is brought to you for free and open access by UIC Law Open Access Repository. It has been accepted for inclusion in UIC Law Review by an authorized administrator of UIC Law Open Access Repository. For more information, please contact repository@jmls.edu.

OBSERVATIONS ON LEADERSHIP: MORAL AND OTHERWISE

WILLIAM ARTHUR WINES*

ABSTRACT

The literature on leadership is vast.¹ There are shelves of books on leadership in business, leadership in education, leadership in the military, leadership in politics, etc. An examination of a significant sample of this literature shows a considerable disagreement on what leadership entails. It also reveals a substantial lack of any major inquiry into when leadership is moral and what factors might cause one leader to act morally when another chooses the low road.

One aspect of moral leadership that this Article will focus upon is how we can improve our chances of predicting whether a prospective leader will be a moral leader. Although this paper does not resolve that issue, it addresses that problem, examines specific examples of non-leadership, moral leadership, and immoral leadership, offers some insights, and suggests directions for further research.

*William Arthur Wines is Associate Professor of Business Law in the Steven L. Craig School of Business, Missouri Western State University, St. Joseph, MO 64507. Professor Wines holds a B.S.B.A. with distinction from Northwestern University and a J.D. from the University of Michigan and is admitted to practice in Minnesota and Washington State. In 1999, Wines was the John J. Aram Professor of Business Ethics at Gonzaga University, Spokane, Washington.

An earlier draft of a small portion of this paper was presented to the Association for Practical and Professional Ethics annual meeting on February 22-25, 2007, in Cincinnati, OH. Only that paper is subject to copyright laws.

Professor Wines acknowledges with thanks the word processing and research assistance of Olivia C. Scott. He further gratefully acknowledges the research assistance of Jason Tate, Miami University '05; Mark Linebaugh, MWSU '10; and Jacob Wharton, MWSU '11. Professor Wines also appreciates and wishes to acknowledge here the summer research grant from the Steven L. Craig School of Business, Missouri Western State University in the summer of 2009 that allowed him to complete this work. He is indebted to Professor Tom Fuhrmann, Luther College, for valuable insights provided on an earlier draft. The opinions expressed herein are solely those of the author and do not necessarily represent the views or policies of the Steven L. Craig School of Business, Missouri Western State University, or the State of Missouri.

1. See University of Miami Library Link, <http://www.library.miami.edu/index.html> (last visited Feb. 23, 2010) (entering the term "leadership" and restricting the search to "printed material" returned 5035 results).

OBSERVATIONS ON LEADERSHIP: MORAL AND OTHERWISE

INTRODUCTION

"[T]wo of the most glaring examples of academic oxymorons are the terms 'business ethics' and 'moral leadership.' Neither term carries credibility in popular culture and when conjoined constitutes a 'null-set' rather than just a simple contradiction in terms."

Al Gini (1996)²

"False . . . he who would be no slave, must consent to have no slave. Those who deny freedom to others, deserve it not for themselves"

Abraham Lincoln (1859)³

"Don't say things. What you are stands over you the while, and thunders so that I cannot hear what you say to the contrary."

Ralph Waldo Emerson (1875)⁴

Being first in an elementary school's rush to the door for summer vacation is not an example of leadership. This is true whether or not the first person out the door is a rising 4th grader or the principal. "Leadership," for our purposes, is the ability to lead people or the characteristic of leading people.⁵ Two sets of people are involved in leadership: (a) a leader or leaders and (b) a follower or followers.⁶ In addition, it seems clear that a genuine

2. Al Gini, *Moral Leadership and Business Ethics*, Kellogg Leadership Studies Project (The James MacGregor Burns Academy of Leadership 1996), available at <http://www.infra.kth.se/courses/1H1146/Files/leadershipandethics.pdf>.

3. Letter from Abraham Lincoln to H. L. Pierce and Others (Apr. 6, 1859), <http://showcase.netins.net/web/creative/lincoln/speeches/pierce.htm> (emphasis in original).

4. RALPH WALDO EMERSON, LETTERS AND SOCIAL AIMS 96 (Houghton Mifflin & Co. 1904) (emphasis in original).

5. JOSEPH CLARENCE ROST, LEADERSHIP FOR THE TWENTY-FIRST CENTURY 47-102 (Greenwood Publishing Group 1991). There are over 221 definitions of leadership. *Id.* (as cited in JOANNE CIULLA, THE ETHICS OF LEADERSHIP, at xii-xiii (Wadsworth 2005)).

6. See JAMES MCGREGOR BURNS, LEADERSHIP 4 (Harper Torchbooks 1978) (distinguishing between (a) transactional leadership and (b) transformational leadership). In Burns' opinion, professional managers and political leaders often exchange one thing for another, such as jobs for votes or subsidies for campaign contributions. *Id.* (as cited in WILLIAM D. HITT, ETHICS AND LEADERSHIP: PUTTING THEORY INTO PRACTICE 160-61 (Battelle Press 1990)). Transforming leaders, in comparison, seek to identify higher

leader has qualities that cause autonomous human beings to choose to follow him or her.⁷

One of the *central* “problems” in the area of moral leadership, from the perspective of a potential follower, is figuring out whether a person seeking leadership in a group, organization, or governmental unit is *likely*⁸ to provide moral leadership. In short, can we pick leaders who will *not* be moral disappointments? Attempting to make such a determination at the outset is an important part of responsible “following.” Yet, whether and how we make such a judgment initially, rather than after we have been deceived or ill-served, is a subject that has not been well covered in the literature. Perhaps such a discussion risks coming to naught. This Article seeks to offer some insights and will suggest some areas for additional study. We venture into this area with some trepidation because it may seem as if we are engaged in some variety of crystal-ball reading. Yet, there may be a valid distinction because we are seeking better odds of selecting moral leadership, not a forecast of the future, even while conceding that “good” people can and will do immoral acts under certain circumstances.

American society, it seems, has had some difficulty historically with the following: (1) identifying genuine leaders and separating them from the others, such as those with wealth and prominence,⁹ those with the “right” looks or personal bearing,¹⁰ or

needs in followers, and by seeking to satisfy those needs, engage the whole person of the follower. *Id.* Burns’ transformational leadership embraces our definition of leadership; but, in modesty, we eschew the “transformational” label and engage the concept at a level of decisions to follow being made by autonomous, moral individuals, who, given a choice, would prefer organizational identification with a transformative leader who seeks to fill higher level needs and who engages the whole/entire person of the follower. In our experience, we have seen such leaders at work as department chairs and deans. For example, we may believe that the late Bong G. Shin (1942-1992) was such a leader when he was at Boise State University. See Boise State University Emeriti-Deceased, <http://www.boisestate.edu/emeritusguild/deceased2.shtml> (last visited Feb. 27, 2010) (listing Bong G. Shin among those who received the honor from Boise State University). For a thorough discussion of different styles of leadership, see HITT, *supra* note 6, at 135-74 (examining the qualities of various types of leaders and leadership styles).

7. See *infra* Appendix A (compiling definitions of leadership over time from Professor Ciulla).

8. I have intentionally used the term “likely” because prognostication is, at best, a risky business. There are many variables involved in predicting the future actions of a leader. One very important one is the power of the organization and its culture to influence even the best of people. See, e.g., William Arthur Wines & J. Brooke Hamilton III, *Observations on the Need to Redesign Organizations and to Refocus Corporation Law to Promote Ethical Behavior and Discourage Illegal Conduct*, 29 DEL. J. CORP. L. 43 (2004) (discussing how a strong corporate culture can influence its personnel).

9. One here could mention some of the second generation of prominent

those with arrogance and brashness;¹¹ and (2) separating those leaders whose leadership activities can be morally justified from the rest.¹² Moral justification means that a choice can be satisfactorily defended by reasons that pass the tests of one or more of the three main schools of moral philosophy.¹³ In short,

American families that almost “fell into” the family business as being lesser leaders than those who sired them. The second Mayor Daly of Chicago, the second General Patton, and the entire second generation of the Kennedy clan starting with Representative Patrick Kennedy (D., R.I.) but certainly not ignoring many of his cousins who all had big shoes to fill and all seem, from this vantage point, to have come up short of their ancestors.

10. See American President: An Online Reference Resource, Warren Gamaliel Harding, <http://millercenter.org/academic/americanpresident/harding/essays/biography/1> (last visited Feb. 23, 2010) (briefing the presidency of William G. Harding, twenty-ninth president of the United States). Harding died in office of a heart attack. *Id.* Harding was weak-willed and allowed his cabinet members to push through their own policies. *Id.* He was also a poor judge of character as evidenced by the fact that many of his cabinet members were dishonest men known as the “Ohio Gang.” *Id.*

11. George Armstrong Custer would qualify as one who was brash and daring to the point of rashness and recklessness. See generally EVAN S. CONNELL, SON OF THE MORNING STAR (Harper & Row 1984) (discussing the arrogance of Custer, which ultimately led to the Battle of Little Big Horn).

12. For example, a number of people in and around Kearny, Missouri believed that Jesse James and his older brother Frank James were folk heroes, latter-day Robin Hoods who stole from the rich and gave to the poor. Old West Legends: Jesse James—Folkhero or Cold-Blooded Killer?, <http://www.legendsofamerica.com/WE-JesseJames.html> (last visited Feb. 27, 2010). While there is conflict as to James’ true intentions, what does remain true is that the James brothers were part of a violent gang. *Id.*

Frank James rode with William Quantrill when he leveled Lawrence, Kansas. GEOFFREY C. WARD, A LIFE OF TAUT NERVES, IN THE WEST: AN ILLUSTRATED HISTORY 354 (Little, Brown & Co. 1996). Jesse James became a Confederate guerilla fighter at the age of seventeen, rode with Bloody Bill Anderson, and was wounded three times. *Id.* After their outlaw careers ended, both the James brothers were immortalized in dime novels. *Id.* at 355. See also THE OXFORD HISTORY OF THE AMERICAN WEST 389-99 (Clyde A. Milner II, Carol A. O’Connor & Martha A. Sandweiss eds., 1994) (explaining how Jesse James was portrayed as a “social bandit”); RICHARD WHITE, “IT’S YOUR MISFORTUNE AND NONE OF MY OWN”: A NEW HISTORY OF THE AMERICAN WEST 336 (Univ. Okla. Press 1991). Six months after Bob Ford shot Jesse James dead in St. Joseph, Missouri, Frank James turned himself in. James & Youngers Website, The Life and Trial of Frank James, <http://www.civilwarstlouis.com/History/jamesgangfrankjamestrial.htm> (last visited Feb. 22, 2010). A sympathetic Missouri jury acquitted him for “[c]rimes he surely committed.” WHITE *supra*, at 336.

13. The three main schools of moral philosophy are: (a) virtue ethics from Aristotle; (b) duty-based ethics such as those of Emmanuel Kant; and (c) outcome-based ethics such as those of the Utilitarians led by Jeremy Bentham and John Stuart Mill. See WILLIAM A. WINES, ETHICS, LAW, AND BUSINESS 49-53 (Lawrence Erlbaum Associates 2006) (differentiating between the schools of moral philosophy and their development). See generally JAMES RACHELS, THE ELEMENTS OF MORAL PHILOSOPHY (McGraw Hill 4th ed. 2003) (giving a brief overview of the subject of moral philosophy).

moral leadership is leadership that is driven by moral values intelligently and rationally operationalized and then correctly applied to concrete problems.¹⁴ This Article will address, *inter alia*, these two issues.

For instance, we have, as a society, developed ways to predict success in college studies. Scholastic Aptitude Test ("SAT") scores do a fairly good job of predicting success at college.¹⁵ Football scouts have developed a number of measures that indicate potential for success in professional football.¹⁶ With adequate resources and motivation, why not develop profiles or other measures that predict leadership capabilities and other means that might in general¹⁷ identify those more likely than others to make morally defensible decisions under pressure? I believe that such predictors could be developed. I also believe that there would be not insignificant resistance to using them.

Joanne Ciulla, a noted scholar in the area of the ethics of leadership, wrote, "*The whole point of studying leadership is, 'What is good leadership?' The use of [the] word good [sic] here has two senses: morally good and technically good or effective.*"¹⁸ Although I generally admire Professor Ciulla's work, I have some difficulties with the above statement. If someone attempts leadership and has no followers or is not effective, that someone has not displayed "leadership." For our purposes, leadership has

14. See, e.g., WINES, *supra* note 13, at 6, 43-53 (discussing morals and ethics as applied to business leaders).

15. Press Release, The College Board, SAT Studies Show Tests Strengths in Predicting College Success (June 17, 2008), <http://www.collegeboard.com/press/releases/197359.html>. For instance, studies done in 2008 show that a SAT score is a better predictor of first year college success than high school grades for all minority groups studied (African American, Hispanic, American Indian, and Asian). *Id.*

16. Scouting is still more of an art than a science, but it is moving toward science. Scouting Combines for high school football players are held at various big cities spread geographically across the country. See Schuman's National Underclassmen Combine, <http://footballrecruiting.rivals.com/content.asp?SID=880&CID=1029490> (last visited Feb. 22, 2010) (providing a list of combine events throughout the country). They are usually held from April to July, and participating athletes get to demonstrate speed in the 40-yard dash, vertical leap, and other talents. *Id.* Scouts also hold tryouts for players interested and eligible for the NFL draft at which they observe the athletes and measure speed, strength, etc. NFL.com, What Goes on at the Combine, <http://www.nfl.com/combine/workouts> (last visited Feb. 22, 2010).

17. Note that we separate predictors of leadership from predictors of moral leadership, believing those to be two distinct activities. We are not seeking to guarantee moral leadership, merely to develop predictors of such characteristics. We are aware of the corrupting influence of power as well as of the corrosive potential of corporate culture and group influences on otherwise good people. See, e.g., Wines & Hamilton, *supra* note 8, at 54-75 (examining corporate structure's influence on "good people").

18. CIULLA, *supra* note 5, at xiii (emphasis added).

to be effective for it to be “leadership”—otherwise, we have a failure of leadership.¹⁹ I do not think this is hair-splitting or a simple matter of semantics. Without effectiveness, the concept of “leadership” is empty;²⁰ and the word would have no meaning.

A second difficulty I have with framing the issue as “What is good leadership?” is the tendency to conflate ethics and leadership. In fairness, we should note that Professor Ciulla may be the latest to beg the hard questions by defining them away. Noted management scholars Peter Drucker,²¹ Warren Bennis, and Burt Nanus²² had done the same thing in prior years.²³ In another later section, Professor Ciulla stated that:

The conflict between ethics and effectiveness and the definition problem are apparent in what I have called, “the Hitler problem.” The answer to the question, “Was Hitler a good leader?” is yes [sic] if a leader is defined as someone who is effective at getting people together to perform some task. The answer is no [sic], if the leader gets the job done, but the job itself is immoral or is done using

19. I do not think that it is either reasonable or helpful to explain “leadership” as a set of actions containing leadership, non-leadership, and ineffective leadership, perhaps using a Venn diagram. Although, cold may be defined as the absence of heat with the result that the Venn diagram for heat includes every temperature from absolute zero to infinitely hot. The same argument does not advance discussion in the area of leadership. It merely obscures the topic.

20. Without effectiveness, we would have the possibility of a leader with no followers. Leadership has a dictionary definition of “capacity or ability to lead.” THE AMERICAN HERITAGE DICTIONARY 1023 (3d ed. 1992). Without effectiveness, would we redefine leadership as “the incapacity or inability to lead”? If so, leadership would include lack of leadership; and this would be the same as calling black white or round square.

21. PETER F. DRUCKER, *MANAGEMENT: TASKS – RESPONSIBILITIES – PRACTICES* (Harper & Row 1973). Professor Drucker famously declared: “Efficiency is concerned with doing things right. Effectiveness is doing the right things.” *Id.* at 45.

22. See WARREN BENNIS AND BURT NANUS, *LEADERS: STRATEGIES FOR TAKING CHARGE* 20 (HarperBusiness Essentials 2003) (1985) (stating that “[m]anagers are people who do things right and leaders are people who do the right thing.”) (emphasis in original). By making an artificial distinction between management and leadership, Msrs. Bennis and Nanus eliminated the issue of moral leadership by defining the problem away. Peter Drucker, the head guru of management, pointed the way. See generally DRUCKER, *supra* note 21 (illustrating that Peter Drucker is an authority in the field of management). However, it is superficial and not satisfying to say that the CEOs of the top banking firms that led this nation into a financial meltdown in September of 2008 were merely “managers” and not true “leaders.” We are reminded of Abraham Lincoln’s question: “If I call a dog’s tail a leg, how many legs does the dog have?” QuotationsBook, <http://quotationsbook.com/quote/11321/> (last visited Feb. 25, 2010). The answer, of course, is four because as Lincoln explained, “calling a tail a leg does not make it one.” *Id.* This has been a principle of the Common Law for almost a millennium.

23. See, e.g., HITT, *supra* note 6, at 12-13 (giving a narrative history of this style of management literature).

immoral means. *In other words, leadership is about more than being effective at getting things done.*²⁴

Later in that passage, Professor Ciulla stated, "Most of us want leaders who do the right thing, the right way, and for the right reasons and are personally moral."²⁵ That may be true, but I would not recommend starting a definition of leadership by anticipating what a society might want as additional characteristics for its leaders.

Let me illustrate: Suppose I define leadership as "leadership plus A and B." Then I state most of us want our leaders to have A and B. Therefore, I have added A and B to the definition of leadership. Does leadership become "NOT leadership" if we subtract A and B? The answer is "no." Leadership can still be defined as "leadership"—dropping both A and B. In fact, leadership = leadership. Does leadership = leadership + A + B? It might, but only because I set it up that way axiomatically. The axiomatic changing of leadership's definition, ultimately, is neither helpful nor clarifying.

At the risk of belaboring the point, suppose that most of us can be said to want U.S. presidents to be "morally good" and "effective." Does President X become less of a President if she/he is neither effective nor morally good? The answer is clearly "no." That is one of the reasons why we have historically rated our presidents by effectiveness and morality. Likewise, I argue that we should do the same with leadership especially because "morally good" is not dichotomous²⁶ and tends toward a span of points along a more complex linear scale²⁷ and "effectiveness" is sometimes a mixed bag.²⁸

24. CIULLA, *supra* note 5, at xiii-xiv (emphasis added) (internal citations omitted).

25. *Id.* at xiv.

26. "Not dichotomous" is another way of saying that moral goodness is *not* binary, as is sometimes assumed. Binary thinking is one characteristic of white male consciousness according to psychologist Anne Wilson Schaef. See generally ANNE WILSON SCHAEF, *WOMEN'S REALITY* (Winston Press 1981) (discussing binary thinking and the emerging female system in the white male society). People and decisions tend not to be either wholly good or wholly bad. They actually seem to fall along a spectrum from immoral through amoral to moral and then to supererogatory goodness. See also WINES, *supra* note 13 (discussing morality as a linear continuum rather than purely binary).

27. See WINES, *supra* note 13 (illustrating how morality is measured on a complex linear scale).

28. For example, LTG George Meade was effective as a military leader at Gettysburg after he arrived there on the night of the first day. He and 80,000 union soldiers held the high ground against heroic efforts by the South. However, he was not effective when he failed to follow up on his victory by pursuing Gen. Robert E. Lee and cutting off Lee's retreat back into Virginia. His delay in pursuit cost the country two more years of war. Even with this small example, it is not reasonable to force a decision of "effective vs.

I. COMMON PROBLEMS IDENTIFYING LEADERSHIP

A. *In Some Circles, Brashness Passes for Leadership*

In Officer Candidate School during the year 1969, it seemed at times as if abruptness, aggressiveness, and loudness were proxies for leadership.²⁹ At any rate, there we were, a miserable lot of conscripts uprooted from graduate schools (for the most part);³⁰ and we had to do a forced ranking of each other's "leadership" every week. We called these sheets for the forced rankings "bayonet sheets."

It was an apt term, "bayonet sheets." It was apt because the line drawing was brutal and frequently based on happenstance scraps of information. Yet, too regularly, someone who was rated low on leadership ended up being "recycled" through extra months of O.C.S. or shipped out to Vietnam with two weeks of leave "enroute." Those who washed out of O.C.S. ended up "in country" and were designated "11 Bravo," that is the M.O.S. (Military Occupational Specialty) for light arms infantry—fancy words for cannon fodder.³¹

ineffective" in judging President Lincoln's Generals. T. HARRY WILLIAMS, *LINCOLN AND HIS GENERALS* 260-65 (Grosset & Dunlap 1952) (discussing George Meade's leadership at Gettysburg and his failure to pursue Lee after the victory there).

29. This material and some of the materials that follow are based upon the author's own recollections of his experience as an O.C.S. candidate at Fort Belvoir, Virginia from May 1969 to October 31, 1969.

30. The author's law class at University of Michigan Law School went from 350 to 150 over the spring and summer of 1968. See also Melvin Small, *The Domestic Course of the War*, an excerpt from *THE OXFORD COMPANION TO AMERICAN MILITARY HISTORY* (John Whiteclay Chambers II ed., Oxford UP 1999), available at <http://www.english.illinois.edu/MAPS/Vietnam/domestic.htm> (describing the draft during the Vietnam War); RONALD H. SPECTOR, *AFTER TET: THE BLOODIEST YEAR IN VIETNAM* 30-38 (The Free Press 1993) (giving an excellent summary of the impact of Vietnam war on the draft and vice-versa). In October 1969, President Nixon removed the unpopular General Lewis B. Hershey, who had headed the Selective Service System since World War II. Small, *The Domestic Course of the War*. Two months later, the President instituted a lottery system based upon birth dates. *Id.*

31. I do not use the words "cannon fodder" in any way to denigrate the service or sacrifice that the millions of "dog-face" grunts made to our country. They, not necessarily the brass hats and the politicians in safe areas of the rear echelons, know the true horrors of war. See, e.g., BILL MAULDIN, *UP FRONT* (Henry Holt & Co., Inc. ed., World Publishing Co. 1945) (reflecting on his own experience as a soldier). Mauldin, for example, used the term "doggies" to refer to the "dog-faces," i.e., the infantry soldiers, who fought in Europe and were his beloved brothers in arms of the 45th Division. *Id.*

Many of my contemporaries were permanently scarred by their experiences in Vietnam. A student of mine was a Marine during the siege at Khe Sanh in early 1968. He spent his first night there loading bodies into body bags. He broke down when he tried to relate the story. A friend of mine was a "tunnel rat" at Cu Chi. When he has flashbacks, he finds himself

We all shared sleep deprivation, virtually constant harassment by upperclassmen and tactical (training) officers, and grueling physical training. In time, I came to believe that not many other officer candidates had a sound handle or perspective on the concept of leadership either.³² Quiet, thoughtful men were shipped out to Vietnam, while I felt at times as though I was destined to keep company with aggressive, loud, and brash youngsters.³³ If I had been smarter, more mature, and less scared of the jungle or of dying in the rice paddies, I might have skipped the theatrics of O.C.S. and volunteered to take my chances in the war. "Life, to be sure, is nothing much to lose; But young men think it is, and we were young."³⁴

Now, I am past three-score years and still curious about leadership. John Steinbeck once wrote this line, "A boy becomes a

patrolling the "perimeter" of his house with a loaded weapon in his hands. My bunkmate during the middle third of O.C.S. was Dennis N. Hogenboom, a young married man from Schoharie, New York. He elected to take his chances with the war rather than be recycled through O.C.S. at the end of fourteen weeks. He was killed in action on June 6, 1970. He fathered a daughter during his R & R (Rest and Recreation) in Hawaii, a daughter he did not live to see. You can find his name on Panel 09W – Row 020 of the Vietnam Veterans Memorial (The Wall). See VIETNAM VETERANS MEMORIAL FUND, INC., VIETNAM VETERANS MEMORIAL: DIRECTORY OF NAMES 310 (1988).

32. Every week, if my memory is correct, we had to rate each other's leadership. In the early weeks, I remember having to ask other candidates to point out a classmate who I did not recognize by name so that I could "rate" his leadership. It seems unlikely to me that I was the only one with such difficulties in the early going. When our class, Engineer O.C.S. Class #30-69, graduated at Fort Belvoir, there were eighty four of us left. We were commissioned on Halloween (October 31, 1969). My best estimate at this late date (forty years later) is that between five and twelve candidates washed out or were "recycled," meaning had to repeat a segment of the O.C.S. program. Most of those who were offered the choice of recycling and "washing out," i.e., going to Vietnam as an enlisted man with an infantry M.O.S., chose the latter.

33. At 24 years of age, I was the second oldest "man" in my O.C.S. platoon; the oldest was Max Stokes, a nephew of Cleveland mayor Carl Stokes, who had a stateside appointment in the National Guard. The youngest in the platoon, if memory serves, was a wild and slightly crazy 19-year-old from Texas named Ken Blitchington. One of our favorite "gag lines" at the time was the joke: "How can you tell the difference between the Army and the Boy Scouts?" Answer: the Boy Scouts have adult leadership.

34. A. E. HOUSMAN, *Poem XXXVI*, in MORE POEMS 53 (Alfred A. Knopf ed., 1936). The entire poem is short and reflective of the lyrical, epigrammatic style that characterized Housman's poetry. It reads: "Here dead lie we because we did not choose to shame the land from which we sprung. Life, to be sure, is nothing much to lose; But young men think it is, and we were young." *Id.* For those not familiar with Housman, Alfred Edward Housman (1859-1939) was the Kennedy Professor of Latin, Trinity College, Cambridge from 1911 until his death in 1936. He has been ranked as one of the greatest scholars of all time. See, e.g., Alfred Edward Housman, http://en.wikipedia.org/wiki/Alfred_Edward_Housman (last visited Mar. 31, 2010).

man when a man is needed. . . . I have known boys of forty because there was no need of a man.”³⁵ Perhaps, Steinbeck claims too much here. Sometimes, a boy rises to the occasion only to lapse back into immature ways. Other times, the need for a man goes unanswered; and the opportunity for growth and maturity is missed. As someone observed, “wisdom doesn’t necessarily come with age. Sometimes age just shows up all by itself.”³⁶

Leadership does not have to be moral.³⁷ Sometimes leaders are immoral, amoral, or moral.³⁸ If it were otherwise, the term

35. JOHN STEINBECK, *Flight*, in THE LONG VALLEY 50 (Compass Books ed., 1956).

36. Tom Wilson, Age Quote, <http://www.quotegarden.com/age.html> (last visited Feb. 26, 2010); THE PRETTY GOOD JOKE BOOK 18 (Highbridge Co. rev. ed., 2001).

37. The history of Western Civilization has plenty of examples of leadership that was not moral. A favorite of college professors (and some students) is the illustration of Adolf Hitler (1889-1945). See CUILLA, *supra* note 5, at xiii-xiv (asking about Hitler’s leadership). Another favorite when it comes to false prophets and evangelists is Jim Jones. See *infra* note 68 (discussing Jim Jones in more detail); CUILLA, *supra* note 5, at 192-202 (giving a case based upon Jim Jones and the Peoples Temple by Charles Lindholm).

38. See WINES, *supra* note 13, at 43-44 (arguing that morality is a linear continuum rather than the popular but mistaken idea of morality being binary). In part that section states:

One’s approach to ethical problem solving depends in large measure on the way one thinks. The modern business world long has been characterized by a manner of thinking depicted as “white male consciousness.” In the view of Ann Wilson Schaefer, such a mind-set attempts to force decisions into an either-or, hierarchical mode; thus, anyone operating in such a binary consciousness is likely to see all the choices as either moral or immoral.

Morality, however, is not so simple; it proceeds along a continuum from immoral to morally inert to simple morality to supererogatory morality. Supererogatory morality, as the far extreme, is morality of heroic proportions. The term comes from the Latin for “over” and the past participle of the Latin verb for “has been paid out.” If what one has been paid for is one’s duty and if one does more than what one is paid for, such conduct is “over and above the call of duty.” This phrase appears in many military citations for bravery.

Understand that not doing a moral act is thought of as immoral, whereas not doing a supererogatory moral act is not immoral but morally neutral—or merely human. A reasonable moral code cannot require that people, on pain of being judged immoral, act in a manner that can be achieved only by heroic figures.

“Moral” as an adjective means that an act is compatible with a code of conduct—a set of rules for living. When gauging an individual’s moral code, watch the person’s actions and discount his or her words. Thoughtful people tend continually to examine and adjust their moral codes. This is a way of developing moral sensitivity.

Some people have patently inadequate moral codes, but everyone has one.

“moral leadership” would be redundant; and that is clearly not true. In an ideal world, perhaps, all leadership *should* be moral; but that is a judgment that goes beyond the scope of this Article. Let us look at some of the principles of leadership that the U.S. Army sought to inculcate in me. My 1969 handout entitled “Leadership Guide S. 120-769” contained an essay on military leadership, a list of fourteen leadership traits, and a list of eleven leadership principles (that we were required to memorize).³⁹

Of the fourteen “Leadership Traits” provided by the Army, only seven seem to involve moral values: courage (physical and moral); tact; justice; dependability; unselfishness; integrity; and loyalty (both up and down the chain of command). The others are mostly pragmatic or devoted to military appearance and tradition—i.e., endurance, bearing, and enthusiasm. From the perspective of the Department of the Army, combat effectiveness was the end-all and be-all of leadership.

One of the things about this handout that troubled me then and challenges me now is how it ranks two goals: *it puts the mission ahead of the welfare of the troops*. In short, a military leader had to be willing to sacrifice the lives of his men to achieve an assigned objective.⁴⁰ Such a ranking goes to the very heart of whether someone is a pacifist,⁴¹ a conscientious objector,⁴² non-

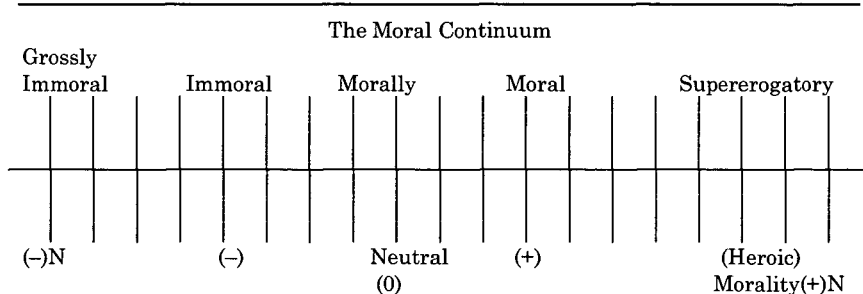


Figure 1©2003 WILLIAM A. WINES

39. See *infra* Appendix B (showing a complete transcript of the document).

40. In the film “Gettysburg,” General Robert E. Lee says to General Longstreet on the start of the second day of the battle of Gettysburg: “Soldiering has one great trap. To be a good soldier, you must love the army. To be a good officer, you must be willing to order the death of the thing you love.” GETTYSBURG (TriStar Television 1993). The film is based on the novel *The Killer Angels* by Michael Shaara. The novel won the 1975 Pulitzer Prize for Fiction. The Pulitzer Prizes, <http://www.pulitzer.org/bycat/Fiction> (last visited Feb. 26, 2010). The film closely follows the novel. The same quotation can be found in *The Killer Angels*. MICHAEL SHAARA, *THE KILLER ANGELS* 202 (The Random House Publishing Group 1974).

41. THE AMERICAN HERITAGE DICTIONARY 1298 (3d ed. 1992) (defining a pacifism as “opposition to war or violence as a means of resolving disputes”). The root word for “pacifist” is the Latin word *pax* meaning peace. *Id.*

42. The concept of “conscientious objector” is a legal one based upon this nation’s development of criteria for exemption from compulsory military service (i.e., The Selective Service System, better known as “The Draft.”). Its history goes as far back as the debate over the Second Amendment to the U.S. Constitution

violent,⁴³ or a warrior.⁴⁴ Is it ever moral to use human beings as a means to an end?⁴⁵ How many lives is a “mission” worth? How do we tell? Who makes the decision? It would require an extended examination of the “Just War” theory advocated initially by Thomas Aquinas⁴⁶ to even begin to get to the heart of this matter; and such an inquiry⁴⁷ goes beyond the scope of this Article.

B. Sometimes Power Passes Itself Off as Leadership

Power tends to follow wealth in our times. The economist

when the House of Representatives considered exemption from compulsory bearing of military arms for religious reasons, basically out of concern for the Quakers in Pennsylvania. See, e.g., Alfred J. Sciarrino & Kenneth L. Deutsch, *Conscientious Objection to War: Heroes to Human Shields*, 18 BYU J. PUB. L. 59, 80-83 (2003) (giving a brief history of the “conscientious objector” concept). In three 1965 cases decided simultaneously, the High Court unanimously held that “[a] sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption comes within the statutory definition” of a conscientious objector. *U.S. v. Seeger*, 380 U.S. 163, 176 (1965).

43. Someone is “non-violent” if they strive to live in accord with the teachings of Mahatma Gandhi and Martin Luther King, Jr. In some respects, this position is more extreme than pacifism because it rejects all violence, not just violence in dispute resolution and war. “Man as animal is violent but as spirit is non-violent. The moment he awakes to the spirit within he cannot remain violent. Either he progresses toward *ahimsa* [Hindu for non-violence] or rushes to his doom.” MOHANDAS K. GANDHI, *GANDHI ON NON-VIOLENCE* 27 (Thomas Merton ed., 1964, 1965). See generally MARTIN LUTHER KING, JR., *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR.* (James M. Washington ed., HarperCollins ed. 1986) (1991).

44. A warrior is “one who is engaged in or experienced in battle.” THE AMERICAN HERITAGE DICTIONARY 2015 (3d ed. 1992). The root word for warrior comes from an Old North French word meaning to make war. *Id.*

45. Anytime we use people as means to an end and not as ends in themselves, we violate the Categorical Imperative announced by Immanuel Kant. See, e.g., ROBERT C. SOLOMON & KRISTINE R. HANSON, *ABOVE THE BOTTOM LINE: AN INTRODUCTION TO BUSINESS ETHICS* 181-84 (Harcourt Brace Jovanovich, Inc. 1983) (exploring the philosophy of Kant). Further, an example of a categorical imperative is “[a]lways act so as to treat humanity, whether in yourself or in others, as an end in itself, never merely as a means.” *Id.* at 183.

46. ST. THOMAS AQUINAS, *THE SUMMA THEOLOGICA*, Part II of Second Part Q. 40. (as quoted in 18 *ENCYCLOPEDIA BRITANNICA*, *GREAT BOOKS OF THE WESTERN WORLD* 577-79 (Mortimer J. Adler ed., 1992)).

47. St. Thomas Aquinas in *SUMMA THEOLOGICA* made his argument for a just war theory in the following way. The basic argument in Article I “Whether It is Always Sinful to Wage War?” has three main parts. For a war to be just, Thomas declared three things were necessary: (1) the war must be declared lawfully by the sovereign under whose command the war is to be waged; (2) The war must be in response to a just cause so that those who are attacked deserve it as a result of some fault or a wrong that they have committed, as when a nation-state has seized territory unjustly or has wronged without amends its own citizens; and (3) The intentions of those making the war must be right, so that they intend the advancement of good, or the avoidance of evil. *Id.* at 578.

Robert Heilbroner noted this phenomenon several decades ago.⁴⁸ When one has power, either economic or political (although the two seem to run together these days⁴⁹), many people scramble to be dutiful followers. Their reasons may be as simple as the need for a regular income or as complex as the desire for reflected glory and power coupled with a need for recognition. The result, under casual scrutiny, can be mistaken for leadership when it actually involves nothing more complicated than throwing treats to children.⁵⁰

In some settings, business managers confuse what they do with leadership because subordinates do what the managers tell them.⁵¹ Some comparisons to ensigns and second lieutenants might be in order here.⁵² If merely being higher on an organizational chart were the same as leadership, then the word “leadership” would have no content independent of authority.⁵³

II. SOME PROBLEMS IDENTIFYING MORAL LEADERSHIP

A. Faith-Based Equates to Moral Leadership

*“I personally take comfort in the fact that [President] Bush is a man of faith.”*⁵⁴ This sentence from a recent book can be found

48. ROBERT L. HEILBRONER & WILLIAM MILBERG, *THE MAKING OF ECONOMIC SOCIETY* 20-21 (Prentice Hall 11th ed. 2002) (1962).

49. *Id.*

50. The dispensation of jobs and patronage is the activity that sometimes causes the patron to be mistaken for a leader; hence, the parallel to dispensing candy to children.

51. See, e.g., HITT, *supra* note 6, at 146-47 (using the terms “leadership style” and “administration” and “management” virtually interchangeably); see also LESLIE W. RUE & LLOYD L. BYARS, *MANAGEMENT: THEORY AND APPLICATION* 380 (Irwin 4th ed. 1986) (1977) (declaring that “[m]anagers are in a leadership role because they can influence the behavior of members of the formal work group.”); and JOHN B. MINER ET AL., *THE PRACTICE OF MANAGEMENT* 174-75 (Charles E. Merrill Publishing Co. 1985) (arguing that a group leader is a useful way to view many aspects of the management job).

52. Because disobeying the direct order of a superior officer is a court-martial offense, soldiers and sailors will generally follow the orders of a senior officer (NCO and commissioned). In corporate America, the penalties are similar, with a pink slip substituted for a dishonorable discharge. Therefore, corporate directives tend to be obeyed. Obedience to authority should not be confused with the choice of an autonomous moral actor to follow a leader. See generally STANLEY MILGRAM, *OBEDIENCE TO AUTHORITY* (Harper Torchbooks 1974). Milgram wrote that “[t]he disappearance of a sense of responsibility is the most far-reaching consequence of submission to authority.” *Id.* at 8.

53. *Id.*

54. ROBERT E. DENTON, JR., *MORAL LEADERSHIP AND THE AMERICAN PRESIDENCY* 111 (Rowman & Littlefield Publishers, Inc. 2005) (emphasis added). This is a sometimes strange and troubling book that discusses such things as “a religion gap.” This reader was left wondering if that were anything like a “missile gap,” and I refer concerned readers to *DR. STRANGELOVE* (Columbia Pictures 1966).

toward the end of a comparison of the Presidencies of William Jefferson Clinton, an immoral, “lying”⁵⁵ piece of womanizing⁵⁶ White Trash,⁵⁷ and that of George W. Bush, a “personable, honorable, decisive, and straightforward”⁵⁸ “man of faith.”⁵⁹ I have great difficulty with this statement because the issue of moral leadership and the issue of faith are independent variables, as the following materials will seek to illustrate.

For instance, the Ayatollah Khomeini⁶⁰ was a person⁶¹ of faith. I would take no comfort in his being resurrected to be President of the U.S. Billy Sunday,⁶² John Brown,⁶³ and the fire-

55. *Id.* at 62-63. “Clinton was the master of the big lie.” *Id.* at 63.

56. *Id.* at 65.

57. *Id.* at 66. Professor Denton stopped short of using the term “White Trash.” However, he did insist that William Jefferson Clinton “had neither” a clean set of principles nor any moral character. *Id.* In my mind, that seems to equate to the coarser term. The term “White Trash” can be defined as “a member of the class of poor whites, especially in the southern U.S.” RANDOM HOUSE WEBSTER’S COLLEGE DICTIONARY 1492 (Random House, Inc. 2000). The term can be traced to Black slang from the 1800s. ROBERT L. CHAPMAN, NEW DICTIONARY OF AMERICAN SLANG 466 (Harper & Row Publishers, Inc. 1986). It is synonymous with other slang terms such as “cracker,” “peckerwood,” and “red neck.” *Id.* Another source gives “poor white” as a synonym and adds that the term is “used with disparaging intent.” WEBSTER’S COLLEGE DICTIONARY, *supra* note 60, at 1492.

58. DENTON, *supra* note 57, at 95.

59. *Id.* at 111.

60. Ayatollah Ruhollah Khomeini (1900?-1989) was the leading political Iranian from 1979 until his death in 1989. WORLD BOOK ENCYCLOPEDIA 308b (World Book, Inc. 2009). He rose up after his followers overthrew the sitting king, Mohammad Reza Pahlavi. *Id.* Khomeini made Iran an Islamic Republic by codifying Islamic laws. *Id.* For example, citizens were forbidden to drink alcoholic beverages, and nightclubs were closed and outlawed. *Id.* In his youth, Khomeini taught of Islamic philosophy and law. *Id.* In teaching, he earned the highest title a Shiite member can earn, that of ayatollah, a Persian word meaning “reflection (or sign) of Allah.” *Id.*

61. I use the word “person” in this context to note that leadership is NOT limited by sex. There are women who are moral leaders just as there are men; and there are women who have failed to be moral in positions of leadership just like men. An interesting question, and one that goes beyond the scope of this Article, is whether we have “gendered” notions of leadership in this culture. Are the characteristics that we usually associate with leadership also associated with the masculine? Is there a distinctive form of female leadership that is frequently below the proverbial “radar screen”? I regret that many of my examples and illustrations involve males but that is a result of my using illustrations from business, the military, and politics—all areas where females are underrepresented.

62. William Ashley “Billy” Sunday (November 19, 1862 - November 6, 1935) was a professional baseball player who became an extremely influential American evangelist during early twentieth century. Billy Sunday, <http://www.spiritustemporis.com/billy-sunday/> (last visited Feb. 26, 2010). As a young boy, he never finished high school and used a colloquial manner of speech in his sermons as a preacher. *Id.*

He was a frenetic, conservative “fire and brimstone” preacher. *Id.* His primary target was alcohol, and he played a prominent role in the Prohibition movement and the adoption of the Eighteenth Amendment in 1919. *Id.* He

and-brimstone Puritan preacher Cotton Mather⁶⁴ were all men of faith. I doubt that many people would find them qualified to be president or take rational comfort in their attaining the office. Likewise, I think for modern evangelists such as Jim Jones,⁶⁵ Jimmy Swaggart,⁶⁶ Jim Bakker,⁶⁷ and the late Tammy Faye

remained a staunch supporter of the Prohibition movement throughout his life, even after the Amendment was repealed. *Id.* While Sunday's popularity waned towards the end of his life, he still was relatively popular. *Id.* When he died in the midst of the Great Depression, he was a wealthy man leaving a large trust fund to his children. *Id.*

Sinclair Lewis lampooned Sunday in his novel *BABBITT* using a character named "Mike Monday" who was "the distinguished evangelist, the best-known Protestant pontiff in America" for whom the "service of the Lord had been more profitable." SINCLAIR LEWIS, *BABBITT* 98 (Harcourt, Brace & Co. 1941) (1922). Sinclair Lewis also drew his main character in *ELMER GANTRY* with more than a faint resemblance to Billy Sunday. SINCLAIR LEWIS, *ELMER GANTRY* (Signet Classic 1927). Rev. Sunday, in turn, denounced Sinclair Lewis as a member of "Satan's cohort." Elmer Gantry Study Guide, <http://www.bookrags.com/studyguide-elmer-gantry/intro.html> (last visited Feb. 26, 2010).

63. See generally STEPHEN B. OATES, *TO PURGE THIS LAND WITH BLOOD: A BIOGRAPHY OF JOHN BROWN* (Univ. of Mass. Press 2d ed. 1984) (following the Calvinist life of John Brown who acted as if he were an Old-Testament Patriarch). Two of his sons, Watson and Oliver, were killed in the Harper's Ferry raid. *Id.* As Oliver was dying in agony he begged his father to shoot him and end his intense pain, Brown turned on him and declared: "If you must die, die like a man." *Id.* at 299.

64. Cotton Mather (1663-1728) graduated Harvard at the age of fifteen. Richard W. Pointer, *Cotton Mather*, in 13 *WORLD BOOK ENCYCLOPEDIA* 308-09 (The World Book, Inc. 2001). He was a Congregationalist minister who worked as an assistant to his father, Increase Mather, at the Second Church of Boston. *Id.* He published nearly 500 pamphlets and books, many of which were on sermons. *Id.* Many historians believe that the two Mathers (father and son) helped stir up the Salem witchcraft trials with their preaching and writings. *Id.* The trials resulted in the execution of nineteen people for witchcraft and the death by torture of another. *Id.*

65. Jim Jones was a "self-appointed minister" and "phony faith healer" from the Midwest." CNN.com, *Inside the Jonestown Massacre*, <http://www.cnn.com/2008/US/11/12/jonestown.factsheet/index.html> (last visited Feb. 26, 2010). On November 18, 1978, 909 Americans were led to mass murder-suicide by the Rev. Jim Jones at a place in the jungle in Guyana called Jonestown. *Id.* Many of them, especially the children, were encouraged to drink Kool-aid laced with cyanide. *Id.* Only thirty-three people survived Jonestown. *Id.* Also killed was Congressman Leo Ryan, from California, an NBC news correspondent, and his TV cameraman, who all went to Jonestown to investigate. *Id.* Government investigators later found \$10 million in Swiss banks and another \$1 million in cash at Jonestown. *Id.* Much of that money came in mail-in donations from the desperate. *Id.* Jones also had church members turn over their Social Security checks and some turned over all their property. *Id.*

66. Jimmy Swaggart was a television evangelist who fell from Grace on February 21, 1988, when he admitted to consorting with prostitutes. Joanne Kaufman, *The Fall of Jimmy Swaggart: The Self-Appointed Judge of America's Televangelists Finds Himself the Penitent*, <http://www.people.com/people/archive/article/0,,20098413,00.html> (last visited Feb. 26, 2010). The hypocrisy of his situation seemed almost breathtaking because Swaggart was the firebrand who labeled Jim Bakker "a cancer on the body of Christ" when Bakker had an affair

Bakker.⁶⁸ If we were to drop back historically to the Middle Ages, the Inquisition was led by men of faith; and the works of the Inquisition included torture and mass murder.⁶⁹

Moreover, faith and works have been the basis for a great theological debate over several millennia.⁷⁰ We do not need to get

with church secretary Jessica Hahn. *Id.* A spellbinding performer with a keen eye for financial management, Jimmy Swaggart built an electronic empire with hundreds of millions of television viewers worldwide and an income from contributions of \$150 million per year. *Id.* Swaggart was suspended from the ministry for three-months and assigned a two-year rehabilitation period by the Assemblies of God Church. *Id.*

67. Jim Bakker is an American televangelist who was formerly a host of *The PTL Club*, a popular evangelical Christian television program. Hanna Rosen, *Televangelist Jim Bakker's Road to Redemption*, WASH. POST, Aug. 11, 1999, at C1, available at <http://www.washingtonpost.com/wp-srv/style/daily/aug99/bakker11.htm>. A sex scandal caused Bakker to resign in the late 1980s. *Id.* In the fall of 1989, a jury found Jim Bakker guilty on twenty-four counts of fraud. *Id.* Bakker was paroled after serving almost five years of his sentence. *Id.* Jim Bakker has remarried and is back into televangelizing from a studio near Branson, Missouri. Jim Bakker's Claim to Fame, http://www.weht.net/WEHT/Jim_Bakker.html (last visited Feb. 26, 2010).

68. Tammy Faye Messner (formerly Tammy Faye Bakker) was born the oldest of eight children to Rachel LaValley on March 7, 1942, in International Falls, Minnesota. Tammy Faye Messner Biography, <http://www.biography.com/articles/Tammy-Faye-Messner-9542346?print> (last visited Feb. 26, 2010). She married Jim Bakker in 1961 after meeting him at North Central Bible College in Minneapolis. *Id.* They dropped out of college because of the school's strict policy against married students. *Id.* In 1992, after a thirty-one-year relationship, Tammy and Jim divorced as several of Jim's extramarital affairs surfaced. *Id.* In 1992, Tammy married Roe Messner, a friend and business associate of the Bakkers. *Id.* In 1996, Tammy was first diagnosed with colon cancer, which she eventually died of in 2007. *Id.*

69. Pope Gregory IX, who reigned as pope from 1227-1241, established and started the Inquisition in an attempt to rid the Catholic church of heretics. Hugh O'Reilly, *Why the Inquisition Was Founded*, http://www.traditioninaction.org/History/A_013_Inquisition-Greg.htm (last visited Feb. 27, 2010). Pope Gregory IX relied heavily on the monastic training of Dominican monks, and to a lesser extent the Franciscans, to help him bring the Church around. *Id.* Pope Gregory IX created tribunals and appointed many Dominicans to serve as judges. *Id.* At these tribunal hearings, an accused heretic had no right to counsel and was required to testify against himself. Albert Van Helden, *The Inquisition*, <http://cnx.org/content/m11944/latest/> (last visited Feb. 27, 2010). Since the Inquisitors (those charged with rounding up the heretics) could bring anyone in front of the tribunal, they oftentimes abused this power. *Id.*

The Inquisition's turning its attentions to witchcraft is discussed in an excellent chapter by Barbara G. Walker. See BARBARA G. WALKER, *THE CRONE: WOMAN OF AGE, WISDOM, AND POWER* 125-144 (Harper & Row 1985) (discussing the persecution of so-called witches). Her chapter includes an estimate of the Inquisition's executions after the date of 1484 as being "about nine million persons." *Id.* at 142.

70. "Justification by grace, through faith" is a phrase based upon a sentence in the epistles of Paul: "By grace are ye saved through faith; and not of yourselves: it is a gift of God." E.D. HIRSCH, JR. ET AL., *THE NEW DICTIONARY OF CULTURAL LITERACY* 97 (Houghton Mifflin Co. Rev. ed. 2002). Whether the actions of human

mired in that debate in order to shed a little light on the issue of moral leadership. The author of the Epistle of James wrote:

What doth it profit, my brethren, though a man say he hath faith, and have not works? Can faith save him? If a brother or sister be naked, and destitute of daily food, And one of you say unto them, Depart in peace, be ye warmed and filled; notwithstanding ye give them not those things which are needful to the body; what doth it profit? Even so faith, if it hath not works, is dead, being alone.⁷¹

Others have argued that humanity is saved by grace alone.⁷²

The author of the quotation at the head of this section did not specify what type of faith a leader should possess that would bring him comfort.⁷³ Suppose a president is a person of faith, and suppose further that the faith is in Rastafarianism,⁷⁴ would that president, *ipso facto*, be a moral leader? Suppose a president is a person of faith, and suppose further that her faith is a Native American Peyote cult.⁷⁵ Would that be a comfort to the rest of us as autonomous, rational, moral decision makers?⁷⁶ I doubt that we would find comfort in that fact, even though the question of whether or not such a president would be a moral leader is left open.

Whether a “person of faith” provides moral leadership is an

beings can contribute to this justification was one of the great points of division among Christians at the time of the Reformation. *Id.*

Martin Luther stressed justification by grace, through faith; and it became one of the main doctrines of the Lutheran Church. *Id.* at 99. Martin Luther was the leader of the Reformation, a religious movement that started out to reform the Catholic Church but instead led to the birth of Protestantism. *Id.*

71. 2 James 14-17.

72. See generally PHILIP GULLEY & JAMES MULHOLLAND, IF GRACE IS TRUE: WHY GOD WILL SAVE EVERY PERSON (HarperCollins Publishers 2003) (arguing that God will save everyone regardless of human action).

73. See *supra* note 57 and accompanying text (stating that faith would be a comforting trait in a leader, namely the U.S. president).

74. Rastafarianism is “a religious sect originating in Jamaica whose members worship Haile Selassie as savior and regard Africa, especially Ethiopia, as the Promised Land.” THE AMERICAN HERITAGE DICTIONARY 1499 (3d ed. 1992).

75. The Peyote religion is a medico-religious cult. RICHARD EVANS SCHULTES & ALBERT HOFFMAN, *The Tracks of The Little Deer*, in PLANTS OF THE GODS - THEIR SACRED, HEALING AND HALLUCINOGENIC POWERS (Healing Arts Press 1992), available at <http://peyote.org/>. In considering Native American medicines, one must always bear in mind the difference between the aboriginal concept of a medicinal agent and that of our modern Western medicine. *Id.* Primitive societies, in general, cannot conceive of natural death or illness but believe that they are due to supernatural interference. *Id.* There are two types of “medicines”: those with purely physical effects (i.e., to relieve toothache or digestive upsets); and the medicines, “*par excellence*,” that put the medicine man into communication, through a variety of hallucinations, with the malevolent spirits that cause illness and death. *Id.*

76. Human beings are assumed to be autonomous, rational decision. RACHELS, *supra* note 13, at 194.

inquiry independent of the fact of faith *qua* faith. Do we need to point out that Abraham Lincoln was *never* a member of an organized church?⁷⁷ Would it help to remember that Thomas Jefferson believed the Holy Bible was written by “unlettered and bigoted men”?⁷⁸ It is possible, as the preceding discussion seeks to illustrate, that faith itself might be an obstacle to moral leadership in some settings.⁷⁹ It is also possible that faith might be a neutral factor in moral leadership issues.⁸⁰ It is further possible that faith might aid some areas of moral leadership and hinder others?⁸¹ In the Crusades, after the fall of a besieged city, an envoy for the Pope, when confronted with the problem of separating converts from infidels in the fallen city, said, “Kill them all. God will know his own.”⁸² A man of faith, arguably, thus made an immoral,

77. Abraham Lincoln’s religious affiliations are a hotly contested issue, but it can be conceded that he never officially joined a church. Gordon Leidner, *Lincoln’s Faith in God*, GREAT AMERICAN HISTORY, <http://www.greatamericanhistory.net/lincolnsfaith.htm>.

78. Thomas Jefferson said that “[t]he authors of the gospels were unlettered and ignorant men” WILLIAM EDELEN, TOWARD THE MYSTERY 89 (1991). Deism can be traced all the way back to American Founding Fathers, such as George Washington, Thomas Jefferson and Benjamin Franklin. The Deist Roots of the United States of America, <http://www.deism.com/deistamerica.htm> (last visited Feb. 27, 2010). For a Deist, there is no personal god only an impersonal energy, force or providence. Welcome to Deism!, http://www.deism.com/deism_defined.htm (last visited Feb. 27, 2010). See also JAMES A. HAUGHT, 2000 YEARS OF DISBELIEF: FAMOUS PEOPLE WITH THE COURAGE TO DOUBT 77-101 (Prometheus Books 1996) (detailing the lives of many early-American “rationalists”).

79. Faith comes in stages, much like and somewhat parallel to the stages of moral development outlined by Lawrence Kohlberg. See JOHN W. FOWLER, STAGES OF FAITH: THE PSYCHOLOGY OF HUMAN DEVELOPMENT AND THE QUEST FOR MEANING 117-213 (Harper & Row 1981) (outlining in detail the six states of faith). Thus, for example, if a leader was in an early stage of faith development, such as the Loyalist stage (stage 2 of 6), such a person might well be limited by his or her faith in dealing with a complex moral dilemma. See *id.* at 149 (summarizing State 2 faith as “a more linear, narrative construction of coherence and meaning.”).

80. For instance, a United States president might be of a faith that required her to not drink alcohol or use tobacco or dance or play card games. It would be immaterial to the moral issues involved in nuclear disarmament or in whether to build a missile defense system in Poland.

81. For instance, a president of the U.S. might be of a faith that taught strict adherence to the law of *lex talionis*, an eye for an eye and a tooth for a tooth. WINES, *supra* note 13, at 53. Responding with violence to an act of violence perpetrated against a U.S. embassy might be a beneficial strategy in one setting and counter-productive in another. Yet, the president might well respond with force in both in reliance on her faith’s teaching.

82. The actual quotation, given in Latin, probably was “*Caedite eos. Novit enim Dominus qui sunt eius.*” This translates as “Kill them. God will know his own.” The quote is attributed to Arnaud Amaury, the Abbot of Citeaux and papal legate (representative) with the crusading army at the massacre in Beziers, France on July 22, 1209. See, e.g., STEPHEN O’SHEA, THE PERFECT HERESY: THE REVOLUTIONARY LIFE AND DEATH OF THE MEDIEVAL CATHARS 80-87 (2000) (discussing this historical event). An estimated 20,000 people (men, women and

indefensible, and unconscionable decision.

The confusion is a popular one, however. It originates with the mistaken concept that religion is the basis of morality and ethical behavior.⁸³ The refutation of this mistaken notion can be found at least as far back in time as Plato's dialogues of Socrates (about 465 B.C.E.). In the *Euthyphro*, Socrates asked whether conduct is a right because the gods command it, or do the gods command it because it is right?⁸⁴ Further, a prominent modern philosopher noted that Thomas Aquinas (1225-1274), a leading Roman Catholic theologian, rejected the concept of Divine Command as the basis for morality, thereby eliminating the theological construct that paralleled such secular thinking.⁸⁵

B. "Good" Outcomes Make Leadership Moral

In some circles, winning or prevailing in a contest establishes the leader as moral; if the cause is just or if it can be rationalized as "good."⁸⁶ This is certainly a popular position and one that should not be disregarded lightly. It implicates the deepest single dilemma in moral philosophy: do the ends justify the means? Philosophers have been debating this issue for over three thousand years.⁸⁷ I will attempt to present carefully and respectfully my reasons for rejecting it.

Allow me to be clear as to the narrow scope of my inquiry. I am not attempting to answer the fundamental issue of moral philosophy. I am, rather, attempting to determine the true nature and the characteristics of "moral leadership." This is a

children) were slaughtered because the town refused to turn over approximately 200 Cathari heretics. *Id.* The modern rendition of this order seems to be "Kill them all and let God sort them out." Special Forces and other units, without official endorsement, used this sentiment variously during the Vietnam War and elsewhere, appearing even in music lyrics.

83. In a chapter entitled "Does Morality Depend on Religion?" James Rachels emphasizes the popular practice of linking morals, ethics, and religion with an illustration of New York Governor Mario Cuomo announcing the formation of a special panel to advise him on ethical issues in October 1984. JAMES RACHELS, *THE ELEMENTS OF MORAL PHILOSOPHY* 39-40 (1st ed. 1986). Governor Cuomo had invited Roman Catholic, Protestant, and Jewish leaders to join his group. *Id.*

84. See RACHELS, *supra* note 13 (discussing *Euthyphro's* and Socrates' comments).

85. *Id.* at 53.

86. Such a position is an aberrant form of Utilitarianism because "prevailing" does not necessarily equate to maximizing happiness and minimizing pain or disutility for the greatest number of people. Also, performing the utilitarian calculus after the fact allows for some "revisionist history" on the matter of intent, which is central to morality. See *id.* at 192-96 (commenting on the short discourse on motives and morality).

87. See generally BERTRAND RUSSELL, *A HISTORY OF WESTERN PHILOSOPHY* (1945) (discussing the ends versus means issue in the context of the philosophies, *inter alia*, of Aristotle, Machiavelli, and Hegel).

substantially narrower question. In short, "When is someone likely to provide moral leadership?" is my question; and it *should* be asked before the results are even on the horizon by everyone seriously thinking about enlisting as a follower.

Robert Caro, in his brilliant second volume on the life of Lyndon B. Johnson ("L.B.J."), repeatedly pointed out that L.B.J. was a political genius with a gift for leadership but that he was completely void of any moral compass⁸⁸ in his struggles to beat Coke Stevenson for the 1948 Democratic nomination for U.S. Senator from Texas.⁸⁹ L.B.J. was complicit in violating the election laws of Texas⁹⁰ and in using the courts to defeat an effort by the Stevenson forces to have an honest recount of the ballots.⁹¹ That L.B.J. prevailed does not, in any measure, redeem his actions or those of his followers. Lyndon Johnson did, however, exhibit political leadership;⁹² and from one limited perspective, his example seems to have been noted because what he did in Texas in 1948 almost provides a template for what the George W. Bush camp did in Florida in 2000.

C. Sometimes Charisma Passes for Moral Leadership

George Lincoln Rockwell is not nearly as well remembered as he was notorious in his heyday in the 1960s. Rockwell, of course, was the founder and leader of the American Nazi Party.⁹³ Rockwell was a U.S. Navy fighter pilot in both World War II and in Korea⁹⁴ and has been described as "the most charismatic

88. Caro described Lyndon Johnson's lack of any moral compass in these words: From the earliest beginnings of Lyndon Johnson's political life—from his days at college when he had captured control of campus politics—his tactics had consistently revealed a pragmatism and a cynicism that had no discernable limits. His morality was the morality of the ballot box, a morality in which nothing matters but victory and any maneuver that leads to victory is justified, a morality that was amorality.

ROBERT A. CARO, *THE YEARS OF LYNDON JOHNSON: MEANS OF ASCENT* 287 (First Vintage Books 1991) (1990).

89. See *id.* at 209-401 (explaining L.B.J. lacked humility in the race of the 1948 Democratic nomination for U.S. Senator from Texas).

90. *Id.* at 309-17. When the election bureau closed at 1:30 a.m. on the morning after the 1948 U.S. Senate election in Texas, L.B.J. was behind Stevenson by 854 votes out of almost one million votes cast. *Id.* By the next Friday afternoon, L.B.J. was ahead in the final tallies by eighty-seven votes. *Id.* One precinct in the valley had "found" 427 unreported votes, and only two of them were for Stevenson. *Id.* He wasn't called "Landslide Lyndon" for nothing. *Id.*

91. *Id.* at 318-84.

92. See, e.g., ROBERT DALLEK, *LONE STAR RISING: LYNDON JOHNSON AND HIS TIMES 1908-1960* 298-346 (Oxford Univ. Press 1991) (discussing L.B.J.'s leadership during the 1948 senate election).

93. See, e.g., WILLIAM H. SCHMALTZ, *HATE: GEORGE LINCOLN ROCKWELL & THE AMERICAN NAZI PARTY* 1-3 (First Brassey paperback 2000) (1999) (commenting on Rockwell's relationship with the American Nazi Party (ANP)).

94. *Id.* at 15, 18.

American Nazi,”⁹⁵ “highly intelligent,”⁹⁶ and as possessing “considerable charm.”⁹⁷ Despite his strengths, Rockwell had very limited success in fund raising⁹⁸ or in drawing others to his banner,⁹⁹ but he was a master at generating publicity.¹⁰⁰

However, his deep psychological drive to self-destruction¹⁰¹ ultimately brought about his assassination by a disaffected ANP member in Arlington, Virginia on August 25, 1967, at the age of forty-nine years.¹⁰² A statement Rockwell issued from the New Orleans jail in 1961 summarized his party’s platform: “We only hate the things every red-blooded American should hate—Communism and race-mixing.”¹⁰³

Another homegrown example of a charismatic politician who was frequently mistaken as a moral leader for the downtrodden of the country was Huey P. Long of Louisiana.¹⁰⁴ Long was both charismatic and extremely popular with one segment of the Louisiana electorate, the common people.¹⁰⁵ “Known as ‘the Kingfish,’ Long espoused the redistribution of wealth in his ‘Share the Wealth’ crusade.”¹⁰⁶ He was elected governor of Louisiana in 1928 and was elected U.S. Senator from Louisiana in 1930.¹⁰⁷ He did not take his seat in the U.S. Senate until January 1932,

95. *Id.* at xi.

96. *Id.* at xiii.

97. *Id.*

98. Most of the time, the ANP was strapped for funds under Rockwell’s leadership. *See generally id.*

99. For example, after an extensive speaking tour through the State of Virginia, Rockwell was able to muster only eighty-seven counter-protesters for Martin Luther King’s March on Washington on August 28, 1963. *Id.* at 185-90. Most observers thought that the March had been “a tremendous success” for the Kennedy Administration and the Civil Rights movement. *Id.* at 189. One historian estimated that the crowd marching in support of civil rights that day was approximately 250,000, about 25% of whom were white. JUAN WILLIAMS, *EYES ON THE PRIZE: AMERICA’S CIVIL RIGHTS YEARS, 1954-1965* 195-99 (Penguin Books 1987).

100. *See id.* at 292-93. By getting himself arrested in the Cook County Sheriff’s office on August 29, 1966, Rockwell was able to generate national publicity and even gain a supportive editorial in the *Washington Evening Star* in September of 1966. *Id.* Rockwell’s total time invested in this publicity stunt was under five minutes. *Id.*

101. *Id.* at xiii-xv.

102. *Id.* at 320-23.

103. *Id.* at 103.

104. *See generally* ALAN BRINKLEY, *VOICES OF PROTEST: HUEY LONG, FATHER COUGHLIN, AND THE GREAT DEPRESSION* (Vintage Books ed. 1983) (1982).

105. *Id.* at 9. Hatred could be found on the other side. Huey P. Long could also be used as an example in several other parts of this Article. *Id.*

106. Biographical Directory of the United States Congress: 1774 – Present, Long, Huey Pierce, (1893-1935), <http://bioguide.congress.gov/scripts/biodisplay.pl?index=L000418> (last visited Feb. 23, 2010).

107. *Id.*

preferring to continue as Governor.¹⁰⁸ Long was shot by an assassin in the State Capitol Building in Baton Rouge on September 8, 1935, and died on September 10, 1935, after a botched surgery failed to stop his internal bleeding.¹⁰⁹

D. Popular Opinion Redeems Leadership

In nation-states or in societies or cultures with claims to democratic values, there is a tendency to count heads before pronouncing a leadership decision as “right.”¹¹⁰ The term “right,” of course, is one of moral judgment.¹¹¹ Whether some act is right or wrong is *not* determined by popular vote, opinion polls, or jury verdicts.¹¹² The news commentary and sometimes public opinion itself seems to be swayed by the polls, especially opinion polls backing a leader’s decision or direction.¹¹³ From a moral

108. *Id.*

109. BRINKLEY, *supra* note 108 at 249-50.

110. See *Should The Government Limit Executive Pay At Bailed-Out Firms?*, ST. JOSEPH NEWS-PRESS, Oct. 25, 2009, at B1 (indicating that to the question of whether the government should limit executive pay at bailed-out firms, 86% voted “Yes,” while 13% voted “No”). The complexities of whether the compensation is direct salary or stock options or something else are ignored. The implication is that the readership of this newspaper supports President Obama’s administration on its actions limiting pay for banking executives. See William Arthur Wines & Thomas M. Fuhrmann, *An Inquiry into CEO Compensation Practices in the United States and Proposals for Federal Law Reform*, 43 NEW ENG. L. REV. 221-70 (2009) (giving a more thorough analysis concerning executive pay at government bailed-out firms).

111. See, e.g., WILLIAM H. SHAW, BUSINESS ETHICS 4 (3d ed. 1999). Shaw writes: “Ethics’ does, of course, denote an academic subject, but in everyday parlance we interchange ‘ethical’ and ‘moral’ to describe people we consider good and actions we consider *right*. And we interchange ‘unethical’ and ‘immoral’ to describe what we consider bad people *and wrong* actions.” *Id.* (emphasis added). Another author, in a similar vein, declared that moral refers to an action insofar as it is considered right or good; and immoral refers to an action considered wrong or bad. VINCENT BARRY, MORAL ISSUES IN BUSINESS 2 (2d ed. 1983).

112. For a good illustration, note the “sympathetic Missouri jury” that acquitted Frank James of “crimes he surely committed.” WARD, *supra* note 12, at 355. That trial was held in Gallatin, Missouri in July 1883 for the July 1881 robbery of a Rock Island Line train at Winston, Missouri, in which the train engineer and a passenger were killed. Civil War St. Louis, James and Youngers: The Life and Trial of Frank James, <http://www.civilwarstlouis.com/History/jamesgangfrankjamestrial.htm> (last visited Feb. 23, 2010). Some sources report that Frank James was tried a second time at Huntsville, Alabama for the March 1881 robbery of a U.S. Corps of Engineers payroll at Muscle Shoals, Alabama. US Army Corps of Engineers, Historical Vignette 026 - An Infamous Gang Stole a Corps Payroll (June 2001), http://www.usace.army.mil/History/hv/Pages/026-Stolen_Payroll.aspx. He was also acquitted in the Alabama trial. *Id.*

113. See, e.g., Chris Cillizza, *Short Takes: Reid’s Squeeze*, WASH. POST, Oct. 22, 2009, available at <http://voices.washingtonpost.com/thefix/senate/short-takes-reids-squeeze.html> (“A new poll released by the Progressive Change Campaign Committee suggests that Senate Majority Leader Harry Reid (D-Nev.) should tack to his ideological left, the latest example of the party base putting the squeeze on

philosophy perspective, this is foolishness on stilts.¹¹⁴

In 1846, U.S. President James K. Polk had overwhelming support for his declaration of war on Mexico, which in the clearness of hindsight, was a naked land grab with little or no moral justification.¹¹⁵ At the end of the 19th century, the U.S. public vociferously supported the unprovoked Spanish-American War of 1898.¹¹⁶ A well-known example from world history: Adolph Hitler became *chancellor* (prime minister) of Germany by means of a 1932 popular election in which his Nazi [National Socialist] party gained thirty-eight percent of the seats in the *Reichstag* (parliament).¹¹⁷

In September 1949, several law enforcement personnel stood idly by while a mob stoned automobiles along a two-mile strip of country road merely because the autos belonged to people who had attended a concert outside Peekskill, New York, featuring Paul

the leader even as he faces significant electoral peril next November.”). The newspaper post goes on to provide the supporting poll data, which has been the topic of full-length monographs. *Id.*; see generally SUSAN HERBST, NUMBERED VOICES: HOW OPINION POLLING HAS SHAPED AMERICAN POLITICS (1993). One review declared, “[o]pinion polling has become one of the most pervasive elements of American politics over the last thirty years, increasingly relied upon for information, suggestions on directions that political leaders should follow” Joel H. Silbey, *Untitled Review*, 25 THE J. OF INTERDISCIPLINARY HIST. 3, 551-52 (1995), available at <http://www.jstor.org/stable/20576?seq=2>.

114. I owe a debt to the great Utilitarian, Jeremy Bentham, who coined the term “nonsense on stilts” as he dismissed claims of “rights” in another context. ROBERT C. SOLOMON & KRISTINE R. HANSON, ABOVE THE BOTTOM LINE: AN INTRODUCTION TO BUSINESS ETHICS 293-94 (1983).

115. THE WORLD ALMANAC AND BOOK OF FACTS 2004 528 (2004) [hereinafter 2004 WORLD ALMANAC]. President James K. Polk ordered Gen. Zachary Taylor to seize disputed land settled by Mexicans along the Texas border. *Id.* After a border clash, the U.S. declared war on May 13, 1846. By treaty signed on February 2, 1848, the war ended; and Mexico ceded claims to Texas, California, and other territory. *Id.*

116. Three causes are frequently cited for the short Spanish-American War of 1898: (a) Cuban war for Independence from Spain which had huge popular support in the U.S.; (b) American imperialism; and (c) the sinking of the battleship *Maine* in the harbor of Havana, Cuba on the night of February 15, 1898, with the loss of all 266 officers and men. Despite the war-fevered battle cry of “Remember the Maine,” a 1976 publication of a U.S. Navy study indicated that spontaneous combustion in the ship’s coal bunkers caused the explosion that sank her. Naval Historical Center Home Page Frequently Asked Questions, The Destruction of the USS Maine, <http://www.history.navy.mil/faqs/faq71-1.htm> (last visited Feb. 25, 2010). The War “was, to a large degree brought about by the efforts of U.S. expansionists.” See Spanish-American War, http://www.encyclopedia.com/topic/spanish-american_war.aspx (last visited Feb. 25, 2010) (listing an excellent, but short (eight volumes) bibliography).

117. 9 WORLD BOOK ENCYCLOPEDIA 254n – 254o (1990). The president of Germany, an aging Paul von Hindenburg, named Adolf Hitler *chancellor* on January 30, 1933. *Id.* at 254o. By the summer of 1933, Hitler had assumed dictatorial powers. *Id.*

Robeson and where Pete Seeger also performed.¹¹⁸ Examine, if you will, the racial lynchings in the United States.¹¹⁹ Most of them were aided and abetted by law enforcement officials; in a number of photographs, the victims are shown still wearing handcuffs placed on them by the law enforcement personnel.¹²⁰ A poll of the mob standing around admiring its handiwork in those lynching photographs would show overwhelming popular support for an act of murder.¹²¹

Although history has not been kind to him, the junior Senator from Wisconsin Joseph R. McCarthy was twice elected to the U.S. Senate and was, between 1950 and 1954, probably the second most powerful man in the country, second only to President Dwight D. Eisenhower.¹²² At least one author wrote that McCarthy was the first real “national demagogue.”¹²³ Yet in 1954, McCarthy supporters numbered in the millions; and only twenty-nine

118. Alec Wilkinson, *The Protest Singer: Pete Seeger and American Folk Music*, THE NEW YORKER, Apr. 17, 2006, at 48-49; see also DOROTHY BUTLER GILLIAM, PAUL ROBESON: ALL-AMERICAN 145-54 (1976) (detailing the account of the violence in Peekskill).

119. One estimate is that from 1889 to 1899, “there were an average of 187.5 lynchings per year, while in the following decade the number was 92.5, or less than half.” C. VANN WOODWARD, ORIGINS OF THE NEW SOUTH 1877-1913 351 (1951). Woodward adds that “mob rule and race riots were not confined to one part of the Union.” *Id.* In 1900, there were race riots in New Orleans, New York City, and Akron, Ohio. In 1908, mobs took possession of Springfield, Illinois for two days and “waged brutal war on Negro life and property.” *Id.* Another source noted that the reality of black servicemen returning home after World War I and demanding the freedom and opportunity that they had fought for abroad “inflamed many whites. Race riots swept the North each summer from 1919 to 1921.” ETHNIC NOTIONS (California Newsreel 1987).

120. Deputy Sheriff Cecil Price of Neshoba County, Mississippi took Schwerner, Chaney and Goodman into custody in his jail and held them until the Klan could get the lynching/murder party together. Price was eventually convicted in October 1967, along with six other Klansmen, of depriving Mickey Schwerner, James Chaney, and Andrew Goodman of their civil rights (by killing them). SETH CAGIN & PHILIP DRAY, WE ARE NOT AFRAID: THE STORY OF GOODMAN, SCHWERNER, AND CHANEY AND THE CIVIL RIGHTS CAMPAIGN FOR MISSISSIPPI 461 (Nation Book 2006) (1988); see also Without Sanctuary: Photographs and Postcards of Lynching in America, http://www.withoutsanctuary.org/pics_51.html (last visited Feb. 25, 2010) (showing a photo of the corpse of Rubin Stacy, on July 19, 1935, hanging from a tree near Fort Lauderdale, Florida, which clearly shows that he still had handcuffs on when he was lynched).

121. See Peter Rachleff, Lynching & Racial Violence: Histories & Legacies, <http://www.nathanielturner.com/lynchingandracialviolencepr.htm> (last visited Feb. 25, 2010). Professor Rachleff wrote, “Photographs of lynching ‘parties’ reveal that members of the mob or audience often posed with the corpses of their victims, in a sort of trophy shot akin to those of successful hunters and fishermen On occasion, the photos were turned into postcards which could be mailed to friends and relatives in distant locations.” *Id.*

122. See, e.g., RICHARD H. ROVERE, SENATOR JOE MCCARTHY (Harper Colophon Books 1973).

123. *Id.* at 252-71.

percent of Americans disapproved of him.¹²⁴ He was a leader, but a more unprincipled leader might be impossible to find in the annals of American history.¹²⁵

III. ILLUSTRATIONS OF MORAL LEADERSHIP FROM HISTORY

A. Martin Luther

Martin Luther (1483-1546), father of the Protestant Reformation, provided an example of "revolutionary leadership," according to the Pulitzer-Prize winning author James MacGregor Burns.¹²⁶ His was also a burning moral leadership embedded in a fanatical conviction and based upon "first principles"¹²⁷ rather than "new and revolutionary ones."¹²⁸ Later, as Burns observed, "it would be said about Martin Luther, as about all great leaders, that he was merely a catalyst of social change, a trigger for historic forces that had piled up and were waiting to burst into flame."¹²⁹

B. Abraham Lincoln

The life of Abraham Lincoln (1809-1865) has been used as an example of everything from master politician¹³⁰ to prairie saint.¹³¹ I would like to use a little noticed episode from his early years as President to illustrate his capacity for moral leadership. After ten years of abuse by White Men and broken treaties, the Lower Sioux Agency Indians (Santee Sioux, primarily) led by Little Crow, a baptized Episcopalian, started a war in August 1862.¹³² The war ended badly for the Sioux. In late September and early October,

124. *Id.* at 50.

125. *Id.* at 19 ("Like Hitler, McCarthy was a screamer, a political thug, a master of the mob, an exploiter of popular fears." Indeed, "[h]e used the fear of Bolshevism as Hitler used it. . . . To be sure, there were points, and crucial ones, at which contrast was more striking than comparison. Hitler had a program for the coming millennium; McCarthy had no program for tomorrow morning.").

126. JAMES MACGREGOR BURNS, *LEADERSHIP* 203-205 (Harper Paperback 1979) (1978).

127. "In philosophy, a first principle is a basic, foundational proposition or assumption that cannot be deduced from any other proposition or assumption. In mathematics, first principles are referred to as axioms or postulates." Egerton Chang, *GSAT, First Principles and the Joy of Learning*, THE GLEANER, June 19, 2009, available at <http://www.jamaica-gleaner.com/gleaner/20090619/cleisure/cleisure3.html>.

128. BURNS, *supra* note 130, at 203.

129. *Id.* at 205.

130. See generally STEPHEN B. OATES, *WITH MALICE TOWARD NONE: THE LIFE OF ABRAHAM LINCOLN* (1977).

131. See generally CARL SANDBURG, *ABRAHAM LINCOLN: THE PRAIRIE YEARS AND THE WAR YEARS* (1939).

132. DEE BROWN, *BURY MY HEART AT WOUNDED KNEE: AN INDIAN HISTORY OF THE AMERICAN WEST* 42-58 (1970).

Colonel Sibley of the Sixth Minnesota imprisoned 2,000 Santee Sioux in a stockade and commenced military trials.¹³³

Sibley chose five of his officers to constitute a military tribunal to try all the Santee Sioux suspected of engaging in the uprising.¹³⁴ Because he believed the Indians had no rights, Sibley failed to appoint any defense counsel for them.¹³⁵ When Sibley's trials were completed on November 5, 1862, three-hundred and three Santees had been sentenced to death; and sixteen others had received long prison terms.¹³⁶ The trials had moved forward so smoothly that on some days as many as forty Indians had been sentenced to death or imprisonment by the one court.¹³⁷

The responsibility for extinguishing that many lives was more than Colonel Sibley wanted to bear alone so he sought approval from General John Pope, commander of the Military Department of the Northwest.¹³⁸ General Pope, in turn, sought confirmation from his boss, then President of the United States Abraham Lincoln.¹³⁹ President Lincoln, despite pressure from Minnesota Governor Ramsey, demanded "the full and complete record of the convictions."¹⁴⁰

Upon receipt of the records, President Lincoln assigned two lawyers to examine them to differentiate between those who committed murder and those who killed in battle.¹⁴¹ After reviewing the recommendations of those lawyers, President Lincoln on December 6, 1862 authorized Colonel Sibley to proceed with the execution of thirty-nine of the 303 condemned Indians. On December 26, 1862, in Mankato, Minnesota, thirty-eight Santee Sioux were hung in what one spectator boasted was "America's greatest mass execution."¹⁴² Some hours later, officials discovered that two of the men hung were *not* on President Lincoln's list for execution.¹⁴³

On July 3, 1863, Little Crow was gunned down by two settlers who spotted him and his sixteen-year-old son picking raspberries near the settlement of Hutchinson.¹⁴⁴ The other two chiefs,

133. *Id.* at 58-59.

134. *Id.* at 58.

135. *Id.*

136. *Id.* at 59.

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.* at 60-61.

143. *Id.* at 61. The information about hanging two innocent men was not made public for nine years. *Id.*

144. *Id.* at 63. The State of Minnesota had placed a bounty on Sioux scalps of twenty-five dollars. The State of Minnesota presented the settlers who killed Little Crow with the regular scalp bounty and a bonus of five hundred dollars. *Id.* at 64.

Shakopee and Medicine Bottle, were found in Canada, deceitfully drugged, bound hand and foot, and dragged on a dog sled across the border into the United States where later they were executed by hanging.¹⁴⁵ This ended the saga of the Woodland Sioux in Minnesota. But for the intervention of Abraham Lincoln, more than half of the adult males of the Santee Sioux would have been hanged by agents of the State of Minnesota.

C. John Peter Altgeld

The Haymarket Square riot and bombing occurred in Chicago on May 4, 1886, after bitter labor struggles for an eight-hour day.¹⁴⁶ Seven police officers and four workers died as a direct result of the violence.¹⁴⁷ Eight anarchists were found guilty on August 20, and four were hanged by the State of Illinois on November 11, 1886.¹⁴⁸ That is a well-known story from American history.¹⁴⁹ What is not as well known is the rest of the story.

John Peter Altgeld (1846-1902) was the elected Governor of the State of Illinois from 1893-1897. He is best remembered for pardoning the surviving three Haymarket Square anarchists, a move that cost him a promising political career.¹⁵⁰ When he died at age fifty-four, Altgeld was buried in Chicago's Graceland Cemetery and was eulogized by Clarence Darrow and by Hull House founder Jane Addams.¹⁵¹ John F. Kennedy took note of Altgeld as one exception of someone who failed to get into the U.S. Senate because of moral courage,¹⁵² in a book based primarily on

145. *Id.* at 64-65. After the hangings, John McKenzie, the American responsible for this deceitful act and deliberate violation of international law, was awarded a thousand dollars for his services by the Minnesota legislature. *Id.* at 64.

146. 2004 WORLD ALMANAC, *supra* note 119, at 530.

147. *Id.*

148. *Id.*

149. The Haymarket Riot took place during an otherwise peaceful labor protest rally in Haymarket Square in Chicago on May 4, 1886. When 200 police tried to break up the rally, an unknown person threw a bomb into the police. The police fired into the crowd. A riot ensued. Seven policemen were killed, and 67 were injured. Four workers were killed, and over fifty were injured. On August 20, 1886, eight defendants were convicted of conspiracy against the police. Seven were sentenced to death, and one to prison. In 1887, four of the seven men were hanged, one committed suicide, and the remaining two were sentenced to prison. This punishment was meted out even though none of the defendants were found guilty of throwing the bomb or of causing any deaths. 9 WORLD BOOK ENCYCLOPEDIA 126 (1990); see also HOWARD ZINN, A PEOPLE'S HISTORY OF THE UNITED STATES 1492-PRESENT 264-66 (rev. ed. 1995) (1980); FOSTER RHEA DULLES & MELVYN DUBOFSKY, LABOR IN AMERICA: A HISTORY 116-19 (4th ed. 1984).

150. Ken Armstrong, *The Trial of Dick Cunningham, Part 2: A Career Teetering On A Bottle: A Death Row Lawyer's Search for Mercy and Redemption*, THE CHI. TRIB., Dec. 22, 2002, available at <http://www.chicagotribune.com/features/chi-0212120291dec12,0,604452.story>.

151. *Id.*

152. JOHN F. KENNEDY, PROFILES IN COURAGE 244-45 (Harper Perennial 1964).

the U.S. Senate, in the following words:

After reviewing a tremendous stack of affidavits and court records, Governor John Peter Altgeld of Illinois was convinced that an unfair trial and insufficient evidence had convicted the three defendants, not yet hanged, of murder in Chicago's famous Haymarket Square bombing of 1886. Warned by Democratic leaders that he must forget these convicts if he still looked toward the Senate, Altgeld replied, "No man's ambition has a right to stand in the way of performing a simple act of justice"; and when asked by the Democratic State Chairman if his eighteen-thousand word pardon document was "good policy," he thundered, "It is right."

For his action, the Governor was burned in effigy, excluded from customary ceremonies such as parades and commencements, and assaulted daily in the press with such epithets as "anarchist," "socialist," "apologist for murder" and "fomenter of lawlessness." Defeated for re-election in 1896, denied even the customary right to make a farewell address at his successor's inaugural ("Illinois has had enough of that anarchist," the new Governor snorted), John Peter Altgeld returned to private life¹⁵³

D. The Watergate Episode

A free press and an independent judiciary were the two essential elements necessary to stop an Executive who was out-of-bounds, who had abused the powers of the office by breaking the laws and then constructing an elaborate cover-up (known as obstruction of justice, a crime itself).¹⁵⁴ Yet, a free press and an independent judiciary without persons who had the moral courage to do their job without fear or favor would not have succeeded. Ultimately, U.S. District Judge John Sirica¹⁵⁵ and *The Washington Post* Publisher Katharine Graham¹⁵⁶ were the vitally important actors; and that is neither to belittle nor to detract from the key

153. *Id.* at 245.

154. Obstruction of justice can be defined as "[a] criminal offense that involves interference, through words or actions, with the proper operations of a court or officers of the court." Obstruction of Justice, <http://legal-dictionary.thefreedictionary.com/Obstruction+of+Justice> (last visited Feb. 25, 2010). Obstruction of justice in the federal courts is governed by a series of criminal statutes (18 U.S.C. §§ 1501-1517 (2006)). Section 1503, which contains the so-called "Omnibus clause," is the principal vehicle used to enforce sanctions against obstruction or endeavors to obstruct justice. *Id.*

155. *Infra* note 252.

156. Katherine Meyer Graham (1917-2001) was the publisher of the *Washington Post*, a newspaper her father bought in 1933, for more than two decades. Jessica Reaves, *Katharine Graham: 1917-2001*, TIME MAGAZINE, July 17, 2001, available at <http://www.time.com/time/printout/0,8816,167941,00.html>. She took over in 1963 when her husband committed suicide. She guided it through its most famous period, publishing the Watergate stories that led to the resignation in disgrace of Richard M. Nixon. *Id.* Her biography, PERSONAL HISTORY, won the Pulitzer Prize. *Id.* She died as a result of an accidental fall in Sun Valley, Idaho in July 2001. *Id.*

roles of reporters Bob Woodward¹⁵⁷ and Carl Bernstein,¹⁵⁸ their Executive Editor Ben Bradley,¹⁵⁹ or their best-known source “Deep Throat.”¹⁶⁰

E. William O. Douglas

In April 1939, President Franklin D. Roosevelt appointed forty-year-old William O. Douglas to the seat vacated on the U.S. Supreme Court by the retirement of Louis Brandeis.¹⁶¹ Douglas was the second-youngest person appointed to the high court;¹⁶²

157. Robert U. “Bob” Woodward (born March 26, 1943) graduated from Yale University with a B.A. in 1965, where he had attended on an ROTC scholarship and had studied history and English literature. Academy of Achievement: Rob Woodward & Ben Bradlee, <http://www.achievement.org/autodoc/page/woolbio-1> (last visited Feb. 25, 2010). He spent the next five years on active duty in the U.S. Navy working in communications. *Id.* He worked as a reporter on a weekly newspaper in the Washington D.C. area for about one year before getting hired as a reporter for the *Washington Post* in September 1971. *Id.* He teamed with Carl Bernstein as the lead reporters on Watergate and helped the *Post* win two Pulitzers. *The Post Investigates*, THE WASH. POST, available at <http://www.washingtonpost.com/wp-srv/politics/special/watergate/part1.html> (last visited Feb. 25, 2010).

158. Carl Bernstein, born February 14, 1944, graduated from high school in Silver Spring, Maryland and attended the University of Maryland, College Park. NNDB: Tracking the Entire World, <http://www.nndb.com/people/315/000022249/> (last visited Feb. 25, 2010). Bernstein played an integral role in teaming with Bob Woodward and reporting on the Watergate scandal for the *Washington Post*, which he left in 1977. *Id.* He is the author or co-author of six books. Bernstein currently lives in New York and works for *Vanity Fair*.

159. Benjamin C. Bradlee, born August 26, 1921, is a 1942 graduate of Harvard College. Spartacus Educational, <http://www.spartacus.schoolnet.co.uk/jfkbradlee.htm> (last visited Feb. 26, 2010). He comes of an old distinguished New England family that can trace its roots back to 1630 in Massachusetts. He served in Navy Intelligence in the South Pacific theater during World War II. *Id.* After the War, Bradlee worked for a forerunner of the U.S. Information Agency and with the CIA in Europe and North Africa. *Id.* He joined the staff of *Newsweek* in 1953; and as a reporter for *Newsweek*, he became friends with then-Senator John F. Kennedy. Bradlee was Washington Bureau chief for *Newsweek* and, in that position, helped negotiate the sale of *Newsweek* to the *Washington Post* holding company. In 1965, Bradlee was promoted to managing editor of the *Post*. Forum for Ben Bradlee, WashingtonPost.com, <http://discuss.washingtonpost.com/zforum/97/bradlee.htm> (last visited Feb. 25, 2010). In 1968, he was promoted to executive editor; and he retired as executive editor in 1991. *Id.*

160. David Von Drehle, *FBI's No. 2 Was 'Deep Throat': Mark Felt Ends 30-Year Mystery of The Post's Watergate Source*, THE WASH. POST, June 1, 2005, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/05/31/ar2005053100655.html>.

161. GERALD GUNTHER & NOEL T. DOWLING, CASES AND MATERIALS ON CONSTITUTIONAL LAW 1459-60 (8th ed. 1970).

162. At forty years, six months of age, Douglas was the second youngest Supreme Court appointee in history and the youngest in 128 years; the youngest was Joseph Story who was appointed at age thirty two. Michaelariens.com, <http://www.michaelariens.com/conlaw/justices/douglas.htm> (last visited Feb. 26, 2010) [hereinafter William O. Douglas Biography].

and when he retired in November 1975 due to deteriorating health, he had served the most years of any Justice in the history of the Court.¹⁶³ This vignette is about the history leading up to Justice Douglas's retirement, not about his lifestyle, his sexual mores, or his judicial service, per se.¹⁶⁴

In April 1970, then House Minority Leader Gerald R. Ford led an ill-considered attempt to impeach Justice William O. Douglas.¹⁶⁵ A measure of how ill-advised that attempt was, one of only a handful of such attempts, can be deduced from the absence of any mention of it in Richard Nixon's *Memoirs* as well as by the attempt by William Safire, a speech writer for Nixon, in his book *Before the Fall* to distance not only Nixon but also John Mitchell, the Attorney General, and the entire Nixon administration from Ford's folly.¹⁶⁶ Other sources attempt to lay part of the blame on Nixon and Mitchell for encouraging Ford.¹⁶⁷ The truth may lie somewhere in between, and the full truth will probably never be known.

William O. Douglas in the second volume of his autobiography devoted about nineteen pages to discussing the effort in the spring

163. On November 12, 1975, Douglas submitted a letter of retirement to President Ford. Douglas had served longer than any other justice in history (by more than two years). *Id.*

164. Some fairly recent biographies are less than complimentary. See generally BRUCE ALLEN MURPHY, *WILD BILL: THE LEGEND AND LIFE OF WILLIAM O. DOUGLAS* (2003). Murphy, a professor at Lafayette College, spent fifteen years working on Douglas' biography and also apparently digging up as much dirt as he could find, which was not an insignificant amount. Not content with his findings of Douglas's multiple adulteries, lying, and generally embellishing his life story at practically every turn, Murphy falsely alleged that Douglas was not entitled to burial at Arlington National Cemetery. *Id.* at 509-10. That unsubstantiated claim was repudiated in a later article published by the *New York Times*. Charles Lane, *On Further Review, It's Hard to Bury Douglas's Arlington Claim*, THE WASH. POST, Feb. 14, 2003, at A29.

165. William O. Douglas Biography, *supra* note 165.

166. See WILLIAM SAFIRE, *BEFORE THE FALL: AN INSIDE VIEW OF THE PRE-WATERGATE WHITE HOUSE* 267-69 (1975). "Jerry Ford, the usually sensible House Minority Leader, threatened to lead an impeach William Douglas' movement on grounds of conflict of interest." *Id.* at 269. According to Safire, Nixon called John Mitchell to try to get him to tell Ford to call it off. *Id.*

167. William O. Douglas cited a letter dated May 13, 1970, in which then President Richard Nixon addresses the House Judiciary Committee and offers "to supply relevant information to the legislative branch" to aid in the resolution of the motion to impeach Justice Douglas. WILLIAM O. DOUGLAS, *THE COURT YEARS 1935-1975: THE AUTOBIOGRAPHY OF WILLIAM O. DOUGLAS* 362 (1st ed. 1980). "As a result of Nixon's instructions to the FBI and the CIA, hundreds of documents concerning me were turned over to the House." *Id.* Another source declared that efforts to gather evidence of criminal conduct by Justice Douglas on the part of Attorney General John N. Mitchell and the Nixon Administration came up empty. See Congressman Gerald R. Ford, Remarks on the Impeachment of Supreme Court Justice William Douglas (Apr. 15, 1970) (explaining there was an apparent lack of proof of any criminal conduct by Justice Douglas).

of 1970 by Congressman Gerald R. Ford to have him impeached.¹⁶⁸ He also reproduced one cartoon showing Gerry Ford with Strom Thurmond¹⁶⁹ and others carrying a noose, knocking on his door at night with the caption: "We're the Investigating Committee."¹⁷⁰ Douglas had no doubts in his mind that President Nixon and Mitchell's Justice Department were at the heart of the Ford effort.¹⁷¹ The effort by Minority Leader Ford cost Douglas having to put together a team of eight first-class [and expensive] lawyers to represent him before the House Judiciary Committee,¹⁷² which fortunately for Justice Douglas,¹⁷³ was chaired by Emanuel Celler

168. DOUGLAS, *supra* note 171, at 359-77.

169. James Strom Thurmond (1902-2003) was a perennial South Carolina elected office holder. See Strom Thurmond Biography, <http://www.strom.clemson.edu/strom/bio.html> (last visited Feb. 28, 2010). In 1946, after service in the U.S. Army during World War II, he was elected Governor of South Carolina. *Id.* When he resigned from the U.S. Senate in January 2003, he was the longest serving (forty-eight years) and oldest U.S. Senator in U.S. history. Thurmond was instrumental in the so-called "southern strategy" that helped Richard M. Nixon win the White House in 1968. *Id.* Senator Thurmond fathered his first child on a sixteen year-old African-American maid, Carrie Butler, who worked in the Thurmond family home in 1925. Thurmond never publicly acknowledged his biracial daughter, but provided financial support for her and saw her about once a year. Senator Thurman conducted the longest filibuster ever by a lone senator in opposition to the Civil Rights Act of 1957 (24 hours, 18 minutes). Thurmond always insisted he was not a racist, but was only opposed to excessive federal authority. See, e.g., Adam Clymer, *Strom Thurman, Foe of Integration, Dies at 100*, N.Y. TIMES, June 27, 2003, available at http://topics.nytimes.com/topics/reference/timestopics/people/t/strom_thurmond/index.html; Strom Thurmond, http://en.wikipedia.org/wiki/Strom_Thurmond (last visited Mar. 31, 2010); and Shaila K. Dewan & Ariel Hart, *Thurmond's Biracial Daughter Seeks to Join Confederacy Group*, N.Y. TIMES, July 2, 2004, available at <http://www.nytimes.com/2004/07/02/us/thurmond-s-biracial-daughter-seeks-to-join-confed>.

170. DOUGLAS, *supra* note 171 (appearing on the eleventh unnumbered prefatory material).

171. *Id.* at 372 (wherein Douglas related to retired Chief Justice Earl Warren that he had word from the new Chief Justice, Warren Burger, that Nixon was opposed to the impeachment effort). Douglas wrote, "When I told that to Earl Warren he roared with laughter and said, 'If that son of a bitch is opposed to your impeachment he could stop it in one minute.'" *Id.* Douglas also believed that "[a]s a result of Nixon's instructions to the FBI and the CIA, 'hundreds of documents concerning [him] were turned over to the House.'" *Id.* at 362.

172. *Id.* at 363-64. Douglas was represented in the House Judiciary impeachment probe in 1970 by Simon H. Rifkind of New York, as lead counsel; Ramsey Clark, Gerald Stern, and Dan Levitt—all of the Rifkind law firm; Dave Ginsburg; Fred W. Drogula; Charles Miller of the Covington & Burling law firm; Warren Christopher of O'Melveny & Meyers in LA; and Vern Countryman of Harvard Law School. *Id.* at 364. In all, there were eight lawyers working on his defense. *Id.*

173. That the impeachment hearings ended up before the Judiciary Committee instead of a House Select Committee, the alternative favored by Representative Ford, was not entirely fortuitous. One source states that as House Majority Leader Ford was speaking on floor about the need to remove Justice Douglas, Andrew

(D., NY).¹⁷⁴ The entire investigation from start to finish lasted about seven months,¹⁷⁵ and it ended with a report of the Committee finding insufficient grounds to support going forward with articles of impeachment.¹⁷⁶

This was the last of what some count as three impeachment attempts at Justice Douglas.¹⁷⁷ The first came in 1953 when he stayed the execution of Ethel and Julius Rosenberg.¹⁷⁸ A second attempt allegedly occurred in 1966.¹⁷⁹ The easy success of the Republicans under Nixon in getting Justice Abe Fortas to resign in 1969 due to an alleged conflict of interest¹⁸⁰ inspired a third

Jacobs, Jr. (D., Ind.) dropped a bill into the House hopper that moved the impeachment inquiry to the House Judiciary Committee, chaired by Emanuel Celler (D., NY). GERALD R. FORD, *A TIME TO HEAL: THE AUTOBIOGRAPHY OF GERALD R. FORD* 93 (1979).

174. Emanuel Celler (1888-1981) was a representative in the House from Brooklyn, New York for almost fifty years. See Celler, Emanuel (1888-1981), <http://bioguide.congress.gov/scripts/biodisplay.pl?index=C000264> (last visited Feb. 23, 2010). He was a long-time chairman of the House Committee on the Judiciary. *Id.*

175. See William O. Douglas Biography, *supra* note 165 (stating that with his “puckishness temporarily suppressed, Douglas mounted a feverish defense, and the charges were rejected eight months later by a House judiciary subcommittee.”).

176. FORD, *supra* note 177, at 93.

177. One biographer of Justice Douglas stated that “four attempts to impeach [him] failed.” JAMES F. SIMON, *INDEPENDENT JOURNEY: THE LIFE OF WILLIAM O. DOUGLAS* 2 (1980). Another source claims there were three attempts to impeach Douglas. William O. Douglas Biography, *supra* note 165.

178. William O. Douglas Biography, *supra* note 165. See also *Rosenberg v. United States* 346 U.S. 273 (1953) (detailing the case of the Rosenbergs). On June 17, 1953, Representative William M. Wheeler, infuriated by Douglas’s brief stay of execution for the Rosenbergs, introduced a resolution to impeach Justice Douglas. William O. Douglas Biography, *supra* note 165. The matter was referred to the House Judiciary Committee on June 18th. *Id.* On July 7, 1953, the committee voted to end the investigation. *Id.*

179. Those who assert there were more than two attempts to impeach Justice Douglas claim an impeachment effort in the year 1966. *The Law: The Court’s Uncompromising Libertarians*, TIME, Nov. 24, 1975, available at <http://www.time.com/time/magazine/article/0,9171,913732-1,00.html>. By 1965, Douglas had divorced three wives and had married for the fourth (and last time) Cathleen Heffernan, a twenty-two-year-old woman. *The Supreme Court: September Song*, TIME, July 29, 1966, available at <http://www.time.com/time/magazine/article/0,9171,899281,00.html>. At the time of the marriage, Douglas was 66 years old. *Id.* At the time, Douglas’s marriages and alleged womanizing were matters of some public debate and provided fuel for his critics. *Id.*

In the spring of 1966, Representative Robert Dole (R., KS) compared Douglas’s “bad judgment from a matrimonial standpoint” to his judicial decisions; and four separate resolutions were introduced in the House of Representatives calling for investigations of Justice Douglas’s moral character. *Id.*

180. Abraham Fortas (1910-1982), a brilliant lawyer, was appointed to the U.S. Supreme Court by his friend, confidant, and one-time client L.B.J., in 1965. David Kaplan, *The Reagan Court—Child of Lyndon Johnson?*, N.Y. TIMES, Sept. 4, 1989, available at <http://www.nytimes.com/1989/09/04/opinion/the-reagan-court-child-of-lyndon-johnson.html?pagewanted=1>. He resigned his seat on the Court on May 14,

attempt to impeach Justice Douglas,¹⁸¹ which was motivated by the Nixon camp's anger over its defeats in the Senate of the Clement Haynsworth¹⁸² and G. Harrold Carswell¹⁸³ nominations

1969. *Id.* L.B.J. tried, toward the end of his presidency in June 1968, to elevate Fortas to Chief Justice to fill the place left open by Earl Warren's retirement. *Id.* Although not illegal, there was controversy about Fortas accepting a \$15,000 speaking fee from American University Law School for giving nine lectures. *Id.* In May 1969, Justice Fortas resigned his seat on the U.S. Supreme Court in the wake of charges that he "agreed to accept a \$20,000-a-year lifetime payment from a foundation set up by Louis E. Wolfson, a businessman who was later convicted and sentenced to prison for selling unregistered stock." Alfonso A. Narvaez, *Clement Haynsworth Dies at 77; Lost Struggle for High Court Seat*, N.Y. TIMES, Nov. 23, 1989, available at <http://www.nytimes.com/1989/11/23/obituaries/clement-haynsworth-dies-at-77-lost-struggle-for-high-court-seat.html?pagewanted=1>; FORD, *supra* note 180, at 90-91.

181. DOUGLAS, *supra* note 171. When Representative Gerald Ford rose to speak on April 15, 1970, in favor of Justice Douglas's impeachment and removal, Ford was cognizant of the recent resignation of Douglas's protégé Abe Fortas, who had been forced to resign because of ties to a foundation similar to the Parvin Foundation of which Justice Douglas was president. *Id.* Additional motivation may have been provided by Representatives Ford's well-known disappointment over the failed nominations of Clement Haynsworth and G. Harrold Carswell to fill Fortas's vacant seat on the High Court. *Id.*; *supra* note 184 and accompanying text; *infra* notes 186-187 and accompanying text.

182. Clement Haynsworth (1912-1989) was a Harvard Law School graduate (1936) and a Chief Judge of the 4th Circuit Court of Appeals—nominated in 1957 by President Eisenhower. Narvaez, *supra* note 184. He also was an unsuccessful nominee for the U.S. Supreme Court. *Id.* Haynsworth was nominated on August 21, 1969 by President Richard M. Nixon to replace Justice Abe Fortas. His nomination was opposed by Democrats, liberal Republicans (now extinct), organized labor, and the NAACP. *Id.* Joseph L. Rauh, counsel to the Leadership Conference on Civil Rights said that Judge Haynsworth was a "laundered segregationist." *Id.* His court decisions were characterized as favoring segregation and being reflexively anti-labor. *Id.* Ultimately, Haynsworth's nomination was rejected by a vote of 55 to 45 by the Senate, marking the tenth time in the nation's history that a Supreme Court nominee had been rejected. *Id.*

183. President Richard M. Nixon nominated George Harrold Carswell of the 5th Circuit Court of Appeals to take the seat vacated by the resignation of Justice Abe Fortas. JOHN WESLEY DEAN, *THE REHNQUIST CHOICE: THE UNTOLD STORY OF THE NIXON APPOINTMENT THAT REDEFINED THE SUPREME COURT 18-19* (The Free Press, 2001). Judge Carswell was a U.S. District Court (N.D. of FL) from 1958 to 1969. *Id.* He was elevated to the Fifth Circuit Court of Appeals by President Nixon's nomination and Senate confirmation on June 19, 1969. Judges of the United States Courts: George Harrold Carswell, Federal Judicial Center, <http://www.fjc.gov/public/home.nsf/hisj> (last visited Feb. 22, 2010). The high reversal rate of his decisions as a U.S. District Judge by the Court of Appeals, fifty-eight percent, did not help the cause. DEAN *supra* at 21. Carswell had consistently opposed women's rights, and many leading feminists, including Betty Friedan, testified before the Senate in opposition to his confirmation. Judge Carswell and the "Sex Plus" Doctrine: Testimony Bety Friedan Before the Senate Judicial Committee – 1970, *Gifts of Speech*, available at <http://gos.sbc.edu/f/friedan.html> (last visited Feb. 22, 2010). Defending Carswell against charges of mediocrity, Senator Roman Hruska (R., Neb.) argued that "even if he was mediocre, there are a lot of mediocre judges and people and lawyers. They are entitled to a little representation, aren't they,

for the seat vacated by Fortas. Ultimately, Nixon had to send up the name of Harry Blackmun of Minnesota¹⁸⁴—one of the so-called “Minnesota Twins.”¹⁸⁵ Douglas himself harbored a deep-seated anger, if not hatred of both Nixon and Gerald Ford.¹⁸⁶

Thus, when he was felled on December 31, 1974, by a severe

and a little chance? We can't have all Brandeises, Frankfurters and Cardozos.” DEAN, *supra* note 187, at 21; *The Supreme: A Seat for Mediocrity*, TIME, Mar. 30, 1970, available at <http://www.time.com/time/magazine/article/0,9171,942208,00.html>. On April 8, 1970, the U.S. Senate rejected Judge Carswell's nomination by a vote of 51 to 45. DEAN, *supra* note 187, at 21. On April 20, 1970, Judge Carswell resigned from the Fifth Circuit in order to run in the GOP primary for the U.S. Senate in Florida. THE OXFORD COMPANION TO THE SUPREME COURT OF THE UNITED STATES 128 (Kermit Hall ed., Oxford Univ. Press 1992) [hereinafter OXFORD COMPANION]. He lost. *Id.* In 1976, Carswell was convicted of battery for advances he made to an undercover police officer in a Florida men's room. JOYCE MURDOCH, DEB PRICE, *COURTING JUSTICE: GAY MEN AND LESBIANS V. THE SUPREME COURT* 187 (2002).

184. On April 15, 1970, President Nixon nominated Minnesotan Harry A. Blackmun (1908-1999) to fill the Fortas vacancy. *U.S. Supreme Court Justice Harry A. Blackmun (1908-1999): A Selected Bibliography*, available at <http://www.loc.gov/rr/mss/blackmun/blackmun-ex-bib.html> (last visited Feb. 22, 2010). Blackmun was confirmed on a 94-0 vote on May 12, 1970. DEAN, *supra* note 187, at 23.

185. Minnesota Twins, the name of a major league baseball team, was applied by journalists to Chief Justice Warren E. Burger and Justice Harry A. Blackmun. OXFORD COMPANION, *supra* note 187, at 551. They were both nominated by President Nixon within a year of each other; both are Minnesotans; and they were long-time personal friends. *Id.* After a few years of serving together on the High Court, Blackmun and Burger began to drift apart due to professional and personal differences. LINDA GREENHOUSE, *BECOMING JUSTICE BLACKMUN: HARRY BLACKMUN'S SUPREME COURT JOURNEY* 121 (Times Books 2005).

186. In the second volume of his autobiography, William O. Douglas makes scores of references to Richard M. Nixon. See generally DOUGLAS, *supra* note 171. Just a few of them will serve to give the flavor of the rest: “[h]ow RMN picked Agnew [to be his running mate in 1968] I do not know, but his instinct for ‘malleable’ men was sound. And Agnew had Mafia-like tendencies to cut corners, violate the law and enrich himself. By RMN standards these were endearing ones.” *Id.* at 350.

Nixon lived not for his ‘friends,’ but for his ‘enemies.’ Everyone who crossed his path, everyone who was a competitor, had to be destroyed . . . He had to shatter and suppress every latent force that sponsored opposition to him and his regime. This attitude toward ‘enemies,’ this use of ‘threats’ marked the essence of Nixon's *Mein Kampf*.

Id. at 351-352. “One who contemplates the career of Richard M. Nixon should read Joachim C. Fest's biography of *Hitler*.” *Id.* at 353. By way of contrast, William Orville Douglas makes only thirteen indexed references to Gerald R. Ford; and most of them are milder than his vitriolic barbs aimed at Nixon. One such comment should serve to give the milder slant on Mr. Ford:

We also predicted that Gerald Ford would be his choice for Vice President. It had to be Ford because of his mediocrity. RMN—like LBJ before him—could not stand to be overshadowed. So he picked a man who represented the doldrums of conservatism, though Ford, unlike Agnew, was an honest man.

Id. at 350-351.

stroke while on vacation in the Bahamas, Justice Douglas was stubborn in his refusal to resign his seat on the Court and give current President Gerald R. Ford a nomination to the Supreme Court.¹⁸⁷ Severely disabled and “glazed” by medications for pain, Douglas held onto his Court seat until Abe Fortas, his friend and former student at Yale Law School, convinced him to resign on November 12, 1975.¹⁸⁸ If he had been able to continue for another 15 months, his replacement would have been named by a Democrat.¹⁸⁹ However, the act of moral courage that I wish to emphasize is Douglas’s placing the welfare of the United States Supreme Court before his own very strong negative feelings toward the President who received the opportunity to name his replacement on the Court.¹⁹⁰

IV. DISTINGUISHING MORAL LEADERSHIP

Virtually every day, some journalist or other writer bemoans the lack of moral leadership in this country.¹⁹¹ How do we go

187. On December 31, 1974, while on vacation in the Bahamas, Justice Douglas suffered a debilitating stroke. William O. Douglas Biography, *supra* note 165. “He became confined to a wheelchair pushed by an aide, wracked by constant pain, and glazed by medication, and increasingly incoherent.” *Id.* Severely disabled, Douglas insisted on continuing to participate in Supreme Court affairs. *Id.* Eight of Douglas’s fellow justices voted to put off any argued case in which Douglas’s vote might be decisive until the following term. Jacob M. Appel, *Anticipating the Incapacitated Justice*, THE HUFFINGTON POST, Aug. 22, 2009, available at http://www.huffingtonpost.com/jacob-m-appel/anticipating-the-incapaci_b_266179.html. Douglas was at times incoherent, but he would not resign. He tried to hang on. After more than ten months, Justice Douglas – at the urging of Abe Fortas – submitted his resignation on November 12, 1975. William O. Douglas Biography, *supra* note 165. According to one Court observer, Ford’s effort to remove Douglas from the bench accomplished one thing: it “created an intractable resolve by Douglas never to resign while Nixon [or his proxy] was president.” DEAN, *supra* note 187, at 16.

188. William O. Douglas Biography, *supra* note 165.

189. William O. Douglas died on January 19, 1980. William O. Douglas Biography, *supra* note 165. James Earl (Jimmy) Carter, a Democrat from Georgia, was inaugurated the 39th President of the United States on January 20, 1977. ANDREW SANTELLA, JAMES EARLY CARTER JR. 29, 53 (Compass Point Books 2003).

190. A mild irony is that Gerald Ford missed that angle entirely. Instead, in his autobiography, former President Ford wrote that his call for a select committee to investigate Douglas “may have been politically ill advised, but it was not irresponsible.” Ford, *supra* note 171, at 94. Ford also wrote that when Justice Douglas resigned, he wrote him a nice note on his thirty-six years service because “I [Ford] felt no rancor toward him personally.” *Id.* at 334. Obviously, Ford missed the point. He was the one who had done the political hatchet job on Douglas—and, if rancor were felt, he would be the object of it. Even reviewing Ford’s grounds for the impeachment attempt in their best possible light, as Ford does in his autobiography, they seem petty, irrelevant, and mean-spirited, especially with the additional perspective of time. See *id.* at 90-93 (describing Ford’s reasoning in his own words).

191. See, e.g., James K. Galbraith, *The Predator State: Enron, Tyco,*

about separating moral leadership from the rest? Textbooks on ethics tell us that there are three basic schools of moral philosophy:

(1) Ontological ethics or ethics of being, such as the ethics of virtue from Aristotle;

(2) Consequential or outcome-based ethics, such as the utilitarian ethics of J.S. Mill; and

(3) Non-consequential or duty-based ethics, such as the ethics of Immanuel Kant.¹⁹²

All three have distinct theoretical approaches to the question of how can we know whether an act is good or bad. The consequential position is that an act is good if it produces good results—frequently measured by utility. Duty-based ethics measures the quality of the act by moral yardsticks that are constructed upon rules of moral duties. Thirdly, the ethics of virtue concentrates on the character of the actor grounded on the premise that we tend to become what we do. Since we are always in the process of defining ourselves, our goal should be to become a good person, “especially the kind of person who performs right actions by habit and by desire.” A good act, then, would be one that complies with the rules, promotes good ends, and, most importantly, moves us in the direction of becoming a good person.

A. Virtue Ethics

If we were to take these philosophies and use them to attempt to separate moral leadership from amoral or immoral leadership, we might gain some insight. Aristotle listed several examples of virtues: courage, temperance, liberality (as displayed in the sphere of getting and spending), magnanimity (large mindedness—as displayed in the arena of honor/dishonor), patience, truthfulness, friendliness, and modesty.¹⁹³

If we embraced these eight virtues, as suggested by Aristotle, then we might, for example, search the nominated leader's behavior and character to determine whether these virtues were manifested therein. If our putative leader displayed these virtues to our satisfaction, then we might safely follow her with some confidence that her leadership would be moral—but only to the

WorldCom...and the U.S. government?, MOTHER JONES, May 5, 2006, at 30, available at 2006 WLNR 24191010; Robert J. Samuelson, *It's Policies, Not People*, NEWSWEEK, May 1, 2006, at 31, available at 2006 WLNR 6943153; Alan Sloan, *Bush's Budget and Words Don't Add Up*, NEWSWEEK, Feb. 20, 2006, at 18, available at 2006 WLNR 2563747; Anna Quindlen, *Remembrance of Things Past*, NEWSWEEK, Mar. 6, 2006, at 68, available at 2006 WLNR 3383824.

192. See, e.g., RACHELS, *supra* note 13, at 92-93, 176-85.

193. THE ETHICS OF ARISTOTLE: THE NICHOMACHEAN ETHICS 101-07 (J.A.K. Thompson trans., Hugh Tredennick rev. trans., Penguin Classics 1976) (1955) [hereinafter ETHICS OF ARISTOTLE].

extent that past behavior is an accurate guide to future behavior (not always a sure thing).

B. Duty-Based Ethics

Emmanuel Kant argued that the only thing “good of and in itself” was a good will. Kant also urged us to embrace his “Categorical Imperative” as a rule for all times and situations. The categorical imperative, according to Kant, could be stated in various ways, for instance:

1. Act only on the maxim [intention] whereby you can at the same time will that it should be a universal law.
2. Act as if the maxim of your action were to become by your will a universal law of nature.
3. Always act so as to treat humanity, whether in yourself or in others, as an end in itself, never merely as a means.¹⁹⁴

Thus, we might be able to apply Kant's Categorical Imperative to a would-be leader to determine whether we should follow the pro-offered leadership. Suppose that in the Presidential campaign of 1948, we were undetermined between the candidacy of Harry E. Truman and the States' Rights (3rd party) candidacy of Strom Thurmond.¹⁹⁵ Thurmond's platform called for continued segregation (Jim Crow laws¹⁹⁶) in the Deep South. We might apply Kant's Categorical Imperative and determine that Thurmond lacked moral leadership because the idea of segregation by race cannot be universalized. In a number of other situations, the application of Kant's principles may not be clear or helpful.

194. EMMANUEL KANT, FUNDAMENTAL PRINCIPLES OF THE METAPHYSICS OF MORALS in ROBERT C. SOLOMON & KRISTINE R. HANSON, ABOVE THE BOTTOM LINE: AN INTRODUCTION TO BUSINESS ETHICS 219 (Harcourt Brace & Co. 1994) (1983) (describing Emmanuel Kant's principles of morals).

195. Strom Thurmond ran as a States' Rights (Dixiecrat) candidate in 1948 on the platform of racial segregation. He captured thirty-nine Electoral College votes from four southern states to Truman's 333 and Dewey's 189. NADINE COHODAS, STROM THURMOND & THE POLITICS OF SOUTHERN CHANGE 176-77, 189 (Simon & Schuster 1993); *see supra* note 173 (relating a biographical sketch of the late Senator Thurmond).

196. Jim Crow laws were state and local laws in the United States enacted between 1876 and 1965. They mandated de jure segregation in all public facilities, transportation, and education under a banner of “separate but equal” status for black Americans. DIANA KENDALL, SOCIOLOGY IN OUR TIMES 323 (7th Edition Thomson Wadsworth, 2008). The term “Jim Crow” came from an exaggerated song and dance originally performed in blackface by a white entertainer named T.D. Rice about 1828 or 1830. Ronald L. F. Davis, The History of Jim Crow, <http://www.jimcrowhistory.org/history/creating2.htm> (last visited Feb. 22, 2010). This song and dance was the initial step in the evolution of the minstrel show tradition that was hugely popular in the United States in the 1840s and 1850s. *Id.*; *see also* C. VANN WOODWARD, ORIGINS OF THE NEW SOUTH: 1877-1913 210-15 (1951).

C. Utilitarian-Type Ethics

Here we have a system of moral philosophy that has a famous weakness, i.e., a very poorly developed concept of justice. This school also has an aptitude for being fairly easily manipulated to achieve desired results. Manipulation can be achieved by pushing out the timeline horizon for the measuring of the utilitarian results. Both of these weaknesses have been compensated for by the development of more sophisticated forms of Utilitarian philosophy—such as rule-based utilitarianism. Whether moving to one of the much more sophisticated and modern forms of utilitarianism resolves these weaknesses is beyond the scope of this Article. Other problems with utilitarian analysis remain—such as the somewhat arbitrary assignment of utilities and disutilities and the crystal ball reading involved in invoking a future and uncertain outcome to justify a current decision.

At its worst, utilitarianism might be reduced to the kind of immorality that Lyndon Johnson displayed in the 1948 Texas Senate primary against Coke Stevenson: “win at all costs, but do whatever it takes to win because our candidate is the good guy and will do great things in the not-to-distant future.”¹⁹⁷

D. Moral Reasoning Stages

In the last half of the 20th century, a new discipline emerged entitled “developmental psychology” or “moral psychology.” Based upon the work of the French psychologist Jean Piaget and upon the ground-breaking dissertation of Lawrence Kohlberg, moral psychology allows us to evaluate the moral reasoning level of people using a two-hour standardized test developed by James Rest.¹⁹⁸ Consequently, we could, at least in theory, rate the moral reasoning levels of candidates offering their leadership to see which one reasoned at a higher, more mature level, assuming we could get all the candidates for a leadership post to take the test.

Critics may claim that the results are irrelevant because there is no proof that anyone *actually* makes decisions at a higher moral level merely because that person has the *capacity* to think at a higher level. They certainly have a point, but it may be less of one than they think. It really amounts to about half of a criticism. The rejoinder is that we can say with certainty that someone who cannot reason at a higher, more mature level in a laboratory situation will never be able to reason at a higher level in the field. In other words, it may not be a sufficient condition for moral leadership but it is a *necessary* condition.

197. See *supra* notes 92-96 and accompanying text (explaining the true nature and the characteristics of ‘moral leadership’).

198. See, e.g., WINES, *supra* note 13, at 57-58 (describing the six universal moral stages of development).

E. Minimalist Morality As a Proxy for Character

Character and questions of character arise whenever the discussion turns to leadership.¹⁹⁹ No less a person than Alexander Hamilton in the Federalist Papers wrote that the office of the U.S. President called for persons of “character” and “wisdom” and “integrity.”²⁰⁰ Measuring character in this age is a daunting task. Perhaps, we could use a minimalist morality as a proxy for the minimum requirements of a “moral character.”

At least one minimalist code of morality has been advanced. It states that a minimalist moral code would consist of three rules: (a) be just (this would include promise keeping) in dealings with others; (b) tell the truth; and (c) avoid doing any unnecessary harm.²⁰¹ We might employ this code in determining whether a pro-offered leader is moral. This might be more feasible than attempting to measure levels of moral reasoning ala Kohlberg.

“Character” has been defined, in one applicable sense, as “moral or ethical strength”²⁰² We might say then that a person has a sound character when we know that he or she has a strong moral compass combined with moral courage. A quick test of “character”—fitness for moral leadership—might then be to check out that person’s track record against the three precepts of a minimum morality.

F. The “Apprenticeship” Issue

Childhood is frequently said to be a creature of the Enlightenment;²⁰³ and, much to my chagrin, it is very much an endangered species these days in much of the United States.²⁰⁴ An exploration of that observation could, itself, be the topic of another

199. See, e.g., ROBERT E. DENTON, JR., MORAL LEADERSHIP AND THE AMERICAN PRESIDENCY 46 (2005) (issuing a call for a “return to the republican values of character.”).

200. THE FEDERALIST, No. 76 (Alexander Hamilton), in DENTON, *supra* note 57, at 47.

201. WILLIAM H. SHAW, BUSINESS ETHICS 296 (3d ed. 1999). Shaw wrote, “that employees – like everyone else – have certain elementary duties to other people. Of particular significance are the obligations to avoid injuring others and to be truthful and fair.” *Id.* Norman Bowie brought the idea of “unnecessary harm” to my attention. NORMAN E. BOWIE & RONALD F. DUSKA, BUSINESS ETHICS 73 (2d ed. 1990).

202. THE AMERICAN HERITAGE DICTIONARY, *supra* note 20, at 321.

203. Although the history of the development of childhood is a bit more complex, the “intellectual climate of the eighteenth century – the Enlightenment, as it is called – helped to nourish and spread the idea of childhood.” NEIL POSTMAN, THE DISAPPEARANCE OF CHILDHOOD 56-57 (Vintage Books ed. 1994). In the Middle Ages, childhood was considered to end at the age of seven years. *Id.* at 13-14.

204. See, e.g., HENRY A. GIROUX, STEALING INNOCENCE: YOUTH, CORPORATE POWER, AND THE POLITICS OF CULTURE (2000); SYLVIA ANN HEWLETT & CORNEL WEST, THE WAR AGAINST PARENTS: WHAT WE CAN DO FOR AMERICA’S BELEAGUERED MOMS AND DADS (1998); POSTMAN, *supra* note 207.

article. My purpose, however, is to raise another facet of how we might vet potential leaders for capacity to be moral leaders. We could check the backgrounds of those who wish to act as our leaders to see with whom they “apprenticed.”

Most potential leaders will say they did not “apprentice” with anyone. Technically, that would be accurate. However, Aristotle emphasized that the student of ethics “should have some general knowledge and experience of life.”²⁰⁵ What I would like to know is whom did they study with or whom did they work under in their formative years? This is certainly not foolproof, but it might prove helpful. Some examples come to mind. Roger Williams, responsible for much of the push toward religious tolerance in the Colonies, was once a scribe (clerk) to Sir Edward Coke, a champion of civil liberties.²⁰⁶

V. SUGGESTIONS FOR POSSIBLE APPLICATIONS OF MORAL LEADERSHIP

A. Wars of Aggression and Military Occupation

On September 1, 1939, Nazi Germany invaded Poland and started World War II.²⁰⁷ On December 7, 1941, the airplanes of Imperial Japan attacked U.S. forces at Pearl Harbor, Hawaii²⁰⁸ and brought the United States into the Second World War.²⁰⁹ The Korean War began on June 25, 1950, when North Korean troops invaded South Korea.²¹⁰ U.S. involvement in the Second Indochina War (1954-1975) became virtually inevitable when the French succeeded in colonizing all of what is now Vietnam in 1883 following a series of French military incursions that started in 1853.²¹¹ In August 1990, an Iraqi Army sent by the late Saddam

205. See, e.g., ETHICS OF ARISTOTLE, *supra* note 196, at 65-66; RACHELS, *supra* note 13, at 173-90. Aristotle taught that “a virtue is a trait of character manifested in habitual action.” RACHELS, *supra* note 13, at 175. Thus, a person who seeks to be virtuous must through self-discipline and repeated practice acquire “the habitual action” of being virtuous. *Id.* at 175-76.

206. WINES, *supra* note 13, at 25-26 (2006).

207. WINSTON S. CHURCHILL, MEMOIRS OF THE SECOND WORLD WAR 165 (Bonanza Books 1978).

208. See, e.g., GEOFFREY C. WARD & KEN BURNS, THE WAR: AN INTIMATE HISTORY 1941-1945 1-5 (2007).

209. CHURCHILL, *supra* note 211, at 505.

210. WORLD ALMANAC, *supra* note 63, at 127. North Korea and South Korea signed an armistice on July 27, 1953. *Id.*

211. See WILLIAM S. TURLEY, THE SECOND INDOCHINA WAR: A SHORT POLITICAL AND MILITARY HISTORY (1954-1975) 2-8 (Rowman & Littlefield 2008). The French forces were decisively defeated at Dien Bien Phu on May 7, 1954. *Id.* at 4. The French sought a face-saving way to exit under the Geneva Accords which portioned the country at the 17th parallel; and the U.S. essentially stepped in to prop up the weak government of South Vietnam because it was supposedly anti-Communist. *Id.* at 4-8, 12-18. In early 1955, the South Vietnam President, Ngo Dinh Diem, had

Hussein invaded and attempted to annex Kuwait.²¹² This invasion was the cause of the first Gulf War (Operation Desert Storm).²¹³

The above illustrations of wars started by aggression could be expanded many times.²¹⁴ However, based on the collective experience of humanity, wars of aggression have been singled out for special treatment by international law.²¹⁵ On May 6, 2002, the United States government delivered a letter to the United Nations giving formal notice that the U.S. had “no intention of becoming a party to the Rome Statute of the International Criminal Court.”²¹⁶ This letter had the effect of renouncing the signing of the treaty by the prior Clinton administration.²¹⁷ On March 19, 2003, American troops following the orders of President George W. Bush invaded Iraq.²¹⁸ As a direct result of this invasion, many American service members and Iraqi civilians are dead or have suffered horrific injuries.²¹⁹ In the aftermath of this national and international

stabilized his political control by bribing opposition leaders with \$12 million secretly supplied to him by the CIA and absorbing some of their troops into his army. *Id.* at 12-14. “By 1956, South Vietnam was receiving \$270 million per year, which made it the recipient of more U.S. aid per capita than any other country in the world except for Laos and Korea.” *Id.* at 17.

212. WORLD ALMANAC, *supra* note 63, at 784.

213. See *id.* (describing that when Iraq attacked Kuwait, a US lead coalition launched air and missile attacks and began its ground attack on February 23, 1991).

214. For example, recall the War of 1812, the Mexican-American War, the Spanish American War, the entire set of so-called “Indian Wars” that settled the American West by forcing tribes onto reservations, and the American Civil War. These additional examples come only from American history. The history of the Roman Empire could more than double the list, as could any history of the wars on the European continent.

215. See, e.g., Article 39 of the United Nations Charter, which states that “[t]he Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.” U.N. Charter art. 39. Another example is in the Rome Statute of the International Criminal Court, which lists the crime of aggression as one of the most serious crimes of concern to the international community, and provides that the crime falls within the jurisdiction of the International Criminal Court (ICC). ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT art. 5 (Jul. 1, 2002) available at http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf.

216. Anthony Dworkin, *The United States and the International Criminal Court: A Briefing*, May 15, 2002, available at <http://www.crimesofwar.org/onnews/news-us-icc.html>.

217. *Id.*

218. See, e.g., VINCENT BUGLIOSI, *THE PROSECUTION OF GEORGE W. BUSH FOR MURDER* 151 (2008).

219. See, e.g., *id.* at 3-153; FRANK RICH, *THE GREATEST STORY EVER SOLD: THE DECLINE AND FALL OF TRUTH IN BUSH’S AMERICA* (2006); RICHARD A. CLARKE, *AGAINST ALL ENEMIES: INSIDE AMERICA’S WAR ON TERROR* (2004); JOHN W. DEAN, *WORSE THAN WATERGATE: THE SECRET PRESIDENCY OF GEORGE W. BUSH* (2004); BOB WOODWARD, *PLAN OF ATTACK* (2004); THE 9/11 COMMISSION, *FINAL REPORT OF*

tragedy, what kind of decisions might a moral leader contemplate?

I believe, looking at the three principles of minimum morality, that a moral leader would (a) contemplate signing and having the U.S. Senate ratify the Rome Statute of the International Criminal Court;²²⁰ (b) turn the appropriate members of President George W. Bush's administration over to the International Criminal Court;²²¹ and (c) make reparations for the harm we have caused in Iraq.²²²

B. Nuclear Weapons

"Do as I say and *not* as I do" lacks any moral legitimacy.²²³ The United States is the original member of the nine nations composing the International Nuclear Club. There are five Nuclear Weapons States: U.S., Russia, U.K., France, and China.²²⁴ These are nation states with nuclear weapons and the ability to deliver them. There are four nation-states, who have not signed the

THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES (2004).

220. Renouncing the tactic of starting "pre-emptive" wars of aggression would seem to be the right thing to do. The history of the United States as well as its claims to the moral high ground seems to demand such a stance among the community of nations.

221. We Americans frequently claim that no one is above the law in our country. The surrendering of fugitives from justice is a necessary part of such a policy. Moreover, some members of the Bush Administration are already being sought by a Spanish Court for trial on their part of the torture of prisoners. *See, e.g.*, Hilary Brown, 'Torture' Could Haunt Bush Officials (Mar. 29, 2009), <http://abcnews.go.com/print?id=7203966>. A complaint filed in a Spanish Court names six former officials in the Bush Administration for violating international law by creating legal justification for torture in Guantanamo Bay of four Spanish nationals. *Id.* Among those named are former Attorney General Alberto Gonzales and John Yoo, a former Justice Department lawyer who wrote the so-called "torture memo." *Id.* The main allegation is that the named individuals violated the 1984 Geneva Convention Against Torture, signed by 145 countries including Spain and the United States. *Id.*

222. There are historical precedents for the payment of war reparations to Iraq by the United States. *See* Bob Schildgen, *Why We Should Pay War Reparations to Iraq*, SAN FRANCISCO CHRONICLE, Nov. 6, 2005, available at <http://www.commondreams.org/views05/1106-24.htm>. First, Germany was required to pay reparations for its part in World War I; and more recently, reparations were exacted from Iraq to pay Kuwait for the 1991 invasion. One source has argued for reparations in the amount of \$5,000 to each Iraqi and \$50 billion for infrastructure repairs, a total of \$150 billion. That suggestion was made in November 2005. Doubtlessly, the amount now would be greater. *See Id.*

223. *See, e.g.*, RACHELS, *supra* note 13. First of all, it is ineffective because it is hypocritical. Secondly, it violates Kant's Categorical Imperative. Kant, *supra* note 198 and accompanying text. Third, it creates the typical I-thou stance that is the basis of racism, nationalism, and most other toxic "isms" that divide people into haves and have-nots.

224. SHARON A. SQUASSONI, STEVEN R. BOWMAN & CARL E. BEHRENS PROLIFERATION CONTROL REGIMES: BACKGROUND AND STATUS 15 (Nova Publishers 2002); *Treaty on the Non-proliferation of Nuclear Weapons (NPT)*, available at <http://www.un.org/Depts/dda/WMD/treaty/> (last visited Feb. 26, 2010).

Nuclear Non-Proliferation Treaty ("NPT") and they include India, Pakistan, North Korea, and Israel.²²⁵ India, Pakistan, and North Korea have successfully tested weapons.²²⁶ South Africa has disassembled its arsenal and signed the NPT.²²⁷ Additionally, the U.S. has, through its NATO allies, made "sharing arrangements" with some other NATO members.²²⁸ Whether nuclear-weapons sharing violates the NPT is a matter of some disagreement.²²⁹

International tensions exist currently because of suspicions that Iran, and other countries such as Myanmar, may be building nuclear weapons.²³⁰ The U.S. and its supporters at the UN and elsewhere have been raising the stakes by imposing sanctions on Iran to discourage it from building weapons, specifically from generating weapons grade plutonium.²³¹ All of this is certainly dismaying to various observers because, *inter alia*, the generation of plutonium for any purpose produces nuclear waste²³² and no one

225. DAVID OWEN, NUCLEAR PAPERS, at iv. (Liverpool University Press 2010).

226. *Id.*

227. *South Africa Nuclear Overview*, NTI RESEARCH LIBRARY, Jan. 2010, http://www.nti.org/e_research/profiles/SAfrica/Nuclear/index.html.

228. MARTIN BUTCHER, OTFRIED NASSAUER, TANYA PADBERG & DAN PLESCH, QUESTIONS OF COMMAND AND CONTROL: NATO, NUCLEAR SHARING AND THE NPT, PENN RESEARCH REPORT 2000.1, PROJECT ON EUROPEAN NUCLEAR NON-PROLIFERATION 20-21 (2000), available at <http://www.bits.de/public/pdf/00-1command.pdf>.

229. *Id.*

230. See, e.g., *Letters: October 12, 2009*, NEWSWEEK, Oct. 12, 2009, available at <http://www.newsweek.com/id/217082> (printing different public perspectives on Iran's nuclear situation).

231. Merle David Kellerhals Jr., *United States, Allies Exploring Further Sanctions Against Iran*, AMERICA.GOV, Jan. 12, 2010, available at http://www.america.gov/st/peacesec-english/2010/January/20100112141741dmslahr_ellek0.6837122.html; *Over \$1.6 bn of Iranian Assets Frozen in Britain*, PRESSTV, June 8, 2009, available at <http://www.presstv.com/detail/98465.htm?sectionid=351020101>. The first U.S. sanctions against Iran (after the Iranian Revolution deposed the Shah) came in 1979, when a group of radical students seized the U.S. Embassy in Tehran. *Timeline: US-Iran ties*, BBC NEWS, Jan. 16, 2009, available at http://news.bbc.co.uk/2/hi/middle_east/3362443.stm. The enforcement body of the Nuclear Non-proliferation Treaty (IAEA) has reported failures by Iran to meet its safeguards obligations under the treaty since 2003. Julia Choe, *Problems of Enforcement: Iran, North Korea, and the NPT*, ENTREPRENEUR, Summer 2006, available at <http://www.entrepreneur.com/tradejournals/article/149520994.html>.

232. The majority of radioactive waste originates from the nuclear fuel cycle and nuclear weapons reprocessing. Rodney C. Ewing, *Nuclear Fuel Cycle: Environmental Impact*, Apr. 2008, http://www.mrs.org/s_mrs/bin.asp?CID=12527&DID=208644. Plutonium (symbol Pu) was discovered at the University of California at Berkeley in 1941 by Dr. Glenn T. Seaborg and three colleagues. What is Plutonium?, www.wipp.energy.gov/fctshts/plutonium.pdf (last visited Feb. 26, 2010). "In general terms, it is a radioactive metal about 50 percent heavier than lead." *Id.* Plutonium can be easily split to generate large amounts of energy, quickly. *Id.* This element is valuable as fuel for nuclear reactors and as a key ingredient for nuclear weapons. *Id.* The principal risk of plutonium, particularly that which is maintained above ground in storage facilities, is that it and other

has developed a safe means of disposing of nuclear waste.²³³ Additionally, the use of sanctions to deter conduct by other nation states has a dismal record.²³⁴

After the end of World War I, the nations of this planet worked on and eventually agreed upon the banning of mustard gas as a weapon.²³⁵ Mustard gas was a hideous weapon that was

transuranic isotopes have the potential to be accidentally released into the biosphere. *Id.*

233. Grace Huang, *Major Fallout Predicted over Obama's Nuclear Power Proposal*, TRUTHOUT, Feb. 22, 2010, available at <http://www.truthout.org/major-fallout-predicted-over-obamas-nuclear-power-proposal57088>.

234. For example, the U.S. has upheld sanctions against Cuba almost continuously since Fidel Castro's victory over Batista in January 1959. Simon Romero, *Cuba Marks Revolution's Anniversary*, N.Y. TIMES, Jan. 1, 2009, available at <http://www.nytimes.com/2009/01/02/world/americas/02cuba.html?n=Top/Reference/Times%20Topics/People/C/Castro,%20Fidel>. Yet, Daniel Erikson, director of Caribbean programs at the Inter-American Dialogue, a policy research group in Washington, notes that "[w]hile the U.S. is dithering, virtually every other major actor in world affairs is becoming more engaged with Cuba." *Id.* Further, over fifty years of sanctions on North Korea has had no visible effect on the Communist Regime. See, e.g., North Korea: What You Need to Know About Sanctions, US Dept. of the Treasury, Office of Foreign Assets Control, <http://www.treas.gov/offices/enforcement/ofac/programs/nkorea/nkorea.pdf> (last visited Feb. 26, 2010) (last visited Feb. 26, 2010). Even one conservative writer has noted, "Thus, the case for sanctions in general is weak," and the same observer called for an end to sanctions against North Korea over ten years ago. Thomas H. Henriksen, *It's Time to End Sanctions Against North Korea*, available at <http://www.hoover.org/publications/digest/3533426.html> (last visited Feb. 26, 2010).

235. After 12 years of negotiation, the Chemical Weapons Convention (CWC) was adopted by the Conference on Disarmament in Geneva on September 3, 1992. United Nations Office for Disarmament Affairs, *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction*, <http://www.un.org/disarmament/WMD/Chemical/index.shtml> (last visited Feb. 26, 2010). "The CWC allows for stringent verification of compliance by State Parties." *Id.* It opened for signature in Paris on January 13, 1993, and entered into force on April 29, 1997. *Id.* In October 1914, the French were the first to use gas; they fired non-lethal tear-gas grenades against the Germans. See, e.g., *Weapons of War—Poison Gas*, <http://www.firstworldwar.com/weaponry/gas.htm> (last visited Feb. 26, 2010). The Germans were the first to use poison gas. *Id.* On April 22, 1915, at the start of the Second Battle of Ypres, sentries among the French and Algerian troops on the famous Ypres Salient noticed a curious yellow-green cloud drifting slowly toward their line. *Id.* They were ordered to prepare for an infantry attack that never came. *Id.* It was a cloud of chlorine gas; and it was the first ever use of chlorine gas in battle. *Id.* The effects of the chlorine gas were severe. Within seconds of inhaling the gas, the chlorine destroyed the victim's respiratory organs, bringing on choking attacks. *Id.* Phosgene as a weapon is more potent than chlorine gas. *Id.* Mixtures of phosgene and chlorine, the so-called "white star" mix, was commonly used on the Somme. *Id.* Mustard gas contained in artillery shells was used for the first time in battle by the Germans against the Russians at Riga in September 1917. *Id.* Mustard gas, an almost odorless chemical, raises serious blisters both internally and externally; blisters appear several hours after exposure. *Id.* Mustard gas had mixed effects, even though it inflicted serious injuries on the enemy, because it remained potent

indiscriminate. It has been successfully banned.²³⁶ Countries with stockpiles of mustard gas (the U.S. has eight such stockpiles²³⁷) have only recently begun to destroy those weapons.²³⁸ After World War II, a similar fate should have awaited nuclear weapons. It has yet to happen. In view of the horrific outcomes possible if any country uses nuclear weapons again, what actions might a moral leader contemplate?

I suspect that a moral leader might consider moving toward a nuclear-free world. Such a political step would require that all countries agree to dismantle their nuclear weapons—including all the members of the current nuclear club. If we could negotiate such a treaty, any country having a nuclear weapon or attempting to generate one might, pursuant to the terms of such an agreement, be considered to have committed a war crime under the Rome Statute²³⁹ and be subject to sanctions such as the imposition of an international trustee until the weapon or weapons were disassembled and the political passions calmed. Perhaps, such a non-nuclear weapons treaty might have its own enforcement protocol aside from the Rome Statute.

By now, it should be clear to informed and open-minded observers that the use of sanctions has not worked and will not work. For illustrations, see the cases of sanctions to end apartheid in South Africa; sanctions to enforce no-fly and other restrictions on Iraq (pre-fall of Saddam Hussein); sanctions to deter the nuclear ambitions of North Korea; and sanctions to stop nuclear

in the soil for several weeks after release. *Id.* This made capture of infected trenches a very dangerous activity. *Id.*

236. *Weapons of War*, *supra* note 239.

237. There are eight chemical stockpiles in the continental United States and a ninth on Johnston Atoll in the Pacific Ocean. *U.S. Chemical Weapons Stockpile Information Declassified*, NO. 024-96, Jan. 24, 1996, <http://www.defense.gov/Releases/Release.aspx?ReleaseID>.

238. According to officials, “[t]he U.S. Army has recently destroyed more than 70-percent of its stockpiles of chemical weapons—some dating as far back as to the World War I era—as part of an elaborate, decades-long process slated to be largely completed by 2012”. *US Gains Momentum Destroying Chemical Weapon Stockpiles*, DEFENSE TALK, Feb. 8, 2010, <http://www.defencetalk.com/us-destroying-chemical-weapon-stockpiles-24069/>. Russia has also recently begun such a process, jointly opening a destruction plant with the US in to destroy a huge stockpile of artillery shells filled with deadly nerve agents, more than a decade after alarmed U.S. officials first pledged to help secure and dispose of the weapons. Phillip Pan, *Plant to Destroy Chemical Weapons Opens in Russia*, WASH. POST, May 30, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/05/29/AR2009052903109.html>.

239. The Rome Statute of the International Criminal Court (also referred to as the International Criminal Court Statute or simply the Rome Statute) entered into force on July 1, 2002. United Nations Treaty Collection, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&lang=en (last visited Feb. 26, 2010). As of February 2010, 110 states are parties to the statute; and 38 states have signed but not ratified the statute. *Id.*

development by Iran. Perhaps, a large problem is the lack of moral standing to impose restraints on the weaker nations that the more powerful do not themselves observe; this is one of the definitions that Dr. King offered for "unjust laws."²⁴⁰

VI. CONCLUSIONS: WHY MORALITY AND LEADERSHIP MATTER

The United States has, since 1968,²⁴¹ moved through an era remarkable for its ethical, moral, and legal "melt-downs." From Watergate to Iran-gate, from prisoner abuse at Abu-Ghraib Prison to torturing prisoners at Guantanamo, from the impeachment of Bill Clinton to the indictment of "Scooter" Libby, from "special rendition" to the resurrection of Ponzi schemes, the politics of the past four decades have been notable in their bi-partisan corruption and "anything-goes" moral *laissez faire*. In business and the marketplaces, we have gone from Equity Funding and Union Carbide at Bhopal to Tyco, Enron, WorldCom, Arthur Anderson, Lehman Brothers, and Washington Mutual. Looting or terminating employee pensions,²⁴² sending jobs "off-shore," and shucking off union contracts by ducking into "reorganization in bankruptcy" have become common business strategies. Could this country use additional moral leadership? Perhaps, we might first strive for a more modest goal, perhaps something such as felony-free leadership.

In the United States today, numerous "consultants" and various "experts" have responded to the felt need to spruce up corporate images and to rehabilitate various brand names.²⁴³ Not

240. CLAYBORNE CARSON, *THE AUTOBIOGRAPHY OF MARTIN LUTHER KING, JR.* 193 (Warner Books 2001). Dr. King stated, "An unjust law is a code that a numerical or power majority group compels a minority group to obey but does not make binding on itself." *Id.*

241. Lance Morrow, *1968: The Year that Shaped a Generation*, *TIME*, Jan. 11, 1988, 16-27; see also FREDERICK D. STURDIVANT, *BUSINESS AND SOCIETY: A MANAGERIAL APPROACH* 32-36 (1981) (documenting the drop in American institutional confidence post-1968).

242. *Pilot Pensions Heading for Scrap: Airline to file Monday for OK to Dump Plan*, *CIN. ENQUIRER*, June 17, 2006, at A1; Ellen E. Schultz & Theo Francis, *As Workers' Pensions Wither, Those for Executives Flourish*, *WALL ST. J.*, June 23, 2006, at A1.

243. For example, on the heels of accusations of U.S. Marines killing unarmed women and children in a murderous rage in Iraq in November, 2005, the U.S. commander announced troop-wide "Values training" for all U.S. armed forces in Iraq. Jonathan Karl, *Did Marines Massacre Iraqi Civilians?*, *ABC News*, May 26, 2006, <http://abcnews.go.com/Nightline/print?id=2006497>; *US General in Iraq Orders 'Values' Training*, *MSNBC*, June 6, 2006, <http://www.msnbc.msn.com/id/13076442/print/1/displaymode/1098/>. Once again (as in the Abu Ghraib prison incident), the Pentagon "spin" is that it is only the work of a few bad individuals and that "99.9 percent of them [the 150,000 troops] perform their jobs magnificently every day[.]" according to Lt. Gen. Peter Chiarelli, commander of U.S.-led forces in Iraq. An excellent research-based argument can be and has been

far behind are some colleges and universities, who are attempting to sell “education for leadership”²⁴⁴ or “ethical leadership”²⁴⁵ or variations on the theme. The sheer blatancy of this approach is awe-inspiring. Oblivious to much of the better research and to the idea that one has to develop good instincts as a follower before one is qualified to be a moral leader, these consultants and programs plunge ahead. The unspoken assumption seems to be that some training, course work or programs of study can turn any “John or Jane Doe” into a marvelously gifted moral leader. “Say it ain’t so, Joe. Say it ain’t so.”²⁴⁶

This particular blind spot might possibly be attributed to the “corporatization” of the universities in this land.²⁴⁷ Some colleges and universities have become little more than hucksters seeking enrollments, endowments, corporate research grants, and “trying to make the numbers” rather than striving to serve their historical and rightful social purposes. Universities arose in Europe in response to price gouging by a rising merchant class and as an

advanced that organizational factors contribute substantially to such aberrant conduct. Wines & Hamilton, *supra* note 8, at 43-82.

244. Placing “Education for leadership” in the Google search engine generated 2,760,000 computer pages of responses in 0.14 seconds of computer search time (last visited Feb. 26, 2010).

245. Placing “Ethical Leadership” in the Google search engine produced 164,000 computer pages of responses in 0.15 seconds of computer search time (last visited Feb. 26, 2010).

246. A quote by a little boy begging “Shoeless Joe” Jackson of the 1919 Chicago White Sox baseball team to deny that he conspired to “throw” the World Series. EIGHT MEN OUT (MGM 1988).

247. *See, e.g.,* DEREK BOK, UNIVERSITIES IN THE MARKETPLACE: THE COMMERCIALIZATION OF HIGHER EDUCATION (Princeton Univ. Press 2003) (discussing the commercialization of universities who sell off pieces of the institution at a price and the negative effects this has on education and society at large); MURRAY SPERBER, BEER AND CIRCUS: HOW BIG-TIME COLLEGE SPORTS IS CRIPPLING UNDERGRADUATE EDUCATION (Henry Holt & Co. 2000) (discussing how many major universities do not give their undergraduates a meaningful education, and rather, keep them happy with sports party scene due to a shift in focus); JENNIFER WASHBURN, UNIVERSITY INC.: THE CORPORATE CORRUPTION OF HIGHER EDUCATION (Basic Books 2005) (discussing the increase of corporate funding to universities and how this had a negative impact on the quality and partiality of research). *See also* Lucien J. Dhooge, *Making the Numbers*, 23 J. L. STUDIES EDUC. (introducing the Richard Scrushy trial and how education is a “numbers” game that is not based on the effectiveness of teaching); Terence J. Lau & William A. Wines, *Observations on the Folly of Using Student Evaluations of College Teaching for Faculty Evaluation, Pay, and Retention and its Implications for Academic Freedom*, 13 WM. & MARY J. WOMEN & L. 167 (2006) (concluding the use of non-validated student evaluations alone without any other criteria for teaching effectiveness causes problems in regards to faculty retention); William A. Wines, *Anatomy of the AFSCME Strike at Miami University: Should Higher Education Engage in Corporate-Style Strikebreaking?* 55 LABOR L. J. 5-24 (2004) (analyzing whether corporate strike breaking is an appropriate or useful tool for a major university to employ with low paid workers).

important countervailing secular force to the Church and the Crown.²⁴⁸ Knowledge alone is not a sufficient cause to change behavior; but knowledge may be necessary even if insufficient alone. As a people, we could make better choices in leadership.

How do we go about selecting people who have innate moral leadership traits? This Article suggests that certain traits do not necessarily demonstrate either leadership or moral leadership: (a) loudness/brashness; (b) a position of power; (c) a faith-based position of leadership; (d) success in outcomes; (e) charisma; or (f) popularity. This is to neither confirm nor deny that such attributes travel with either leadership in general or moral leadership in particular. One could just as well attempt to make decisions about leadership style based upon whether a person drove a Chevy or a Toyota.

The examples of moral leadership in Part III suggest some of the characteristics displayed historically by moral leaders. Martin Luther in the Reformation demonstrated that a moral leader may be a catalyst that ignites various dormant grievances. President Lincoln showed that an act of moral leadership can be unpopular but still just and merciful. Governor Altgeld of Illinois displayed moral courage and leadership in a situation where his choice was self-mortifying because it was so unpopular, but it pitted lives against political ambition and he chose with character. The decision to put other men's lives ahead of his ambition was one that ultimately showed clear priorities in the ordering of his moral values.

In the Watergate episode, we have Katharine Graham risking her entire newspaper empire on the integrity of her editors and reporters.²⁴⁹ Despite threats from powerful people such as

248. See, e.g., CHARLES HOMER HASKINS, *THE RISE OF THE UNIVERSITIES* (Cornell Paperbacks 1957) (recounting that "new knowledge burst the bonds of the cathedral and monastery schools and created the learned professions . . .").

249. "Katie Graham's gonna get her tit caught in a big fat wringer if that's published." *AMERICAN HERITAGE DICTIONARY OF AMERICAN QUOTATIONS* 525 (Margaret Miner & Hugh Rawson 1997). This threat was made by former U. S. Attorney General John N. Mitchell on September 29, 1972, in a telephone interview with Carl Bernstein when told that the *Washington Post* was going to publish the next day a story accusing Mitchell of controlling a secret fund that financed the Watergate break-in. JAMES ROSEN, *THE STRONG MAN: JOHN MITCHELL AND THE SECRETS OF WATERGATE* 335 (2008). John Mitchell was a powerful man in Washington D.C. during the presidency of Richard M. Nixon, and threats from Mitchell were not something that many people took lightly. See *id.* at 143, 180-81 (noting that former secretary of Labor, George Shultz, used Mitchell to quash dissent on the subject of segregation, and H.R. Haldeman noted that "people are really afraid of John Mitchell."). On reflection, Katharine Graham wrote:

I was fairly confident that the work of *Post* reporters and editors would withstand critical scrutiny. I once said to Truman Capote that it looked as if 'either I'm going to jail or they are.' On the other hand, I have to admit that I was frightened. I was frightened of the power of a man and his minions, of

Attorney General John Mitchell, she understood the critical nature of the challenge, rose to it, and never wavered. Judge John J. Sirica ("maximum John"—as the federal bar called him²⁵⁰) displayed a tenacity and an even-handedness when he treated the Watergate burglars, who obviously were politically connected,²⁵¹ to the same tough standards that he employed against ordinary street criminals. Sirica wanted to get at the truth behind this so-called "third-rate burglary,"²⁵² and he prevailed.

Finally, we have Justice William O. Douglas, clearly a rascal if not worse in his private affairs, rising to the challenge and after a long-struggle with his conscience and with his advisors, putting the institution of the Supreme Court ahead of his personal animosity toward Gerald Ford. Before we succumb to the temptation to discount Douglas's deed, contrast Lyndon Johnson's behavior after his forces stole the 1948 election from Coke

a president who thought he had the power to wrap himself in the cloak of national security. I was frightened for the future of the Washington Post Company . . . my responsibilities weighed heavily on me.

KATHARINE GRAHAM, PERSONAL HISTORY 507 (Alfred Knopf, Inc. 1997).

250. Judge Sirica got the nickname "Maximum John" for his tendency to give criminals the longest sentences permitted by law. *John Sirica: Biography*, About.com, <http://www.answers.com/topic/john-sirica> (last visited Feb. 26, 2010). John J. Sirica (1904-1992) became the chief judge of the U.S. District Court for the District of Columbia on April 2, 1971 through seniority (fourteen years). *Id.* Judge Sirica had a reputation as a hardworking judge of high integrity. He was a tough, law and order type of judge. *Id.* In his capacity of Chief Judge, he assigned himself the task of presiding over the Watergate cases. It would take him five years to finish that task. *Id.*

251. JOHN J. SIRICA, TO SET THE RECORD STRAIGHT: THE BREAK-IN, THE TAPES, THE CONSPIRATORS, THE PARDON 43-44 (1979). On Sunday, June 18, 1972, "a little story" appeared in the *Washington Post* about a burglary at the Democratic National Committee's headquarters in the Watergate office building. *Id.* It was noticed by Judge Sirica as he read his morning paper:

It wasn't much of a story, but it was a little out of the ordinary. Five men had been arrested inside the headquarters carrying sophisticated electronic equipment and rather large sums of money, mostly in hundred-dollar bills. 'Politics,' I thought immediately. The average felon doesn't look for money in offices, especially in political offices.

Id. at 43. The five men were led by James McCord, who identified himself as a former CIA agent. *Id.* at 44. The four others were Bernard L. Barker, Frank A. Sturgis, Virgilio Gonzales, and Eugenio R. Martinez, all from Miami. *Id.* Later, it turned out that McCord was on the payroll of the Committee to Re-elect the President (CREEP). *Id.* Two other men were implicated, G. Gordon Liddy and E. Howard Hunt. *Id.* Liddy was on the CREEP payroll; and Hunt had been an employee of White House aide Charles Colson. *Id.* at 44.

252. AMERICAN HERITAGE DICTIONARY OF AMERICAN QUOTATIONS, *supra* note 253 at 525. Watergate was "a third-rate burglary attempt." This statement was made by Ronald L. Ziegler on June 19, 1972, at a press conference at Key Biscayne, Florida where President Nixon was vacationing. *Id.* Presidential Press Secretary Ziegler was characterizing the break-in on June 17, 1972, at the DNC in the Watergate Complex in response to a question and in an obvious attempt to downplay its significance. *Id.*

Stevenson. Johnson, after his swearing in as the junior U.S. Senator from Texas, joked about dead men voting for him with no shame or embarrassment.²⁵³

If we review the virtues (virtue-based ethics), we find those of courage (moral and physical), large-mindedness, and a devotion to truth showing up repeatedly in history—as well as in theory. Duty-based ethics seem to be found in the historical examples primarily in the “universality” test of Immanuel Kant. This review points us toward a respect for all humanity—not just those like us. Utilitarianism has the least connection to the historical examples I chose, but that may be sample error. At another level of abstraction, all of us have the opportunity to benefit from those who teach moral leadership by example and not just with chalk or computer ink cartridges.

The Kohlberg scale of moral development can be said to be useful in quantifying what might otherwise be uncertain intuitive judgments. We know, intuitively, that Lincoln was advanced in his moral thought processes. However, the other cases are much less clear. Look, for example, at whether “apprenticeship” associations would predict any of our historical acts of moral leadership. The answer is clearly “no.” Lincoln himself seems to be *sui generis*, as do Martin Luther and John Peter Altgeld. Katharine Graham and John Sirica rising to the daunting challenges of the Watergate crisis seem not predictable. Also, as later biographers have shown, William O. Douglas was, at a minimum, a hard-drinking, womanizing, truth stretcher who displayed an unexpected flash of moral character at the end of his life by resigning from the High Court while Gerald R. Ford was President.

Perhaps, the single strongest observation to arise from this work is the importance of a strong character, a moral compass—sometimes (as in W. O. Douglas’s case) a compass not always in regular use. The litmus paper test for character, in the absence of a better one, seems to be a three-part test for a minimum morality displayed in daily living. A person with a strong moral character will tend to be just in his or her dealings, truthful, and in the habit of avoiding doing unnecessary harm to others. Over the millennia, Aristotle’s teaching rings true: a person tends to become what he or she does. The repetition of virtuous acts leads to a person who has character, i.e., the habit of doing good deeds. In sum, we should look for character “under fire” when we pick our leadership if we want it to be moral.

253. See CARO, *supra* note 92, at 398-99.

APPENDIX A

THE DEFINITION PROBLEM

Leadership scholars are often concerned about the definition of leadership. Some believe that if they could agree on a common definition of leadership, they would be better able to understand it. The meaning of a word is not decided by scholars. It is determined by the way people in culture use it and think about it. The denotation of the word “leadership” stays basically the same in English, with slight variations that tell us about the values and paradigms of leadership in a certain place and at a certain time. Joseph Rost collected 221 definitions of leadership, ranging from the 1920s to the 1990s.¹ All of these definitions generally say the same thing—leadership is about one person getting other people to do something. Where the definitions differ is in how leaders motivate their followers and who has a say in the goals of the group or organization. As you look at the following definitions from American sources, think about the famous leaders of that era. What were they like? What were their followers like? What events shaped the ideas behind these definitions?

1920s [Leadership is] the ability to impress the will of the leader on those led and induce obedience, respect, loyalty and cooperation.

1930s Leadership is a process in which the activities of many are organized to move in a specific direction by one.

1940s Leadership is the result of an ability to persuade or direct men, apart from the prestige or power that comes from office or external circumstance.

1950s [Leadership is what leaders do in groups.] The leader’s authority is spontaneously accorded him by his fellow group members.

1960s [Leadership is] acts by a person which influence other persons in a shared direction.

1970s Leadership is defined in terms of discretionary influence. Discretionary influence refers to those leader behaviors under control of the leader which he may vary from individual to individual.

1980s Regardless of the complexities involved in the study of leadership, its meaning is relatively simple. Leadership means to inspire others to undertake some form of purposeful action as determined by the leader.

1990s Leadership is an influence relationship between leaders and followers who intend real changes that reflect their mutual purposes.

Notice that in the 1920s leaders “impressed” their will on those they led. In the 1940s they “persuaded” followers, in the 1960s they “influenced” them, and in the 1990s leaders and followers influenced each other. Although these definitions are social and historical constructions, they are also personal. There are still people today who subscribe to the 1920 model of leadership. The difference between the definitions rests on a normative question: How should leaders treat followers and How should followers treat leaders? What is and what ought to be the nature of their relationship to each other?

Leadership scholars who worry about constructing the ultimate definition of leadership are asking the wrong question, but inadvertently trying to answer the right one. The ultimate question about leadership is not “What is the definition of leadership?” The whole point of studying leadership is, “What is good leadership?” The use of the word good here has two senses: morally good and technically good or effective.

APPENDIX B

LEADERSHIP COMMITTEE COMBAT OPERATIONS BRANCH COMBINED ARMS DIVISION UNITED STATES ARMY ENGINEERING SCHOOL

Fort Belvoir, Virginia

LEADERSHIP GUIDE

S. 120-769

CONCEPT OF LEADERSHIP

TRAITS

COMMANDER

PRINCIPLES

ACTIONS AND ORDERS

THE COMMAND

MORALE

ESPRIT DE CORPS

DISCIPLINE

PROFICIENCY

SUPERVISION

COMBAT

EFFECTIVENESS

Appendix B

LEADERSHIP PRINCIPLES

BE TECHNICALLY AND TACTICALLY PROFICIENT

KNOW YOURSELF AND SEEK SELF IMPROVEMENT

KNOW YOUR MEN AND LOOK OUT FOR THEIR WELFARE

KEEP YOUR MEN INFORMED

SET THE EXAMPLE

INSURE THE TASK IS UNDERSTOOD, SUPERVISED AND
ACCOMPLISHED

TRAIN YOUR MEN AS A TEAM

MAKE SOUND AND TIMELY DECISIONS

DEVELOP A SENSE OF RESPONSIBILITY AMONG SUBORDINATES

EMPLOY YOUR COMMAND IN ACCORDANCE WITH ITS CAPABILITIES

SEEK RESPONSIBILITY AND TAKE THE RESPONSIBILITY FOR YOUR ACTIONS

MILITARY LEADERSHIP

Military leadership is the art of influencing and directing men in such a way as to obtain their willing obedience, confidence, respect and loyal cooperation in order to accomplish the mission.

LEADERSHIP TRAITS are personal qualities that are of great value to the commander in gaining the willing obedience, confidence, respect, and loyal cooperation of his men.

COMMANDERS ACTIONS AND ORDERS should:

Accomplish or aid in the accomplishment of one or both of the commander's responsibilities.

Be guided by the Leadership Principles.

Exhibit the strong traits of the commander.

RESPONSIBILITIES OF A COMMANDER

Accomplishment of the mission.

Welfare of the men.

THE PROBLEM SOLVING PROCESS

Recognize the problem.

Determine the cause.

Take action.

LEADERSHIP TRAITS

KNOWLEDGE – Acquire information including professional knowledge and an understanding of your subordinates.

COURAGE (PHYSICAL AND MORAL) – A mental quality which recognizes fear of danger or criticism but enables the individual to meet danger or opposition with calmness and firmness.

INITIATIVE – A quality of seeing what has to be done and commencing a course of action.

DECISIVENESS – Ability to make decisions promptly and then express them in a clear and forceful manner.

TACT – The ability to deal with others without creating offense.

JUSTICE – Being impartial and consistent in exercising command.

DEPENDABILITY – The certainty of proper performance of duty with loyalty to seniors and subordinates.

BEARING – Creating a favorable impression in carriage, appearance and personal conduct at all times.

ENDURANCE – Mental and physical stamina measured by the ability to stand pain, fatigue, distress and hardship.

ENTHUSIASM – The display of sincere interest and exuberance in the performance of duties.

UNSELFISHNESS – The avoidance of providing for one's own comfort and personal advancement at the expense of others.

INTEGRITY – Uprightness of character and soundness of moral principle; the quality of absolute truthfulness and honesty.

LOYALTY – Faithfulness to country, the Army, your unit, your senior and subordinates.

JUDGMENT – Weighing facts and possible solutions on which to base sound decisions.

INDICATIONS OF MILITARY LEADERSHIP

MORALE is the state of mind of the individual. This state of mind is dependent upon his attitude toward everything that affects him.

DISCIPLINE is the individual or group attitude that insures prompt obedience to orders and initiation of appropriate action in the absence of orders.

ESPRIT DE CORPS is the loyalty to, pride in and enthusiasm for a unit shown by its members.

PROFICIENCY is the technical, tactical and physical ability that enables superior performance.

A COMBAT EFFECTIVE UNIT is one which will accomplish any mission assigned or indicated for which it has been organized, equipped and trained to perform in the shortest possible time, with least expenditure of resources and with least confusion.