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Moral competence in public life

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states**services**authority



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This occasional paper draws on a 2003 essay, "Moral Competence in the Practice of Democratic Governance," in *For the Public: Can We Fix the Public Service?*, edited by John D. Donahue and Joseph S. Nye Jr. It has been updated with material from a recent working paper, "What Makes Ethics Practical," HKS RWP08-013.

The curriculum of schools of public policy and management covers three broad areas: policy analysis, strategic management, and politics, including electoral activity, advocacy, and public leadership. The mission is not only to educate professionals in these areas, but also to enable them to integrate the three in depth and move across them in the course of their careers. What kind of professional can do this, and are there generic skills and capacities that this person possesses?

In this essay, I explore one dimension of professional skill which I refer to as moral competence. By this I mean the set of individual attributes and dispositions that make for good governance. Public institutions should either seek these attributes when recruiting or cultivate them on the job through an appropriate ethos and well-designed structural supports, which then constitute the moral competence of the institutions themselves. My working assumption on good governance is that the duties of practitioners and the nature of the polity are inextricably linked. What a practitioner should be depends crucially on what the practitioner is legitimately expected to do, and that depends on the polity.

The central question, then, is what constitutes moral competence for a practitioner of democratic governance. I outline six generic attributes that I regard as constituent components of the good practitioner, and variable attributes of actual persons. These are not character traits or personal virtues in the ordinary sense, but qualities of those acting in their official capacities. They are requisite skills for dealing with complex institutional and political exigencies, adequate to producing certain effects in the world. Thus, we should not expect individuals necessarily to exhibit these traits in other aspects of their lives. The nominal tags for the six types of competence are civility, fidelity, respect, proficiency, prudence, and reflection.

Civility

If by *conscience* we mean the personal moral convictions that guide one's life, it matters little in a democratic society what those convictions are or whether they are shared by anyone else. In the public realm, however, we do not have the luxury of idiosyncratic conviction. Personal principles, no matter how important or foundational, do not necessarily have a claim on anybody else. Thus, sincerity of conviction is not an acceptable basis of public action. Since public decisions affect others, often profoundly, including those with conflicting convictions, good practitioners are obliged to reach beyond the personal to what can be shared and endorsed by others. Personal beliefs, of course, generate felt imperatives, and may legitimately function as starting points of public discussion. Common ground, however, is indispensable for collective endeavours. Accordingly, one moral capacity for responsible decision making is the ability to regard one's own opinion as only one among others, and not decisive simply because one holds it, however passionately.

The good practitioner has a duty to act in accordance with a *public conscience*. The conscientious democratic official is one whose grounds of decision are beliefs and principles that citizens in general are committed to—or could be, after deliberation and reflection. The hypothetical is crucial. If we required immediate assent, we would license every prejudice and every opinion, no matter how ill-considered. On the other hand, assent must be available at some level, even if it is only emergent and inchoate.

Consider the example of Mario Cuomo, former governor of New York, who wrestled with this issue in the context of the abortion controversy. In his famous 1984 speech at the University of Notre Dame, Cuomo observed that the problem begins 'when religious values are used to support positions which would impose on other people restrictions they find unacceptable.' As a public official, Cuomo acknowledges his duty to abide by United States law, which permits abortion in some circumstances. He also recognises his responsibility to craft a public policy for a pluralistic society where conscientious citizens differ, sometimes radically,

in their views. Is there, then, no space for his own deeply-held anti-abortion convictions? He believes there is if he presents his stance as an elaboration of a widely-held value. Accordingly, he reaches for a moral principle—respect for life—that can provide common ground. He knows the principle can be specified in different ways, so his way is only one among those possible. The principle, however, is compelling in itself. It provides a basis for mutual deliberation and, therefore, the possibility of moving the argument in his direction. Educating, advocating and living by one's principles provide opportunities for furthering the deeply-held conviction without imposing it on those who find it unacceptable.

The duty to act only on the basis of principles that citizens could reasonably accept is what John Rawls (1999) refers to as the duty of *civility*. The good practitioner must strive for a vantage point to assess and revise exclusionary claims and inaccessible doctrines to make the grounds of decision available to all citizens.

Fidelity to the public good

A democratic polity is based on a mutual commitment to living together. As a result, the good practitioner is crucially concerned with determining the content and scope of the public good. While this may seem platitudinous, the challenge is formidable.

The aspect I want to stress is the tension that arises from an inescapable dual responsibility. Almost every public figure assumes office through a process that incurs legitimate obligations to specific individuals or limited constituencies. At the same time, officials have a duty to project beyond these connections to encompass considerations of the public good. Legislators, for example, are elected from particular districts and have duties to their electoral constituents. They are, however, also lawmakers for the whole country, and thus have responsibilities to all citizens—that is, their *constitutional constituents*. Similarly, top-level administrators (or ministers) owe allegiance to their appointing officer and the officer's political agenda, yet they are also bound to the statutorily created mandate of their office, which may not coincide with the boss's wishes. Policy analysts face this dual responsibility derivatively when they take on public officials as clients. Only judges appointed for life escape the need to grapple with it.

The problem, in part, is determining the appropriate public whose good one is obliged to serve. An interesting case is that of Senator Patrick Leahy, a Democrat from Vermont. From 1990, Leahy made repeated unsuccessful attempts over a ten-year period to enact legislation restricting the export of pesticides that were prohibited for sale in the United States (Scott, 2000). He offered two principal reasons for this measure. First, he wanted to prevent the pesticides returning to the United States in the form of poisonous residues on imported food; this was known as 'the circle of poison' argument. Second, he was concerned for the health of the farm workers, most of them in developing countries, who used these toxic chemicals in conditions that often resulted in illness, sterility and death.

Leahy's first reason is not controversial. Surely members of the United States Congress would have a legitimate regard for the health and safety of their constituents, both electoral and constitutional. If there were questions about Leahy's efforts in this regard, they related to the best means for achieving these ends. Leahy's second reason is less clear-cut. Why is the health of farm workers in developing countries his concern? Can a legislator have responsibility for a constituency—let's call them Leahy's *moral constituents*—to whom he or she is not directly accountable? If the category of moral constituent is not empty, how should one weigh up duties to constituents to whom one is directly answerable (including the United States chemical industry) against duties to constituents where no accountability mechanism exists? Suppose the workers themselves arrived at a different conclusion about the risks they were willing to take in return for certain benefits? Would Leahy's sincere effort to avoid double standards (one standard of safety for the United States, and another for developing countries) become simply a case of unjustified paternalism? How does one configure the

public good in these cases? While I sympathise with Leahy's sense of responsibility to workers in developing countries harmed by these products, these questions are not easily answered.

Respect for citizens as responsible agents

I subscribe to Amartya Sen's (1985) belief that, for moral purposes, our conception of democratic citizens has a double aspect. We view citizens in terms of well-being and of agency. The first concerns how well off citizens are—whether they enjoy favourable life circumstances, security and prosperity. To regard citizens as agents means respecting their ability to set goals, develop commitments, pursue values, and succeed in realising them. In a democratic polity, valuing agency is at the core of self-government. Strictly, what is fundamental is not so much the realisation of what one values, but recognition of the moral space within which one can exercise deliberate choice, typically with others. In this view, liberty is not a pre-social attribute of individuals that government (or society) inevitably restricts; it is the exercise of self-determination that the polity makes possible. A fundamental aim of public policy, therefore, is to empower citizens, and foster the conditions for engaging in meaningful activities together.

Recognising this point enables us to distinguish between two opposing conceptions of the democratic practitioner and the proper exercise of political power. The first is rule by an elite cadre of experts. This elite is needed because modern democratic society has become so complex that it has outgrown the capacities of even an active and informed citizenry. In this scenario, the role of citizens is to choose from competing elites who define policy alternatives. Here political power resides in the capacity to achieve citizens' compliance with goals set by practitioners. Let us call this the *directive* style of governance. Every government, to some degree, must use coercion to achieve compliance with its rules and decisions. Yet, in a democratic polity, coercive threats are never favoured; they are necessary only if alternative methods have failed or are unworkable. The search for alternatives, therefore, is a constant imperative.

The opposing conception is based on the premise that democratic self-government is too important to relinquish to elites; the modern polity simply poses new challenges to engage citizens actively in decision making. While practitioners must be knowledgeable and expertly trained, all control should not reside with them. Undoubtedly, they have important functions to perform, especially in ensuring that goal-setting is informed and deliberative. But respect for citizens as responsible agents goes further, by acknowledging the goals that citizens have adopted for themselves and enabling them to be realised. Thus, the orientation is different; while the practitioner's input is essential, the decision process is interactive. Power lies in the practitioner's capacity to facilitate citizens' capacity for self-direction. The good practitioner, where feasible, adopts a *facilitative* rather than a directive style of governance, which enhances citizens' exercise of effective agency.

Sen (1999) discusses these opposing conceptions of governance in relation to the difference in population policies of southern and northern Indian states. In the southern state of Kerala, the principal determinant of low population growth has been women's education and their successful integration into the labour force. By contrast, in northern states such as Bihar, governments have relied primarily on the command-and-control model, imposing prescriptive rules and threats of sanctions. Some states have also attempted social engineering, using economic incentives to achieve compliance. The implicit assumption is that without manipulation, citizens will not act as desired. However, incentives change people's calculations, not necessarily their minds. Even worse, material incentives to do socially desirable things crowd out rather than supplement civic motives to do them, with the result that citizens become generally less inclined to act in socially beneficial ways. In Sen's view,

material incentives are an unstable public policy strategy. Since the practitioner knows the goal to be achieved (in this case, lower reproduction rates), the temptation is to use the directive style to achieve compliance. However, the indirect approach of facilitating citizens' choice of other things they value may be more enduringly successful.

From the importance of agency flows the principle of citizen participation in decision making—not necessarily ‘maximum feasible participation’, but participation that is appropriately structured and relevant to the activity in question. The availability of collective decision making mechanisms is, therefore, crucial for citizens’ capacity to exercise choice together. To act effectively as a member of a democratic polity, citizens require structures that bring their actions into meaningful relation with the actions of others. This is the civic dimension of freedom—the capacity to engage with others in self-rule.

While valuing agency, we should also scrutinise how it is exercised. People voluntarily enter into employment, family and political relationships even when they are ill-informed or the relationships are demeaning. We need to retain a critical perspective on such choices. Thus, at least for decisions with public implications, the polity benefits when institutional mechanisms operate to transform initial preferences into thoughtful judgements, the way litigants in constitutional disputes must formulate their complaints in terms of authoritative readings of the collective compact, or juries are required to reach unanimous agreement and thereby strive for impartiality. In general, well-designed institutions transform citizens through participation, enabling the reconciliation of partial and general perspectives, which is the special task of good practitioners.

Traditional decision mechanisms include election, adjudication, legislation, contract, mediation, administrative regulation, and choosing by lot (Fuller, 2001). Each comes in many variations. For example, voting can take the form of simple majoritarianism or proportional representation; it can be single or cumulative. These alternatives are obviously incompatible. Without some method of counting, a collective decision cannot occur, but each method has its own implications for the polity that adopts it. Each is qualitatively different and makes of the polity something that, morally, it would not otherwise be.

Observing these structures from both of the relationships they establish highlights the moral quality. From the side of practitioners, we see that certain duties to citizens flow from the purpose of the mechanism itself, apart from substantive outcomes. If the point of a legislature is to promulgate general rules and give meaningful direction to citizens’ conduct, legislators have a duty to make statutes clear, consistent and capable of execution. A carelessly drafted law fails to respect citizens in their capacity as responsible agents. Similarly, a retroactive statute is inherently problematic and requires special justification when invoked. In general, practitioners not only have tasks to perform and goals to achieve, they also have relationships to sustain. The commitment to these relationships determines, to some extent, the kinds of goals practitioners are able to take on and how tasks are accomplished.

For citizens, fundamental to the structures of decision are the methods by which participation occurs. In adjudication, litigants present evidence and reasoned arguments in support of their claims. Respect for litigants is optimised if the judge’s decision is based, as far as possible, on those arguments, even though this entails a reduced role for the judge as policymaker. In that way the fate of litigants lies in their own effort and understanding of their situation. Similarly, the important feature of an economic market, in this view, is that it brings human choices and the cost of realising them into a common calculation. Participation as an equal in the allocation of social resources is the driving consideration, not efficiency. Closer is the notion that the market is a sensitive mechanism for coordinating a myriad of activities without requiring agreement on values. Each of these structures recognises a mode of participation, and hence of self-rule, fitting to its purpose and effective operation.

Prudence

In the classical sense, prudence is the cardinal political virtue: the exercise of practical wisdom in governance. Since governance is largely about sustaining valued relationships, ruling requires more than technical expertise. Can we assume, however, that those who rule in a democratic polity are endowed with superior wisdom? Does their expertise disclose to them a better range of beliefs, which gives them authority to control our conduct and affect our lives? As I have indicated, I believe democrats are cautious about such assumptions.

Max Weber (1978) addresses this matter when he asks: 'In which area of ethics, so to speak, is [politics] at home?' He suggests that the animating passions of politics—the pursuit of 'ultimate ends'—must be tempered by an 'ethic of responsibility', which moderates the commitment to grand principle with sensitivity to consequences for specific persons. So, while politics is born from passion and nourished by it, it becomes a mature human activity when disciplined by practical judgement. Responsible public servants appreciate the particularity as well as the complexity of political action. They pay more attention to individuals than to abstractions. They appreciate the fallibility of human planning, and the inevitability of unintended consequences.

Weber admired the person of principle who says: 'Here I stand. I can do no other.' However, it is one thing to regard this pronouncement as a demand to respect the imperatives of personal commitment, and another to see it as a valid claim on the conduct of others. The ethic of responsibility rejects personal conviction as a measure of the rightness of action, and cautions against focussing too fixedly on matters of principle. To paraphrase Emerson: All principles are vehicular and transitive, and are good, as ferries are good, for conveyance, not as houses and farms are good, for homestead. The good practitioner takes for granted certain pervasive facts—the limitations of regimes, the faults of human beings, the disorder of society and economy, and the quest for power—in order to act effectively for good.

Accordingly, the reasoning of the prudent practitioner is strategic. In using this term, I do not mean to suggest that ethics, when it is practical, is instrumental to other (non-ethical) purposes. Nor that, in conducting oneself to best realise the ideal, one has to recognise, realistically, that one will fall short. While tension is inherent between the ideal and the real, in thinking strategically, one devises plans of action, with ends-in-view, while contending with conflict in situations of uncertainty and risk. One pays very close attention to conditions of feasibility, to the dynamic interplay between means and ends, and to the constraints and opportunities of specific situations. In essence, the prudent practitioner is especially skilled at exercising contingent judgement.

More specifically, prudence is practical wisdom in deciding how to act in particular cases. It is not expediency, focusing on the assessment of means to specified ends. Neither is it opportunism, taking advantage of institutional dysfunction to achieve predetermined outcomes. Rather, prudence is making sound moral judgements in concrete situations—the capacity and willingness to engage in ethical inquiry when the occasion demands. Beyond the traits described above, prudence includes skill in managing competing claims, and the ability to tolerate moral ambiguity. The commitment to core values is balanced by an appreciation of recurrent perplexities and tensions. In this endeavour, the prudent public officer learns more from cumulative experience than from philosophical reason.

What is the significance of cumulative experience? Aristotle says that, in ethics, we should attend to the opinions of older, experienced people—those with practical wisdom. Such wisdom is neither a science nor an art. It is not a matter of logical demonstration or of purely technical skill. Rather, it is the capacity to judge reliably in particular situations so as to act for the good—'Because experience has given them an eye, they see aright.' The person who judges reliably has an apt temperament and is not distracted by pain, pleasure or unruly passions. More importantly, they require experience because 'matters concerned with

conduct and questions of what is good for us have no fixity, any more than matters of health.' Particular cases 'do not fall under any art or precept but the agents themselves must in each case consider what is appropriate to the occasion,' as is also the case in medicine and navigation.

The good practitioner does not dispense with rules entirely, but remains alert to how they can lead one astray. Too fastidious a commitment to rules leads to ignoring the contextual factors, local knowledge, or tacit understandings that make a difference in ethical diagnosis or decision making. Rule-centredness has its place. In some areas, strict adherence helps to preserve important values: for example, when clarity and determinacy give citizens advance notice of conduct likely to incur severe penalties. However, in situations of complexity or flux, where flexibility and adaptability are critical to acting effectively and well, the pathologies of rule-centredness become evident. To avoid the rigours of a rule, different techniques are available. One is attending to the fact that a rule, typically, is an indicator of purpose, whose dimensions may not be immediately obvious, but which ought to guide any understanding of the rule's meaning and scope. Another is to invoke a norm of more general application, especially one embodying discretionary terms such as 'decent' or 'reasonable'. In practice, the significance of these terms is not that they leave judgement unguided; rather, they invite reliance on tacit understandings and expectations in deciding specific cases.

Double reflection

These days we are constantly reminded that national borders are not moral boundaries. Increasingly, practitioners face ethical challenges that cross geographical and cultural divisions. They must attempt to mediate between settled understandings and alternative ways of life. Undoubtedly, practitioners who understand the moral viewpoint of others will be more competent and resourceful in addressing the problems they face, but the challenges involved should not be underestimated.

The variety of values and fulfilling ways of life results in a large degree of indeterminacy in moral reflection. Even with reasonable standards of knowledge and deliberation, people may judge differently. While such differences are more acute in cross-cultural encounters, I believe they are intrinsically the same as those between people of the same culture. When people from different ethical traditions confront one another in a practical context, what may we reasonably expect? We are familiar with situations of asymmetric power, where one party or group exercises effective control at the exclusion of mutual deliberation. But is deliberation across ethical traditions possible? To what extent can we succeed in justifying our conduct to one another? If we cannot agree on specific principles, can we at least develop a framework or set of guiding concepts? If we limit ourselves to familiar conceptual tools, we may only learn more about ourselves than about others.

The question, in part, is about the transparency of human beings to each other. We want to avoid transforming partial and perhaps complementary perspectives into irreconcilable standpoints, yet we do not want to deny real differences. It is all too common to err in both directions—assuming that others are just like us, or completely opaque to us. No matter how successful we are in understanding other normative orders, there will be cases where we regard a society as admirable, highly cultured, sophisticated or advanced, and still judge some of its practices as unacceptable, even repugnant. So, which other normative orders should we take seriously?

Chad Hansen (2004) suggests that sincere confrontation with a rival moral tradition destabilises our moral confidence when the rival has three features: it is intellectually rich, and a product of deep and sustained reflection; it is significantly different in its conceptual structure or theoretical orientation; and it satisfies a threshold condition of plausible rightness, either historically (as the foundation of a major civilisation) or substantively

(generating what one regards as correct moral judgements). If these three conditions are met, one may find the rival tradition sufficiently attractive to induce a re-examination of one's most basic assumptions and perhaps to engage in an attempted synthesis. If such efforts are to be more than academic exercises, they must occur within each moral community—each re-examining for its own reasons and engaging in the kind of critical self-reflection involved in recognising a viable alternative.

Needless to say, this undertaking involves a lot of work in assessing the adequacy of one's cognitive grasp of the world and the reliability of one's moral emotions. My point here is to emphasise the importance in this endeavour of *double reflection*—the ability to discern what something could mean to another person, when at variance with one's own understanding, and the ability to contemplate with equanimity the contestability of one's own worldview. These abilities are not easily developed or practised. Since no one inhabits an ideal moral space, however, it is likely that many current beliefs, including some of our own, are mistaken—just as even the wisest people have been mistaken in the past. Can we accept that our values are just one set among others, and could be displaced, while sustaining sufficient conviction to be effective moral agents? The caution I stress is that we must avoid the tendency to regard our own thinking as uncovering necessities of thought, without putting it to the test by examining moral thought in other cultures or historical traditions. Again, it is hard work. Yet, without such reflection, we have no right to feel confident about the views we hold.

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