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Public Ethics and Political Judgment

July 2014

Commissioned by the Committee on Standards in Public Life from Mark Philp, Professor of History and Politics at the University of Warwick, and Chair of the Research Advisory Board to the Committee on Standards in Public Life.

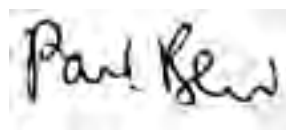
PREFACE

When the Committee began its work on the role of induction in embedding ethical standards in public life we were aware of a degree of scepticism from those in Parliament. The very fact of being a politician, and in particular an elected politician, it was argued, meant that normal workplace solutions to standards issues – like induction – should not, or indeed could not, apply. The nature of politics complicated the whole process of upholding the Seven Principles of Public Life.

This viewpoint did not entirely convince us. The Seven Principles of Public Life were a response to political scandals, and the solutions set out by Lord Nolan for maintaining and restoring standards in public life – including guidance, education and training, particularly induction training on the Principles and Codes of Conduct – were developed with Parliament, amongst other institutions, in mind. Did the nature of politics and its institutions make such a difference when it came to embedding ethical standards, or was Parliament simply resistant to change?

In order to help us better understand ethics in practice for politicians we commissioned this report from Mark Philp, Chair of our Research Advisory Board and Professor of History and Politics at the University of Warwick. Mark has helpfully gone back to first principles in his discussion of the Seven Principles, and explored what they mean in the context of the adversarial politics of Westminster. His paper shows that, although the nature of political ethics in practice is complex, the principles advanced by Lord Nolan

remain central in the challenge to raise ethical standards in the twenty first century. Those engaged in the political life of the country need to recognise that the ethical requirements of politics demand serious public deliberation and reflection and that finding creative solutions for raising and embedding ethical standards in public life will depend on that process.



LORD PAUL BEW

Chair, Committee on Standards in Public Life

1 INTRODUCTION

1.1 The idea of providing elected politicians with programmes to increase their awareness of their ethical responsibilities is seen by many representatives and members of the executive as impugning their integrity and their common sense. It is also seen by many politicians as presuming that other (unelected) people are in a better position to know what to do than are representatives who are elected precisely to exercise their judgment on matters of controversy.

1.2 Many ethics or standards programmes for politicians may well be subject to such objections. This does not mean there is no case for preparing those who enter political office for some of the ethical issues they will face, although any such preparation must avoid encroaching on the legitimate sphere of political judgment. The justification for such preparation lies in the distinctive character of political responsibilities and in recognising that there are a number of dimensions to political judgment. In particular, the distinction between the ethical requirements of public office and the legitimate sphere of political judgment is not well understood. This brief paper attempts to assist wider discussion of political ethics and standards in public life by identifying some of the relevant distinctions between aspects of political roles. It focuses primarily on elected office holders.

2 POLITICAL ETHICS AND MORALITY

2.1 Political ethics is not the same as personal morality and the two sets of requirements do not always align. Political ethics broadly covers standards, rules, norms and precepts that relate to the roles and functions that political office serves and the concomitant responsibilities that incumbents of office undertake to fulfil. These responsibilities are not identical to acting 'morally' or with personal integrity. Indeed, there is some similarity to other professions in the separation of personal morality and professional ethics. A doctor with a strict personal moral code deriving from religious commitments must distinguish between what her formal responsibilities for the care of a patient requires and what she would herself opt to do in a similar situation as a patient. Similarly, politicians may not always be able to do what their consciences demand because, in accepting the responsibilities of public office, they accept duties that it would be inappropriate (unethical or 'dishonourable') to ignore even when these clash with their personal moral convictions. For example, they have duties to represent their constituents' interests even where they regard aspects of those constituents' lives as morally reprehensible or repugnant. In no case are such conflicts easily resolved, but the potential for such clashes highlights the fact that role requirements differ from those of personal morality.

2.2 The Seven Principles of Public Life set out by the Nolan Committee in 1995 and reiterated with slightly revised descriptors in the Fourteenth Report of the Committee on Standards in Public Life *Standards Matter* (2013) have been the subject of some commentary.¹ The initial descriptors of the Seven Principles did not wholly match ordinary people's understandings of the meaning of the Principles, and that disjunction was a matter of concern. The revised descriptors are much closer to how ordinary people understand the Principles. Nonetheless, the distinctive character of the Seven Principles is less often acknowledged and ought to be emphasised. The Principles are not guides to morality. Rather, they set out the standards that those in public office must respect *in their*

capacity as holders of public office. They should demonstrate honesty; they should make decisions with objectivity and be open about the way in which they have reached those decisions; they should set aside their own interests (selflessness) when acting in their official capacity; they should show leadership to others and be prepared to be held accountable for their conduct through the appropriate mechanisms; and they should demonstrate integrity, that is, they should act in ways that are compatible with their acceptance of public office and with its concomitant responsibilities.

2.3 Although some of the Principles are sometimes interpreted as identifying personal qualities, such as honesty and integrity, the way in which they are stated addresses the qualities of the person *as an occupant of public office, fulfilling a certain role*.² The Principles lay out in broad terms the ethical demands made on those who hold and exercise public office. Whether and to what degree these are compatible with individual moral convictions is a distinct question, as is the extent to which they line up with common sense. Preparing people for or supporting them in meeting their ethical responsibilities is not a matter of teaching morality or common sense. The Seven Principles address the distinct domain of duties associated with public office.

2.4 The potential confusion of the Principles with precepts of morality is understandable. Many members of the public think of principles such as honesty and integrity as referring to personality traits or deep-seated features of personal character. Nonetheless, this confuses the person with the office holder, and fails to distinguish between a judgment about what sort of person he or she is, and a judgment about what sort of office holder he or she is. In some areas many members of the public clearly do recognise the distinction. They can see that in many political contexts it would be inappropriate to require politicians to

¹ First Report of the Committee on Standards in Public Life (HMSO, 1995); *Standards Matter: the Fourteenth Report of the Committee on Standards in Public Life* (Cm 8519, 2013); Mark Philp, 'The seven principles of public life: What they say and what they mean', Report to the CSPL, 2002 (revised 2012).

² See Susan Mendus, *Politics and Morality* (Polity Press, 2009) chs 1 and 2.

be completely honest and candid.³ For example, they can see that it would not be right to press ministers for details of talks or meetings if revealing those details might jeopardise further progress. In many cases the public must reserve judgment, respect confidentiality, and create space for deliberation and reflection outside the glare of publicity.

2.5 Ethical standards with respect to public office and public service apply (at the very least) to those who hold senior positions in the public service and to those in any form of elected political office. The exact demands of the Principles will vary according to the office or role and its specific responsibilities, but they need to be understood as providing a distinctively 'political' ethic. In this respect, political ethics is similar to the ethical codes that govern conduct in law, medicine and other professions. In each case, the formal character and responsibilities of the role, the importance of sustaining public trust in the execution of those roles, and the fact that the decisions made have major implications for the rights, liberties and welfare of citizens, gives ethical significance to ensuring that a common set of standards is adhered to in the execution of the duties associated with these roles.

2.6 In some respects, however, political ethics faces distinct challenges. There is no formally established body overseeing the professional ethics of politicians in the way that there is in law and medicine. There is also a good deal of contention as to exactly what the appropriate standards of political conduct are both in general and in particular cases. And there are often very basic disagreements between those holding the same or similar roles – such as political representatives – as to what their central responsibilities are and how they are best fulfilled. It is one thing to recognise that there is a distinctive set of ethical principles for political office; it is another matter entirely to achieve widespread consensus on exactly what those principles demand in any given instance. Insisting on the relevance and validity of the Seven Principles does not mean that they necessarily give determinate guidance in every particular case, not least because individual principles may conflict with each other or be indeterminate between rival courses of action. This makes political ethics distinctly challenging. That it is so, is a reason for thinking that some preparation for and ongoing reflection on the demands of public office might be appropriate.

³ This is one conclusion drawn from the qualitative work undertaken by the Committee into how ordinary people understood the principles of public life conducted for the Thirteenth Report, and that undertaken earlier for the CSPL by the National Centre for Social Research, *Guiding principles: Public attitudes towards conduct in public life* (October 2002) and by BMRB, *Review of the descriptors of the Seven Principles of Public Life* (November, 2006).

3 POLITICAL ETHICS AND POLITICAL JUDGMENT

3.1 Political ethics concerns the principles that guide and constrain the interpretation and understanding of the role and function of public office. The Seven Principles should guide politicians' judgments and their consequent actions. They are only one component of judgment: they will not tell politicians what policies they ought to adopt, although they touch aspects of such judgments. For example, a decision to adopt a policy requires an appreciation of the relevant facts: the ethical requirements of the Principle of Objectivity should influence judgment about what the relevant facts are, the degree of confidence they command, and what further evidence is required before a decision is made. These judgments are to be made in the light of an appreciation of the role, function and responsibilities of office; they should not be determined by mere expediency or strength of political conviction.

3.2 The relationship between political ethics and modern politics more widely has several dimensions that are not always easy to reconcile. For example, politics is partly about winning – nominations, candidacies, elections, offices, debates, votes.⁴ But winning cannot be achieved at any price: not least participants should respect the rules and procedures of the process. Moreover, while many political systems are vulnerable to winners altering the rules to make it more likely that they will keep winning, the legitimacy of the political system depends on a high degree of consensus on the character of the political game and the rules for contesting political office.

3.3 Politics is competitive, but a distinctive feature of consolidated political systems is that the competitive political process generates governments who see their responsibilities as owed to the polity as a whole, rather than merely to those who voted for them. Only in such systems do legislation and negotiated political solutions command wide authority and legitimacy, enabling public office to stand above and apart from the particular interests of groups and individuals. Only where it does so can politics play its crucial role in the authoritative resolution of conflicts

and the management of consensus. Playing that role, however, presumes the acceptance of certain ethical constraints on political conduct.

3.4 A third dimension of political office is that those who exercise this power and authority are accountable to those over whom it is exercised.⁵ As John Locke put it, people are not disposed 'to avoid what mischiefs can be done them by polecats and foxes, (only to be) content, nay think it safety to be devoured by lions.'⁶ Political office is won by competition, it claims a general authority over the polity, but the people who exercise such office are accountable – both in terms of whether they have fulfilled the formal responsibilities of their office, and in terms of whether their public approves of the policies that they have used their office to enact. These last two judgments involve a distinction between formal accountability (did they act 'properly?') and political accountability (do we approve of what they did?). Political systems that blur the distinction risk subordinating ethical considerations to expediency, or eliminating the distinct political dimensions of judgment.

3.5 It is not difficult to see that these three dimensions of politics – competition, authority and accountability – can be in tension. Each, unconstrained by the others, creates problems. Ethical principles serve in part to guide the individual's navigation of these competing demands.

3.6 These principles are brought to bear within particular contexts that make distinctive demands. For Members of the UK Parliament to recognise their responsibilities they require some understanding of the nature of representation, of the different interpretations of that role and the functions it serves, and a grasp on how that role currently plays out in the UK political system. That should inform the way they respond to and help frame the expectations of their constituents, their local party, and their Westminster party and colleagues. MPs who serve only one section of their constituencies fail in their responsibilities as the representatives of that community.

4 Bernard Williams, *In the Beginning was the Deed* (Cambridge University Press, 2005)p. 13

5 Mark Philp, *Political Conduct* (Harvard University Press, 2007) Ch. 3.

6 John Locke, *Second Treatise of Government*, Ch.VIII, sect.93.

MPs who refuse to support the causes of members of their constituencies in cases of grievance against the state, are similarly not meeting their role responsibilities. And MPs who are merely delegates of their constituents similarly fail since the responsibility (as least in the UK, in part as a result of the influence of party in individual electoral success) is to serve *both* the constituency and the wider political platform on which they were elected.

3.7 Similarly, recognising that there may be cross-pressures and conflicting demands from a range of constituencies – voters, local party, central party, Westminster colleagues, etc., – does not tell us how office holders should resolve these pressures. Nor will identifying the ethical principles relevant to the public roles and functions of MPs automatically determine how such conflicts should be resolved. Ethical considerations provide a frame for the judgment and they help to clarify some components of the judgment to be taken. For example, they may prompt reflection for decision-makers as to whether they can both make a particular decision and accept being held to account (politically) for the decision and (formally) for the way the options were evaluated and alternatives eliminated. For any political decision, we can ask whether the politician can give an account of the decision that meets the criteria of honesty and demonstrates objectivity; was the decision taken uninfluenced by personal interests or considerations; how far was the judgment made compatible with the leadership that the office provides within the political system; and does the compatibility of the judgment with these requirements reflect the integrity with which the agent accepts and seeks to fulfil the responsibilities of the office. None of these questions focuses directly on the content of the decision or policy. Instead, each is concerned with how far the decision-making process meets the ethical standards associated with the office that is held.

3.8 Public offices serve their functions and perform as they should only if those in office acknowledge the weight of these considerations in the exercise of their judgment. Without these standards, political rule has an entirely different character. These standards are intrinsic to consolidated democratic politics because while government rests on opinion, it is opinion concerning the legitimacy of its authority. People acknowledge and accept political authority in part because they see it as working within these principles.⁷ These standards are instrumental to

politics because government on these principles works more effectively since it is in a position to elicit the willing compliance of those subject to its authority.

3.9 Those in office, then, need judgment in responding to the conflicting demands under which they are placed; they need a sense of responsibility that is embedded in their office and the ends it serves; and they need to recognise that they are accountable to their colleagues, peers and to the general public for the way they interpret those responsibilities and for the judgments they make. Certain decisions may concern matters of law and its interpretation, but the scope of political judgment and responsibility means that a great many decisions are properly ‘political’: making them one way rather than another is a matter of judgment – one that must be informed by ethical standards although these will rarely in themselves determine a decision.

3.10 The distinction between the ethical components of a decision and matters of political or policy judgment is important even if it is not easily drawn. Consider a decision by the executive of a local authority to provide care for the elderly in their own homes using a variety of service providers on grounds of economy, despite this resulting in very poorly co-ordinated care and, for recipients, a bewildering array of constantly changing people entering their homes. Is this an ethical matter or a political one? One question to ask is whether those commissioning the care are taking their different responsibilities sufficiently seriously: they clearly have responsibilities under various Acts to provide access to various forms of care, and have responsibilities to ensure a cost-efficient service. They also have responsibilities to provide a service that meets certain standards of care, and certain ways of fulfilling the first two responsibilities can be incompatible with meeting this last. There are political decisions that those in office have the responsibility to make and for which they are politically accountable to the electorate and public opinion: about how much to spend on this sector, and about what standards of care should be provided, and with what distribution of cost between the recipient, their families, and the community at large. But providing care that is substandard because it is ill-coordinated and confusing and alienating for the recipients is a policy outcome that could reasonably have been predicted and rejected in advance on the grounds that it is incompatible with the authority’s responsibilities to those who are vulnerable. Allowing that outcome

⁷ David Hume, ‘It is therefore, on opinion only that *government* is founded’ in ‘Of the First Principles of Government’ in *Essays Moral, Political and Literary*.

does not demonstrate the requisite commitment to objectivity and openness in managing the responsibilities of that office. In this case, the judgment of those who commission and implement the service can be criticised for the way its design fails to meet certain ethical standards of judgment.

3.11 Nonetheless, formal accountability systems and popular political accountability must recognise that ethical guidelines do not avoid every possible poor outcome. Political decision-making is often a judgment call under pressure of time and rapidly moving events and conditions of risk and uncertainty. We want people making those judgments to set aside self-interest, to have integrity, to be alert to their responsibilities, and to be scrupulous in assessing the factors in a case. But we would be naïve to think that probity in judgment will necessarily and in every case produce optimal outcomes. Ethical principles guard against only one set of ways in which things can go wrong. The reality of politics is that judgment does not always go right, but we have no better alternative for reaching authoritative decisions in situations of multiple conflicting interests, values and views, uncertain evidence, and disputed claims.

3.12 The UK's adversarial political system is not good at keeping these various elements apart. The failings of one's political opponents are often greeted as failures simultaneously of ethics, politics, and competence. The cross-party, investigative select committee system has done something to sustain some distinctions between these components, as have Royal Commissions, special inquiries and so on. But they are not distinctions that come easily to ordinary people or to the popular press; and their confusion creates bad incentives in politics. Ethical failures should not be brushed aside by the exercise of a government majority. Difficult decisions should be capable of being presented in a way that underlines the concern to meet the ethical requirements and is open about the difficulties of being confident of achieving the desired outcomes.

4 HIGH POLITICAL OFFICE

4.1 These different dimensions of judgment, and the tendency for them to be confused, means that the challenge is to assist those in public office in reflecting on the nature of the judgments that they must make and the pitfalls that certain options face. They need a sense of the ways in which judgment can be distorted or misled, either by individual hubris or by certain forms of 'group-think'. Those in office ought to be exposed to a variety of situations or scenarios in which complex judgments have to be made and in which, while there may not be a single right answer, there will be bad answers – that is, judgments that cannot be defended consistently in the light of the principles of public office.

4.2 There is an added area of complexity in relation to high governmental office. As Bernard Williams pointed out some time ago: "It is a predictable and probable hazard of public life that there will be these situations in which something morally disagreeable is clearly required. To refuse on moral grounds ever to do anything of that sort is more than likely to mean that one cannot seriously pursue even the moral ends of politics."⁸ As Williams notes, however, we do not want politicians who simply discount such costs: "we need to hold on to the idea, and to find some politicians who will hold on to the idea, that there are actions which remain morally disagreeable even when politically justified...only those who are reluctant or disinclined to do the morally disagreeable when it is really necessary have much chance of not doing it when it is not necessary."⁸ For Williams, what we want from people in politics is not just sensitivity to the beliefs of others (something that a cunning manipulator might have), but also some responsiveness to these principles and values in their own right, even if they do not wholly determine their actions. Being a good politician, on this account, is having an ability to recognise and to feel the weight of

the values, claims and commitments that exist in a given situation, without thinking that this weight must over-ride every other consideration. We also want politicians to be moved by more than what serves their personal or political interests, even if we also recognise that they may not do what we want wholly for the reasons we would want them to have. Motives in politics are often mixed and identifying the right balance between contending claims is far from simple. Indeed, such decisions are often further complicated by elements of public accountability and the requirements of honesty and openness. The difficulty of sorting through such decisions so as to clarify their multiple dimensions and to accord to each its appropriate weight in the final judgment lends some support to the view that there may be things that can be done to help prepare or support those who face such decision making.

4.3 Of course, those who take such decisions often have many sources of advice, from senior civil servants through to special advisors and experts. But providing such advice is also a responsibility that should be governed by certain standards, and we need confidence that those who provide advice do so with the appropriate sense of responsibility. The larger questions are about who is taking final responsibility for the decision, what grounds are appropriate to the decision, what the duty of accountability is in respect to such decisions, and to what extent the individual is content that the decision is one which he or she can defend before the relevant authority – whether Parliament, the electorate more widely, or a special inquiry. In these judgments the aim must be to equip people to think about the kind of justification they believe that the public or other relevant body ought to be prepared to accept (because they should be able to see that it meets certain ethical and practical standards for such a decision).

⁸ 'Politics and Moral Character', in Stuart Hampshire, *Public and Private Morality* (Cambridge University Press, 1978), 62, 64

5 SUPPORTING POLITICAL JUDGMENT

5.1 Political ethics is not widely taught, not least because of its difficulty, the resistance many politicians have to it, and the fact that there is often no right answer. Politicians are right to think that, in many cases, they have to exercise judgment, where that judgment brings together facts, commitments, values and 'ethical' components in ways that are difficult to separate. It is not straightforward to assess what is possible or what is desirable from whose point of view, or what the probabilities of success of different courses of action are. Nor is it easy to ensure that this process of judgment exemplifies the principles of selflessness, integrity, and objectivity, and can be defended openly and honestly in ways that are subject to appropriately wide accountability. Political ethics is not a matter of telling people what the right answer is: its role is to assist those in public office in exploring the various considerations relevant to political judgment, and to help develop more secure, stable and wiser judgments in often difficult circumstances.

5.2 In the UK political system it is possible to attack an opponent for the judgment they formed without attacking them on ethical grounds – but that is not as widespread in the world as we might wish and the distinction can easily be rendered fragile. This is one reason why it is crucial that the distinction is acknowledged in media and public commentary. As part of the wider political culture that they observe and over which they exert often considerable influence, those engaged in reporting and commenting on politics ought to take cognisance of the ethical principles of the political order and acknowledge when decisions are taken appropriately even if there is partisan disagreement over whether it is the right decision. In a world where the public are not clear on the distinctions, media blurring of the issues will mean that those in politics will also have still greater difficulty in keeping the components distinct.

5.3 The challenge is to heighten awareness of the ethical principles, and to do so across the political system – from the local constituency party, the parliamentary party and the chief whips, the formal bodies such as the Parliamentary Standards Committee and the Parliamentary Ombudsman, and bodies linked to the senior civil service. This requires a degree of cross-party commitment. The Seven Principles are non-partisan in character, so that while the judgments politicians make are usually partisan on some dimensions, the common ethical standards that apply to any given decision need to be acknowledged. Partisan disagreement over the ethics of public office – like partisan disagreement over the rules of the political game – would seriously damage the political system and its standing with the public.

6 LEADERSHIP AND JUDGMENT

6.1 Those in elected public office demonstrate ethically sound judgment when they take decisions and justify them on grounds that they believe that the public or other bodies to which they are accountable ought to be prepared to accept. Making the decisions on one basis and justifying them on another is not ethically sound. Liberal democracies presume a certain transparency and openness for accountability to work. Of course, having a large majority might enable a government to do what it wants to do, but even where there is a plausible mandate for certain policies, the exact nature and shape of those policies, the basis for advancing them in a particular form at a particular time, and the preparations made for their implementation also raise issues about how far their formulation, introduction and execution meet standards of openness, honesty, and objectivity; whether they meet the selfless or public good requirement; the extent to which the decisions are properly accountable; and the degree to which the standards of decision-making embody the quality of leadership, and do so by exemplifying the integrity with which those engaged in the process weighed and reconciled the responsibilities they have as holders of public office, with the electoral mandate they received.

6.2 There may also be a further dimension of leadership that the political process demands. If the political system and its processes are to have authority, they must command respect. Administrative decisions should demonstrate impartiality and objectivity, otherwise people lose confidence in the process. Those in political office often face more extensive demands. In the UK Parliamentary system few politicians can claim a wholly personal popular mandate for their actions in politics. Their legitimacy as office holders rests on the public's endorsement of the wider political process and on the place the office plays in that system. They can compromise both these by behaving in ways that are incompatible with the leadership and integrity that the public's confidence in that process presumes. When aspects of politicians' private lives are presented as evidence of hypocrisy or as a lack of commitment to the office, this may often be a matter of private morality being inappropriately brought into the public sphere. On the other side, politicians have a

responsibility not to appear as if they are treating the law with contempt, or bringing the political process into disrepute, or acting in ways that are irreconcilable with their public commitments, or exploiting opportunities to benefit themselves. This is not a comprehensive list. What should help to generate such a list is the question of what would count as the occupant of an office giving adequate weight to the public significance of that office and to the expectations of leadership, probity and selflessness that are associated with high public office.

6.3 Of course, political life can give rise to conflicting demands and expectations. The public do not want politicians who line their own pockets. They expect them to give priority to the public interest rather than being concerned with their own. They clearly do not want MPs to focus wholly on their expenses. But a politician who is inattentive to the expenses claimed – for example by leaving it to an assistant who claims inappropriately – generates problems of a similar magnitude. Yet it is unreasonable to expect MPs not to claim expenses. For most MPs it is not clear exactly what the public see as the correct attitude to claiming expenses, and that is because it is probably not wholly clear to the public. It is likely that only in a system in which what the MP claims is largely a function of what s/he is instructed to claim by his/her local constituency party, her/his parliamentary party, and the formal system for claiming expenses, will the process be seen as one which is largely out of MPs hands, and therefore as something that cannot be represented as self-serving. And the responsibility of those institutions must be to produce a workable system that can command elite agreement and wider political legitimacy.

6.4 This is not an exhaustive account of public ethics and political judgment. It is offered as a contribution to the debate on what might be done to ensure that our political system is more resiliently defended against some of the ethical failings that have dogged it over the last thirty years – failings that the Committee on Standards in Public Life was set up to address and in response to which it first articulated the Seven Principles of Public Life.

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