

Chapter 15

Ethics in politics

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Why politics is a special case

The topic 'ethics in politics' might cover a multitude of sins. Here it will be restricted to the ethics of politicians in representative liberal democracies. The ethics of public servants will be left aside, as will be the ethics of politicians in other political systems. Plain criminal wrongdoing by politicians will also be outside our scope. The subject is still very large. It includes all those matters that reflect on a politician's ethical reputation. Political wrongdoing can range in magnitude from taking a country to war on inadequate grounds to fiddling with one's parliamentary expenses.

Political thinkers have always been concerned about the temptations that power presents. Alexis de Tocqueville put it this way: '[T]o pillage the public purse and to sell the favours of the state are arts that the meanest villain can understand and hope to practice in his turn' (Tocqueville 1835, Chapter 13). More famously, Lord Acton remarked that 'Power tends to corrupt, and absolute power corrupts absolutely. Great men are almost always bad men...' (Acton 1907, Appendix). Acton's saying is usually misrepresented as the categorical 'power corrupts', and in that form it is at best only half true. It would be more accurate to say that sometimes power corrupts to some degree. In any case, power must be employed if government is to be possible. Modern states possess a monopoly of legitimate violence, even if they rarely have to use that violence (Weber 1919/1994). Merely having such power available to them makes governments and politicians subject to the temptations of abuse and misuse.

Politics is a public activity, not just in the sense of being open to public scrutiny, but in the much stronger sense that politics deals with public power, and such power is held in trust from the community. Public power is the recognised authority to make binding decisions, decisions that will be enforced by the police and the courts. The quality of those decisions will affect the lives and fortunes of many. Ethics in politics is therefore a matter of great

concern. The difficult problem, however, is to say what sort of ethics is applicable in the political arena.

Politics is not a profession (it is not based on a body of knowledge), it is not a kind of commercial activity, and it is not a form of corporate employment, so none of the well-known ethical guidelines that apply to these activities can be applied straightforwardly to political conduct. At least for legislators, the obligations of public office are not covered by any job description, and they are not enforced by any system of management. In the absence of any corporate structure, the standard understanding of whistleblowing does not apply.

Is politics a form of public service? There are two factors (at least) that differentiate politics from the public service. Firstly, politicians are our ultimate decision-makers, whereas public servants are not. Politicians therefore have both more power and a different kind of power, and public servants may not encroach on that power. Secondly, public servants are employees of the state, and thus have a contract defining their role, whereas politicians are not employees and are not contract-bound; their role is only loosely defined, and that must be the case if they are to do their job well. For politicians, answerability is to the electorate, to their fellow members of parliament, to their party, and to the law. For public servants, answerability is to their managers and then finally to the relevant minister. Given these differences, the ethics that applies will be different, though both can misbehave similarly in that they can misuse public power and authority.

Being the highest decision-making bodies, parliaments see themselves as self-governing and as making the final decisions on the behaviour of their members. This is the theory of parliamentary privilege. In the case of the Australian Federal Parliament, its legal basis set out in the *Parliamentary Privileges Act 1987*. The details of this privilege can be technical, but in broad terms members of parliament are subject to the normal operation of the law when acting in their private capacities, but when acting in their proper role as parliamentarians they are outside the jurisdiction of the courts. This allows them to speak freely about controversial matters. Members of parliament can be punished by parliament itself for breach of privilege. Beyond that, accountability is to the electorate, and thus to democracy. Of course, parliamentary privilege does not by itself make an action morally acceptable, but it does show that society recognises that political actions should be judged on somewhat different grounds from the actions of ordinary citizens. How well the institution of parliamentary privilege achieves its aims can still be debated, and much depends on how sharply the distinction between public and private roles can be drawn (Wigley 2003).

In a representative democracy, political office is a form of trusteeship and trusteeship is an ethical concept with specific implications. As Uhr has put it, 'at the end of the day, much of the most valuable work of democratic government requires substantial delegations of public trust to allow government officials to manage public affairs' (Uhr 2005, pp. 19-20). Politicians make decisions on behalf of the community. They generally offer an ethical or quasi-ethical rationale for the policies they advocate. Ideals such as the national interest, the public interest, the common good, justice, liberty, and protecting the vulnerable are plainly ethical ideals; while other ideals such as economic development, economic efficiency and protecting the environment are, generally speaking, ethically respectable. Policies not at least ostensibly grounded in a rationale of some such sort are rare in liberal democracies. In that sense, ethics is central to politics and government.

Politicians attempt to resolve conflicts that cannot be resolved by voluntary agreement in the general community. Such conflicts commonly arise from moral disputes and disagreements, not just about appropriate individual behaviour but also about the proper structure of society. Often deep moral complexity – the conflict of right and right (where both sides believe they are justified) – is the source of the problem. Legislators should aim to devise laws that serve the common good of society, when society itself is divided about what it regards as the common good. There are usually no clear indicators of success, comparable for example to the role of profitability or share prices or net worth in the commercial world. Public money is always in short supply, so decisions are usually trade-offs between competing goods, rather than choices between right and wrong. Thus, the tasks that confront politicians often far exceed the difficulty of everyday issues.

There is a further complication. Politicians are usually, in part, the product of a party system, to which they therefore owe some allegiance. Their role is thus twofold: to defend and promote the party version of the common good that got them elected, and to respect those who hold a version different from their own, since their views make up part of the community's self-understanding. Striking the right balance between these is not easy. In the ordinary run of affairs the politician in a party-based democracy must speak for his party's view of things. In the system of party politics, politicians seem to have to operate under the rule which says: policy X is a good thing when advocated by my party, but a bad thing when advocated by the rival party. The ethics of politics has to be to some degree adversarial, though it should not be entirely so, and on special occasions all sides in the political game should come together in the name of what the wider community fundamentally agrees upon – that is, the values of liberal democracy.

Politicians are subjected to pressures far beyond those of everyday civilian life. Media scrutiny can be intense. Strenuous and manipulative lobbying on behalf of powerful interest groups is a hazard that has to be negotiated. Political parties impose their own often harsh disciplines, as do factions within parties. Fellow politicians are often opinionated, ambitious and ego-driven. Constituency members often see 'their' politicians as all-purpose problem-solvers, expecting them to pursue a multiplicity of personal and sectional interests. In addition, the requirement to show one's face at an endless success of community functions leaves little time for family life.

No-one is conscripted into politics, and the pitfalls of a political career path are well known, so there are no grounds for arguing that the pressures of political life might excuse unethical behaviour. Politicians take on political office voluntarily, and take an oath of office to serve the public good. Faced with a seemingly impossible ethical situation, it is always possible to resign.

If we accept that politics in a representative liberal democracy is a special kind of activity, then we may agree that it will involve a special kind of ethics and that it will not be appropriate to judge politicians by the same standards as we judge everyday behaviour. Standards for politicians may be seen as 'higher' or as 'lower' than those that apply in everyday life, but they will be different from those standards. Political activity involves special privileges and special responsibilities, and political ethics should reflect both dimensions. This is not an original contention. It has long been argued that moral idealism is not an adequate basis for political life. As Machiavelli observed, 'There is such a difference between the way

we really live and the way we ought to live that the man who neglects the real to study the ideal will learn how to accomplish his ruin, not his salvation' (*The Prince*, Chapter 10, section 15). He may also bring ruin on those who follow him because he and his cause will be outsmarted by others with opposing causes who have not neglected to study the real. More recently, philosophers have discussed at length the morality of 'dirty hands' (Walzer 1973; Coady 1993; Nagel 1991; Thompson 1987). Good politicians must aim to be both ethical and effective, but effectiveness is often in tension with the demands of ethics.

Ethics in Australian politics

The evidence on the ethical standards of Australian politics is somewhat paradoxical. On the one hand, surveys of the general public show that politicians are held in low esteem (Goot 2002; Leigh 2010, pp. 50-52; Uhr 2005). On the other hand, international comparisons show the ethical standards of Australian governments in a good light. According to Transparency International's Corruption Perceptions Index 2010, Australia ranks as the eighth least corrupt out of 178 countries (Transparency International 2010).

Popular distrust of governments has led to demands for greater ethical accountability. Such demands go back to the 1980s, and the scandals in government in Queensland under Sir Joh Bjelke-Petersen and in Western Australia under Brian Burke clearly play a large part in their genesis. And, as Uhr observes, it is not only the general public that issues calls for accountability:

The language of ethics now comprises its own distinctive policy discourse reflecting emerging demands on democratic governance caused by doubts about the sustainability of public confidence in government. Where do these doubts come from? Surprisingly perhaps, they frequently come from governments themselves, particularly from the elected political executives who sense the need to 'do something' to repair the reputation of politics and the standing of public life. Governments want us to believe in them, in the basic political sense of believing in the trustworthiness of government, at the political as well as the bureaucratic level. (Uhr 2005, p. 29)

The standards for politicians must in some way be grounded in generally accepted ethics. One way to ensure this is to ask the general public to clarify what it considers to be the appropriate standards for political life. A study of this topic by McAllister found a rough agreement between a sample of opinions held by the general public and members of the political elite on the ethical requirements applicable to legislators. McAllister distinguished between eight principles of conduct. In all but one of the eight cases, the public set these standards higher than did the elite (McAllister 2000).

We can read this survey as showing broad agreement or significant disagreement between the public's and the elite's views of political ethics. It may be read as illustrating the maxim that citizens typically expect higher standards of conduct of elected officials than they do of themselves. However, it may also be read as showing that those closer to an issue – in this case, the politicians – see more complexities than do those further away. The politicians may understand that it is not ethically required to *always* put the public interest ahead of their personal interests, recognising that even politicians deserve some privacy and have

Table 15.1 Public and elite perceptions of ethical behaviour

| How important do you think it is for federal politicians to ... | Public | Percentage saying 'extremely important' Elite | Public-elite difference |
|--|--------|---|-------------------------|
| ... respect the dignity and privacy of members of the public | 75 | 55 | +20 |
| ... use public resources economically | 75 | 50 | +25 |
| ... act honestly at all times | 74 | 73 | +1 |
| ... always put the public interest ahead of their personal interests | 73 | 59 | +14 |
| ... always tell the truth to the public | 73 | 51 | +22 |
| ... always behave in a dignified manner | 59 | 48 | +11 |
| ... not favour special interests | 49 | 23 | +26 |
| ... refuse to accept gifts of any kind | 46 | 24 | +22 |
| Mean | 66 | 48 | +18 |
| N | 1794 | 105 | |

Source: McAllister I 2000, 'Keeping them honest: Public and elite perceptions of ethical conduct among Australian legislators', *Political Studies*, volume 48, pp. 22-37, at p. 28; based on 1996 Australian Election Study, voter and legislator samples.

ordinary concerns of family life, for example. Or they may interpret 'favouring special interests' to include the legitimate special interests of their constituents. Whatever view we take of this evidence, it seems right in principle that in a representative democracy political ethics should reflect the public's view of acceptable political conduct. This may seem truisitic, but in professional ethics, the opposite is the case: the public's view of professional conduct and misconduct is usually given less moral weight than the intra-professional perspective, and for that reason alleged professional misconduct is judged by fellow professionals.

Various procedures and mechanisms can be used to strengthen the ethical accountability of governments (Uhr 1998, pp. 151-209). These come in two forms – internal and external.

Internal accountability has two main aspects. The first is parliamentary self-regulation. As Uhr describes it,

each house of the Commonwealth parliament has a privileges committee responsible for investigating the professional ethics of members, including the professional standing of relationships between members on parliamentary committees, their witnesses and others named in proceedings. These committees act as the conscience of parliament, articulating case by case the professional ethics that parliament judges itself by. These committees provide valuable case studies of the capacity of parliaments to regulate their own affairs. (Uhr 2005, p. 149)

Importantly, the proceedings of these investigations are published on government websites. In the United Kingdom expenses scandal of 2009 (Winnett & Rayner 2009), one key issue was that the deliberations of the committee tasked with ruling on expenses claims were kept secret. When a whistleblower made this information public, the strong public reaction caused considerable damage to the reputations of otherwise well-regarded politicians. This could not have happened if transparency had been built into the process, as it is in Australian parliaments, and as it is now in Britain.

The adoption of codes of ethics and codes of conduct is the second internal method of attempting to strengthen accountability. When a code was proposed for the Australian parliament, it was made clear in advance that:

The purpose of a code would be to:

1. set public standards by which the behaviour of parliamentarians can be assessed;
2. provide a basis for assessing proposed actions and so guide behaviour;
3. provide an agreed foundation for responding to behaviour that is considered unacceptable; and
4. assure and reassure the community that the trust placed in parliamentarians is well placed.

In order for a code to be credible it must not only be aspirational but also contain clear guidelines and injunctions, prescriptions and prohibitions. (Brien 1998-99)

The working party that designed the proposed code set out eight broad 'principles' intended to 'form the basis of the conduct which is expected of Australian federal legislators'. The eight were:

1. loyalty to the nation and regard for its laws;
2. diligence and economy;
3. respect for the dignity and privilege of others;
4. integrity;
5. primacy of the public interest;
6. proper exercise of influence;
7. personal conduct; and
8. additional responsibilities of parliamentary office holders. (McAllister 2000, p. 27)

In this case, the proposal for a code was eventually rejected. However, most states do have codes of ethics for ordinary members of parliament.

In reality, it is ministers who form the executive branch of government who in most matters exercise real power and who are most in need of ethical constraints (see Mulgan 2002). The Australian federal parliament did adopt a code of ministerial conduct in 1996; five ministers

lost their positions in that term of parliament for minor offences to do with pecuniary interests and travel allowances. Since then, the code has had only as much force as the Prime Minister of the day deems it to have (Kelly 2011, p. 259). This may illustrate how difficult it is to design codes that reflect the accepted standards of conduct. As Uhr remarks,

Democratic public integrity can never be fully ‘systematised’ or ‘rationalised’. It will always be mediated by politics. ... Not every detail of appropriate conduct can be codified in advance: codes of ethics can summarise the spirit of responsible use of public offices, leaving officials with the duty of managing their own conduct in ways that are consistent with prevailing law but largely unregulated by detailed legal instruments (Uhr 2005, p. 26).

The most common forms of *external* accountability are:

1. Reports by auditors-general and ombudsmen
2. Senate or Upper House inquiries into particular government activities
3. Royal Commissions into particular government activities
4. Independent statutory integrity commissions.

Bodies such as these have mainly an advisory, guidance or educative status, though they may also have the power to recommend prosecution. Strictly speaking they do not derogate from the formal powers and privileges of parliaments. Commissions can reach adverse findings against individuals that can be referred to police and public prosecutors, and can make findings that will have considerable persuasive force.

In general, all of these external and internal mechanisms and procedures attempt to arrive at a clearer and sharper ethical analysis of government and political behaviour than occurs in the normal course of events. This could be so only if the codes or commissions bring to bear sharper ethical concepts or judgements than are commonly used.

When a royal commission declares that certain legal but ethically dubious behaviour is ‘improper conduct’, without any sharper analysis of how such a term is defined and how improper conduct is recognised as such, we seem to be at the limits of conceptual clarity. Thereafter, the matter falls under the jurisdiction of personal judgement, with plenty of room left for good faith disagreement. The ultimate form of accountability is the free and fair election, which puts adjudication of such disagreements into the hands of the citizens.

A different problem arises when the ethical credentials of the electoral system or the constitution are called into question. Clearly corrupt elections are unlikely to resolve the problem of a corrupt electoral system. But the ethics of that sort of situation go far beyond the scope of this discussion, which is confined to political ethics within liberal democracies.

Strengthening ethical practices

The founder of the Australian Democrats, Don Chipp, coined a phrase that has resonated in the vernacular when he said in 1980 that his party would undertake to ‘keep the bastards honest’. Chipp’s idea was that a third party would be able to improve the ethical

performance of the two main sides of Australian politics. The phrase has outlived his party, and the task remains a perennial one. In recent decades, the trend has been to move from parliamentary self-regulation, governed by an ethic of responsibility, to the establishment of various bodies and codes, guided by an ethic of accountability. More broadly, political life relies on six kinds of ethical control (apart from the personal values and responsibility of individual politicians):

1. self-regulation, under the theory of parliamentary privilege;
2. accountability to external regulatory bodies;
3. legal accountability;
4. media scrutiny;
5. public debate, including internet debate; and
6. free and fair elections.

Here we have focused on the first two forms of control. Whether going further in the accountability direction would strengthen ethical performance is at least doubtful, since the fundamental problem of *quis custodes custodiet?* (who governs the governors?) is unavoidable. The more power is placed in the hands of accountability bodies, the more attention shifts to the performance of those bodies and to the personnel that occupy them. To the extent that members of parliament are fallible and corruptible by power, to exactly the same extent will be the members of accountability bodies when power is transferred to them.

Outright corruption does not seem to be deeply entrenched in Australian governments. Isolated acts of misconduct do not amount to a systemic ethical problem – it is well understood that ethical problems are most serious when individual misconduct is covered up or officially denied, thus threatening to become structural or systemic. External accountability systems are well-suited to deal with that sort of wrongdoing.

Public distrust or disgust may arise more from observing a steady stream of petty point-scoring, subterfuge, evasion and half-truths than from concern about serious political corruption. The ethics of accountability is not suited to deal with those kinds of ethical shortcomings. The ethics of responsibility also fails this test, simply because it has no answer on how to improve the performance of those who are under-performing.

Another possibility is at least worth consideration. Granted that Australia is a leading and longstanding liberal democracy, that it has free and fair elections, and that its politicians are rarely corrupt, it still remains possible that the democratic processes have become run-down and even decrepit. Party membership and activity are at an all-time low (Leigh 2010, pp. 59-66), yet, despite this, politics is party-dominated. Selection into politics is from a narrow range of candidates. Suspicion about the low standards of political ethics may be better addressed by finding ways to broaden entry into political life, rather than by further regulation in the name of accountability.

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