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Dennis F. Thompson

Excerpt

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## Introduction

### *The Need for Institutional Responsibility*

Ethics scandals have proliferated in the worlds of government, business, medicine, and on the sites of many other professions, even the clergy. In the United States more members of Congress have been investigated and sanctioned for misconduct in recent decades than in all of its previous 200-year history. Some 500 officials in the executive branch have been charged with misconduct since 1970. The top executives of Enron, once the world's seventh largest corporation, perpetrated fraudulent schemes that brought about the company's collapse in 2001. The ensuing inquiries exposed ethical failures in other corporations and in the institutions that are supposed to oversee them. Accountants, lawyers, bankers, security analysts, and brokers were implicated. The Catholic Church in the United States has yet to recover from the most devastating scandal in its modern history – the failure to deal early and properly with the hundreds of priests who abused young children. Less dramatic but no less significant lapses occurred in the healthcare system, philanthropic organizations, universities, the legal profession, and the media.

Are public officials, corporate executives, and other leaders becoming more corrupt? Are we in the midst of a “corruption crisis” as some have declared? There is no good reason to believe that our leaders in general are more corrupt than they used to be. In some respects, they may be less corrupt. Conduct that was widely ignored in previous eras (petty graft, nepotism, payola, drunkenness, and physical violence in Congress) would be grounds for prosecution today. Despite prominent exceptions, the moral and intellectual quality of public officials in many governments is no lower and arguably higher than it has ever

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been. Most corporate leaders are more public spirited than their predecessors, or at least act in ways that are more socially responsible. It is less likely that human nature has changed than that the environment in which human nature shows itself has shifted.

Why then are there so many ethics charges and ethics violations? Reformers have been more zealous in recent years, and the media have been more aggressive, both for good and for ill. But there are other more systematic causes that are probably more important and merit more attention than they have received. First, there are more violations simply because there are more rules to violate. Governments at both federal and state levels have responded to public demands for new rules to limit campaign contributions, require disclosure of financial interests, restrict the gifts officials may accept, and regulate the types of jobs they may take after they leave office. New investigative bodies, such as public integrity agencies and special prosecutors, have been established. Two dozen state legislatures now have independent ethics commissions, many of which regulate the conduct of legislators as well as campaign practices and lobbyists.

Beyond government, many institutions and professions have strengthened both their ethics procedures and expanded their ethics training. In 1982 less than 1 percent of American hospitals had ethics committees; today more than 90 percent of large hospitals have them. After years of ignoring the problem, the American Medical Association is finally addressing the conflicts of interest that physicians frequently face. In most large scientific laboratories that receive federal support, scientists are now expected to undergo ethics training. Corporations are hiring ethics consultants, promulgating codes of ethics, and providing ethics workshops for their employees. After Enron and the other corporate scandals, boards of directors, the accounting profession, and other "gatekeepers" of the corporate world are coming under greater scrutiny. The legal profession, subject to increasing criticism for a wide range of deficiencies in ethics, is considering new approaches to professional discipline. Accountants, architects, clergy, computer programmers, engineers, social workers, veterinarians, among others, have turned their attention to formulating or strengthening the standards of conduct in their professions.

The second cause of the escalation of ethical scrutiny has a deeper source. It arises from a growing movement calling for greater moral responsibility on the part of the leaders of the large institutions that govern our daily lives. The movement expresses a dispersed but

widespread insistence that those who exercise power over us and in our name should answer to us, and a discontent with the traditional means of calling them to account. As voters, customers, employees, patients, or clients, we find our lives affected more and more often by decisions made by others – by politicians, managers, doctors, lawyers, or others who exercise authority in today's society. Their decisions have become not only more complex but also more contentious; increasingly, they involve disagreements about fundamental moral values. At the same time, more people from different backgrounds and with different perspectives are seeking a voice in making the decisions and in influencing the institutions that affect their lives. As the participants in ethics debates become more diverse, the ethical differences become sharper and the ethical scrutiny more salient.

In these circumstances it should not be surprising that charges of unethical conduct have proliferated. But it should also be clear that the usual responses – more (or fewer) prosecutions, more (or fewer) rules, more (or fewer) media investigations – are at best inadequate. What is required is a more direct response to the movement for greater accountability – a more cogent answer to the challenge directed against the traditional forms of responsibility.

We cannot ourselves make many of the decisions in the institutions that govern our lives, but we can try to shape the conditions under which the decisions are made. Those conditions critically implicate the principles and practices by which leaders are held responsible for the decisions. We can and should develop principles and practices of responsibility that are more appropriate to the institutions that now dominate our social and political world.

The essays in this collection, written over a period of twenty-five years, are themselves part of the movement that has sought greater responsibility in institutional life. They are the products of their circumstances, and naturally reflect the concerns of the times in which they were written. But they express a common and consistent theme – the need to develop a more robust concept of individual responsibility for social and political institutions. That theme is now more relevant than ever – not only in the general approach it suggests but also in the specific arguments it supports.

The essays seek to reorient our thinking about ethics in public life toward a more institutional approach to individual moral responsibility. Restoring responsibility, they suggest, will require revising responsibility. In many different ways and in several different contexts,

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the essays suggest that we should stop thinking about ethics so much in terms of individual vices (bribery, extortion, greed, personal gain, sexual misconduct) and start thinking about it more in terms of institutional vices (abuse of power, improper disclosure, excessive secrecy, lack of accountability). We have been paying too much attention to individual, and too little to institutional, vice.

These mistakes are connected. The preoccupation with individual vices sometimes causes, sometimes even contributes to, the neglect of institutional vices. The obsession with individual vices rests on a misconception. It fails to appreciate the difference between individual and institutional ethics. Although they share a common moral foundation, these two kinds of ethics are quite different, both in their origins and in their purposes. Individual ethics originates in face-to-face relations among individuals, and it aims to make people morally better. Institutional ethics arises from the need to set standards for impersonal relations among people who may never meet, and it seeks to make institutions better by making their leaders more accountable.

Institutional ethics does not reject the possibility of holding the institutions themselves accountable. In the case of legal liability, the organization may be the only feasible defendant. Suing the corporation, or threatening to do so, may also be a necessary complement to holding its officers liable. But by blocking one of the most common ways that officials try to avoid taking responsibility – blaming the organization or the system (Chapter 1) – institutional ethics focuses on the individuals who run the organization and those who have the power to change it.

Adopting an institutional approach (Chapter 12), the essays shed light on a wide variety of ethical questions in public life. How can we hold officials in large organizations accountable for policies that many different people had a hand in making (Chapter 1)? Are advisers responsible for the consequences of the advice they give (Chapter 2)? How can the conflict between secrecy and accountability be resolved (Chapter 6)? Why do campaigns corrupt even honest legislators, and what can be done about it (Chapters 7 and 9)? Can elections make representatives accountable (Chapter 8)? The approach also illuminates problems beyond politics by showing, for example, why the ethical principles we should emphasize in hospital decision making are different from those we should apply in doctor-patient relations (Chapter 13); and why good character is neither necessary nor sufficient for ethical management in corporations (Chapter 15).

The institutional approach has three general implications for the project of restoring responsibility. First, the approach supports a concept of responsibility that is best understood as democratic. Although the concept takes several different forms in these essays (sometimes because the contexts are different, sometimes merely because the essays were written at different times), its essential core is constant. Democratic responsibility requires that officials and others who exercise power (1) acknowledge their agency in making decisions for the institution; and (2) provide a justification for their decisions.

The acknowledgment is what is usually called “taking responsibility.” When this is not merely a ritual (Chapter 1), it results in sanctions (informal praise and blame, or more systematic rewards and punishments), which are imposed by citizens or others to whom the agent is accountable. Without rejecting the possibility that institutions themselves may be responsible agents, democratic responsibility, like most conceptions of democracy, respects persons as the fundamental moral agents. It is individuals who are ultimately held accountable. Because officials are regarded as responsible agents when they do not act under coercion or in ignorance, democratic responsibility tracks the traditional criteria of moral responsibility. It transposes the criteria of individual moral responsibility into an institutional key. The project of restoring responsibility is in this way an effort to strengthen individual responsibility in institutional life.

The second requirement – the demand for justification – captures part of what is usually meant by “exercising responsibility.” It expresses the idea that people who have power must justify their decisions to those who are significantly affected by those decisions. Yet because the number of people affected is greater in institutional than in private life, so is the likelihood that they will disagree about the principles that should apply, and how they should apply. These disagreements are often reasonable, and cannot be resolved by an appeal to any simple set of rules, whether it be the law or the Constitution. Even judges, as Chapter 4 shows, should be subject to the demands of certain kinds of democratic responsibility.

To deal with such disagreements, citizens need to deliberate together, seeking to reach moral agreement when they can, and to find constructive ways to live with it when they cannot. Democratic responsibility therefore often needs the institutions of deliberative democracy, not only within but also outside government – for example, in ethics committees in hospitals (Chapter 13) and lay councils in

the Church (Chapter 11). In the international sphere, the disagreement may go even deeper, and the need for deliberation may even prove greater (Chapter 16). These institutions fall short of the ideal of deliberative democracy, not only because people are imperfect and circumstances intractable, but also because the ideal is not always appropriate for all institutions at all times. Several of these essays explore the various forms the reason-giving requirement of democratic responsibility takes in different institutions – including the various standards for what should count as a reason.

A second implication of the institutional approach is that the focus of responsibility should be widened. The standard questions in practical and professional ethics typically take this form: What should I do? or What ought to be done? But equally important is a kind of question that is less often asked: What ought to be done when others do not do what they ought to do? Many of the essays in various ways address the responsibility for seeing that other people do the right thing, and, if they do not, for doing the right thing to correct the problem. The errors of some of the leaders in Enron, the Church and the FBI (Chapter 11) were failures in the ethics of oversight, an important form of moral responsibility in organizations.

More generally, an institutional approach implies that officials are responsible not only for the institutional decisions they make but also for the institutional conditions in which they make them. Institutional reform therefore must be part of the continuing agenda of any project to restore responsibility. The essays mention some possible reforms, but these should be seen less as proposals than as illustrations intended to clarify concepts and principles that could be useful in identifying the need for institutional change and evaluating its success or failure.

A third implication of an institutional approach concerns method – the level of analysis we should use for examining democratic responsibility. An institutional approach operates most fruitfully in a midrange of inquiry between abstract theory and concrete practice where principles and institutions meet. Institutional ethics is informed by philosophy. It favors a concept of responsibility that pays less attention to rules and regulations (such as those in codes of ethics) and more to the broader moral principles that underlie the processes that the rules and regulations govern. If we take institutional ethics seriously, we would for example view the responsibilities of bureaucrats more broadly and less negatively (Chapter 3). In an official manual for the

training of U.S. civil servants entitled *How To Keep Out of Trouble*, one section addresses the question: “Can You Gamble While on Duty?” The answer – in case anyone is in doubt – is “No.” This kind of handbook may be necessary, but ethics education and principles for bureaucrats (as well as for other officials) should of course go further. They should be about not only how to stay out of trouble but also how to take and exercise responsibility. Even in the case of a practice that necessarily involves rules – such as the prohibition of conflicts of interest – we should attend more to the moral purposes of the rules (Chapter 14).

Yet institutional ethics does not aspire to be a branch of philosophy. It counsels theoretical modesty: concentrate on institutional norms rather than philosophical doctrines. It does not take a stand on the question of free will versus determinism. Nor does it seek to resolve controversies about individual responsibility in general – whether, for example, one is responsible only for choices as distinct from circumstances. However such disputes may be resolved, the distinctive problems on which institutional ethics concentrates remain – and in much the same form.

Even in political philosophy, the most fruitful arguments about institutional responsibility rarely turn on choices between grand theoretical alternatives – liberalism or conservatism, utilitarianism and Kantianism, or other competing “isms.” Many of the debates about responsibility evoke elements of these theories, and are easily turned into battles between ideologies or comprehensive philosophies. But the deliberation that responsibility requires is more likely to be productive in the midrange of controversy, where more citizens can express their disagreements and accommodate their differences without abandoning their comprehensive conceptions of morality and politics. This midrange method also offers the prospect of a more meaningful engagement with the actual views of members and leaders of organizations, and the actual arguments of citizens and representatives in government and other institutions.

The essays in this collection are arranged in three sections, each of which explores a different aspect of the project of restoring moral responsibility in social and political institutions. The first section develops the concept of responsibility needed for making ethical judgments about leaders in public institutions. Although the basic concept remains the same across a wide range of contexts, the various roles in public institutions – executive, adviser, judge, legislator – create different obligations and raise different issues even in the same context.

The second section turns to some of the particular vices for which public officials should be held responsible: secrecy in government, corruption in office and campaigns, and immorality in private life. The third section takes the discussion beyond government to issues of moral responsibility in corporations, hospitals, and religious organizations. It concludes with an essay that shows the need for extending deliberation about responsibility across national boundaries.

Restoring responsibility in our institutions may require modifying our attitudes toward ethics itself. We need to resist the popular notion that ethics is only what you do, not also what you talk about. We should not be satisfied with any version of what some would call the John Wayne theory of ethics: stand up for what you think is right, but never say why. If we are to hold our leaders responsible, we ourselves must become more comfortable with articulating ethical principles in institutional forums and in terms that others can appreciate, if not accept. We must be prepared to justify our own decisions to others as we ask others to justify their decisions to us.

In the increasingly complex and contentious democracies in which we live, these justifications – even while addressed to individuals – must go beyond the familiar territory of individual morality. The reasons we ask for, and the reasons we give, should be firmly rooted in the circumstances of institutional life. Although the basic values on which individual and institutional ethics rest and the agents to which they apply are often the same, the interpretations, implications, and applications of the principles of each are often significantly different. The theory and practice of responsibility in democratic societies should respect these differences. Those who exercise power in these societies, whether in government, business, or other pursuits, must accept responsibility not only for their own character but for the character of the institutions they govern.

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PART I

DEMANDS OF INSTITUTIONAL POLITICS

## I

## The Problem of Many Hands

Philosophers and political scientists in recent years have begun to apply moral principles to public policy and to public officials.<sup>1</sup> None of these scholars supposes that moral principles can, without modification, be directly deployed in politics. Indeed, one of their preoccupations is the possibility that public life may require officials to act in ways that would be wrong in private life, raising the classic problem of “dirty hands” (Walzer 1973). But in a significant respect, their analyses are often apolitical: the official they portray agonizing over a moral dilemma seems a solitary figure, single-handedly gathering information and implementing decisions. This paradigm of the lonely leader obscures a pervasive feature of modern government – a feature that stands in the way of applying moral principles, whatever their content, to individual officials. Because many different officials contribute in many ways to decisions and policies of government, it is difficult even in principle to identify who is morally responsible for political outcomes. This is what I call the problem of many hands.

The two most common ways of ascribing responsibility to officials – the hierarchical and the collective models – do not adequately respond to this problem; and personal responsibility, suitably interpreted, can be imputed to officials more often than these models suggest. The criteria for personal responsibility I adopt are common to a wide range of moral theories; they hold us responsible for outcomes insofar as we cause them and do not act in ignorance or under compulsion. On these criteria we can say that one official is more or less responsible than another official without implying, as in the law, that degrees of fault correspond to proportionate shares of compensation