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PERSONAL RESPONSIBILITY AND PUBLIC INTEGRITY

*J. Patrick Dobel**

POLITICAL ETHICS AND PUBLIC OFFICE. By *Dennis Thompson*. Cambridge, Mass.: Harvard University Press. 1987. Pp. viii, 263. \$25.

Individuals who hold office in liberal and democratic societies need a coherent account of public integrity to carry out their discretionary duties. Yet, liberal and democratic theories primarily evolved in opposition to government and therefore granted discretionary power to public officials very grudgingly and with tremendous constraints. In both traditions, a viable theory of public integrity that does justice to the complexity of exercising public office has not developed as yet. Such a theory would give moral and politically realistic guidance for the exercise of discretion in public office.

As I employ the term, public integrity encompasses three separate dimensions of decisionmaking by public officeholders. First, it should define the official standards and processes to which public servants hold themselves accountable. These would define the commitments that frame official judgments. Second, it should account for how personal integrity, initiative, judgment, and responsibility should interact with official standards. A simple theory of official and hierarchical subordination of self to the routines, standards, and status of a role simply would not do justice to the moral reality of oath-bound public service. Moreover, it would invite inflexibility, timidity, and self-protective bureaucrats. Third and finally, a coherent theory of public integrity should accommodate the range of prudential judgments that individual officeholders must make to perform their jobs fairly and efficiently. Formalistic theories of official responsibility doom effective performance by not giving guidance to officials on how to manage or how to protect a program's budget or otherwise guarantee their institution's integrity in the real political environment.

In this essay, I touch upon each of these three dimensions as reference points in a theory of public integrity. I mainly focus, however, upon how Dennis Thompson's recently published book of essays, *Political Ethics and Public Office*, contributes to integrating personal responsibility — the second dimension — with the discretion granted to public officeholders.

The classic theoretical solution to problems of public integrity has

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been to combine elements of democratic sovereignty with hierarchical accountability. According to this theory, the people as sovereign act through their institutions to determine all significant political/moral questions. These questions are then shaped into viable directives embodied in clear and unambiguous regulations or lines of authority that officials must follow. Public servants then "administer" the laws and regulations determined by the legislative political process. The integrity of the officials depends on their obeying the laws and responding to the formal processes of government. While this adherence to democratic government is buttressed by an emphasis upon the virtues of administrative expertise, continuity, and impartiality, any initiatives by public servants can be only advisory. According to this ideal, only the democratic process embodying the popular will can authorize governmental action. All other action is arbitrary.¹

The classical solution poses a number of problems. First, it generates a public officialdom that is reactive, rule-bound, and timid. Second, it depends upon a very pronounced notion of hierarchy that subverts individual integrity, initiative, and dissent within a governmental organization. Third, it simply does not respond to the realities of political life because it does not recognize what public servants must do to accomplish organizational and policy goals. Fourth, by emphasizing formal democracy, it serves the interests of the organized and powerful, since the reality of the system is that special interests too often dominate the legislative process. The poor, the unorganized, and children or future generations are seldom adequately represented. This theory reduces the ability of public servants to act morally (from an individual perspective) allowing them to address only issues of procedural fairness and orderly bureaucratic remedies. It leaves little if any room for an individual sense of responsibility or effective management. Nor does it grant officeholders any independent moral status as trustees — of authority, expertise, law, or minority rights. Only the popular will has moral weight.

Other elements of the liberal tradition better provide for a theory of public integrity than do the purely democratic elements outlined above. Liberalism demands accountability to the popular will, but also demands the recognition of human dignity and individual rights. Liberalism grounds notions of the popular will in human dignity and individual rights, thus it envisions an accountability to standards not based simply upon the will of the sovereign people. Public servants should be loyal to the rule of law and the legitimate procedures by

1. For the most recent expansion of this traditional theory, see J. BURKE, *BUREAUCRATIC RESPONSIBILITY* (1986). He attempts to resolve the weaknesses of the model by allowing discretion to be exercised to protect either the democratic process or the "enterprise as a whole." *Id.* at 41-43 (quoting R. DWORKIN, *TAKING RIGHTS SERIOUSLY* 105 (1978)). I will periodically refer to the book to demonstrate the differences between the traditional theory and the one I argue for here.

which laws are enacted, but they also have obligations to the principles that undergird those processes and that protect individual dignity and rights. In light of the theories of liberalism, officeholders should hold themselves accountable to more than the popular will as expressed in laws and regulations. They should resist or seek to educate or ameliorate the popular will, especially if it subverts standing laws or violates the dignity and rights of individuals. In this sense, John Rohr's recent work on bureaucratic ethics articulates a plausible moral understanding of the first dimension of public integrity — the official standards and procedures to which public officeholders are accountable — which Rohr calls "regime values."²

Dennis Thompson's book of essays on political ethics in public life illuminates the second dimension of a theory of public integrity. Thompson's book comprises a series of extensively revised, though not necessarily related, essays, which he has written over the last several years. The essays sensitively and carefully probe the implications of incorporating notions of "personal responsibility" in our assessments of moral political life. In seeking a meaning for "political ethics," he is looking both for criteria by which citizens can fairly judge public officials and for standards public officials can use in exercising their discretion.

Personal responsibility must be a dimension of public integrity because the very notion of bounded judgment presumes a capacity for personal integrity. An individual of integrity makes commitments that define her selfhood. A commitment to be bound by rules, then, is an aspect of personal integrity, one that defines a basic attribute of a public official's character. These commitments also provide the foundations for an official's own assessments and judgments. The stability and reliability of such commitments give reality to the idea of a morally responsible self. The individual can make sense of her world and explain to herself and others the coherence of her actions.

Personal integrity leads to reliability and is a precondition of trust. This connection between integrity and trust makes oaths possible, and public office in liberal and democratic life hinges upon the validity of oaths. Public officials pledge to act according to official constraints and to accept the directives of the political process. It makes no sense to grant anyone official power if these oaths cannot be relied upon.³

2. See generally J. ROHR, *TO RUN A CONSTITUTION: THE LEGITIMACY OF THE ADMINISTRATIVE STATE* (1986). Rohr provides the most interesting account of how a liberal and democratic understanding of the American Constitution authorizes discretion for officeholders. Rohr argues that public officials act as trustees of existing laws and of basic principles underlying the laws and constitutional order. These principles are spelled out in, among other places, Supreme Court decisions. Both sources, existing law and underlying principles, give officials independent bases to judge and act which are not reducible to formal lines of authority or obedience to superiors. See also J. ROHR, *ETHICS FOR BUREAUCRATS: AN ESSAY ON LAW & VALUES* (1978).

3. J. ROHR, *supra* note 2, at 186-94 (demonstrating the central role oath-taking has in connecting individual integrity and government service).

The validity of the individual's promise depends upon the informed and voluntary nature of the promise. Individuals must follow personal standards of integrity when agreeing to act within official constraints. It is not clear that any oath can require individuals to disregard completely the foundational personal commitments that in fact gave life to his or her public commitment. Rather, the promise can be seen as a warrant for continuous personal scrutiny of one's own conduct in relation to the changing conditions of office to ensure that the conditions still hold.

Government, then, can be understood as an endeavor in which one's actions are ultimately judged in light of the standards of personal integrity that lead the governed to grant the endeavor legitimacy. A series of fundamental premises underlies both personal integrity and governmental claims to legitimacy,⁴ and judgments based on these link the personal and the public. This is the relationship Thompson examines in his book, arguing that officials are "expected to promote the general values we share as well as the distinctive values that inhere in the duties of their particular offices" (p. 4). The moral power of office and oath-bound discretion depend upon individual integrity, and demand that officeholders see themselves both as persons who "have rights and obligations that all citizens share," and as officials "judged by different principles, or principles differently interpreted, than those applied to persons who act for themselves and for less inclusive groups."⁵

In these essays, Thompson insists that individuals matter more than official roles, and that they should be assigned praise and blame as individuals in their exercise of public office. "Political ethics, as presented here, resists the growing tendency to deny responsibility to persons, and the complementary tendency to attribute it to collectivities of various kinds" (p. 5). The first essay is a discussion of the problem of "dirty hands," which presumes a tension between general moral values and problematic political actions (pp. 11-40). Another essay addresses individual responsibility even when routines and "many hands" are involved (pp. 40-65), while another examines the advantages of using criminal negligence categories to judge public officials and avoid the limits of purely hierarchial and collective responsi-

4. For a thoughtful argument about the connectedness of the two realms, see Nagel, *Ruthlessness in Public Life*, in *PUBLIC AND PRIVATE MORALITY* 75-91 (S. Hampshire ed. 1978). Stuart Hampshire in the same volume provides a way of seeing that public morality imperatives are in fact built upon and remain subject to basic moral considerations which private judgment can generate. Hampshire, *Public and Private Morality*, in *PUBLIC AND PRIVATE MORALITY*, *supra*, at 23-54.

5. P. 4. Cf. J. BURKE, *supra* note 1, at 55-99, 164-74. Burke argues that no common principle connects the two realms. Individuals are only allowed to refer to a common morality if the standard is specified in law by the democratic process. Burke specifically rejects the use of other principles to augment judgment, arguing instead that public officials should return to the authorizers for greater specification.

bility (pp. 66-95). Other essays address the private lives of public officials (pp. 123-47), the multiple tensions in legislative ethics (pp. 96-122), and some more substantive problems such as individual responsibility (pp. 123-47), paternalism (pp. 148-77), and social experimentation (pp. 178-202).

This theme of personal responsibility dominates the essays. As Thompson puts it, “[a]n official is morally responsible for an outcome only if (1) the official’s actions or omissions are a cause of the outcome; and (2) these actions or omissions are not done in ignorance or under compulsion” (p. 47). He uses a “deliberately weak” criterion of causal responsibility — “[a] person qualifies as a cause if the outcome would not have happened but for the person’s act or omission” (p. 47). In doing this, he greatly extends personal responsibility and denies most of the usual excuses people use to escape responsibility. But this stance is balanced by several other concerns.

First, although Thompson acknowledges that ethics is a reflective discipline that seeks impartial and disinterested standpoints, he argues that political ethics can be understood best as midrange principles derived by a dialogue with concrete cases. The ethical standards, then, do not dictate but rather should provide “a set of factors that citizens as well as officials consider as they deliberate about decisions and policies” (p. 7). These midrange principles evolve from an understanding of the situational and mediated nature of politics. “[P]olitical ethics is better conceived as a conflict between the different demands that ethics itself makes on politics” (p. 2). Such principles are necessarily unstable and contextual. (Indeed this book will frustrate moralists looking for clear-cut principles that apply to all cases.)

Second, Thompson asks that ethical criteria be realistic and useful. Each discussion identifies in an almost overly modest way appropriate standards to judge actions contextually. He furthermore asserts that all political ethics are exercised “with others.” Any political ethic must account for the limits imposed by collegial authorship, public accountability, and the need to persuade and implement noncoercively (pp. 7-10). In all this, the book avoids the overly rationalistic and hectoring tone that characterizes so much moral thinking about politics. Neither does he resort to Niehburian hand-wringing about sin and the limits of ethics in political life. Rather the book is an effort to regain thoughtful ethical insight over political action.

Thompson’s discussion of legislative ethics, in which he painstakingly examines the multiple moral positions a legislator must assess if he or she is to be effective, exemplifies this approach (pp. 96-122). A purely rationalistic ethic might argue that legislators should only be driven by their conception of the common good. But a political ethic that carefully examines all the moral and practical dimensions involved will not bind legislators so, for legislators are also bound to

consider the individual interests of constituents. Moreover, legislators must also distinguish constituents' expressed preferences from what members believe to be the real interests at stake based upon their experience and judgment (pp. 99-102). Legislators must decide how much they owe to colleagues or party allies, since coalitions are necessary to get legislation passed. They also need to assess what role they can best play in a particular legislature given their own talents and interests. They might want to be rabble-rousers, conciliators, or statesmen. To judge each of these contexts fairly Thompson maps out what realistic requirements of generality, autonomy, and publicity would look like in legislative life.

Thompson lays out the range of judgments legislators make and then explains how they operate. He chides legislators to take more seriously their own task of representing constituents who do not vote or are otherwise powerless. He points out that claims to institutional legitimacy also require legislators to protect better the institution's integrity by policing themselves more consistently. These concerns for institutional legitimacy and concrete reality lead him to suggest that public financing floors make considerable moral and political sense for legislatures while avoiding the predictable problems of other schemes (pp. 114-16).

In one of his many complex assessments, Thompson argues that we should see trading votes, protecting power, and lobbying colleagues as ethically valid actions. But he recognizes as a condition that these should be done in ways that do not compromise legislators' ability to evaluate important legislation on its merits. In other words, effectiveness should not compromise moral integrity (pp. 97-113).

The key to establishing personal responsibility as a component of a theory of public integrity lies in Thompson's insistence that officeholders are real persons with personal histories that carry across official roles (pp. 49-65). Thompson demonstrates that responsibility is not confined just to office and hierarchical relations. For example, he points out that former New York City Mayor Abe Beame should not really be blamed for actions he had to take to bring under control the fiscal crisis he inherited. But that does not end Thompson's assessment. He points out that Beame, who served as controller, budget director, and assistant budget director before his term as mayor, should carry a great share of the blame for the accounting practices and policies that precipitated the crisis (pp. 62-63).

As further illustration of this, he defends a number of common moral intuitions about individuals in large institutions: persons who protest and fight a policy are less responsible than those who pushed it; those who have more resources to act are more responsible than those with less; those with more knowledge or access are more responsible than those with less; those who should have known or acted by

virtue of their office and did not act are also responsible.⁶

This approach contributes to a theory of public integrity by strengthening the moral resources available to a public servant. In a classic problem, individuals who try to remedy incompetence, illegality, or policy problems can find themselves transferred or demoted. A formal insistence upon office and hierarchy as the basis of responsibility simply ends the problem. Instead, Thompson insists that personal responsibility inheres across roles and gives the individual officeholder good reasons to work to rectify the mistakes she knows about. For example, Ernst Fitzgerald, the Air Force budget analyst who blew the whistle on the cost overruns of the C-5A, continued to act even though he was harassed and transferred. Recognition of personal responsibility at this level would also provide a welcome way to impute criminal responsibility to superiors who harassed such officials (pp. 85-86).

This focus on personal responsibility also helps individuals avoid another pathology of bureaucratic and public life. Too often the genealogy of an outcome involves what Thompson calls the problem of "many hands" (pp. 40-65): the procedures that create wrongs or lead to failed policies are the responsibility of too many individuals. The actual people who carry them out can each deflect responsibility. Thompson insists that those who participate in formulating routines or setting bureaucratic precedents are responsible in a morally meaningful way and remain responsible for them. He argues that those with the knowledge and power to effect change are culpable and that even those who know of wrongs or harms but do not have power have an obligation to work to persuade others to change it (pp. 40-95). Thompson's focus on individuals over time with skills, expertise, and knowledge demonstrates that moral responsibility defies the traditional categorization of office and official responsibility.

This focus upon personal responsibility can energize a theory of public integrity and public management. It expands obligations of public servants by focusing upon their greater knowledge, skill, and position to know and act. This warrants them to evaluate critically their actions as public managers and empowers them to rectify harms and accomplish good when they can. It challenges the common excuses designed to insulate individuals from both positive initiative and serious responsibility for their actions. Any theory of public service or public management which wants a robust notion of initiative and action needs to make the link that Thompson argues for.

This focus also subverts another typical bureaucratic technique to

6. Pp. 41-49. Cf. J. Burke, *supra* note 1, at 55-125. Burke spends most of his time arguing that one's actions should be constrained to one's formal duties. He would permit very few unauthorized actions. Even identification of harms or wrongs are constrained by one's limited job competence. This limits what could have been otherwise a very expansive notion of loyalty to the "enterprise as a whole" to one's limited domain within an agency or bureau.

avoid responsibility. In real organizations, influence and power flow along informal as much as formal lines. If persons possess knowledge of wrongs and can affect outcomes within their informal networks, this emphasis upon real personal responsibility warrants them to act beyond confines of hierarchical office to rectify the wrongs consistent with the goals of their real power and responsibility.

For instance, during the Vietnam war George Ball's official duties encompassed Western European Affairs. But by virtue of his access to President Lyndon Johnson and his own predilections, he became the major focus of opposition to the escalation of the Vietnam War. Yet, Ball responded to questions as to why he did not resign, having failed to prevent the escalation, by arguing that it was not his "job." Thompson rightly acknowledges that "[o]ne cannot be culpable for all the policies on which one could have had any influence," and suggests that "it's not my job" would be an appropriate excuse most times (p. 57). Ball, however, was designated by Lyndon Johnson as a special advisor and had a privileged role in the deliberations on Vietnam policies. He in fact relished and took pride in that role.⁷ Thompson reminds us that when important values are at stake or others are not doing their jobs, "some officials may be obliged to do more if the circumstances are exceptional" (p. 56). This is a warrant to evaluate more extensively and more harshly than is mandated by purely formal and hierarchical standards (pp. 47-60).

Such robust notions of responsibility provide great moral resources for individuals to resist illegal, unjust, or inefficient actions. They also provide good reasons for individuals to initiate change. However, these same resources can also inspire dangerous abuses of power. The Iran-Contra affair was initiated by a number of highly motivated individuals spurred on by self-righteous belief. They, especially Oliver North, went far beyond the confines of their jobs and chains of authority and used informal networks to effectuate highly questionable policies.⁸

The Iran-Contra affair should remind us of the importance of the basic reference points for officeholders' actions. These remain the laws and procedures of the political order. These reference points mean that discretion is not unlimited but should occur within a deliberative traditions and procedures with their own logic and limits. Personal judgments and initiatives in government must be tested by public deliberation and accountability. This domesticates personal moral initiative while keeping it alive in government. Policies and judgments

7. See G. BALL, *THE PAST HAS ANOTHER PATTERN: MEMOIRS* chs. 24-26 (1982). See also L. BERMAN, *PLANNING A TRAGEDY: THE AMERICANIZATION OF THE WAR IN VIETNAM* (1982).

8. H.R. REP. NO. 433, S. REP. NO. 216, 100th Cong., 1st Sess. (1987) (Report of the Congressional Committees Investigating the Iran-Contra Affair with Supplemental, Minority and Additional Views).

must persuade others and connect to established meanings and procedures and law. This prevents them from becoming arbitrary and tyrannical.⁹

In this light, the major issue for public integrity in the Iran-Contra affair is the problem of secrecy and intergovernmental deception. The actors deceived the Congress, the president, and the secretaries of defense and state. The pervasive use of secrecy violated the basic precondition of democratic accountability and contributed to both bad and illegal policy. In this regard, I think Thompson's approach could have been helped by a less modest account which laid out more systematically the norms that would have foundational status for public service in a liberal democracy. These norms then needed to be linked to both personal responsibility and broader constitutional values. In this, the book could have used a good summary chapter pulling Thompson's underlying substantive theses together; also each chapter could have used a stronger analytic summary.

The central role of publicity in political ethics is one standard that does run through all of Thompson's work. Thompson consistently minimizes the conditions when secrecy or deception can be legitimately used by officeholders. He requires prior procedures and standards to be in place to determine when secrecy is legitimate and to set time and oversight constraints, and suggests that public records ought to be made available after the fact so that retrospective accountability can occur.¹⁰

Even here, Thompson points out, absolute prohibitions seldom

9. For a vehement argument that all use of "ethical" judgments not strictly bounded by clear law and authorized regulations constitute an arbitrary and illicit use of official power, see J. BURKE, *supra* note 1, at 7-37, 126-41.

I think Burke misunderstands the nature of "arbitrary." He suggests that because moral controversies over rights or principles cannot bring definitive and consensual closure, individual leaders' decisions on such matters are arbitrary and illicit. But arbitrariness is best characterized by giving reasons which are not appropriate or cannot be accepted by others. To avoid arbitrariness, one need not rule out recourse to justifications per se, but only to justifications which cannot persuade or be made consistent with the world of legitimate justification. To the extent that public officials utilize rights language or common-good language to identify new harms or wrongs and propose actions to rectify them, to initiate discussion, and to aggressively bring issues to the attention of interested groups or the public at large or the various branches of the authorizing process, they do not act arbitrarily. They place their reasons in a public domain and link their reasons to justifications understood by the population. The incompleteness of the reasons should not disbar them from use for justification as long as they remain plausibly connected and open to public acceptance or repudiation. For a compelling account of how moral discourse and legal discourse can interact in a nonarbitrary way, see R. DWORKIN, *LAW'S EMPIRE* (1986).

Burke also misunderstands the difference between advocacy and tyranny within bureaucracies. Often public officials' knowledge, skills, and familiarity with the problems they address give them the capacity and arguably the responsibility to bring these problems to the attention of the government or the people. Bureaucrats can then advocate extensions or modifications of plans and programs within the public rules of decision by persuading members of Congress or the executive or the courts or even interest groups. Thus, while acting to enforce existing rules, they can work for change via the real world processes at their disposal, not confined to the austere formal hierarchy advocated in Burke.

10. See chapters 1, 4, and 5.

work nor can they anticipate all the possible events of politics. Similarly, at times mediation and oversight break down, while retrospective accountability occurs only after the damage is done. He accepts this reality of political life, but sees secrecy and deception as the fundamental dangers to the moral legitimacy of democratic politics. He calls for strengthened procedures and asks officials to internalize notions of generalizability to constrain their judgments. As the Iran-Contra affair reminds us, his concerns are legitimate on all accounts. The publicity requirement clearly emerges from his qualified acceptance of democratic ethical principles. "Many of the disputes in political ethics, even about fundamental principles, must be resolved finally or at least partly through some form of the democratic process" (p. 3). While he does not go into why democracy deserves such deference, he does suggest that such a process must not be simply "majority rule" or procedures that merely reflect the power of some citizens. Democracy cannot be relied upon to resolve such disputes legitimately without collective deliberation and "publicity."

Thompson makes a very persuasive case that publicity is so important for democratic accountability that the private lives of many public officials should be open to extensive public scrutiny (pp. 123-47). He suggests several contextual standards. First, the higher the office, the more legitimate pervasive scrutiny is. Second, to the extent that a causal or symbolic connection exists between personal behavior and the requirements of the office, scrutiny is legitimate. He cites the example of Attorney General Griffin Bell's membership in a discriminatory club as an example of such a connection. Third, all officials ought to be subject to such scrutiny and, in an interesting argument, he denies distinctions between elected, appointed, and career officials. Fourth, he suggests that for career officials the scrutiny is generally legitimately kept to their superiors rather than the public. Fifth, to the extent that a person makes his or her personal life part of a public image, he or she is open to scrutiny (pp. 129-40). At the same time, consistent with the careful nature of his analysis, Thompson presents some limits and constraints on the ways this scrutiny can legitimately be exercised by government officials and the public (pp. 140-47).

In a related and central argument, he contends that the classic paradox of "dirty hands" can be dissolved by the public nature of democratic action. According to Thompson the only time it inheres in its full sense is when public officials act secretly (pp. 11-39). The dirty hands paradox argues that public officials must sometimes do wrong in order to do right.¹¹ The problem can be dissolved by utilitarian theo-

11. See generally N. MACHIAVELLI, *THE PRINCE* 90-114 (G. Bull trans. 1961); M. WEBER, *Politics as a Vocation*, in *FROM MAX WEBER: ESSAYS IN SOCIOLOGY* 77 (H. Gerth & W. Mills eds. 1970); Walzer, *Political Action: The Problem of Dirty Hands*, 2 *PHIL. & PUB. AFF.* 160 (1973).

ries of public morality by simply weighing up the aggregate good while dropping out the bad from the final assessments. It can also be denied by those who argue that public life has two different levels of nonrelated morality, so no paradox exists.

Because Thompson sees two moralities linked by common premises and principles, with real humans at the interpretive center, he accepts the paradox of wrong for the cause of good. Yet, even as he accepts its existence, he argues that the paradox is not as severe as it seems. He points out that in a democracy, officials act "for us" and "with others." Consequently, any guilt or obligation implicated in the action is shared by all citizens, not just the official. This accomplishes two things. First, it gets away from the paralyzing assignment of expiation to public officials acting as "suffering servants" or moral scapegoats for the community. Second, it shifts the discussion to issues of compensatory justice for those "wronged" by the actions that served the broader public good.¹²

Both are important changes in the way we view this problem. However, it is troubling that a theory that has as its basic focus the reinsertion of individual responsibility into assessments of governmental effectiveness dissolves this focus in solving the Machiavellian paradox. If a person can simply spread the blame for his actions to everyone within the society, the actual assessment of responsibility will be severely diluted. Yet Thompson elsewhere specifically rejects the practice of diluting the blame and praise by just this technique of making everyone and no one responsible (pp. 44-49).

He makes this claim about the "dirty hands" problem in order to deflate the Lone Ranger mentality of moral assessment in public life, and to devise an ethic that accounts for the collegial and realistic dimensions of public life. But it is not clear that the paradox is or should be resolved by diluting individual responsibility. I think it can be viewed another way, using the insights of Thompson's discussion of legislative leadership.

In Thompson's view, each legislator has two different obligations: to serve the common good and to serve her individual constituents. Legislative action depends upon persuading and making deals with fellow legislators. Thus one can defend stands one takes based upon these legitimate contextual claims of being effective and responding to collegial and constituent demands.

Thompson argues further that members can become active mediators among views of the common good of their colleagues and constituents. "We can think of this creation as occurring in a reiterated, four-step process: representatives express particular views, modify the views in light of what other representatives say, act on the

12. Pp. 11-24. It is interesting that whereas Max Weber addressed this paradox as inherent in the classic hierarchical model, Burke's analysis dissolves the paradox.

modified views, and then seek to justify them to constituents" (p. 107). Thus elected officials become leaders and educators of public opinion and engage in a continuous dialogue with colleagues and constituents. One might easily expand this to include all public officials. The reality of public life is that the success of most programs depends upon a few individuals who are deeply committed and skilled.

Thompson's discussion of legislative ethics reveals the activist preference-changing dimension of official responsibility. If we apply this insight to the "dirty hands" discussion, then the individual responsibility for official actions may be greater than Thompson indicates, especially where the people trust a given public official and agree with her less because they think the policy is good and more because they trust her personal judgment and integrity.

Compensation by the polity for harms done to attain a public good is vitally important. But the burden for avoiding harm should fall more heavily upon the leaders and officeholders. To the extent that leaders misrepresent or push hard for an issue or use their personal credibility to maintain a policy, as Robert McNamara did for the escalation of the Vietnam war, it might be doubly important to keep the blame for such actions squarely on the shoulders of the leaders.¹³ This also places responsibility to initiate and keep alive discussions of compensation on those participants.

The dissolution of the paradox also depends upon the consent of the citizenry, but Thompson again underestimates the active and responsible role leaders have in shaping consent. Many citizens who do consent may do so only because it is retrospective. They may not have consented if they had been consulted. Some citizens, even if consulted, may have dissented. Many others may consent because they trusted the advocates of the policy. In these cases, the paradox for the officials does and should remain. While the blame might be legitimately extended to those who consent beforehand or actively benefit and consent, Thompson's own focus upon the reality and centrality of personal responsibility can remain largely intact.

While an officeholder's standards of personal integrity provide a basis for self-scrutiny and assessment, a basis vital to keeping alive initiative and humanity in official life, as Thompson clearly acknowledges, personal values should not dominate official decisions. But when official decisionmaking is completely insulated from personal moral life, moral squalor is the normal result. In such a world no moral resources exist for individual officials to innovate or to resist

13. Professor Lea Vaughn has suggested to me that one should be very careful about relying on the possibility of compensation. If leaders are not always prone to place compensation on the political agenda, majorities will not necessarily be sympathetic to the need for compensation. The internment of Japanese Americans during World War II is an interesting case in point. The policy was created by a small number of officials who shaped public opinion. That policy, and the harm flowing from it, took 40-plus years to rectify. See P. IRONS, *JUSTICE AT WAR* (1983).

unjust policies. They have no moral reference points outside of the closed, officially recognized system. In a constitutional order where fundamental values of human dignity and individual rights depend for protection upon a basic personal commitment to the constitutional order itself, personal integrity becomes doubly important. Only the personal references can give one the critical distance and moral courage to work to resist or change such deprivations. It is doubly important that this notion of individual responsibility be kept alive because it prevents a person from abandoning critical judgment and handing it over to "routines" of office.¹⁴

One weakness in Thompson's analysis is that it does not pursue the third dimension of public integrity, political prudence. As the essays reestablish personal responsibility in the world of public justification, they often touch upon the importance of contextual judgments of a prudential nature, but they never systematically pursue these. But even individuals who consider themselves personally responsible for their actions in government and give great initial weight to regime values do not possess all the moral and judgmental resources they need for public integrity.¹⁵

Prudence is vital because with rare exceptions all standards of action, all laws and moral claims underdetermine their outcomes. This becomes especially so where several norms or goals are at stake. Additionally, the nature of language and authority suggests that the actual meaning of directives in context is almost always subject to negotiation and judgment.¹⁶ Very few directives or even direct orders are determinatively explicit to cover all contingencies and requirements of action in all times. When more than one goal or moral or legal right impinges upon an issue, unless specifically and clearly lexical in their orderings, then judgments will have to be made about the relative priority or the weighting among priorities given to each goal. The lived cognitive reality of institutional life means that individuals always ini-

14. Pp. 70-89. Thompson's discussion of using negligence criteria to assess personal responsibility in public organizations is one of the most creative and insightful sections of the book. Here he extends the active notion to include stronger anticipatory notions as well as scathing criticisms of the dangers and ineffectiveness of notions of pure hierarchical and collective responsibility in organizations.

15. This term builds upon that used in J. ROHR, *ETHICS FOR BUREAUCRATS: AN ESSAY ON LAW AND VALUES* (1978) *supra* note 2. He refers to the values which a society has consensually agreed upon to govern official conduct in a particular area. These values do not reduce to the exact law itself, but are reflected in the procedures, discourse, and especially the court decisions. Rohr also strongly believes that a set of basic values embodied in the Constitution should also inform judgments in difficult situations. Lastly, he sees the processes which develop these as central and deserving of loyalty and deference.

16. For a discussion of the interaction between moral claims, background principles of the culture and constitution, and laws, see R. DWORKIN, *supra* note 9. He argues that the nature of history and language require that law and morality be seen as engaged in a consistent interpretive dialogue where determinative decisions are framed by deliberation within the system of constitutional principles and laws.

tiate, negotiate, and judge meanings as they exercise discretion. No amount of overdetermination or hierarchical subordination would solve this problem.¹⁷

The activity of governance and effective implementation of underdetermined directives has its own agenda of concerns and skills. Prudence in the areas of building support, handling budgets, and gaining efficiency is required to meet the obligations of public office given the realities of public life. First, the process of lawmaking involves building coalitions, and coalition-building usually means putting multiple purposes into a law without clearly prioritizing them. Thus, laws are usually underdetermined, not only to gain support of a coalition but also because premature exactness can hamstring effective enforcement and override legitimate contextual concerns. Second, the actual enactment of a law is a largely symbolic act; it is more a pledge of effort than a guarantee of result. The result depends upon budget, management, and continuing political support for the law. Every time insufficient resources are given to achieve multiple purposes, political prudence must be exercised. Individuals charged with performing official duties will need to exercise some discretion to build support for their efforts, build coalitions, and maintain their budgets over time.¹⁸ This is so because in the American system, multiple sources of accountability exist. The actual formulation and oversight of policy depends not just upon the vested discretion of career public servants, but upon political appointees, elected executives, legislative committees, and courts. All are involved in oversight and formulation of the explicit purposes of a law. Thus individual officials possess considerable discretion in where to look for accountability in shared powers. Additionally the actual alliances to pass laws and sustain budgets emerge from wide-ranging and permeable issue networks. The blunt moral and prudential reality of political life is that one who is given a charge cannot accomplish it over time without exercising discretion to build outside political support.

Any public servant who is charged with creating or overseeing a program has the warrant to sustain the program's existence and viability, for without these the goals cannot be accomplished. An individual who ignores the process of building support for her program basically jeopardizes the program and its ability to sustain itself in the political process of a liberal democracy. In all these cases, individual public servants will and should exercise wide discretion over a vast range of moral and legal subjects. Thus, a theory of public integrity which slights any of these three dimensions — regime commitments, per-

17. See generally M. HARMON, *ACTION THEORY FOR PUBLIC ADMINISTRATION* (1981); H. MINTZBERG, *POWER IN AND AROUND ORGANIZATIONS* (1983).

18. See generally M. EDELMAN, *THE SYMBOLIC USES OF POLITICS* (1964); T. LOWI, *THE END OF LIBERALISM* (2d ed. 1979).

sonal responsibility, and political prudence — would be inadequate as a basis for evaluating the requirements of public service.¹⁹

It would also have been helpful if Thompson provided a means by which to weigh prudential judgments against personal moral claims. The section on legislative ethics illustrates the importance and weight of such judgments most clearly. Other sections are not as much help. For instance, in the chapter on paternalism he suggests that aid-in-kind programs are objectionable given certain assumptions about the autonomy of the individuals receiving such aid (pp. 170-72). But he ignores the prudential dimension of these programs: it is much easier to build coalitions for in-kind aid for the poor. In the case of food stamps, Farm Belt senators who would not normally support welfare assistance become abiding supporters. Is such a tradeoff between the prudential concern to build a coalition and a violation of individual autonomy justified? I believe Thompson would suggest that it is but gives no framework for assessing such tradeoffs.

At this stage we need some broader mapping of the relative values at stake or some way to get a priority assessment of the relation between core values of public integrity and less central ones. This would cue us as to tradeoffs one should be willing to make. But these are concerns that would complement Thompson's basic project, not negate the import of the essays themselves.

I have argued that a theory of public integrity should view public officials as responsible political and moral actors within a governmental system with multiple sources of accountability and subject to underdetermined goals. An emphasis upon individual responsibility

19. John Rohr demonstrates the legitimacy of looking to multiple sources of accountability in a system where sovereignty itself is divided and shared. J. ROHR, *supra* note 2, at 13-54, 115-94. The absolute importance of tending to the budget for the welfare of the program and the problems which can emerge when "bureaucratic politics" and budgetary concerns override program integrity are discussed in A. WILDAVSKY, *THE POLITICS OF THE BUDGETARY PROCESS* (4th ed. 1984). For the importance of coalition-building to sustain programs and budgets, see F. ROURKE, *BUREAUCRACY, POLITICS AND PUBLIC POLICY* (3d ed. 1984).

It is interesting how limited the classic model is in this area. Burke argues that the bureaucrat facing unclear directives or insufficient funds should return to the authorizing process to ask for a clarification of the goals or an increase in funds. J. BURKE, *supra* note 1, at ch. 5. But politics always involves unclear goals and insufficient funds. A public servant who followed Burke's advice would lose credibility and effectiveness.

More interesting is the insufficient aid classic theory gives to an officeholder committed to a law. Suppose a conscientious bureaucrat who is committed to implementing a program faces an appointed leader who regularly negates effective action and cuts budgets in a way designed to hamstring enforcement. Under a more robust theory like Thompson's or Rohr's, the individual could fight to protect the integrity of the program and the public purposes of which he or she is a trustee.

In Burke's formal democratic model, the individual has little recourse but to complain to the superior or resign. He cites approvingly an official who resigned and ineffectually went public over Secretary of Labor Donovan's crippling of an agency. *Id.* at 191-93. A more realistic and helpful theory of integrity would enable the individual to go to the courts or convince friends to go to the courts to get injunctions. He or she could leak to the press to build outside support or use allies in Congress to pressure actions and save budgets. The traditional theory as Burke understands and revises it, simply misunderstands the moral importance of implementation.

encourages officials not only to obey the laws, but to understand law as an ongoing dialogue among themselves and other bureaucrats, executives, legislators, and judges. This gives individual officeholders a warrant to act, evaluate, and initiate on the basis of their moral assessments, plausibly and publically debated. Dennis Thompson's ideas inform this approach, and provide a far more plausible context for a theory of public integrity than does the traditional democratic sovereign model. Public integrity, then, resembles a triangulation in which an individual would operate within three dimensions. As the range of actions derived from each reference point overlap, the most morally, politically, legally, and prudentially defensible solutions would start to emerge. When they don't intersect, the greatest weight should be given to those suggested by the regime values and procedures, but it warrants the official to work to change the outcome within the framework.

Public integrity begins with regime values. This is supplemented by a robust sense of personal accountability as emphasized by Thompson. Finally, a theory of public integrity needs a stronger sense of political prudence. The intersection of these dimensions should give effective ranges of acceptable answers to questions of discretion and would provide public officials with moral resources to govern realistically and morally.