

CODES OF ETHICS IN GOVERNMENT: A QUICK INTRODUCTION

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This talk--and the discussion to follow--should tell you enough about codes of ethics in government for you to decide whether to consider such a code as a serious option for increasing governmental integrity in Ukraine over the next few years. The talk has three parts. The first simply explains what a code of ethics is, including the institutional arrangements necessary to make it work well. The second identifies reasons for having a code. What, for example, can a code of ethics do that a ombudsman or citizens' charter cannot? The third part identifies certain pre-conditions for a code of ethics. Not every government should have a code of ethics.

I. What is a code of ethics?

For those interested in governmental ethics, living in Chicago is like being a zoologists whose home is the jungle: one need only step out the door to find interesting specimens. So, for example, as I prepared for this conference, the newspapers were following three local scandals. One involved one of the Mayor's bodyguards. His wife ran a security business that had won a contract from the Chicago Park District, an independent entity the governing board of which the Mayor appoints. The two other scandals involved members of the City Council. One resigned in disgrace after the Sun-Times revealed that he had taken a large loan from a trucking executive whom he had just helped to arrange a City subsidy. The other, a lawyer, though still in office, has had to explain why he tried to settle a dispute between the City and one of his constituents without revealing that the constituent was also his client.

Chicago adopted its code of ethics in 1987 and has strengthened it several times since. So, these three scandals demonstrate, if demonstration is necessary, that adopting a code of ethics does not mean the end of political scandal. But the scandals also point to some benefits of having a code of ethics. None of the scandals seems to have involved a crime, an important point in a city where, on average over the last two decades, one councilman a year has been sentenced to

prison for taking bribes, "ghost pay-rolling", or other governmental corruption. The code provided those who were trying to act properly with a defense; and channeled discussion of actual wrongdoing in a way that avoided degeneration into mere legalism.

But I am getting ahead of myself. Let's begin with the basics. "Ethics" has at least three senses; it can refer:

- 1) to ordinary morality (to such rules as "Don't lie" or "Don't cheat");
- 2) to a field of philosophy (the attempt to understand morality as a rational undertaking); or
- 3) to special, morally permissible standards of conduct governing members of a group just because they are members of that group (for example, medical ethics).

I shall be using "ethics" in its third sense. Governmental ethics are special standards, not standards governing everyone.

A code states ("codifies") standards. So, a code of governmental ethics states standards of conduct for those involved with government. Any level of government--national, regional, or local--can have its own code of ethics, whether or not other levels of government do. The code may apply to government employees generally, to a single department, to government officials, to those who do business with government, or to some combination of these. So, for example, Chicago's code of ethics at first applied only to the executive branch; later it was extended to those contracting with the City; and only quite recently, to the City Council. A code may be quite short, a few simple commands, or (like Chicago's) many pages. In general, short codes are easier to remember but harder to apply; long codes, harder to remember but easier to apply. Codes tend to grow in length as experience provides the basis for more detailed guidance.

A code may describe pre-existing practice (as a dictionary definition does), but a government generally adopts a code to change existing practice. A code that guides actual practice (more or less) is an actual code; a code that only states a possible practice, or has only an accidental correspondence with actual practice, is merely a "model code", not an actual one.

A code need not be written. In principle, an oral formulation or even a tacit understanding will do. In practice, however, especially in a large literate society, a code of ethics should be in

writing for the same reason most technical standards are. Putting it in writing reduces disputes about what it actually says, makes it easier to teach, and otherwise helps to ensure that it will be put into practice.

A code of ethics states standards for a particular group. In this respect, codes of ethics resemble laws rather than ordinary morality. Ethics can vary from place to place. So, for example, a particular Ukrainian district need not have the same code of ethics as Chicago--or, indeed, even of the next district. Codes of ethics can vary as much as law can. In two other respects, however, codes of ethics are distinct from law.

First, a code of ethics must, by definition, consist of morally permissible standards. Even if an immoral law can be valid law, it cannot be ethical. A "thieves' code of ethics" could only be ethics in a degenerate sense, an ethic or ethos, much as counterfeit "money" is money only in a degenerate sense.

Second, the standards in question must morally oblige members of the relevant group. But, by definition, a code of ethics cannot oblige merely by restating a common moral standard or applying it to specific circumstances. A code of ethics must require something ordinary morality merely permits. A code of ethics must set a standard "higher"--that is, more demanding--than ordinary morality. So, for example, Chicago's code of ethics is a code of ethics in part because it requires City officials to refuse substantial gifts from anyone doing business with the City. Ordinary morality does not require officials to refuse such gifts, however large, at least so long as they are given innocently.

How, then, can a code of ethics be both morally obliging and more demanding than ordinary morality? The answer is simple: it can be both if the code of ethics is made part of morality by some morally obliging act. So, for example, a promise can, in conjunction with some ordinary moral standard ("Keep your promises"), add a new morally permissible standard (what was promised).

Here, then, is the chief difference between codes of ethics and (ordinary) law. A law is a law whether those subject to it agree to it or not. Law is an external imposition, achieving order by threatening liability, physical restraint, or punishment. In contrast, a code of ethics achieves

order by getting new moral commitments from people who take such commitments seriously. That is true even when, as generally happens with codes of governmental ethics, these are written into law. The code of ethics, if it is a code of ethics at all, is a personal code; its claim to obedience must rest on a person's individual commitment, not on external imposition. A code of ethics is nonetheless never merely a personal code; the commitment in question must be shared with others in the group (for example, with other government officials). Ethics, by definition, always governs a group.

A code cannot achieve its purpose unless those subject to it generally do as it requires. What a code of ethics requires is, by definition, more than would otherwise be required. So, a code of ethics is, as such, a burden. Undertaking that burden is reasonable, when it is, because the code creates a cooperative practice, each participant in the practice benefiting (primarily) from what the others do and would not do did they not believe the rest were generally doing the same. So, for example, a code of ethics that forbids government officials taking bribes benefits each government official (in part) because the fact that other government officials refuse bribes helps to give all government officials a reputation for integrity. That reputation would not long endure should more than a few officials take bribes.

The standards of a (morally permissible) cooperative practice are morally obliging for those whose participation is voluntary (just as not cheating is a moral obligation for anyone voluntarily sitting down to play chess). Participation in government as official, employee, or contractor is, of course, (generally) voluntary. So, each person in government is morally obliged, even without oath or promise, to do what the code says, at least while there is good reason to believe that governmental practice is (more or less) up to the standard the code sets. There need be no explicit oath or promise to obey the code.

What reason would anyone subject to a code of ethics have to believe that governmental practice is (more or less) up to the standard the code sets--and so, that he too is obliged to do as the code says? That will depend on circumstances. For example, in a society where people are reasonably sure an oath will be lived up to, requiring that those subject to a code take an oath to obey it would suffice to give everyone subject to it good reason to believe that everyone else

would obey it too. In any society much like yours or mine, however, an oath is unlikely to suffice. So, ethics codes require one or more of the following four supporting conditions.

1. Realistic standards. The code must not be very demanding, that is, it must not set standards even decent people are likely to disregard. So, for example, in a city in which government employees do not receive a living wage, a code of ethics should not forbid government employees to accept "side payments" to do what they should do anyway. Even a decent person, forced to choose between watching her family starve and accepting side payments in violation of a code of ethics, is likely to accept the side payments. And, because that is so, no one can have much reason to believe others are abstaining from taking bribes and so not much reason to abstain herself. The prohibition of bribery would be born dead.

2. Screening for character. If someone subject to a code of ethics has reason to believe that most of those subject to it are dishonest, or otherwise likely to ignore even realistic standards, he will have no reason to follow the code himself. For this reason, professions screen candidates for admission, excluding those who seem untrustworthy. Governments often have similar procedures for hiring employees, appointing officials, or even qualifying contractors. There should also be procedures for expelling those already "inside" once they reveal themselves unworthy of the trust a code of ethics puts in them. A code of ethics is for the trustworthy.

3. Ethics training. Ethics training has two closely-related purposes. One is to transmit information, to ensure that each person subject to the code knows what the code requires. The other purpose is to assure each person that all the others subject to the code understand it more or less as she does. Though ethics training may be as simple as asking each person subject to it to read the code, much ethics training takes the form of extended discussions of representative cases or problems. These "case discussions" not only put flesh on the code's bare bones, they also allow each person participating in the discussion to hear what others in the group think. Where, as generally happens, discussion leads to one or a few responses everyone

regards as permissible, the discussion provides concrete assurance of agreement on what the code says--and of the personal commitment of others to do as the code says. (Such case discussions can also be used, without a code, to increase sensitivity to ethical issues.)

4. Ethics board. The primary function of an ethics board is to provide authoritative interpretations of the code of ethics, not only for officials but for anyone subject to the code. Such interpretations--published in easily accessible form--provide further assurance of agreement on what the code says. The board can resolve disagreements that might otherwise fester. In this respect, a board of ethics is much like an ordinary court of appeals. In another respect, it is not: board interpretations are advisory, having the authority of reason rather than law. That authority derives in part from the reasoning the board offers in support of its advice, but in part too from the trustworthiness of those giving the advice. So, in Chicago, the board consists of respected private citizens, not government officials, employees, or others whose advice might be thought "too political".

Where board interpretations have the authority of reason, the board has two secondary functions as well. One is to provide guidance to individuals before they act. Individuals seeking to conform their conduct to the code will do as the board recommends, usually because they find its advice convincing but sometimes simply because they think others will find it so. The other secondary function of the board is to protect individuals who act as the board recommends. For example, contrast public response to the Mayor's bodyguard (the one whose wife owns a security business) with its response to the councilman who accepted the loan from the trucking executive. The bodyguard had asked the board for guidance and acted as advised. Because the board had ruled that the code only barred his wife from contracting with the City itself, the scandal has focused on whether the board's interpretation of the code was right and, if it was, whether the code should be changed. Because the councilman chose not to ask the board's advice, he did not risk being told he could not accept the loan. But once the loan became public, he was open to charges of corruption, charges that forced his resignation, even while the newspapers still debate whether what he did was allowed under the code.

5. Compliance procedures. Though a code of ethics works because those subject to it trust each other to do as they should, having a code of ethics is consistent with procedures to assure compliance. Indeed, in any society much like yours or mine, such procedures are necessary to maintain enough trust for the code to claim obedience.

We may distinguish at least three ways in which compliance procedures can support a code of ethics. First, the procedures may simply reduce grounds for suspicion. So, for example, a requirement that officials disclose their personal finances would reduce grounds for suspecting that a particular official's decision has been affected by financial interests that, in fact, she does not have. Second, some procedures, such as auditing, provide assurance by identifying error and correcting it. Such procedures actually help maintain obedience by educating the honest: here's what must be changed. For the dishonest, of course, an audit has a different function, which brings me to the third way in which compliance procedures work. They can identify those who do wrong knowingly or recklessly--that is, those who cannot be trusted to do what the code says. These are people for whom the criminal law, not ethics, is the appropriate mechanism of control. Their arrest, trial, and punishment helps assure those who mean well that they will not be prey to those who don't.

That, in outline, is what a code of governmental ethics is. Such a code is not inconsistent with a "citizens' charter" or "citizens' bill of rights". Indeed, a citizens' charter might help assure compliance with a code (and might well share many provisions). Nonetheless, a code of governmental ethics differs from a citizens' charter in emphasizing relations among those in government rather than the relationship between government and those the government serves. The citizens' charter has its roots in the consumer movement; the roots of a code of governmental ethics is in the professions.

Much the same is true of an ombudsman or citizens' advocate. The office combines certain investigative powers characteristic of an auditor or inspector general with responsibility for resolving citizen grievances against government. In practice, an ombudsman's recommendations may operate much as those of a board of ethics do. In theory, however, the

board of ethics is concerned primarily with relations among those in government; the ombudsman, of relations between government and those it serves.

II. Why have a code of ethics?

Why then have a code of ethics? Why not make do with ordinary law, with a citizens' charter, with an ombudsman, or with some combination of these? There is, I'm afraid, no single answer to that question. Everything depends on local circumstances. All I can do here is point to two considerations relevant to deciding whether a code of ethics would add anything to what law, citizens' charter, and ombudsman offer a particular government.

First, a citizens' charter or ombudsman is, like ordinary law itself, an external imposition on those in government. The justification of impositions rests in the interests of others--generally, those of the ordinary citizen--not the interests of those in government. In contrast, a code of ethics can, in part, be justified by appeal to the interests of those subject to it. If it is to be a code of ethics in more than name, it must consist of standards everyone subject to it wants everyone else subject to it to obey, wants that so much that he too would be willing to obey if that were the price of getting others to do the same. A code of ethics has a claim on the cooperation of those subject to it that law, citizens' charter, and ombudsman do not. That is an important advantage.

Another advantage of a code of governmental ethics is that it is a natural vehicle for improving relations among people in government, as well as (or even instead of) government's relation to those it serves. So, for example, a code of ethics might seek to prevent officials giving government jobs to family members even when giving them to family members does not affect efficiency or otherwise aggrieve ordinary citizens. In contrast, a citizens' charter or ombudsman attempts to resolve disputes arising between citizens and government. Neither is necessarily concerned with relations among those in government--though concern with such matters might be tacked on.

III. What are the preconditions for a code of ethics?

From what I have already said, it should be clear that not every government should adopt a code of ethics. Those in government must be ready for a code. So, for example, when Chicago first adopted a code of ethics, the City Council was exempted. The Council took a decade to decide that it should come under the City's code. Why did the Council eventually agree to come under the City's code? My impression, and that's all it is, is that the majority of the Council got tired of being described as "a bunch of crooks", tired too of telling constituents or government contractors to put their money away. They also came to believe that they could live with the City's code.

I doubt that the majority of the Council need a code of ethics to remain law-abiding, to get re-elected, or even to live morally decent lives. What they need the code for is to raise standards of conduct around them to a level less likely to lead to embarrassment; they need the code to create an environment less hospitable to wrongdoing.

So, there are at least two pre-conditions for adopting a code of ethics: First, the code must be one with which those subject to it can live; it must not impose too high a standard. Second, the code must be one that gives those subject to it something they want--whether a good reputation, decent working conditions, a sense of working in an honorable enterprise, or the like. Though a code should not set standards too high, it must set them high enough to repay the burden it imposes. Sometimes standards high enough to repay obedience are too high to obtain obedience. Then government should not adopt a code of ethics.

Michael Davis
Center for the Study of Ethics in the Professions
Illinois Institute of Technology
Chicago, IL 60616-3793