

# ETHICAL GOVERNANCE

## More than Rules: On Some Uses and Limits of a Compliance Approach to Ethics

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*Excellence in public service and good governance requires the acquisition of significant knowledge, the development of crucial skills, and the ability and willingness to follow relevant rules. But, it requires even more. Each of these is important, necessary even, but together knowledge, skills, and rules will be insufficient to achieve excellence. Excellence also requires that practitioners consider the goals and values present in action and policies. Following the rules, being in compliance, even with knowledge and skill, might help us avoid errors, but it will not be enough to help us get-it-right.*

You may have read about Klaus Iohannis's surprising victory over Victor Ponta to become president of Romania in 2014. A key question in the campaign was whether or not the newly-elected president would continue to support the work of Romania's National Anticorruption Directorate (D.N.A.) that, by early autumn 2014, had successfully expanded its prosecution of graft and corruption violations beyond low-level state employees to include bigger fish; catching among others, a former prime minister. The open and frank discussion of governmental transparency and accountability is a relatively new phenomenon in Romania. After decades of distrust under Nicolae Ceaușescu, followed by successful efforts to join NATO and the European Union, Romania ranks only 69th of 177 countries on the Corruption Perception Index. This places it below Georgia, Rowanda, Saudia Arabia, and Cuba. The World Bank indicates that Romania has stalled for most of the past decade in efforts at accountability and anti-corruption. Recently several brave individuals, such as Laura Codruta Kovesi, who heads the D.N.A., Cristina Guseth of Freedom House, and Diana Lupescu, of the National Agency of Civil Servants, have led the charge to reform ethical standards in the country. My co-author and I were fortunate enough to be invited by the *Romanian Journal of Local Public Administration (Revista Romana de Administratie Publica Locala)* to join in conversation with the latter two individuals at the Romanian Symposium on Collaborative Public Management: Pathway To Good Governance At The Local Level, held 16-26 June 2014. What follows below is a summary of our remarks at that event. We believe our comments can help both new and established practitioners to think about that nettlesome subject of ethics.

### What Does it Take to be a Good Professional?

No one wants to be bad at a chosen profession. Who would seek work as a department manager, a director, or an elected official, with the aim to do the job poorly? No one. Rather, we desire to be good at what we do - to be a good manager, a good leader, a good director. We all want to be good professionals, but taken further, it seems reasonable to claim that we also want to be good parents, good siblings, good partners, good friends, and so on. So, although our focus in this article is on professional lives, the ideas discussed are more broadly applicable.

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What does it take, then, to be a good professional? Part of the answer is obvious; it requires knowledge and skill. One of the distinguishing characteristics of professional roles is that they require specialized knowledge. Beyond specialized knowledge, professional roles necessitate the development of skill-sets in order to translate knowledge into action. Often these skill-sets are also specialized. For instance, public managers might pursue professional education through a Certified Public Manager program or an MPA, whereas attorneys will attend law school and then continuing legal education. Some skills are generalized and necessary in most professions, such as skill in prioritizing tasks, but a surgeon or chef needs skills in cutting that a manager of a public agency typically does not.

## **Technical and Procedural Knowledge and Skill are Necessary, but are not Enough**

While necessary to be a good public administrator, technical and procedural knowledge and skills will not be enough. Not only might knowledge and skill be themselves inadequate to the task (as when an issue arises due to a new technology) but also knowledge and skill can be used for bad ends.

In his 1946 book, *Concord and Liberty*, the great 20<sup>th</sup> Century Spanish writer José Ortega y Gasset noted, “Law is born from despair of human nature.” While knowledge and skill are necessary to being a good professional, they are not sufficient. Knowing how to do something does not tell us whether it should be done. If we would always do what is right, then we would need no rules and no laws. But, as we all know, humans sometimes act badly. In a democratic social order it is likely that bad actions are more often the result of a lack of knowledge, bad habits, and/or inattention than to outright maliciousness.

| There are many possible contexts and reasons in which bad actions can and do occur: Sometimes people use knowledge and skills in public agencies for selfish reasons, for private gain for themselves or friends and family. Or, people may use knowledge and skill for improper or bad ends because of a lack of guidance. Or, sometimes rules exist, but they are bad or unjust rules. They may be unjust in the context of a generally unjust regime (authoritarian regimes have laws and courts and so on), or the rules may be unjust laws or regulations within a democratic society, as existed in the United States under the former Jim Crow laws.

Having rules is a typical response to A and B, rules can provide guidance and alert us to inappropriate selfishness in our own actions and in the actions of others. But as we shall see in the next section, following the rules, even good ones, is not enough. As C points out, the rules may be wrong, and in our final section we will turn our attention to criteria for evaluating whether a rule is a good one or not.

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## Guidance from Rules is Necessary, but Compliance is not Enough

Rules take many forms. Some are formalized, such as the rules for chess. Others are formalized but in practice have many variations, such as the rules for Monopoly. Yet others are formalized and have interpretation built-in to their application, such as the strike-zone in baseball. Many rules are informal, such as habits of applauding or not between movements of a classical music performance. Rules offer guidance about when and how to act, as well as when and how to make use of the knowledge and skills we have. The rules also tell us which knowledge and skills are relevant to the contexts in question. In this context we are concerned with the rules that are relevant to work as a public administration professional. These rules are found in laws, regulations, and codes of ethics or conduct. While these different types of rules serve many similar purposes, as outlined below, it is important to note that whereas laws and regulations carry formal sanctions, this is not true of all professional codes of ethics or conduct. Examples of codes of ethics or conduct are professional codes, such as the *Code of Ethics* of the American Society for Public Administration (ASPA) or the *AMA's Code of Medical Ethics*, or institutional codes, such as the *Code of Conduct for EPA Staff* or the *Code of Conduct of the International Federation of Red Cross and Red Crescent Movement*. Violation of the AMA code of ethics can lead to loss of membership and can threaten one's license to practice, but violating the ASPA code of ethics carries no such possible sanction. All of these (laws, regulations, codes) are types of rules.

Rules serve many purposes for the professional, including:

- Informing clients, the public, other professionals, and practitioners of standards for behavior and decisions.
- Defining and promoting the profession's or institution's image – internally and to the public
- Providing support for practitioners
- Serving as inspiration and guidance
- Regulating behavior
- Standardizing professional practice
- Communicating expectations to professionals, clients, citizens, and government

But, rules are not the same as ethics; and following rules is not the same thing as acting ethically (even if it is generally an ethically good thing to follow just and good rules). Rules tend to provide guidance in reaching minimal standards and in avoiding some wrong. Ethics also includes working to create a flourishing and vibrant situation, toward more than merely avoiding wrong. For example, suppose one works in an election office. The rules will help that person avoid doing explicit wrong and thereby decreasing the number of eligible and interested voters who participate. But, ethics might also require that we encourage more people to vote and support more active citizen participation, as that is a good for a democracy. In this context, a fuller understanding of the ethical responsibilities of a public administration professional who works in a voter registration or county election office points toward courses of action beyond avoiding violations of law. Adopting the view that we have met our ethical

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obligations as professionals when we meet the minimal standards required by following the rules will keep us from recognizing and fulfilling our ethical obligations to work to create a better world. Ethics understood in this way requires that practitioners consider the practice and goals of their jobs and evaluate whether the existing practices and policies are the best way to meet the goals. Ethics also requires evaluating how we understand the goals of a job. In the example of the voter registrar this might mean thinking of new ways to encourage registration and participation, in addition to a more limited focus on accurate processing of voter registrations. The following chart offers a brief comparison of rules, regulations, and codes with ethics, and highlights the differences between rule-following and ethics.

## A SUMMARY COMPARISON OF RULES AND ETHICS

RULES: Law, Regulation, Codes	ETHICS
Minimal Standards	Aim at maximizing good, more than minimal standards
Cover limited range of cases – previously encountered	Provides tools for evaluating new cases.
Breaking a law or regulation can lead to criminal or financial penalties	Can evaluate whether laws, regulations, or existing practices are just.
Breaking codes can result in loss of license or job	Ethical failings are judged by individual conscience, or by one’s community.
Rest upon ethical principles and values, but do not evaluate those principles and values	Discussion, questioning, and evaluating ethical assumptions in order to obtain better understanding

As the above example of someone working in an election or voter registration office illustrates, a focus on rules, while necessary, can leave us with the idea that if we follow the rules we have done enough. This is sometimes referred to as an Ethic of Technical Compliance, a term coined by University of Miami Law Professor William Widen in his 2003 examination of the Enron case. The Ethic of Technical Compliance takes two forms. First, the Ethic of Technical Compliance can be articulated in the idea that if a person follows the rules, then that is enough. Of course, the rules may not be comprehensive, may be outdated, or may fail in subtlety or complexity. And, even if they are generally good rules, they are likely to direct us only toward avoiding a wrong, not toward achieving a good. Remember the example above; we are technically compliant with the rules of work as a voting official if we do not unlawfully exclude

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anyone. But, if we believe this is all that is required – avoiding a wrong – then we do not do anything to increase democratic participation.

The second sense of the Ethic of Technical Compliance is when someone follows a narrow and technically correct reading of the rules, but will not act beyond that narrow understanding. This is commonly found within large organizations, and is a long-recognized characteristic of bureaucracies. Returning to the above example, if a voting official recognizes that more could, and perhaps should, be done to facilitate participation but does nothing to make that happen because increased participation is not required by a narrow understanding of the job, or because the inertia of the organization is to continue what is already done and not rock-the-boat, then technical compliance occurs but the ethical good is missed.

In his 1953 novel, *The Long Goodbye*, Raymond Chandler noted, “The law isn't justice. It's a very imperfect mechanism. If you press exactly the right buttons and are also lucky, justice may show up in the answer. A mechanism is all the law was ever intended to be.” While it is necessary to have rules to provide guidance, and to help us guard against selfish motives, following the rules is not enough. We now turn our attention to what is lacking, to what is necessary to ensure that knowledge and skills and compliance are directed toward the good.

## **The Necessity of Ethics and Justice**

To be a good public servant one needs knowledge and skill, and compliance with rules. One also needs a larger orientation toward ethics and justice to provide guidance in developing and evaluating good rules and to assist when knowledge, skills, and rules are inadequate. As noted in the chart above, ethics provides tools and perspectives to evaluate rules. Here we offer some considerations to illustrate how ethics assists in evaluating the justice of our rules.

In his 1963 “Letter from Birmingham Jail,” Martin Luther King, Jr. articulates clear and useful criteria for distinguishing a just from an unjust law, a good from a bad rule. There are three ways in which a law can be unjust. The first is that a law can be unjust in content if it requires that we treat people as less than full people, or that we deny rights to fellow citizens, or that we treat others in a dehumanizing manner. This means we should evaluate whether the rules we are supposed to follow, or the rules we write, enact, and enforce, serve to encourage greater human flourishing (King asks whether the rules are based on love), or if following the rules will deny some aspect of humanity and respect to others. In this way rules can be unjust in content. For example, consider the case of *Symm Vs. United States* (US Supreme Court, 1979) in which the Supreme Court affirmed a lower court ruling that LeRoy Symm, County Tax Assessor in Waller County, Texas, acted in an unjust manner when he prohibited students at Prairie View A&M University from registering to vote. The rule Symm implemented was not a rule based on affirming humanity and encouraging participation, but one that required exclusion and dehumanization.

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Second, rules can also be unjust in the contexts of their enactment and application. Rules are just when everyone affected has a voice in their drafting and when the rules apply equally to all. Thus, fair and equal application and participatory development of rules must be two of our guiding principles, beyond the rules themselves. One important cause of cynicism about government is the idea that the people making the rules are not like and do not understand those who must follow the rules. If we act ethically, we should seek to involve those most affected by a rule in the development of the rule. And, thirdly, we should ensure that rules are not applied to just some individuals and not others. A town near where we live has a no alcohol in public parks ordinance. It is more likely to be invoked to a boisterous group on a Saturday afternoon than to the sedate audience at the Summer Concerts-in-the-Park series.

Such unjust application, even if it is a good rule and even if it is democratically enacted, is unethical. Returning to the example of voter registration in Waller County, Texas, in 2004 (and again in 2006) thousands of students at Prairie View A&M were denied registration or turned away from voting. They were denied these forms of democratic participation even though doing so violated the ethical requirement of supporting their rights of citizens and in spite of the 1979 Supreme Court ruling affirming their rights to register and vote. In this instance the rules governing voter registration and access to voting were applied differently to long-time county residents than they were to the students.

## A Challenge for Public Servants

In an essay written 30 years ago, called *Power of the Powerless*, Václav Havel, the great Czech poet, philosopher and president, accurately captured the challenge we have here discussed, “The law is only one of several imperfect and more or less external ways of defending what is better in life against what is worse. By itself, the law can never create anything better... Establishing respect for the law does not automatically ensure a better life for that, after all, is a job for people and not for laws and institutions.” As public servants, we want to avoid mistakes, we want to uphold and encourage respect for the law, but we should also want more – to work together with each other, with other citizens, and with members of our communities to create a better life for all.

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