

The Obligation to Play Political Hardball

Do politicians have an obligation to play hardball? This sounds like a very odd question. It is natural to view politics as a realm where morally questionable means are particularly prevalent, and moral qualms particularly unavoidable. Hardball — the use of questionable, qualm-producing means — might be thought permissible in certain circumstances, but how can it be obligatory?

These ordinary opinions are hardly groundless. Nonetheless, I want to argue that the notion of an obligation to play hardball, far from being outlandish, is in fact implicit in a sound understanding of political practice. The basic argument is this: in most circumstances, a politician does not stand alone, but rather acts on behalf of others, or acts in ways that affect others, in pursuit of certain ends that others have good reason to expect him to pursue. To become a politician is in most circumstances to say to others that you take seriously the acquisition and maintenance of power and its employment to further the goals you share with them. You take upon yourself the responsibility to act effectively, which not infrequently entails the obligation to use the kinds of tactics I am calling "hardball."

The 1988 Campaign

To understand my motivation for posing the hardball question, let me reflect briefly on the 1988 presidential campaign. There is, I think, a general agreement that Michael Dukakis failed to campaign effectively. I want to argue that this and other such failures are more than tactical blunders. To the extent that they are rooted in certain erroneous conceptions of political practice, they represent a moral failing and a failure of responsibility.

Dukakis didn't want to conduct the campaign on the terrain defined by Bush, either by defending himself against Bush's charges or by responding with charges of his own. He wanted to be affirmative, not negative; he wanted to talk about what he regarded as real issues, not phony ones; and he wanted discourse to be rational, not emotional or demagogic. These are understandable desires. But my contention is that they reflected a kind of recoiling from the rigors of the combat Dukakis had willingly entered. The party that nominated him had every right to expect that he would do what was necessary to maximize his chances of winning, shaping his tactics in relation to the world as it was, not as he wanted it to be.

This may strike you as the easy part of the question.

What about George Bush? Did he have an obligation to campaign as he did? I am a partisan, activist Democrat, but I am compelled to answer that question in the affirmative. In accepting his party's presidential nomination, he took on the same responsibility for effectiveness that Dukakis had earlier assumed. In discharging this responsibility, moreover, he had to work within a context largely created by others; in particular, he had to overcome the "wimp factor" by projecting guts and strength. And he succeeded.

I would be the first to concede that the spectacle wasn't exactly edifying. But a reasonable person surveying the terrain in July of 1988 could well have come to the conclusion that nothing else was likely to work: the electorate was in no mood to hear a serious discussion of the long-term problems facing the country, emotional issues such as drugs and crime dominated the agenda, and the media were determined to focus on tactics and personalities.

Given our founding tradition of populist suspicion, it is natural for us to blame our leaders for these ills. I think the truth lies elsewhere. George Bernard Shaw once defined democracy as the only form of government in which the people get exactly what they deserve. Our politicians will lose all incentive to employ negative advertising when it stops being effective. They will talk to us seriously about serious things only if we give them good reason to believe that they will be rewarded — or at least not punished — for it. It has been a long time since that last happened.

Means and Ends

As posed, the question of playing hardball is a subset of a larger issue — the relation between ends and means in politics. To add some particularity and bite to the hardball question, let me offer the following specifications.

First, the question as I wish to address it arises only if we assume the legitimacy of a particular politician's end or cause. We are not, for example, talking about brutal repression, mass enslavement, or genocide as policy goals to be implemented.

Second, I will make the anti-utilitarian assumption that (at least) some acts, considered in themselves, above and beyond their "consequences," have intrinsic moral properties that render them distasteful or objectionable, the sort of thing that a decent person would regard with aversion and hesitate to do.

Third, I want to make the anti-absolutist claim that in certain circumstances it is at least permissible to perform acts that, considered in themselves, must be judged morally distasteful.

Fourth, to say that a "politician" has responsibility to perform such acts is not to say that nonpoliticians have that (same) responsibility, or even that it would be permissible for a nonpolitician to act in that way. That is, for the purposes of this argument I will make the familiar but by no means uncontroversial assumption that social roles affect moral rules.

Doesn't this entangle me in Aristotle's distinction between the good man and the good citizen, or (even more starkly) in Machiavelli's dictum that leaders must often choose between their fatherland and their souls? I don't think so, because I believe that a decent human being can remain decent while playing hardball if required by circumstances to do so. But (someone might retort) wouldn't it be better to avoid altogether the circumstances that continually test our sense of where to draw the line and tend over time to corrode our conviction that the line exists? I don't think that's correct either, because the effort to lead others toward legitimate goals is always permissible, and sometimes obligatory. I believe, for example, that George Washington had no choice but to accept the presidency of the infant republic and then to act effectively in that capacity.

How, then, are we to understand the nature and limits of what I have been calling "hardball"? As the term suggests, sports analogies may be illuminating.

In sports, there is a three-fold distinction: hardball is understood in distinction from softball, but also from

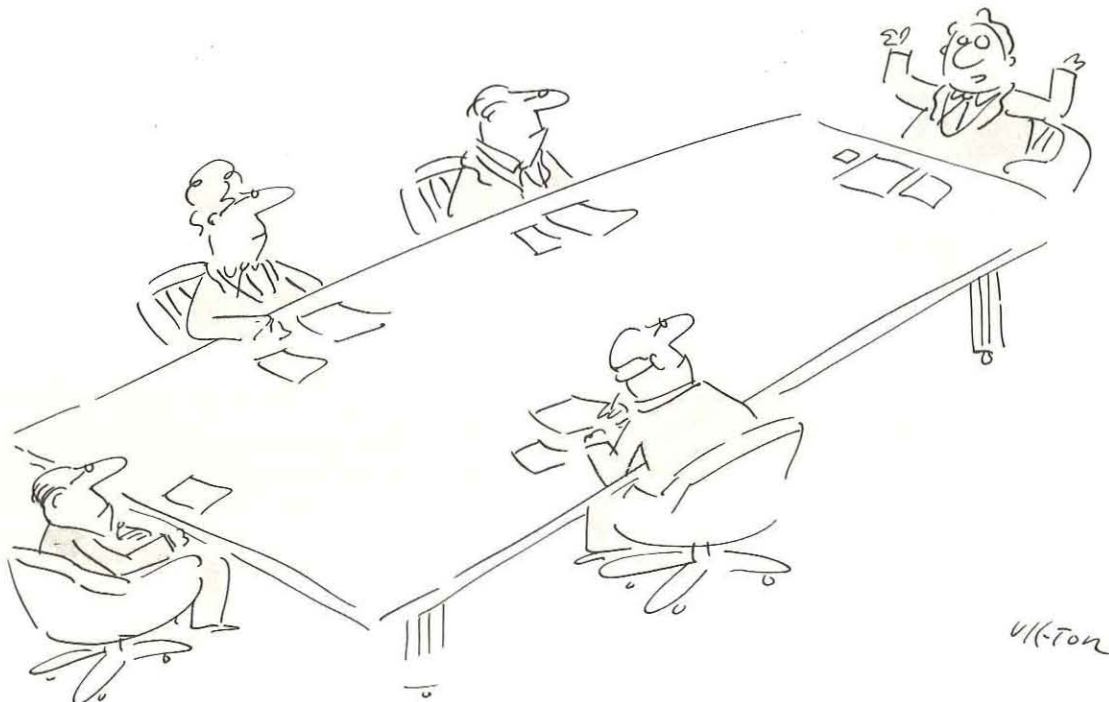
dirtyball. Consider an example from baseball. Hardball means sliding into the second baseman to break up a double play; softball means sliding around the second baseman to avoid potentially injuring him; dirtyball means sliding into him spikes up with the intention of knocking him out of the game.

It is possible to express the political import of this example in a quasi-Aristotelian formula: playing hardball requires the political virtue of toughness, which is flanked by the opposing vices of squeamishness and brutality or cruelty. It is possible also to give an account of the vices in Machiavellian terms. Squeamishness invites the victory of evil — that is, more of the evil from which it averts its gaze. For example: the failure to apply force vigorously when necessary may open the door for greater disorder, doing greater damage or necessitating more force than would earlier have been the case. Brutality or cruelty, on the other hand, involves inflicting pain and injury beyond the minimum needed to attain an appropriate objective. At its most perverse, it can even become a kind of pleasure or end in itself. A decent political act, by contrast, is one that a morally serious and responsible person with adequate knowledge of the facts could perform in the specific circumstances in which the decision must be made.

Static Rules vs. Fluid Rules

This rough and ready characterization of political hardball suggests two very different kinds of cases in which it must be employed.

First: within static sets of rules to which all adhere, you have a responsibility to play hardball as necessary.



"This might not be ethical. Is that a problem for anybody?"

Yes, the decision to use a brushback pitch on the other team's leading hitter appreciably raises the odds that you will hit him, a prospect you understandably view with distaste. But if you don't use the pitch, you will raise the odds that the slugger will make solid contact, and you have a responsibility to your teammates to minimize those odds, within the framework of the tactics generally specified as acceptable.

Let me offer another example from the late unlamented presidential campaign. Well before the Iowa caucuses, there surfaced a now-famous "attack video," which graphically drew the press's attention to the remarkable similarity between some of the speeches of Sen. Joseph Biden, a candidate for the Democratic nomination, and orations previously delivered by Neil Kinnock, the head of the British Labour Party. These revelations drove Sen. Biden from the race. They also led to the resignation of John Sasso, the manager of the Dukakis campaign, who had masterminded the release of the fatal videotape.

A strong case can be made that Sasso in fact did nothing wrong. After all, the video did not lie: it represented hardball but not dirtyball. Why then was Sasso compelled to resign? Early on, Dukakis had forsworn negative campaigning and had pledged to crack down hard on any member of his campaign caught indulging in it; Dukakis was thus forced to expel Sasso from his campaign to honor his own — misguided — pledge. I want to suggest that the Dukakis pledge, the refusal to play hardball, represents an instance of the political vice I have called squeamishness.

The second kind of hardball case involves circumstances in which the political rules are fluid rather than static. If your adversary systematically and intentionally crosses the line separating hardball from dirtyball, the location of the line may be said to shift, and you may now have a responsibility to consider the use of previously forbidden tactics, either to give your adversary an incentive to return to the status quo ante or to maintain competitive effectiveness in the circumstances your adversary has unilaterally altered to his advantage. Thus in current circumstances, for example, to forswear negative advertising, especially if one's opponent is determined to use it, is to heighten unacceptably the risk of defeat.

Where Do the Limits Lie?

At this juncture, I anticipate an anguished and perhaps angry outcry. How far can the requirements of efficacy drive us? Are there no limits? Doesn't a healthy and proper regard for our own decency at some point lead us to say, enough is enough?

To illustrate this tension between moral self-regard and responsibility to others, let me offer a somewhat less charged example from my own life. My wife and I bicker, more or less amicably, whenever we encounter two lanes of traffic merging into one. Some people zip along the disappearing lane until the last possible moment, then wedge themselves into the surviving

lane, obtaining a significant advantage over drivers who wait their turn. My wife frequently wants me to do the same thing, but I refuse. I would like to be able to say that I'm employing the categorical imperative and recoiling in horror from the world of vehicular anarchy my own lane-jumping would implicitly endorse. But in fact that's not what's going on. What really holds me back is my desire to be able to say to myself, I'm not the kind of person who engages in that kind of unfair, self-aggrandizing behavior. Because I regard the rules as fair and sensible, I want to be able to see myself as a person whose character is defined/expressed by adherence to them, even at some cost.

At least in the limit case — if I am in the car by myself, driving for personal pleasure or on some personal errand — this behavior seems morally unobjectionable. The focus on my desire to view myself in a certain way becomes steadily less defensible, however, as my responsibility to others escalates. In a case at the other extreme: if I were rushing my son to the hospital, it would be almost unimaginable to impede my progress by refusing to breach some rules of the road.

In politics (and perhaps elsewhere as well), the morality of using intrinsically attractive means is circumscribed by the ability of the political system — and in a democracy that means the people — to respond affirmatively to them.

Note also that our judgment is shaped by assumptions about the nature and status of the rules. Some are purely conventional, in two senses: there is no compelling moral reason why they couldn't have been different (driving on the right versus driving on the left); and the fact that there is a general propensity to obey them is a necessary condition of their being binding on me. Other rules are quite different in both respects: we assent to them because we regard them as rationally or morally correct, and the behavior of others may not be a necessary condition of bindingness for me, even though others' violations may impose costs on me.

Now clearly, the rules demarcating hardball from dirtyball are of the second sort. We quite properly regard an appeal to public ignorance, prejudice, or passion as wrong in itself and not merely by agreement. We would try to resist as long as possible the conclusion that such appeals by others have left us with the unpalatable alternatives of retiring from the fray or responding in kind. Nevertheless, we may ultimately be driven to confront just such a choice.

For example, in the midst of the 1984 North Carolina Senate race between Jim Hunt and Jesse Helms, the Senate took up legislation to create a national holiday honoring Martin Luther King. Helms went all out

against the bill; Hunt knew that supporting it would cost him severely, but he felt he had no other morally acceptable course. One of Hunt's advisors is reported to have said to him at the time, "If the election is about race, if that's what you've got to do to win, we just won't win, and just be prepared to accept that."

Hunt's decision strikes me as defensible, for two reasons. First, it might be argued that his responsibility to his supporters was not only to win, but also to represent certain values about which they cared deeply. If the price of victory was the public abandonment of one of those values, then his victory could well be thought to lose much of its point. Second, race was not just any issue. A decent politician — and particularly a southerner — had ample reason to believe that compromise on race would be unconscionable.

Still, the result of Hunt's decision was the defeat of an intelligent and honorable man at the hands of one

of the most unreconstructed race-baiters in American politics today, someone beyond the pale on a wide range of issues. If trimming on the holiday bill could have secured Helms's defeat, I believe that a decision on Hunt's part to do so would have been morally permissible. In politics (and perhaps elsewhere as well), the morality of using intrinsically attractive means is circumscribed by the ability of the political system — and in a democracy that means the people — to respond affirmatively to them. For whatever else the endeavor to pursue and exercise power may be, it is surely not a suicide pact.

— William A. Galston

This article was adapted and condensed from "Do Political Candidates Have an Obligation to Play Hardball?" a talk given at the Institute for Philosophy and Public Policy's Workshop on Philosophy and Public Policy, held at Catholic University, June 21-23, 1989.

What's Wrong with Entrapment?

Police are often tempted to use deceptive tactics in investigative work — and indeed are sometimes justified in doing so. Many offenses could not be successfully prosecuted without the use of deceptive tactics — e.g., white collar crime, organized crime, and crimes, such as blackmail and extortion, where the victims are inhibited about reporting. In all these cases, the traditional reliance on testimony of the victims is likely to be inadequate, and evidence needs to be gained in other ways. Unless deceptive tactics are used to detect crimes like these, criminal charges are likely to be concentrated on crimes more commonly associated with the poor and minorities, giving the criminal justice system a class bias. And even for more commonplace crimes, the use of deceptive tactics may be an efficient means of collecting evidence and ensuring the conviction of wrongdoers, given opposition to the excessive use of coercion in law enforcement and constitutional constraints on the gathering of evidence by the police.

In the United States, entrapment constitutes a legal limit on the use of deception in investigation. It is a defense which, if established, will result in the acquittal of a person charged with a criminal offense. But it is not always clear what makes for entrapment or why it ought to function as a defense.

What is entrapment? Why does it constitute a defense against criminal accusations?

The Subjective Approach

Discussions of entrapment have generally taken the form of a comparison between "subjective" and "objective" approaches.

The subjective approach places the emphasis on the defendant's mental state — on whether or not, prior to the inducements offered by state officials, the defendant was disposed to commit a crime of the particular type with which he or she is charged. Thus, in *U.S. v. Russell*, Justice Rehnquist argued that the defense of entrapment can be made out "only when the Government's deception actually implants the criminal design in the mind of the defendant." What lies behind the "subjective" approach is a desire to protect innocent defendants. The purpose of the defense, according to Chief Justice Warren, is to draw a line "between the trap for the unwary innocent and the trap for the unwary criminal." Where the "disposition" to commit the alleged offense has been "implanted" in the mind of an "innocent" person, the line separating permissible deception and entrapment has been crossed. The defendant is no longer culpable.

But what is involved in "implanting," such that it should diminish culpability? Suppose Abel would be reluctant to commit a crime of a certain type, say, to embezzle funds; however, Agent Baker plays on Abel's sympathies and persuades him to undertake the embezzlement. On the subjective approach this counts