

The Product of Public Service

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Ollis salus populi supreme lex esto.

—Marcus Tullius Cicero

Introduction

Two thousand years ago, in his best aphoristic style, Cicero clearly defined the duty of public service. Commenting on the duty of the consuls, the civil servants of the Roman republic, the renowned Roman senator observed, "They saw the well-being of the people to be the highest law." I have seen the Latin word *salus* translated variously as welfare, well-being, safety, and benefit, but *salus* literally means health. After all, health is precedent to all other measures of well-being. The primary, indeed the highest, responsibility of government is to protect the public health from the depredations of violent invasion, domestic crime, epidemic disease, economic and political injustice, and environmental pollution. Other functions of government, though important and laudable, are of secondary importance.

We in the United States of America so love our liberty, that we cultivate a healthful distrust of our government. This distrust often sours to disdain when the rule of law restricts our liberty directly and personally.

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Who of us has not chafed at receiving a speeding ticket and justified in our own mind that our speed was really very safe and the officer was being arbitrary and unfair? Yet when we perceive the "recklessness" of others on the road, our first thought is, "where are the police when you need them?" With regard to laws and rules and regulations, most of us live in a constant state of cognitive dissonance. We want the protection

of our personal liberties that the law affords, but we do not want the laws to restrict those liberties.

It is that very cognitive dissonance that makes the contractual aspect of government necessary. It is axiomatic that in order for us to enjoy our liberties we must accept some restrictions; and so long as those restrictions are as minimal as possible and fairly and evenly applied to everyone, we accept them as necessary to our safety and comfort. How a community establishes a system that produces fair and equitably applied rules is the practice of government.

While the theory of government is a subject too large to address here, there are two aspects of public policy that are important to consider when exploring the duty of public service. These two concepts concern the economics of providing the commodity of public safety and the problem of establishing and maintaining a stable pattern of compliance. Associated with the economics and compliance issues is the recent call by free market purists to reduce the burden of environmental regulations on businesses and the claims made by industries that they would voluntarily reduce pollution if only they were given regulatory relief and flexibility to design their own cost-effective solutions. As part of the discussion of the economics of regulations and development of stable compliance, I will show that it is unreasonable to assume that any business would take voluntary actions to reduce pollution in an environment of reduced regulation.

The Importance of Voluntary Compliance

Before addressing the reasons why a purely voluntary system would not produce desired benefits, I will show how important it is to develop a stable pattern of voluntary compliance. In his book, *The Evolution of Cooperation*, political scientist Robert Axelrod makes the following observation about the development of effective regulations: "The trick is to set the stringency of the standard high enough to get most of the social benefits of regulation, and not so high as to prevent the evolution of a stable pattern of voluntary compliance from almost all of the companies."

A stable pattern of voluntary compliance is essential to the effectiveness of any regulation. There are not enough investigators, policemen, and inspectors in government to ensure that everyone is complying with all of the laws all of the time. We derive the benefits of regulations through the widespread voluntary compliance with laws. While enforcement of rules is necessary to ensure that violators do not endanger the public health and derive a competitive advantage, we rely on most people to comply with rules willingly, in fact enthusiastically, day after day. Axelrod notes that everyone benefits by this type of cooperation. "If the agency enforces with flexibility and the firm complies with rules, then both the agency and the firm benefit from mutual cooperation. The agency benefits from the company's compliance, and the company benefits from the agency's flexibility."

In *A Theory of Justice*, the philosopher John Rawls observes that "the conduct of others in doing their part is taken to be to the advantage of each. Here the evident intention to honor one's obligations and duties is

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seen as a form of good will, and this recognition arouses feelings of friendship and trust in return. In due course the reciprocal effects of everyone's doing his share strengthen one another until a kind of equilibrium is reached." Also, beyond the purely reciprocal benefits of cooperation, people are motivated to comply by their mutual desire for social acceptance. As Rawls notes, "It would seem that while the individual understands the principles of justice, his motive for complying with them, for some time at least, springs largely from his ties of friendship and fellow feeling for others, and his concern for the approbation of the wider society."

The best way to ensure the evolution of a stable pattern of voluntary compliance is through clear communication and possession of an open and collaborative policy development process. Having an open rule development process is perhaps the most important prerequisite to the evolution of a stable pattern of voluntary compliance. It is essential that those affected by a rule have ample opportunity to contribute to the rule's development. This is important for two reasons. First, rules that require measures which are either technically or economically infeasible will not be effective because companies cannot and will not comply with them. Such rules are systemically ignored by the regu-

lated companies and often arbitrarily reinterpreted by the regulator. Rules that are informed by the knowledge of those whom would be regulated are always better and, therefore, more effective rules. This is not so much the case for the basic rules of society such as proscriptions against robbery and murder. Though, given the choice, even murderers would probably not choose to live in a society in which random murder were sanctioned.

Secondly, rules that have evolved in a collaborative and iterative process tend to achieve broad acceptance by all stakeholders. The parties that are involved feel a certain ownership in the result and are therefore more motivated to comply. This is a case of correct process being essential to the quality of the product. Many of California's air pollution control agencies use specially appointed community advisory councils or ad hoc advisory committees, which meet in publicly noticed forums, to facilitate collaboration of stakeholders during the rule development process. One of the best features of a collaborative rule development process is that all it costs is time. If the agency is willing to dedicate the time to the process, it is highly likely that the outcome will be a rule that achieves most of the desired benefits and the acceptance of the parties regulated by it.

Finally, the importance of respectful discourse and effective routes of appeal to the collaborative process cannot be exaggerated. In order for all parties to feel

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that their respective contributions to the process are being seriously considered, the regulators must maintain respectful communications with the parties that are regulated. Also, there must be an organizational route of appeal for regulatory decisions and rule interpretations; otherwise disputes will devolve into the rancor of political maneuver and the courts. Respectful demeanor and routes of appeal will together go a long way toward facilitating stable patterns of voluntary compliance.

So, with all this voluntary compliance going on, why would not a purely voluntary system work?

The Limits of Voluntary Compliance

One of the reasons why purely voluntary regulatory systems do not produce desired benefits has to do with how economic externalities affect economic

behaviors. The environmental and public health costs of the private economy are largely external to the market economy. As Rawls has noted, "There are the striking cases of public harm, as when industries sully and erode the natural environment. These costs are not normally reckoned with by the market, so that the commodities produced are sold at much less than their marginal social costs. There is a divergence between private and social accounting that the market fails to register." What that means with regard to environmental pollution is that because the economy does not compel individuals or companies to pay the costs of pollution caused by them—and, in fact, individuals or companies enjoy the benefits of environmental and public health protection regardless whether they contribute to protective measures—there is no economic

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incentive to take such measures. "If the public good is produced his enjoyment of it is not decreased by his not making a contribution. If it is not produced his action would not have changed the situation anyway." Such is the nature of economic externalities. "One essential task of law and government is to institute the necessary corrections."

Furthermore, if there is no penalty for noncompliance (either in the form of fines or imprisonment or public opprobrium) individuals simply have no incentive to suffer financial loss in order to contribute some benefit to the community at large. "The firm . . . faces a temptation to evade if the agency is using a flexible enforcement policy which is unlikely to penalize evasion," Rawls has noted. Also, once widespread non-compliance becomes general knowledge, those who may have felt morally compelled to comply perceive the contract as broken and are driven by the economic force of competition to reduce the costs of compliance. In the words of Rawls:

The suspicion that others are not honoring their duties and obligations is increased by the fact that, in rules, it is particularly easy to find excuses for breaking them. Thus even under reasonably ideal conditions, it is hard to imagine, for example, a successful income tax scheme on a voluntary basis. Such an arrangement is unstable. The role of an authorized public interpretation of rules supported by collective sanctions is precisely to overcome this instability. By enforcing a public system of penalties government removes the grounds for thinking that others are not complying with the rules.

The Necessity of the Enforcement of Standards

Even when most people in a society agree on what is right, enforcement of standards remains necessary. As Rawls reasonably observes, "The need for the enforcement of rules by the state will still exist even when everyone is moved by the same sense of justice. The characteristic features of essential public goods necessitate collective agreements, and firm assurance must be given to all they will be honored." In order to ensure that voluntary compliance will be practiced, it is necessary to assure everyone involved that the standards will be enforced. Of course, as Rawls has noted, "each person's willingness to contribute is contingent upon the contribution of the others."

Consequently, there is a need to create incentives for compliance by internalizing the costs of non-compliance through the establishment of laws enforced by monetary penalties as well as through other monetary incentives and disincentives. By becoming involved in economic activity in this fashion, government finds itself in the business of providing a commodity: the commodity clean air, for example, which is essential to the public welfare.

Government cannot effectively and efficiently provide most of the commodities that meet the needs and desires of the people. Only the private economy and a relatively free market can do that. But only the public

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sector, with the participation of the entire community, can ensure the equal distribution and stable persistence of certain basic commodities that are essential to the well-being of the people. Such essential public services as transportation system infrastructure, national and civil defense, provision for the poor, public and environmental health protection, fire protection and suppression, police services, disaster response and relief, sewage treatment and disposal, and solid waste collection and disposal can only be provided by government or through monopolies created under public sanction. It is worth extensively quoting Rawls on this point:

The main idea is that a public good has two characteristic features, indivisibility and publicness. That is, there are many individuals, a public so to speak, who want more or less of this good, but if they are to enjoy it at all must each enjoy the same amount. The quantity produced cannot be divided up as private goods can and purchased by individuals according to their preferences for more or less. There are various kinds of public goods depending upon their degree of indivisibility

and the size of the relevant public. The polar case of public good is full indivisibility over the whole society. A standard example is the defense of the nation against (unjustified) foreign attack. All citizens must be provided with this good in the same amount; they cannot be given varying protection depending on their wishes. The consequence of indivisibility and publicness in these cases is that the provision of public goods must be arranged for through the political process and not through the market.

Another aspect of the public goods situation is that of externality. When goods are public and indivisible, their production will cause benefits and losses to others which may not be taken into account by those who arrange for these goods or who decide to produce them.

The market is ineffective at providing such goods for two additional reasons. First, due to their indivisibility, most essential public services are of such a large scale that no private individual or corporation could ever hope to accumulate sufficient wealth to make the initial investments necessary to provide such commodities. Even if sufficient investment capital could be amassed to start such an enterprise, the likelihood of any return on such an investment would be poor indeed. Only the massive resources available by the authority to levy a general tax are able to meet the investment needs of large public works projects. Secondly, many of the essential public services require the use of the public wealth in the form of taxes or publicly held resources; and such use is rightfully subject to the public's review and approval through representative legislators. Rawls has observed that, "it follows that arranging for and financing public goods must be taken over by the state and some binding rule requiring payment must be enforced."

In fact, Rawls stresses that the government may purchase from the private sector or from publicly owned firms public goods of many kinds (such as military equipment and health services, for instance). Through its involvement in providing these commodities, government supplies the foundation for high quality life through environmental protections, land use planning, reliable public utility infrastructure, and social safety nets by spreading and externalizing the costs (and sometimes internalizing externalities) of many of the elements that contribute to the quality of life. By building roads, government externalizes a large part of the costs of transporting goods. By regulating the economic behavior that uses the atmosphere to dispose of harmful waste, government internalizes externalities and becomes involved in providing the commodity of clean air, which is an essential requirement of public health. Neither the free market nor voluntary programs would ever effectively provide the essential commodities and services necessary to the maintenance of public health and the economic stability of the nation. Thus, in Rawls's view, "the indivisibility and publicness of certain essential goods, and the externalities and temptations to which they give rise, necessi-

tate collective agreements organized and enforced by the state."

Conclusion

The fundamental dialectic in human politics is the tension between the liberty of the individual and the individual's duties to the community. As social creatures, we derive personal benefits from being part of a community. In fact, humans are at their best, strongest, and most adaptive when they are engaged in cooperative enterprises. Each of us understands that the benefits to be derived from cooperative endeavor come at the cost of some amount of personal liberty in the form of various responsibilities, duties, loyalties, and proscriptions against infringement on the liberties of others. Each of us will quite willingly perform our duties and refrain from certain behaviors for the sake of harmony, cooperation, and stability as long as we are assured that everyone else must also comply and the imposition on our liberties is rational and necessary. If some members of the community are not required to comply, there is no incentive for everyone else to do so, even if it is generally accepted as the "right thing to do." The challenge for the public servants in regulatory agencies is to design public policy that achieves a stable pattern of voluntary compliance while at the same time assures everyone that scoff laws will not benefit by shirking their duties. It is at the fulcrum of that balance where public service achieves its highest duty: To protect the well-being of the people. Cicero's observation is every bit as applicable today as it was two thousand years ago. The health of the people is the highest law.

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Sources: Marcus Tullius Cicero, *On the Commonwealth*, translated by George Holland Sabine and Stanley Barney Smith (Columbus, OH: The Ohio State University Press, 1926); Robert Axelrod, *The Evolution of Cooperation* (Basic Books, 1984); John Rawls, *A Theory of Justice* (Oxford: Clarendon Press, 1972).