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In Personal Performance Codes, One Size Doesn’t Fit All: Clarifying the Professional and Ethical Responsibilities of Decision Makers

W Michael Reisman and Andrew R Willard

Abstract

Though the responsibilities of decision makers are often described, analysed and evaluated by observers of decision, professional and ethical guidance crafted specifically for those making decisions is less common. In this article, building on Lasswell and McDougal’s jurisprudence, many of the factors shaping conduct and performance are delineated. These include the roles decision makers play and their intellectual procedures. Responsible decision makers are encouraged to reflect on these factors and develop personal performance codes that are compatible with human dignity.

Explicit performance codes are usually associated with skill groups characterised as ‘professions’. In social process, the designation of ‘profession’ is a jealously guarded asset, access to which is carefully controlled and often ritualised. At the same time, in a confirmation of Durkheim’s venerable insight, skill groups regularly try to ‘professionalise’ themselves up: thus garbage collectors ascend to ‘sanitation engineers’ and LLBs transmogrify to JDs. Each skill group that professionalises claims not simply the monopoly over the performance of important, inter-generationally transmitted skills, but also adherence to expectations and demands as to the mode and purpose of their performance: these personal performance codes are often called codes of professional ethics.

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The matter is not, however, limited to the free professions. Every congregation of specialised skills, from the most humble to the most complex, presupposes not simply the execution of the skills concerned with appropriate expertise and care, but also expectations and demands about the use by the performer of the power the exercise of the skill affords. Personal performance codes are all the more important in complex and highly interdependent civilisations. Whenever survival by strategies of self-sufficiency yields to survival by strategies of specialisation and, perforce, dependence on members of other specialist groups, express or implied performance codes which are shared by performers and performees are indispensable. Their importance increases as those dependencies shift from face-to-face arrangements to those found in mass societies.

Personal performance codes have multiple functions. Their manifest function is to ensure the performance of the specialised skills in question for the benefit of the performee and not for the benefit of the performer. One of their latent objectives is to assuage anxieties in the performees, those who are receiving and paying for those skills, because the need for those skills, like all dependences, carries with it a latent fear that, to paraphrase Shaw, professions are actually conspiracies against the public. Concern for addressing that latent fear is one of the reasons that the prescriptive process for professional performance codes is more often patho-generated on a stimulus-response basis than the result of comprehensive and explicit policy-planning on a gestalt basis; new provisions in the code are hastily added to dispel popular anger or assuage anxiety provoked by the more notorious of performance failures.

The self-serving character of much of the performance code phenomenon should not detract from the positive and inclusive function it serves. From a public policy standpoint, the most important function of personal performance codes is to ensure that the skill-congeries in question is performed in the common interest, which, in this context, often includes establishing and maintaining stable, shared expectations about the quality and character of performance. And the urgency of the public policy dimension of personal performance codes is not limited to the so-called ‘free professions.’ In complex and interdependent social arrangements, every skill group has a personal performance code, whether explicit or implicit.

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1 Another source for the demands for prescription of and adherence to a personal performance code may be the intense rectitude demands of certain professional performers.
It is widely accepted that the performance of any role must be effected in ways consistent with the normative expectations that constitute that role; elsewhere this has been referred to as ‘role fidelity.’ Decision making, understood in functional terms, is such a congeries of skills and activities for which role fidelity is demanded and, as such, should have its own personal performance code. Indeed, because decision making at every level of social organisation is central to the achievement of minimum and optimum order, its personal performance code is especially important.

This is not a ‘new idea’. McDougal and Lasswell emphasise the importance of observational standpoint and their students have proposed a praxis for self-scrutiny. (An example of an approach to developing a praxis of self-scrutiny is appended to this article.) But those operations, while relevant to the performance of every intellectual task, look to the self and not to the separate question of policies about the performance of roles. As for the latter, Weber, in a seminal essay, addresses this for power holders but in the most general, albeit inspiring terms; Niebuhr dwells on the moral paradoxes faced by those endowed with power and charged with decision. Lawyers, as one would expect, generate codes of professional ethics so detailed they would be the envy of Napoleon and bureaucratic codes abound.

But more detailed performance codes for many other decision makers are quite unrefined and, ironically, the higher the post and the greater the power, the more general is likely to be the performance code. At the working levels, criteria such as ‘good character’ are usually specified as a prerequisite for public office. Oaths are administered to public office holders to ‘uphold the constitution’ and so on. (It is striking that there are no performance codes or even oaths for the Permanent Members of the United Nations Security Council, the highest international political decision making body.)

These sorts of generalities hardly provide the official in question and that official’s constituencies with a performance code. Even these general guidelines are not available to functional and especially occasional decision makers in many value-situations and they account for a large part of decision making in all but totalitarian systems of public order.

In drafting performance codes, the level of abstraction is a strategic question. On the one hand, very abstract formulations on the order of ‘act so as to optimise human dignity’ may allow for the most general application, but they provide relatively little operational guidance. On the other hand, codes of highly inflected rules ignore the novel and unexpected elements which recur in even apparently routinised situations and procedures. In some circumstances, especially crises, a vague and general performance code, especially at top leadership levels, it could be argued, might serve the common interest. Moreover, a vague and general code (possibly for all decision functions), with an implied *exceptio* for times of crisis may be part of operational codes and could even be compatible with prevailing myth systems. The performance
code implicit in Machiavelli's advice to the Prince carries that argument to the extreme, counselling him to do whatever is necessary. Political history is rife with examples of the tremendous potential for abusing discretion afforded by such open-ended authority; crises are sometimes manufactured and anxiety is fomented to generate and/or sustain a crisis and the enlarged discretion that the leadership claims the right to arrogate to deal with them.

For McDougal and Lasswell, crisis is a variable of which their principles of content and procedure take account. Because their approach involves the clarification of policy rather than the formulation of rules, they are not caught in the need to choose between the disjunction of either laying down hard-and-fast rules or contenting themselves with bromides on the order of 'be good' and platitudes such as 'do the right thing'. Here, too, we submit that the most urgent need is not the formulation of rules but the clarification of policy. With an appropriate framework of inquiry, such policies can afford those making decisions with the tools necessary for appropriate professional ethical action.

As part of the effort to develop a provisional identification of personal performance codes, it may be useful to delineate the different functions all decision processes perform and to clarify the policies on behalf of which the decision functions are carried out in social systems that seek to approximate a public order of human dignity. Using the jurisprudence developed by Lasswell and McDougal, we see that all decision processes can be conceived in terms of seven component functions: intelligence, promotion, prescription, invocation, application, termination and appraisal.

The intelligence function comprises the gathering, evaluation, and dissemination of information relevant to decision making, prediction based on the intelligence derived and, in some cases, the planning for future contingencies. In general, there is some overlap of all functions; in the case of intelligence, relations are especially close with promotion or recommendation. This is particularly true where intelligence, disseminated by the use of ideological strategies becomes promotion. The potential for such conflation – whether or not deliberate – supports the need for clarified policy that can help to guide the performance of each function and the roles individuals play as they carry out assignments associated with such performance. An intelligence function that is compatible with human dignity goals will strive continuously to be dependable, comprehensive, selective, creative and open. Individuals performing intelligence roles are encouraged to develop and apply personal performance codes that are compatible with these policies.

The promotion function goes beyond passive recommending to active advocacy of policy alternatives. Participants in a decision process promote when they project their intensified demands to authoritative decision makers. Hence, promotion is a pressure operation aimed at getting authoritative and controlling results. Its objective is to transform promoters' demands into group prescriptions. If the promotion function is to contribute to a public order of
human dignity, it is clear that it must be brought to conform to a number of fundamental policies. Of primary importance is the encouragement of integrated policy: the promotion of common rather than special interests. This implies that promotion channels are open to all, and that persuasive rather than coercive strategies are used. Individuals performing promotive roles are encouraged to develop and apply personal performance codes that are compatible with these policies.

The prescription function refers to processes associated with the projection of policy and its establishment in varying and diverse communities as authoritative and controlling. As policy becomes law, expectations of politically relevant parties stabilise with respect to how a given community will deal with issues related to the policy’s content. The more important policies for prescriptions are promptness in initiation, comprehensiveness and contextuality in exploration, conformity with the basic values of a public order of human dignity, and effectiveness in communicating all prescriptive elements to those concerned. Again, individuals performing prescriptive roles are encouraged to develop and apply personal performance codes that are compatible with these policies.

The invocation function refers to the provisional characterisation of facts as deviating from prescribed policy and the provisional assertion of control to prevent or abate the deviation or to seize control of individuals or values necessary for subsequent application. In some situations, provisional characterisations of deviations — whether or not accurate — may have enormous consequences. This is a key reason for why non-provocativeness is included as a preferred policy for this function along with timeliness, dependability and rationality. Invokers should develop and apply personal performance codes that are compatible with these policies.

The application function represents the transformation of authoritatively prescribed policy into controlling event. Whereas prescription is primarily prospective and ambiguous to a degree, application is immediate and usually involves a specific congeries of events; hence, a component function of application is enforcement and implementation. Application policies that support a public order of human dignity include promptness in initiation, comprehensive contextuality in exploration of pertinent facts and claims, choice in decision that is both realistic as to fact and in conformity with inclusive community policies, and enforcement that is effective and economical. Those playing applying roles are encouraged to develop and apply personal performance codes that are compatible with these overarching policies.

The termination function deals with the abrogation of extant prescriptions and arrangements, and provision of claims arising from good faith value investments that were made under the assumption that such prescriptions and arrangements would continue without disruption. While community goals may survive a changing context, prescriptions embodying those goals will require reformulation or change as the facts upon which they were formulated are
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supplanted. Accordingly, an effective public order system requires a termination process that is responsive to change; without such a function, a legal system will be restricted to a minor or even negative role in social change. The primary policy of termination is, thus, reducing the cost of social change and encouraging changes that are compatible with human dignity. This policy will be served by cultivating a climate sympathetic to change. This, in turn, is contingent on the availability of procedures for minimising the destructive impacts of explicit cancellation of prescriptions. Hence, termination should provide ease, promptness and availability in initiation, comprehensiveness and dependability in exploration, cancellation in conformity with inclusive community goals, and effectiveness in amelioration. Because orderly change frequently turns on anticipatory satisfaction of termination claims, a balance must be struck between a reverence for the past yet a non-encumbrance of the future. Although value reallocations generally import fundamental changes, ill-effects can be mitigated by restricting windfall indulgences and irrational deprivations. In addition to establishing and applying personal performance codes that support these policies, those who play roles in termination are encouraged to develop sensitivity to those who will be deprived by new arrangements, even if they have now been characterised as unjust.

The appraisal function involves assessing the degree of success of authoritative policies in realising the goal values of human dignity and ascribing responsibility for successes and failures. Hence, appraisal is concerned with the comprehensive performance of decision processes. It is particularly important in periods in which conditioning factors are changing rapidly. Though appraisal works within a framework of posited goals, its outcome recommendations may clearly indicate the need for policy reformulation. The efficiency of appraisal requires that information about decision processes be collected and analysed in a rigorous, dependable way; and the skills necessary for appraisal are best maintained if the function is performed continuously. To receive support and ensure credibility, appraisal must have a high degree of impartiality and even independence. In its execution, appraisal must be contextual in method; each detail requires appraisal in light of all community goals and engaged conditioning factors. As with the other functions, appraisers should develop and apply personal performance codes that are compatible with and support the achievement of the preferred policies for appraisal.

Hopefully, the preceding presentation has clarified that personal performance codes will vary depending on a number of factors, especially the decision function(s) with which an individual is engaged. Moreover, such codes will also vary within function according to the role(s) the individual plays. Consider the application function. It is clear to us that the performance code of an advocate representing a party in court may differ in important respects from the correlative performance code of the judge presiding over the procedure; and that the performance code of an expert witness appearing in the case will also differ
from the other two codes. In the promotion function, the performance code of a lobbyist (in a system in which such roles are licit) may differ in important respects from that of a member of a national scientific society whose rubric identifies him or her as such. A journalist, reporting events, will have a different performance code than a columnist from the same paper who comments on those events. Role, in our view, is a critical variable in the clarification and articulation of personal performance codes.

Addressing role in relation to a performance code is also important because of the necessarily dialectical character of the policy process. We eschew the certainties of Natural Law and reject the notion that policies can be ‘reasoned’ down from ‘higher’ principles by the application of exercises in logical derivation. But, that said, the process of the formation of policies in the common interest is not simply dialogic, in the sense that it involves exchanges with actors whose identities, expectations and demands are different. It is also dialectical, in the sense that it is unending, a result of the fact that as each installation of a specific policy changes the social process in ways that benefit some more than others; actors who view themselves as comparatively disadvantaged begin to promote alternative arrangements which they believe are ‘fairer’ or, at least, fairer to them.

Another factor that bears importantly on developing, applying and appraising personal performance codes are the problem solving or intellectual tasks that many carry out in the course of their work. Lasswell and McDougal identified five such intellectual tasks, and though the way in which they are performed can vary from decision function and role, it is essential that those who are active in decision processes develop awareness of and try continuously to improve how they address and perform these tasks. The five tasks are:

1. **Goal clarification** requires the identification, at the highest level, of community goals but, beyond that, the exercise of disciplined imagination and even fantasy in the exploration of new goals which, in projected contexts, better achieve the goals of a public order of human dignity. In working on particular problems in context, individuals descend the ladder of abstraction and delineate goals with increasing specificity.

2. **Trends studies**, by contrast, require a suspension of personal preferences and a rigorous and disciplined examination of the events that transpired in terms of how well and in what ways particular goals have been achieved. Obviously, any infiltration of personal preference in the description of those trends will present a rosier picture than is justified and will undermine the utility and authority of this intellectual task of decision making.

3. **Conditioning factors** involve the identification of the environmental and pre-dispositional factors that have accounted for the trends in decision. Here again, a rigorous scientific application with, insofar as possible,
suspension of personal value preferences is indispensable to the adequate performance of this task.

Projections of future decision require, once again, the liberation of the imagination so that possible developments, though some might be most undesirable, can be projected and thus enable observer and decision maker to propose alternatives that can bring future decision closer to preferred goals.

Invention, evaluation, and selection of alternatives are stimulated by plausible projections showing that business as usual is unlikely to achieve goal values. Invention requires the introduction of a degree of creativity and imagination; evaluation requires clarified policies against which to test options; and selection requires commitment.

While each intellectual task should be carried out to achieve a public order of human dignity, as indicated earlier, the ways in which they are incorporated into codes of personal performance will vary depending on a range of factors. Nonetheless, decision makers who perform these tasks in a thorough, responsible, and honest manner, and build this practice into their personal performance code, increase the likelihood that their work will be truly professional and ethical, and will contribute positively to efforts to establish a public order of human dignity.
Appendix

Standpoint, Performance and Ongoing Self-Scrutiny

1. What role(s) are you (or others) engaged in? For example:
   (a) student
   (b) teacher
   (c) advocate
   (d) advisor
   (e) reporter
   (f) decision maker
   (g) scholar
   (h) facilitator
   (i) concerned citizen

2. What intellectual tasks do you (or others) carry out – whether or not you are aware of them – when performing the role(s) you are participating in?
   (a) goals
   (b) trends
   (c) conditions
   (d) projections
   (e) alternatives

3. What factors shape how you (or others) carry out the intellectual tasks associated with the roles you are participating in?
   (a) culture
   (b) class
   (c) interest
   (d) personality
   (e) previous exposure to crisis

4. How do these conditioning factors shape your standpoint, in general, and your orientation or approach to solving problems and to particular subjects of inquiry? Which standpoints are you predisposed toward – both favourably and unfavourably – and how are you predisposed to conduct observation, analysis, recommendation and judgment?
   (a) participant-observation
   (b) interviewer
   (c) spectator
   (d) collector
5. How does your standpoint shape the way in which you carry out the intellectual tasks associated with the roles you are participating in? For example, what is the impact of your standpoint on the goals you clarify and how you specify them? The trends you identify and describe? The conditions you analyse and how you analyse them? The projections you make and how you make them? The alternatives you invent, evaluate and select?

6. How does policy sciences or policy-oriented jurisprudence try to improve performance of the intellectual tasks associated with the role(s) you (or others) are participating in?
   (a) Procedures are offered to call attention to and make explicit the roles and tasks we (and others) are in fact performing.
   (b) Procedures are offered that call attention to and make explicit the fact that our standpoint, which itself is shaped by a number of factors, influences the way in which we carry out the intellectual tasks associated with the performance of any of the roles we play.
   (c) Provision is made of a set of conceptual lenses to bring into sharper focus features of the earth-space habitat and eco-social process that require attention in order to carry out the intellectual tasks, regardless of standpoint and the particular role we are performing.

Such lenses include:

1. The social process mapping categories:
   (i) participants
   (ii) perspectives
   (iii) situations
   (iv) base values
   (v) strategies
   (vi) outcomes

2. The decision process mapping categories:
   (i) intelligence
   (ii) promotion
   (iii) prescription
   (iv) invocation
   (v) application
   (vi) termination
   (vii) appraisal

2a. Each decision function can be mapped in terms of:
   (i) participants
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(ii) perspectives
(iii) arenas
(iv) base values
(v) strategies
(vi) outcomes

3. The value categories:
(i) power
(ii) enlightenment
(iii) wealth
(iv) well-being
(v) skill
(vi) affection
(vii) respect
(viii) rectitude

3a. The social process specialised to the shaping and sharing of each
value can be mapped in terms of:
(i) participants
(ii) perspectives
(iii) situations
(iv) base values
(v) strategies
(vi) outcomes

4. The conceptual lenses can be used, in whole or in part:

For descriptive or preferential mapping; carried out from any standpoint
or combination of such standpoints; for helping you to carry out any or
all of the intellectual tasks; in any of the roles you perform, now or in the
future.