



# Constitutional Character: Virtues and Vices in Presidential Leadership

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*Constitutional Character:  
Virtues and Vices in Presidential Leadership*

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Consider two candidates for president. Candidate A while in office has engaged in questionable financial dealings and consorted with criminal types, but is an exemplary family man. Candidate B has had several extra marital affairs, but his financial record is above reproach. Whom should voters choose?

Recent candidates may come to mind, but the question actually refers to the 1884 presidential election—the contest between Grover Cleveland and James Blaine. Blaine had corruptly profited from public office but lived an impeccable private life. Cleveland had a reputation for public integrity, but had been forced to acknowledge fathering an illegitimate child. Here is what one of Cleveland’s supporters said in the campaign:

I gather that Mr. Cleveland has shown high character and great capacity in public office, but that in private life his conduct has been open to question, while, on the other hand, Mr. Blaine, in public life has been weak and dishonest, while he seems to have been an admirable husband and father. The conclusion that I draw from these facts is that we should elect Mr. Cleveland to the public office which he is so admirably qualified to fill and remand Mr. Blaine to the private life which he is so eminently fitted to adorn (Howe 1932, p. 151).

The separation between private and public life may not be as sharp as Cleveland's supporter implies. Some kinds of otherwise private immoralities can affect public responsibilities. How we should draw the line between the public and private for officials can be a quite complex question (Thompson 2005, 227-242). But for the purposes of addressing the question of the qualities we should want in a president, the main implication of this and similar examples is that ethical virtues do not always go together. It is quite possible to be moral in public but not in private, and vice versa. Most of the leading conspirators in the Watergate scandal led impeccable private lives. And some presidents who are regarded as ethical leaders were not moral exemplars in their personal relations. FDR's wartime leadership and his extramarital affairs illustrate the contrast clearly. To generalize the point: ethical character is fragmented. The classic ideal of the unity of virtue is neither psychologically plausible nor ethically necessary. Presidents like the rest of us can have some virtues without having all the others.

Not only can individuals have some without having the others, they can display the very same virtue in some situations but not in others. A long line of research in social psychology (beginning with unreliable school children and continuing with insensitive seminarians) has generally supported what is now called situationism (Doris 2002; but see Sabini and Silver 2005). Small and seemingly irrelevant differences in the situation (such as whether you are late for a meeting) may make all the difference in whether you act morally. If moral character is so variable and so mixed, we should be prepared to tolerate some vices in our presidents, and be more discriminating in the virtues we require of them. Some vices may be less serious in public office, and some virtues more essential than in private life. We may of course aspire to have a president who has all the virtues, public and private,

or as many as possible, but we should recognize that we have to decide which are more important. We should develop a better sense of the priorities of the virtues than is commonly displayed in the media and popular comment on presidents.

Which virtues should have priority? The virtues we should care most about—those that we should require rather than just hope for—are the qualities that make up what may be called *constitutional character*. This refers to the disposition to act, and motivate others to act, according to the principles that constitute the democratic process. No doubt there are many personal qualities that would help a president use the process well— for example, courage, compassion, loyalty, constancy, though even some of these take a different form in public than in private life. Loyalty to friends can turn into a vice in governing. Constancy may save a president from the charge of flip-flopping, but (as I explain below) at the cost of failing to respond opportunely to changed circumstances.

Constitutional virtues are distinctive: they are specific to public office, either because they take a different form in public life or because the occasion for their exercise does not arise in private life. Because the democratic process assigns different responsibilities to different offices, the constitutional virtues needed in a president may differ from those desirable in a member of congress or the Supreme Court. But the most important virtues can be described quite generally. They include sensitivity to basic rights of citizenship, a respect for due process in the broadest sense, the sense of responsibility, tolerance of opposition, willingness to justify decisions, and above all the commitment to candor.

Although the ideal leader would manifest all of these virtues, constitutional character is often fragmented like other forms of character. A president may respect basic rights but not due process, or may have a strong sense of responsibility but little tolerance for

opposition. Some constitutional virtues probably go more naturally together: it would be difficult to display a sense of responsibility without be willing to justify decisions. And without an ultimate commitment to candor, as will be emphasized below, the other virtues cannot be fully known and genuinely practiced.

Defending these virtues and criticizing their corresponding vices does not imply that character is more fundamental than actions or consequences in political ethics. Constitutional character does not require that we make virtue foundational in our ethical theory. The qualities of character discussed here must ultimately be assessed by considering the actions of the leaders who possess them and the consequences that follow the decisions they make. The nature of each virtue can be best brought out by describing the corresponding vice, which is if not the more common than the more conspicuous of the pair.

### **Sensitivity to Rights**

In this era of rising concern about national security, we should not be surprised that presidents are tempted to violate basic rights. We may not even know when they have authorized or permitted their subordinates to carry out actions that invade privacy, deny legal access, abuse prisoners, and other clandestine wrongs. In the absence of timely knowledge of actions, we have to rely on dispositions. We want a president who is sensitive to rights even when acting in secret.

A good test of whether a president has this disposition is how he deals with rights in public. This may give some indication of how he would act in private. But presidents know that other leaders (in Congress, the judiciary and civil society) are likely to challenge public violations that affect large numbers of citizens, especially those with political

influence. The respect for rights in public may weaken when they can act in secret. A better test is how the president treats the more vulnerable citizens, those who are seen as different or marginal and those who do not yet have all the rights of citizenship. The political pressure to respect their rights is usually weaker and sometimes even negative, and the influence of the disposition or its absence is therefore more pronounced.

On this test, even some of the most fair-minded presidents did not always do so well. After the attack on Pearl Harbor, FDR ordered the forcible removal and internment of more than 100,000 people of Japanese ancestry to “War Relocation Camps.” Some 60 per cent were U.S. citizens. Not until 1988 did the U.S. government officially acknowledge that this order was wrong. Reagan signed legislation that stated that government actions were based on “race prejudice, war hysteria, and a failure of political leadership” (100th Congress, S. 1009). Reparations did not come until 1999. It is of course easier to recognize a violation of rights after the threat of war has passed and when the wrongs can be attributed to an earlier regime (and opposing party). Nevertheless, Reagan (and the Congress of his time) showed at least a symbolic concern for rights and put future presidents on notice that respect for rights is a necessary part of constitutional character.

Not only action but also inaction can show a disregard for rights. The failure to speak out against the violation of basic rights is another sign of the lack of this virtue. According to one of his most sympathetic biographers, Eisenhower provided “almost no leadership at all” on “one of the great moral issues of the day, the struggle to eliminate racial segregation from American life. ...His failure to speak out, to indicate personal approval of (the 1954 Supreme Court decision to force integration in the schools), did incalculable harm to the civil-rights crusade and to America’s image” (Ambrose 1984). Many other historians and journalists have portrayed Eisenhower’s role on this issue in the

same way, but a more recent study, sharply critical of the conventional view, emphasizes the many significant actions he took toward protecting the civil rights of African-Americans (Nichols 2007). Eisenhower's rhetorical deficiencies, this author suggests, may have obscured his substantial contributions. In this case, it seems that words spoke louder than actions. Speaking out may thus be a necessary component of the virtue of respect for rights.

Those who do not yet have full rights, and those who seem different from us, are often no official's influential constituents, and no official's important cause. A president who shows sensitivity to their plight, who challenges threats to their fundamental rights of citizenship, displays a trait essential to constitutional character. If a president respects their rights, we can have some reason to believe that he will respect ours even if he could get away with violating them.

### **Respect for Due Process**

"Energy in the executive," Hamilton wrote in Federalist No. 70, "is a leading character in the definition of good government." The constitution and the law give the presidency plenty of sources for that energy, and presidents have not been shy about exploiting them for good or for ill. As the presidency has grown more energetic, presidents have become bolder in pursuing their ends with means that may formally follow the constitution but flout its spirit. The temptation to expand executive power beyond its just limits is most obvious in struggles between the president and congress. To be sure, we want a strong leader, but one who respects due process in the broadest sense—who respects constitutional balance and recognizes the authority and value of the legislative branch even when it thwarts his will.

One instrument of presidential power that is perfectly constitutional but easily subject to abuse is the executive order, a directive issued to officers under the president's authority. Most orders are routine but some can result in far-reaching change (Mayer 2002; and Howell 2003). The effects can be deplorable as in the case of FDR's internment order. But they can be admirable as in the case of Truman's decision to desegregate the armed forces. An order is constitutional if it is under a law but not if the order itself makes law. (Truman's seizure of the steel mills was overturned because it was not implementing any specific law.) The distinction between making and implementing law is obviously fuzzy, and presidents who care more for their policies than the constitutional process are prone to ignore it.

A similar disregard can be seen in the abuse of signing statements, the formal declarations that presidents attach to legislation ("Symposium" 2007; and Lee 2008). Sometimes these are perfectly appropriate. The president may attach qualifications that fill gaps where congress was silent. Arguably, he may use the statements to express his own views about the constitutionality of the law. But in recent years signing statements have been used more frequently, and often with the intent of undermining the legislation. Several of Clinton's signing statements came close to challenging the law he was signing, and many of Bush's have been plausibly interpreted as declaring that the president will not enforce the law being enacted. A president with a stronger constitutional character would find more forthright ways to challenge the law.

Yet another distinction that is regrettably easy for an energetic president to ignore concerns the power of appointment. Presidents certainly should be able to appoint high level officials who are faithfully committed to carrying out their policies. But except for their close political advisers, they should not make personnel decisions on the basis of whether



the officials will give the highest priority to the reelection of the party and president. The line between policy reliability and partisan loyalty is, like other practices that call for judgment, not sharp. A due process disposition may be the only protection against stepping across a line that is inevitably blurry and often deliberately blurred. Evidently with the encouragement of Bush's White House, the Attorney General and some of his staff ignored the line. They systematically flouted the tradition of nonpartisan appointments in the Justice Department by dismissing seven US attorneys in 2006. These dismissals surely violated political ethics and they may have violated the law as well. A due regard for the difference between policy making and partisanship is a necessary part of a respect for the kind of due process that constitutional character calls for.

### **Sense of Responsibility**

"Mistakes were made" is one of the most common locutions in the rhetorical arsenal of presidents and other officials of government. It is a "passive-evasive way of acknowledging error while distancing the speaker from responsibility for it" (Safire 2008, p. 431). The "past exonerative tense," as it has been dubbed, is a reliable sign of the absence of a sense of responsibility (Broder 2007). The locution marks a long trail of responsibility evasions from Grant ("mistakes have been made, as all can see and I admit it," referring to the scandals spreading through his administration in 1876) to Bush's Attorney General ("mistakes were made" in the firing of the U.S. attorneys). So when mistakes are made, whether policy blunders or ethical transgressions by his subordinates, should a constitutionally virtuous president take responsibility for them?

Presidents are of course not always personally responsible for many of the mistakes made or wrongs committed in their administration. In private life, individuals may be

excused or at least not blamed as much for actions of others even if they could have prevented them. But in public life we should expect more: the sense of responsibility should expand as the powers of the office and the scope of its consequences expand. Like leaders of any large organization, presidents should be held accountable for the failures of their subordinates. This elementary principle of the democratic process has not escaped presidential notice, but the way in which presidents take notice of it shows no more constitutional character than the invocation of “mistakes were made.”

In September 2005, shortly after Hurricane Katrina devastated New Orleans and large parts of the Gulf Coast, Bush announced: “To the extent the federal government didn’t fully do its job right, I take responsibility” (White House News Release 2005). Yet only a short time earlier he had praised his director of the office of emergency management (in the now notorious “You’re doing a heck of a job, Brownie”), allowed unnamed White House sources to pin most of the blame on state and local officials, and took no action against the principal cabinet officer in overall charge. Taking responsibility does not show a sense of responsibility if no consequences follow for those who take it.

Taking responsibility becomes a kind of political ritual that has no negative effect on the president. Indeed, a president can often turn this ritual to their advantage. With regular incantations of “I accept full responsibility,” he strengthens his own political standing—by reassuring the public that someone is in charge and by projecting an image of a courageous leader who does not pass the buck (Thompson 2005, 11-32). Also, as he becomes known as a leader who takes the blame for subordinates, he gains gratitude and thus greater obedience from those subordinates in the future. Most significantly, the ritual often quells public debate about a controversial decision or policy, effectively blocking

further inquiry into the genuine moral responsibility of all of the officials involved, especially that of the leader.

After the failure of the Bay of Pigs invasion, President Kennedy privately blamed the CIA, the Joint Chiefs, and just about everyone who knew about the invasion in advance. But publicly he accepted the “sole responsibility” and objected to anyone’s “attempting to shift responsibility” away from him (Schlesinger 1965, 289-90). The ritual taking of responsibility in this case not only cut short public inquiry into other officials’ responsibility for the failure of the invasion, but more importantly, also forestalled public debate about each official’s failure to consider whether subversion of this kind is justified at all. It seems, furthermore, that the more personally blameworthy an official, the more strenuously the official is likely to insist on accepting this kind of faux responsibility. In the spring of 1973, as Watergate intruded more and more into the office of the president itself, Nixon invoked the ritualistic formula of responsibility in almost its pure form:

Who is to blame for what happened in this case? . . . The easiest course would be for me to blame those to whom I delegated the responsibility to run the campaign. But that would be a cowardly thing to do. . . . In any organization, the man at the top must bear the responsibility. That responsibility, therefore, belongs here in this office. I accept it (transcribed from tape of CBS broadcast of Nixon’s address to the nation, April 30, 1973).

The norm of taking responsibility has a long tradition in the professional military. It has been codified as “command responsibility” in international law since the early part of the last century. The norm is also typically observed by British and European cabinet

ministers when their policies go disastrously wrong, regardless of whether they, their subordinates or anyone is at fault. But translated into American political culture, the norm has lost its consequential sting. Unlike military commanders and parliamentary ministers, American officials do not assume that taking responsibility for major mistakes requires punishment or even resignation. (In Nixon's case resignation came later and was forced.) Presidents thus reap the rhetorical advantages of taking responsibility without suffering the political sanctions that the full-bodied norm would impose.

Constitutional character seeks to revive at least part of that traditional sense of responsibility but without turning the norm into a rule of strict liability. The sense of responsibility properly understood is still personal, even if the mistakes are institutional. It attaches to the president, not to the system or some diffuse collection of other officials. Constitutional character shifts the focus away from individual responsibility for committing primary offenses to individual responsibility for failing to oversee the institutional practices and subordinate officials that permit those offenses. This shift of focus requires a modified concept of individual responsibility, with a somewhat broader reach than is common in private life. Constitutional character calls for a sense of responsibility that results in effective actions before and after its "taking." The actions include, if not the resignation of the president, then the dismissal of high level subordinates, a thorough investigation by independent monitors, and significant institutional reforms to prevent similar mistakes in the future.

The concept also requires a shift of emphasis in the objects of responsibility—what the president believes he is responsible for. These should include: (1) acts of omission as much as for acts of commission; (2) gross negligence as much as for intentional wrongdoing; (3) offenses of oversight as much as for the primary offenses over which the

oversight is exercised; and (4) inappropriately trusting friends and colleagues as much as for mistakenly trusting enemies and rivals. In general, a constitutional sense of responsibility focuses less on the vices and virtues of personal decision making (greed or honesty, for example), and more on the vices and virtues of the institutional overseeing (carelessness or vigilance, for example). Watchfulness is as important as righteousness in the constitutional character of presidents.

### **Tolerance of Opposition**

An essential prerequisite of the democratic process is the existence of a vigorous opposition (Dahl 1972), which in turn requires a disposition to tolerate political opponents. This tolerance supports the capacity of the democratic process to promote necessary compromise and accommodation. It is acutely impaired by extreme partisanship and political polarization of the kind that has marked national politics in the US in recent years.

Political tolerance does not of course mean that you cannot criticize, work against, shun or politically punish your rivals. But it does mean that you must engage them in the political process on fair terms, rather than trying to eliminate them by concocting conspiracies in the backrooms or fomenting violence on the streets. The attitude or character underlying this kind of political tolerance more positively requires that citizens genuinely believe that their opponents should have full rights to participate in the political process. It goes beyond mere tolerance, beyond the attitude of forbearance that citizens are expected to adopt in a healthy civil society. In its strongest form, political tolerance calls on leaders actively to seek opportunities for cooperation with their opponents. In partisan politics, that may mean practicing more bipartisanship than they might otherwise prefer.

Until recently, political scientists have paid more attention to attitudes of tolerance in citizens rather than in leaders (Sullivan et al 1993). But as American politics has become increasingly polarized, they have begun to study the rise of extreme partisanship among political elites. (Bond and Fleisher 2000; Fiorina 2006; McCarty et al 2006). Although the conclusion is still controversial, it appears that a major if not the main cause of polarization is to be found more among the political elites than among ordinary citizens. In any case, presidents certainly set the tone for their administration, and to some extent also for the polity. If they display a politically intolerant disposition, they are more likely to inspire a politics of enmity and obstruction. If they manifest a more tolerant character, they are more likely to encourage civility and cooperation.

The contrast between Nixon and Reagan in this respect is striking. Whether Nixon knew in advance about the notorious enemies' list (part of his campaign's "Political Enemies Project"), it expressed accurately enough his own attitude toward political opponents. The original list included 20 names of opponents whom his aide Charles Colson identified as potential targets for governmental harassment, which included ordering unwarranted tax audits, and manipulating "grant availability, federal contracts, litigation, prosecution, etc."). White House counsel John Dean described its purpose at the time:

"This memorandum addresses the matter of how we can maximize the fact of our incumbency in dealing with persons known to be active in their opposition to our Administration; stated a bit more bluntly—how we can use the available federal machinery to screw our political enemies" (Dean, 1971).

Reagan conveyed a quite different attitude. The public policies he supported were probably less accommodating and more ideological than Nixon's but his political style was much more conciliatory. Reagan was "more a conciliator than a reformer" (Troy 2005, 18-

19). “Although passionate—at times too passionate—in fighting for what he believed in, Reagan was a leader who understood American politics, and who, with the egregious exception of Iran-contra, practiced the art of compromise shrewdly” (Wilentz 2008, 286). After Iran-contra, Reagan brought in a new chief of staff, Howard Baker, known as the great conciliator—in signal contrast to Nixon’s H.R. Haldeman, the “quintessential hatchet man” (Liebovich 2003, 3).

By the mid 1990s the increasingly polarized politics made it difficult for any president, whatever his disposition, to show much forbearance toward his political opponents. Clinton may have had an inclination toward compromise (Wilentz 2008, 326 ) but it was set aside in face of what he and his wife saw as a “vast right wing conspiracy” organized by his political enemies. Bush may have intended to be a “uniter, not a divider.” As a candidate, he promised to stand against the “politics of pitting one group of people against another, the politics of pointing fingers” and in favor the “politics advocated by ... Ronald Reagan, who was a uniter” (CNN 2000). But he surrounded himself with advisers like Karl Rove who keenly embraced polarization as a deliberate political strategy.

Obama came into office with a record of reaching across the aisle in the Illinois senate and briefly in the U.S. Senate, and with promises of promoting a new bipartisanship in Washington. His early efforts met with mixed success at best, but he persisted. “When I made a series of overtures to the Republicans ...all those were not designed simply to get some short-term votes. They were designed to try to build up some trust over time ... as I continue to make these overtures, over time, hopefully that will be reciprocated ...And hopefully the tone that I’ve taken, which has been consistently civil and respectful, will pay some dividends over the long term” (Federal News Service 2009). His chief of staff, Rahm Emanuel, offered what might be regarded as a more strategic interpretation of the

administration's efforts: "The public wants bipartisanship...We just have to try. We don't have to succeed" (Lizza 2009). But Emanuel's main point was that a president cannot achieve bipartisanship alone: "I don't think the onus is on us. We tried. The story is they [the Republicans] failed."

Whether that is the full story is no doubt subject to partisan dispute, but the need for reciprocity in the pursuit of bipartisanship should not be. Even a president inclined toward cooperation cannot succeed unless his opponents respond in kind. Moreover, the leaders and members of his own party in Congress must share his attitude. His own party's partisans are often a major obstacle to depolarization. The character of the president is obviously not the only protection against the politics of polarization, but his habits of mind and those of the officials he appoints are a significant source of the support for (or impediment to) the attitudes of political toleration on which a healthy democratic process depends.

### **Willingness to Justify Decisions**

Presidents are usually all too ready to justify their decisions—on their own terms. With the help of press secretaries, political surrogates, information campaigns, spin doctors and other techniques of modern public relations, their justifications are sometimes indistinguishable from propaganda. The kind of justification required by constitutional character is quite different. It calls for a good faith effort to give reasons and respond to reasons others give. This is the process of mutual justification that contemporary deliberative democrats have made the core of their conception of democracy but one that democrats of many stripes have long held as an ideal (Gutmann and Thompson 2004). The moral basis for this reason-giving process is that citizens should be treated not only as



objects of legislation, as passive subjects to be ruled, but as autonomous agents who take part in the governance of their society, directly or through their representatives. In a democracy an important way they take part is by presenting and responding to reasons, or demanding that their representatives do so, with the aim of justifying the laws under which they must live together.

This justificatory requirement has several practical implications for the exercise of constitutional character. First, the president should regularly face his critics in public settings that permit a genuine give and take. Press conferences are not ideal, but they are better than nothing (Clayman et al 2006; and Kumar 2005). Yet since Truman's presidency there has been a significant decline in the frequency of press conferences (<http://www.presidency.ucsb.edu/data/newsconferences.php>). Both Bushes held more than Clinton, but the events were widely considered even less informative. Debates have their deficiencies too, but they allow for more sustained dialogue. If they have value when candidates are campaigning, might they not also have value when presidents are governing? The practice of regular debates could be carried over from the campaign to the presidency—not with the same opponents of course but perhaps with leaders in Congress serving as the challengers.

A second implication is that the justifications should be accessible. A deliberative justification does not even get started if those to whom it addressed cannot understand its essential content. Appeals to abstruse scientific studies or complex economic theories should not substitute for a good faith attempt to explain the fundamental rationale of a policy. Nor would it be acceptable to appeal only to the authority of revelation, whether divine or secular in nature. Most of the Bush's arguments for going to war against Iraq appealed to evidence and beliefs that almost anyone could assess. Although Bush implied

that he thought God was on our side, he did not rest his argument on any special instructions from his heavenly ally (who may or may not have joined the coalition of the willing).

The example of the controversy about the Iraq war suggests a third implication: the justification should not depend mainly on secret evidence. It is usually possible to have a substantive debate even about decisions involving national security without revealing sources and methods of intelligence and other critical information that are legitimately kept secret. In the case of Iraq, it was not the need for secrecy that prevented the administration from presenting a compelling justification. It was, as we later learned, the weakness of the evidence itself. (To the extent that the justification was deceptive, it revealed another character defect, the lack of candor, discussed below.) The partial secrecy and presumed deception made it difficult for citizens adequately to dispute the decision to go to war at the time (though some tried hard). The reasons the administration gave were effectively challenged later, and they were found to be wanting. The democratic process would have been better served if the reasons could have been challenged earlier. Leaders with constitutional character do not evade early challenges.

A final implication is that the reason-giving should be on-going. It should be part of a dynamic process that does not necessarily end when the initial decision is made. Argument about the decision to go to war in Iraq went on for a long time, longer than most preparations for war. But even after the decision was made, the argument continued. It was then not about whether to go to war but whether the decision to go to war was justified (and if so whether for the right reasons). The critics could not undo the decision but they hoped to influence future decisions—to press for involving the UN and other nations in the reconstruction effort, to bring the war to a more rapid conclusion, or simply to weaken

the Republican's prospects for re-election. Even when motives are partisan, a president with constitutional character does not shrink from confronting his critics—and in public forums that allow for genuine exchange of views. On matters of war and peace, that kind of dialogue is difficult to promote, but it is all the more important.

The point of recognizing that the process is on-going would be lost if presidents did not leave open the possibility of changing their mind. Not only should they be prepared to learn new facts, but they should also stand ready to revise their views in response to good arguments others make. The importance of this openness to change is too often obscured by the insistence on another, commonly overrated personal virtue—constancy or steadfastness. To be sure, we do not want presidents who pander to public opinion, who govern mainly by reference to focus groups. But neither do we want presidents who ignore changing circumstances, disconcerting facts, or widespread opinion that is stable and well informed. Fidelity to core principles is to be admired, but constancy in the face of evidence of error is to be suspected. Steadfastness can too readily turn into stubbornness.

That is why the charge of flip flopping, so prevalent in recent campaigns, distorts the appraisal of candidates. The mere fact that a candidate has changed his position may be a cause more for praise rather than for censure, whether or not the shift is to his electoral advantage. The question should be whether his new view is justified, whether changing circumstances (fresh evidence or better arguments) warrant the change, whatever his motives might be. Answering that question is harder than merely pointing out inconsistencies, and would require pundits to look more deeply into the merits of the issue in question. A president with constitutional character is not afraid to change his mind. The constant commitment should be to taking positions on the basis of the best available

evidence and advice at the time, and justifying any necessary changes on the same basis—without fear of being branded a flip-flopper.

### *Commitment to Candor*

In Dante's *Inferno*, liars end up in the penultimate circle of hell, even deeper in Hell than those who have perpetrated violence. Deceit is an especially diabolical vice because its victims often do not know they are victims. They cannot take steps to protect themselves from the other evils that may be visited upon them. This is even more true in government. Deception undermines democratic government. It is so destructive because it enables governments to commit other wrongs with impunity. We cannot hold officials accountable for their other vices and other misconduct if they deceive us about what they are doing. Candor is therefore the pre-eminent virtue of the democratic process because it is the pre-requisite for knowing what other virtues (and vices) the president and his associates have.

Even with respect to this preeminent virtue, we should still be selective in what we require of leaders. One reason to be discriminating is that presidential deception is occasionally justified. Constitutional character does not abjure it absolutely but includes the capacity to discern when it is and when it is not justified. At a press conference in November 1962 shortly after the Cuban missile crisis had passed, Kennedy was arguably justified in denying that any matters other than Cuba had been discussed in negotiations with Soviet officials. Kennedy had privately promised Khrushchev that if the Soviets withdrew their missiles, the U.S. would remove its missiles from Turkey. But a full report on the negotiations, candid enough to persuade Americans, could have unsettled our Turkish allies, and undermined Khrushchev's precarious position with his suspicious colleagues, reigniting the crisis. (Allison 1971, but see Alter 2005).

To be justified, official deception must satisfy stringent conditions. It should be in the service of a goal that is widely acceptable (not merely in the political interest of the president and his party). There should be no reasonable alternative means of achieving the goal (such as saying only “no comment”). It should be an isolated incident rather than part of a permanent practice (a one time crisis rather than a continuing routine). If the deception is not of a type that could be approved in advance (such as sting operations by law enforcement agents), the officials should ensure that it can be reviewed later. Because these conditions are difficult to satisfy, even well-intentioned leaders are tempted to ignore them. That suggests that constitutional character should tilt toward candor. We should worry less that a president will be too pure to get his hands dirty than that he will when he should not.

Kennedy’s deception may have satisfied the first three conditions, but falls short on the fourth. Neither the deception nor the agreement that it concealed was made public until years after the need for secrecy had passed. The President’s advisers reported the episode publicly for the first time in a magazine article in 1972 —long after they and their party had left office. The first public statement by those who participated in the decision making during the crisis came in 1982 (“Lessons...” 1982, 85-86). Because of the delay, citizens could not effectively sanction those who made the decisions or those who engaged in the deception, and could not call for timely measures to change how officials might conduct themselves in similar crises in the future. In those limited circumstances in which deception is justified, presidents should reveal the deception as soon as the end that justified it has been accomplished and no further equally important ends would be defeated by the revelation. If constitutional character includes the discretion to deceive, it also implies a duty

to disclose the deception. The license to deceive expires sooner than most presidents are inclined to assume.

Even among the deceptions that are not justified, some are worse than others. Candor itself is not a unified virtue. Several years ago a team of magazine researchers compiled a list of lies spoken by the last four presidents, and asked a panel of noted pundits and journalists to rate each lie, and give an overall score to each president. (Washington Monthly 2003). The subhead asked: “Which president told the biggest whoppers?” The answer —George W. Bush— evidently did not surprise most readers. The more interesting fact was that there was not that much difference in the overall scores of the four presidents: most received about a 3 on a scale of 5. All our presidents are liars, the implication seemed to be. A cover story in *Atlantic Monthly* by a veteran White House reporter later came to the same conclusion. “From Washington to FDR to Nixon, presidents have always lied” (though again GWB is deemed worse than most) (Cannon 2005).

Even if all presidents are equally liars, which is doubtful, not all lies are created equal. The experts on the lie-rating panel were usually able to distinguish the trivial from the significant. Clinton’s claim to have heard about the Iowa caucuses since he was a “little boy” though they did not exist until he was much older was deemed less serious than his notorious “I did not have sexual relations with that woman, Miss Lewinsky.” Even so, catalogs of this kind do not reveal much about character because they do not tell us much about the content of the lie, the consequences it might have for public policy, and the likely effects on the intended audience. And they often confuse lies with other kinds of failures. GHW Bush’s defense of his decision to appoint Clarence Thomas to the Supreme Court (“...he is the best qualified at this time. I kept my word ... by picking the best man for the job on the merits”) shows less an ethical flaw than a failure of judgment.

This preoccupation with individual lies is problematic in several ways. Most seriously, it distracts us from attending to more insidious forms of concealment, especially institutional deception with which constitutional character should be principally concerned. Hunting mainly for individual lies merely reinforces the common tendency to worry more about the more familiar personal vices of private life than about the less appreciated institutional vices of public life. Consider Ronald Reagan's statement in November 1986 defending the administration's actions in the Iran-contra affair:

"We did not—repeat, did not—trade weapons or anything else for hostages, nor will we" (Reagan 1986).

Reagan was probably sincere. He was not lying, strictly speaking. He was inattentive, some would say, but he was not unethical, or at least not as unethical as Oliver North and Admiral Poindexter, both of whom evidently did lie. But this charitable view ignores Reagan's failure to take real responsibility for allowing or even creating conditions that encouraged others to lie and deceive. For a President that may be an even worse vice, as far as constitutional character is concerned. Explicit presidential lies are usually soon exposed, but the lies of subordinates and deceptive practices are harder to detect and are therefore more pernicious.

Beyond deception, constitutional character needs to be steeled against the other vices of concealment—most notably, secrecy and manipulation—which can distort the democratic process no less (Thompson 1987). In modern government, secrecy in particular has a tendency to expand well beyond its legitimate limits. A presidential commitment to transparency may be one of the few checks on this excessive expansion. If allowed to spread, its effects can amplify the damage of deception. Secrecy can block inquiries into

past deceptions. If citizens do not know whether they have been deceived, they cannot take measures to prevent similar deception in the future.

Thus the qualities we should require —as distinct from those we might hope for— do not include many of the virtues we prize in private life. But they do include all of the constitutional virtues —and above all candor. A candid president not only tells the truth, but encourages his subordinates to be truthful (when the public good requires the truth). Only when the president has this virtue can we as citizens judge whether he possesses the other qualities of constitutional character that we should demand in our political leaders.



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