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DECODING THE CODE

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DECODING THE CODE

Three vocations in the history of Western society have been termed status occupations or "professions": religion, medicine, and law. These groups held exclusive claim to the professional distinction from the 16th to the 18th century when the military (officer corps only) first shared in the status designation. The military, no doubt due to politics, was never able to retain the professional connotation with consistency. Except for the vacillating position of the military, the label of "profession" remained unique to the original three groups until the 20th century. Today there is little agreement as to what constitutes a profession with various occupations claiming the distinction. However, there is still general consensus on the professional status of the traditional three occupations despite contemporary cynicism reported in various opinion polls indicating a decline of public confidence in the practitioners of medicine and law.

Using the three traditional occupations as a basis for analysis, theorists generally agree on variations of the following list of attributes required for a profession:

1. full time and stable occupation
2. life-long calling
3. identification with the occupation
4. theoretical body of knowledge transmitted through formal schooling
5. service-client orientation
6. collective autonomy in recruitment
7. collective autonomy in monitoring standards of performance¹

Noticeably absent from this list is the professional code. The immediate response is to point to the Hippocratic Oath sworn by new physicians as an obvious exception. However, there is considerable difference between the swearing to an oath, a formal declaration to fulfill a pledge by an individual,

and the informal espousal of a code by a group. In the 1950's, the Hippocratic Oath was refused by increasing numbers of physicians who declared the act of oath-swearing to be a threat to individual autonomy.² When the Hippocratic Oath returned to prominence in the 1970's, the oath had begun to be interpreted as a code. Since this transition, there have been several attempts to alter the original oath into a more familiar code format. The phenomenon of the code has spread to include the recent adoption of a professional code of ethics by the legal profession. Other occupations, with increasing frequency are giving serious consideration to the formulation and possible adoption of similar codes for their own respective occupations. The possession of an ethical code appears to be the contemporary hallmark of a profession.

The code phenomenon abounds with much confusion. There is very little understanding of the concept and even less critical analysis applied to the ambitious claims made by code proponents for the concept. Investigation reveals that the term itself has antithetical meanings. It is this antithesis which is central to the ambiguity of the professional code. Without an attempt to remedy these inherent contradictions, the professional code of ethics is worthless in fulfilling the three most common claims: 1) a code of ethics can establish respect for the profession and its practitioners, 2) a code of ethics can counter public cynicism, and 3) a code of ethics can cause practitioners to adhere to certain standards of behavior deemed appropriate by the profession. By examining the nature of the antithesis surrounding the term code and also analyzing the structure of common codes, the conclusion will be suggested that as currently interpreted, the code principle is inert and incapable of doing much of anything except damage. The remedy that will be offered will pose a serious challenge to any profession concerned with the moral dimension of their work. The challenge is posed essentially as a

question as to whether the profession wishes to be actor or audience in the moral area.

The Nature of the Antithesis

The word code has two very different meanings. The nature of the two definitions can be examined by dividing each into meaning, intention, and purpose.

<u>Rule</u>		<u>Symbol</u>
A specific collection of rules	<u>meaning</u>	An arbitrary set of symbols
Clarification---intended for public display	<u>intention</u>	Confusion---intended for secret communication
To require individual accountability to the rules for behavior	<u>purpose</u>	To cause exclusion/inclusion selective accountability for knowing the symbols
External Cohesion		Internal Cohesion

Rules seek to communicate to a large audience and are therefore public in their intention. The purpose of the rule is to hold all those subjects to the rule accountable for their behavior in common to the rule. To insure accountability in common, the rule concept must be supplemented with an enforcement procedure. The example for this definition of the code is any legal code which is enforced or administered by an authorized law enforcement agency. The laws are usually in some way connected to the norms and values of the society which adopts or accepts the legal code. The Symbolic reference notion is a specific collection of arbitrarily agreed upon symbols which are known only to the members of a very limited or select group. There is no intention for widespread dissemination of their meaning. The intention, instead, is to confound or confuse. The purpose of secret communication is for inclusive/exclusive communication. These types of codes vary from secret fraternal rituals to specific codes used for highly sensitive military communication.

Either code concept is capable of producing a feeling of cohesion among the members of the group. However, the type of cohesion may be very different. The "Rule" definition causes cohesion externally through the enforcement or accountability that is required. The cohesion which results from the inclusion/exclusion principle develops from within and is integral "to knowing the symbols." For example: When I was in grade school, I sent away for a special decoder ring which enabled me to translate messages at the end of a comic strip. Several friends also possessed the "magic ring" allowing for secret communication among the ring owners. In-group cohesion developed naturally from knowing the common secret. Equally important to the cohesion principle is the degree of voluntarism which is exercised on the part of the individual. Cohesion which occurs from choosing to be associated with a particular group through schooling, training, licensing, etc., may cause a very different cohesive attitude in the individual toward the group than a cohesion which is required and enforced from an external source.

The professional code of ethics lies somewhere between these two opposing definitions. Contemporary interpretative trends attempt to cause a synthesis of this antithesis by combining the meaning and intention of the "Rule" definition with the purpose of the "Symbol" definition. The result is approximated by the following:

- meaning - a specific statement of values and standards of behavior required in order to be termed a competent professional.
- intention - the standards of the profession are displayed to the public with the intention of clarifying those standards to the public.
- purpose - the purpose of the statement is to give group identity to those espousing the code (in-group inclusion/out-of-group exclusion) and to allow for internal cohesion to develop.

With the substitution of the "Symbol" purpose (inclusion/exclusion) for the purpose of the "Rule" concept (individual accountability), the enforcement provision is eliminated and symptomatic that this synthesis is in fact untenable in satisfying claims for the professional code. It is doubtful that a cohesion principle can replace the enforcement principle which insures accountable behavior in common to those standards and values of the profession intended for public display.

The Structure of a Code

Any professional code of ethics is formulated as a group product. Examination of typical codes reveals two basic requirements for formulation. These requirements, although seemingly very simple, are potentially as problematic as the synthesis of definitions of the concept itself. A code must be general enough to be easily communicated and specific enough to serve as a guide to behavior.³ The first requirement aims at both the public statement aspect of the code and the cohesion principle. The professional code is intended for the group, by the group to the public. It represents the espousal of common group principles potentially to enhance the service-client relationship of the occupation. This aspect of the code might be interpreted as giving the public a norm by which to judge the behavior of the practitioners of the occupation. However, since professional codes do not contain provisions for certification or decertification of the practitioners and with the elimination of enforcement potential by the synthesis of the definitions, this interpretation cannot be taken seriously.

Even when decertification is ultimately within the control of the group separate and apart from the code, decertification does not occur as a result of code violation. Decertification, if it occurs, follows conviction for

violating a legal code which does in fact have the power to hold individuals accountable for their behavior to its rules. Charges of unethical behavior or violation of the professional code are compounded after civil action and have not to date ever stood alone in any serious decertification effort. Even criminal conviction does not insure decertification; it may only result in suspension. There are countless examples to demonstrate this point from the medical profession to the Congressional Ethics Committee hearings. A recent example involving the equally recent lawyer's code of ethics serves as a typical paradigm to exemplify the limitations of the professional code as an active principle. A lawyer in Oklahoma is suspected of duping elderly clients into naming him as their heir. Local courts have been unable to bring specific charges of illegality against this lawyer. The Pyatt County Bar Association has declared that even in the absence of such charges, this lawyer's behavior is clearly in violation of the recently adopted code of ethics. The Bar Association also admits that they are incapable of taking any action on the basis of the code violations and have asked the state supreme court to investigate in order to discover some kind of legal inpropriety that can be acted on.⁴ If the intention of a formal code of ethics is to bolster waning public confidence, the question that can only be answered by individual reaction to situations such as that just described, is whether the espousal of a code that is not enforceable is not the cause of increased public cynicism.

Without the provision for decertification, consideration of a code as a guide to behavior may lack any credibility. Risking accusations of a Hobbesian view of human nature, Derek Bok, President of Harvard University, offers the following opinion on educational programs in professional ethics:

Formal education will rarely improve the character of a scoundrel. But many individuals who are disposed to act morally will often fail to do so because they are simply unaware of ethical problems that lie hidden in the situations they confront.⁵

If formal education, which can be supposed to be a more comprehensive source for moral guidance than a code, cannot reform the character of the scoundrel, it is bizarre to contend that a code with no provision for enforcement will become a guiding principle. For those who are disposed to act ethically and who have had the advantage of a comprehensive program in the ethics of their profession, that a code will offer further guidance is equally bizarre. For others who are disposed to act ethically but who have not had the advantage of such formal education, the question is this: Can a code which is required to be general enough to be easily communicated and specific enough to be a guide to behavior be of any use at all? The requirement for anything to be both general and specific appears incredulous.

Solving the Code Dilemma

In an article for Change magazine, Dr. Bok summarized an analysis of public confidence in American professional institutions during the period 1966 to 1976. This analysis presented an attitude among Americans of increasing mistrust for members of these institutions. The level of public confidence in doctors during this period dropped from 75% to 43%, confidence in lawyers fell from 46% to 6%.⁶ It is also during the period from 1966 to 1976 that the code phenomenon becomes prevalent. It is fair to assume that codes are in some way meant to react to or to remedy declining confidence. Whether a code is a reaction or an action is solely within the control and intention of the professional institution.

As a reactionary device, a code presents a short-term panacea. The

code is intended to show apparent concern for the declining confidence without attempting serious consideration of the possible sources of the cynicism.

There is no provision to hold members accountable to the code and thus the code will quickly contract all of the diseases of ambiguity and antithesis with the possible counter productive result of actually increasing the level of public cynicism by publicly presenting the values and standards for judgment which the profession itself has no power or intention to act on. Such a situation may confirm that public cynicism is both warranted and justified.

As an active principle, a code must provide a remedy for declining confidence and prevention from further declines. The code is not simply a public display of standards, but a recognition and willingness to respond rather than to react to public cynicism. The response must include inquiry into the sources of the cynicism. Genuine concern can be related naturally through the attribute of professional autonomy which grants to the profession the ability to monitor the standards of behavior of its membership. This serious monitoring effort must include two further actions: 1) Abandonment of the cohesion purpose, 2) Adoption of a formal enforcement system. If cohesion is a professional necessity, it should not be tied to the code. Cohesion can be accomplished by issuing distinctive buttons, wearing uniforms or the awarding of "magic rings." A code with a cohesion purpose cannot also provide for censure. For one member of the group to censure another destroys cohesion. To act on one principle is to violate the other. There is no way for these two notions to work in concert with each other.

A code of ethics which is supported by a formal censuring system is an active principle. The code can be used in total compliance with the definition of the "Rule" notion. It is conceivable that these rules are the values and

standards deemed appropriate to be termed a competent professional and it is to these standards and values that the individual practitioner will be held accountable. Accountability is insured by the inclusion of the provision for decertification within the code itself and the supplemental enforcement of these concepts or rules. The system must also be open to the public. If the code is intended for display to the public, the public must have access to the mechanism. The public ought to have the power to bring charges of unethical behavior to the professional group and not be limited to civil action. If this is done and actively received by the profession, it might in fact decrease the number of civil actions brought against professionals. To date there are only two alternatives open to a public grievance. These two actions are either to sue or to do nothing. However, in order to cause the code to provide a third alternative, the public perception must be that the group will act. These may be stringent requirements to place on a code which perhaps began as a rather simple idea, but without these requirements, a code is worthless as a guide to behavior or as a problem solver.

Endnotes

¹This list is condensed from several sources. The most complete treatment of this concept can be found: Hughes, Everett C. Men and Their Work. (Glencoe: Free Press, 1958) and Lynn, Kenneth S. The Professions in America (Boston: Houghton Mifflin, 1965).

²The transition from oath to code for the medical profession was a discussion topic at the Workshop on the Teaching of Ethics in American Higher Education, Princeton University, Princeton, NJ. Sponsored by the Hastings Center, July 16, 1979.

³The requirements for code formulation was suggested by Bernard Rosen, Professor of Philosophy, Ohio State University, in a seminar on professional ethics at the same workshop mentioned above. The requirements can be confirmed by examining a number of professional codes especially those formulated recently.

⁴The description of this situation was contained in a 60 Minute report entitled "Where There's a Will," 24 February 1980 by Harry Reasoner.

⁵Change Magazine, Vol. 8, No. 9 (Oct 1976), Derek C. Bok, NBW Tower, New Rochelle, NY 10801, p. 12.

⁶Bok, p. 12.