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A POLITICIAN'S CONSCIENCE†

SENATOR PHILIP A. HART *

WHEN MARK TWAIN wanted to paint a character as particularly untrustworthy, he would apply one of his favorite phrases. “The fellow has no more scruples than a Congressman,” he would write, thereby neatly making both a character sketch and a political judgment.

Irreverence for the public officeholder is one of the oldest, and perhaps one of the healthiest, of American attitudes. And yet, the American measure of disrespect for politicians collectively is balanced by favorable regard for the politician individually. Mark Twain could write cynically of Congressmen but it is unlikely that he ever spoke disrespectfully to a Congressman.

And an officeholder introduced to an audience as a “politician” will get a different reaction than if he is introduced as a United States Senator, even though both titles are equally accurate. If, for example, I were to write an article and put on it the title “The Responsibility of a United States Senator to His Conscience,” there wouldn't be as many readers as there would be if “Politician” were substituted because the conclusions would be as predictable as an essay on the moral responsibility of a bishop.

The two titles, “politician” and “Senator,” conjure up two stereotyped views of the same job. The “Senator” walks the somber halls of power, deliberating great issues in dignified chambers. The

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"politician," meanwhile, scurries through tunnels of intrigue, making decisions with an eye to the opinion polls and ever-mindful of the next election.

Neither image, of course, is a very balanced one. Perhaps this is one reason many people least expect from the public officeholder what should be his most important attribute: balance. Ask a high school civics class what the ideal public servant should be and someone is very likely to answer: "A man of principle." And the answer will probably be greeted with approving nods even though it is exactly wrong.

In politics today—any day—there is nothing more dangerous than a man of principle. Much of the unnecessary anguish the world has suffered since time began can be traced to some man marching under the banner of a single valid principle.

What should an ideal public servant be? The most valid answer, to my mind, is: "A man who can be trusted to make a thoughtful judgment among competing principles."

Let us assume that there is general agreement that communism is an undesirable force in this country and that we should not tolerate any movement advocating force-overthrow of our government. (An overworked theme, true, but still familiar enough to provide a useful example.) We are all acquainted with the views of men who saw this single principle as justice's only banner. And for them, competing principles tended to fade, fade away like romance in the mouthwash commercials, principles such as the right to privacy, a man's right to face his accusers and the right to a fair hearing.

So it's not a matter of picking a principle, but of identifying all the principles which are relevant and resolving the issue among them—a "compromise." In the public mind, there probably seem two times when the politician's good conscience is in greatest danger: (1) when he is tempted, if ever, to use his office for financial gain and, (2) when the prospect of political gain or loss tempts him to choose a position he does not actually believe in.

There is no need to discuss the first point. Fewer subtleties are involved and the moral case is much too clear. But let's examine the second point for a moment. Let's say that a politician is tempted to grab an issue that, despite dubious merit, will gain him the acclaim of a major part of his constituency. Instantly, we are confronted with two competing principles. Is it the duty of the politician to sense out the majority view of his constituents and reflect that view, undistorted, in the Congressional Record? Or should he, as Edmund Burke put it, "only promise to inform himself on issues and vote as an informed conscience directs?"

What we usually find is the employment of both philosophies with a leaning toward Burke. First of all, no officeholder is going to be too far from the center of his constituency's spectrum or he wouldn't be elected in the first place. After that commences a dialogue in which the officeholder sometimes manages to influence his constituency's views (depending on his luck and eloquence)
and sometimes finds his own actions shaded by the changing mood of the “folks back home.”

It is a very subtle and complex relationship and not even the politician can rightfully tell exactly who influences whom the most.

Let me explore with you the way in which one United States Senator arrived at a position on one domestic issue, an administration bill. The bill, at one stage in its career, would have banned the sale of all firearms across state lines, thus effectively ending mail-order dealings. And here’s how the Senator mustered and weighed competing factors:

1. Mail-order sales make it easy for criminals and juveniles to get weapons.
2. Ordering a gun by mail is a good way to circumvent state laws applying to firearm sales.
3. The nation should do whatever it can to make it difficult for criminals to get guns.
4. Popular feeling against mail-order gun houses has been running high since President Kennedy’s assassination.
5. Mail-order gun sales have been steadily increasing.
6. A special problem exists in Detroit. Despite strict Michigan controls on the sale of handguns, the state’s ineligibles can get any pistol they want simply by slipping over the line into Toledo.

But,

1. Almost everyone in Michigan who had strong feelings about the bill was against it.
2. Since the bill applied to all firearms, it would clearly be an inconvenience to the many honest sportsmen who buy sporting rifles and shotguns from mail-order houses such as Sears Roebuck. This is particularly true in rural areas where counter selection is limited.
3. Rifles and shotguns are rarely used in criminal pursuits.
4. Likewise, it is much more difficult for juveniles to conceal mail-order shoulder arms from their parents than any handgun they may order by mail.
5. Only a very few states have any restrictions on the sale of shoulder arms; so, generally speaking, whatever is available by mail is also available at any hardware store.
6. Gun lobbyists make the claim that any criminal who wants a gun badly enough, whether a pistol or rifle, will find a way to get it.

That last argument is dismissed easily because, if its logic were followed, we would have no laws against narcotics.

But the other arguments, weighed and balanced, led to this position. A gun law? Yes. The arguments for banning interstate sale of handguns are too compelling to be denied. But in the case of shoulder arms, it is doubtful if the benefits would outweigh the necessary inconveniences. Therefore this Senator took the position that interstate sale of handguns and heavy military weapons (bazookas, mortars, etc.) should be outlawed but sporting shoulder guns should be exempt.

Those who feel all guns should be outlawed will shout compromise and they (Continued on page 358)
may procure a warrant for the entire area to be presented to any reluctant occupant within its scope. While this method will save the inspector a great deal of time and effort and insure a more thorough investigation, it is an open question whether these "area warrants" fulfill the fourth amendment requirement that the place of the search be particularly described. The Court may well decide that the "place of the search" can be expanded, just as "probable cause" was, to permit area searches. Indeed, since "probable cause" can be based, not only on the particular premises involved, but on the entire area, such area warrants would seem to afford no less protection than the "individual warrants."

At first glance, it appears that the Court has given the individual a greater right of privacy by requiring search warrants and, at the same time, taken away that right with its broad interpretation of "probable cause." To allow the usual standards of "probable cause" to prevail, however, would have destroyed the efficacy of the area inspection, which is the most effective way to discover all violations. What these decisions do is fulfill two basic needs for the protection of the individual: (1) the requirement that he be informed of the authority for the search as well as its purpose and limits before a criminal prosecution is risked by refusing entry, and (2) the need to be free of the unbridled discretion of the officer in the field. This is a good deal more than was previously available and to have gone further would have been too great a sacrifice of the public need.

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(Continued)

will be right. But compromise reached by a careful weighing of equities is not harmful to the domestic structure. Compromise and consensus are what democracy thrives on. Only when a nation finds itself split on powerful competing principles that will not admit of compromise will it be in serious trouble.

The United States in 1860 and Spain in 1936 are cases in point. In each case, the opponents rushed to battle with slogans of principles on their lips, each finding that the ensuing years demanded many of the same compromises that might have headed off the conflict in the first place.

Essentially, the responsible politician is one willing to examine the opposition's points carefully. He is one willing to judge ideas by their content rather than by their source. He will be, in short, a man whose good conscience will demand that he always seek justice by the light of many principles—and not by the beam of one isolated ideal.

46 Note, Enforcement of Municipal Housing Codes, 78 Harv. L. Rev. 801, 807 (1965).