



Virtuous Leadership and the Separatist Thesis

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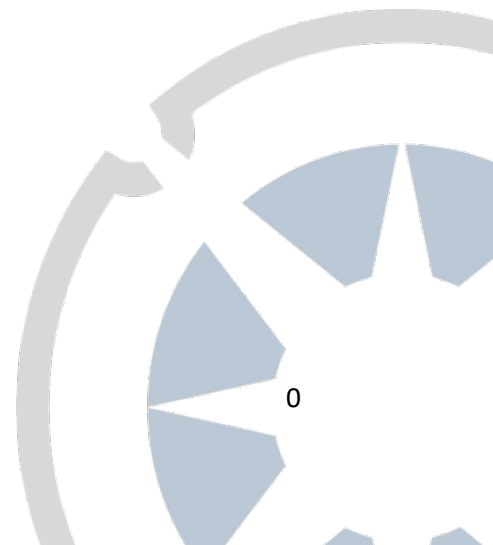
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Professionals enjoy powers and privileges not afforded to those who are not members of that profession. Physicians can probe bodies and ask deeply personal questions that the non-professional usually is prohibited from doing. Attorneys are required to maintain confidentiality for the sake of their clients to degrees not expected outside the attorney-client relationship and cannot be compelled under law to reveal information protected by this relationship, unlike others who have a relationship with a defendant. Soldiers are authorized to seize property, arrest, and kill, and to take a more extreme case, intelligence agents manipulate, lie, and dissemble to achieve the aims of their profession.

It appears that the special status of professionals and the powers granted to them also carry moral significance to the extent that there is a morality for each profession that is distinctive from “ordinary morality.”¹ Professional morality understood as such raises several important philosophical questions, including whether it is separate from “ordinary morality” and if so, what justifies this special status and the powers it grants to professionals. This paper seeks to gain clarity on these questions by considering professional morality from the perspective of virtue ethics and in so doing will highlight important ways in which leaders, as professionals, have special obligations to uphold the constitutive values of the institutions they represent that often are in tension with, if not at odds, with “ordinary morality.”

¹ The separatist thesis holds that “professionals, by virtue of their expertise and their consequent roles, have rights and duties that are unique to themselves and that may hence be not only different from, but even contrary to, the rights and duties that are found in other segments of”¹ The use of quotes throughout is intended to recognize that there is considerable disagreement about important moral issues and so there is not a single referent to the term

The Separatist Thesis

The separatist thesis holds that “professionals, by virtue of their expertise and their consequent roles, have rights and duties that are unique to themselves and that may hence be not only different from, but even contrary to, the rights and duties that are found in other segments of morality” (Gerwith 1986, p. 282). Because of their particular expertise and the benefits they provide to other members of society, professionals’ morality is separate from the morality of ordinary citizens. Professionals are both licensed to and prohibited from actions that non-professionals are not. For example, certain medical professionals are authorized to administer controlled substances to patients where non-medical professionals are not able to do so without risk of legal repercussions. Lawyers cannot be required to divulge sensitive and even potentially criminal information about their clients, where ordinary citizens may be compelled to do so.

That professionals enjoy powers and protections different from ordinary citizens is not altogether controversial. What many moral philosophers dispute is the additional claim that professional morality might require actions that are contrary to “ordinary morality” in the sense that professionals are justified in infringing upon the rights and protections of other moral agents in carrying out their professional roles and responsibilities: “The separatist thesis is invoked...where this or some other general moral requirement of rights is not fulfilled, so that a moral right of the client or of someone else is infringed” (Gerwith 1986, p. 283). In other words, the separatist thesis holds that professionals, by virtue of their expertise and the benefits they confer on society, are justified in acting ways that otherwise would invite moral sanction or reproach in other, everyday contexts. The separatist thesis does not give professionals absolute license to act without restraint or reproach but applies to specific actions taken for the purpose of

“ordinary morality.” At the very least, “ordinary morality” can be understood as morality for the non-professional or the professional outside of their professional role.

carrying out one's professional role. Moreover, professional morality, according to the separatist thesis, may impose *greater* demands or obligations upon the professional than the non-professional. Again, confidentiality obligations typically are stricter for physicians, therapists, clergy, and attorneys than between two individuals engaged outside a professional context (Freedman 1978, p. 3).

The separatist thesis, if true, raises interesting questions about its justification. On what grounds are professionals justified in infringing upon the rights or abrogating the demands of "ordinary morality"? Are these grounds themselves in some sense separate from "ordinary morality" or somehow justified by it? If professional morality is somehow justified or grounded in "ordinary morality" but allows for the licit infringement of demands of "ordinary morality," then how is it binding? In other words, how does "ordinary morality" justify its own violation? Not surprisingly, there is considerable disagreement among moral philosophers about the validity of the separatist thesis and its justification. These disagreements, however, reveal the limitations of a deontological and utilitarian approach to understanding professional morality because these approaches often do not account for the distinctive requirements and role-generated obligations of professionals (Oakley and Cocking 2001).

Alan Gerwith offers a justification for professional ethics by referring to "the necessary conditions of action and successful action in general," which he identifies as freedom and well-being (Gerwith 1986, p. 287). Freedom and well-being are the objective of moral rights; they are what rights are aimed to protect and preserve. Every actual or prospective agent has equal rights to these necessary conditions for action and successful action in general, which Gerwith calls the Principle of Generic Consistency (PGC) and deems as "the supreme and most general principle of all morality" (Gerwith 1986, p. 288).

The PGC can be justifiably infringed if one of three conditions are met: 1) infringing is the only way to prevent the violation of another moral right; 2) when rights conflict, infringing one right over another is justified where that right is more necessary for action; and 3) infringement is justified by the rules of an institution. The third condition is most relevant to justifying the separatist thesis, according to Gerwith, because neither of the first two make special appeal to professions and, more importantly, because “a profession is a kind of institution” (Gerwith 1986, p. 290). Institutions may justify rights because these rights are derived from the rules of the institution, and the institution itself is morally justified because either all persons subject to the institution have freely consented to accept its rules and roles, or the institution’s rules and roles are designed to protect and promote the well-being of all persons subject to them. Because professional rules and actions are justified in this way, professionals may justifiably infringe upon rationally grounded moral rights of “ordinary morality.” Gerwith, however, adds a third requirement for the justification of professional morality and the separatist thesis, namely “that the specific mode of the institution’s operation must itself also conform to the rights conditions of the PGC” (Gerwith 1986, p. 294). That is, an institution itself is justified only to the extent that its specific aims and functions uphold the rights entailed by the PGC.

However, there seems to be circularity in Gerwith’s account that does not resolve the paradox of the separatist thesis, or the idea that “ordinary morality” can be used to justify its own violation (Freedman 1978, p. 13). Infringing moral rights is justified insofar as professionals are acting as a type of institution, which itself is justified only to the extent that it and its constituent rules and roles uphold the moral rights necessary for action and successful action of moral agents. But why should institutions in this sense have priority or trump the rights of individuals? Gerwith’s answer is that “because the infringements are intended to restore that equality of the generic rights of agency that the principle [PGC] declares to be morally obligatory” (Gerwith

1986, p. 296). So, the only justification for infringing upon the rights of another by a professional is because the profession-as-institution is needed to preserve the PGC of individuals.

Professional morality, then, is justified as an intervention only.

What justifies the intervention and coercive power of professions-as-institutions? Appeals to the PGC alone are insufficient because they are binding on everyone equally and so cannot differentiate between professionals and non-professionals. Professional morality gives special power or at least priority to professions that is absent with the non-professional. The professions-as-institutions are the enforcement mechanism to preserve the PGC across individuals. When the judge or umpire rule to infringe upon a defendant's or player's freedom, they are acting from a position of authority that the player or defendant lacks. Gerwitz seeks to legitimize this authority through indirect appeals to the deontological principle of consent or to the consequentialist goal of promoting well-being. But these two grounds do not cover all instances of where professional morality may license departure from "ordinary morality" and infringement of rights of individuals. Professional morality often requires more than interventions to restore or uphold the PGC among individuals. Professionals are sometimes able to act (or not act) in ways that do not directly aim at protecting an agent's rights or prevent infringements of even greater rights.

To see this point, consider the real case of Petty Officer Marcus Luttrell. Luttrell was a Navy Seal on a clandestine operation in Afghanistan in 2005 when he and his squad encountered two goat herders during the course of their operations. Luttrell knew that were he to let the goat herders go free unharmed they would undoubtedly inform the local Taliban of their location and that his only alternative would be to kill the goat herders, two noncombatants. Does Luttrell contravene obligations of "ordinary morality" by killing two innocent individuals thereby preventing greater harm, or does he allow them to go free unharmed? However one might judge each option morally, the point is that were it permissible to kill two non-combatants, it cannot be

on the grounds that doing so protects the generic right of agency of the goat herders or their well-being. Something more needs to be said in favor of professional morality and the separatist thesis.²

Benjamin Freedman offers a different account of the separatist thesis when he argues that professional morality gives professional values greater importance or priority than the values or interests of non-professionals. Such a distinction helps explain why there are cases in which the professional has reasons for keeping confidentiality that override the reasons that the same individual ordinarily would have for disclosure. For example, a physician would not necessarily be required to keep confidential medical information about another person were she to obtain that information outside of her role as physician, whereas she is obliged to keep that same information confidential about her patients. That there can be a real conflict between obligations and the reasons one might give for each action provides *prima facie* reasons to believe that professional morality is separate from “ordinary morality,” and in some cases, can be given higher priority or greater weight.

Freedman suggests that the distinctiveness of professional morality stems from “the nature and requirements of the practice of the profession” (Freedman 1978, p. 11). In assuming the role of the professional as part of one’s deep identity, individuals are thereby able to contravene the requirements of “ordinary morality” in carrying out these roles. Questions remains as to what justifies professional morality, and how it comes to have priority over “ordinary morality.”

² Gerwith rejects the separatist thesis because he views professional morality as justified by the more general PGC and so not distinct from “ordinary morality.” Consequently, Gerwith most likely would reject the killing of noncombatants but cannot do so without a question-begging reason; namely, that such actions violate the PGC. At minimum, that it is at all *plausible* that professional morality might sanction the killing of noncombatants in special circumstances gives strong evidence that the separatist thesis must be taken seriously, and professional morality does more than intervene to uphold the PGC.

Freedman considers that obligations of professional morality may be entered into by way of tacit agreement. In this way, professional morality is given a deontological gloss as a form of promise-making. By entering into a profession, an individual obligates herself to carry out the duties inherent to the role of that profession. Professional morality, then, is justified as kind of promise to upholding the duties of the profession. Freedman rejects the deontological justification of professional morality because “by promising to obey professional morality, one has promised to contravene ordinary morality; and a promise to perform evil is traditionally regarded as either not binding at all or as deficient in its binding power” (Freeman 1978, p. 12). Certain actions required by professional morality, such as killing noncombatants, are by their very nature opposed to “ordinary morality” and from that perspective commit one to doing evil. Freedman suggests that this is because “professional morality, unlike promising, commits one to a different ordering of values at the outset” (Freedman 1978, p. 12). Because professional morality is often in opposition to “ordinary morality” it cannot be justified by appeal to “ordinary morality” principles. Likewise, professional morality cannot be justified along consequentialist grounds because, as we have seen, there are cases in which the professional, by virtue of their role, have stronger requirements than “ordinary morality,” which themselves are not justified on consequentialist grounds. Consider the example where the physician could withhold information from or lie to her patient to spare him the agony or anxiety of a dire diagnosis, but her professional obligations prohibit her from doing so, no matter the benefits or amount of increased utility withholding information might realize.

Because there are cases in which it is plausible that professional morality requires more than “ordinary morality” that cannot be justified by direct appeals to “ordinary morality,” the separatist thesis must be taken seriously. The question then is what justifies professional morality as separate from “ordinary morality.” For reasons discussed, consequentialists and deontological

approaches seem deficient in justifying professional morality and the separatist thesis. Freedman points to another approach worth considering when he suggests that professional morality is distinct from “ordinary morality” at the outset because of the nature and requirements of the professional practice itself. The profession has internal practices and requirements that are constitutive of the profession, which themselves define the professional’s responsibilities and determine appropriate behaviors. These practices and professional requirements therefore are justified by the profession itself because of the distinct goods that the profession aims to promote and safeguard. A better approach to understanding professional morality and the separatist thesis, therefore, would be to turn toward virtue ethics.

Virtue Ethics and Professional Morality

Professionals are classes of individuals who possess specialized knowledge, skills, and abilities aimed at providing a unique set of services and benefits to others through a defined range of activities. A profession, then, is defined by the type of activities its members engage in and the benefits and services for which it aims. A good or excellent professional will possess the requisite skills, abilities, understanding, and dispositions to allow her to carry out those activities that constitute that profession. A physician, for example, develops specialized skills, understanding, and abilities necessary to engage in the range of activities aimed at restoring or maintaining the health and wellbeing of her patients. The profession is defined by its purpose (viz., health of others) and a professional is identified as a member of that profession by virtue of possessing the requisite abilities, knowledge, and skills for carrying out the tasks necessary for achieving that goal (e.g. knowledge of anatomy, chemistry, diagnostic skills, surgical dexterity, etc.). In many cases, a license exam stands as a proxy for demonstrating that one possesses the requisite characteristics of a profession and serves as the gateway for membership.

Professions share many similarities with Alistair MacIntyre's notion of a practice that are worth considering and might shed light on the separatist thesis. MacIntyre defines a "practice" as a "coherent and complex form of socially established cooperative human activity through which goods internal to that form of activity are realized in the course of trying to achieve those standards of excellence which are appropriate to, and partially definitive of, that form of activity" (MacIntyre 1984, p. 187). A profession, much like a practice, circumscribes particular activities and standards of excellence as constitutive (at least partly) of the profession itself. There are goods internal to the profession that are realized by the professional in the course of their exercising their professional activities and duties. A civil engineer, for example, is a member of a profession insofar they achieve standards of excellence in carrying out the essential functions of a civil engineer and in so doing realize those goods internal to that practice. They will be precise in designing their projects, knowledgeable about what materials are suitable for the task at hand, efficient in constructing the edifice, and diligent in testing and ensuring the safety and functionality of the project. Throughout the process, the engineer will be responsive to the standards established explicitly and implicitly through the practice of professionals over several years and capable of executing tasks in the manner appropriate to achieving the goals of the project. By engaging in these "practices" the engineer will realize the goods internal to its profession, namely improving the physical environment and infrastructure for the benefit of others and perhaps personal satisfaction that comes with a job well done.

Moral norms associated with a profession, then, are established through the practices constitutive of the profession. What is required and what is prohibited will be codified, whether explicitly or implicitly, through activities appropriate to the profession. To become a professional requires an apprenticeship not only of the technical aspects of the profession but also of the norms that govern the profession. Attorneys, for example, will be expected to master finer points

of law, learn to be effective advocates and communicators, but also understand and abide by codes of conduct, such as maintaining clients' confidentiality and holding themselves to high standards. As MacIntyre points out, "a practice involves standards of excellence and obedience to rules as well as the achievement of goods. To enter a practice is to accept the authority of those standards and the inadequacy of my own performance as judged by them" (MacIntyre 1984, p. 190).

The rules and standards of a profession are established through a history of social interactions. Professions emerge, then, from a historical context and within a community. Professional morality can be understood as those activities or requirements that have been identified as enabling a professional to carry out their function effectively and efficiently to achieve the goods internal to that practice. Norms that govern professional behavior are established through best practices that enable the profession to fulfill its purpose or function and can evolve over time. A physician's responsibilities to her patient can be understood as those behaviors that are accepted or prohibited by the profession as constitutive of the practice of medicine and necessary to promote the internal goods of medicine. This way of understanding professions as historical and communal practices explains why withholding information from a patient to spare him mental anguish was once accepted through the lens of a paternalistic way of understanding the doctor-patient relationship, but now is no longer acceptable for a practice that prioritizes patient autonomy as an internal good to medicine. Others, such as non-maleficence, or *do no harm*, are more enduring.

Conceptualizing professional morality as those standards of behavior that emerge from and within a practice to achieve the purpose and function of that profession and the goods internal to it allow us to reframe some of the issues raised with respect to the separatist thesis. The judge or the umpire are justified in restricting the freedom of the defendant or the player by

either sentencing them to prison or calling them out not because the defendant or the player have consented to subjecting themselves to their authority nor to uphold some general principle of consistency, but because so doing is necessary to secure the goods internal to each practice. An umpire must enforce the rules of the game to protect its integrity; otherwise, there is no way of enabling players to secure the goods internal to this practice. Calling a player out on strike three just is part and parcel of the practice of baseball itself. The case of the judge is more complicated, not the least because much of our legal system is based on liberal conceptions of individual freedom, coercion, and limitation of governmental powers, but in a clear sense law is a kind of practice that requires able practitioners to uphold standards to safeguard that the legal system functions as it should. Ensuring that the law is applied without prejudice, enforcing established rules of procedure for all, and exercising considered judgment on points of legal disagreement all are abilities necessary for a judge to possess and exercise to secure the goods internal to the legal system. The practice of law also requires that judges be authorized to infringe upon the freedom of individuals when appropriate to secure the goods internal to it.

Understanding professions as practices also explains why professional morality might seem separate from “ordinary morality.” Insofar as the goods internal to the practice are distinct and separate from other aspects of our lives or to other practices, the requirements and norms that contribute towards those goods might be distinct and separate because they are justified by those goods and not to things external to them. There is no overarching principle or set of principles that justify professional morality; the goods internal to the practice provide the justification. As Freedman argues, the nature of the profession sets itself apart from “ordinary morality” because it demands the professional commit to a very different ordering of values at the outset, not because of some tacit or explicit contract or for utilitarian grounds, but because of the nature of the profession itself and one’s identification with it (Freedman 1978, p. 12).

To return to Gerwith's question about why professionals are justified in infringing upon the rights of others, the answer is to be found in the goods promoted by the profession. Because the legal profession is aimed at producing some good or set of goods (a mechanism for fair and non-violent adjudication of civil disputes, for example) there are activities essential to the production of those goods that might require infringing upon the rights of others—by not disclosing information protected under client privilege—that may indirectly harm a third party (or at least impede the remedy of harms).³ Gerwith seems to dismiss this justification of professional morality or characterizing professions because it aligns “with a certain conception of cultural pluralism” (Gerwith 1986, p. 284). It is not clear what the objection or argument is but one might assume that by aligning with certain conceptions of cultural pluralism it invites considerations of ethical pluralism, which often is levied as an objection to virtue ethics.

Though there is not sufficient space to address this criticism completely, there are a few things to consider. First, as Gerwith himself notes, “ordinary morality” also can be pluralistic in the sense that whatever this denotes, there is a lack of consensus on important moral judgments and values, and the domain of human activity described by “ordinary morality” is neither simplistic nor monolithic (Gerwith 1986, p. 286). Second, ethical pluralism is not the same as ethical relativism. Gerwith's rejection of the separatist thesis is largely motivated by his desire to provide a unitary vision of morality under the PGC, or what he calls “rational ethics.” Skeptical worries about whether “a supreme and most general principle of all morality” can be found notwithstanding, it is not necessary to establish ethical monism as the only way to avoid ethical

³ One problem with Gerwith's argument is that he adduces examples of rights infringement that he claims are sanctioned by professional morality but in fact would be contrary to the norms of those professions. For example, he claims that a physician may lie to patients to spare them mental anguish, or a researcher may do experiments on human subjects without their consent, or an attorney may tell their client to lie on the witness stand. These are paradigmatic cases where such actions would be in violation of professional morality. However, his point is made if we consider that there are some cases or examples in which professional morality does allow rights of others to be infringed.

relativism. Goods may be pluralistic and they may even come into conflict (as do rights), but that does not entail that they are relative to a culture or group. There might be common, overlapping goods or higher goods, which could constitute what we refer to as “ordinary morality.” Finally, Gerwitz’s attempt to provide a supreme principle of all morality that justifies professional morality, as we have seen, begs the question regarding the separatist thesis because he begins with the premise that ethical pluralism is mistaken and so there cannot be *any* morality that is separate from “rational ethics.”

A virtue ethical approach to understanding professional morality, however, adds further complexity to the debate about the separatist thesis. To the extent that professions and professional morality are justified by the goods toward which they aim and these goods are plural, ethical pluralism might entail a rejection of the separatist thesis insofar as there would not be an overarching or singular morality from which professional morality is separate. Professional morality would just be another morality within the pluralism of ethics that exists. It might overlap with other moralities, and it might be ordered to some higher goods that unify the plurality but nonetheless it would not stand apart from them in the way that one understanding of the separatist thesis suggests. Were we to understand “ordinary morality” as the morality of non-professionals, however, then there is an important sense in which professional morality might be separate or at least distinctive.

Leadership and the Separatist Thesis

There is another less obvious but nonetheless important way professional morality can be separate from “ordinary morality.” Because there are special obligations and roles necessary to carrying out the aims and objectives of the practices that constitute a profession, professional morality seems to require moral obligations that are at least different, if not separate, from “ordinary morality,” or morality for non-professionals. Professionals, therefore, inhabit a special

place within the moral world insofar as they have special powers and responsibilities that non-professionals do not possess. These special powers and duties, and the profession itself, are justified morally by virtue of the goods the profession promotes. Professionals pursue the goods promoted by their profession by carrying out the essential functions of their profession; because these functions are privileged in the sense that they allow for actions and obligations not afforded to the non-professional, there are times when professional morality will conflict with “ordinary morality” for the professional herself.

In other words, a professional may experience internal conflict due to the distinctiveness of their “ordinary” obligations from their professional duties. An attorney might otherwise be an avid and effective advocate for her clients yet unable to look past her moral judgments of a potential client who is a repeat child abuse offender. Her professional obligations would have her be a zealous and vigorous advocate for her client; yet her “ordinary” moral judgments find her client heinous and deserving of swift punishment. This scenario is probably not uncommon as professionals are people who hold deep, personal commitments as well as enjoy special powers and privileges as professionals. One would hope that in most cases professionals are able to reconcile the two by putting aside their personal convictions for the sake of their professional obligations. Their allegiance to the profession takes precedence over their personal judgments. But conceivably there are cases in which the professional is not able to reconcile their personal beliefs with what their profession requires of them. Perhaps there are ways to accommodate their conflict within their organization or profession but foreseeably there might be instances where the conflict forces them to abandon their profession entirely. Because professional morality is separate from “ordinary morality” they are not able to reconcile the two but, in some circumstances, give more weight to “ordinary morality” than their professional morality.

Considerations of leadership only complicate this scenario further as leaders have a special obligation to their profession or the institution on whose behalf they act.⁴ Leaders have a fiduciary duty to the institution and therefore are committed to promoting the aims of the profession or institution above most other considerations. In a certain sense, leaders must embody the values and ideals of the profession or organization they represent. To the extent that these values and ideals involve obligations which are separate from “ordinary morality,” leaders must insulate themselves from the demands of “ordinary morality” for the sake of preserving the integrity of the profession.

Recent debates around free speech on university campuses highlight this tension and underscore the conflict that many university leaders face with respect to their role as leader and their own personal commitments and values. Infringing upon the right of free speech can be justified if so doing is necessary to uphold the values and ideals of the institution, or to put it another way, to promote the goods internal to that practice. More to the point, leaders have an obligation to do so even if infringing upon others’ free speech conflicts with their own convictions or the convictions of many others.

Universities, like other institutions, define themselves by principles, values, and ideals tied to their constitutive role and uphold these “identity-conferring” values by acting accordingly (Korsgaard 2009; von Eschenbach 2020). Promotion of free speech is one of these identity-conferring values, but it usually is not the only one. Ideals such as respect for others, rational and dispassionate inquiry, the principle of charity, inclusion, and community also might be ideals constitutive of an institution of higher education and its essential aims. To uphold these ideals,

⁴ Gerwith identifies professions as a kind of institution, which he defines as “a relatively stable, standardized arrangement for pursuing or participating in some purposive function or activity that is socially approved on the ground...of its value for society” (Gerwith 1986, p. 290). Gerwith’s definition of an institution is similar to the notion of professions as practices and so treating professions as a kind of institution construed in a broad, non-legalistic sense is valid.

institutional leaders sometimes must give voice to views they and others find objectionable and curtail activities that violate some institutional values even though they are motivated by or in the interest of causes they deem worthy.

Different institutions have different identity-conferring values and so will handle conflicts differently. Some institutions, for example, may curtail certain research activities or funding because these activities are in opposition to some identity-conferring value of that institution. Other institutions might not find these forms of research objectionable or antithetical to its values and would therefore permit them. But in each case, the decisions and actions are guided by the principles, values, and ideals of that institution, and leaders have an obligation to uphold these values through their words and deeds even when their personal convictions might not align or even be in conflict. To the extent there are excellences recognized by the institution as constitutive of its identity or activities that enable the organization to fulfill its function or purpose well, there are something akin to virtues that leaders need to emulate and promote.

Finally, because the special powers and distinct morality of the professions are justified by the goods they deliver, leaders must be tireless advocates of their institutions and their constitutive values to the public even when so doing may conflict with their personal commitments. Leaders are called upon to defend and explain to the public the benefits that institutions provide and why they should be granted special status and powers for in the end it is the public that gives license to professional morality as something distinctive. Because the goods professions promote are typically public goods, and it is the public that ultimately grants professions and institutions their special status, in this sense professional morality is never entirely separate from “ordinary morality.”

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