

# Lord Acton and Employment Doctrines: Absolute Power and the Spread of At-Will Employment

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**ABSTRACT.** This study analyzes the at-will employment doctrine using a tool that encompasses the complementarity of results-based utilitarian ethics, rule-based duty ethics, and virtue-based character ethics. The paper begins with a discussion of the importance of the problem followed by its evolution and current status. After describing the method of analysis, the central section evaluates the employment at-will doctrine, and is informed by Lord Acton's dictum, "power tends to corrupt, and absolute power corrupts absolutely." The conclusion explores the implications of the findings.

**KEY WORDS:** at-will employment, civil service reform, employment doctrines, ethical theory, power

The nature of the employer–employee relationship is undergoing change from a long-term career system to a short-term employment system (Bowman and West in press). The risks of management decisions and market fluctuations, previously borne by institutions, have increasingly been shifted to individuals. As a result, the traditional social contract at work – job security in exchange for organization loyalty – has been eroded (Stone 2004). One of the most sweeping measures is the at-will employment doctrine. It has been used to eliminate existing employee protections not only in private companies, but also in government service (Hays and Sowa 2006).

Lord John Emerich Edward Dalberg Acton's (1834–1902) adage – "Power tends to corrupt and absolute power corrupts absolutely" – provides a useful perspective on contemporary trends in employment relations. This study analyzes the at-will doctrine using a tool that encompasses the complementarity and interdependence of results-

based utilitarian ethics, rule-based duty ethics, and virtue-based character ethics. The discussion begins with the importance of the problem, followed by its evolution and current status. After describing the method of analysis, the central section of the text evaluates the employment at-will doctrine. The conclusion explores the implications of the findings.

## Background

### *The employment at-will doctrine*

Early American labor-management law was based on British master–servant law which assumed employment would last 1 year.<sup>1</sup> However, consistent with laissez-faire capitalism of the Industrial Revolution, the approach was abandoned for the American Rule near the end of the 19th century. Under this rule, employees work for an unspecified period of time at the will of the employer (<http://www.workforce.com/Hugh>; also see Holger 2004; Werhane et al. 2004). The relationship would be defined by the freedom to contract where neither party was compelled to create the affiliation and either party could terminate it at-will. The discipline of the free market would ensure the societal efficiency of these voluntary agreements as both parties would have incentives to recover their investments in each other (Epstein and Rosen 1984). With the exception of unionized industries and most civil servants, the majority of the U.S. workforce today works at-will.

In concept, the absolute right of the employer to discharge a worker coincided with the sovereignty doctrine in the public sector. Since employment was a privilege, not a right, it was subject to terms specified by government. Government is sovereign; it is inappropriate to dilute its management rights

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(e.g., no person has a right to a public job). Indeed for much of the 1800s – the last time that at-will employment was used in public service – the spoils system dominated personnel policy. Citizens sought a position not on the basis of character or competence but on political connections, and they could be terminated on the same basis. Public office was perverted into a private fiefdom as arrogance, greed and opportunism prevailed over honor, openness, and prudence.

Favoritism, cronyism, intimidation, corruption, and rampant dismissals were characteristic of that era. Rather than emphasizing good government and policy, the system encouraged mediocre governance; its highest priority was to reward its friends, to grant favors for favors given. To protect the legitimacy of the state from private interests and to cleanse public service of partisan interference, English merit principles (including entrance examinations, job tenure, and career service political neutrality) were adopted in the 1883 Pendleton Act (and state “mini-Pendleton” laws) as well as in the 1912 Lloyd-LaFollette Act. As the spoils system gradually eroded (only 10% of employees were initially covered by the Pendleton Act), the merit system, and the federal courts, progressively strengthened employee rights under the Constitution.

A merit-based civil service – as a moral guardian of democracy – would shield employees from politically inspired employment actions. Public servants would be loyal to the system of government, not to a particular political party. They would only give free and candid advice if their positions were safeguarded. Clean government would mean effective government as job security facilitated government responsiveness and ensured efficient service delivery. Competence would be the foundation of ethical public management; government would be run like a business when organized by administrative principles, led by an executive, and staffed by non-partisan employees shielded from unscrupulous politicians.

Although the merit system was created to “clean up government” by eradicating spoils, it is not surprising that with the passage of time the past would be forgotten. Toward the end of the 20th century, a simpler, private sector-inspired employment model gained favor. Based on a liberal market ethos, it stresses a laissez-faire employment relationship that celebrates self-interested behaviors and economic

incentives. The New Public Management/Reinventing Government movement emphasizes “letting managers manage” by increasing their discretion and using corporate management styles to ensure improved performance and results (Ferlie et al. 1996; Gore 1996; Kettl 1998; Pollitt 1990). Relaxing job protections for civil servants has been seen as a key method to accomplish these objectives. Policy advocates favor substituting tenured employees for contract workers who are obliged to provide specific outputs with few job guarantees (Pollitt and Bouckaert 2004; Sulieman 2003). At-will employment, in short, is now seen as solving, instead of causing, public management problems.

#### *Contemporary reform*

Fueled by entrepreneurial strategies, budget cutbacks and devolution, the reform movement (Condrey and Maranto 2001) has gained exceptions from merit systems across the nation by expanding management prerogatives and restricting employee rights (Kellough and Nigro 2006). In recent years, a variety of federal departments received full or partial waivers from Title 5 of the U.S. Code which defines the merit system. Further, in the wake of the September 11, 2001 attacks, the Transportation Security Agency established at-will employment for its personnel. Subsequently the departments of Homeland Security and Defense were authorized, in the name of the “war on terror,” to create new human resource management systems that generally strengthen administrative discretion and diminish employee protections. Reformers are seeking to use these approaches as templates for government-wide change.

At the state level, major reform examples also exist: Texas nullified its merit system in 1985, making all state employees at-will; a 1996 Georgia law mandated that all new civil servants be hired on an at-will basis; and in 2001 Florida eliminated job tenure for most incumbent middle managers (Walters 2002). South Carolina and Arkansas recently abolished their merit systems; less dramatically, many states (e.g., Indiana, Delaware, Kansas) are reclassifying career service positions to at-will ones as a consequence of reorganizations, reductions-in-force, and/or attrition. Such strategies are

often mutually reinforcing in a manner that promotes the on-going decline of career public service.

One result of these changes is that the status and role of the public employee today is not too different than that found in business (Hays and Sowa 2006). Changes reducing or abolishing job security (and otherwise altering basic merit system tenets), then, have occurred throughout the country, arguably in violation of International Labor Organization standards that forbid unjust dismissal.

**Method**

The spread of at-will employment has led to concerns about whether the doctrine is ethical. While various ethical models may shed light on this question, one is particularly useful because its comprehensive nature reduces the chances of an incomplete, flawed judgment. The decision making tool, the “ethics triangle” (Svara 1997), recognizes the complementarity and interdependence of the imperatives in three schools of thought based on:

- expected results of an action (consequentialism or teleology),
- application of pertinent rules (duty ethics or deontology), and
- personal integrity or character (virtue ethics).<sup>2</sup>

The first two approaches to ethical decisions contend that matters of right and wrong are a cognitive function, whereas the latter one believes that the primary faculty is moral intuition, not intellect. Taken together, the triangle emphasizes that cognition without virtue is as insufficient as virtue without cognition (Figure 1). Accordingly, it can help to provide a balanced, defensible decision derived from consideration of results, rules, and virtues. The tool not only assists in understanding proposed actions in an analytical sense, but also in judging them in a normative manner.

Each point of the triangle provides a lens to clarify and reframe different aspects of a proposed action. Employing “Ockham’s Razor” to cut to the essence of an argument, three queries can be posed.<sup>3</sup> When considering the results part of the triangle, the question is, “Which policy produces the greatest

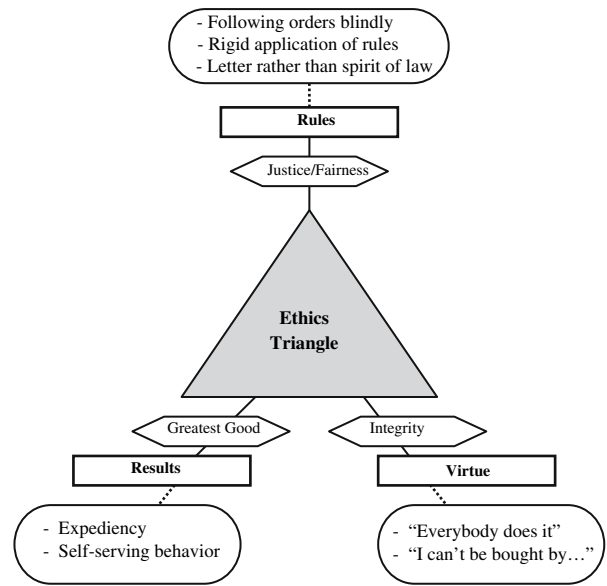


Figure 1. Ethics Triangle. Key: Examples of nonethical or unethical behavior or attitudes resulting from narrow application of the approach. Source: Adapted from Svara: (1997): p. 39.

good for the greatest number?” In contemplating the rules angle, the issue is, “Would I want everyone else to make the same decision that I did?” From the virtue ethics vantage point, one might ask, “What would a person of integrity do?” A narrow, overreaching application of a single approach at the outer reaches of the triangle, at the expense of the other philosophies, holds considerable dangers – viz., expediency (results-based ethics), rigid rule application (rule-based ethics), and self-justification (virtue-based ethics). In light of the shortcomings of the individual points of the triangle, it is reasonable to assume that this eclectic technique to adjudicate matters of right and wrong can be helpful.

Although the synthesis developed from triangulation analysis does not provide definitive solutions, it does offer guidance by teasing out the underlying logic by which decisions are justified (for further discussion, see Bowman et al. 2004, chapter 3). The goal is to strive for balance; governance is not geometry, but the art of the possible. When choices are guided by benevolence, creativity, and an ethic of compromise and social integration – a moral tenet of democracy – there is at least the satisfaction that the problem has been fully examined and that the

decision can be rationally defended. Ethical theories may lead to different evaluations of at-will employment, but Acton's warning challenges decision makers to confront these differences, not suppress them. Management ethics need not be an oxymoron. The at-will doctrine will be analyzed below using the three perspectives represented in the ethics triangle.

## Findings

### *Result-based analysis*

In consequentialism, the best policy results in "the greatest good for the greatest number." What is right is that which creates the largest amount of human happiness with the least harm. This school of thought is associated with John Stuart Mill's ideas that "Decisions are judged by their consequences depending on the results to be maximized" (Frederickson 1997, pp. 167–168). A similar emphasis is found in Georg W.F. Hegel's writings where he articulates the principle, "judge an act by its consequences, and make them the standard of what is right and good" (Hegel 1821, p. 113). This approach is useful for public administrators seeking the common good for the majority of citizens. Accordingly, consideration of an employment at-will policy examines affirmative and negative arguments on (1) productivity, (2) flexibility, (3) responsiveness, (4) merit, and (5) loyalty grounds.

### *In support of at-will employment*

Reformers maintain that use of a corporate-style "bottom line" standard results in exemplary performance. Over-protective employment requirements entitle civil servants to their jobs regardless of results achieved (Howard 2001). Moving from "protection to performance" means employees are not shielded by procedural requirements if they fail to produce (Florida Council of One Hundred 2000). The threat of job loss is needed to keep employees motivated; they will have incentive to produce because they can be replaced at any time by others willing to work harder (Bardwick 1995).

Among the benefits, then, are gains in *productivity* (e.g., Epstein and Rosen 1984). Charged with the responsibility to serve the public interest, political

leaders have considerable leverage with at-will employees. When serving "at the pleasure of" the appointing official, efficiency is maximized and waste minimized. Time and resources expended dealing with burdensome due process rights and "just cause" dismissal rules are thereby saved for regular business which increases effectiveness. This assurance is grounded in employee confidence that government officials make decisions based on their merits. Prime beneficiaries of increased productivity are citizens who pay for and receive public services.

Running government like a business produces not only cost savings and enhanced efficiency, but also greater *flexibility* in implementing the will of the voters. Elected officials are responsible to the people and, in turn, civil servants must be held accountable. Absent the protection of job security, elected officials can more easily pinpoint responsibility and ensure accountability from career personnel. At-will status, for example, can disempower "bureaucratic guerillas" who directly or indirectly subvert plans of their organizational superiors (O'Leary 2006). Political appointees, in short, can expect that civil servants will be more *responsive* when their job is at risk. With emphasis on performance, it follows that *merit* can be readily rewarded, using programs such as pay for performance. The overall result is that employee *loyalty* is assured (Epstein and Rosen 1984; Maitland 1989).

In the 21st century, then, absolute power does not corrupt (as it might have done in Lord Acton's time) because it is limited by legal safeguards such as anti-discrimination statutes. Running government like a business by encouraging productivity, flexibility, and responsiveness enables the will of the people to be fulfilled. The pay off is greater workforce merit and loyalty, as well as enhanced public trust. Since the marketplace does not naturally produce job security contracts, this demonstrates that they are inefficient. For all these reasons one can rest assured that removing job tenure and instituting at-will employment serves the greatest good for the greatest number.

### *In opposition to at-will employment*

Skeptics argue that reformers base their views on "common sense" and/or anecdotes, which are suspect justifications for abandoning constraints on power that so concerned Lord Acton. There is a lack of empirical evidence of improved *productivity* when

workers lose job security (e.g., McCall 2003). Indeed, tenure, together with other workplace initiatives (e.g., employee participation, empowerment, and incentive programs), is associated with higher productivity (see literature review in Levine and Tyson 1990; also review Freeman and Medoff 1984; Ichniowski 1992; Pfeffer 1998). Substantial cost saving can be incurred with a stable and loyal workforce (Reichheld 1996).

Job tenure, in addition, does not require employers to retain unproductive workers or require them to keep employees if economic conditions mandate reductions in force. The real problem is not employment security provisions, but rather that administrators “do not want to go through the aggravation of giving marginal employees an unsatisfactory rating. If that is so, wouldn’t managers under the new system also be reluctant to do so?” (Underhill and Oman 2006, p. 15). Finally, critics hold that fear of job loss is a poor motivator, because “KITA” (Kick in the Ass) is counter productive (Herzberg 1987). Indeed, they see “Theory X” managerial control policies, and its assumptions about human nature that guide reform (McGregor 1960), as unfortunate throwbacks to an earlier era. Expectations of enhanced productivity are likely to be dashed, with heightened cynicism and low morale the plausible outcomes as employees spend more time concerned “about antagonizing the current political party” than providing citizen services (Bowman and West 2006a, p. 150). There is a paucity of evidence, in brief, that job security is related to productivity losses.

Defenders of “just cause” standards also point out that existing public personnel systems provide for ample *flexibility* when officials understand procedures, take advantage of opportunities to provide feedback, and use progressive discipline. This can lead to increased *responsiveness* since the public service ethos, by definition, encourages service to the citizenry. The absence of assurance of a job in the future may lead to high turnover, and less capacity for responsiveness, as employees use their positions as stepping stones to higher paying openings elsewhere. Upholding the principles of *merit* has been the important distinguishing feature of modern personnel systems for many generations. Indeed, historically government has been a “model employer,” as recruiting, rewarding, and retaining employees based on merit

characterized best practices in public management (Berman et al. 2006).

In contrast, at-will employment exemplifies “hard” human resource management derived from Taylorism and scientific management (Greenwood 2001; Guest 1987, 1998; Truss and Gratton 1997). Its instrumental emphasis focusses on organizational ends, with employees seen simply as means in achieving these ends. The doctrine allows “inconsistent, even irrational, management behavior by permitting arbitrary, non work-related, treatment of employees – behavior that is not considered a good management practice” (Werhane et al. 2004, p. 197). “Soft” human resource management, however, grew out of the human relations movement, and views people as assets to be developed more than costs to be reduced. Organizations, in fact, have a moral obligation to treat individuals with dignity by pursuing exemplary practices such as staff empowerment, participation, training, and skill building (Greenwood 2002, p. 269).

One way to meet this obligation is to invest in employee skills and abilities and to utilize them effectively over the long-term. This is more apt to occur where people are valued and protected from wrongful discharge (Burke and Little 2002–2003). It is also likely that employers will experience a return on this investment in the form of greater employee *loyalty*, satisfaction, job commitment, and cooperation (Ashford et al. 1989; Green et al. 2006; Guest 1998; Lim 1996; Niehoff and Paul 2001; West and Bowman 2004).

Absent security, people may well ask, “If the employer is not loyal to me, why should I be loyal in return?” If government employment is just a job and not a calling, and if the traditionally below-market pay is not compensated for by tenure, then key staff are likely to leave. Indeed, at-will employment and privatization often has meant public employees lose their positions and do the same work done previously, but now as contract “shadow workers,” with no security or benefits. Those who remain in the more politicized workplace may displace their loyalties from serving the public to obeying political masters. Manipulating public servants as disposable commodities or interchangeable parts is demeaning and misguided. In brief, the greatest good for the greatest number

is achieved not by Theory X, but rather by Theory Y management policies.

#### *Summary*

In result-based ethics, only consequences matter. At-will advocates seek the greatest good by emphasizing expected results from corporate, bottom-line approaches said to enhance productivity, flexibility, responsiveness, merit, and loyalty. To do otherwise, by authorizing job tenure, risks employee self-serving, expedient behavior. On these same grounds, however, skeptics argue that abandoning the keystone of the merit system hardly serves the citizenry. Instead it encourages managerial opportunistic, expedient, and ultimately counterproductive actions. Further, little theoretical or empirical evidence exists to suggest that the at-will doctrine has the results supporters claim. Since an over-emphasis on any one point of the ethics triangle may put a proposed policy at risk, attention now turns to another approach represented in Figure 1.

#### *Rule-based analysis*

Rule-based decision making provides a different lens for evaluating at-will employment. Certain actions are inherently right (e.g., promise keeping) or wrong (e.g., inflicting harm), irrespective of predicted consequences. This approach is useful for administrators who are obligated to follow the principles found in the Constitution, court cases, and laws and regulations (Rohr 1988). Principle- or rule-based ethics is closely identified with Immanuel Kant's categorical imperative and Thomas Hobbes' (1958) social contract theory. Kant's imperative is to "act as if the maxim of your action was to become a universal law of nature" (1785, p. 17), which in turn is rooted in the belief that humans are capable of rational thought and self-governance. Hobbes claims that natural law, by which he means a combination of all human experiences and competencies, yields a common understanding of right and wrong (Kem 2006).

What is right is what conforms to moral rules; one must see one's duty and do it. In deciding what rule to apply, the person asks, "Would I want everyone else to make the decision I did?" Here the emphasis

is on ethical principles such as autonomy, fairness/justice and mutual respect in examining the affirmative and negative positions on civil service reform.

#### *In support of at-will employment*

Proponents stress the importance of managerial proprietary rights and prerogatives, and their need for *autonomy* to run their agency (Epstein and Rosen 1984; Werhane 1985). At-will is justified because no one has a right to a government job, as such employment is a privilege. Mandating employment security diminishes managerial authority and the right to do what is best. Any abuses arising from discretion can be controlled by formal procedures (e.g., internal auditors), informal norms (employee pressures), and the operations of the free market (Epstein and Rosen 1984).

Knowledgeable managers, in fact, would refrain from unjust adverse actions because arbitrary and capricious actions impair the organization's reputation, damage morale, lead to high quit rates, and impede recruitment. Thoughtlessly exercising management proprietary rights and prerogatives is clearly unwise. Since wrongful personnel actions and discharges diminish returns on investments in training and development, they are costly and infrequent. The at-will doctrine, then, actually serves to deter employer abuse. In addition, legislation exists to protect the rights of employees from unfair dismissal (e.g., civil rights laws, whistle-blower protection). The concerns of Lord Acton, in short, are considerably circumscribed in modern times.

At bottom, then, each party is at liberty to terminate a relationship should either one fail to live up to expectations: workers can quit at will, employers can fire at will. It follows that *fairness* and *mutual respect* is accorded to each. Both parties are negotiators who attempt to arrive at employment arrangements that advance their interests. As a matter of autonomy and simple justice, once such commitments are freely made, the working conditions and responsibilities apply to the partners. The market assures fair treatment; so long as employees are paid for past work, they have been fully compensated and thus have no claim on future employment (McCall 2003). Abuses can occur, but sensible protections exist, and the deficiencies of job tenure outweigh the benefits.

*In opposition to at-will employment*

Skeptics, following Lord Acton, are apprehensive about the exercise of power. Employers are in a dominant position over employees because they control the means of production without which the employee could not make a living. It is evident that the employee needs the employer more than vice versa, placing *autonomy* at risk. Since the asymmetric power relationship and the resulting inequality in resources favors employers, job security is key to level the playing field (Gertz in press).

While acknowledging wrongful discharge legislation, critics point out that there are numerous ways to terminate someone that are not protected by law. The at-will doctrine, in effect, furnishes near-absolute power to managers to discharge a worker for any or no reason not contrary to the limited exceptions provided by statute. Since most people need work to survive, “there is a sense in which (they) are forced to work” (Bowie 2005, p. 70). Genuine autonomy is impossible under such circumstances. Indeed, assuming that the market will deter abusive behavior overlooks the hundreds of thousands of employees annually whose contested terminations are found by arbitrators to be without cause (McCall 2003). The very lack of power can also produce effects detrimental to both the individual and organization. As Werhane et al. (2004) observe, the at-will creed “has, on numerous occasions, seemingly translated into a license for employers and employees to treat one another” unfairly (p. 196).

The unbalanced nature of the doctrine violates basic *fairness* and *mutual respect*. Job loss can have serious economic and psychological repercussions for employees and their families as well as exacerbate problems in the larger community (unemployment, poverty). Formal and informal pressures (internal auditors, co-worker monitoring) and legal protections (civil rights, age discrimination, and whistleblowing laws) are often insufficient to deter abuse. Further, at-will employment is seen as part of a package of policies that includes outsourcing, privatization and civil service reform – all of which enhances management rights at the expense of employees. Might does not make right. Instead there is a duty to offer people meaningful work, to treat them as ends, not means, to show each person respect.

*Summary*

In short, at-will advocates see a fair, symmetrical relationship, one that preserves the autonomy of each party. The balance of power is maintained not only by the employer’s enlightened self-interest, but also by wrongful discharge legislation. Any effort to unduly emphasize rule-based ethics at the expense of the rest of the ethics triangle is thereby circumscribed. At-will protagonists, as free-market fundamentalists, believe that everyone should be at will so that mutually beneficial agreements can be struck with little or no outside interference. In contrast, defenders of the “just cause” standard see the one-sided power relationship leading to a lack of mutual respect and fairness and encouraging overreaching, detrimental practices. It follows, then, that the at-will creed must not be made universal, but rather job protections should be widely available. Attention now turns to the final point of the ethics triangle.

*Virtue-based analysis*

In virtue ethics, answers to the question of “What to do?” have little to do with results or rules and everything to do with the kind of person one is. Personal character offers a third perspective by asking, “What would a person of integrity decide?” when assessing the ethical advisability of employment at-will. Virtue theory stems from the classical writings of Aristotle (1980) and the modern views of Alasdair MacIntyre (1984). As Gueras and Garofalo (2002, p. 59) note, the “theory considers an act to be good on the basis of the character trait or virtue that the act evidences.” Virtuous conduct derives from a lifelong practice of self-discipline requiring commitment to ethical values.

Virtue ethics is compelling for administrators because it is a more personal approach than cognitive ethics – i.e., decisions are informed not only by consequences and duties, but also by the quality of one’s character. What is right is that which nurtures individual excellence and contributes to collective well-being. While no definitive list of traits exists (the idea of virtue theory is to get away from formulaic thinking by emphasizing one’s moral identity), characteristics such as trustworthiness, integrity, and prudence are integral to moral nobility.

*In support of at-will employment*

Reformers believe that voluntary employer–employee relationships, unencumbered by regulations, promote *trustworthiness*. Employers trust that those hired will perform and employees trust that appropriate work opportunities will be provided. Legal requirements assume that trust cannot be assured, thereby damaging mutual expectations. Since an employer cannot exist without an employee (and vice versa), the at-will doctrine services both parties. A freedom of contract, laissez-faire approach is best to ensure trust.

*Integrity*, the synthesis of virtues, is the capacity to understand one's obligations and ensure moral soundness as a member of a larger community. By striving for integrity in work, employees will be secure in their positions. People are not moral because of rules, but because of what they demand of themselves in character; externally imposed rules impair the development of authentic character. One's moral self grows from internal values; a person of integrity chafes at outside regulations in his relationships with others. The spirit of the at-will doctrine, then, enriches the association between the employer and employee.

Personal character, steeped in virtues, provides the disposition to take action. If moral virtue directs one to the right end, then *prudence* (the ability to distinguish between right and wrong, and to act accordingly) directs one to the right means. The goal of individual freedom at work, in short, can be best pursued by employers and employees through the at-will principle.

*In opposition to at-will employment*

Reintroducing the 19th century at-will doctrine into government service reneges on the social contract inherent in the merit system: job safeguards in exchange for modest compensation. Complementing legal protection in most workplaces is the existence of a “psychological contract,” an understanding between an employee and employer that enhances loyalty and commitment (Berman and West 2003; Niehoff and Paul 2001; Rousseau 1995). Since such a contract implies continued employment, the taking of such an entitlement is a betrayal of good faith. Having due process rights with orderly procedures (notice, opportunity be heard, enforcement of rights) is an effective check on capricious

behavior. When personnel know that they will be treated fairly, in brief, then *trustworthiness* in the employment relationship is fostered.

Without such protections, employment at-will promotes a system in which *integrity* is difficult for employees to maintain. Even now, not only are civil servants unlikely to report fraud, waste, and abuse, but they may feel pressured to “go along to get along” (Gertz in press). A consequence of at-will is that staff will be increasingly reluctant to participate fully in decision making or to “speak truth to power” by criticizing inefficient or unethical policies, or may even feel compelled to participate in dubious policies when confronted with job loss. Absolute power, manifest in at-will employment, can corrupt absolutely: it heightens the probability that such corruption will occur and that the public interest will be compromised. If employees are unlikely to report untoward behavior for fear of retribution, truth-telling, so critical to integrity, is devalued.

*Prudent* decision making suggests a cautious approach to reform, thereby ensuring that proposed change will lead to desired improvements. As noted by Dobel (1998, p. 76), “Prudent judgment identifies salient moral aspects of a political situation which a leader has a moral obligation to attend to in making a decision.” “Good judgment,” he adds, “requires good information and a willingness to learn” (p. 76). However, many jurisdictions have seen the at-will doctrine as a seductive quick-fix to perceived problems. They have undertaken reform initiatives hastily and with little evidence demonstrating the efficacy of the change. They are victims the “sin of superficial advice” (Meltsner 2005, p. 412), of “amputation before diagnosis,” which results in misjudgments and dubious policies. Bowman et al. (2006), for instance, note that the absence of reliable evidence, a distorted view of the business model, and ideological rigidity promoted radical reforms in Florida.

*Summary*

In a nutshell, at-will supporters argue that the mutual freedom to contract nurtures trust, regulations interfere with individual and collective integrity, and individual freedom creates prudence. Critics think the creed negates trust by breaking contracts, damages integrity by increasing fear, and undermines prudence by its panacea-like quality. Yet, the strength of virtue theory (reliance on subjective



assessment derived from personal character) is also its weakness: if at-will proponents and opponents believe that they are good, then it is not hard to believe that what they do is good.

### **Summary and conclusion**

Responsible policymakers, by definition, are obligated to develop virtues, respect rules, and consider results. The ethics triangle cannot produce a final, perfect decision for all seasons. Instead the analytical process is a conscious attempt to reconcile conflicting values by highlighting a key function of ethical management: generating alternative viewpoints, systematically evaluating them, and crafting a considered judgment. The triangle, then, like a good map, offers choices, not formula. Just as a map outlines a journey, the triangle provides help in making the inevitable compromises. It enables the skilled management of ethical ambiguity and independent thinking. When choices are guided by benevolence, creativity, and an ethic of compromise and social integration – a moral tenet of democracy – there is at least the satisfaction that the problem has been fully examined and that the result can be rationally defended.

It is important to keep in mind potential pitfalls when just one point of the triangle is emphasized at the expense of the others. For example, the results approach may be problematic because it is difficult to anticipate all possible consequences and because it may lead to expedient action (thus, when choosing among appealing outcomes, rule-based ethics and virtue theory should also be applied). Similarly, rule-based ethics, if used alone, may lack compassion (Svara 1997) when truth-telling produces cold and inconsiderate behaviors (to compensate, benevolence in the virtue ethics might be applied). Last, the exclusive use of virtue theory is perplexing because of its intuitive and possibly self-serving nature (to be counterbalanced by utilizing the other two schools of thought). In short, an integrated approach helps to provide a defensible decision that takes into account results, rules, and virtues.

As part of New Public Management, the employment at-will doctrine, after a long decline (Muhl 2001), has enjoyed a renaissance in recent years. As Schwab (2001) predicted, the principle of just cause protection against unfair dismissal is being eroded in the new century. Reformers believe that

employees have no need of job security because modern civil rights and whistle-blowing laws provide adequate protection and employers are generally honorable and rarely engage in egregious behavior.

Until a short time ago one of the distinguishing features of public employment was the merit system and the neutral competence of the civil service, safeguarded from political pressures, cronyism, sycophancy, and corruption. The rise of at-will employment (and its functional equivalents such as hiring temporary employees) is seen by proponents as a way to re-energize the bureaucracy and by opponents as a return to the spoils system (Bowman 2002; Bowman and West 2006a). There are compelling, competing grounds found in the debate over civil service reform and at-will employment. The overall assessment of these contentions below, using the ethics triangle, will provide a synthesis, or at least a conclusion.

Result-based decision making, as discussed earlier, evaluates at-will employment as it relates to productivity, flexibility, responsiveness, merit, and loyalty, and how these contribute to the greatest good. Several stakeholders are benefitted or harmed by employment at will. Elected officials benefit from the increased responsiveness of civil servants that eliminating job security is thought to produce. Managers, due to enhanced flexibility, are not required to deal with procedural requirements when undertaking adverse actions. However, career public employees, lacking tenure, are likely to fear losing their positions if they seek to serve the long-term public interest as opposed to short-term political advantage. More generally, the at-will doctrine encourages the treatment of personnel as means to organizational ends, as costs to be controlled rather than assets to be developed.

The largest stakeholder, though, is the citizenry. Reformers suggest that productivity will soar when government is run like a business. Yet there is little documentation adduced by reformers to substantiate this view, perhaps because available data suggest productivity, morale, and loyalty may be placed in jeopardy when employee protections are removed. Further, government can adopt proven business tools (e.g., competitive pay, teamwork) and still provide job safeguards. Such action is not inconsistent with the New Public Management emphasis and preserves the existing social contract with employees. A policy

maker using result-based ethics may find some politically attractive at-will arguments, but the evidence suggests that the greatest good is served by neutral competence in the public service.

Rule-based imperatives, the second aspect of the triangle, emphasize the need for principles such as autonomy, fairness/justice and mutual respect. At-will supporters argue that the doctrine allows for freedom of contract. When the decision maker takes into account the asymmetrical nature of the employer–employee relationship, however, it is evident that personnel can easily be subject to intimidation and unjust actions that violate their autonomy and rob them of respect.

Virtue-based ethics relies on intuitive character traits such as trustworthiness, integrity and prudence, said to be nurtured by the at-will doctrine according to reformers. Yet doubters believe that trust is compromised when rights are diminished, and adverse actions lacking just cause occur. Integrity suffers in a fear-filled environment. To the extent that reforms are rushed into place, with questionable grounds to support them, prudence is violated.

Each of the angles of the ethics triangle contains arguments for, and against, at-will employment. Taken separately, the creed may appear ethical at some points and unethical at others; as Aristotle admonished, one should not expect more precision from a subject matter than it can allow. On balance, though, it is difficult to see how an employment doctrine that permits harm without cause can be ethical from a result-, rule-, or virtue-based perspective. To have power is to be morally responsible for one's actions. An employment relationship with few reciprocal obligations, in which the employer recognizes little obligation to the employee, compromises the greatest good, duty, and personal integrity. In so doing, it needlessly puts the hallmark of modern civil service – neutral competence – at risk. Since all power needs to be restrained, such concerns should inspire public employers to unambiguously reject the at-will doctrine.

When others crucially depend on and expect continued participation in a cooperative enterprise, it appears patently unfair to abruptly end the relationship without notice and without good reason, an idea we reflect in our common moral assessments of contexts as varied

as marriage, housing, and access to traditional routes of public passage through private property. Thus...the power to terminate the relationship without due process...violates commonly held norms of fairness...It is especially unfair when one party has the preponderance of power (McCall 2003, p. 10)

Since arbitrary behavior is not tolerated in other areas of management such as finance, it should not be accepted in employment relations. Lord Acton would agree.

## Notes

<sup>1</sup> Parts of the Background section are condensed from Bowman and West (2006a).

<sup>2</sup> While other philosophies might be used to evaluate the ethics of at-will employment, these three schools of thought are dominant in the literature on administrative ethics (see Cooper 1987; Frederickson and Ghore 2005; Garofalo and Geuras 1999; Geuras and Garofalo 2002; Richter et al. 1990).

<sup>3</sup> Use the simplest possible explanation of a problem, and only make it more complex when absolutely necessary. Adding qualifications, and explanations may make a position less elegant, less convincing, and less correct.

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