THE ETHICS OF DISSENT: LESSONS FROM THE U.S. SUPREME COURT

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Most Americans are familiar with the U.S. Supreme Court—including its issuance of decisions with majority opinions and dissents. We know that the Supreme Court hands down decisions each term accompanied by carefully-crafted written opinions to explain and justify the Court's actions. We also expect there to be assorted dissents written by various justices to express disagreement.

Many of us, especially the lawyers among us, know that the justices also complexify cases by writing other kinds of opinions as well, including "concurrences" to make additional points or express qualified agreement with a decision. Sometimes the justices even write "concurrences in the judgement" to communicate basic agreement with the outcome of a case but basic disagreement with the reasoning of the Court in reaching that outcome.

We lawyers certainly know that judicial decisions today are often marked by a multiplicity of disagreements and a proliferation of dissents and concurrences. It can all become very complicated, confusing, and divisive.

Most Americans and even many lawyers, however, would be surprised to learn that it was not always thus and that in fact in some earlier eras concurrences and dissents were quite rare. Notably, under the leadership of Chief Justice John Marshall in the early 1800s, the Supreme Court established the then-new tradition of issuing unanimous opinions of the Court without either concurrences or dissents to express divergent views.

Chief Justice Marshall forged this new tradition of unanimity so that the Court would speak with one voice in order to build its institutional power among the branches of government. Marshall was reacting to an even earlier judicial tradition on the Court of issuing decisions with "seriatim" opinions in which each justice of the Court wrote individually in a series to express views on a case, a practice that encouraged divergence and disagreement.

What motivated Chief Justice Marshall's single "opinion of the Court" approach was promoting the unity and power of the Court, especially its ability to defend the Constitution and the rule of law.

Echoing Alexander Hamilton in the *Federalist Papers*, Chief Justice Marshall viewed the Court as the "least dangerous" (i.e., the weakest) branch of American government, an institution chiefly dependent on the force of its public reasoning in cases rather than on the brute political power which the executive and legislative branches could wield.

In Marshall's view, the power of the Court could be found in its written opinions, and the proliferation of public disagreement among the justices expressed in written dissents dissipated that power and weakened the Court. Thus Chief Justice Marshall encouraged the justices to compromise and to join the Court's opinions even when they disagreed with them rather than express their disagreement openly and formally in written dissents. Marshall himself joined many opinions with which he disagreed rather than write a dissent.

What one might call the Marshall Court's "ethics of dissent" reserved the public expression of disagreement in dissents for only the most important of cases. Building a consensus, compromise, and a willingness to put aside individual views in particular cases for the greater good of the Court, the Constitution, and the country were the order of the day in the Marshall era.

Are there lessons to be learned from the broad spirit of the Marshall Court's tradition—with its emphasis on unity and compromise? I would argue yes, even though the Marshallian view of the "ethics of dissent" eroded over the years on the Court and completely disappeared by the middle of the twentieth century. Disagreement is inevitable, and dissents can be very valuable—but that can all be taken too far and balance is called for. Compromise and consensus are too easily undervalued, and not just on the Supreme Court.

Perhaps all our institutions of government today need the kind of institution building that Chief Justice Marshall aspired to for the Court in the early 1800s. Public confidence in our institutions is low. Politics is too often marked by ideological polarization, political partisanship, and self-righteous incivility. The quest for political purity and absolute victory too often trump the willingness to work to find common ground, promote compromise, and build a consensus. We are all too eager to find fault and too quick to dismiss what might be right with the world. Not all the glasses are half-empty.

A dose of Marshallian respect for institution building, compromise, and unity might be a good thing. What if more often the justices, whatever their views, emphasized the value of compromise and

sought broader support for the Court's decisions instead of settling for narrow five-to-four victories? What if more often members of Congress put aside their ideological and party-based disagreements and instead were willing to support legislation with broader centrist appeal? What if presidents did the same? What if voters, especially in primaries, more often supported candidates with experience, good temperaments, and middle-of-the-road views rather than voting for candidates at the political fringes?

What, in short, if there were a new willingness to accept compromise and a return to the vital center in American life, the common-sense core of our broad political spectrum, a place where we could all meet more easily to find commonalties, solve problems, and craft solutions with widespread public support?

Some might say that this not a realistic prescription—for all the obvious reasons that could be cited—but, notably, few in 1801 would have predicted the new path of the Marshall Court or the rise of the Supreme Court to new levels of power and prominence. We might be on the cusp of a new era, if we have had enough of extreme division and dissent. Hope springs eternal.

IMPORTANCE OF ETHICS IN INTERNATIONAL RESEARCH PROGRAMS

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It has been noted that most of the top US research universities pursue extensive international research programs. The common goals for these research programs are access to unique sites and populations, promotion of economic development, improvement of research areas of weakness, recruitment of students and faculty, increase in research productivity, increase of the capacity of civil society, and engendering goodwill[1]. The focus on ethics in international research programs has been motivated by:

> (i) the numerous ethical challenges in international research during sudden epidemics[2],

> (ii) the advancement of world-class research as inherently international[3,4], and

> (iii) the need for continued emphasis on ethics education to mitigate the scandals in the global industry such as by Volkswagen[5].

To address ethical challenges that often arise during international collaborations, international frameworks for ethics need to be constructed. These frameworks are often divergent from the classical western ethical frameworks. The international frameworks for ethics are often informed by cross-cultural perspectives[6], the difference in value systems (e.g., about ownership of ideas), gender perspectives[7], lack of institutions, and lack of trained human resources[2]. These international frameworks have recently been used to develop ethics curricula for university students. Recently, an interdisciplinary team[6] (with backgrounds in engineering, social science, linguistics, and art) located in diverse countries (including the US, India, and China) developed a new curricular model that emphasizes ethics and its cultural contexts. The proposed model had the following learning outcomes:

> (i) understanding of ethics & ethical decision-making as a process,

> (ii) complex relationships between researchers and the communities being studied,

> (iii) scholarly integrity within an international context,

(iv) imagining alternative and conflicting ethical positions, and

(v) the larger societal context for ethical decisions.

It was argued that on completion of this curriculum, the students acquired the skills necessary to effectively conduct international research collaborations. A different approach to ethics education that has also been proposed is modeling ethics after the design process. Here the ethics model is such that:

(i) there is no singularly correct solution or response,

(ii) some solutions are wrong answers,

(iii) none of the solutions are clearly superior to the others[8],

(vi) the decisions often involve weighing subjective values[9], and

(v) ambiguities and uncertainties[10] are appreciated.

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