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Reply to Joseph Ellin's Of All Professions, Prostitution is the Oldest (Except Possibly for Teaching)

Michael Davis

Joe Ellin's commentary on "Of All Professions, Begging is the Best" illustrates both the strengths and the weakness of what I called the "Cartesian method". Among the strengths is that, without leaving his desk or consulting any other person, Ellin has been able to tell us a good deal about how "profession" might be used, about what libertarians might think, say, or do, and even about what *might* be true of professions. Among the weaknesses of the Cartesian method Ellin's commentary illustrates is, however, an inability to undermine, or even understand the power, of what I called the Socratic method. Indeed, his argument rests on an obvious fallacy. He seeks to move from what might be true to what is true. That form of argument is a respectable way to refute logical claims. ("Imagine a space in which parallel lines cross" is a way to disprove the Euclidian axiom concerning parallel lines.) But imagining what could or might be is no way to disprove an empirical claim. ("All swans are white" might be true—or false—no matter how many red, green, or mauve swans we imagine.) And my main claim about what professions are (their complex connection with morality) is an empirical claim (though, as I shall explain, a special sort of empirical claim). Not all philosophy is *a priori*; much philosophy, such as the philosophy of law or the philosophy of biology, is

contingent on the empirical claims (what those involved with law or biology claim about the practice of law or biology).

My talk was not, therefore, an exercise in lexicography or language analysis. I was not trying to describe how the word “profession” is in fact used (its “one central definition”, as Ellin called it). I was not seeking “the concept” (the most general guide to usage). Rather, I was engaged in trying to understand a certain use of “profession” (a conception rather than the concept), the use people calling themselves “members of a profession” make of the term when they are speaking carefully about their common project. That is why I distinguished and dismissed several common senses of “profession” before reaching the admittedly specialized sense on which I focused. Much of Ellin’s ruminations on how “profession” is used are therefore strictly irrelevant (however accurate).

Consider an analogy with money. There may well be one central definition of money, say, “any means of exchange”. Money in this sense includes coins of various kinds, bills of various denominations, checks, negotiable bonds, and so on. Nonetheless, for some purposes, we distinguish between “real money” and other sorts. For example, none of us would knowingly accept *payment* for our services in play money (what we happily treat as money when playing the board game Monopoly), counterfeit money, or even lapsed currencies (such as the Confederate dollar or Soviet ruble). Though at least arguably money in the central sense, they are not *real* money, that is, money for the end in view, receiving payment. The reason is not that real money is valuable and the other sort is not. We sometimes refuse

payment in something that we admit is valuable. For many of us, negotiable instruments (like bearer bonds) are not “real money” because no store will take them, though we would be treat them as money when calculating our inheritance and an economist calculating the “money supply” would include them. A conception of something always sacrifices the complete description of usage—the “central definition” or concept—in order to obtain a term useful for a particular purpose, the purpose of picking out what is of interest to us then. Conceptions are therefore always as open to controversy as a) the purpose to which they are to be put and b) the criteria for evaluating their usefulness. Like other tools, they are inventions or works of art, not the linguistic equivalent of a photograph.

What special sense of profession was I interested in? I was, as I said, trying to understand what members of professions, both actual members of actual professions (whoever they turn out to be) and mere supposed members of merely so-called professions (the remainder), think about the project they take themselves to be involved in—not, I hasten to add, what they *happen* to think at a given moment (a fact about their psychology) but what they think after careful reflection in concert with others who make similar claims (a fact about their common conception of profession). So, what people *might* say is entirely beside the point. Even what they do say is only a beginning. I do not, as Ellin put it, simply “count noses” (not even after selecting the right noses). The crucial thing, what is entirely missing from Ellin’s critique, is what members of professions (and those who only think

they are) say after such careful reflection in concert (what they say “at their rational best”).

How can I know this crucial thing? My claim to that knowledge rests on actually engaging in (something like) the appropriate dialogue with them in classes or workshops, at conferences, at parties, and even in open-ended interviews.¹ My dialogue with members of professions has not been—as Ellin snidely suggests—“[mostly] internal”. I am serious about following (what I called) the Socratic method. One sign of Ellin’s Cartesianism is that he supposes me to committed to Socrates’ metaphysics (along with his method); a metaphysics that guarantees agreement among all rational persons whether they have the appropriate experience or not. I have no such commitment. Another sign of Ellin’s Cartesianism is that he cannot believe a philosopher would actually go about the world as Socrates once went about Athens. I sympathize. Like him, I was taught philosophy at a time when “we” (philosophers) could not see why internal dialogue was not sufficient. If one can define “chicken” without asking a “chicken” for its opinion (something we certainly can do), why not define “profession” without asking its members what they think they are doing?

The question is not merely rhetorical. The conception of profession I am interested in is not like the concept of chicken, or even any of the likely conception of chicken. “Profession” (in our preferred sense)—like “democracy”, “engineering”, and “rational”—is a conception having an inside as well as an outside. It describes a self-

conscious undertaking (as well as a collection of behaviors). The test of a Socratic definition is, it is true, *in part* Cartesian even when the definition concerns "profession". The definition must satisfy philosophical standards of clarity, coherence, and so on. But the test of a Socratic definition is in part radically un-Cartesian, that is, that those who seem to use "profession" to describe what they are doing recognize the corresponding definition as describing their use. While the internal dialogue of a philosopher at his desk can (in principle at least) determine that the first test is satisfied, it cannot determine whether the second is. Anyone using the Cartesian method will almost certainly miss what is central to the conception of profession that interests us, the way the members of profession understand what they are doing. Ellin's method of understanding profession rests on (what used to be called) "a category mistake".² He has treated a term belonging to one logical category (conception with an internal point of view as well as an external one) as if it were a term belonging to another (conception with only an external point of view).

There is, nonetheless, much agreement between Ellin and me—and pointing it out should help to clarify the strength of the argument I made in my talk. So, I now turn to what we agree on, though even here there are important disagreements.

¹ See, for example, my *Thinking like an Engineer: Studies in the Ethics of a Profession* (Oxford University Press: New York, 1998), Ch. 9.

² For an extensive discussion of this mistake in another context, see my "Liberalism and/or Democracy?" *Social Theory and Practice* 9 (Spring 1983): 51-72.

First, we agree that “professional” has a somewhat different use than “member of a profession”. I concluded my discussion of the Socratic definition of profession with a characterization of professional (relying on that conception): “To be a ‘professional’ (or ‘a real pro’) is to be a member (in good standing) of the profession in question—or *(by analogy) to act as if one were* (that is, to act in the way the relevant standards require or, perhaps, should require).” Notice that I offer ways to extend the use by analogy (in what I have now italicized). So, of course, I can agree with Ellin that there can be athletes who are “real pros” in this (extended) sense even if professional athletics are not members of a profession (in that sense).

To say that professional athletes do not now form one or more professions is, of course, not to say they could not. All they need do is organize as the Socratic definition requires. Here Ellin raises the question whether what professional athletes do or at least could do would serve (what I call) a moral ideal. I see no reason why not, though I do think finding such an ideal is not as straightforward as it is, say, for medicine or engineering. Consider, for example, Ellin’s suggestion, the ideal of competing in physical games at a high level of skill. This is an ideal, but not a moral ideal. Nothing about playing perfectly makes it rational for a moral agent as such to favor anyone’s competing well, badly, or not at all. Only if one has an interest in athletics to begin with would it be rational to favor his or others’ pursuing the ideal in question. And nothing in moral agency requires such an interest.

Behind my conception of a moral ideal is (as Ellin explicitly notes) a conception of rational goods (what goods it is always rational

to desire). All ideals are rational guides to action in the sense that pursuing what one considers good is rational (all else equal). These may, of course, only be "apparent [rational] goods". Some ideals are rational in the stronger sense. The supposed good actually is good for the one pursuing it (though perhaps not for others). We might call these "prudential goods." Certain prudential goods are rational in an even stronger sense, that is, they are (all else equal) what any rational person has an interest in. Among these, presumably, are health, a good education, safe and useful structures, accurate financial information, and justice. These (or at least the more important of these)—what I think Ellin means by "rational goods"—is, however, still not necessarily pursuing a moral ideal. Moral ideals have a connection with morality that mere rational goods of this sort, what we might call "primary good", need not have. Anyone's pursuing one of them is, all else equal, good for others. So, for example, physical strength is a mere primary good, but public health is a moral ideal (in part, of course, because I benefit not only from not have a contagious disease myself but from your also not having it). We might usefully picture this connection between certain primary goods and morality by thinking of morality as the work of a "moral legislature" consisting of all rational persons laying down rules binding on all.³ Achieving the desired distribution of certain primary goods may be possible without adopting any particular rule. Self-interest may, for example, assure the desired

³For a fuller explanation of this technical device, see my "The Moral Legislature: Morality without an Archimedean Point", *Ethics* 102 (January 1992): 303-318.

distribution (as it may for physical strength). The distribution, though it can be an ideal, cannot be a moral ideal. Other primary goods may be such that achieving the desired distribution, while possible only by adopting a rule, is best approached by adopting a rule expressly requiring the desired distribution. This distribution of primary goods would be a moral requirement, not an ideal. An environment free of serious physical violence is such an ideal. Still other primary goods may be such that the desired distribution cannot be directly legislated. For example, the necessary rule might impose too great a burden (as universal altruism would), or something about the good itself might make *requiring* the distribution self-defeating (as requiring everyone to share confidences with everyone else seems to be—since universal sharing would destroy the point of confidences). The desired distribution of such goods may still be approximated by adopting auxiliary rules, that is, rules making it easier than it would otherwise be to engage in activity tending to produce the desired distribution. For such goods, the desired distribution is a moral ideal. The connection between the rule and the ideal provides a reason for making supporting rules part of morality.

On this analysis, a moral ideal is a distribution of goods every rational person wants enough to accept a significant moral burden in exchange but not enough to accept the burden that morally requiring the good to be provided would entail. So, for example, achieving good health for everyone is a moral ideal in this sense. Health is certainly a primary good and we generally benefit from the health of others. The healthy are not a drain on us in the way the sick are, nor do they

threaten contagion in the way the sick often do. Yet we are unwilling to require each of us to help the sick, to avoid all conduct that might cause disease, and to do whatever else might be necessary to provide that good for everyone. The moral rules therefore include no requirement that each do what he can to assure his own health or anyone else's, only such auxiliary rules as prohibit sneezing on others or require us to help a physician if our help is needed in an emergency and can be given with minimal cost.⁴

So, if professional athletics is to be a profession, it must serve some moral ideal in this sense. Ellin's suggestion is to consider athletes are a category of entertainer. Like actors, magicians, jugglers, and so on, they seek to provide amusement, relaxation, and distraction from the cares of the day (by competing in physical games at a high level). This strikes me as a useful way to define their moral ideal. But before I accept it, I would want to ask professional athletes whether they consider themselves to be providing this good (perhaps among others). If not, then, of course, the mere possibility of their doing so does not make them a profession. But for now, let's assume professional athletes would accept this description of their work. Amusement, relaxation, and distraction from the cares of the day seem to be rational goods (even if not as important as primary goods like health, justice, or

⁴ This analysis of the distinction between "rational goods" and "moral ideal" is not new but follows what I said in *Profession, Code, and Ethics* (Ashgate: Aldershot, England, 2002), pp. 25-26. As used here, "moral ideal" is a term of art (a conception). Those who wish to save the term for some other purpose are free to substitute another. What is important is not the term itself but the conception it names.

safety). Still, that does not show that their provision is also a *moral* ideal, that is, a good important *enough* to take on the burdens that turn a rational good into a moral ideal. Ellin, or more likely other thinkers, will have to provide further argument before we can conclude that good athletes can routinely serve a moral ideal (much less that they actually do).⁵

That brings me to the question why any occupation, not only professional athletics, should want to form a profession. Echoing much sociology, Ellin seems to think that “profession” is an “honorific”, that is, a term convention makes an honor or sign of respect (whether deserved or not). “Sir” or “Nobel Prize Winner” are typical honorifics. Most honorifics simply accord honor or respect (though some, like the Nobel Prize, come with money or other valuable things). The title “profession” differs from typical honorifics in (according to Ellin and many sociologists) somehow guaranteeing (or, at least, making much more likely) higher social status, higher income, or more authority (control over one’s work). While I agree that “profession” (in the relevant sense) does justify respect for the occupation so designated (until we have reason to doubt the designation), I do not think the

⁵ My position on the possibility of a profession of prostitution would be exactly the same. I see no reason a priori why prostitution cannot be a profession (one committed to providing “sexual comfort”). Just that possibility was a subject of common conversation in the Netherlands when I visited in 2007. Of course, those discussing the possibility did not regard providing sexual comfort for money as morally wrong. Had they considered it morally wrong, they would have had to reject the possibility of a profession of prostitution. The list of possible professions will always be contingent on our understanding of morality. Ellin is right to point out that that is indeed a consequence of my analysis.

connection is conventional or that it guarantees (or even makes likely) anything in the way of status, income, or authority. Certainly, there is no centralized body handing out the designation (in the US) or setting the benefits to accompany the designation.

The connection between the benefits of a profession (whatever they turn out to be) and the designation is more like that a trademark (Bayer Aspirin or Campbell's Soup) and the goods properly sold under that designation. The professions so called have had to earn whatever respect we now tend to give them. The term "profession" may yet go the way of other terms that once demanded respect but no longer do, such as "Made in the USA" or "British engineering". The conception of profession I offered is, all else equal, a reason to expect a profession (properly so called) to do more good in the world than the corresponding (non-professional) occupation would. After all, a profession is designed to do good beyond what law, market, morality and public opinion would otherwise require. But the design does little more than give us reason for hope; designs often go awry. Professions may become "corrupt" (to use Ellin's term), that is, come to ignore their own standards most of the time. They may simply become lax in enforcing their standards. But, even if they maintain their standards as strictly as humanely possible, the design for service may fail for one reason or another. Their required education may ill fit them for the work they do (which is why construction managers are replacing architects on large projects); the cost of their ways of doing things may be too high for the market to bear (which is why physicians are yielding many routine activities to nurses, technicians, and physician's

assistants); their techniques may become outmoded (which is why we no longer have phrenologists); and so on. What can happen to one profession could happen to all. If the market became much closer to perfect than it is, professions would probably disappear. The professions would go the way of guilds. There is nothing in the conception I offered to guarantee the existence of professions, much less higher status, higher income, or greater authority than the market would otherwise provide.

That is just as well. The professions seem to have special status, income, and authority only when we focus on the “principal professions”, that is, law and medicine. Once we widen our view to include the great majority—engineering, nursing, teaching, military officers, and so on—the “honorific” tends to dissolve into the respect that is due those who set a high standard of conduct for themselves, act accordingly, and benefit society in consequence. If the designation of profession were primarily a means of “self-promotion” (as Ellin claims), it seems to be a surprisingly poor means. MBAs and even plumbers do better without it. That is, it seems to me, a good reason to reject this “debunking” interpretation of professions—one Ellin seems to have derived from the sociology’s economic tradition (though he seems to think it a result of his Cartesian method).

Ellin is, I think, right that professional soldiers generally recognize the mercenaries as belonging to the same “profession of arms” as they do—in the occupational sense—, that is, as fellow warriors. A professional soldier will nonetheless distinguish himself from the mercenary. He will point to the special standards of conduct

professional soldiers do not share with mercenaries (who are, after all, explicitly creatures of the market). He will not—as the sociologists seem to tell us to expect—point to the higher pay of professional soldiers (since mercenaries are generally paid more), nor to higher social status (since the social status of both is pretty low and about the same), nor even to greater authority (since mercenaries today seem to have greater control over what they do than professional soldiers have). One of the odd things about the sociological analysis (which Ellin seems to endorse at the end of his comments) is how badly it fits the facts of most professions. Those who doubt this should check it out, starting with any professional soldier he can find.