

A Practical Basis for Public Service Ethics

J.I.Gow
Université de Montréal

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The study of public service ethics has received new vigour in recent years because of the changes in values that have been introduced by politicians, business elites in the last twenty five years, in

developed countries but also to some extent around the world. It is a difficult subject, but one which rewards attention. As public administration is purposeful action, so a subject that leads one to reflect more systematically on what the purposes may be and how they are affected by what we do.

In Canada, it takes temerity to venture into this field, such is the dominance in it of Ken Kernaghan, who stands over it like the colossus of Rhodes (or Niagara, if you prefer). Nevertheless, the occasions that bring us to study a subject, as well as our own experience mean that each of us has a perspective different although similar to those of others.

In this case, my look at a possible practical basis for public service ethics will advance in four stages. First, as always some definitions are needed, both for ethics and for values, as well as the questions these subjects raise and the most useful ways of looking at them. Second, the values identified in public administration will be considered, including a development on the public interest. The third part deals with the practical implications of public service ethics and their feasibility, including the implicit moral contract that links public servants and elected politicians. the fourth part deals with the infrastructure of public service ethics, or what you do about it.

I argue that there are very few final values involved in this question. The multiple values we see at present are mostly only means to further ends which are the bedrock of ethics. Also, the various categories of values that are currently identified tend to conceal their common nature as sources of ethical obligations. Finally, it is proposed that it is not only useless but dangerous to encourage public servants to follow the highest moral principles to their logical conclusion, since the final determination of the public interest is not theirs to decide. Their major role is to operate, adapt and protect the democratic state that they serve.

Analytical framework

¹ Because of their format, I was unable to include the two tables with this version of the paper. I will be glad to send them if asked : gowji@sympatico.ca

Ethics poses the question of good behaviour. As Van Wart (1998, 316) puts it : « Ethics is doing the right thing, that is, acting on right values » and not acting on wrong values. It may extend to include notions of the beautiful and the true, but in the practical life of the public service, it usually means good behaviour. A Quebec study (IQEA 2003) adds that it is the search for the appropriate conduct in a given situation.

The problem of ethics arises in public administration because of its subordinate nature. In democratic states, the administration is there to serve not to govern. The relevant academic disciplines all recognize that it is impossible to completely control the work of public servants. In sociology, Michel Crozier speaks of zones of uncertainty surrounding their work; in economics, principal-agent theory studies the problems caused by the difficulty for a leader to know that her or his agents faithfully execute their orders; in political science and law, the existence of discretionary powers has long been seen as a challenge to the Rule of Law.

The study of ethics is a relatively recent phenomenon in public administration. Writers in the early 80s thought that the 1970s had been the ethics decade (Kernaghan and Dwivedi, 1983, with most of the attention devoted to conflict of interest and accountability. The subject made little impact in public administration training however. An international comparison of 136 schools in 1981-2 found « values and ethics » to be the third weakest area in their programmes, while in North American schools, this was ranked as the weakest subject area (Engelbert and Konig, 1983). Twenty years later, a study of sixteen basic graduate programmes in public administration, management and/or policy found only one compulsory course in ethics (at Dalhousie) (Gow and Sutherland, 2004, 401).

The impetus for the recent spate of publications on public service ethics has been the public management movement (Lewis and Longley 1994,596, Kernaghan 2003). As Van Wart, 1998) puts it, this movement has seen a decline in the importance of law and rules and an increased emphasis on results and comparison. Several aspects of public management doctrines affect the problem of ethics : the new theory of motivation for managers is based on the model of the private sector, hence concern

for traditional public service values of equity, equality, human rights etc; the preference for more or less autonomous agencies for the delivery of public services and the recourse to partnerships raise questions of adequate political control; and the accent on client or customer services challenges to top-down mode of accountability. Finally, the rapid growth of data banks in government information systems raise difficult questions about the ethics of their use, even moreso in times of security problems than in more normal times.

An interesting debate exists over the status of public service ethics. For some, it is linked to formal rules and guidelines of correct behaviour, while for others it is a personal matter that only arises when an individual is free to choose. Two groups seem to hold this latter position, that is, of the personal nature of ethics : on the one hand, American post rationalists like Harmon (1995) and Mc Swite (1997 and Canadians like Gilles Paquet (1999)) ; on the other hand, a new group of Quebec specialists (Villemure, 2002, Boisvert, 2004) oppose the legalistic approach in the name of philosophical clarity and cultural complexity.

This question deserves more attention further on, but I agree with John Rohr (1994, 505) that the field of ethics includes two categories «the legally enforceable and the aspirational ». This is also the position of the Quebec Auditor General in his annual report for 2000-2001, when he called for a common corpus of values and minimal ethical rules (chapter 3.11). In my view, one must reject the idea of a clear distinction between rule-based deontology and personal ethics for several reasons. For one thing, the list of regulated behaviour keeps getting longer as new concerns make themselves felt. It is true that a regulated behaviour implies a greater obligation, but zones of uncertainty also include these regulated behaviours. If we cannot be certain that the policeman, the prison guard, the soldier or the customs officer will fully respect his duty, it raises the question of their personal ethics.² Finally, in countless cases, we cannot let public servants impose their values on citizens in opposition to duly

² Part of their discretionary power extends to wise and practical application of the rules. One form of collective action is the full application of all of the rules (work to rule), a sure way to cause trouble.

adopted public policies. For instance, officers authorized to perform civil marriages are not free to decide whether or not to preside over marriages of homosexuals once the government has legally decided to allow them. It is an essential part of the difference between civil and religious marriage.

Public service ethics concerns relations among public servants, but above all between public servants and the interested parties in the outside world : elected politicians, the media, institutions, and citizens. Here the question is to determine under what circumstances, if any, the status of public servants ought to limit the power of their political and administrative superiors to dictate their conduct. Also, what are their obligations towards the entire political system that could lead them not to follow, in any given case, the request for services from a citizen or a group? The American literature suggests that for ordinary public servants the most frequent ethical problem occurs when a superior asks them to do something illegal, contrary to good practice, wasteful or against the organization's mission (Cooper 2004, Schmidt and Posner 1986, also, for Britain, Lewis and Longley, 1994). On the other hand, the ethical preoccupations of elected politicians regarding public servants are more likely to include conflict of interest, declarations of assets and post-employment activities.³

In this context, Frederickson (1994) has noted the gulf between the preoccupations of academic research of public service ethics and those of practitioners. Academics, he said, tend to seek social equity through moral reasoning, whereas public servants are naturally more attentive to practical questions. Politicians, said Frederickson, in words still very relevant in Canada, tend to be moved less by principles than by cycles of scandal and corruption. He thought that public service ethics suffered from the lack of an interested public which supported them. Maybe so, but politicians and public servants suffer in the public's esteem from scandals. Van Wart (1998) makes a distinction between public service ethics as an art, as practised by public servants and a science, as practised by academics, a distinction I can only agree to if philosophy is a science.

³ The first codes of ethics in Canada dealt almost exclusively with these questions, which still occupy a large part of regulations, but not of value statements and codes.

In comparative studies, corruption is still a big topic; indeed, for Jabbra and Jabbra (1983), it is the most important topic in public service ethics in developing countries. Hood (1991) has noted that the New Public Management assumed that public servants would continue to be honest, even under a new set of incentives more oriented towards personal gain or advancement.

As if to confirm Frederickson's remark, recent academic studies look to wider topics of ethics. Van Wart (1998, 21) cites an author to the effect that corruption is not the primary problem. Terry Cooper (2004) gives four « big questions » in administrative ethics : first, what are the normative foundations for public administration ethics?; second, how do American administrative ethical norms fit into the global context?; third, how can organizations be designed to support ethical conduct; and fourth, should people be treated equally or fairly? In my opinion, the real questions here are the second and the third and this paper deals above all with them, that is the normative foundations and the design of an ethical infrastructure.

The study of administrative ethics covers a broad range of topics. From down to earth questions like conflict of interest and post employment rules, it extends to questions of constitutional significance and, eventually, to the values adhered to by public servants that is, their administrative culture. In this respect, as in any teaching situation, one must know the people ones is dealing with and the situation in which they work . In this paper, our goal is to reach, in the words of the Quebec Institute of Applied Ethics (IQEA 2002, 5) « a vision of the world based on clear, practicable and shared values ».

So these are the questions I wish to address : what are the important values in public administration today? which of them are fundamental and may serve to evaluate the others? what do we know of relevance concerning the interested parties, both public servants and elected politicians? what components are called for in a good public service ethics infrastructure? In conclusion, I will return to the problem of rationalism and the limits of any approach to ethics,

Values and the public interest

If ethics is acting on right values, what are these? First, values are, according to Christopher Hodgkinson (1978, 105) « concepts of the desirable with motivating force ». In his view, they are facts of a subjective nature that can never be true or false. His position is similar to that of Herbert Simon (1957), but Simon added that most values in public administration are intermediate values that can be analyzed to see how likely they are to lead to the satisfaction of more profound or ultimate values. This vocabulary is suitable to public administration, since the many controls it exhibits feature norms and standards which are, in turn, based on values. For this reason Dwivedi and Gow (1999, 21) define value as « a principle or quality from which may be inferred a norm or standard conducive to ranking by preference objects, results or people ». Such values may be collective or personal.

Among the debates over values, an important one opposes the deontological to the teleological approach (Kernaghan and Langford, 1989, 23-28, Cloutier and Paquet, 1988, 75-76 and Somerville, 1999). The first seeks to identify values that are true no matter what the circumstances, The problem with this approach is that people of good will may differ over fundamental values that find their justification in intuitive experience or religion. The second, or teleological approach, asks rather what are the chances that a decision or course of action will produce the desired effects. It seems much more appropriate for the analysis of administrative questions, essentially concerned with means. In public administration, one has not the luxury of being an absolutist; the adoption of a value must be done with full consideration of the effects it will have on different stakeholders and on other values with which it might be in competition. Langford (2004) calls this second approach « consequentialist » and, as it is closer to common usage,⁴ I will use it instead of « teleological ».

The obvious place to look for the official version of public service values is in documents with these words or something like « public service ethics » or « mission statement » in their titles.

However, laws and regulations reveal great numbers of them : an analysis of the Quebec Public Service and Public Administration Acts by the Quebec Institute of Applied Ethics (IQEA 2003) found many values or standards that could be summed up by only four true values, that is, equity, honesty, respect and trust. Reports of central agencies and parliamentary agents also abound in explicit or implied value statements, as do those of study groups like Public Service 2000 or the Tait Committee on Public Service Values and Ethics (1997)

If one wants to know what are the values put into practice by public servants, rather than what the official version says that they must do, one must look at public service culture. Some of this information comes from observation, and some from declarations of unions or associations, but most of it comes from interviews or opinion surveys such as those of Zussman and Jabes, 1989, Bourgault and Dion (1990, 1993) and Germain Julien (1989, 1993, 1994). Moreover, in recent years, the federal government has conducted two major surveys of public servants' opinions and attitudes.

Langford (2004) is critical of the values that are typically presented in studies of the subject. He notes that the Tait committee said that they had come forth « spontaneously », but argues that they deserve closer attention. For instance, in documents like PS 2000 and the Tait report, the values presented are more likely managerial values than those really practised. Polls are for that. Langford also points out that many values are not really values but competencies (such as professionalism and excellence). Most damning of all, is the large number of so-called core values. Langford (437) counts roughly 60 in *A Strong Foundation*, and 164 in Ken Kernaghan's survey of 93 public organizations. Dwivedi and Gow (1999, 142-143) found thirty values that featured prominently in the reports of the ten working groups of the Public Service 2000 study.

This profusion of values is one of the reasons for the numerous calls for some kind of code of ethics or statement of essential public service values . If public servants are to know what is expected

⁴ Langford (2004, 443) says that most public servants « are intuitively consequentialist ». A main exception to this remark would be those whistleblowers who plunge ahead without regard for the consequences. As we shall see, it is just these

of them, it has to be accessible to them in comprehensible form. Ken Kernaghan has been a champion of this path for many years, even though he recognizes that it is not enough to solve the ethical problems of the public service (Kernaghan, 1983, 1993, 1997, 2003).

Recent years have seen widespread adoption of such codes of values or ethical behaviour. Four of these are presented in table one, three Canadian, and one survey of essential values identified by OECD member countries. The resulting lists are different, but comparable. The OECD list is interesting because it ranks the values according to the number of countries reporting them. They all are widely adopted, but impartiality and legality (at 24 and 22 mentions respectively) far outclass equality, responsibility and justice (11 and 10 mentions).

The longest list in table 1 is that of the federal government. Following the lead of the Tait group, it distinguishes four kinds of public service values : first, political values concern the public interest, loyalty, respect of the law and accountability; second, professional values include excellence, efficiency, effectiveness and impartiality; third, ethical values cover upholding the public trust, serving the public interest and avoiding conflict of interest; and fourth, personal values include respect for human dignity, fairness and civility, openness and respect for diversity, and the merit principle. Not only are some of these not really values, there is overlap and duplication. At the very least categories three and four should be merged, but all values can create ethical questions so a separate class for ethical values seems redundant. What the categories do usefully however, is remind us that one may have mixed reasons for doing the right thing; to be polite to the at the front desk or on the telephone is both a matter of common or personal courtesy, it is also a message about how the state deals with citizens.

The federal categories also correspond to different levels of analysis : a macro level, of political, economic and social values, a meso level, including professional, organizational and possibly ethnic and regional values; a micro level, involving individuals and primary groups.

Searching for fundamental values

The profusion of values and the confusion they engender, leads us to try and sort out the basic values, on which the others may be based. Can we rank them so that the hard-pressed public servant will have a small number of basic values or standards on which to base her reasoning?

Two preliminary remarks are in order. First, there is no prima facie reason for excluding or downgrading any one category of values. Some commentators have chosen to exclude economic values from the list (ICEA 2003), while others have seen in ethics a way to counter the business values promoted by the public management movement and right wing politicians (Frederickson 1993).

We cannot leave out economic values even if we wanted to for several reasons : first, those who wish to limit public expenditure do so in the name of personal liberty. We may agree or not, but it is a major value; second, the fiscal burden caused by expenditures and the public debt affect the health of the entire political system. They commit future generations, they may expose the system to the intervention of foreign investors and they may affect the state of public opinion about the state; third, not to waste the taxpayers' money is to respect them and to protect the legitimacy of the state; finally, forty years of studies , beginning with those on PPBS, have shown us that the attraction of a value may vary with our awareness of the costs associated with its realization.

The second remark concerns a value that does not appear in the various codes and declarations that I have seen . This is the survival of the political system that the administration exists to serve or, its maintenance and adaptation to the changing conditions surrounding it. True, the defence of this value may lead to unwanted side effects such as the sponsorships scandal at Ottawa, or the excesses of the search for security in western countries under threat of terrorism, but it is a value that it is a primary value that public servants in every country are required to respect. In most, systems, public servants swear loyalty to the regime. One of the qualities of democratic regimes is that the courts and some public servants are assigned the task of keeping the others within the confines of the constitution, the laws and the major public policy traditions.

If we turn to the literature to find the fundamental values that might allow us to justify the others, several are available :

- justice (B. Cooper, Stewart and Sprinthall) ;
- social equity and justice (G. Frederickson);
- the rule of law (Aucoin);
- individual rights (cited by Van Wart, 98)
- regime constitutional values (Rohr);
- loyalty (Tait, Kernaghan);
- stewardship (Aucoin, Dunsire);
- citizenship (C. Stivers).

Others reject the very idea of searching for rational and universal criteria from which we may derive the ethics of public servants. A feminist critique (C. Gilligan 1982, Scranton and Ranney 2001) claims that this is a masculine approach and that a feminist approach would be more flexible and would be directed towards the solidarity needs of staff and clients. Post modernists, for their part, say that the important thing is not to blame and discipline certain individuals but that feedback and accountability should aim at social learning (M. Harmon 1995, K. Denhardt, 1988 McSwite 1997 , G. Paquet 1999). I will return to these criticisms later in the paper.

Even this short list reveals the potential for opposition among them. Justice may be at odds with the automatic application of the law, with loyalty to the government. Or again, loyalty to the government may fall into conflict with loyalty to the state. Consideration of these conflicts leads directly to the question of the public interest.

The Public Interest

In one sense, discovering the public interest from the point of view of a public servant is the key to placing all other values in some sort of rank, but this may be because it is an ill-defined concept.

In 1960, Glendon Schubert found three models of the public interest in American public administration literature, : realist, idealist and broker. For the realist school, the public interest requires the public servant to do what he is told to do. Despite the fact that the literature has long since discredited this version, Barry Cooper (2004) writes that many public servants still believe it. For Schubert's idealists, the public interest required that public servants must act according to their conscience and professional knowledge, a version that leads straight to conflict with the democratic duty to carry out the will of the elected representatives. The third category, that of broker, called on public servants to deal with all stakeholders in a way that avoids appeal to a higher level, be it political, administrative or legal. This version is more realistic than the other two, but it could easily produce corporatist conniving.

In the face of opposing ideas, a traditional solution is to turn to procedural criteria : have the prescribed procedures surrounding consultations, analyses, and deliberation been followed? It is an enhanced criterion of obedience. To meet these shortcomings, Manzer (1984) proposed three substantive criteria to accompany the procedural ones; these were, acceptability, authenticity and justice. It is true that the criterion of acceptability or feasibility is important. Many administrative projects have had to be abandoned because they were not politically acceptable. This criterion takes into consideration power relations. Authenticity is a more delicate and controversial criterion, and yet it arises whenever a group brings its case to the government. Whether it be a grant to a sports team or a multinational corporation, or a raise in welfare payments or the minimum wage, the question will be considered partly according to the view that one has of its authenticity. Finally, justice, according to Manzer, is linked to the idea of equity. It is usually determined either as equality or as a form of proportionality (to each according to his contribution, his merits, his efforts etc.).

Manzer's analysis reminds us that the question of justice may derive from philosophy, but it also raises questions of political judgement. Morgan and Cass (1991) have tried to convert the idea of justice into an administrative model. The administration in their view is the place to protect procedural

values, public servants are the guardians of administrative and political history and they represent a reservoir of community identity.

The provisional conclusion from these remarks is that the idea of the public interest obliges us to recognize that public servants have other obligations than those of obedience and following the rules to the letter. Without usurping the place of elected representatives, they have responsibilities to the political system and to the political community at large. I will argue that it is this responsibility and not some higher level of moral reasoning that should be their paramount duty. Moreover, it is a realistic position, that takes account of the complex relations between the administration and ministers and other members of parliament. Is it feasible for both groups?

Feasibility of Values

There is little point in working up codes of values and ethics if those who will have to put them into effect do not believe in them or see no interest in them. We therefore have to raise several questions concerning those who share in a sort of contract, some of which is explicit and written but other parts of which are unwritten. This section deals with the values of public servants and elected politicians as well as the psychology of ethics.

Public servants' values

Most bureaucrats understand their roles. In Aberbach, Putnam and Rockman's major survey of *Bureaucrats and politicians in Western Democracies* (1981), the only role in which bureaucrats thought that they should have the principal responsibility was policy implementation. In areas of policy formulation, brokering interests and articulating ideals, they either thought that politicians should have the main responsibility or that responsibility should be shared. Graphs showing opinion distribution on a number of ideological issues showed bureaucrats to be more concentrated in the moderate ranges, while politicians had flatter curves, showing more support for positions at either extreme.

Canadian public servants also share this image as moderates, even more so than those in some countries where public management reforms have been more radical (Dwivedi and Gow, 1999, Gow

2004). In their well-known study of senior federal public servants, Zussman and Jabes (1989) showed that they were more likely than their private sector counterparts to value intrinsic motivating factors, such as the interest of the work, recognition of work well done and public service. The study also showed that there was a fault line through the senior public service, with dissatisfaction increasing as one moved downward from the highest levels. Many studies have shown that managers and senior public servants want more decision making power. This is one of the attractions to them of the New Public Management; they are willing to be held more accountable in order to obtain it.

Thus, higher civil servants are mostly committed to their work, they have ideals and they want influence. Lower level civil servants may be more affected by the need for security, but federal higher level officials have shown themselves to be in favour of reducing job security.⁵ The former head of the federal civil service wrote that there was a « quiet crisis » in the public service after several years of downsizing and restructuring (Bourgon 1998), while Christian Rouillard (1999) found disenchantment rather than a survivor's syndrome among employees of Revenue Canada. The federal employee surveys of 1999 and 2002 found high levels of job satisfaction, but almost half of the respondents felt that quality had declined as a result of cuts in resources.

If we wish high levels of employee ethics, employee surveys are important, as they help to put employee attitudes into perspective and to spell out areas of current concern. A shared code of values has more chance of being respected than one that is imposed from the top. Moreover, the values of public servants change over time. Eleanor Glor (2001) has made a first attempt to apply to the federal public service categories developed for election and opinion studies : civil servants born before 1945 were probably motivated by a sense of duty, the « baby boomers », born between 1945 and 1964 would be more autonomous and rebellious, while those of « generation X », born after 1964, would likely be more pragmatic and in need of a different type of direction.

⁵ On this subject they appear to differ considerably from their Quebec counterparts, who are firmly committed to job security for the staffs (Demers and Gow, 2002).

Studies by Germain Julien (1989, 1993, 1994) have shown that, among Quebec's managers and professionals, the collective values of the organization, that is, its culture, are stronger than personal preferences. In support of this, studies of women managers in the United States do not support the notion of a feminist or woman's ethics, but find rather that women managers exhibit much the same values as their counterparts (Stewart, Sprinthall and Shafer 2002, 461, Scranton and Ranney 2001, 563). A big problem for a general ethic of the public service, however, is the attachment that most employees have for their department or agency, that may take precedence over the common good.

The psychology of ethics

The weight of organizational culture and of social origins may be attenuated by training in ethics. Frederickson (1991, 35) summarizes studies that tend to show that socio-economic variables have little impact on the moral reasoning of public servants. According to Stewart, Sprinthall and Schafer (2001, 458), L. Kohlberg demonstrated both theoretically and empirically the values and ethics were neither born nor made, but « developed as the result of interaction between the person and the environment ». Kohlberg developed a scale which claimed to show the evolution of moral and ethical reasoning from a rudimentary to a superior level :

1. Concern for self and for eventual punishment;
2. Occasional cooperation and reciprocity;
3. Concern for enduring personal relationships and reciprocity;
4. Concern for law and duty;
5. Moral reasoning.⁶

In an empirical study, Stewart and Sprinthall (1991) found that the passage from level 3 to 4 usually occurred with a promotion or increased job responsibility. Rohr (1978) admits that to stay at level 4 is to remain at an inferior level as compared to that of full moral reasoning. I agree with him that it is

⁶ There is a sixth level not used here.

more realistic to remain at that level, however, than to push public servants to an exalted level of moral reasoning that risks placing them in conflict with government policy.

Nevertheless, the most important result of Kohlberg's work is the observation that the greatest variation in the level of moral reasoning comes from the content of the question under consideration. The more they know of a question and the more it has been discussed beforehand, the higher will be the level of moral reasoning attained by the civil servants who have to deal with it. There is thus a strong inducement to allow public servants to familiarise themselves with the ethical dimensions of their work by discussions workshops, courses, publications etc. Through such methods, one can hope to place ethics at the heart of their preoccupations.

The interests and values of public servants and of elected officials

I said above that survival is a primordial but not exclusive value for any political system. However, this value is experienced very differently by public servants and by elected politicians. It is in the interest of public servants that the state survive, their careers depend on it. A government cannot allow itself to look much beyond the next election. To be sure, it will take decisions affecting the community over the long term, but survival, to it, means being re-elected. There is thus a certain opposition between those whose role is to bring energy, new ideas and change to the system and those who, in the words of the *Institut québécois d'éthique appliquée* (2003) must defend the intermediary values of prudence, caution and prevention.

It took a good deal of maturity before politicians collectively came to believe that the merit system was in their interest. According to Aucoin (1997), it is now accepted that it is in the public interest to have an impartial administration, recruited and appointed by merit, professional and accountable before elected representatives and the population at large.

The principle is accepted, but practice does not always follow. According to American studies, the ethical dilemma most frequently encountered by public servants occurs when they receive orders that they consider unjust, dangerous or illegal (Cooper 2004, Schmidt and Posner 1986). Lewis and

Longley (1991) found that British ministers often asked their officials to do things that they ought not to do, despite the prescription against such acts. We have seen from testimony before the Gomery Commission that a number of public servants were unhappy with things that were happening, without having the means to do more than raise questions.

Organization culture plays a role in these problems. Public servants who denounce abuses, waste of favoritism are frequently punished or isolated, despite the existence of Whistleblower Protection Acts. In this case, it seems that organization culture at the meso level overcomes democratic and patriotic duties at the macro level.

Another important difficulty comes from the respective roles of the two sides : the world of civil servants is one of action, while that of politicians is one of conflict, debate and appearances. The requirements of contemporary accountability oblige public servants to enter the world of politics, because the information that they provide on the results obtained by government programmes fuel public debates. Also, under the eye of public opinion, governments do not want to admit that the new direction that they wish to bring to public policies requires the promotion of certain values at the expense of others. At the present time, we do not see government admitting that the pursuit of economy, efficiency and effectiveness may adversely affect equity, justice of transparency. They want to believe that the list of values public servants must respect can be regularly added to without some of those already adopted being neglected. It is a recipe for confusion or a hypocritical pretence.

This kind of postulate is also present in certain schools of management. Hood (1991) remarked that the New Public Management presumes that public servants will continue to be honest, even though it was proposing to introduce business inspired motivators (competition, performance evaluation, results-based pay) quite different to those traditionally associated with a civil service career.

The moral contract

Public servants have interests, but they also have ideals, which are influenced by the milieu in which they work. As for interests, many observers and practitioners, like the Tait group, have observed

that a deep knowledge of the rules of the game in public administration comes with having a career public service. The Tait report (1997,7) wrote that loyalty to the regime would be less certain without a career system : « For a public service where employment is more contingent and short-term, public servants would necessarily be encouraged to use their current role to advance themselves and position themselves for future employment” Savoie (2004) summed up the same point by saying that the consultant only has a client whereas the public servant has a minister.

As for ideals, all agree that the public service is not the place for an extremist. The government must be assured that it will not be faced with a revolt inspired by an opposing view of the public interest. Kernaghan (1997) mentions that the ethics code of both the British and the New Zealand public services, while ensuring the right of public servants to make known their objections to a government policy or practice clearly say that, once heard, they must accept the will of the government or resign. For some observers, it is an outstanding feature of the Canadian model of public administration that elected governments have been confident enough of their potential to control the administration that they did not fear being prisoners of the public service (Aucoin 2002, Gow 2004).

All of which brings us to a position which is neatly summed up by article 2 of the Quebec

Public Service Act :

The Public Service has as its mission to offer the public the service to which it is entitled, to carry out the policies of the elected government and to ensure the achievement of the other objectives of the state (my translation).

Even this formulation is slightly misleading. It is not true, despite what certain reports have said over the last twenty years, that the *raison d'être* of the public service is to serve the public. True, those familiar with these questions will have noted the additional words « to which it is entitled ». However, as it is the first mission mentioned, public servants and the public might be forgiven for thinking it is. Rather, the public service exists to serve the government, within the limits implied by the third mission identified here. The services that public servants provide for governments include many services to citizens, but they include numerous and more vital services to the operation of the state, including

many services and controls for the decentralized networks of health, education and social services. Of course, among these other missions of the state is the maintaining of the law.

Thus an idealistic and realistic solution to the search for a fundamental value that allows one to derive and rank almost all the others is loyalty to the democratic constitutional and political regime. Such a criterion serves the interests of public servants, politicians and citizens. To be sure, the possibility exists that the public service will tend to profit from this position to adopt a corporatist and self-serving attitude. However, unlike legally recognized professions, the public service has to live with the dynamics of change brought in regularly through elections and changes of political leadership. Moreover, the public service is quite vulnerable to criticisms made by politicians and it is under scrutiny by the media. As a group, public servants and especially their leaders, have no tribune from which to defend themselves from attacks that are sometimes unjust, often exaggerated, made by various party candidates.

An ethical regime based on service to the government within the framework of the constitution, the law and the customary values of the political system also serves the public by offering them quality services, yes, but within the legal and customary restraint inherited from the past.

As various British observers have remarked, the profession of the public service is government (Chapman, 1959, Clarke 1971). Public servants do not govern alone, but they participate in government. Their primary goal is to look after the system, to make it work, to maintain it and to look to its necessary reform. For this to work, it is necessary that members of the government and of the legislature respect the moral contract between them and the public service. This contract is described in the Tait report (1997) as the offer by public servants of professionalism, discretion and non partisan loyalty in return for a degree of anonymity, a degree of autonomy and sufficient job security to ensure the existence of a career service. This moral contract is what Donald Savoie is referring to in his book *Breaking the Bargain* (2003).

This contract is shaken by several recent trends (Savoie (2003, 7-16) : more than twenty years of bureaucrat bashing, blame shifting and flight from ministerial responsibility, new management doctrines that treat government like a business and downplay the role of citizens, new forms of partnerships that dilute accountability public disenchantment with politicians and bureaucrats. To these, I would add that the federal government seems to want to abandon the idea of a career service in favour of the notion of the learning career, which guarantees public servants the chance to keep learning in order to prepare themselves for future jobs. Such an approach may just fit the danger that the Tait committee foresaw.

Relations between public servants and elected politicians are governed by several laws, such as the Public Service Act and the Financial Administration Act. Other aspects, however, depend on conventions : ministerial responsibility, public service anonymity, the proper treatment of public servants who testify before parliamentary committees. As Canada has frequently experienced high rates of turnover among elected members of Parliament, there appears to be a need for means to transmit to these new members a better understanding of the role of the public service. The suggestions by Savoie (2003, 273-275, to create both a standing committee on public administration and a new parliamentary Office of Public Administration within the parliamentary staff to serve it. In addition to elucidating many of the complex questions concerning relations between the House, parties and individual members on the one hand, and the civil service on the other, it could be a place where other parliamentary agencies, such as the Office of the Auditor General, gave account of their activities, something that they do not at present have to do. At present, the interest of members for public service ethics is sporadic, either at moments of crisis, or when the Public Service Act is revised.

(table 2 about here)

I may now sum up my position on the most fundamental values to which civil servants, both morally and practically, owe allegiance. As shown in table 2, the chief values to be defended are the conservation of the liberal democratic state and justice. The role of conservator or steward includes the

operation, protection and adaptation of the system within which public servants work. They are not alone in these responsibilities, politicians and other actors like the media and organized groups share these obligations, with politicians being the other crucial group. Even justice must, for a public servant, be tempered by what the authorities have legitimately decided. If a public servant considers that some proposed policy or action is unjust, it is her duty to bring this argument to the attention of her superiors but, if she does not prevail in the end, she must accept this decision or resign.

The other values do not follow in logical decision hierarchies. Several values (equality, respect, trust) appear in both the democratic and personal values columns. Professional values have been subsumed under the economic values of effectiveness and efficiency. This lack of hierarchy also seems necessary, because there may be personal, professional and political reasons for doing the right thing.

The argument is that, given their role and those with whom they must work, public servants must temper their loyalty to certain personal values with loyalty to the system. Obviously, this loyalty may be put to severe test, as in the case where a public servant's personal values leave him with a sense of « dirty hands » (Chapman 1993 , Sutherland 1995). In other cases, he may wish to « blow the whistle » on actions harmful to the state, a subject to which I return in the next section.

The Means : the Ethics Infrastructure

A recent comparative federal study (Treasury Board of Canada 2002) concludes that an ethics infrastructure generally includes the following elements : a statement of values or principles, norms of conduct, tools of promotion and sensitization to these values, control of reprehensible acts, coordination, management and evaluation of programmes of values and ethics . To which the OECD (2000) adds means to ensure accountability of the actors in this area. In other words, ethics is an area that requires to be taken as seriously as other administrative activities and thus structured from beginning to end.

Within the limits of this text, I will deal with the issues of the approach (values or discipline?), the usefulness of codes of values and ethics, what to do about whistleblowers, and how to deal with drift or decay.

Ethics or discipline?

It seems clear that neither a values-based approach nor a disciplinary one alone will solve all the problems raised by public service ethics. As Langford (2004) has so decisively demonstrated, the hope that a values approach would lead public servants to behave ethically is illusory, as the values they are encouraged to uphold are too numerous, too apt to conflict with each other and too ill-defined to serve this purpose. On the other hand, repression alone cannot suffice. Studies of the most tightly hierarchically organized organizations, both from the command and disciplinary points of view, that is, the armed forces and the police, show that strict discipline ensures neither ethical conduct nor full accountability (Brodeur 1999, Bourgault and Gow, 2002). At any rate, we know that the lives of public servants are full of occasions where there are no « normative reference points » (Boisvert 480).

These observations lead to the conclusion that both control mechanisms and the promotion of key values are needed. It is true that much ethics work concentrates on the repressive side. Smith (2003) finds that ethics commissions in the American states do monitoring, investigating and punishing of both elected and appointed officials. Our own Ethics Commissioner does not deal with public service employees, but only with ministers and other political appointees

But what of those other numerous decisions where ethical behaviour is hoped for? For the moment, the answer to the sixty year old position of Carl Friedrich or the recent ones of post modernists and of Quebec ethicists (Boisvert and Villemeure) is that while it is no doubt illusory to try to cast all values in rules, all decision-makers have to defend their judgement after the fact. In cases where important rules have been broken, they will face disciplinary and maybe criminal proceedings. In other cases, it would normally be at times of crisis and scandal, before parliamentary committees or at periodic personnel evaluations that they would be called upon to explain their

behaviour (Sutherland, 1991, 1995). On these occasions, it would seem normal that they would need to justify their interpretation of the values both of the current government and of the civil service. As we have seen from commissions of inquiry into the Somalia, the tainted blood scandal, the sponsorships scandal and from others into the failure of the provincial police during the Oka crisis, such after the fact mechanisms are costly and time consuming.

One reason to favour a values approach over a disciplinary one, a reason having nothing to do with personal ethics, is the misplaced attention that disciplinary ethics produce. Long-time specialist of police and military affairs, Jean-Paul Brodeur, insists that our reactions to scandals fail to escape the hunt for the guilty. The potential to focus on systemic failings which might be remedied is usually lost when the search for the guilty takes to priority (Brodeur 1994, 1999).

Here, then is the reason for the accent put by postmodernists on the learning organization. As Savoie (2004, 20) points out, we may be past the point where one person, or even a department may be blamed in retrospect for a mistake or reprehensible acts. It would probably be more profitable to place the accent on reform, something that requires a different atmosphere than one of repression and fear.

The debate between the values and the disciplinary approaches is alleviated by the findings of Kohlberg and those who have applied his theoretical grid that familiarity with ethical problems by itself raises the level of moral reasoning of employees. This finding also pleads for multiplying occasions for them to gain experience with ethical reasoning. Short pieces like the “Ethics clinic” that sometimes appears in IPAC’s *Public Sector Management* magazine, or “The Ethicist” in the *New York Times Magazine* are welcome for this reason.

The Code Solution

Although Ken Kernaghan promoted the idea of a public service code for a long while before it was accepted in Canada, as in other OECD countries, he also recognized that having a code is not

enough (Kernaghan 1993). Other means are surely needed to promote a high level of public service ethics, but a code is a starting point. One advantage during the development of a code is the possibility of having various drafts widely discussed and debated, ensuring in this way the widest possible support for its principal ideas. In the case of the recently fragmented British Civil Service, the Civil Service Code, along with the pension plan, may be one of the few unifying factors (Lewis and Longley 1994, 3

The Codes most relevant to us vary considerably (Table 1), Some are laws, others are regulations or executive declarations (the United Kingdom, Canada), while Quebec has both a Regulation on Ethics and Discipline in the Public Service and a Declaration of Values of the Quebec Public Administration. Britain and now Canada, have Codes of ethics for ministers, which is a good idea in terms of the moral contract spoken of earlier . The British Civil Service Code is very short, at 14 paragraphs and under 2 pages; the New Zealand Public Service Code of Conduct, at 46 paragraphs and 13 pages is much more detailed. The two British codes and the New Zealand codes give a number of specifics about relations between civil servants and politicians including, as I mentioned, the reminder that if the civil servant's views have been overridden by ministers, she must accept this. The Canadian parliamentary and public service codes and the Quebec regulation deal almost entirely with monetary issues like conflict of interest and post employment work.

These pecuniary matters are surely of great interest, but the political questions are more interesting. One thing they all reveal is our reluctance to speak of the state, even in Quebec, which is often seen as more European than the rest of Canada. The use of the expression « the Crown » is a euphemism for the state which unfortunately obscures the true object of loyalty (Kernaghan 1983, 43, Mockle 1986). The one place where we seem to have been willing to entertain the word was in the dangerous area of « reasons of state ».

Codes are obviously valuable as they can be used in training and discussion. New employees and especially those promoted to positions of responsibility are generally required to sign a statement that they have read and accept them. In evaluations and disciplinary matters, they may also have a role

to play. However, a code imposed from on high will not fit the bill, if the goal is to produce a document of shared values. The widest possible discussion of drafts of the code will be needed to ensure its practicability.

In sum, codes are useful but perfectible instruments. Their periodic revision should be the occasion to reengage the public service community in new dialogue about their contents.

Whistleblowing and resistance

As public servants are often placed in situations where obedience is at odds with their view of their obligations, what are they to do? The classic range of choice was given by A.O. Hirschman in *Exit, Voice and Loyalty* (1970). Certainly, the exit option is mentioned in the UK and New Zealand codes : if you cannot accept the position of the government of the day, after your objections have been considered, then you must resign. The cost is much greater, however, for an employee than for a customer who may decide to abandon a product or a service. Here, it involves placing a career in jeopardy. Also, as Hirschman points out, loyalty to the organization raises the cost of exit. To this range of choices, Lundquist (1993) adds obstruction.

There are probably cases where each of us would approve of blowing the whistle : Daniel Ellsberg giving the Pentagon Papers on Vietnam to the New York Times, « Deep Throat » feeding Watergate material to journalists Woodward and Bernstein, the women who blew the whistle on Enron, Worldcom and the FBI, and became *Time's* persons of the year in 2002. However, as a general proposition, providing a safe haven for those who denounce political and administrative practices raises many problems. O. Glenn Stahl (1983, 23) worried that encouraging whistleblowers would undermine relations of trust between executives and public servants, encourage malcontents, and give no recourse to unfairly accused executives. He and others like Peter Drucker (cited by Stahl 1983) and Yves Boisvert () affirm that a general climate of denunciation is more in tune with dictatorships than with a free society.

From the point of view defended here, a whistleblowers' protection act that undermined the moral contract between the government and the public service would be harmful to the mission of the public service. Even so, as this mission is to protect the constitution and its values, public servants ought not to be coerced into accepting harmful or illegal instruction simply because the government will lose confidence in them if they don't.

Kernaghan and Langford (1989, 94-100) set the bar high for acceptable whistleblowing. It must : deal with serious problems (Lundberg, 1993, 80, says those harmful to citizens), be supported by unequivocal evidence, come only after internal channels of resistance have been exhausted, and be likely to obtain satisfactory results. As Ken Kernaghan was chair of the working group whose report led to it, the Bill C-25 now before the Canadian House of Commons generally conforms to these requirements (Johansen, 2004). It would create a new post of Public Sector Integrity Commissioner, who would provide a place for blowing the whistle outside of one's own department or agency but still inside the public service.

This seems a desirable compromise, especially in view of the experience of reprisals that many whistleblowers have undergone. In such cases, the immediate organization culture outweighs loyalty to the larger public service culture. The new bill provides for appeal to the new Commissioner by an employee who believes that he is being punished unfairly for his denunciations, with power to correct such wrongdoing.

As Hirschman (1970, 16) pointed out, voice is much messier than exit (which is why economists invariably prefer the latter). It is all the more necessary that the cost of exit is high. The alternatives are creating a culture of loyalty to the regime in both parties to the moral contract, and having more open government. Lundquist (1993) writes that there are few problems with leaks in Sweden because of the long tradition there of freedom on information (also Lewis and Longley, 1994, 608).

Drift or decay

Hirschman (1970, 1) considered that decay or « ...lapses from efficient, rational law-abiding, virtuous or otherwise functional behaviour » is inevitable in any organization. This law would apply also to « recovery mechanisms » created to correct decay (124). The reasons for this lie in change : people, values and circumstances change. Also, every policy has unintended consequences. As H.L. Laframboise (1971) pointed out, it takes departments and agencies time to adjust to new reforms imposed by the centre (he said about 18 months) but they do, and they can then blunt their more demanding or harmful effects in their eyes.

What can be done in the field of ethics to minimize the risk of drift or decay? Two points merit attention. First, the federal government's employee surveys are important and useful in taking the pulse of current morale. Second, codes and mission statements should have sunset clauses or something like attached to them in order to obtain new adhesion to them through the process of their revision.

Conclusion

Aron Wildavsky (1988) wrote of his concern for growing anomie or normlessness in the American public service. It is, he said, a career without orientation. Robert Denhardt (1993, 17-18) thought that the way to provide significance in public organizations lay through developing the values of public service, shared leadership and pragmatic incrementalism. I would agree, but I feel that public servants are being asked to respect too many values for them to be practicable.

The basic values of the public service are « constitutional stewardship » (Morgan and Kass) or « regime values » (Rohr). tempered with justice. In their unwritten moral contract with politicians, public servants have to uphold the democratic state, while bending to the policies of the legitimate government. Whistle-blowing policies try to cover these two poles, legality-morality and legitimacy.

I have held that the apparent contradiction between a rules-based approach and one based on personal and professional ethics is bogus, because while there is no way that rules can effectively cover all cases, even the most high-minded public servant must answer for his or her actions or decisions. A more real divide exists between rationalists and postmodernists or consequentialists. Public sector

reform repeatedly seeks to find the rational « fix » that will solve today's problems, but public servants are mostly consequentialists, a position much closer to that of feminist authors than to rational choice thinking.

When I was reading George Frederickson's *The Spirit of Public Administration* (1977) a misreading of the index led me to see an entry for « bounded benevolence ». This happy error sums up my position quite well. Public servants have a noble calling : to act with the highest possible ethical standards and benevolence, but within the constitutional framework and the system values they are there to uphold. That this approach is in their long-term interest is not a fault, quite the contrary.

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