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**ETHICS IN GOVERNMENT**  
**PUBLIC SERVICE ISSUES**

John Uhr

Discussion Paper No19, June 1990



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## Abstract

This paper treats ethics as an issue of public or political morality, as distinct from private or religious morality. The paper brings a public policy perspective to public sector ethics, where conflicting recommendations derive from differing assessments of the virtues, vices and public interests of administrative responsibility.

The public policy perspective revealed here can help render administrative discretion politically responsible through the 'ethic of accountability'. This calls on public officials to meet a political rather than a moral test: the political test being that of justifying --- before the politically legitimate agents of accountability --- the bureaucratic means and the social impacts of their uses of administrative discretion.

The chief recommendation of the paper as it affects ethics in government is for a merging of the interests of public policy and public law, with the restoration of constitutionalism --- and with it public accountability --- as the critical category of analysis for public sector ethics. Any hoped for 'Australian agenda' of ethics in government should properly begin with reappraisal of the political requirements of responsible government. Such a reappraisal must address the political feasibility of recognising ethical responsibilities of public servants.

It is the business of ethics to tell us what are our duties, or by what test we may know them; but no system of ethics requires that the sole motive of all we do shall be a feeling of duty: on the contrary, ninety-nine hundredths of all our actions are done from other motives, and rightly so done, if the rule of duty does not condemn them.

Mill, Utilitarianism, ch.2

## Introduction

This paper is a revised version of a paper originally presented to the September 1990 conference entitled 'Do Unto Others', sponsored by the Royal Australian Institute of Public Administration (RAIPA) and the Electoral and Administrative Review Commission (EARC) of Queensland, in conjunction with the Department of Government at the University of Queensland. The specific topic assigned me was the content of 'the Australian agenda' for public sector ethics.

This paper attempts to clarify the order of priority which should exist in an Australian agenda for responding to ethical problems in the public sector. The paper attempts to think through what an Australian agenda might entail, although the thrust of the argument is that the last thing needed among public officials is enthusiastic zeal for a new public sector agenda of 'ethical administration'. Indeed, there are sound policy reasons why public accountability should trump private morality.

An Australian agenda could well begin where this paper leaves off: at the point of identifying the proper framework for evaluating and improving the ethical impact of Australian public services. This paper is an essay in problem definition rather than problem solving, based on the belief that ethics is too politically relevant for us to charge ahead without first clarifying the constitutional or public accountability framework of administrative ethics.

## Public Policy Considerations

It is appropriate at the outset to draw a distinction between the reforms in public law being called for in the name of ethics in government (consider Prasser, Wear and Nethercote),\* and the formative public policy which might, or should, be guiding the reform process. The ethics bandwagon has begun to roll, and now is not too soon for us to examine how best to orchestrate what will otherwise be a deafening burden of ill assorted noise. Accepting that there is an ethics problem, one can still ask: what is the appropriate public policy design for structuring the messy array of policy proposals? Indeed, is there a settled public policy on ethics in the public sector? Without inhibiting the need for swift action in regulating official conduct, one must still ask: what should be the public policy considerations governing the changes in law or convention?

Codes and guidelines for improved practices are necessary, and much of our attention over these few days will properly be spent in evaluating alternative schemes for regulating official conduct. Many attractive schemes can be coined, but we still need some sense of the appropriate policy framework, some 'currency converter', to assist with the exchange rate and comparison of contending schemes. In the absence of an identifiable public policy on ethics and integrity, we are likely to remain mute on the public interest, and merely reshape public administration to suit the convenience of those entrusted with power, and not the community.

A public policy perspective is essential, yet it is still at this stage in the ethics debate and reform movement poorly articulated. Without it, we risk drifting increasingly away from the politically feasible. Perhaps more importantly, in the absence of a thought out public policy on administrative ethics, we run the risk of acting without an appropriate design for the range of public impacts our community might reasonably bare.

My aim in this paper is to bring some fresh policy sense to the exciting and somewhat dizzying responses now emerging in the ethics reform movement, which is the latest wave sweeping the reform of government administration. In my view, the most practical contribution now called for is a critical evaluation of the very concept of 'an Australian agenda' for public sector ethics. Being positive, my re-evaluation draws on political science and administrative doctrines only so far as they can help

improve the practice of government. One key feature of such a positive approach must be the re-alignment of academic research programs directly to assist the political community and public officials.

Being practical, however, sometimes means being suspicious of the conventional wisdom; and suspicion risks being misunderstood for 'academic impracticality' or 'overly refined nitpicking' or some other term of derision. If our focus and attention should be on results, as I think it should be, then some considerable care should be invested in the task of problem definition, lest we become carried away by energetic agendas for administrative change which affect the forms but not the substance of government. I suggest that we reframe the standard approaches to the Australian experience of ethics in government, and that we look to a fresh start to the whole enterprise of government ethics.

My argument rests on three rather simple propositions, which I can summarise as follows:

- First, that the other worldly ethos of the so called Golden Rule is less relevant to better ethics in government than is the mundane ethos of liberal-democratic constitutionalism. Ethics in government is a political problem requiring a political and not a religious solution.

- Second, that the Australian tradition of referring to 'public' rather than 'civil' services is but one indication that the spirit of Australian administration is wedded to institutions of public accountability, as distinguished from alternative schemes of primary commitment and accountability either to executive governments of the day or, more menacingly, to independent bureaucratic professionalism. The real heart of administrative ethics is the ethics of public accountability.

- And third, that the chief issue of political philosophy or principle which informs or ought to inform debates over the ethics of accountability is that old standard of 'administrative responsibility', not the new challengers of personal conscience, 'social values' or the ethics of leadership. The old wisdom on responsible discretion, now only of historical interest in public policy and administration, is still the best wisdom.

In what follows, I will unpack each of these three propositions, with the aim of repacking them in the conclusion in the form of a

guide to 'the Australian agenda'. Be warned that my guidance might not seem very practical in that it amounts to a caution against reformist ethical zeal, or 'overfeasance' as it is termed. The best Australian agenda rightly begins with the task of problem definition, which ought to take precedence over programs of problem solution.

#### The Golden Rule and Administration

Let me deal with one fundamental issue right at the outset. The conference title of 'Do unto Others' is intended to remind us of the content and continuing relevance of the New Testament Golden Rule: 'Do unto others as you would have them do unto you', which summarises the teaching of the sermon on the mount (see Matthew 7:12 and Luke 6:31; and consider generally Strecker: 151-155). Unfortunately, religion and public administration are no better bed fellows than religion and politics; and lest we are tempted into a new wave of administrative fundamentalism, I think that we ought to bear in mind the liberal rationale for the separation of church and state --- and indeed for the separation of religious and political ethics.

Posing the issue of ethics in this religious way as this conference has done is extremely useful. It forces us to think through the administrative design of public service ethics, and to appreciate the constitutional logic of conventionally honourable practices. It may well be that in point of abstract moral principle the Golden Rule is correct; but the inconvenient political facts are that our system of administration is a creature of a religiously neutral political regime, with the effect that a wide range of religiously based ethical precepts carry little administrative weight and no political legitimacy. They might be tolerated but only on civil terms, according to their social utility as distinct from their intrinsic moral worth.

In the family of political systems of liberal democracy, of which Australia is a member, there is a long tradition of political and constitutional theory holding that the regulation of public office is best managed through public law rather than through religious or ethical belief. The constitutional tradition of liberalism is not unfriendly to religion; but it does not grant religious ethics any special status or privileges. As a way of dramatising this secular spirit, a number of early liberal political theorists actually devised their own versions of the Golden Rule which, upon



examination, indicate the irrelevance of the Biblical solution to our problem of administrative ethics.

Three examples will illustrate this liberal preoccupation with public law rather than private conscience. First, the English philosopher Thomas Hobbes, rightly regarded as the founder of liberalism on account of his pioneering justifications of liberty and natural equality (civil equality, alas, was another matter to Hobbes), who included in his great work The Leviathan one of the earliest examinations of the place of the administrative adviser or counsellor in affairs of state. In that context, Hobbes argued that the liberal substitute for the traditional moral rule is this 'one easie sum, intelligible, even to the meanest capacity; and that is, Do not that to another, which thou wouldst not have done to thy self' (Hobbes: 214). As this new rule (itself a roughish return to an Old Testament formulation eg, Leviticus 19: see Strecker:151-152) suggests, liberalism is anchored in a protective doctrine of individual rights rather than a selfless charter of social obligations.

Indeed, even our typical movements of social reform retain this individualist bias of self interest: one need take only the example of Rousseau, the chief propagandist of virtue and self sacrifice in modern politics, who in his Discourse On Inequality stoutly refused to accept the Golden Rule as guidance. In its place Rousseau proposed 'this other maxim of natural goodness, much less perfect but perhaps more useful': 'Do what is good for you with the least possible harm to others' (Rousseau:133). To cite a third and concluding example, this time from the apostle of free enterprise, Adam Smith, who some twenty years before Australia was settled under a policy of criminal retaliation, noted sadly in his Theory of Moral Sentiments that: 'As every man doth, so shall it be done to him, and retaliation seems to be the great law which is dictated to us by Nature' (Smith:82).

My point is that the problem of ethics in the public sector is not at base a religious problem requiring a religious solution. The political theorists associated with the rise of the modern liberal regime were all suspicious of airy religious enthusiasms, and so tried to ground political liberty in the soil of constitutionalism. Religion indeed has its place, but it is subordinated to such civil considerations as honesty and fair dealing: manners and social virtues which religion can encourage and from which the civil order can profit. But generally speaking, ethics as it arises in our public sector is more of a political problem, one requiring a political, or more precisely, a constitutional solution. The scope

of ethics which concern us is better defined as political than conscientiously religious or personal.

### The Place of Politics

There are two main reasons underlying the claim for the political basis of public service ethics. First, the context is that of public affairs --- of the actions of officials in the sphere of public administration, performing duties as determined by the political process. Even the quest for a politically neutral public service can only be understood as an essential ingredient in a political diet for healthy self government. But this first and uncontroversial reason fades in comparison with the second: which is that the Australian political order is a particular example of the more general species or regime of liberal democracy, and as such is biased or partial toward the ethical virtues of liberalism.

Every political regime rests on a particular view of the political --- or view of the arrangement of the competing spheres of public and private. Drawing freely on the work of John Rohr, the eminent American authority on public service ethics, this point can be put as follows: we should separate the two categories of the 'morally right' and the 'politically feasible', and begin to see public service ethics as falling somewhere in between, with a leaning toward the political end of the scale (see Rohr 1989 and 1986). The degree of ethical choice and discretion open to public officials in liberal regimes is decisively limited by what Rohr calls the 'regime values' or core political premises on which liberal polities are founded. The duties of citizenship and the civic obligations of public officials vary from regime to regime. So too public service ethics also vary from polity to polity, depending on the reigning sense of the public and of what is publicly acceptable and legitimate.

It is heartening to learn that our early liberal theorists and constitutionalists knew or at least sensed this, and that our legal forms are shaped by more fundamental political designs, originally drawn up to help modern democracies remain liberal in their social and ethical orientation (see for example Berns, Diamond, Goldwin and Kaufman, Ionescu, and Pangle 1973 and 1988). Liberal constitutionalism is preoccupied with questions of due process precisely because duly managed processes can help secure liberal outcomes. One result is that most liberal polities seek to nurture and discipline integrity in office through robust

mechanisms of public accountability. We are not the first generation to ponder the ethics of public office, and it is vital to recognise that liberal regimes --- such as that in Australia --- have, as do all regimes, a bias towards a particular view of the political and of what is publicly legitimate. It is true, of course, that all such 'regime values' are limiting conditions: they constrain the paths of citizenship and public integrity through a commitment to the particular virtues of their own political order.

### 'What Can I Get Away With?'

The great advantage of liberal regimes is their relative openness to argument, including ethical claims and disputes over what really constitutes the public interest. The limiting condition for liberal regimes is in fact the very process of public accountability which to a considerable extent defines the nature of the liberal constitutional order. At best, the publicly legitimate course of action is that which has been authorised after passage through and approval by the various courts of public accountability. As a consequence, the test of ethics in office is this test of public accountability: or to put this in more conventional terms, the test of ethical responsibility for a certain range of official actions occurs in the process of public accountability to the authorised public scrutineers.

In this sense, public service ethics can be defined as something in between high morality and low politics. The bias in liberal regimes is, in practice, toward the lower end of the scale, because the liberal political theorists who influenced our constitutionalists reckoned that it was better for the cause of liberty if greater reliance was placed on the negative capacity of constitutional 'checking' institutions than on the positive force of morally worthy motives. All this might make political and administrative ethics seem morally flaccid, and I will not help by defining negatively the key question confronting official ethics as: 'What can I get away with?' rather than the positive 'What ought I do?'

My intention in suggesting that the focus of analysis be on 'getting away' behaviour rather than on 'ought' behaviour is not to pose as the grim realist or as the defender of immorality. My suggestion is strategic, designed to cut through the 'do-gooder' rhetoric of the moralising tendency within the ethics movement; and so by upsetting the balance of pieties to prepare the ground for acceptance of the more practical test of ethics posed in the

question: 'what can I justify?' Opinions will differ on how best to invigorate administrative discretion. My estimate is that at present dotingly 'do-gooders' pose considerable risks to good government; these risks might be corrected through a carefully administered antidote which, left to its own devices, would indeed act as a poison.

The advantage of approaching ethics through this rather base question of 'What can I get away with?' is that it draws attention to two of the chief political elements of official ethics which are frequently ignored or overlooked. These two elements are: first, the self interested motivation which is the distinctive feature of liberal political theory (ie., its 'realism'); and second, the logic of public accountability within liberal constitutionalism which is designed to modify the private use of public office. The temptation of the official to think in terms of 'what can I get away with?' is checked by the requirement to defend the record in terms of whatever is publicly justifiable; so that justice enters through the side door of due process rather than the front door of ethical substance.

In my view, the base question serves as a sobering reminder whenever we begin an inquiry into ethics in government. The base question calls to mind the temptation of the liberal citizen to use public offices for private gain, and the allied temptation to risk detection by gambling on the inefficiencies in the systems of public accountability. We all know many instances in which accountability systems have failed or not even been tested; and one practical application of this 'ethics of accountability' approach is in the incentive it gives to wider public scrutiny of the very institutions of accountability --- of their actual performance in operating as courts of public accountability.

There are good policy reasons for keeping our focus on the ground around us. My preference is to let the ought questions unfold as slowly as they do in the ordinary routines of administrative life, particularly in the explanatory activities and language of public accountability. Not that the science of administrative ethics or good government is divorced from justice: it is rather a question of how best to appreciate the character of political morality. The rather dull but effective ethic of accountability has the capacity to transform official behaviour: both the zest for self interest and the zeal for public interest face a common ethical test --- in responding to the disarmingly neutral, almost procedural question: 'What can I justify?', when the agents of public accountability demand their reckoning.

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I can now summarise the effect of this first part as clarifying the political context and limits to any reform agenda in a liberal regime. The feasible path of reform is that which is consistent with the prevailing ethos of the polity. In liberal regimes, any ethic more noble than 'self interest rightly understood' goes against the grain. As can be readily demonstrated, the institutions of public accountability devised by liberal constitutionalism have precisely the desired effect of disciplining and restraining self interested individualism (see especially Mansfield 1989 and Berns).

### An Australian Agenda?

In turning now to the second part of my presentation, my focus is on the supposed 'Australian-ness' of the agenda for public sector ethics. Once again, the design of the conference is useful in forcing us to confront a difficult question and thereby discipline our thinking and critical responses. The Australian polity is not

simply a copy-book version of some theoretical model of liberal democracy, but is a distinctive species of that political genus or regime. If the grammar is liberal democratic, then the accent and the vocabulary is distinctively Australian.

Political scientists are now paying considerable attention to the specific qualities of the Australian political tradition, in an effort to identify the potential capacities contained in 'the Australian way' (of government and misgovernment). None has yet addressed the significance of the local Australian preference for describing state officials as 'public' rather than 'civil' servants, which is the universal practice in the United Kingdom, Canada and the United States --- those pre-existing liberal regimes upon which Australian constitutionalists relied when searching for notions of nation building (see for example Sharman, Galligan, Finn, Saunders).

The historical origins of this Australian preference are identified by Caiden as emerging from the struggles for colonial self government in the mid nineteenth century. The colonies had originally relied on the existing British term of 'civil' servant. With the granting of responsible government, each of the colonies began to adopt public servant as 'a more popular term to denote the constitutional change' from British rule to responsible self government (Caiden:488).

Although the significance of this Australian alteration can surely be overdrawn, consider this explanation. The British term 'civil' was originally devised to discriminate between the two forms of government service: the military and the civil. Remembering Australia's origins of military government, it is not difficult to see the attraction to colonial Australians of the alternative term 'public' as a category of political office. The prevailing term 'civil' when used to designate early Australian administrators promised more than it delivered. It confused the name with the actual nature of the office: in point of fact, most 'civil' servants were more akin to military agents in that they were appointed by and responsible to the British military governors of the day.

The officers termed 'civil' came to be seen as being in the service of the British Crown and under the control of the appointed government of the day. Along with the demand for responsible government (ie., executive government drawn from and responsible to an elected legislative assembly, in place of military governors appointed by the British Crown), came the demand for public officers who would be responsible to the new

source of government: public servants in practice as well as in theory, with the new conventions underlined by a name-change.

The rhetoric of responsible government promised community control of public affairs through an elected legislative assembly. The name-change from 'civil' to 'public' was part of a package of practices for more responsible government, including the core concept of public accountability. The rationale for the name-change runs as follows: where 'civil' servants regarded themselves as responsible for civil administration and accountable to the Crown through the government of the day, 'public' servants would be responsible for public administration and accountable to the public through the newly constituted institution of government --- the legislative assembly.

### Public Policy and Accountability

Thus, the distinctiveness of the wider Australian agenda for good government is summed up in this very Australian term 'public' rather than 'civil' service, and its essential companion piece of 'public accountability'. Caiden's history records the admittedly unsteady pre-federation march of acceptance of 'public' as the preferred term. The ambiguity of the call for greater public accountability in public services --- ie., the uncertainty as to whether the new legislature or the new executive would hold the greater power of accountability --- is conveyed by such historical descriptions as that of Caiden of the 'subordination of public officials to the elected representatives of the people' (Caiden:35; but see pp. 49-50). To a considerable extent, Australian public services have been the object of intense battle between executives and legislatures, thereby confusing or straining their service ethos beneath conflicting charters of accountability (see Uhr:1989).

Typical of our way of political life is the odd place in the Australian polity of that distinctive piece of public service machinery, the public service board. The Victorian example is telling, possibly because it today remains the last exemplar of this distinctive Australian public body, the rest having disappeared with the recent and explicit transition from 'responsible' to 'responsive' models of machinery of government. The original Victorian Public Service Board was established by an act of the Victorian parliament in 1883 (remarkably, the same year as the statutory establishment of the Civil Service Commission in the United States).

This legislative protection of the ethos of the merit-based public service tells us something important about the emerging Australian constitutional status of the public service: precisely what is less certain. The history tells a tale of uneven and at times bewildering confusion over public service policy. For our purposes, the relevant point might be that a statutory board or commissioner was empowered to administer the system of public administration --- for the convenience of the executive but on terms and conditions approved by the legislature. The existence of boards signifies the political meaning of merit: that the public service be administered free from direct executive interference. The existence of legislative codes, in the form of public service acts and subordinate legislation, signifies the basic commitment to a public accountability framework. Together these early developments in public law suggest that the ethos of public service in Australia was intended to take its character at least as much from the community as from cabinet, with a central place allotted to parliament in reconciling these two, often divergent, forces.

#### Australian Ethos Indicators

In a recent article, I listed a selection of what I termed 'ethos indicators' for Australian public service (Uhr 1990a:26). Included in this listing of key expressions of the accountability ethic in the Australian constitutional order were such items as: public service acts and boards and commissioners, parliamentary control of executive supply and administration, a system of administrative law for public regulation of administrative discretion, parliamentary approval of guidelines for public service conduct, and even the prominent place of public accountability in the schemes of the 'new public management'. My argument was that such features illustrate the distinctive qualities of Australian public service professionalism, with its obligation to provide fair and reasonable administration.

These 'ethos indicators' dovetail well with the early returns coming in from the current academic re-appraisals of Australian constitutionalism, if the independent work of professors Cheryl Saunders and Paul Finn is any guide (see Saunders, and Finn: 1988 and 1990). The importance of Saunders' critical search for 'a coherent philosophy of Australian government' underlying the (hybrid, derivative but) 'distinctively Australian' constitutional order is twofold: first, in that we now recognize that our public



order deserves evaluation within its own terms of reference, freed from the straitjackets of such foreign concepts as 'westminster' or the 'British conventions of responsible government'; and second, in that we also accept that the framers' busy blending of constitutional arrangements might not always have bonded as they had hoped for. Saunders, for example, accepts that our political order is 'distinctive', but doubts that it is 'cohesive'. If Saunders is correct, then some of our contemporary problems associated with the misuse of office might be attributed to mixed or confused historical expectations of public office.

Paul Finn is perhaps more optimistic in his de-mythologising of the conventional narrative of Australian public administration: He probes for the secrets of cohesion in the original understanding of Australian constitutionalism. Down goes the myth that we are 'England's replica, faithfully tracking in a more modest way the paths of Whitehall and Westminster. This is a large and erroneous assumption'. Thus there begins to emerge the conviction 'that there has been a logic and a coherence in what we have done even if today we are prone to losing sight of this' (Finn: 43,49). This is not the place to record in any detail the emerging picture of Australia's original understanding of public order and public office. The main lesson is that we should not reform institutions until we have properly understood their original forms, and the public policies behind them.

Another lesson is that we should locate our evaluation of Australian public sector ethics within an Australian framework of government, and appreciate the underlying logic of the political order of which the public service is such a distinctive part. This is not intended to unleash a narrow nativism, but to help identify the principles 'constituting' the Australian public services and thereby to prepare for an initial assessment of their ethical performance within their own terms. The location must be Australian in orientation; but the full evaluation will, of necessity, compare the Australian experience with that of other liberal democratic regimes. In my third and last section, I will outline a procedure for comparative analysis which draws explicitly on the public policy orientation with which I began this presentation.

## Public Policy and Administrative Responsibility

The public policy approach to matters of government began about fifty years ago as a reform movement within the academic discipline of public administration, promising to draw lessons from the comparative study of government relevant to the political management of the modern state. It shared with public administration a bias towards bureaucracy and a commitment to the enhancement of public services (see eg. Friedrich 1953). Typical of this public policy orientation is the contribution of Carl Friedrich, a Harvard professor of government who in 1940 founded a new journal called Public Policy, one of the earliest usages of the term as a new political and scholarly endeavour.

And typical of the policy orientation fostered by Friedrich is his own contribution to the first issue of that journal, entitled: 'Public Policy and the Nature of Administrative Responsibility' (Friedrich 1940). The argument of that paper is now best remembered as one of the salvos in the classic debate between Friedrich and Herman Finer over the forms of accountability appropriate to bureaucracies (see Finer; and more generally Uhr: 1990b). For those who remember that debate --- with Friedrich defending the 'inner checks' of independent bureaucratic professionalism and Finer defending the 'external checks' of legislative control --- I can summarise my argument by saying that we need both positions claimed by these famous political scientists. The ethic of accountability will work best where there is a preparedness among both public officials and public scrutineers to have policies and their administration justified in a properly accountable policy process: one open to the community, and representative of their best interests.

The early issues of Public Policy also included characteristic articles on political responsibility and administrative ethics (Spiro, Callard). This pairing of reports is not accidental. In the original public policy orientation, administrative ethics was understood in terms of the professional ethics of administrators. Ethics was seen to be about the professional responsibilities of those exercising administrative discretion. Administrative ethics focussed on the obligations of executive officials in their carriage of part of the power of the executive branch of government. The gravest issue then facing officials was thought to be the balance between professional and political responsibilities. The typical 'ethics incident' was more likely to be experienced as a burden of open discretion than as a problem of conflict between political authority and personal morality.

Thus far I have stressed the place of the external checks which, while necessary, are frankly insufficient. Eventually one has to address the topic of official duties in regard to promoting the public interest. The policy orientation devised by Friedrich illustrates why external checks are ultimately insufficient, and the ethics movement would do well to build its case on the requirements of public policy, as distinct from those of private conscience. Ethics is certainly directed to duty and obligation, but our immediate concern is with the professional ethics of public officials, especially but not exclusively that of career public servants --- with the professional obligations of public officials, for which certain ethical qualities or virtues are most certainly preferred over others. But as Friedrich's policy orientation suggests, the content of these professional qualities is best revealed procedurally rather than substantively: ie., in terms of decision making procedures capable of being justified in the policy process, rather than in terms of a core set of desirable 'social values' capable of being defended as socially just policies (see Uhr: 1990a:24).

#### Virtues not Values

There is another side to the public policy preference for a focus on process-related virtues over 'social values'. Virtues are matters of intellectual and moral character: excellences, such as courage or prudence or magnanimity, which can be ranked according to lists of desired qualities or 'competencies', to use a more contemporary term. In a sense, virtues are instruments of justice in that they are ruled and deployed by the individual's sense of justice, which is traditionally understood as the highest and definitive of the political virtues. The concept of 'values' derives from the political sociology of Max Weber, where values are meant to be distinguished from facts in that they lack the latter's solid objectivity: values are by definition subjective, drawn from the individual's idiosyncratic 'worldview' (see Bloom:194-216; and Eden:134-173). To rely unduly on a 'social values' approach to ethics is to sever the anchor to impersonal justice, and either to drift irresolutely on the tides of personal commitment or --- as in Weber's case --- to surrender all authority for policy values to 'charismatic' political leaders.

To a considerable extent, the early policy emphasis on political virtues reflects a traditional suspicion of the very category of 'social values'. The policy perspective under review here arose as

an expression of the scholarly enterprise of comparative government, drawing on the social sciences but still working within the traditions of comparative politics long identified with and partly inspired by Aristotle's Politics. In marked contrast to Weber's elegiac treatment of the irreconcilable clash of social values, Aristotle examined the justice of contending political virtues: increasingly the modern practice of values clarification replaces the traditional political science of values adjudication (see Mansfield 1989:23-71). One must concede that most recent policy analysis has been more energetically 'socially scientific' than was typical of the earlier, value-laden work in 'comparative government'. Policy studies can be as regressive as policy practices.

The practical relevance of this divergence in approach is this: to the extent that administrative ethics is now analysed at all within the policy sciences, it tends to reflect current scholarly fashions and focus on the place of 'social values' in government. Typical of this approach is the question: 'what are the right social values which ought to influence administrative decision making?' The earlier policy literature was not only more traditional but more helpful, in my view. It still reflected the older political science interest in the virtues or components of justice required of individuals in political office, as distinct from the requisite 'values' or social outlook.

Some of the defects of the values approach are evident in its source, in the amazingly influential contribution of Max Weber to this question of administrative responsibility. One can not do justice to Weber's balancing of the ethics of social science and politics in one or two paragraphs, but it is important to note Weber's desperate attempt to separate administration from politics, and separate and liberate the politician's 'ethic of responsibility' from bureaucratic manipulation. In turn, Weber hoped to develop an ethic of value-free public management by subordinating both bureaucratic 'politiking' and moralism beneath a public service ethic of value-neutrality --- which is much more radical (in allowing extensive executive control over public bodies) than conventional arrangements for party-political neutrality. It might be that this hidden radicalism is the price we pay for embarking on the voyage of 'values'; and that responsible government can take some comfort from the traditional pieties of public accountability.

Weber's essay on 'Politics as a Vocation' illustrates the political implications beneath the values perspective (Weber; and

Eden:174-210). In it, Weber argues that the 'proper vocation' of 'the genuine official' is to engage in impartial administration, free of the taint of political interest. The principles of responsibility for politician and administrator are 'exactly the opposite'. Politicians represent the realm of values; they are expected to 'take a stand, to be passionate'. Administrators represent the realm of dispassionate implementation: 'The honor of the civil servant is vested in his ability to execute conscientiously the order of the superior authorities, exactly as if the order agreed with his own convictions. This holds even if the order appears wrong to him and if, despite the civil servant's remonstrances, the authority insists on the order. Without this moral discipline and self-denial, in the highest sense, the whole apparatus would fall to pieces' (Weber:95,115-122).

To Weber, the modern polity can be managed only through the reins of responsibility, and that can rest safely only in the hands of elected representatives, especially executive leaders whose conscience should be informed by 'the ethic of responsibility' in contrast to all ethics of absolute ends, particularly that of the Sermon on the Mount (Weber:119-20). The Weberian model bureaucrat is divested of responsibility for policy or value judgments, and trained to respect and obey the value judgments of those in whose hands is placed 'the ethic of responsibility' --- the elected parliamentary leaders.

Many reasonable policy analysts who accept the values approach rebel against this attenuation of responsible administrative discretion; their checks and balances solution of spreading the values around is good as far as it goes, but it is locked into the values orientation and limited in scope (consider Burke, Cooper). Better, I think, to learn from pre-Weberian democratic theory, release the vice-like grip of 'social values', and to restore the language of the virtues of justice, as was once standard (and indeed standard-setting) practice, if one can rely on the 'values'-free transatlantic analysis of J S Mill and Woodrow Wilson, to name two classic theorists of administrative responsibility.

### Responsible Government

The policy orientation identifies administrative responsibility as the basic or core competency required of public officials. We generally know this as the responsible use of administrative discretion. The policy orientation regards the test of responsible discretion as that provided for in the public accounting process.

Australians have yet to profit from the policy perspective's original task of relating administrative responsibility to what was then termed 'responsible government' --- a term not exclusively Australian or even parliamentary. As Friedrich never tired of complaining, the standard of responsible or accountable government depends for its efficacy on the care for the public interest entertained, as it were, by both sides of the accountability process: administrators entrusted with responsibilities and politicians recalling accountabilities.

'Entertain' might not be too strong a word, since bureaucrats and politicians are both capable of adopting the appearances and roles of 'the public interest'. Ultimately, the processing of public accountability rests on the shoulders of the public, who make the final judgments on the meaning of the public interest. This, too, is a feature of the public policy orientation: the attempt to construct a better sense of political community between the holders and the granters of public power and public trust. The essential first step in that construction is the right ordering of the professional ethic of public officials.

How do administrative responsibility and responsible government thus understood help our analysis of official ethics? One line of answer comes from the important contribution of such Canadian analysts as Langford (Langford). Without wanting to detract from Langford's unique qualities, I suspect that Canadian analysts generally have a better feel than many Australians for the realities of responsibility in government: rare is the Australian authority like Wettenhall who rightly identifies Canada as the constitutional source of the whole 'responsible government' concept. There is a vast and immensely relevant Canadian literature linking ethics to administrative responsibility. In my terms, Canadians are 'policy sensitised' to responsible government and carry through, drawing from their own particular sources, many of the same elements central to the policy approach developed by Friedrich (see eg, Dobell, Kernaghan).

The three essential elements of the policy approach to ethics as identified by Friedrich in his schema for comparative government were:

- First, a refusal to accept the conventional distinction or so called 'dichotomy' between policy and administration: administrative responsibility is the important issue that it is because officials necessarily participate in the policy process, using their discretion to give effect to public policies. Officials

are responsible for huge slabs of public policy, which would not be mined, cut or polished without their involvement. Officials are part of the governance process, and our task is to clarify more precisely which part they may rightly claim as their own (Friedrich 1940: 5-8).

- Second, the wider context of administrative responsibility is that called 'responsible government', by which term Friedrich and his public policy followers referred to the contribution of the legislature as the source of policy legitimacy. Friedrich is now remembered as one of the early mockers of parliamentary government, but the basis of this is his comparative evaluation of the greater merits of Congress as an agent of responsible government --- by virtue of its more effective capacities for public accountability (see Friedrich 1935 and 1960).

- Third, the policy orientation launched as the key operational test of responsible discretion what might be called 'rule of anticipation' (Friedrich 1940: 11,16; but also Finer: 348-349) --- the prototype of the 'what can I justify?' test, requiring administrators to evaluate the political and ethical dimension of their activities in terms of what they would be prepared to justify before their legislative accountants. Bureaucratic professionalism is as much about the ethics of professing to policy authorities as it is about professing for authoritative policies. That is, it is as concerned with policies of justification as with just policies.

#### Conclusion: Overcoming Overfeasance

In speaking of ethics and probity, the shadow of Victorianism hangs over us. It all sounds so gloomy, so dutifully correct, so proper. And indeed, the Australian polity was built on foundations laid in Victorian times. But there is a very real danger of treating ethics in government with a misplaced earnestness, and of adopting the posture of the moraliser when in fact the posture of the moral realist is more productive. As part of my conclusion, I want briefly to refer to a striking Victorian morality tale which helps to convey the heavy burden of rectitude which lurks in wait for those tempted to devise an Australian agenda of 'golden rules'<sup>1</sup>.

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<sup>1</sup> I am indebted to John and Mary McKenzie, two exemplary Canberra public officials, for this reference.

Charles Kingsley's children's classic The Water-Babies tells the tale of the adventures of the young runaway, Tom, who learns of ethics and good behaviour from his confrontation with two powerful fairy figures: the fearsome and vengeful Mrs Bedonebyasyoudid, and the more attractive and rewarding Mrs Doasyouwouldbedoneby. The negative, vengeful figure forces Tom to drink much of his own medicine, and learn to do good from suffering the fate of those by whom he had done badly. The positive figure tries to teach Tom that all of his suffering and humiliation could be avoided if he were prepared to treat others under the spirit of the golden rule. Tom tries to work out which is the better course, since the force of it all depends less on doing good than on being caught out: is it better to adopt goodness as a way of life, or only occasionally as a matter of mere policy?

The relevance for us as administrators and officials is this: taking the golden rule approach seriously means either relearning the experiences of Kingsley's character, young Tom, and engaging in at least some version of the mighty confrontation between the two guardians of the rule; or relearning the wisdom of Kingsley himself and treating the whole matter with a rare combination of poetical licence and moral gravity. Either way, we are not likely to come up with the goods of an Australian agenda for a long time --- and then one can scarcely imagine how 'golden' any such rules would be. Better perhaps to think of Australian rules than golden rules.

The 'Australian agenda' should properly begin with a revitalised concept of responsible government, building on a renewed constitutional appreciation of administrative responsibilities. There is quite a degree of latitude inherent in the concept of responsible government: the coiner of the original term, Lord Durham, was so convinced that liberal constitutionalism permitted a variety of forms of responsible government that he included republican United States (as did his colleague J S Mill in On Liberty) within the field of 'responsible government'. In a sense, the precise shape of responsible government depends on the elements of executive and administrative irresponsibility, real or potential, which a legislature wants to govern. That shaping depends, of course, on the wider sources affecting the polity, especially including the external forces conditioning the policy power of the legislature, regardless of the black letters of the constitution.

Seizing Durham's generous latitude, we can reach out and adapt the agenda of administrative responsibility which emerged fifty



years ago in the first steps of the public policy school. That agenda helps us because it modelled the basic task of problem definition --- the beginning point of any agenda. The key problem to which our agenda must respond is that debated by Friedrich and Finer: not malfeasance, nor underfeasance, but the mischief of what Finer called overfeasance, often the result of an overcharged ethical conscience 'or genuine, sincere public-spirited zeal' (Finer: 337-338). As I have argued elsewhere, the agenda of ethics should be politically feasible even if that means being morally modest. To accept the policy realities and so to begin with politics does not necessarily mean that we end with realpolitik; no more than beginning with moral pieties means that we end with good government.

## References

- Berns W, 1984. In Defence of Liberal Democracy, Regency Gateway, Illinois.
- Bloom A, 1987. The Closing of the American Mind, Simon and Schuster, New York.
- Burke J P, 1986. Bureaucratic Responsibility, Johns Hopkins University Press, Baltimore.
- Caiden G E, 1965. Career Service, Melbourne University Press, Melbourne.
- Cooper T L, 1986. The Responsible Administrator: An Approach to Ethics for the Administrative Role, Associated Faculty Press, New York.
- Diamond M, 1986. 'Ethics and Politics: The American Way', in R H Horwitz ed, The Moral Foundations of the American Republic, University of Virginia Press, Charlottesville.
- Dobell A R, 1984. 'Responsibility and the Senior Public Service: Some Reflections in Summary', Canadian Public Administration, vol 27, no 4 (Winter).
- Eddy J J, 1988. 'Australia' in J Eddy and D Schreuder eds, The Rise of Colonial Nationalism, Hale and Iremonger, Sydney.
- Eden R, 1983. Political Leadership and Nihilism: A Study of Weber and Nietzsche, University Presses of Florida, Tampa.
- Finer H, 1940. 'Administrative Responsibility in Democratic Government', Public Administration Review, vol 1 no 4.
- Finn P D, 1986. 'The Faultless King Is Not Dead', in J J Eddy and J R Nethercote eds, From Colony to Coloniser, Hale and Iremonger, Sydney.

Finn P D, 1990. 'Myths of Australian Public Administration' in J Power ed, Public Administration in Australia, Hale and Iremonger, Sydney.

Friedrich C J, 1935. 'Responsible Government Service Under the American Constitution', in Friedrich, Beyer, Spero, Miller and Graham, Problems of the American Public Service, New York.

Friedrich C J, 1940. 'Public Policy and the Nature of Administrative Responsibility', in C J Friedrich and E S Mason eds, Public Policy 1: 1940, Cambridge, Massachusetts.

Friedrich C J, 1953. 'Policy --- A Science?', in C J Friedrich and J K Galbraith eds, Public Policy 4: 1952, Cambridge, Massachusetts.

Friedrich C J, 1960. 'The Dilemma of Administrative Responsibility', in C J Friedrich ed, Responsibility, New York.

Galligan B J, 1984. 'The State in Australian Political Thought', Politics, v19 no2, November.

Galston W A, 1988. 'Liberal Virtues', American Political Science Review, v.82, no.4, December , pp.1277-1289).

Goldwin R A, 1986. 'Of Men and Angels: A Search for Morality in The Constitution', in R H Horwitz ed, The Moral Foundations of the American Republic, University of Virginia Press, Charlottesville.

Goldwin R A and Kaufman A, 1988. Constitution Makers and Constitution Making, American Enterprise Institute for Public Policy Research, Washington.

Hobbes T, 1968. The Leviathan, ed C B Macpherson, Pelican Books.

Ionescu G, 1988. 'The Theory of Liberal Constitutionalism', in V Bogdanor ed, Constitutions in Democratic Politics, Policy Studies Institute, Aldershot.

Kernaghan K, 1984. 'The Conscience of the Bureaucrat: Accomplice or Constrictant?', Canadian Public Administration, vol 27 no 4 (Winter).

Langford J, 1984. 'Responsibility in the Senior Public Service: Marching to Several Drummers', Canadian Public Administration, vol 27 no 4 (Winter).

Pangle T L, 1973. Montesquieu's Philosophy of Modern Liberalism, University of Chicago Press, Chicago.

Pangle T L, 1988. The Spirit of Modern Republicanism, University of Chicago Press, Chicago.

Prasser S, Wear R, and Nethercote J, 1990. Corruption and Reform: The Fitzgerald Vision, St Lucia, Queensland.

Mansfield H J, 1985. 'Constitutionalism and the Rule of Law', Harvard Journal of Law and Public Policy, v.8, pp.323-326).

Mansfield H J, 1989. Taming the Prince: The Ambivalence of Modern Executive Power, Free Press, New York.

Rohr J A, 1989. Ethics For Bureaucrats: An Essay on Law and Values, Marcel Dekker, New York.

Rohr J A, 1986. To Run A Constitution: The Legitimacy of the Administrative State, University of Kansas Press.

Rousseau J J, 1964. The First and Second Discourses, ed R D Masters, Saint Martins Press, New York.

Saunders C, 1990. 'The Constitutional Framework', in J Power ed, Public Administration in Australia, Hale and Iremonger, Sydney.

Sharman c, 1990. 'Australia As A Compound Republic', Politics, v25 no1, May.

Smith A, 1982. The Theory of Moral Sentiments, ed D D Raphael and A L Macfie, Liberty Press, Indianapolis.

Strecker G, 1988. The Surmon On The Mount, Edinburgh.

Uhr J, 1988. 'Ethics and Public Service', Australian Journal of Public Administration, v.47, no.2, pp.109-118.

Uhr J, 1988. 'So You Thought Ethics Had Nothing To Do With Executive Development?', Canberra Bulletin of Public Administration, no.55, June, pp.37-40.

Uhr J, 1988. New Strategies For Executive Development: The Management of Public Accountability, Canberra College of Advanced Education, Canberra.

Uhr J, 1989. 'Dilemmas in Administrative Responsibility', Canberra Bulletin of Public Administration, no. 59, August, pp.25-27.

Uhr J, 1990. 'Ethics and the Australian Public Service', Current Affairs Bulletin, April at p.26)

Uhr J, 1990. 'Reflections on the State of Executive Development', in A Kouzmin and N Scott eds., Dynamics in Australian Public Sector Management: Selected Essays, Canberra.

Weber M, 1948. 'Politics As A Vocation' in H H Gerth and C W Mills eds., From Max Weber: Essays in Sociology, Routledge and Kegan Paul, London.

Wettenhall R L, 1987. 'The Challenge of Administrative History' in J J Eddy and J R Nethercote eds, From Colony to Coloniser, Hale and Iremonger, Sydney.

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