

PERSPECTIVES

On the Professions

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"Political Ethics: Breaking New Ground"

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One August afternoon in 1997, I arrived at my office to find a message from the "World Bank" asking me to call Geoffrey Dubrow at the number indicated. I assumed the bank name was garbled because the World Bank seemed an unlikely caller, and Dubrow's area code was in upstate New York, not where I supposed the World Bank to be. But I returned the call.

Three Surprises

Dubrow quickly explained that he, a graduate student at Cornell, was then working as a consultant for the Bank, that the Bank had concluded that Ukraine could not develop a healthy national economy unless it reduced governmental corruption substantially, and that the Bank had therefore undertaken to help the Ukrainians understand the West's techniques for controlling corruption. I was to be a part of that undertaking.

That was my first surprise: the World Bank had called. Two more surprises followed quickly. The second was that the Bank might want me to participate in a meeting with senior officials in the Ukrainian government. The

meeting was less than two weeks away. Could I fax him anything of mine relevant to government ethics? I did.

A few days later, Dubrow called back: would-I go? If I would, I had to overnight-mail my passport and two visa-size pictures to the Bank's main office in Washington, DC. The Bank would take care of everything else: tickets (business class), good hotel, and so on. I felt a bit like James Bond. This was my first "ethics emergency".

The third surprise was that I was to be the expert in governmental ethics. As longtime readers of this publication may recall, I had done some work with the City of Chicago in the late 1980s, helping its Board of Ethics implement an ethics program for the City administration. Later, and without publicity, I had done workshops for the Chicago Transit Authority and the Illinois Commerce Commission. I had also published two short papers on governmental ethics (and done some less important consulting). But I had, I thought, done nothing to prepare me to counsel a national government. Nor did I have any other obvious special qualifications. I knew no Ukrainian - and only a few words of Russian. Most of what I knew of Ukraine, I owed to National Public Radio. How, I asked, had I been chosen?

Dubrow assured me that a number of people whose judgment he trusted had listed me among those who knew a good deal about codes of ethics in government, their design and implementation. He had chosen me over some I would have identified as much more qualified primarily because my experience was in Chicago, a place Ukrainians regard as sufficiently corrupt to provide analogies likely to be useful to them. In short, I owed my trip to Kiev to Al Capone.

In the end, nothing went quite as planned. Ukrainian politics forced postponement of the meeting till late November, forcing me to miss Thanksgiving with my family. (This delay had its good side, allowing the Bank to translate my talk and relevant papers into Ukrainian.) At the last minute, the Ukrainian President decided not to attend because his counterpart at the World Bank could not attend. Meanwhile, the little meeting had grown into something more like a two-day conference.

But, for all the changes, it was very much the event Dubrow promised. Even Dubrow's explanation of my credentials was confirmed: The young customs officer who examined my passport, visa, and declaration, said only one word to me, "Sheekago", then made the gesture and sounds children use

for firing a machine gun, smiled impishly, stamped my documents, and waved me on.

An Idea

I do not know what Ukraines officials made of the conference, but I found it an interesting way to look at governmental ethics, interestJ i ng enough to inspire this issue of Perspectives. The conference organizers had thought of preventing corruption inuch more broadly than I would have, gathering under that heading anything that might help control corruption. I have tried to be as expansive here (while respecting the twelve-page limit my budget imposes).

In the first piece, Dubrow, now finishing his masters thesis, brings the Ukrainian story up to date. So far, the World Bank's efforts seem to have yielded only one more plan unlikely to be implemented. Ukraine's economy is still in ruins; its government, deeply corrupt; its people, more or less helpless victims; and its chances of foreign credit, no better than before. Much of Dubrow's piece is a meditation on what can only be described as failure. His judgment is that the Bank's efforts failed because the non-governmental organizations, "civil society", that do much to keep government in the West relatively honest, are still largely undeveloped in Ukraine. Their development, in turn, seems to be retarded by a Soviet legacy, a sense in the public as well as in the government that government is not the public's business. Dubrow has no recipe for changing this part of Ukraine's "culture".

I find Dubrow's sad meditation oddly comforting - a few days after the House of representatives voted to consider impeaching the

President of the United States for "high crimes and misdemeanors" that seem only the low errors of a relatively decent private life. Like many other Americans, and perhaps most foreigners, I have the feeling that something is deeply wrong with impeachment on such grounds. But what? Dubrow's description of Ukraine suggests an answer. If the Ukrainian government and people tend not to see the government's business as public business, perhaps the American government and people tend the opposite way, that is, to see everything government officials do, even in their private lives, as public business. Though there is much to be said against this American tendency, Dubrow makes clear why it is better than its opposite. There is comfort in considering how much worse things could be.

Ombudsman

I find comfort of another kind in Patrick Robardet's description of Quebecs Office of the Ombudsman. The Office skirts the legalisms in which American politics seems almost always imbedded. The Office seeks justice in the moral sense, Justice not only for individuals but for the public at large and, indeed, for all involved in the administrative machinery of the executive branch of government. The Office has no power except the power to subpoena and call public attention. It must work by persuasion or moral authority. It is at once above polttics, in the sense of partisan strategies, and profoundly political, in the ancient Greek sense in which politics implies persuasion rather than violence.

The contribution of the Office of Ombudsman to governmental ethics is. oblique. Day to day the

Office may seem no more than "the department of lost causes". But over time, it works like sunshine, killing germs of corruption that might spread in the dark. And perhaps it works in another way as well, serving as a permanent reminder of the underlying moral decency politics requires: the Office of Ombudsman works only if both government and public can be moved by considerations of simple justice.

Privatizing and Professionalizing

Inge Fryklund's piece describes another oblique contribution to governmental ethics. From Kiev to Chicago, governments are considering "privatization", that is, contracting with business or non-profit agencies to perform services that government previously performed. There is now a general assumption in favor of having services provided by "the private sector" (as earlier this century, there was a presumption in favor of having government provide the services itself).

Fryklund here summarizes a handbook on privatization she helped prepare for the National League of Cities. She begins with a point one might suppose obvious, that privatization should be the end of a careful process, one including collection of information about costs and beriefits. She concludes by sketching such a process. In between, she makes the Point that such a process is part of carrying on government ethically. Among each official's political obligations is the stewardship of public resources.

The last piece is by three members of the staff of the Office of Inspector General, Illinois

Department of Children and Family Services (DCFS). What they describe is an attempt to use professional ethics to improve governmental ethics. Private businesses could benefit from doing something similar.

DCFS is responsible for most children who are wards of the state in Illinois. When DCFS was established about three decades ago, it replaced a patchwork of private agencies (effectively "deprivatizing" child welfare). In the late 1980s, DCFS, overwhelmed by its caseload, suffered a series of scandals, some involving the death of children. Much of its work, both finding foster homes and supervising them, was then contracted out to private non-profit agencies. DCFS has increasingly become an overseer rather than a direct provider of services. One way to oversee is to look for wrongdoing and punish it whenever discovered. Another way is to win from those one supervises a commitment to the standards, so that enforcement of standards becomes a way of helping the agencies do what they want to do. DCFS is now experimenting with this second way to overseeing, emphasizing the professional origin and justification of its standards.

An Admission

You may have noticed that this issue of Perspectives was late in arriving. The reason is that we were persuaded by IIT's Public Relations department to upgrade our format. Only after time consuming experimentation did Public Relations and CSEP arrive at the format of this issue. We are grateful to out- new managing editor, Ethel Lewis, CSEPs Administrative Associate, who kept a steady hand on the process.

We appreciate the absence of letters of complaint. We welcome your comments on the format as well as the content of this issue.

"Clean Hands in the Ukraine"

Geoffrey Dubrow, Cornell
Institute of Public Affairs

Ukraine is a shrinking industrial giant and former breadbasket, a country of celebrated artists and poets with a highly educated and literate people. Its recent history has been a series of traumas: World War I and the Russian revolution, the purges of the 1930s, World War II, Chernobyl - and independence.

The Challenge of Independence

That independence should be included in a list of Ukraine's traumas is itself a great tragedy for the fledgling nation of 52 million. Like the gross domestic product (GDP) of other former Soviet republics, Ukraine's GDP has decreased over 60% since the country became independent in 1991. Over half of the economy is legally unrecognized and therefore untaxed. For some neighboring countries, the private sector has been the vehicle of economic recovery. In Poland, for example, the private sector's contribution to GDP increased from only 18% in 1989 to 52% in 1996. But in Ukraine, the private sector remains stifled by licensing requirements, frequent visits by inspectors, and other legal arrangements permitting government employees to exact illegal "side payments".

Beside this petty corruption, there is much "grand corruption", the pilfering of state assets. For example, the current Speaker of the Ukrainian Parliament, Alexander Tkatchenko, was accused of embezzling \$70 million intended for Ukrainian farms. He then allegedly used his post (deputy speaker at the time) to cover up the crime and force the resignation of the man investigating him, Prosecutor General Vladimir Datsuk. In another case, President Leonid Kuchma dismissed the Prime Minister, Pavlo Lazarenko, for corruption. Lazarenko is DOW an influential Member of Parliament.

Why accusations but no convictions? First, MPs have parliamentary immunity. Second, the courts lack a tradition of independence from the executive branch. They are used to doing the bidding of the executive branch rather than holding it to the requirements of law. Third, judge's salaries are so low (between \$50 and \$100 a month) that judges easily succumb to bribery.

There have been many presidential anti - decrees, most of which have not been Implemented. (The last one, known as "Operation Clean Hands", expired in early 1998 and was replaced by "A Concept on Combating Corruption and Organized Crime (1998- Typically, the President signs such decrees, the Cabinet of Ministers draws up a watered-down implementation plan, neither the government nor any non -governmental organization (NGO) effectively supervises implementation, little is accomplished, and then a new

degree is drawn up, beginning the cycle again.

The Rewards of Integrity

One of the few politicians ever to attempt to break this cycle, Serhiy Holovaty, lost his cabinet post in August 1997. More recently, the courts stripped him of his position as an elected deputy in a dubious and probably extra- power play.

As Minister of Justice from September 1995- 1997, Holovaty drafted and attempted to coordinate implementation of Clean Hands. Clean Hands had been designed to tackle corruption in at least five ways: 1) investigating and dismissing corrupt officials; 2) strengthening legal procedures to ensure corrupt officials do not benefit from lighter sentencing options; 3) revising laws to curb corruption in the judiciary; 4) developing a civil servants' code of ethics; 5) gathering statistics on the effects of corruption and the extent of the shadow economy.

Holovaty met resistance at the highest level of government, especially within the Cabinet's Secretariat and the Cabinet itself. The Kiev Post accused the "reactionary government" of firing Holovaty because he had proved to be more than window dressing.

The Cycle of Inaction

Why this cycle of inaction? Why has the government failed to implement integrity reforms needed to pull the economy out of a deep depression? Why have the Ukrainian people not demanded that its government serve it better? There are at least three reasons.

First, the mechanisms of governmental accountability in

Ukraine are weak. Ministers are not necessarily drawn from elected members of Parliament. They are appointed without parliamentary approval. And the Cabinet's "Apparat", an unwieldy bureaucracy in the old Soviet manner, directs the Cabinet instead of receiving orders from it.

Second, Ukraine has neither a democratic nor a capitalist heritage. Unlike the Czech Republic, no democracy existed in Ukraine before the collapse of the USSR. Unlike Poland, Ukraine lacked a private sector before that collapse. Without such a heritage, the control mentality of the "command economy" generates opposition to the very regulatory and administrative reforms that could encourage private sector growth.

Third, institutional actors able to undertake needed reforms did not, and even today do not, exist in Ukraine. Until 1991, the executive was the only branch of government with real power (and indeed power was concentrated even within that branch). Today, there are only a few viable NGOs in Ukraine. Most of these are run by parliamentarians. Few are interested in touching the anti-corruption agenda in any meaningful way, since working against governmental corruption is likely to displease an executive that still views other institutional actors, including civil society, the media, and even Parliament, as competitors to be kept at arms length. Without stronger governmental and non-governmental institutions to pressure and monitor the executive branch, little incentive exists to take any concrete steps to curb corruption. This is why the development of civil society - and

a fundamental change in the attitude of government towards civil society - are so critical.

Unshackling of Civil Society

The Ukrainian Legal Foundation is one of the few reform-oriented NGOs in Ukraine. There a number of young, talented reformers, including Holovaty, its president, have taken refuge from the government. While the new Concept calls for the inclusion of NGOs in the monitoring of implementation of anti -corruption reforms, government officials tend to be hostile to the idea - or, more accurately, bewildered.

The idea that NGOs might either provide input for an anti-corruption program or help monitor its implementation is foreign to a government still run by bureaucrats most of whom were Communist party apparatchiks for most of their career. Their reaction resembles that of a Cabinet meeting caught off guard by a 12-year old child who, having been admitted, presents a report she has prepared on debt financing or pension reform: "What is this person doing here? Surely we can handle this matter without her help."

That explains the government's attitude. What explains the failure of civil society to mobilize? Since NGOs are discouraged from working with government, their work must either be ineffective or risk government hostility - in a country where the government's hostility might again mean imprisonment, death, or worse. There is a great post-Soviet joke tat may seem relevant here: "During the Soviet era, government oppressed civil society, now they just ignore us. Which is worse?" But, in fact, the problem is more complicated. The

government is only part of the problem. The lack of public mobilization also creates little incentive for government action. There is at least one handy explanation for public inaction.

After more than seventy years of communism in which the state penetrated every aspect of social, economic, and political life, the Ukrainian people are simply not aware that they have the right and responsibility to mobilize if they expect change to occur. As author Slavenka Drakulic wrote in *Cafe Europa*:

Suddenly there is such a thing as public interest. It is difficult for people to grasp that, in the end, it is our interest and our problem, and our citizen's right to act in the name of it. But how do you define a common, public interest, and how do you fight for it? It is a new issue, because it is something that could become an issue only in a democracy, where one can actually do something - start some action, organize a pressure group or lobby, and influence public opinion. [But] people don't think in this way; they are not prepared for it, either by their political leaders or by then- media.

Strengthening Civil Society

The Ukrainian government's hostility to civil society is not unknown in the West. For example, the current Conservative Premier of Ontario, Mike Harris, recently labeled groups opposing his policies as "special interest groups" and vowed to ignore them. These are the very groups whose participation is so desperately needed in Ukraine: teachers, doctors, union members, police officers, students, senior citizens, women's groups, and so on. In Ontario, the government's attempt to ignore civil society will

not have the same consequences as in Ukraine. No matter what Mike Harris does, civil society in Ontario will not go away. In Ukraine, however, civil society barely exists and needs constant stimulation.

What now? One possibility is that economic ruin, seemingly imminent already, could propel Ukraine towards post-Soviet neo-of the sort Belarus has. A more hopeful possibility is that Ukraine's citizens will become more active, demanding better services and more integrity. For that to occur, however, the public needs, to form strong grass-NGOs, a civil society, to force reforms on the government and then to monitor their implementation. A media independent of government and of oligarchic interests is also needed to keep the citizenry informed about government. Only then will the preconditions exist for a democratic revolution in Ukraine.

"Ombudsing: Reflections on Role and Style"

Patrick Robardet, Office of the Ombudsman for Quebec, Canada

"Ombudsman" is Swedish for "agent", that is, a person who represents the interests of another. The Swedish Constitution of 1809 created a Justitieombudsman to ensure the legality of official actions and to protect the public from official wrongdoing. All modern ombudsmen- or, to avoid sexism, "ombudspersons" or "ombudses" -derive from this one.

There are today a great many

ombudses and (ombuds derivatives) around the world. Current membership in the International Ombudsman Institute includes over 125 government ombuds offices in more than 85 countries. There are also national or regional associations of government ombudses (such as the United States Ombudsman Association), of university and college ombudses (such as the University and College Ombudsman Association in the US), and of private-sector ombudses for consumer products, banking, health care, and so on.

The Image

When Quebec established its Office of the Ombudsman in 1968, the provincial premier described its job as "persuasive judgship". This description captures something essential to ombudsing: the impartiality of a Judge, with persuasion replacing the judge's power to issue binding orders. But the description also leaves much of importance out.

A year ago I surveyed press references to the Office of Ombudsman in Quebec between 1968 and 1996 to get some idea how the public understands our office. The result both confirmed the premier's description and expanded it: "Defending the little guy" was a favorite theme; so was the "watchdog" (sometimes without teeth). The image of "the bureau of lost causes" was quite a surprise. Less surprising was the ombuds as "wonderman", "miracle-worker", "Zorro", and even "Superman".

These are, of course, not the usual images in which a government office is portrayed. They suggest some special role - a punchy, *even combative*, style as well as a taste

for the spectacular, all in the service of the public. Indeed, one popular definition of the ombuds is "the people's advocate".

Yet, there is no Model Ombuds. Ombuds offices can be organized quite differently, assigned quite different tasks, and carry out those tasks in quite different ways. Nonetheless, all varieties of ombuds seem to me to have at least one thing in common, an approach to supervising large institutions that makes a positive contribution to ethics.

What Ombudses Actually Do

Two things all ombudses do: receive complaints from individuals (and corporations) who feel they have been treated unfairly by administrative authorities, public or private; and investigate those complaints. After the investigation, the ombuds may make a recommendation to the appropriate authority, supply information to the complainant, make a referral, or simply give an explanation.

Normally, an ombuds has no power to issue orders or to reverse administrative action; an ombuds can only make recommendations and try to persuade the appropriate authority that the recommendations should be followed. An ombuds may also mediate between individual and bureaucracy. Today's ombudses rely on both law and broader concepts of fairness - that include equity, justice, and humanity - to achieve their mission. Sometimes the ombuds is a catalyst for change in administrative procedures or resource allocation; *sometimes* the ombuds prevents problems by identifying sources of potential dysfunctions in proposed laws, rules, or programs.

Why Ombudsing?

The main reason for the spread of ombudsing in democratic countries is, I think, the tremendous growth both in government activities and in the power of private entities. Large organizations, whether public or private, sometimes abuse their power. Some of those abuses can be corrected by the courts, constitutional entrenchment of basic rights, or private law. But some cannot because ordinary-lack the resources and expertise to challenge a large organization. An ombuds can give ordinary people resources and expertise they would not otherwise have. The ombuds thus complements judicial review and political accountability. That is true of ombudses both in the public sector and in the private sector. But, hereafter, I will focus on the public sector, since I know it better.

The public-sector ombuds is a facilitator of good government. There has been a gradual evolution from the ombuds as citizens' advocate toward a more neutral thirdparty position similar to that of mediator, arbitrator, or conciliator. But too much emphasis on neutrality (the judicial virtue) may undermine the persuasive side of ombudsing, the ombuds as "equity agent" acting in response to an individual's complaint. For ombudsing, fairness - understood broadly - is the primary ground for acting.

So, for example, in the United Kingdom, "maladministration" is the statutory concept delineating the jurisdiction of their ombuds, the Parliamentary Commissioner for Administration (PCA), but the PCA is given full power to say what "maladministration" means.

One author was able to list 156 common "bureaupathologies" - ranging from "A" (abuse of authority/power/position) to "X" (xenophobia) that the PCA has treated as maladministration. Serious or criminal infractions are the of a court of law. The ombuds assesses the equity of decisions and the humanity of officials.

Independence and Ethics

Independence, that is, freedom from official interference, is basic to ombudsing. The ombuds' authority presupposes independence from the authorities he supervises. Without such independence, an ombuds would be just another official. But the ombuds' authority presupposes more than actual independence. The public must also see the ombuds as someone independent of the authorities supervised.

Ethics is therefore important to ombudsing, in at least two ways. First, ethics is part of the broad mix of law, equity, and humanity, that underlies the ombuds' interventions. Government failure to treat individuals fairly is an ethical failure, whether or not it is also a legal failure.

Second, to be effective, the ombuds must be governed by, rather than simply speak for, ethical considerations. Pointing out maladministration can boomerang: the Chinese say that when you point your finger at someone, three of your other fingers point to you. Since the ombuds has no formal power to issue binding orders, the office's effectiveness depends on its moral authority. An ombuds guilty of maladministration will have little moral authority. So, wrestling with values in discharging the duties of the ombuds is intrinsic to being effective.

Neutrality and Advocacy

Ombudses are supposed to be neutral, impartial, and non-partisan, to have no personal or professional interests to protect, and to investigate without prejudice. Since, theoretically, ombudses do not act for individuals, an ombuds does not have to espouse a complainant's point of view or attempt to win a case the way a lawyer does. Investigating individual complaints or systemic issues does not imply taking anyone's side. The ombuds only has to find a solution fair to all concerned. That is what theory teaches.

In practice, ombudsing is not that simple. For example, when seeking to protect against administrative abuse, the ombuds does not act as a classic neutral arbitrator but as a "negotiator of fairness and equity" (as one observer put it). An ombuds is not a judge, tribunal, advocate, jury, police unit, auditor, inspector, arbitrator, legislator, or law reformer, yet may - occasionally and interstitially (and in a non-legal and nonjudicial way) - exercise some or all of these roles when necessary to ensure fairness in the matter at hand. The ombuds is more active than a neutral-third party, though not active in the way a lawyer should be.

When facilitating an agreeable outcome as negotiator of fairness, the ombuds is impartial, yet interested. The ombuds is interested because she is committed to finding a outcome. She must nonetheless be impartial because she can only make recommendations. While she not have to side with the complainant or the authority that is challenged, she cannot serve fairness unless she can find a solution agreeable

to all parties.

When acting as negotiator of fairness, the ombuds must have the capacity to think independently, to develop an appropriate solution, and to recommend it to the appropriate authority, just as when investigating an individual grievance.

Traditional ombudses report to the legislative, not to the executive. In a sense, then, they work for the legislative. Yet, an ombuds cannot be effective without the agreement of the very agents of the executive whose decisions he must challenge. Ombudses have the power to compel some response from a public official, and so the power to draw public attention to some problem, but they have no power to compel the response they want. The relation between ombuds and government combines conflict with collaboration.

To win the collaboration of public officials, the ombuds must be seen to be "politically neutral". Yet, the public sector is inherently political. Any particular act of an ombuds may threaten some politicians, especially those in office, and help others, especially those out of office. Ombudses can only overcome the natural hostility of officials to having their decisions challenged by making a case for the undeniable fairness of the alternative they propose. Because the power of an ombuds is ultimately moral - consisting in no more than the power to force officials to think about the ethics of what they do - ombudses tend to make the institutions in which they work more ethical.

"Doing Privatization Right"

Inge Fryklund, Tactics Inc.,
Chicago

Since the early 1980s, privatization has grown in popularity the world over. In the United States, the term "privatization" usually refers to arrangements under which government maintains responsibility for some service but contracts with a private company or not-for-profit for service delivery. In other countries, such as those emerging from the former Soviet Union, "privatization" - or "denationalization" - refers to the transfer to private owners of assets previously owned by the state.

Problems

All forms of privatization have at least two characteristics in common. First, taxpayer-funded assets or services (a construction contract, ownership of a utility, award of a long-term service contract) are at stake, and the government, not the market, makes decisions about the transfer of the public benefit to particular private hands. Second, there is an intersection of public and private-sector rules, practices, and expectations not found when the transaction is purely market-driven or purely internal to government.

Recent enthusiasm for privatization of all varieties has been driven by failures of government: the general failure of centrally planned economies; the uncompetitive position of state-run railways and industries; and the costliness or inefficiency of

government services ranging from garbage collection to golf-management. Because some privatization has provided solutions to seemingly intractable governmental problems, anything termed "privatization" is likely to be greeted with uncritical enthusiasm by the popular and business press-if not by the government employees immediately affected.

By now, however, there is much evidence that privatization can bring not only new efficiencies but also new possibilities for corruption and waste. Consider, for example, The "crony capitalism" of many former socialist countries in which state assets were transferred to politically connected buyers for a fraction of market value, or the many American scandals about public contracts steered to campaign donors. In order to reap the benefits of privatization, it is necessary to do privatization right.

A Practical Project

In 1996, IIT's Center for the Study of Ethics in the Professions began a project examining ethical issues in privatization. The Centel had long been involved in studying ethical issues facing individuals in business, government, or private practice, those day-to-day decisions made amidst the often conflicting claims of employers, users, profession, and the public. In the privatization project, the Center changed focus somewhat, undertaking to provide analysis, education, and support to elected officials and public managers faced with making large organizational decisions about the allocation of resources and responsibilities between the public and private sector.

This change of focus was not as great as it may at first seem. The project was not a study of privatization as a social policy; rather, it was an attempt to guide the decisions of the individual officials who draft legislation, decide how to advertise a contract opportunity or tender, determine how costs are computed or contracts are to be monitored, or otherwise manage the privatization process. The premise was that privatization does not produce benefits and harms; individuals do.

The Joyce Foundation provided the funding for the project. Co-principal investigators on the grant were Vivian Well (Director of the Centel), Harriet McCullough (ethics consultant and former Director of the Chicago Board of Ethics), and Inge Fryklund (formerly Chicago's Parking Administrator). We were to study examples of privatization around the United States and develop guidelines for responsible decision-making about privatization. When the need for additional financial expertise became apparent, we recruited Margaret Swanton (MBA, CPA, and Certified Fraud Examiner) to help us understand activity-based costing and related issues. We also convened an advisory board representing major interests affected by privatization (government, labor unions, and outsourcing contractors) to provide advice and comments as the project developed. The Center subsequently joined with the National League of Cities (NLC) and participated in its survey of city-level privatization.

The project culminated in a Handbook entitled *Municipal Service Delivery: Thinking*

Through the Privatization Option published in December 1997 by the NLC as part of its Local Officials Guide series. It has been distributed to all NLC member cities. While the project focused primarily on decision-making in American outsourcing at the state and local level, the basic principles (including transparency of decision-making, accurate computation of costs and benefits, and responsible contract monitoring) are of broad applicability.

The ethical issues identified through the NLC survey, through Internet searches of news accounts of privatization, and from information gathered from cities around the country run the gamut from outright illegality through grayer areas of favoritism or unequal access to contracting opportunities, to aspects of decision-making (such as determining projected cost savings) that were not identified by participants as implicating ethics at all.

The ethical issues that garner the most newspaper coverage are often the easy ones. When money changes hands under the table, it is perfectly clear to those involved that the conduct is wrong. That is, after all, why the exchange is under the table, not in full view of the public. Most countries have criminal laws designed to deter bribery, kickbacks, bid rigging, or other collusion. For such deliberate wrongdoing, the best remedy is the vigilance of prosecutors and press.

Rather than spend time discussing conduct already adequately identified by the criminal code, we turned our attention to the harder issues-to those everyday

decisions in which officials, pressed for time and money, and constrained by imperfect information about costs, alternatives, and consequences, try to act as good stewards of the public welfare. For these decisions, identification of and sensitization to ethical issues, and guidance about effective decision strategies can make a real contribution to improving the quality of public decisionmaking. The Handbook is organized as a journey through the privatization process beginning with the decision to consider outsourcing a particular service, proceeding to evaluation and costing of alternatives, contract drafting and negotiation, and ending with long-term monitoring of the contract.

Doing it Right

Our theme throughout the Handbook is that the decision to privatize should always come after a careful, well-informed assessment of costs and benefits, not before. Here are some of the important stages the decision to privatize should include.

Potential Competitors. Ask: Is the service proposed for privatization performed by the private sector or at least likely to be? If so, will the local marketplace have enough potential vendors both now and for the foreseeable future to assure competition? Outsourcing to a monopoly provider is unlikely to be an improvement over government service. Without the presence of competition to constrain a vendor, taxpayers may soon find themselves faced with increased costs and few alternatives.

Understand Problems with the Current Process. The impetus for

privatization is usually dissatisfaction with current operations. Before jumping to privatization, take the time and effort to analyze the problem. What are the internal inefficiencies driving Current costs? Could the operation be improved? Comparing the cost of a privatized alternative only against an inefficient in-house operation is poor stewardship of the taxpayers' money; an inhouse but streamlined operation may be the most cost-effective alternative. Only if the analysis shows that no likely reorganization will sufficiently improve the in-house operation does privatization become an acceptable alternative.

Analyzing the problem in this way is also key to ethical treatment of employees. A decision to privatize rather than improve inhouse operations may amount to punishing workers for the sins of management. Employee input at this stage can be very helpful.

Determining Costs of In-House and Project Outsourced Alternatives. We placed heavy emphasis on evaluating costs because so much of privatization is driven by the desire to cut costs. Yet, our research shows that few governments know how to compute the costs of an activity. Activitybased costing is indispensable for responsible decision making about outsourcing of activities.

Recognize Transaction Costs. Conducting cost studies, finding vendors, and negotiating, drafting, and monitoring contracts all costs money. Honest and accurate assessment of these costs is necessary.

Make Contracting Opportunities Widely Known.

Tenders should be open to all qualified bidders, with accurate information about scope, terms, and quantities equally available to all.

The Decision to Privatize. With all cost information in hand, the basis for the decision to privatize, and the choice of a vendor, should be stated clearly and publicly.

Contract Drafting. The contract governs the future outsourcing relationship. Government should use the contract to make clear what it wants to achieve and how performance will be measured and monitored.

Contract Monitoring. Plan for monitoring for the life of the contract-and budget for the time and expertise required. Too many privatization efforts have failed because government allowed the contract to go on autopilot.

By following such a public and structured decision process, government officials can be sure that they have not missed the key issues. Government employees can also point to the need for a transparent process, should they be faced with pressures to privatize or short- the decision process.

"Government Ethics in the Public Welfare System"

Martin G.Leever, Ellen Mulaney, and Gina DeCiani
Illinois Department of Children and Family Services

Child welfare workers are society's representatives in its

attempt to meet the needs of abused and neglected children and their families. Until 1964, Illinois tried to meet these needs through private charities, typically those affiliated with a particular religion (Catholic Charities, the Jewish Children's Bureau, and so on). In 1964, the state legislature created a more comprehensive system under a new department, Children and Family Services (DCFS).

The volume of cases DCFS handled in its early years was relatively small; DCFS could staff cases with caseworkers and supervisors who held a bachelor's or master's degree in social work.

Because their formal education introduced them to the ethics and underlying values of social work, DCFSs staff viewed themselves as professionals and had the understanding of responsibilities to client and society that the term professional implies. But the child welfare landscape has changed significantly since 1964. DCFS has had to respond. Part of that response is an extensive ethics program.

De- and Re-Professionalization

The number of abused and neglected children entering the system has grown from less than 10,000 DCFS in 1964 to over 48,000 in 1998.

There are at least three reasons for this enormous growth. First, the old system of orphanages gave way to children being placed in individual foster homes. Second, children who would once have been placed informally with relatives can now be formally considered wards of the state. Third, drug addiction has become much more common. Since drug-addicted parents tend to neglect or

abuse their children, the state often has no choice but to place the children in foster care.

As more and more caseworkers were required to meet this growing demand, educational requirements were relaxed to the point that a bachelors degree of any kind was sufficient. Sometimes "casework aids" having only a high school diploma functioned as caseworkers. The demand for child welfare services slowly overwhelmed DCFS's ability to provide them.

Unable to meet the need for child welfare services itself, DCFS began to contract with private agencies to take over some of the case load. Unfortunately, many of these agencies were new to child welfare and lacked the experience or expertise to provide child welfare set-vices properly. Many of their caseworkers and supervisors lacked even a degree in social work. Last year, for example, DCFS shut down eight private agencies because of unqualified staff or fiscal mismanagement (or both). (DCFS retains responsibility both for licensing any agency with which it contracts and for monitoring its *performance*.) The trend toward privatization has nonetheless continued. Today private agencies handle seventy percent of cases.

The child welfare community in general, and DCFS in particular, have been criticized because of well-publicized breakdowns in service to children and families. In response both to this criticism and to DCFS's own recognition that much of the criticism was justified, DCFS has recently begun to reprofessionalize Illinois' "child welfare community", that is, both DCFS itself and the

private agenci es with which it contracts. Part of reprofessionalization is educational. For example, DCFS now requires all its supervisors to have a master's degree in either social work or a related field of social service. Another part of DCFS' reprofessionalization is ethical.

The Inspector General, the Code, and the Ethics Board

In 1993, Illinois Governor Jim Edgar appointed Denise Kane as DCFSs first Inspector General. The Office of Inspector General is responsible for investigating allegations of misconduct anywhere in the state's child welfare system. In 1994, Inspector General Kane submitted her first annual report to the Illinois General Assembly. The report made recommendations concerning a wide range of personnel and systemic issues within DCFS. Because the Inspector General believes that sound ethical judgment is the foundation of good child welfare practice, one of her first recommendations was that DCFS adopt a code of ethics stating the values and responsibilities of the child welfare profession.

One year later, the DCFS Director approved the Code of Ethics for Child Welfare Professionals. Drafted by a broad based committee of experts and practitioners in child welfare and ethics, the Code defines the professional responsibilities of child welfare caseworkers, supervisors, and administrators, considering in turn their relationship to clients, colleagues, agencies, foster parents, the courts, and society. Within the context of these responsibilities the Code covers issues of

competence, documentation, sexual harassment, confidentiality, conflicts of interest, client self-determination, and informed consent, especially as it relates to "mandated clients" (that is, those who are clients whether they want to be or not). The Code was distributed to all DCFS employees and is now part both of agency training and of the DCFS Employee Handbook. Moreover, all DCFS contracts now require that contracting agencies possess a code of conduct of their own that is at least as stringent as the Code of Ethics for Child Welfare Professionals.

Another important innovation of the Inspector General is the Child Welfare Ethics Advisory Board. Meeting at least six times a year, the board is made up of representatives from the fields of child welfare, psychology, law, law enforcement, medicine, and moral philosophy. The board accepts ethics inquiries both from within DCFS and from private child welfare agencies - so long as the inquirer is a child welfare professional seeking guidance on an ethical matter about which he or she must personally make a decision. Ethics inquiry forms are available through the Office of Inspector General (312/433-3000).

When an inquiry either requires an immediate response or is not appropriate for the Ethics Advisory Board, the Inspector General's own in-house ethics handles it. The ethics staff also develops educational materials for Illinois' child welfare community and provides ethics workshops for DCFS. The ethics staff is currently collaborating with Eileen Gambrell, a professor of

social work at the University of California- in writing a companion Handbook to the Code.

Conferences and Workshops

Distribution of the Code to the child welfare agencies throughout Illinois seems to have increased awareness among both private and public agencies of the need to recognize, address, and resolve ethical problems. In response to requests for a forum in which child welfare professionals could express their ethical concerns, the Office of Inspector General sponsored the first Child Welfare Ethics Conference on June 3, 1997 at Loyola University of Chicago. The conference functioned both as an opportunity to discuss ethical issues in child welfare and as a way to encourage dialogue between DCFS and the private agencies it licenses and monitors. To this end, the conference featured speakers such as David Ozar, Director of Loyola's Center for Ethics, as well as presenters from both DCFS and private child welfare agencies.

The Child Welfare Ethics Conference was followed in 1998 by a series of half-day Administrative Ethics Workshops for senior DCFS administrators. Like the earlier conference, these workshops were developed through the Office of Inspector General. But unlike the earlier conference, the workshops focused primarily on administrative and organizational issues. Each workshop began with a talk by Michael Davis of IIT's Center for the Study of Ethics in the Professions and a brief presentation on the ethical

resources available to DCFS administrators (the Code, the Office of Inspector General's ethics staff, ethics literature, and so on). The remainder of each workshop was devoted to cases reflecting the primary ethical issues facing DCFS administrators.

Current Developments

The Office of Inspector General is now working with the Park Ridge Center for Faith, Health, and Ethics to seek foundation funding for a two-year comprehensive ethical analysis of the child welfare field. This project should add to DCFS knowledge about the value conflicts in child welfare and educate practitioners in effective ethical analysis. The project should also lead to publication of a child welfare ethics book and an anthology of articles on the subject.

Another important goal of this project is to establish a permanent, free-standing Child Welfare Ethics Consortium, independent of DCFS, the Inspector General's office and existing private-agency associations. The Consortium would offer ethics workshops, sponsor conferences, publish a newsletter, and be an overall mechanism through which child welfare professionals, both public and private, could address the ethical issues of the profession. Such a neutral forum would provide a non-political setting for frank interchange among professionals charged with a critically important responsibility in our society, the protection of our children.

"Announcements"

Conferences

The 1999 Business Ethics Conference: *Ethics Program Innovation and Growth* will be held May 17-18, 1999 at the WaldorfAstoria in New York, NY. Whether you have responsibility for administering an ethics program, are evaluating such programs for your company, or are assisting clients in ethics and compliance matters, you will find this conference essential. For further information call (212) 339-0345 or fax request to (212) 980-7014.

A PRIM&R Conference on *Educating for the Responsible Conduct of Research in the Next Millennium: New Dilemmas, Continuing Questions, and Effective Strategies*, will take place May 13 & 14, 1999 at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD. This conference is supported in part by a contract with the Office of Research Integrity, Department of Health and Human Services, and jointly sponsored by Public Responsibility in Medicine and Research, Association of American Medical Colleges, Applied Research Ethics National Association, National Institutes of Health, and Tufts University School of Medicine. The conference has been planned in accordance with the Essentials and Standards of the Accreditation Council for Continuing Medical Education (ACCME). For further information regarding the conference and registration forms, contact PRIM&R (RCR Conference) at 617/423-4112, fax 617/423-1185 Email prmr@aol.com, 132 Boylston St.,

4th Floor, Boston, MA 02116.

The International Center for Character Education presents the First International Conference on Character Education *Educating the Hearts and Minds: Values, Ethics, Citizenship*. Conference dates are June 27-29, 1999, and will be held at the University of San Diego on San Diego, CA. For more information call (619) 2605980, fax (619) 260-2961 or e-mail schellj@is.acusd.edu

An NSF supported conference, *"Integrating Ethics into Technical Education,"* will be held June 3 & 4, 1999 at Raritan Valley Community College in Central New Jersey. Forums for discussion will focus on case teaching, intellectual property, quality assurance, and research ethics. For proposals and inquiries, contact Joyce Tigner, Ph.D., Raritan Valley Community College, P.O. Box 3300, Somerville, NJ, 08876, tel 908/526- x8305, fax 908/526-0253, Email jtigner@rvcc.raritanval.edu.

The Kennedy Institute of Ethics, one of the world's premiere institutes for research in bioethics, is offering a course in *Contemporary Challenges in Health Care Ethics* June 12-17, 1999. This course provides the opportunity for participants from different fields and disciplines to come together for a few days to explore the theoretical framework and practical issues of bioethics with a distinguished faculty. For more information, call (202) 687-5477.

The Fourteenth Annual Conference on Computing and *Philosophy* (CAP) will be held at Carnegie Mellon University on

August 5-7, 1999. This conference, which is co- by the APA Committee on Philosophy and Computers and the Department of Philosophy at Carnegie Mellon, has become the central meeting place for all aspects of computing and philosophy. The deadline for submissions (2-3 page abstract, plus equipment needs) is February 15, 1999. For further information regarding the conference, visit: <http://caae.phil.cmu.edu/CAAE/CAP/CAPpage.html>

The second International Conference on *Ethical Issues in Biomedical Engineering* will be in conjunction with the 18th Southern Biomedical Engineering Conference at Clemson University, April 24, 1999. Contact: Subrata Saha, Conference Chair, Director, Bioengineering Alliance of South Carolina, 313 Rhodes Research Center, Clemson University, Clemson, SC 29634-0906. Tel: 864-656-7603. Fax: 864-656-4466. Email: ssaha@clemson.edu web: <http://sbec.abe.msstate.edu>

Call for Papers

Ethics and Justice, an interdisciplinary journal of public affairs in electronic format, covers topics in applied ethics, social and criminal Justice, and politics. It is now seeking short manuscripts for publication in future issues, especially in the areas of professional and governmental ethics. E&J's home page is: <http://www.ethics-justice.org>. A free sample copy of the journal is available by emailing: sales@ethics-justice.org. Please email manuscripts as attachments to: editor@ethics-justice.org.

The Center for Business Ethics,

Bentley College, USA, and Blackwell Publishers have announced a new quarterly journal, *Business and Society Review*, under the general editorship of Robert Frederick. The journal will address a broad variety of ethical issues concerning the relationships between business, society, and the public good. It should be of interest to business people, academics, and others involved in the contemporary debate about the proper role of business in society. B&SR invites manuscripts from a broad variety of contributors', including academics, business people, lawyers, and government administrators. Contact: Robert Frederick, Ph.D., Business and Society Review, Center for Business Ethics, Bentley College, 175 Forest Street, Waltham, MA 02154. Website: <http://www.bentley.edu/resource/cbe>.

Publications

Gordon Moran, *Silencing Scientists and Scholars in Other Fields: Power, Paradigm Controls, Peer Review, and Scholarly Communication* (Ablex Publishing: Greenwich, Connecticut, 1998).

Peter Seidel, *Invisible Walls: Why We ignore the Damage We Inflict on the Planet ... and Ourselves* (Prometheus Books: Amherst, New York, 1998).

Business Ethics: A European Review, a quarterly journal, provides a forum for business people and academics to exchange experience and informed insights on the various moral challenges and opportunities which increasingly face modern business in Britain, continental Europe, and the world. For sample copy:

email: ameadows@blackwellpublishers.co.uk (together with the name and address of your librarian). Quote BUSINESS ETHICS SAMPLE COPY REQUEST 1 in the subject line.

Call for Papers

Education + Technology 11: Exploring Ethical Issues and Interactions will carry forward the tradition of critical reflection on education and technology brought to Penn State by Henry Johnson's 1997 conference "Education and Technology: Asking the right Questions." The conference will be held at The Penn State Conference center Hotel, University Park, PA. The deadline for submission of abstracts (100-200 words) is May 15, 1999. There will be three kinds of sessions: longer papers, shorter papers, and posters. Authors will be notified of acceptance by May 31, 1999. Four copies of completed papers (3500-4000 words) are due September 1, 1999. All participants, including speakers, will be expected to pay the conference registration fee. For more information call (814) 865-1643, fax @ (814) 863-7039 or email: rad119@psu.edu

The Center for the Study of Ethics in the Professions (CSEP) was established in 1976 for the purpose of promoting education and scholarship relating to ethical and policy issues of the professions. *Perspectives on the Professions* is one of the means the Center has of achieving that purpose.

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