

**PUBLIC ETHICS**  
**AND**  
**PUBLIC ENTREPRENEURSHIP**

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**ABSTRACT**

*The widely publicized bankruptcy of Orange County, California focused the attention of political theorists and government practitioners on the prudence and ethics of public entrepreneurship.*

*The question of whether the gains in efficiency made possible by public entrepreneurship may imply disproportionate costs in ethical terms has been raised. This paper revisits the Orange County experience and two other examples of municipal entrepreneurial behavior in the U.S., the Visalia Radisson Hotel project and Indiana's privatization of water treatment, and one case of similar innovation in South America to see how time has changed the cases and whether those changes alter their views regarding how public entrepreneurship can be appropriate and ethical. Several principles are suggested to guide public administrators through entrepreneurial ventures, including the need to take individual responsibility for the process and its consequences and the need for a heightened emphasis on competence as an ethical imperative.*

## **PUBLIC ETHICS AND PUBLIC ENTREPRENEURSHIP**

The ethics of public entrepreneurship became a major issue of public discourse through the widely publicized bankruptcy of Orange County, California (Cohen & Eimicke, 1996). It is a case that will attract the attention of public policy researchers and ethicists because it so dramatically illustrates the tension between the increasing pressure to improve government performance through innovation and the equally strong demand for integrity and accountability of public officials.

H. George Frederickson(1995) uses the Orange County case to make a very strong argument against the reinvention principle of enterprising government--that public officials should look for opportunities earn rather than spend money--continues to provide the best starting off point for another look at the ethics of public entrepreneurship.

We share Frederickson's concern but remain convinced that entrepreneurship in government is needed, frequently demanded and can be ethical. It is not the solution to the ethical problems of government; but more traditional forms of public administration, which rely on bureaucratic forms of administration, are also fraught with dangers. What is needed in both contexts are better guidelines for practitioners to use the potential benefits of improvement in improvement in the efficiency of the public sector. This paper seeks to contribute to the development of such guidelines to assist public servants in acting ethically as well as efficiently.

### **Public Entrepreneurship and Risk**

Reinvention of government and public entrepreneurship are a response to more than two decades of conservative attacks on the efficacy of government and on the validity of public sector intervention in the functioning of the economy and in the structures of society.. The

administrations of Ronald Reagan and Margaret Thatcher escalated demands for smaller, cheaper government to the international level, although in Thatcher's Britain, Reagan's America and in many other developed and developing countries which adopted policies inspired by them government's share of GDP rose rather than declined.

Those attacks were based on two separate arguments: empirical observation of the poor results of many government programs, which seemed to be delivering "less bang for the buck"; and the contrast between "inefficient" bureaucracies (identified with the public sector) and an "efficient" private sector. Reduce the size of government and increase the scope for markets, so the argument went, and you will improve the quality of decisions and the efficiency of use of resources.

Thus stated, the dilemma loses sight of the fact that both bureaucracies and markets are institutions that serve as channels for the exchange of information between producers and consumers of goods and services and that have the task of seeking the best possible use of scarce resources. Even though their mechanisms differ, they are both subject to the problem of inefficiency (for example, imperfect competition in markets) and require controls to avoid corruption, opportunism and shirking. In both contexts, risks of many kinds are inevitable and clear rules that define how each institution will operate are indispensable.

The reinvention movement goes beyond those for whom the answer to poor performance in government is simply privatization. It sustains that it is possible to improve the performance of the public sector through creativity, better management and reforms in organizations and incentives designed to bring out the best, in terms of effort and capability, of public officials. Osborne and Plastrik (1997; pp. 241-298) characterize the present public sector bureaucratic culture as typified by following the rules, staying out of trouble, doing just enough ("good enough for government work") and never, never, ever making a mistake. These are hardly a good recipe for the efficient production and delivery of high quality public sector services.

Part of the strategy suggested by reinvention advocates is that public managers act entrepreneurially (Osborne and Gaebler, 1993; Osborne and Plastrik, 1997). The transformation of existing, outdated bureaucratic organizations into agile, anticipatory, problem-solving entities is what reinventionists call "entrepreneurial government". The French economist J.B. Say developed the concept of entrepreneurship in the early 19th century as the shifting resources out of an area of lower and into an area of higher productivity and greater yield (Osborne and Gaebler, 1993; p. xix). Accordingly, the entrepreneurial public manager is always working to use resources in new ways to increase efficiency and effectiveness. But what of the risk-taking associated with entrepreneurship?

Two separate, but related, issues are involved. The first is the kind of risk associated with any

business decision under conditions of uncertainty. Innovation is based on a judgement that things can be done in different ways in order to improve costs, results, or both. But it is always possible that the decision maker will make a mistake. Most citizens do not want government bureaucrats speculating with their precious tax dollars, nor do they welcome the failures associated with the trial and error process associated with innovation. Reinvention argues that entrepreneurs are not risk-takers, they are opportunity-seekers (Osborne and Gaebler, 1993; p.xx). They embrace Peter Drucker's characterization of a successful entrepreneur as one who defines risk and then confines it, pinpoints opportunity and then exploits it. Drucker goes on to argue that an organization can be structured to encourage or deter entrepreneurial behavior and that government organizations are inherently anti-entrepreneurial (Osborne and Gaebler, 1993; p. xxi).

A second problem, raised by Frederickson (1999), has to do with the very different objectives of entrepreneurs - making a profit - and those that are natural to governments - to assure the (not very easily defined) "public good".

### **An Ethical Critique of Public Entrepreneurship**

Concern for the threat of the proliferation of bureaucrats to public liberties and to the efficiency of public administration was voiced by von Humbolt in 1791 even before the term "bureaucracy" had been coined (von Humboldt, 1969, p.34). Contemporary conservatives have taken up the theme, arguing that in government "less is more". Reinvention advocates Osborne and Gaebler have rejoined that the problem is not whether to make government bigger or smaller, but how to make it stronger better able to address the needs of citizens and more responsive to their needs (1993). This implies willingness to innovate and to operate in ways that are different from those traditionally associated with the public sector.

Frederickson (1995 and 1999) is wary of reinvention's emphasis on entrepreneurship. Simply put, Frederickson affirms that the business and government have very different goals and therefore the techniques of private sector entrepreneurship are seldom appropriate and often result in unethical behavior for public officials. He argues that corruption and unethical behavior in government is on the rise because we are trying to run government organizations as if they were private businesses. In ethical terms, a central issue in Frederickson's critique of public entrepreneurship, or new managerialism, is fairness. Is it possible that we are sacrificing equity for real or expected gains in public sector efficiency?

Frederickson raises several points about the possible impact of public entrepreneurship on public ethics(1999). Among them:

- It is possible that the cutting of red tape, widely perceived as one of the major benefits of public entrepreneurship, may both weaken guarantees of fair treatment to

individuals and specific groups and increase possibilities of corruption.

- Reliance on privatization and contracting out as instruments to increase the efficiency of public sector services may be misleading. In the absence of a real competitive market of private suppliers, or if the public buyer of goods and services is not “smart”, the result may be a shoddy or expensive product and corruption.
- Downsizing in search of cost reduction and efficiency often leads to the “hiding” of bureaucracy and its costs rather than to its elimination.
- Greater reliance on contracting out of public service provision has not been accompanied by the training of public officials to be competent contract managers.

Frederickson concludes that the efficiencies bought by the new managerialism “are being purchase at dear price in ethics.”(1999, p.22)

However, we believe that the kind innovation proposed by those who wish to reinvent government, when accompanied by elements such as community participation and competition, even within the public sector, (Osborne and Gaebler, Chapters 2 and 3) can improve accountability and results. New ways of doing things in the public sector require a reexamination of ethical standards and rules of conduct but do not imply renouncing the basic principle defined by Frederickson: “Ethics is very much more than attempting to combat corruption, it is also doing good” (1999, p.4). To this purpose, both competence and a disinterested pursuit of the public interest are needed.

To expand the debate on the appropriateness and advisability of entrepreneurship in local government, this paper updates and re-examines recent controversies in Orange County, California, Indianapolis, Indiana and Visalia, California, from the perspective of the ethics of entrepreneurial behavior in the public sector. An additional case of public entrepreneurship in local government in Colombia - the creation of urban curators - is also examined.

## **The Financial Collapse of Orange County**

On November 19, 1996, Robert L. Citron the former county treasurer for Orange County, California was sentenced to one year in jail and ordered to pay \$100,000 in fines for his role in one of the largest and most publicized government bankruptcies in United States history. The 71 year old Citron had pleaded guilty to six felony charges stemming from the County's December 6, 1994 declaration of bankruptcy in the face of \$1.7 billion in losses sustained by the 170 member municipal investment pool he managed. Citron, who managed the pool successfully for more than two decades, used a high risk strategy of investing in derivatives, reverse repurchase

agreements and leveraging that had generated extraordinarily high returns until the crash.

What happened? In simple terms, Citron's luck ran out. Given his record of success, the County's governing Board of Supervisors never questioned what risks he was taking and it is doubtful they had the expertise to question him usefully even if they were concerned about such abnormally good returns (Murphy, 1996; p.5; Peterson, 1996; p. 51). Responding to the pressure to keep interest earnings high, Citron speculated on interest rates remaining stable or decreasing and he sought to maximize his gains by leveraging, or borrowing against the assets of the portfolio. While some might characterize these strategies as beyond entrepreneurial, Citron specifically described what he was doing in his 1993 and 1994 financial statements to the Board of Supervisors (Murphy, 1996; p. 6).

Citron's strategy fell apart when interest rates began to rise and a substantial pool participant requested a return of its capital and interest. Within two months, one of the wealthiest local governments in the United States filed for bankruptcy, primarily to keep pool participants from draining the fund and thereby worsening the problem. The bankruptcy disrupted the national municipal bond market, cost local governments around the country millions of dollars in higher interest costs and has spawned widespread training for municipal finance officers and the revision or creation of hundreds of new municipal investment guidelines and policies.

At the end, some person or persons began illegally diverting money from the pool to the county to conceal the growing losses from the pool's investments. Defense attorneys sought to absolve Citron of much of the responsibility for the risky investment decisions and subsequent illegal cover-ups, arguing that he was misled by the county's investment banker, Merrill Lynch (Knap, 1996). Merrill Lynch countered that Citron was a savvy investor who made his own decisions.

So, what does the case of Robert Citron and Orange County teach us about the ethics of public entrepreneurship? For more than a decade, Citron helped the investment pool participants keep taxes down and public service levels high. Some estimates put his entrepreneurial earnings (excess over the State of California's investment earnings over the same time period) above the \$1.7 billion bankruptcy total. It is questionable that Citron was not a "smart" and knowledgeable buyer of investment advice. In spite of this, Orange County has won big at the settlement table, collecting \$400 million from Merrill Lynch, \$75 million from its auditors KPMG Peat Marwick, \$53 million from Credit Suisse First Boston and \$55 million from its bond counsel, LeBoeuf, Lamb, Greene & MacRae, with \$200 million in other suits still pending. To date, school districts investing in the pool have received about 98% of their principal investment. Some tax bills increased in the region, some capital projects were delayed or deferred, but there have been no other government bankruptcies or defaults and in general, the governments and communities affected have gone on, somewhat poorer and perhaps a bit wiser.

Could the Orange County bankruptcy have been prevented? Probably. Is curtailing entrepreneurship the solution? Only to some degree, and other reforms should be higher on the action list. The Orange County Board of Supervisors failed to exercise proper oversight and subtly encouraged Citron to keep producing his extraordinarily high returns. They did not understand what he was doing and did not want to know. It does not seem that the problem was lack of red tape, but of accountability and institutional design. The county did not have an integrated budgetary and accounting system that would have provided some information about Citron's investment practices, whether the supervisors wanted to know or not. These issues raise more questions about the basic structure of Orange County government and its financial management practices than they do about the ethics of public sector entrepreneurship.

The people of Orange County should also consider whether a government of its size and complexity can be managed by a part-time, elected, non-professional board of supervisors. A full-time, professional county executive might have discouraged Citron from taking such great risks. Making the Citron position appointive rather than elected, with minimum qualifications is another structural change that seems prudent. Separating the auditor and controller functions from one to two positions would also increase accountability.

A number of ethical problems coincided here. Citron exercised bad business judgement, acting more like a speculator than an entrepreneur; he apparently was less than forthcoming with the information regarding possible benefits and risks of his investment strategy, information which would probably have led to a more realistic perception of the situation by Orange County officials and voters; and those charged with supervising him acted as if the risks assumed were not their responsibility. Was public entrepreneurship to blame?

It would have been no less reprehensible to keep the government's money in a safe in his office as it was to invest in derivatives and use leverage to maximize the interest earned. Ethical entrepreneurship requires competence and judgement. Citron may have lacked both qualities. And the entire Orange County community seems to have been infected with a get something for nothing, get rich quick fever during the entire period of investment boom and bust. The governments and the people who elected them wanted high quality public services but they did not want to pay the taxes that produce such services. Perhaps the ethical climate of the entire community was a major contributor to the crisis, not just the actions of one public servant. Mark Twain's Hadleyburg was also waiting for someone to corrupt it.

### **Visalia: Trouble in Public Entrepreneurial Paradise**

Visalia is a small, conservative city of safe, clean streets in California's agricultural San Joaquin Valley. Its commitment to enterprising government was in large part created by the financial constraints placed on local governments in California by the now famous Proposition 13, which

cut Visalia property tax base by 25%. The city's first significant, successful experience with acting like a business involved the acquisition of an Olympic-size pool at half the market price by a "third-level parks and recreation employee" (Osborne & Gaebler, 1993, p. 3). The acquisition was possible because City Manager Ted Gaebler instituted a creative and flexible program budget system that permitted departments to keep some of the money they didn't spend in one year and invest it creatively in a subsequent year to achieve the agreed upon mission of the department. Thereby, the parks employee, encouraged to act in an entrepreneurial fashion, was able to acquire a pool that the community wanted from a Los Angeles surplus sale and install it for half of what the city would have paid through normal procedures.

With Gaebler's encouragement the Police Department used a creative lease-purchase arrangement to acquire patrol cars, the sanitation department experimented with the proper intervals for street cleaning and grass-cutting, mechanics reduced energy consumption in their shop, bonuses were given for successful innovations, and joint ventures with private entities were developed to bring in desirable cultural events and build affordable housing. To encourage innovation and risk-taking, Gaebler gave his people latitude to fail and continue, just as Tom Peters and Robert Waterman and notably Bill Gates had been doing in the private sector since the early Eighties. Gaebler even invented an award--the Nugmeyer Award (named for the city employees who came up with the idea)--for the year's most spectacular failure. To make sure the message was totally clear, Gaebler gave himself the award one year (Osborne and Gaebler, 1993, p. 136). And then came the Radisson Hotel project.

There was wide support for a downtown hotel in the city to spur economic development and help create the image of the city as the preeminent municipality in the region. A site was assembled and several administrations, including Gaebler's, sought to move the project forward without success. In 1988, Gaebler's successor, Don Duckworth, struck a deal with San Francisco developer William Courtney to lease the land from the city and put up a hotel.

The deal did not go smoothly and in order to keep the project moving, the city's commitment escalated from providing the land to loaning the developer money and providing loan guarantees, in return for a share of the project's revenues. By 1991, continuing problems forced the city to buy the hotel and assume its debts, raising the city's obligation/risk for the project to \$20 million. The city council and the public, who had generally supported the project all along, became vocal in their opposition and ultimately, less than a year after the hotel opened, Duckworth resigned (Gurwitt, 1994, p. 38).

Today, the hotel is generally regarded as a success--"one of the best in the region"-- and it is covering the city's debt service for the project but Visalia is "a more sober place than it was in the heyday of entrepreneurism" (Gurwitt, 1994, p. 40). And while, according to some observers, entrepreneurship in the city is not dead, there is now a much stronger city council and a greater

emphasis on limits and accountability, primarily in response to the Radisson project (Gurwitt, 1994, p. 40).

Current Visalia Mayor Mary Louise Vivier was a member of the City Planning Commission while Gaebler was city manager and served on the City Council when the city decided to take over the hotel project and its debt. She describes Gaebler as an "out of the box thinker" who inspired everyone in the city bureaucracy to be creative and provided incentives for individuals and agencies to improve their performance. Gaebler believed in incentives and accepting mistakes, but, says Mayor Vivier, never "encouraged taking excessive risks". She confirms that he turned down the hotel project twice when he was in office because he thought the deal was too risky.

Mayor Vivier also shares Gaebler's view that Duckworth was not a reinventor. Rather, she describes him as a strong-minded and hierarchial. The City Council directed him to "make the hotel deal happen." (Vivier, 1997). So, that is what he did. When it was clear that the private developer chosen by the city could not carry the project through to completion, Duckworth and the Council discussed and decided to take over the project during a closed session of the Council.

Vivier urged that the Council take the entire situation to the public and gauge public sentiment regarding the best course of action, given the current realities of the project. She was convinced then, and remains so to this day, that fully informed, the public would have appreciated the candor, understood the difficult choices the Council faced, and overwhelmingly supported the takeover of the debt...if they were fully informed *before* the decision was made.

What is clear about the Visalia deal is that Duckworth was not in touch with community sentiment, took much too big a risk with the taxpayers' money and paid the price of his pride and risk-taking with the loss of his job. Like Citron, Duckworth exercised poor judgement, perhaps exceeded his competence and most certainly changed the environment of his community for future public entrepreneurs and innovators. Duckworth was not charged with personal corruption or seeking personal gain. Rather, it was his competence, judgement and democratic instincts that came into question.

A crucial issue here is how information was handled. A project like the Radisson Hotel is risky, but it may be justified by positive spillover effects on the town and region. Voters are entitled to know the facts, so they can make an appropriate decision. Duckworth's failure was ethical as well as political, because by not sharing information about changing circumstances of the project he did not face up to his own responsibility as a holder of a public trust.

## **Reinventing Indianapolis: Injecting and Managing Competition**

Indianapolis has prospered under an effective and popular city government for more than twenty-five years. Under then-Mayor Richard Lugar, Indianapolis merged 20 city and county departments and incorporated 16 towns to create a metropolitan government (called UNIGOV), putting most important local services under direct city control. William Hudnut followed Lugar into the mayor's chair and succeeded in his economic development agenda, in large part by making Indianapolis "the amateur sports capital of the world".

During his 1991 campaign for Mayor, candidate Stephen Goldsmith emphasized the fragile nature of the city's success and stressed the need for privatization to keep the costs of government low. He argued that if the city did not shrink the size and thereby the costs of its government, it was in danger of losing its jobs and middle class to the suburbs. The result would be fewer and poorer services for those who could not afford to leave. Goldsmith's original vision was a reinvented government that was much smaller, contracting out as many of its responsibilities to private and non-profit, neighborhood-based vendors. He articulates his vision for the City as "a competitive city with safe streets, strong neighborhoods and a thriving economy" (Cohen and Eimicke, 1995, p.5).

As one of his first acts as Mayor, Goldsmith created The Service, Efficiency and Lower Taxes for Indianapolis Commission (SELTIC). Comprised of the city's top private sector leaders and entrepreneurs, SELTIC is encouraged to examine virtually every activity of the city government to determine whether or not the city should continue to be involved in providing that service or product. If the answer is no, privatization plans are developed. If the answer is yes, methods to open that service to competition are recommended.

To date, the City held more than 64 competitions for the than \$500 million in work. The City workers won back all or part of 29 contracts and private firms won all or part of 35, saving taxpayers more than \$120 million over seven years. As a result of the competitions, over 1,000 city positions were eliminated, a reduction in workforce of about 20%. Yet, only about 200 people were actually laid off. Most of the former City employees went to work for the contractor winning the bid, shifted to other City positions, found related jobs, or took early retirement. As a result, the City budget was balanced (and remains in balance) for the first time in a decade and 13,000 new private sector jobs have been created in the City's private sector. The most significant single project to be subjected to competition is the city's wastewater treatment facility.

The business of owning and maintaining a wastewater treatment system is hardly one of the most coveted aspects of elective office. The subject is seldom the subject of inspirational speeches or clever cocktail party chatter and the systems can be costly, difficult to operate and a source of public and environmental complaints. Goldsmith saw these potential problems, sensed that the private sector might pay handsomely for the right to do the job better and he could simultaneously reinforce his commitment to competition and smaller government.

As a result of the creation of UNIGOV more than two decades earlier, Goldsmith did not have to negotiate with other municipalities to accomplish the privatization of their treatment plant. Although the city's plants were considered among the Nation's most efficient, Goldsmith fought for and was selected by the Federal government as one of three national pilot sites for contracting out management. After commissioning a consulting firm to undertake a six month study of the plant operation, Indianapolis accepted statements of qualifications from seven firms.

One of the finalists, Advanced Water Treatment (AWT), was formed by City employees of the treatment plant. AWT proposed cutting costs by \$12 million over five years, while keeping all of its employees, except those lost through attrition. The White River Environmental Partnership (WREP), a firm based in France and 51% owned by the local Indianapolis Water Company, proposed reducing costs by \$65 million over the same time period. WREP was able to run the plants less expensively because it has superior technology and resources. WREP's proposal included the dismissal of 122 of the 138 city workers employed at the facility, regardless of seniority.

Goldsmith had the authority to choose a new operator independent of the City-County Council since no additional spending was involved. He chose instead to create an eight member evaluation committee which included three council members. In the end, the council was unanimous in its choice and WREP was awarded the contract.

A conflict with the union remained. AFSCME Executive Director Stephan Fantauzzo decided not to fight the WREP decision but instead to take the city to court in an effort to save the jobs of the more than 100 city workers who would otherwise lose their jobs. It proved to be an effective strategy, as the Mayor agreed out of court to settle the case by finding jobs at comparable pay in other city agencies for the displaced workers. Within eight months, the reassignment effort was completed successfully.

The results have been impressive--lower cost of government, improved public services and less red tape. The books closed on the first two years of the contract with the operating savings at \$21.6 million, slightly ahead of projections. Capital savings totaled \$13.3 million through 1995, \$4.2 million more than anticipated in the contract (City of Indianapolis, 1996). On the environmental side, effluent concentrations have dropped or remained constant, meeting contractual requirements, despite industrial growth in the region and the total hours of raw sewage overflows have been cut in half over the average performance under City operation. A City audit of preventive and predictive maintenance under WREP operation revealed that 70% of scheduled maintenance was done at the same intervals as under city operation and 30% of the equipment was inspected more often.

The only question regarding the wisdom and ethics of Goldsmith's decision to contract out the operation of wastewater treatment facility was the well-publicized White River Fish Incidents of 1994. Two separate occurrences took place in the Fall of 1994 in the White River on the south side of Indianapolis, resulting in the death of more than 500,000 fish. The fish were found in the same part of the river as previous reported fish kills and under the same low river, warm weather conditions.

The Marion County prosecutor convened a grand jury to investigate the incidents but found no evidence of criminal intent or wrong-doing. No indictments were issued nor legal action initiated. Nevertheless, the City hired a nationally recognized engineering firm, Camp, Dresser & McKee (CDM) to conduct an independent evaluation of the fish incidents. CDM concluded that a lack of sufficient dissolved oxygen (DO) in the area where the fish were found was the most probable cause of the kill (CDM, 1995). They found no evidence of ammonia or chlorine at levels high enough to cause acute toxicity. The fish were trapped by an Indianapolis Power and Light (IPL) dam. When a slug of polluted water lowered the DO levels below the critical level, the fish died.

It is relevant to note that beginning in 1995, Mayor Goldsmith and the State Lieutenant Governor Frank O'Bannon were emerging as the leading Republican and Democratic candidates for Governor. By the Spring of 1996, they were officially running against each other. O'Bannon won and is now Governor while Goldsmith remains as Mayor of Indianapolis. O'Bannon won with strong support from organized labor. He is generally opposed to privatization and contracting out of public services. Not surprisingly, he is not in favor of Goldsmith's competitive model of public service delivery.

So, did Goldsmith's desire for a more efficient and profitable method of operating the local wastewater treatment plant result in a privatization that compromises the community's environmental well-being? We think not. However, the Indianapolis case shows that innovation implies some degree of political risk, even if a "correct" decision is taken and if transparency and a broad participation in decisions are assured.

### **A Quest for Urban Order: Building Licences and Urban Curators in Colombia**

Urban construction is an intensively regulated activity in Colombia. Urban codes and land use regulations specify where and what can be built, with the praiseworthy objective of assuring the orderly and harmonic development of cities. The means used to control compliance with the general zoning and land use regulations are individual building licences which are required for land development, urbanization and individual building projects. (The following case study is based on Palacio Arciniegas, 1998)

The complexity and lack of clarity of the zoning codes often requires interpretation of their applicability to specific sites and projects, which can give the competent authority a great deal of discretionality. This competence belonged to the mayor, through the municipal planning department where it existed. In some cities and towns, the lack of technical expertise created uncertainty on how zoning rules should be applied, and corruption was an ever present temptation. Delays, whether purposeful or unintentional, were of themselves a factor of cost for builders.

As urban planning departments gave high priority to the scrutiny of individual licence applications, they tended to neglect their principal function, urban planning. They also turned a blind eye to informal or "pirate" urbanization, which in many Colombian cities accounts for a high proportion of low income housing construction and which disregards completely all forms of urban regulation. In other terms the system was failing in the accomplishment of the public purpose for whose end it had been created, while generating substantial indirect costs for their users because of corruption and delays.

The solution to these problems was the creation of the urban curators.

The idea was inspired by the institution of public notaries in countries of the civil law tradition. These public notaries, like the American notary public, are guardians of the public faith; they attest to the solemn manifestations of their fellow citizens. Unlike the American notary public, public notaries have the charge of maintaining archives of the records of such manifestations, which may be consulted by anyone. These include birth, marriage and death registers; the creation of companies; mortgages and real estate transactions; and many other types of contracts. The registration of a document by a public notary implies his evaluation and acceptance of its legality. Public notaries are designated by the government and even have quasi-judicial functions, but run their offices as private, for-profit businesses whose income depends on the fees paid by users. Although their tariffs are fixed by government, they compete with other notaries on the basis of the quality of service rendered.

Could a similar institution be established for the purpose of issuing building licences, so that the interpretation of public zoning and land use regulations could be delegated to urban curators? This proposal was made by Fabio Giraldo, Colombia's Viceminister of Housing and Urban Development in 1995. (Ministerio de Desarrollo, 1995). There was a clear analogy with the functions of the public notary, insofar as the idea was to attest that the building licence requested was in accordance with the applicable urban codes and regulations.

The opportunity presented itself the same year, with the approval of an anticorruption statute (Ley 190 de 1995). This law combined a strengthening of controls and sanctions with the simplification of administrative procedures which could be the breeding ground for corrupt

actions or practices. The law gave extraordinary faculties to the President for the elimination or revision of procedures in many fields. Each Ministry was asked to identify candidates for reform within its area of responsibility, and the Ministry of Economic Development recommended that urban curators be created. The suggestion was incorporated in Decree Law 2150 of the same year. According to this regulation, curators would have the responsibility of issuing individual building licences, certifying at the same time that the individual project complied fully with applicable zoning and urban codes. The competence to define and modify the latter was of course retained by the public authorities of each municipality.

Curators were to be designated on the basis of merit, through a public contest, for fixed, renewable, five year periods in cities and towns with a population of more than one hundred thousand. The authority in charge of selecting and controlling them was the mayor of each municipality. The curators were expected to set up offices and staff them at their own expense, and the costs and the curator's remuneration would be covered by users' fees according to a tariff fixed by the local authorities. To prevent conflicts of interest, curators were prohibited from having other professional activities, except for teaching.

The first curators came into office in 1997. The change was welcomed by the construction industry, which had been critical of the inefficiency and corruption of municipal planning offices.

However, the new institution implied several potential ethical problems, especially in the smaller municipalities. Political considerations were not always absent in the selection of curators, and mayors naturally tended to favor candidates close to them. This could lead to partiality in the curators' decisions. Where only one urban curator existed, a public monopoly had been transformed into a private one. While curators had public functions, they were also private businessmen, and the possibility of abuse of users, with or without the connivance of the local authority, existed.

Giraldo's successor in the Viceministry of Housing and Urban Development, Patricia Torres, addressed these issues in the debate of a comprehensive urban planning law that was under consideration of Congress. She successfully lobbied in favor of the inclusion of a special section on urban curators, whose main innovation was the use of competition as a means of regulation.

According to the new law (Ley 388 de 1998) municipalities with more than one hundred thousand inhabitants were obliged to have at least two urban curators; smaller townships had the option of one designating a single curator, but the municipal planning department would retain its competence to issue licences to assure competition. Municipalities can form associations in order to share common curators.

Publicity and community control were also involved. Curators must personally notify the

neighbors of projects for which licences are requested, and each building site must display a billboard with the particulars of its license. This allows interested parties to be informed, to participate and to criticize, and discourages curators from acting arbitrarily.

Torres formulated guidelines for the setting of tariffs by the municipalities for urban curators, with the objective of setting parameters that would assure reasonable income for them without excessive costs for users.. Although the Ministry of Economic Development has no legal competence to enforce these, in practice almost all municipalities have followed them.

The creation of urban curators may be considered a successful case of public entrepreneurship, although no government moneys were involved. Giraldo and Torres acted with decision to transform a deficient and corrupt public service by transferring it from the public to the private sector, albeit under detailed regulation. They built on an existing experience, that of the public notaries, and adapted its characteristics to the needs faced in the issuance of building licences.

It is perhaps curious that the central government took the initiative in what is a typically local matter, but the municipalities in general accepted the new scheme without resistance. Although some complaints are heard from builders about the curators' fees, reducing delays of months or years to weeks implies clear benefits in terms of efficiency and cost reduction. Another advantage of the system is that municipal planning departments have refocused on their basic responsibilities, and that urban curators have become a valuable source of support for them.

Is the balance equally positive from an ethical perspective? The ill fame of municipal planning departments in the handling of building licences was such that just about anything would have been considered an improvement. There have been scattered cases of allegations of misconduct by urban curators, but these have not been frequent and the charges have been minor. It is probable that considerations of professional prestige, a relatively attractive level of income and the controls applied by the community are sufficient to deter undesirable behavior.

However, from the global perspective of the ends of urban policy the creation of urban curators is only a partial solution. The main cause of disorderly growth of Latin American cities is not found in the activities of builders who request licences, but in informal construction which never does. The existence of urban curators has not improved control of informal construction and other policy alternatives, such as penalization, have also failed.

## **The Lessons of Experience**

The experience of the cases we have reviewed do not offer a clear answer to the questions posed in Frederickson's ethical critique of public entrepreneurialism. In part, this is because the practice of public entrepreneurs does not fall easily into the categories which he has described as

“new managerialism”(1999, p.1).

The latitude and discretion conferred on Citron by Orange County authorities was not due to an interest in eliminating red tape for efficiency’s sake. Elementary prudence would probably have led his superiors to inquire more closely into the risks he was assuming on the County’s behalf in order to obtain extraordinary financial returns. This kind of management failure is not merely ethical; it is also a matter of competence.

Visalia Mayor Gaebler was aware that public entrepreneurship does not imply a “free lunch”, and that gains in efficiency might be accompanied by greater risks. His creation of the Nugmeyer Award for the biggest failure in this field (and his award of it to himself) was an acknowledgement of this inevitable fact of life. However, this attitude also implies trust in the competence and motivation of public servants, which in itself is an ethical position. Duckworth’s difficulties with the Radisson Hotel were due to many factors, but probably the most important was that he was not a “smart buyer”, and underestimated the complexity and risk of the financial engineering of this type of real estate development. He and Visalia would probably have benefited from the advice of outside experts, and from more public scrutiny of the project.

In Indianapolis, Mayor Goldsmith decided to inject competition as a means of improving the efficiency of municipal government. In the water treatment plan the result of competition was to contract out to the private sector, but for the maintenance of the city’s streets the same procedure led to “contracting in” with the municipal administration, with a significant reduction in costs with respect to previous public sector performance and private contractors’ bids (Eimicke and Pérez Salazar, 1999). The point in each case is that, even if the ideal conditions of perfect competition are not met, to compare possible suppliers of goods and services and to establish binding contractual obligations for the winning bidder will probably improve performance and accountability.

The creation of urban curators in Colombia might be considered as an abdication, rather than a delegation, of an essential public service - the issuance of building licences. But in this particular function, the voluminous red tape of municipal planning departments had not only generated a very inefficient service, but also a very corrupt one. Complex rules and procedures can have the noble objectives of protecting the right to due process and the rights of individuals and minorities. Unfortunately, their very complexity gives a broad discretionality to the public servants in charge of their administration which in turn can lead to corruption. Urban curators in Colombia are subject to the same temptations, but also to two kinds of controls: competition and the community. Living in a glass house can be an important motivation for ethical behavior.

## **Searching for Ethical Guidance**

Providing practical and specific ethical guidance to public servants is quite difficult. General guidelines such as the Golden Rule endure and are helpful but many practitioners seek more specific direction. Lengthy ethics statutes and detailed booklets from state and local ethics commissions go too far in the other direction, getting bogged down in details such as the price limits for an ethical "free lunch". To provide guidance on how to respond to the issues raised by the cases presented, we have sought to condense and rephrase the extensive literature on public ethics into guidelines for public servants seeking to assess the prudence of a public entrepreneurial venture. The result is five principles (see also Lewis, 1990): 1. Obey the Law; 2. Serve the Public Interest; 3. Ensure Thorough Analysis; 4. Act with Compassion and Empathy; and, 5. Take Personal Responsibility for Decisions.

Would following the letter and spirit of these principles would have led to more ethical decisions in the four cases reviewed?

**Obey the Law-** With the rare exception of situations such as Nazi Germany, obeying the law seems a very obvious first step toward ethical public entrepreneurship. John Locke's work begins with this principle, as do many contemporary public ethical theorists (Locke, 1952; American Society for Public Administration, 1993; Lewis, 1990; Wilson, 1993; Frederickson, 1997).

However, the ethical problems encountered by Citron, Duckworth and Goldsmith did not develop due to their failure to obey the law. Obeying the law is not limited to sticking to the letter of statutes; it also implies good faith and trustworthiness.

This principle is less useful when laws are vague or do not adequately regulate the matter facing the public administrator. Clear rules of the game are not always available when innovation is taking place, but they cannot be replaced by the judgement of even the wisest of public servants. For this reason, it is important to develop an appropriate legal framework for the new challenges and opportunities that inevitably will present themselves in public entrepreneurship.

**Serve the Public Interest-** Most administrators hear this phrase frequently throughout their careers without any sense of how to use it as a way to assess the ethics of policy options before them. Locke defined it as the will of the majority (1952; p. 139). Unfortunately, that majority is not easily established for each policy option or entrepreneurial proposal, and sometimes the majority is just plain wrong. As Frederickson has said, "For the new public service the central question is one of values." (1999, p. 15)

As a surrogate, we suggest assessing the proposal without regard to personal interest or the political interests of those to whom the public administrator is accountable. Or, as political philosopher Walter Lippmann described it as "what men would choose if they saw clearly, thought rationally and acted disinterestedly and benevolently" (Lippmann, 1955; p. 42).

Would the public interest test have improved the decisions in the cases? According to Visalia Mayor Vivier, had Duckworth and the Visalia City Council deliberated in public session, the hotel project decision could have united the community behind making it work instead of against public entrepreneurship from that day forward. Mayor Goldsmith's voluntary formation of a representative selection committee for the wastewater plant operator provided an appropriate surrogate for the public interest and led to broad-based community and media support for that entrepreneurial venture, before, during and after the fish kill controversy. Unfortunately, it appears that Mr. Citron's aggressive risk-taking with taxpayer funds had widespread public support, as long as he was successful. Applying the public interest criterion, public decision maker must go beyond the public immediate desires--in this case, the high earnings Citron produced--to also consider that earnings were accompanied by enormous risk. In defining the public interest, public entrepreneurs should temper the wishes and opinions of the citizenry with their expertise, mature judgement and enlightened conscience.

The public interest can also be expressed in terms of the potential conflict between principals and agents. In this scheme, the principal (for example, the electorate or the community) confers a mandate to his agent (in the same example, the public official). Agents are typically better informed than their principals, and this may lead to the moral hazard of putting their own interests before those of the principal. Institutional design that improves flows of information and transparency helps avoid such temptations. From the practitioner's point of view keeping in mind that the different interests do exist and that the agent is there to serve the principal can help clarify things.

**Ensure Thorough Analysis-** This is the most important responsibility of public servants in large, complex public bureaucracies. Our democratic processes and system of checks and balances provides some safeguards against poor application of our other principles. But the experts in the bureaucracy are often the only officials in the government with the knowledge and tools to assess the expected outcomes and impacts of possible public entrepreneurial projects. The connection between competence and morality is not always made. Yet the cases presented here and our decades of personal experience as practitioners and researchers indicate that incompetence precipitates more ethically suspect decisions than bad intentions.

The Orange County debacle was more a case of flawed analysis and bad judgement than corruption. Visalia's closed door decision-making is surely a violation of the public interest principle but they probably chose that course in an attempt to cover-up the incompetence in managing the hotel project to the point that a public takeover was the only option. The Indianapolis case turned out well because the competition was fair and well-managed and all sectors with useful knowledge were put on the selection committee.

In Ethics Challenge (1990) Carol Lewis suggests that incompetence be treated as an abuse of office. Frederickson insists on the importance of training competent contract managers. (1999, p. 17) We agree. Making decisions without the appropriate level of technical skill and knowledge is a dereliction of duty. Exercising such incompetence at the public's expense is a violation of public trust, an abuse of office and a breach of ethics.

The problem of competence is acute in developing countries because of the weakness of the public sector's technical and administrative capacities. Even when public servants in charge have unimpeachable motivations, public enterprise is plagued by cost overruns, faulty market analysis and deficient financial planning. A major problem in privatization and contracting out is that the public manager is normally seated across the negotiating table from businessmen who know a great deal more than he does about the matter under discussion.

A few practical suggestions are: don't be afraid of admitting your mistakes, apply the lessons of past experience to improve policies and if possible negotiate contractual agreements that permit adjustment when you have better information. Fredrickson's statement that public entrepreneurship is irresponsible and counterproductive without able contract managers is equally valid. If you don't have qualified people in this field, hire them or train them.

**Act with Compassion and Empathy-** The ethical responsibility of a public servant goes further than obeying the law, seeking the public interest and competently executing one's official duties. Otherwise, some could argue that German civil servants who knowingly assisted in the Holocaust were acting ethically. A public servant must also seek to administer the law and assess policy options with compassion and empathy for all those who may be affected. Mayor Goldsmith evidenced such compassion and empathy by voluntarily agreeing to reassign public employee union members who might have lost their jobs when competition resulted in new management for the wastewater treatment plant.

In contrast, the Visalia City Council sought to exclude their citizens from even knowing how or why it was decided to risk their money by taking over the hotel project. Similarly, Citron sought to hide his mistakes in Orange County, even breaking the law in an attempt to save himself, instead of helping his constituents cut their losses once he knew his investment decisions had gone wrong.

Public policy is a complicated endeavor with ethical dimensions that frequently demand more than obedience to the law, a narrow sense of the public interest and basic competence. H. George Frederickson argues that the ethical public servant must also possess benevolence--"a disinterested love of others." (1997: p. 202)

He illustrates benevolence in practice by contrasting the treatment of Jewish residents by German

and Danish civil servants, after Germany occupied Denmark during World War II. German civil servants were generally committed first to their own careers and therefore simply and almost blindly executed the law--contributing to the execution of more than six million of their fellow citizens. Danish bureaucrats generally refused German orders to disenfranchise Jewish residents of Denmark and deport them. And when the Nazis intervened to do it themselves, Danish public servants acted affirmatively to protect Jewish persons, homes, property and funds and assisted those sent to a concentration camp to obtain releases and transfers to Sweden. (Frederickson, 1997; pp. 198-99) While the Holocaust is an extreme case, all societies face issues of official, sometimes popular acts of bias, mistreatment, abuse and even murder. It is the obligation of the ethical public servant to consider the consequences of laws and public policies on all those affected and temper all public actions with compassion and empathy.

**Take Personal Responsibility for Decisions-** Ethical public administrators must do more than just follow orders. They must accept person responsibility for their decisions and the impact of those decisions.

When his investments turned sour, Citron blamed everyone but himself. He even sought to obtain a more lenient sentence by claiming that he was never competent to do his job in the first place. Interestingly, Citron never credited others during the years when his investment performance was the benchmark for municipal finance officers across the country. Visalia City Council members sought to hide their individual roles in the hotel project decision by voting behind closed doors. Duckworth followed their direction, even though he knew better than anyone that the project was in dire trouble, information that the public he served had the right to know. Mayor Goldsmith did not have to accept personal responsibility for the job losses that were a bi-project of competing out the wastewater plant management contract but he did. His decision to find other public jobs for those negatively affected by the entrepreneurial decision to create a competition won him praise from the entire community.

One of the advantages of the system of urban curators established in Colombia is the fact that decisions regarding building licences are easily attributable to individuals, who are prominent members of their community. Mistakes or abuses are not anonymous orphans

A test of accepting personal responsibility is: When one is about to make an official decision on a matter of public policy, assume that the decision will be responsibly covered on the front page of tomorrow's New York Times (or whatever major media source you respect). Assess how you will feel when your family, friends and colleagues read the story. If you would feel proud or at least sanguine, go forward. If you project feelings of shame or fear, do not proceed and immediately seek the advice of colleagues and superiors. As a corollary, increasing participation of external actors, such as the community or the affected parties, and improving public information on government decisions and actions (a matter of rules and institutional design) will lead to greater

transparency and reduce the risks of breaches of ethics..

## Conclusion

We share the view that as government acts more entrepreneurially, the risks of incompetence and of corruption increase.(Frederickson, 1993; pp. 247-58). Frederickson further argues "that it is likely that the efficiencies it buys are being purchased at a dear price in ethics." (1999, p. 22) However, our cases illustrate than often the problem involves losses in terms of both efficiency and ethics. Being unethical does not make for greater efficiency.

Public entrepreneurship has facilitated responsible risk-taking in government, enabling public officials to meet the demands of citizens and the media that public organizations do more with less resources (Berman & West, 1998; pp. 346-52). Even the most able public officials are not fully equipped to determine the degree of risk in a particular innovation and accurately assess the ethical questions it may encompass. Nor are they clear about the proper process to follow when seeking to make decisions regarding risk, innovation and ethics. The solution is not to discourage public entrepreneurship but rather to establish practical principles and provide ongoing training to ensure that it is exercised in an effective and ethical manner.

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