ASSURING PUBLIC ETHICS IN PRIVATIZED PUBLIC PROGRAMS

By

Steven Cohen and William Eimicke

Columbia University
School of International and Public Affairs
Graduate Program in Public Policy and Administration

A Paper Prepared for the 61st Annual Meeting of the American Society of Public Administration
San Diego, California April 1-4, 2000
Managing Public Service in the Private Sector

The world is getting more complicated. Population continues to increase. We are now part of a global economy and a worldwide communication system. Given these facts it is not surprising that the size of government continues to grow in the United States. While the federal government continues to shrink, state and local governments continue to grow. In 1970 there were 13 million government employees in the United States. This number grew to 16.2 million in 1980 and to 18.4 million at the end of the anti-government Reagan era in 1990. In June 1999, there were 20.1 million government workers in the United States.

However, even this growth lags behind the growth of the population and the growth of demand for public governance. To cope with these societal needs, private firms and nonprofit organizations implement an increasing proportion of public policy. Not only is government growing, but government contracts with the public and nonprofit sector are growing as well. As the world grows more complex and our societies and economies more interconnected, one response of government is that it is learning how to leverage governance and resources through partnerships, contracts and incentives provided to the private, for profit, and not-for-profit sector. To some degree, these trends reflect an ideological preference for smaller government, but they are also connected to a search for managerial effectiveness. Public managers have correctly concluded that they will more successfully implement public policy if their organizational tool kit includes government, private firms and nonprofit organizations.
We have written elsewhere about a “functional matching” approach to privatization and the different attributes and motivational advantages of each sector for different tasks (Cohen: 1999). Simply put:

- Government organizations must be used when authority relationships are at the center of the task--such as police and regulatory functions.
- Nonprofit organizations seem best suited to functions such as health care that have a strong mission-driven dimension.
- Private organizations are best when material incentives are needed to assure high quality task performance.

We foresee that public managers will continue to assign functions to non-governmental organizations. This trend has created a dramatic change in the definition of public service. Public service extends beyond government. An individual can and should perform public service in private organizations. This necessarily blurs the meaning of public service, although the definition of such service is a concept that requires more precision and refinement than it has received to date. A deeper problem for governance is the meaning of public ethics and methods for enforcing public ethics when interorganizational, multi-sectoral networks implement public policy.

**The Definition of Public Service**

Historically, most observers equate public service with government service. We believe that the definition of public service must be derived not simply from the organization that one works for, but from the nature of the work that one Performs. Governmental tasks such as
working in the Army, the Peace Corps or the police involve an element of risk or personal
sacrifice for the public good. Other tasks such as policy making, policy analysis, or adjudicating
disputes are clearly involved in the “authoritative allocation of value” a concept at the heart of
the meaning of politics, derived from our sense of collective community.

Some government work such as managing a computer system or driving a bus could just
as easily be performed by the private for-profit sector. Some private sector work, such as caring
for homeless children or providing refugee relief are performed by nonprofit organizations such
as CARE or New York City’s Homes for the Homeless. The work involved in these
organizations is as much a public service as any task performed by government. Moreover, the
work performed on the front lines by these nonprofits is more purely “other regarding” than
many tasks performed by government employees.

How can the contemporary concept of public service be defined? What is “public” and
what is “service”? Public refers to the collective and to those outside of our immediate circle of
family and friends. Service is the provision of work or assistance to those to whom we have no
direct personal obligation or exchange relationship. Service to the public connotes sacrifice,
other-regardedness and the expectation that reward may be indirect, or nonexistent. The concept
of altruism is imbedded in our notion of public service.

What is “public”? Fredrikson observes that:

“The public is a broad, pregovernmental concept. It manifests itself in many ways—
neighborhoods, voluntary associations, churches, clubs, events, and the like—and it
divides to become many publics. Government is an important manifestation of the public, but it is just one aspect of the public. To understand public administration, it is essential to find the public again. This should begin with a broad conception of what the public is.” (Fredrickson: 1997, p.4)

To Fredrickson:

“The term public is not the same as government—that it is indeed very much more than government. The public lives independently of government, and government is only one of its manifestations. We also know of the public as an idea and as a capacity. By reducing the term public to mean government, we limit the capacity of people to be public. As an idea, the public means all people coming together for public purposes rather than for personal or family reasons. The public as capacity implies an informed, active ability to work together for the general good. In many cases such action will occur through government—but not always. Voluntary associations, nonprofit organizations, and corporations are all manifestations of the public. It follows then that public accountability and responsibility lies in enabling citizens to set agreed-upon community standards and goals and in working in the public’s behalf to achieve those goals. Public responsibility and accountability is expected of both public and corporate administrators. One cannot hide behind labels of “private” or “business” to escape responsibility to the public. Nor can one hide behind an organization, a government, or a business. Public responsibility is not collective but is individual.” (p. 51).
This theme of private responsibility to the public is one we will return to later. Carol Lewis expands on Fredrickson’s notion of public by including private sector behaviors within her notion of public service. Lewis writes of a continuum from public to private:

“…Public service refers to agencies and activities tending toward the public side of the continuum... In actuality, there is no clear division between public and private. Embracing more than government service alone, public service includes quasi-governmental agencies and the many nonprofit agencies devoted to community service (and often partially publicly funded).” (Lewis: 1991, pp. 3-4.)

Which returns us to the subject of service. The public service concept is based on a knowable public interest and a belief that the goals of the community are not simply determined through the result of competitive market forces or its political analogue—the clash of interests. Public law, public ethics and public interest set boundaries for interest group competition and at a minimum, the goals for the work of government and the collective community. There is a fair amount of consensus about the goals of the United States’ government and the rules of the game it should follow. Freedom, privacy, safety, economic well being and charity can be seen as shared goals. The rule of law in civil, economic and social discourse is adhered to and respected by the vast majority of the people in this country most of the time.

Still, there are significant differences in how we view the ethics of behavior in the public and private sectors. For example, as taxpayers we would expect that when government purchases a good or service they will use a fair and open bidding process to ensure high quality and low
costs. However, if the owner of a private business contracts with an old college friend, it might be considered an act of friendship, not of unethical favoritism.

But what activities comprise public service? When is an action truly private? When is action far enough along on Lewis’ public service continuum to be considered truly public? Jerome McKinney and Lawrence Howard link public service to a notion of public ethics. They note that:

The goal of public service is to assist in promoting civility… [And to] find the most economic and responsive ways of applying government resources to achieve publicly determined ends to enable citizens to realize their best potential in a good, just, and democratic society… the essence of a public service [is] that [which] will be above reproach. (McKinney and Howard: 1998, pp. 12-13)

Lewis concurs and refers to public service as “the ethical enterprise.” (Lewis, 1991: p. 17) The notion that public service involves moral and ethical behavior appears throughout public administration literature. Elmer Staats observed that: “In its broadest sense, “public service” is a concept, an attitude, a sense of duty—yes, even a sense of public morality. (Staats, 1988: p 601) In a similar vein, Kathryn Denhardt has connected public service to the concepts of honor, benevolence and justice:

“Public service is often described as an honor, a privilege, even a calling. (P 103-104) … Honor is a broadly encompassing tenet. It calls public servants to exhibit excellence in virtue. In benevolence is found the other-regarding essence of public service. It is the disposition to do good and to promote the welfare of others... (p.105) Justice signifies
fairness and regard for the rights of others. The rights of others include most fundamentally, respect for the dignity and worth of each individual. “ (pp.106-107) (Denhardt: 1991, p. 103-107)

Taken together, these public administration scholars, contribute to a composite definition of public service which includes deep concern for others; values such as honor and justice; the notion that such service has the status of a secular calling; and, work in both government and non-governmental organizations. It is reasonable to conclude that public service then has a clear and broad definition in the field of public administration.

Privatization and Government Accountability

What is the impact of the increased role and legitimacy of private organizations in the development and implementation of public policy? Privatization is not a new phenomenon in the United States. Government has contracted with private businesses throughout American history. Private firms in the United States have always run many functions, such as railroad and utilities that have been run by government in other nations. Many government operations such as the military rely on private contractors to build equipment, and therefore the concept of public private partnership is an old story in the United States. The change that is taking place in this era of privatization is one of degree not of kind. In operational terms however, the change is quite important. As the proportion of non-governmental public service grows, the connection to government and instruments of representative democracy weakens. The public service performed is not necessarily in pursuit of programs that reflect a broad societal consensus as legitimated by
the electoral process, but is an expression of an individual impulse toward service and good works.

In part, this reflects antipathy toward government, specifically toward elected officials and the electoral process. While a key political story of the 19th and early part of the 20th century was the expansion of suffrage, by the turn of the 21st century, electoral apathy made these earlier struggles seem almost trivial. Participation in community governance is as likely to be via direct volunteer work and charitable contributions as it is to be through voting in elections. For our purposes, the salient fact is that there seems to be no greater legitimacy granted to the actions of government as representing a social consensus than to the benevolent actions of community based nonprofits and small start up firms in the private sector. This decentralization of public service is not new in the United States and in some respects represents a return to the private charity system that existed during the progressive era.

In the 21st century this private sector public service operation will coexist with a still-large government-funded social service system. We see two arenas of public service—one private and one governmental. While others are interested in the impact of these arenas on policy outputs and outcomes, the concern of this work is on the process of performing public service—specifically the degree to which these services are delivered according to the precepts of public ethics and public sector accountability.
The issue of privatization and accountability is a recurring theme in recent public administration literature (Kettl, 1993, Donahue: 1989, Cooper et.al, 1998) Don Kettl focused on this issue in his landmark work on privatization, *Sharing Power*. According to Kettl:

“Government’s growing reliance on its partners in the private and nonprofit sectors means that its success in many cases has come to depend in large part on how well those partners perform. That reliance also raises serious questions about governance and accountability… Government has—for a remarkable variety of reasons—too often surrendered its basic policymaking power to contractors… These growing public-private ties, including substantial links with the nonprofit sector for social services, have blurred the boundaries among the sectors, making it ever harder to distinguish between public and private accountability.” (Kettl, 1993: p. 13)

This is coupled by an electoral process that can only make modest claims about its ability to provide linkage between the public and policy. Electoral politics help ensure that public policy reflects popular will in fairly general terms, but even without private contractors involved in delivering public services it is difficult to connect government’s actions to the specific preferences of either elected officials or voters. While we share Kettl’s concern with the difficulties posed by adding additional players in the chain from public preference to policy outputs and outcomes, he probably carries the argument too far when he expresses a preference for bureaucratic hierarchy over contract mechanisms. Kettl observes that:

“In public-private partnerships, contracts replace hierarchy. Instead of a chain of authority from policy to product, there is a negotiated document that separates policymaker from policy output. Top officials cannot give orders to contractors. They can threaten, cajole,
or persuade, but in the end, they can only shape the incentives to which the contractors respond. There is a gap in the chain of authority, which the contract fills.” (Kettl, 1993: p.22)

In our view, Kettl overestimates the ability of government managers to issue and enforce orders through the formal organizational hierarchy. More importantly he underestimates the influence of government clients on private sector contractors. The government client can do a great deal more than threaten, cajole and persuade—the client can end the contract, deny performance-based bonuses and significantly impair a contractor’s career and livelihood. Still, the problem of information on contractor performance and accountability remains, and is one of the major themes of this paper.

**Privatized Public Service and Public Ethics**

George Fredrickson equates privatization with the adoption of the enterprise model of service delivery and observes that:

“The propensity for corruption and unethical behavior increases as organization and structure moves from the governmental model to the enterprise model. As we increasingly privatize governmental activities—as we move from the direct carrying out of governmental services to contracting these services to free enterprise—we increase the propensity for corruption and unethical behavior.” (Fredrickson: p. 179)
It is possible for government to utilize private nonprofit organizations that are not organized to maximize efficiency, but are service and mission-driven to overcome Fredrickson’s major ethical concerns. However, one of the principle purposes of privatization is to increase the efficiency and effectiveness of public service delivery. Management experts have long considered the nonprofit sector to be poorly managed. As a result, the nonprofit sector is currently aggressively adopting private sector accounting, finance, management, and marketing and investment techniques. If the adoption of such techniques inevitably increases corruption, as Fredrickson believes, it also increases the organization’s bang for the buck. Fredrickson fears that corruption inevitably follows the enterprise model of government, but what choice does a well-managed organization have? Should they deliberately practice poor management or overly rigid and rule-driven management in order to avoid corruption? In our view privatization presents new challenges to governance and management, but they are solvable problems. This paper briefly explores several possible solutions to the tendencies toward corruption that Fredrickson identifies.

**Private Sector Public Service: Management and Ethics**

The trend toward multi-sectoral public service delivery creates several critical and difficult operational problems that must be addressed:

1. How does a governmental policy maker and manager learn what a private contractor or non-contracted private partner is doing?
2. What ethical precepts should government require of a private contractor or non-contracted private partner?

3. How does a governmental policy maker influence the behavior of a private contractor or non-contracted private partner?

4. What mechanisms are available to enforce these ethical requirements?

5. What skills do government officials need to develop to effectively manage private for-profit and non-profit partners?

The remainder of this paper will sketch out some preliminary thoughts in each of these areas.

**How does a governmental policy maker and manager learn what a private contractor or non-contracted private partner is doing?**

To learn what a private partner is doing a public manager must collect information on the performance of the private organization. To manage an activity; one needs to be able to measure it. Without measurement and reporting of measures it is impossible to know what an organization is doing and whether or not it is succeeding. A second issue, which is not typically addressed through information included in performance measures, is unethical behavior. The are two preconditions for the effective management of the ethics of private partners: First, ethical precepts must be clearly delineated and communicated. Next, there must be some method for learning about unethical behavior.

The issue of information about unethical behavior is critical. Encouraging and protecting whistleblowers is one method for obtaining this information. Active inspectors general and
waste, fraud and abuse units can also be helpful. A critical problem in imparting public ethics to private organizations is the different cultural, political and legal environments these organizations operate within. In many private-for-profit organizations lavish gifts, expensive meals and luxurious meeting travel is a normal part of doing business. In government these activities are tantamount to bribery. Therefore, the collection of information needed to ensure behavior that meets the standards of public ethics cannot even be seriously contemplated without an articulation of the ethical standards that must be followed by private organizations involved in the public’s business.

**What ethical precepts should government require of a private contractor or non-contracted private partner?**

Government should not seek private partners simply to replicate functions it can perform itself. It follows then that government should not attempt to impose its own culture, management system or entire set of legal and ethical standards on the private sector. If government wants a clone it can reorganize and create one, there is no need to enter into a partnership with private organizations. On the other hand, while government should not impose its own operating rules on private organizations, it certainly has the right and obligation to demand some standard of ethical behavior from its partners.

In our view the place to start this analysis is with ethical standards that government itself must follow. These rules on disclosure, gifts, competitive bidding, discrimination and other topics should be summarized and analyzed for applicability and appropriateness to private
parties. While this is a starting point, it is by no means the final word. Private organizations are not obligated to adhere to the higher set of ethical standards expected of public servants. An analysis of the applicability of public ethical standards in a public-private partnership should become an integral part of the process of negotiating such a partnership. There should be a clear discussion of which standards can be applied and which cannot.

A simple analysis of the American Society for Public Administration’s Code of Ethics indicates that some elements of that code would be difficult to apply to individuals in private organizations. For example: “Serve in such a way that we do not realize undue personal gain from the performance of our official duties.” The entire organizing principle of private for-profit organizations is that of personal gain. Undue personal gain is by definition an irrelevant concept. On the other hand, nonprofit organizations, which benefit from their status under the U.S. tax code, are constrained by IRS regulation from overpaying their executives. The ethical principle of “undue personal gain” might be relevant to a public-nonprofit partnership.

Another example from the ASPA code, while perhaps difficult to communicate and enforce, would be applicable in a broad variety of settings: “Eliminate all forms of illegal discrimination, fraud and mismanagement of public funds, and support colleagues if they are in difficulty because of responsible efforts to correct such discrimination, fraud, mismanagement or abuse”. Operationalizing this principle might be problematic, but certainly the public has a right to protect its contracted programs from fraud and gross mismanagement.
Beyond the ASPA code, our earlier work on ethics and public entrepreneurship relied on Carol Lewis’ *Ethics Challenge* (1990). Her twenty-one rules of thumb are both specific enough to guide actual decision but far-reaching and comprehensive as well. For us, her 21 points can be reorganized around five core principles:

1. Obey and implement the law.
2. Serve the public interest.
3. Avoid doing harm.
4. Take individual responsibility for the process and its consequences.
5. Treat incompetence as an abuse of office.

While these principles are an excellent starting point for a discussion of public ethics in the private sector, the issue of responsibility, public interest and abuse of office are concepts related to the governmental role of public officials. It would be difficult to adapt these principles to private players. Still, the government official that enters into an agreement with a private partner, or a network of private partners, is accountable to these principles. At a minimum, government’s partners ought to be made aware of these principles and all parties to the agreement should know the degree to which a private partner must adhere to these rules.

**How does a governmental policy maker influence the behavior of a private contractor or non-contracted private partner? What mechanisms are available to enforce these ethical requirements?**

This brings us to the heart of the issue. Once we conduct an “ethic impact assessment” and decide which public ethical standards should apply to our private partners, how do we apply
and enforce those standards? The public manager has a variety of methods for undertaking this task and influencing the behavior of private organizations. These include:

- **Education**- Discussing and reviewing issues of public ethics with private partners.
- **Exhortation**- Advocacy of the public trust held by private parties implementing public programs.
- **Location**-Have private contractors sit in space in government buildings or adjacent to government buildings.
- **RFP language**- Include in the scoring system for awarding a contract, points for articulation and enforcement of corporate ethical standards.
- **Contract language**- Include articulation and enforcement of specific ethical standards in the contract agreement.
- **Incentives and disincentives**- Link bonus and penalty clauses in the contract to the implementation and enforcement of ethical standards.
- **Contract renewals**- Link contract renewal clauses to implementation of ethical standards.
- **Inspectors’ General**- Provide, through contract provision, access by government inspectors to publicly funded private operations.

This list is by no means exhaustive and should be seen as a starting point for discussion. One issue that must be assessed is the cost of including a serious operational review of ethics issues in routine contract monitoring. It is easy to see compliance with ethics rules becoming the sort of ritualistic, boilerplate-inducing symbolic dance so familiar to observers of bureaucratic requirements. The key question is making ethics a real factor in actions taken by private partners.
Where public-private partnerships are not contractual, this can be difficult. Where contracts and agreements are involved government has more leverage, but it still requires a major effort to make ethics requirements a living, breathing part of the organization’s daily life.

What skills do government officials need to develop to effectively manage private for-profit and non-profit partners?

Managing a network involves a set of skills that may be helpful in managing an internal hierarchy, but are absolutely essential when the job is influencing the behavior of “outsiders”. Negotiation skills are needed to establish workable agreements with external partners. Network managers must have the analytic skill and strategic sense to project the impact of contract provisions on private behavior. They also need communication skills and the ability to listen and understand the needs of organizations that are very different than the ones they belong to. Communication skills are needed not just to transmit information, but elicit information as well. Developing an informal set of contacts throughout the network of organizations is critical to management of such a network.

Network managers also need to be comfortable with electronic information and formal methods of measuring organizational performance. Performance measurement is a critical element of network management and to assure that ethical issues are raised and addressed it will
be important for measures of those factors to be developed for inclusion in performance measurement systems.

**Conclusions**

The management of the public’s business is rapidly changing all over the world. Government’s role is changing, but its importance continues to grow. An important goal for the field of public administration is to continue our effort to help public managers take advantage of the new management tools offered by non-governmental partners. In our view such partnership is an essential and exciting part of the new public management. Government is already doing a better job of implementing public policy through these new interorganizational relationships. The issue raised here is the incorporation of public ethics standards and practices in the private organizations doing the public’s business. We consider this to be a major challenge for the public managers of the 21st century, but one that can be met with persistent, creative effort.

**SOURCES**


Lewis, Carol W. The Ethics Challenge in Public Service. San Francisco: Jossey-Bass Inc, 1991,
