ETHICAL PUBLIC ENTREPRENEURSHIP: A NECESSITY FOR THE 21ST CENTURY

What is Public Entrepreneurship?

Public entrepreneurship is a management approach developed by the reinventing government movement. Reinvention is a response to more than two decades of conservative attacks on the efficacy of government. The Proposition 13 property tax revolt in California in the early 1970s started a relentless public and media fueled campaign for government to do more with less. The administrations of Ronald Reagan and Margaret Thatcher escalated those demands for smaller, cheaper government to the international level and forced many public officials desperately search for a way out of the crisis they faced. For many, the answer is simply privatization. For others, it is a time of great receptivity to the promise and potential of management innovation and creativity. Reinvention attempts to provide strategies for improving public management in its time of crisis, including a recommendation that 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The transformation of existing, outdated bureaucratic organizations into agile, anticipatory, problem-solving entities is what reinventionists call "entrepreneurial government". What exactly does that mean in practice? The French economist J.B. Say developed the concept of entrepreneurship in the early nineteenth 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. 1997). Accordingly, the entrepreneurial public manager habitually acts in this manner, always working to use resources in new ways to increase efficiency and effectiveness. But what of the risk-taking associated with entrepreneurship?

Most citizens do not want government bureaucrats speculating with their precious tax dollars. 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).

Reinvention advocates take the entrepreneurship model to the next level, arguing that one of the five strategies for "banishing bureaucracy" and reinventing government is to create an entrepreneurial culture (Osborne and Plastrik, 1997; pp. 241-298). They 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, ever making a mistake. Conversely, their new entrepreneurial culture has the following characteristics: clarity of purpose; a well-developed strategy; accountability to customers; consequences for performance; empowers employees; pursuit of excellence; innovation; and, taking responsibility for your actions (Osborne and Plastrik, 1997; p. 259). The two major works outlining the principles, strategies and tools of reinvention do not speak directly to the ethics of entrepreneurship, there are no cases illustrating conflicts between ethics and entrepreneurship, and, indeed, ethics does not even appear in either index. However, among the ten rules set out for reinventors are: stand up to special interests; protect your entrepreneurs, build trust, and, manage the transition humanly (Osborne and Plastrik, 1997; p. 344).

Reinvention's emphasis on entrepreneurship is frequently attacked by public administration scholars for its avoidance of issues of constitutional law and representational democracy (Moe and Gilmour, 1995; Schachter, 1995). Three attacks are most frequently heard: (1.) What gives this unelected bureaucrat the right to take risks with the public's money? (2.) What is the role of elected officials in authorizing these creative programs? (3.) How can these programs be held accountable and overseen by elected officials?

Despite the reservation of scholars, public administration practitioners have jumped on the reinvention bandwagon with great enthusiasm. Bill Clinton and Al Gore campaigned on reinvention in 1992 and 1996. Mayors such as Stephen Goldsmith from Indianapolis, Ed Rendell from Philadelphia and Rudolph Giuliani from New York pride themselves on being reinvention mayors (Cohen and Eimicke, 1995). The most extensive and sustained reinvention effort to date has been at the federal level, beginning in early 1993 when President Clinton gave Vice President Gore the assignment of applying its concepts to the federal government. The Administration even asked the founder of the reinvention movement, David Osborne, to help lead the National Performance Review (NPR).
While much has been written about and against the NPR experience (Kettl and Diluli, 1995), far less has been written about the impact of reinvention on the local level, where most public officials exercise the greatest direct authority over the public's money and are potentially most likely to cross the line of ethical conduct in their zeal to be entrepreneurial. To expand the debate on the appropriateness and advisability of entrepreneurship in local government, we have updated and re-examined the recent experiences of Orange County, California, Indianapolis, Indiana, New York City and Visalia, California from the perspective of the ethics of entrepreneurial behavior in the public sector. It is our hope that these cases will help to clarify whether decision-makers can be entrepreneurial and ethical simultaneously.

**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.

The financial collapse came as a total shock to the Orange County Board of Supervisors, the other governments participating in the pool, the public and the entire municipal finance industry. Citron had a national reputation as a sophisticated, aggressive and successful fund manager who had enabled the government fund participants to do more with less, to increase services without increasing taxes. According to The New York Times, he was "a legend in financial circles nationwide" (Margolick, 1994, p.1). He was widely respected as a dedicated, selfless public servant who bought discount clothes, traveled infrequently, always picked up his own meal tab and never took free tickets or other "accepted" gratuities. And he was elected as a Democrat in a solidly Republican county based on his reputation for competence and integrity.

Citron's track record prior to the collapse was nothing short of extraordinary. His investments in derivatives and use of leveraging earned pool participants an average interest rate of 8.52%, frequently 5 full percent points higher than the State of California was able to earn from its investments. In fiscal year 1994-95, Citron's success and Orange County's expectation of his performance resulted in more than a third of the county's operating revenues being derived from interest earnings (Murphy, 1996, p. 5).

What happened? In simple terms, Citron's luck ran out. Given his success, the 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 Assistant Treasurer Mathew Raabe and the county's investment banker, Michael Starmenson of Merrill Lynch (Knap, 1996). Citron and his attorneys maintain that Starmenson lied to Citron and falsely assured him that derivatives and reverse-repurchase agreements could give the county a safe and high return. Merrill Lynch countered that Citron was a savvy investor who made his own decisions.
Merrill Lynch had a 20-year relationship with Orange County and while they now claim that they warned Citron many times regarding the dangers of leveraging (they continue to defend the prudence of using derivatives and reverse repurchase agreements), they never informed the Board of Supervisors of their concerns. Nor did their alleged concerns deter them from underwriting a $600 million bond issue for the county with all of the questionable practices still fully in effect (Murphy, 1996; p. 9). The County sued Merrill Lynch for $2 billion for their contribution to the bankruptcy (The Orange County Register, May 3, 1995; p.1).

The United States Securities and Exchange Commission charged both Citron and Raabe with making material misstatements and omissions in the official statements of eleven municipal securities offerings (SEC Litigation Release No. 14913, May 17, 1996). Without admitting or denying the allegations, Citron and Raabe accepted permanent injunctions preventing them from future acts of this type and agreed to cooperate with the SEC staff in their on-going investigation. Subsequently, in what The Bond Buyer called a “precedent-setting case” the SEC filed securities fraud and other charges against the investment banking firm of CS First Boston and two of its former officials for failing to ensure full and accurate disclosure in connection with $110 million of taxable pension bonds it underwrote for Orange County in 1994 (Hume, 1996). CS First Boston and the officials settled the case in January 1998 by paying a fine of $880,000 (Hume, 1998).

And where were the county’s auditors? Orange County retained the internationally recognized accounting firm of Peat, Marwick as an outside auditor to supplement the full-time County Auditor (who also serves as Controller). Neither raised any red flags. The structure of using one person as auditor and controller and electing, rather than appointing the most qualified person might have also contributed to these risky investment practices going unquestioned until it was too late (Murphy, 1996; p. 11).

Finally, how qualified was Citron to handle the highly technical and responsible job that he was elected to carry out? Only after the bankruptcy did Citron’s qualifications come under serious scrutiny. During the court proceedings against him, former Assistant Treasurer Raymond Wells testified that Citron had no knowledge of accounting and no understanding of investment basics such as arbitrage and market risk until Wells explained them to him (Knap, 1996; p. B 1). Wells said that Merrill Lynch misled Citron. Orange County litigation attorney James Mercer went further, contending that Merrill Lynch deliberately took advantage of Citron’s lack of knowledge about investments and risk.

In his own letter to Judge Czuleger requesting leniency (printed in The Orange County Register, November 19, 1996), Citron states he knew nothing about derivatives until Michael Stamenson and Charles Clough of Merrill Lynch told him that the instruments could earn pool participants a safe return and higher yield. Merrill Lynch continues to maintain that Citron was an experienced and sophisticated treasurer who made his own investment decisions (Reuters North American Wire, November 19, 1996).

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. A $2 billion suit against Merrill Lynch is still pending. Even without funds from the Merrill Lynch lawsuit, school districts investing in the pool received about 90% of their principal investment back and cities got back about 80%. 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? We think so. Is curtailing entrepreneurship the solution? Only to some degree, and other reforms are higher on our list of effective preventative mechanisms. The Orange County Board of Supervisors failed to exercise proper oversight and subtlety encouraged Citron to keep producing his extraordinarily high returns. They did not understand what he was doing and did not want to know. 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 county was not well served by its outside investment advisor or its independent accounting firm. This raises questions about the county's contracting practices and privatizations not about entrepreneurship. It also suggests that the Securities and Exchange Commission should exercise much closer oversight over the municipal finance industry including guidelines emphasizing prudence, competency and ethics.

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 discourage 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.

And what of Robert Citron, once the envy of his peers, a savvy investor with an unmatched track record of success? Was uncontrolled entrepreneurship his undoing...maybe. Citron admitted he broke the law which is not only unethical but also illegal. He earned and then lost hundreds of millions of dollars for pool participants, evidencing some competence, luck (both good and bad) and accurately (and inaccurately) assessing risk. Citron is certainly responsible for what happened, good and bad, but he is not the only one responsible.

The County Board of Supervisors encouraged him and did not ask questions until things were already very wrong. Merrill Lynch says Citron made his own decisions but court testimony raises very serious questions about the honesty of that statement and their role in the debacle. Moreover, Citron's behavior appears to be directly in line with the expectations of his superiors, advisors and the public at large. Indeed, an editorial form the Orange County Register on March 25, 1996 comments that "members of the county political and business establishment (were) cheerleaders."

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 in sufficient measure. 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.

**Visalia: Trouble in Public Entrepreneurial Paradise**

The most entrepreneurial of reinvention's ten commandments--enterprising government--was "invented" by Ted Gaebler as city manager of Visalia, California in the late Seventies and early Eighties. Indeed, if there is a Mecca of Reinvention, it might well be Visalia. Reinventing Government's index includes 25 page citations for Visalia, hailing its innovations in everything from budgeting to personnel policies to energy efficiency. But the city's claim to fame (and its recently reported dissatisfaction with reinvention) center on its history of success and subsequent problems in running government like a business.

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, a 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).

What went wrong was it proved to be much more difficult to attract a qualified developer to the deal than the city originally anticipated. The developer selected was not sufficiently investigated and subsequently proved to be unable to secure the required private sector financing after the city signed their lease agreement. And as they kept moving forward with him, the errors compounded. The developer never was able to meet his obligations and the city was faced with bailing out his project or leaving an empty lot. So they bought the hotel and assumed its debts.

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).

The article in Governing magazine that helped establish Visalia as the symbol of entrepreneurship gone wrong (Gurwitt, 1994) has not gone unquestioned. David Osborne's subsequent letter to the editor (Osborne, 1994) was passionate in its disagreement. Osborne argues that the hotel project illustrates the importance of "managing the politics of change" not the dangers of entrepreneurial government. And he charges that the author deliberately simplified and distorted the story to make it more entertaining.

The debate between Governing and Osborne over the Visalia case is instructive in assessing the ethics of entrepreneurship and the relationship between entrepreneurship and reinvention. Osborne objects to Governing's characterization of enterprising government as the "heart" of reinvention as it is only one of ten principles and certainly not the most important one. Osborne charges that Governing wrongly claims that Visalia put the city's money at risk in return for future profits down the road. Osborne says that reinventors and entrepreneurs are not risk-takers. That is why Gaebler turned the hotel project down twice and why it did not go forward under his watch. Duckworth, a "project manager" not a reinventor, according to both Osborne (1994) and Gaebler (1997), took greater risks than his community thought was responsible, exercised poor judgement, and ultimately lost his job as a result. And while the hotel was a political disaster, it is an operational success, is covering the city debt service, and may ultimately prove to have been a good investment for the city.

Current Visalia Mayor Mary Louise Vivier brings a perspective of more than twenty years of leadership in the community, spanning the Gaebler years of reinvention, what she calls the "dark days of backlash" in the aftermath of the city takeover of the hotel project, and a new spirit of innovation that is emerging today. Now mayor, Ms. 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. According to the Mayor, the Gaebler years were exciting and productive (Vivier, 1997). 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 hierarchical. The City Council directed him to "make the hotel deal happen." (Vivier, 1997). So, that is what he did. In fact, then City Council member Vivier recalls a distinctly anti-reinvention cast to the hotel project decision-making process. 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.

In the reinvention spirit of community-owned government, 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. Instead, the secrecy, credit consequences and continued cutbacks in state assistance to all local governments in California set the city back financially, and soured the public on reinvention specifically and government generally. Public entrepreneurship is now known as the "e" word in Visalia and reinvention is never spoken of any more. After a sufficient period of "uncreative mourning" the city has a new manager, Steve Solomon, who is inspiring and innovating in the Gaebler mold. He does not, however, as the Mayor says, "use the words".

To us, what is very 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. Similar to 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.

The Background of Public Entrepreneurship in Latin America

In South America, as in other developing regions, there is strong tradition of public entrepreneurship. (World Bank, 1995) However, its origins are different in logical and historical terms, although it has in common with reinvention and interest in modernization.

Perhaps the most solid argument in favor of public entrepreneurship in developing counties was proposed by Hirschman (Hirschman, 1958). In essence, it is based on the assertion that in the process of development administrative and entrepreneurial capacities are a very scarce resource. Because markets in developing countries are typically imperfect, private enterprise is unable or unwilling to understand productive projects amply justified in social and economic terms. Thus, it is the responsibility of the public sector to fill this breach in areas or sectors that are outside the classic sphere of action of the State. Hirschman also postulated that in some cases public entrepreneurship could act as a catalyst for private investment through the generation of linkages, so contributing to the acceleration of economic growth. Although Hirschman’s policy recommendations in no way implied that the public sector should be carefree in it’s investment decisions, the emphasis on the difference between social and economic benefits and on the existence of externalities was in practice be used to justify the involvement of the public sector in projects that did not meet more orthodox criteria of financial profitability or efficiency.

A number of other factors help to explain the prevalence of public entrepreneurship of Latin American countries after World War II. Public enterprise seemed an obvious solution for situations where there was a natural monopoly, or where private investors were unwilling to act. For many years, the regions’ main channel of access to external financing was through multilateral institutions such as the World Bank and the Interamerican Development
Bank, which on principle only made loans to public institutions or private projects guaranteed by the State. The philosophy of public entrepreneurship became a convenient excuse for using government resources to back projects for reasons of prestige or regional development.

In time, the stakeholders in public enterprises became a significant force in favor of the perpetuation of this policy scheme, even when the endeavors were unprofitable or otherwise unsuccessful. Public enterprises created opportunities for patronage and corruption; in many cases, the administration of the enterprises and the formulation of such policies regarding them were captured by rent-seeking groups and organizations, such as unions, suppliers or consumers. (For an analysis of the Colombian case, see Wiesner, 1997)

As might be expected, this led to mixed results. Public enterprises of all kinds came to account for a sizeable proportion of the GDP in developing countries and were responsible for the creation of much of their infrastructure and public services. Frequently, they dominated sectors such as heavy industry and finance. However, their efficiency was not always comparable with that of the private sector, and this problem was aggravated by the lack of competitions and accountability. (World Bank, 1995) In some countries, such as Brazil, the continuing losses and capital requirements of ill-conceived public enterprises were the main reason for large public sector deficits and economic instability.

During the Eighties, structural adjustment programs came in vogue in developing countries, and one of their priorities was the downsizing and the refocusing of the state. An important element of this strategy is privatization and contracting out, both because of the expectations of gains in efficiency and because of the revenues generated by the transference of public assets to the private sector. As a result, new mechanisms were needed to regulate the relations between government and the private actors. These challenges are very similar to those posed by what we have called public entrepreneurship.

However, governments in Latin America, at the national and local level, have a weaker institutional base that in the United States. The characteristics of the new entrepreneurial culture as defined by Osborne and Plastrik are not always present. Other problems are the short-term perspective of public managers, their frequent rotation and the lack of effective mechanisms to ensure accountability. This raises, albeit in a different context, the ethical issues outlined above, in particular that of competence as an ethical imperative.

The Contracting out of Garbage Collection in Bogota: Learning by Doing

In Bogotá, a city of more than six million inhabitants, garbage collection for many years had been a typical case of failure in the provision of a basic public service. (The following case study is based on Quiñones and Balcazar, 1998) A public enterprise, EDIS, was created in 1958 by the city government to manage traditional public service responsibilities in a more efficient, business-like manner. One set of services it came to assume the responsibility for included garbage collection, sweeping of the streets and administration of public markets, slaughterhouses and cemeteries. EDIS received fees from users of its services and was also assigned a participation in city tax revenues to cover its operating costs.

The rapid and disorderly growth of Bogotá over the next decades outstripped EDIS’ capacity to furnish garbage collection services. EDIS suffered from internal administrative, operative and financial problems. EDIS was very labor intensive and the majority of its three thousand jobs had few educational or skill requirements. This made the jobs an attractive source of patronage for Bogotá politicians.

A strong labor union obtained privileges for its members, including the possibility of sorting garbage for recycling while on the job as a sideline and six-hour working days, which eroded productivity and the quality and coverage of services. Management of capital equipment was poor. Only 60% of garbage trucks were maintained in working order. EDIS’ other activities, such as administering public markets and cemeteries, were never self-sustaining and distracted from its central mission.

By 1988, only 48% of Bogotá’s garbage was collected and 70% of its streets remained unswept. That year, Colombian cities popularly elected mayors for the first time. The new mayor of Bogotá was Andrés Pastrana, an ambitious young politician who would later become President of the Republic. His campaign slogan was “diciendo
y haciendo” (saying and doing). He was eager to show quick and visible results. As one of his major priorities, he chose improvement of urban sanitation services.

Pastrana decreed a sanitary emergency and approved a five-year strategic plan for restructuring of EDIS. This involved giving EDIS new resources, in the form of city budget allocations and credits from the financial sector, for the renovation of its trucks and other equipment. EDIS’ operations were decentralized, and each zone of the city was given autonomy in terms of facilities, equipment and working force.

A key innovation was private participation in urban sanitation, through contracting out. Bogotá was divided into five zones. In 1989, garbage collection and sweeping of the streets in two zones were contracted with international consortia, Ciudad Limpia (composed of the Compagnie Generaldes Eaux and the Colombian firm FANALCA0 and LIME (made up of a Colombian engineering firm Shader Camargo and two Argentine companies). In 1992, a third zone was contracted with a Colombian-Venezuelan consortium called Aseo Capital. As private contractors assumed sectors of the city, EDIS was able to concentrate its resources on the remained of the urban zone. By 1992, it was directly responsible for 51% of Bogota’s area, which generated 40% of the city’s garbage. Total coverage of garbage collection services had risen to 80%, a level without precedents in Bogotá.

In spite of the improvements of services, the new scheme created several problems. First, because the private contractors were paid on the basis of the weight of garbage deposited at the collection sites, costs skyrocketed. Media, public advocates and city auditors argued that the contractors were more interested in increasing the number of tons transported (including solid and building debris) than in improving the quality of services. Second, EDIS was unable to cover its own costs and the contractors’ fees. In 1990, less than 40% of its budget was covered by current income from sales of services to users. Although in part this was due to an outdated structure of tariffs and an unwieldy system for their collection, the fact is that the increase of private contractors’ share of garbage collection was not accompanied by a proportionate reduction of EDIS’ direct expenses or by an improvement in its efficiency. In comparison with the performance of the private consortia, services in the areas covered by EDIS was widely perceived as deficient. These included some of the city’s poorest neighborhoods.

The situation became critical in 1993. Mayor Jaime Castro proposed to the city council that EDIS be transformed into a commercial company, with capital participation of workers and private stockholders, in order to diminish labor costs and increase productivity. The administration also tried to curtail the traditional practice of allowing EDIS workers to recycle garbage during working hours. The union’s protest was more than verbal. The company’s vehicles were sabotaged and garbage collection and street sweeping were suspended in the zones covered by EDIS during a week in December.

Under strong pressure from the community, the city council decided to dissolve EDIS and authorize Mayor Castro to contract out the whole of Bogotá’s urban sanitation services. This process, including the layoff of all EDIS employees, was concluded by the end of 1994.

The new contractual scheme addresses the perceived deficiencies of the first round of contracting out. The central element is a concession through which the city transfers to its contractors part of the risk involved in the operation of urban sanitary services. The institutional framework for the relations between the city and its contractors was adjusted in order to assure a more balanced distribution of costs and benefits. A major input was the existence of a national public services law (Ley 142 de 1994), which established general principles and a regulatory framework.

Unlike the previous experience, the bidding process was preceded by exhaustive studies. Over 500 simulations were run in order to reach an optimal distribution of the city in the zones that would be assigned to individual contractors. Their contractual responsibility was defined as keeping their zones clean, independently of the cost or efforts required. Contractor fees were set as a percentage of total tariff revenue paid by users, and the bidding competition determined by who accepted the lowest participation. Compensation mechanism were set up, so that excess revenue generated by more prosperous neighborhoods could cover the shortfall in low income areas. Under no circumstance can contractors request supplementary payment from the city government. Contractors also assumed the function of organizing the billing for their services, which is handled jointly with Bogotá’s (public) water company. However, accounts are strictly independent.
The concession system of garbage collection and street sweeping are generally considered to be a success. Coverage has reached a level of almost 100%, and garbage collection is the public service that works in Bogotá. This example of urban sanitation has been used by advocates of privatization of other public services in the city and the country. Bogotá city government has rid itself of the pressures faced in previous years to subsidize garbage collection, while assuring an efficient and effective service. Of course, user fees are higher than they were before, but Colombia’s practice of crossed subsidies between lower and higher income neighborhoods, using differential pricing, moderates possible negative consequences on income distribution.

This would seem to be a success story for public entrepreneurship, but the important lesson is that a learning process is inevitable. The first stage of contracting out was an improvement over EDIS’ monopoly, but many costly errors were committed. Fostering competition between EDIS and private contractors in the absence of a profound structural reform of the former proved futile. The design of the contractual relation between Bogotá and the consortia established a perverse system of incentives for the contractors. The conduct of EDIS’ union was shortsighted and in the end turned out to be counterproductive from the perspective of its workers’ interests. To the credit of local and national authorities, the revision of the system in 1994 addressed these problems with intelligence.

There is, however, a sad sequel to this happy ending. As part of the 1994 reforms, administration of Bogotá’s main sanitary landfill, known as Doña Juana, was contracted out to a private firm. In 1998, a massive landslide took place, apparently because of poor technical administration of the site. Over a million tons of garbage spread themselves over the surrounding terrain, affecting the sanitary and environmental conditions of nearby low income neighborhoods. Almost a year later, it is not clear where the blame for this disaster lies.

A Quest for Urban Order: Building Licenses and Urban Curators in Columbia.

Urban construction is an intensively regulated activity in Columbia. 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 are building licenses, 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 urban codes often requires interpretation of their applicability to specific sites and projects, which can give the competent authority a great deal of discretion. 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 rules should be applies, and corruption was a real temptation. Delays, whether purposeful or unintentional, were themselves a factor of cost for builders.

As urban planning departments gave high priority to the scrutiny of individual license 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 the problem 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 State and even have quasi-judicial functions, but they run their offices as private, for-profit businesses whose income depends on the fees paid by users. Although tariffs are set by the 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 licenses? This proposal was made by Fabio Giraldo, Colombia’s Viceminister of Housing and Urban Development in 1995. (Ministerio de Desarrollo,
There was a clear analogy with the functions of the public notary, insofar as the idea was to attest that the building license requested was in accordance with the applicable urban codes and regulations.

The opportunity presented itself the same year, with the approval of an anti-corruption 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 practices). The law gave extraordinary facilities 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.

Curators were 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 the respective municipality. The curators were expected to set up offices and staff them at their own expense. The costs and the curator’s remuneration would be covered by user 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’ decision. Where only one 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 Viceminsty 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 designating a single curator, but the municipal planning department would retain the power to issue licenses 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 licenses 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 leadership, decision and creativity to transform a deficient and corrupt public service by transferring it from the public to the private sector, albeit under detailed regulation. They build on an existing experience, that of the public notaries, and adapted its characteristics to the needs faced in the issuance of building licenses. 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 focused 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 poor reputation of municipal planning departments in the handling of building licenses 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 licenses, but in informal construction (where licenses are never sought). The existence of urban curators has not improved control of informal construction and other policy alternatives, such as penalization have also failed. The problems, in terms of effectiveness of policy and of ethical behavior of public servants and informal builders, are yet to be dealt with.

**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 four cases, we 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): Obey the Law, Serve the Public Interest, Ensure Thorough Analysis, Act with Compassion and Empathy and 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 and our Founding Fathers who relied so heavily on his work begin with this first step 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, Goldsmith and Guiliani did not develop due to their failure to obey the law. Citron did eventually break the law in his effort to cover-up the growing investment losses but that action did not cause his downfall. Still, had he not broken the law, he would have avoided criminal prosecution, legal penalties and salvaged some of his reputation.

**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. 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 disinterestly and benevolently” (Lippmann, 1955; p. 42).

Would the public interest test have improved the decisions in the four 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. Similarly, press accounts of the New York City cable controversy indicate that if the Mayor had not so visibly intervened on one side of the private competitors, a compromise in the public interest could have been reached quickly and easily. 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. This application of the public interest is similar to the role Edmund Burke and James Madison envisioned for legislators in a democratic republic (Eimicke, 1974; p. 34).
**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 four 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 New York City cable controversy almost went wrong when the mayor sought to distort the market to help political allies. Fortunately, the legal system and a free press put the facts before the public and kept the Mayor from forcing a deal between competitors. 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--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 breech of ethics.

**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, Mayor Guiliani acted as if there were only one side in the New York City cable dispute and seemed to forget Time Warner's history as a good corporate citizen and the city's seventh largest employer. 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, 1996: 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. Mayor Giuliani may have mishandled the cable controversy but he always took full personal responsibility for his actions.

A test of accepting personal responsibility that we like to use for ourselves is as follows. 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 national 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.

Conclusion

We share the view that as government acts more entrepreneurially, the danger of corruption increases (Frederickson, 1993; pp. 247-58). At the same time, 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. What these cases and our experience indicates is that 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 to ensure that it is exercised in an effective and ethical manner.