The Robert Garran Memorial Oration

Delivered by His Excellency the Governor-General the Honourable Sir John Kerr KCMG KStJ QC at the Annual Conference of the Australian Groups of the Royal Institute of Public Administration, Canberra, Monday 11 November 1974.

The Ethics of Public Office

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It is traditional at the beginning of a Garran Oration to make some reference to Sir Robert Garran. I have had a search made for any observations of Sir Robert on the subject of the Ethics of Public Office and I have found that this was a subject on which, so far as I and my advisers can see, he made no pronouncements. Doubtless some diligent person will be able to prove that this is not so but I doubt if it will be shown that it was a subject which loomed large in his mind as one for dissertation. The fact of the matter probably is that he would have taken certain ethical principles for granted and would have guided his distinguished administrative life accordingly. Nowadays things are a little different and ethical matters are often discussed. I therefore plunge directly into my subject noting only that Sir Robert Garran was the very model of an administrative gentleman. Ethical problems would have been for him, as I see it, not worrying problems because everyone who has a commission from the Queen or who holds office under her would know, with the guidance of the conventions of the Constitution and certain fundamental notions, what he should and must do and what he should not and must not do. Sir Kenneth Bailey has called Sir Robert 'a great Public Servant'. He was a foundation member of the Australian Public Service and a foundation Permanent Head and as such he put his stamp upon the Public Service. How far we have travelled since 1901 can be measured by what he said in *Prosper the Commonwealth* 'For the first few days I was both head and tail of my Department, being my own clerk and messenger. My first duty on 1st January was to write out in longhand the first number of the Commonwealth Gazette and send myself down to the Government Printer with it.'[1] The ethical problems of those days were in a very different setting.

When I say I shall plunge directly into my subject I mention first in passing that set of problems which, in the United States, is subsumed under the general heading or label of the Watergate problems, many of which were ethical or related to the conventions of public office. I mention them not because there is any real identity of issues in Australia with the Watergate ethical issues but merely to indicate that discussion of the ethics of public office has become inevitable, though the discussion varies from place to place. The discussion here assumes that there is in Australia a general ethical framework within which the members of society work. Its basic precepts, though in some respects different from those of other Western countries, have generally similar features.

There are, for my purposes, four arms of government — the legislative arm, the executive government itself, the administration and the judiciary. My subject assumes that ethical considerations should guide these four arms of government in the daily work of those working in them, though the position of legislators is different from the others.

This assumption is proper and justifiable. I believe that the community accepts it and that, indeed, the community expects more of those in public office than it expects of individuals pursuing their own interests in non-public affairs.

The community has been well served by the acceptance by those in public office of high ethical standards but we should not be complacent about this. Morality in public conduct must be related to morality in the community in general. If moral standards are low in the community they could be low amongst public officials. The position could also be that low standards amongst public officials could permeate the whole of society.

I shall be seeking to make the point that we have been advantaged in Australia by the ethical approach to their duties and responsibilities by public officials and that, although times have changed radically and are changing at

[1] Garran, Sir Robert Randolp: *Prosper the Commonwealth*, Sydney, Angus and Robertson, 1958, p. 143.

a greater rate than we have ever previously experienced, the basic ethical precepts of those holding public office have stood the test of time and that this is fundamentally because of the underlying professionalism of those holding public office and the continued stability of the inherited Westminster system. Public confidence in the Government and its administration is necessary in a democracy if the policies of the Government are to be properly implemented.

The very notion of a profession carries with it the acceptance of the complementary idea of professional ethics. Public office is a special kind of employment, involving ideas and ideals of public service. Public service implies application of the general notion of the public interest and once it is realised that such a notion is relevant, and indeed ever present, ethical considerations become immediately important. The demands of the public interest are subtle, intellectual and affect personal action. They inevitably raise the fundamental ethical considerations which are subsumed under the generally unwritten codes of honesty and produce respect by the public official for his office in a world in which public administration is becoming increasingly complex and relations with the private sector increasingly sophisticated with the development of the professional lobbyist and the risk of 'leakages'.

Of course in all professions people are ambitious and seek success and power but professional ethics control the ways and means of advance, the permissible ways and means of reaching the top and acting on arrival there, as well as the proper methods of acting for those, ambitious or not, who stay at the lower levels.

I believe that there should nowadays be a continuing public debate about ethical questions in relation to public office because such a debate must inevitably bring to the surface precise questions about departures from, or variations in, traditional standards. If there are to be departures from traditional ethical standards applicable to holders of public office then it is desirable for those departures to be explicitly enunciated, debated and understood. Of course if changes in practice are felt to be necessary it is always best for us to know exactly what we are doing when we tamper with the established and accepted rules of proper conduct which we have inherited.

Ethical standards may vary from country to country and may perhaps vary in the different arms of government in the one country but some elements are generally applicable to all public officials in all arms of government. This enables public officials who accept ethical standards to have a sense of stability, continuity and self respect and this in itself is important.

I believe, as I have said, that Australia has been relatively free from substantial ethical lapses in public life especially at the national level. One question to be considered is whether this is due significantly to our inheritance, along with many other inheritances, of the tradition of a non-political career public service from the United Kingdom.

You will understand, of course, that both as a lawyer and as Governor-General I am very conscious of our inheritance of what is now called the Westminster parliamentary system, the common law, the judicial system and other institutions from the United Kingdom. We have been able to make them work here. Our heritage includes the establishment, under the control of responsible ministers who accept the concept of Ministerial responsibility at least in significant matters, of a non-political and a relatively anonymous career public service. This is an essential part of our inherited system — just as essential as the Westminster parliamentary system and the common law and the judicial system — and we should alter it only if we really know what we are doing and do so deliberately and for specific reasons which we can state and defend.

A non-political professional career public service is not inconsistent with the introduction into it, at all levels from time to time, of qualified persons from outside, provided that, once in the service, they accept its ethical standards and do not act in their work as part of the party political structure. If they do accept these standards they can properly expect to stay in permanent employment, come what may when power changes hands, but if they identify themselves politically in their work with those who appoint them, then they would have difficulty in feeling entitled to permanency.

I have said that these are times of rapid change and the advent of a new Australian Government recently has illustrated this in Australia in many ways, so far as the public official is concerned. Last year's Garran Oration by the Honourable the Prime Minister describes many of the changes affecting the public official and, though it would be out of place for me to discuss the politics of those changes, or to express an opinion about their

desirability one way or the other, it would seem to be permissible to examine the ethical implications, on the assumption that ethical problems are above politics and within the ambit of what a Governor-General may discuss.

I therefore take for granted the changes which have been made and I will summarise them from last year's Oration. The Government, according to the Prime Minister, needed to have available machinery and advice to plan for the inevitable and accelerating change now occurring in all modern communities. The Prime Minister said the Government had adopted a system of support which blended five elements:

1. The Public Service, impartial, responsible and professional.
2. Task forces and Committees of Inquiry with all or a large part of the membership consisting of outside experts, highly competent in their particular fields.
3. Commissions and other continuing authorities drawing staff from inside and outside the Service, investigating and managing new areas of Government initiatives.
4. The Priorities Review Staff, a 'think tank' providing a new form of long term priorities advice.
5. Consultants and outside advisers to Ministers.[2]

The Prime Minister said that the Government took over a large and efficient Public Service, which since its foundations at the start of the century, has built up a reputation for efficiency and probity which places it in the front rank of the Civil Services of Western Democratic countries. The Government had a need however, in carrying out its declared policies, ·to undertake a certain restructuring of the Public Service and this was done.[3] The Prime Minister has said that the changes made were 'by no means revolutionary; they left the system and the principles on which it is based intact, but they were substantial'.[4] He also said that the Public Service had "responded magnificently to the challenges set it. But it would simply have been unable to achieve all that we require in the time available. So while retaining it as an expanding administrative centre for all our activities, we now have working with it, in varying relationships. or independently, many new bodies, to provide specialist assistance to the Administration'.[5]

Accepting all this, it is important to look at the new system thus created to see whether established ethical systems apply to it and to look at the ethical implications, if any, of the change. I propose to do this as part of my general theme — the ethics of public office.

My title, 'The Ethics of Public Office', would indicate an intention to cast the net wide. It implies that there should be some attention given to the legislature, the executive government, the judiciary and the administration. This assumes that those in these various arms of government are holders of public office. For the purposes of this paper I shall accept the view that they are, with some qualifications about legislators. In view of the nature of the body which has invited me to deliver this Oration and of my audience I shall concentrate mainly on the ethics of public administration but will make some observations about the other public offices to provide a setting for the consideration of administrative ethics.

Arising from my own experience in the law and because the Australian Government has been using the services of a number of judges I should like to begin with judicial ethics. It is probably only in the United States, of the common law countries, that there has been thorough and detailed consideration given to this subject. Elsewhere judges tend to assume that their conduct is governed by their judicial oath and the simple proposition that justice should not only be done but should manifestly be seen to be done. The judicial oath requires the judges to administer and apply the law to all manner of men without fear or favour, affection or ill will. This duty and the guidance of the previously mentioned aphorism seem to be enough for most judges, supplemented by the rules of good manners, the generally expressed desire not to be a 'too much talking' judge, the accepted duty to listen

[2] Whitlam, E.G.: *Australian Publie Administration and the Labor Government* (the 1973 Garran Oration), Canberra, ACT Group, Royal Institute of Public Administration, 1974, pp. 5–6.
[3] Ibid, p. 6.
[4] Ibid, p. 7.
[5] Ibid, p. 9.

courteously to the evidence or argument being presented and to seek to understand it, and the limitation of non-judicial outside activities which would interfere with their work, lead to bias or the appearance of it, or impair the dignity and esteem in which the Court should be held.

In the United States problems of judicial ethics and events which have occurred over the years have led to the formulation of Canons of Judicial Ethics. These were established by the American Bar Association over fifty years ago. They have been recently reconsidered and re-issued in a revised form after adoption by the House of Delegates of the American Bar Association on 16 August, 1972. They have also been adopted by the Judicial Conference and have passed the Senate. The Canons, stated very generally, are —

> A Judge should uphold the integrity and independence of the judiciary;
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> A Judge should avoid impropriety and the appearance of impropriety in all his activities;
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> A Judge should perform the duties, or his office impartially and diligently;
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> A Judge may engage in activities to improve the law, the legal system, and the administration of justice;
>
> A Judge should regulate his extra-judicial activities to minimize the risk or conflict with his judicial duties;
>
> A Judge should regularly file reports of compensation received for quasi-judicial and extra-judicial activities;
>
> A Judge should refrain from political activity inappropriate to his judicial office.[6]

Each Canon is accompanied by a more detailed exposition of what is involved in the Canon and by a short commentary. It is not really possible to appreciate the detailed nature of the moral obligations laid down by the Code without reading this detailed exposition. The last Canon is mainly relevant to systems in which judges are elected and the penultimate Canon does not seem to be needed in Australia. The other Canons fit in with and fill in in some detail the ethical concepts normally adopted without codification by our judges in Australia.

Most of this really speaks for itself and indicates that, written or unwritten, there is an ethical approach known to, and conscientiously applied by, judges.

There is one point of contemporary significance that should be mentioned. It is about the relationship between the judiciary and the executive. In a recent book 'The Appearance of Justice' by John P. McKenzie, published in the United States; the author strongly supports the views reflected in the United States' Canons of Judicial Ethics and gives some attention to the unhappy position in which the President of the United States and one of his top aides could discuss what was obviously contemplated as a plum executive appointment for a judge, with that judge, whilst he was in the course of hearing a major government case which was part heard before him at the very time of the discussion. This was, of course, the dramatic Ellsberg Trial. The problem in such a situation, as in so many ethical questions, must to some extent depend on matters of degree and substance. The Governments have an enormous amount of legal business in the courts and there would be no absolute rule that a proposed appointment should not be discussed with a judge because at the time he happens to be hearing some routine or run of the mill case in which the government has an interest, although as will be seen there are in many cases other reasons for not doing so. There are circumstances in which a Government should not approach a judge direct to ask him to accept an appointment to conduct an inquiry.

I wish to direct attention to one special point from the Canon on Judicial Ethics dealing with relations between the judiciary and the executive. Canon 5 states that 'A Judge should regulate his extra-judicial activities to minimise the risk of conflict with his judicial duties'. In the detailed exposition of the ethical rules subsumed under this heading it is stated that 'A Judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice'.[7]

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[6] *Code of Judicial Conduct*. American Bar Association Special Committee on Standards of Judicial Conduct, 1972, p. 5.
[7] Ibid, p. 26.

The commentary on this is —

> Valuable services have been rendered in the past to the States and the nation by judges appointed by the executive to undertake important extra-judicial assignments. The appropriateness of conferring these assignments on judges must be reassessed, however, in light of the demands on judicial manpower created by today's crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the judiciary.[8]

The Australian Government has sought the services of Federal and State judges to conduct inquiries of various kinds and to head permanent administrative bodies. Earlier governments have, in varying degrees, done the same. The Prime Minister named a number of judges who had been asked and had agreed to engage in such work. He said, 'With the co-operation of the State Governments, we have been able to secure the services of several State judges to chair some of these Committees'.[9] I, as Chief Justice of New South Wales, agreed to joint requests from the Australian and State Government to make certain judges available. Judges were made available to the previous Australian Government and to the present New South Wales Government. It will be seen that according to Canon 5 this would nowadays be unethical in the United States and in that country it is necessary nowadays to find persons to do this work from other ranks: business men, academics, professional persons, administrators, trade union leaders and others.

It should be understood that there are various kinds of Royal Commission and committee of inquiry over which judges may be invited to preside. There are cases of scandal and possible crime. There are cases of technical and scientific dispute which need resolving. There are cases of policy areas in which expert people may be asked to advise about future policies. There are cases in which a factual situation needs to be ascertained. There are inquiries, such as the Petrov inquiry, with heavy political overtones. All such inquiries are forbidden areas for American judges.

In Australia the judges of the Supreme Court of Victoria follow a similar line to that stated in Canon 5 and do not undertake such inquiries though there have been occasional exceptions. The reasons for this were stated by Sir William Hill Irvine when he was Chief Justice in a letter to the Attorney-General of the day. It is reproduced in 29ALJ 256-7. His view was that judges obtained the respect of the people by confining themselves to their true judicial work and not inquiring, when asked, into political questions or into administrative or other issues which could not result in an enforceable judgment but only in findings of fact which are not conclusive and expressions of opinion which are likely to become the subject of political debate.

The judges of the High Court of Australia do not accept invitations to conduct inquiries. But as Sir Owen Dixon (29ALJ 272) and Sir Douglas, then Mr Menzies (29ALJ 266) have said, there are special reasons for this, presumably because the High Court is in a special constitutional situation. Sir Douglas did not think it proper to argue from the position of the High Court to the position of the Supreme Courts in this matter.

Many judges in the United Kingdom and in other States of Australia, Federal judges and Victorian County Court judges do not accept, and have not over long periods of time accepted, the principles set out in the Irvine Memor-andum or in Canon 5 and do undertake non-judicial work of the kind under discussion. Lord Hailsham, when Lord Chancellor of the United Kingdom, adopted the view that the temptation should be resisted of asking judges to do too much of this kind of work. His view was that unless there are compelling reasons against it, it is the moral duty, though not the legal duty, of a judge if asked to undertake an inquiry to do so but that if too much of this happened and judges were exposed to the consequent inevitable criticism of their conclusions the best and most conscientious of them might easily begin, though this has not yet happened, to refuse to serve.

Because of the pressure, upon New South Wales Supreme Court judges, of the load of litigation to be attended to and the importance of the matter the whole subject was re-examined just before my departure from office as Chief Justice and I have the authority of the present Chief Justice of New South Wales to quote from a letter which he wrote to the Attorney-General of New South Wales whilst recently Acting Chief Justice. He said that there

[8] Ibid, p. 26.
[9] Whitlam, op cit. p. 12.

should be no approach to an individual judge until the question had been cleared governmentally and with the Chief Justice and that it is in general undesirable that a request be made for a named Judge; it should be the province of the Chief Justice in the first place to suggest the name of the Judge. If that Judge is for any reason unacceptable, then there will always be room for sensible negotiation between the Chief Justice and the Attorney-General.

He also made it clear that he was at all times ready to co-operate with the State and the Commonwealth Governments in the discharge of their public responsibilities and that sympathetic consideration would be given to any request for the services of a judge lo assist in an appropriate role.

He also discussed what was an appropriate role. What he said on this subject stressed the need to assess each request on its merits remembering the need to avoid roles which do not fit the stature of a Supreme Court judge. He added

> Whenever a request is made for the services of a Judge it will be necessary to balance on the one hand the serving of the community interest flowing from acceding to the request and, on the other hand, the risk of placing in jeopardy the judicial institutions of this State.

and

> The Court exists for the purpose of judicially administering the law in proceedings brought before it. Judges are appointed primarily to discharge judicial duties within the ordinary jurisdiction of the Court. As a corporate entity, the ability of the Court to fulfil its proper judicial role in the community is dependent upon the availability of an adequate number of judges. The maintenance of an effective and efficient Court may be encumbered by the extent to which judges are detached for other duties. Here again, the ultimate decision necessarily involves a balancing of the relevant public interests.

The various points of view on this important problem of judicial ethics are under constant discussion. The question is: will practical experience and the weighing of fundamental values ultimately lead Australian judges to the position stated in Canon 5 and followed by the Victorian Supreme Court judges? If so, will this be due, at least in part, to the great increase in the number of requests for judicial help in non-judicial work?

I have left the judicial scene now and I shall play no part in the final evolution of the ethical principle I have been discussing. It is not for me, in my present position, to advise the judges how to resolve the problem. There are some points, however, that I should like to make. The material I have quoted and referred to does indicate that in the last analysis the development and binding character of an ethical principle is largely, if not entirely, an internal matter for the professional group involved and that ethical problems of great significance can arise between the branches or arms of government.

The fact seems to be that judges are being used more and more to preside over administrative tribunals and administrative appeal tribunals doing work in many respects analogous to the work done in committees of inquiry but on a continuous basis. If judges are to continue to do this work they would have a duty to seek to understand the administrative process which is different from the judicial process.

I turn now to another ethical issue arising between judges and another arm of government.

So far as judges are concerned they may have certain relations with or affecting the Legislature and legislation. Canon 4 and the commentary includes the following

> He may serve as a member, officer, or director of an organisation or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice.

and

> As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that his time permits, he is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

Extra-judicial activities are governed by Canon 5.[10]

I have dealt with extra-judicial activities such as being a member or Chairman of a Royal Commission or Committee of inquiry. The subject matter of Canon 4 I believe correctly states what can be the relation between a judge and law reform. He can sit, for example, on a Law Reform Commission. There will be marginal cases where the line may be hard to draw between a law reform commission or activity and a committee of inquiry concerned with policy in some special area but involving law reform to some extent. Some committees of inquiry can be properly and reasonably regarded as dealing with possible law reform and thus escape, through Canon 4, from the prohibitions of Canon 5, assuming Canon 5 to apply, which as I have shown is not yet the case at least in most parts of Australia. It is proper for judges, by the means suggested, to propose that the Legislature should adopt particular laws.

Before going on to discuss special ethical problems of other branches of government in the light of recent administrative and governmental changes I should like to say that the ethical principle's applicable to the judicial branch can be to a considerable extent applicable to public officials generally and they have been traditionally applicable. Let me mention a few points. Like judges all public officials should participate in establishing, maintaining and enforcing, and should themselves observe high standards of conduct. They should conduct themselves at all times in a manner which promotes public confidence in their integrity. They should not allow family, social or other relationships to influence their conduct or judgment. They should not lend the prestige of their office to advance the private interests of others. They should not convey, or allow the impression to be conveyed, that anyone is in a position to exercise improper influence on them.

Just as judges have a duty to be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom they deal in their official capacity so should other public officers. Similarly public officers, like judges, should, where it is relevant to do so, give to interested persons a right to state their case and should dispose promptly of their business so far as they can. Leaving legislators aside, for the time being, public officials should, like judges, be independent of and unswayed by partisan interests, or fear of criticism; and public clamour should not prevent them presenting their views, in appropriate ways, if they believe them to be right.

As judges should diligently discharge their administrative responsibilities and maintain professional competence in law and in judicial administration, the professional ethics of all administrators should require from them a similar professional duty in their own administrative field — in public administration — and do everything they can to ensure that those subject to their direction and control observe standards of fidelity and diligence applicable to themselves.

They should disqualify themselves in matters in which their impartiality might be reasonably questioned, including cases of personal bias or prejudice concerning a person or issue involved and matters in which the administrator has a financial interest or is personally involved in a way which could be substantially affected by his decision or action. They should regulate their extra-administrative activities to minimise the risk of conflict with their administrative duties. They should refrain from financial and business dealings that tend to reflect adversely on their impartiality, interfere with the proper performance of their duties, exploit their position, or involve them in frequent transactions with persons outside the Public Service likely to be involved in their administrative decisions. As to shareholdings they should, if a conflict of duty might arise, either divest themselves of their shares or disqualify themselves.

Like judges they should not accept gifts, bequests, favours or loans from any one where these could affect, or be thought to affect, the exercise of their public duties. This would not prevent, however, acceptance of ordinary social hospitality, or loans from ordinary lending institutions on ordinary terms.

Like judges other public officials should be very careful about the way they use information obtained in the course of their duties for any purpose not relating to those duties — financial dealings are an obvious case.

I have taken this statement of ethical duties almost completely from the United States Code of Judicial Ethics and applied it to administrators. I believe there would be common agreement about these ethical obligations.

[10] *Code of Judicial Conduct*, op.cit., pp. 18–19.

I annex two statements relevant to the ethical duties of administrators in a career service. The first (Annexure A) is from the 'Report of the Board of Inquiry appointed by the Prime Minister of the United Kingdom to investigate certain statements affecting Civil Servants', Cmd 3037, 1928. The second (Annexure B) is from 'Ethical Standards in Government', Report of the United States Sub-Committee on Labor and Public Welfare, U.S. Senate, Washington 1951. These state principles which are in line with those stated by me and derived by me by analogy from the judiciary.

These principles are generally applicable to officers of Commissions and other Statutory Authorities, as they always have been, including of course the many new ones established by the present Australian Government.

As in the case of the judiciary I believe that some of the most interesting problems in administrative ethics are in the area of the relations of the administrators with the other branches of government.

I should now like to mention shortly the ethical problems of the legislator. It may be doubtful whether the legislator, as such, holds public office in the meaning of the phrase in my title but, up to a point only, I treat him as covered. Here obvious principles about bribery and corruption apply and conflicts of interest can occur in the financial area. Legislators can be farmers and barristers, and can doubtless follow other callings and have other interests and the Legislature and the party system benefit from this. Ministers are in a rather difficult position in some respects because of the administrative nature of part of their duties. It would be absurd to demand of a legislator as one can of a judge or administrator that he should be unswayed by partisan interests, public clamour or fear of criticism or that he should be impartial. This is obviously because legislators are organised into parties to fight for political power and politics had little to do with ethical notions of the kind previously discussed, except perhaps when legislators sit as members of a parliamentary committee of inquiry into some question when the rules of natural justice may sometimes be morally applicable. Further because of the existence of absolute privilege most would agree that care should be exercised not to injure people by attacks in Parliament which, if made outside, could be the subject of successful litigation. Naming of public servants critically should be done with caution because they cannot reply and naming them at all may damage the administrative system based on ministerial responsibility.

Ethics and politics are related but the ethics of public office are a special set of rules, not all applicable to politicians. Ethics in politics is a big subject in itself but one, I think, for another day and another Oration by someone else.

The main ethical or conventional principles binding a legislator are generally those of his party and the parties have different principles about leadership, about the rights and powers of the rank and file, backbenchers and the party machine, the methods of making decisions, and the role of consensus as opposed to voting in Cabinet and the Party Room. According to what conventions, loyalties and principles are adopted by the parties, systems of government, somewhat different on points of detail, emerge depending on which party is in power. It does not seem to me to be profitable to discuss these problems in a paper on the Ethics of Public Office.

The same applies to the notions of Cabinet solidarity and responsibility and the duty of party members of the governing party in relation to Cabinet decisions. The political conventions of one day and one party may have to be looked at differently on another day and with a different party in office. All these questions belong more squarely in the area of politics than ethics except perhaps the ethics of political parties and this seems to me to be a different subject from the ethics of public office. It is equally outside my subject to discuss the problem of the source of campaign funds, truth in campaigning, disclosure of assets by legislators and parties and other currently interesting politico-ethical problems relating to legislators. What is to be done about some of these matters will be fought out politically. Political sanctions administered at the ballot box, or the fear of them, will produce some control over conduct but legal change expressed in legislation on some of these problems may emerge. It has been said that 'fairness, impartiality and freedom from irrelevant considerations are now as important for the legislator and the administrator as for the judge, perhaps even more important.[11] This is undoubtedly true for the administrator ·but it is difficult to see how such matters could be judged in the case of a politician.

[11] U.S. Senate Sub-Committee on Labour and Public Welfare: *Ethical Standards in Government*, Washington, Government Printing Office, 1951, p. 16.

So far as the Executive Government is concerned I shall leave its ethical problems in the political area for others to consider, except for the questions arising from its relations with the Public Service and the question of ministerial responsibility. The point should be made, however, that ethics and politics 'are not strangers despite popular dogma to the contrary. They are blood brothers and have always been so. From the beginning of history, thoughtful men who have been concerned about either ethics or politics have seldom been able to escape from becoming involved with the other.'[12] This is because when all is said and done politics involves the pursuit of power while ethics impose restraints on the use of power.

Ministers have very similar ethical duties in one particular respect to those in the administration. The point was well stated by Sir Paul Hasluck in his 1968 Garran Oration 'The Public Servant and Politics' —

> The convention that a Minister does not retain any financial interest in matters over which he has administrative responsibility is not based on the proposition that it is impossible for a man to make an unbiased decision if he stands to gain monetarily from that decision but is based on the need that the public should have complete confidence that there is no self interest to influence him.[13]

Ministers being officers of the Crown should, in that capacity, accept and apply to themselves the principles of honesty applicable to judges and public officials discussed earlier. Further, when deciding questions in a quasi-judicial manner affecting rights and liberties of citizens they should act impartially — just as a public servant performing a similar task should act impartially. On the political and policy forming side of their duties, however, the ethical considerations are different from those applicable to the public servant advising on policy. These latter principles will be discussed later.

I should like in this connection to say something about the private staff and advisers of Ministers. Mr Whitlam has stressed the increase in their numbers. At his Press Conference on 5 December 1972 the Prime Minister was asked to what extent their appointment was going to affect the normal public service structure. The Prime Minister said

> The objective, if it comes about, is to depoliticise the public service so that persons who are responsible for carrying out political decisions will be known to be appointed by a Minister at his whim and disposable at his whim. The public service, of course, will be less political if there are such personal advisers known to be appointed.

As to such advisers it must be recognised that they are not, merely because they are advisers on the personal staffs of Ministers of the Crown, completely outside the ethical system applicable to public officials. On the political side what the Prime Minister has said is doubtless quite correct but as Mr Pearson, when Prime Minister of Canada, stated

> Members of Ministers' staffs, equally with Ministers, must not place themselves in a position where they are under an obligation to any person who might profit from special consideration or favour on their part, or seek in any way to gain special treatment from them. Equally a staff member, like a Minister, must not have a pecuniary interest that could even remotely conflict with the discharge of his duty.[14]

This statement tells us about one important aspect of the duties of Ministers, as well as those of their political personal staff.

The Australian Prime Minister in his Garran Oration last year said

> I might point out that the Ministerial staff from outside the professional Public Service have no security of tenure. They depend wholly on the whim or fate of the Minister. In no sense can they be said to have been obtruded into the structure of the Public Service. They are part of the Government in its political

[12] Ibid. p. 9.

[13] Hasluck, Sir Paul" *The Public Servant and Politics* (the 1968 Garran Oration), Canberra, A.C.T. Group, Royal Institute of Public Administration, 1968, p. 10.

[14] Letter of Mr Pearson to his Cabinet Colleagues, 4 November 1964, quoted in K. Kearnaghan: 'The Ethical Conduct of Canadian Public Servants", *Optimum*, Vol. 4, No. 3, 1973.

and personal sense and in that sense they are, in much the same way, as Ministers, responsible to the people.[15]

This statement would appear to be entirely consistent with what has been quoted from Mr Pearson. The two statements can and should stand together.

The Prime Minister was at pains to say that the increase in ministerial staff in no way represents a departure from the Westminster system. 'Central to that system', he said, 'is the principle that Ministers as individuals and the Cabinet as a whole must exercise real control over the Public Service and accept full responsibility for policy… To the extent that the appointment of a competent personal staff assists Ministers to exercise their proper constitutional authority we are enhancing the basic Westminster system.'[16] I take this to apply to the ethics of the system as well as to its constitutional conventions and I take it to mean that Ministers have an additional source of advice to supplement the policy advice which, under the Westminster system, would normally come from the Public Service, as well as through political channels. Indeed the Prime Minister made this explicit when he said, 'We have not altered the traditional role of the Public Service in the policy making process, but by greatly increasing our sources of policy advice and by involving public servants in our task forces and commissioners, we have provided for a meeting of minds, a re-stimulation which is coupled with a leadership from the political level.'[17] As to Permanent Heads he said, 'We all tend to think of Permanent Heads as policy advisers. Important and glamorous as this aspect of their work undoubtably is, it should not be allowed to obscure the very real responsibility that Permanent Heads carry as general managers of Department under their Ministers.[18]

It can, I think, accordingly be said that the traditional role of the Public Service in policy advising and in policy execution, under the Government, remains the same although the Service has to adjust to other streams of policy advice, increasingly being made available to the Government.

We can therefore give attention to the ethical considerations applicable to the public official in this area without feeling that the traditional approach needs adjustment. It is the duty of the public servant, once policy is settled and stated, to administer that policy loyally. and energetically and not to subvert it or delay its implementation. He must resist the temptation to do so especially when the policy has originated from other sources of policy advice than the Public Service and especially if he disagrees with it and has advised against it. He has a positive duty to advise and to point out risks and difficulties and to assert his right and duty to do this up to the point of decision. Thereafter he is bound to execute with all due diligence the policy as settled. It is this duty which gives the Public Service its continuity and its right to permanence.

Ministers should not involve public servants in party political matters either as between parties or arising factionally within a party. These matters should be handled through other channels.

Faithful, loyal, energetic and active service can and should be available on a change of government with consequent changes of policy. This point requires strict impartiality and, as Sir William Armstrong has pointed out, the impartiality of the Public Service lies in its loyal support of the particular party which happens to be in power and does not extend to impartiality between the Government on the one hand and the Opposition on the other.[19]

If a public servant disagrees with a policy fixed and settled by the government he may have problems of conscience. His confidence in the goodness of his own intent could, but should not, lead a public servant to conclude that he, and not the elected government, knows best what the public interest requires and that he has a right or duty to disclose private and confidential matters if he thinks their disclosure will promote a result he desires. The essential reason why such an individual decision, in response to personal conscience, cannot be accepted is because of the broader implications for the operation of government in the general interest.[20] If such action cannot be taken openly and directly then it cannot be taken secretly and indirectly. The recent repeal of

[15] Whitlam, op.cit., p. 14.
[16] Ibid, p. 15.
[17] Ibid, p.17.
[18] Ibid, p. 18.
[19] Quoted in M. Wright: "The Professional Conduct of Civil Servants", *Public Administration* (London), Vol. 51, No. 1, Spring 1973.
[20] See C. Robertson: "Official Responsibility, Private Conscience and Public Information", *Optimum*, Vol. 3, 1973.

Public Service Regulation 34(b) which prevented an officer from commenting publicly upon any administrative action or upon the administration of any Department leaves the matter of public comment in the realm of ethics which recognises that some restrictions on public controversy are necessary to maintain the identity of a politically impartial career public service able to serve equally well the government of the day, whatever party is in office.

Further if Ministers feel they must publicly disclose differences of opinion between themselves and their officials or between one Minister or group of Ministers and another then they must do so themselves, whether the disclosure be direct or indirect, open or non-attributable. To bring the career public servant into such a position. having regard to the ethical duties upon him, is to act contrary to what the Prime Minister has stated to be the desirable position, namely relief of Departments of involvement in party-political matters.[21]

Relationships between Ministers and departments other than their own and statements by them about the affairs of such departments are political matters and, if covered by a system of ethics, it is not the ethics of the public official but party ethics or constitutional conventions which are involved, Public Servants are in a different position.

I appreciate that there appears to have been a growth of a practice for career public servants on occasions to give background information to journalists in a non-attributable way. What Ministers and their personal political staffs do is their own business, within the system of party ethics, rules and conventions applicable to them, but there are real dangers both to a Government and to permanent public servants in background talks with the press. This is especially so because party political matters are often in such circumstances hard to avoid and policy decisions or differences of opinion at the political level are not for public servants to announce or defend as they carry no responsibility for them and indeed may not agree with them. If they do agree with them and defend them they may come under political attack for political partisanship. It appears to be consistent with this principle however, with the approval of the Minister, for a public servant to explain settled government policy and to give appropriate facts. Defending it is another matter as is public discussion of policy issues before policy is settled. The Public Service Board has said, and I think correctly, that 'in the Australian system of Parliamentary government, the public defence of Government policies and administration has traditionally been and should remain, the preserve of Ministers, not of public servants in departments.'[22] The Board, however, feels that reasoned public discussion on the factual and technical background to policies can lead to better public understanding of the processes and objectives of government. At the highest level it may be permissible to defend the Department against criticism of its probity or competence though this would normally be done by the Minister.[23] These ethical principles appear to be sound.

There is accordingly an ethical restriction which prevents the public servant, in accordance with the principles previously enunciated, from making statements about political matters in and as part of the work of his public office, either to support or oppose policies binding upon him as a public servant and either directly or indirectly, for the record or off the record. To do so would damage his impartiality in his public office, or the appearance of it. Furthermore if he does so he cannot expect the doctrine of Ministerial responsibility to protect him if he opposes his Minister's policy as his Minister would be entitled to expose and disown him and his views. Other consequences could follow as it would be impossible to expect a Minister to continue to work with a man who publicly opposes his policies.

One difficult question for the public servant is what he should do if questioned in a Parliamentary Committee about confidential matters such as certain advice given to his Minister or the contents of sensitive departmental files. He would normally be under an ethical duty not to disclose such material publicly but he may be directed to do so within the Parliamentary process and he may be in difficulty if he does not. The obvious resolution of this problem would be for Legislators to regard themselves as bound by an ethical duty within their own sphere to recognise his ethical duties and not to put him in such a position; in practice, I understand that this is what would normally be expected to happen. In a difficult situation it may be proper for a Minister to intervene; the public servant is a man, under authority, involved in a political process and in this area should have appropriate

[21] Ibid, p. 14.
[22] Attachment to Public Service Board Circular 1974/23: New General Order, Section 14, Subsection M, "Public Comment by Public Servants".
[23] Ibid.

Ministerial support, A witness would doubtless request an adjournment to seek his Minister's instructions or guidance. However, if he is legally required by the Committee to act in the manner contemplated, his ethical duty would be overridden by his legal duty and the system could suffer.

If regularly put at such a risk public servants might come to perform their duties with less courage and hence not make the contribution that their positions require. Such a system operates in the United States but seems inconsistent with our overall approach, under the conventions of the Westminster system, to the relations between Parliament and administrators. This area is still developing and a balance must be struck between the need to maintain certain confidences of government and the ability of Parliamentary Committees to conduct thorough inquiries. There are conventions observed in the House of Commons to the effect that the House will not insist on the production of Cabinet papers, secret information on defence, official papers on foreign affairs or the secret service, advice to Ministers by officials, opinions of the law officers and certain reports, when it can be shown to the satisfaction of the House that withholding the document is necessary for the proper functioning of the Public Service. It is not yet clear how far the Houses of the Parliament will be prepared to follow these conventions which apply to Committees.

Should a Minister ever disclose a difference of opinion between himself and a public servant advising him any more than the public servant may do so? I can deal. with this best by quoting a statement on Ministerial responsibility by M. Wright in 'The Professional Conduct of Civil Servants'

> To operate without undue strain for either side, the relationship between a civil servant and his Minister predicated upon the undivided loyalty test depended upon the observance of two conditions: first, that· where a civil servant was in disagreement with his colleagues or the Minister, or had his advice rejected, or made an error of judgment, that conflict, dissent or error would not normally be exposed outside the department in terms of the personalities involved, whose conduct therefore was not normally the subject of public comment and criticism…
>
> Secondly, that that anonymity of the civil servant was protected by the Minister who assumed responsibility (in the sense of public explanation, if not public expiation) for the actions, or sins of omission, of civil servants. Neither of these conditions is wholly met now, nor has been for some little time past; nor would it be wholly appropriate in every instance if they were. But if the civil servant is expected to serve his Minister loyally to the point of subordinating, perhaps betraying, his conscience, where there is a conflict between his private interest (so defined to include his professional judgment) and the ministerial interest, then he is surely entitled to be protected from critical scrutiny outside the department when judgments, decisions and policies which he may have advised were wrong, mistaken or indefensible are attacked, or where he is censured for not pursuing a particular objective, or initiating a policy which he may have previously canvassed unsuccessfully in his department.[24]

The aspect of ministerial responsibility which relates to the circumstances under which a Minister must resign raises different considerations. Mr B.M. Snedden in 'Ministerial Responsibility in Modern Government' has said

> The reality is that there is no absolute vicarious liability on the part of the Minister for the 'sins'· of his subordinates. If the Minister is free from personal fault and could not by reasonable diligence in controlling his department have prevented the mistake, then there is no compulsion to resign ... Defeat of a Government on a matter of importance on the floor of the House is an ever receding possibility yet its consequence, that is, resignation of the whole Ministry, is the single immutable certainty while modern parliamentary government survives. Likewise, it is apparent that the principle of ministerial responsibility, in so far as it requires the resignation of an individual Minister, is now one of limited application, in particular because matters involving major policy question are increasingly decided by Cabinet as a whole. But this is not to say that ministerial responsibility has ceased to play a significant part in modern parliamentary government for there are other sanctions which have grown in importance as the older remedies have ceased to command acceptance.
>
> Ministerial responsibility is as uncertain as it is dynamic. For any event involving ministerial responsibility will usually be determined in Parliament by facts not necessarily relevant to the event but they will be

[24] Wright, op.cit., p. 11.

> vital to the personality, strength and will to survive of the individual Minister. His tribulations will yet remain to be faced. His leader, his party and his electors are the disciplinary force.[25]

It seems to me to follow from these points of view as quoted, and they appear substantially correct and reconcilable, that although ministerial responsibility may not require a Minister to resign if he has personally made a decision based on advice which subsequently comes under question, he still has a substantial responsibility to preserve the anonymity and freedom from public attack or criticism of the public servant who gave the advice.

As to the duty of the Public Service to serve loyally a new government of a different party, Sir Paul Hasluck said in 1968 that majorities in Parliament may be changed but the Public Service is unchanged and those who served faithfully under a Labor Ministry continue to serve faithfully under a Liberal Country Party Ministry. The Prime Minister has said (Garran Oration 1973) that 'The Public Service has responded magnificently to the challenges we have set it'. These two remarks would appear to state the position truly and to indicate that the Public Service as a whole accepts the basic ethical principles on change of government and successfully applies them.

When a new government has an enormously detailed range of new policies and supplements its sources of advice and its instruments for executing policy by establishing many new Statutory Authorities, tensions and suspicions could possibly arise — on the one hand based upon fears in the Public Service that the Government does not really trust it to do its ethical duty and carry out settled policy vigorously, and upon fears in ministerial quarters that the Public Service is holding back and not being as co-operative and active as its ethical duty would require. I do not, of course, say that this is happening.

It is important for all to recognise both the nature of the ethical duty cast upon the Public Service in this situation and the high likelihood that it will be accepted. It is also necessary to appreciate that the duty to co-operate includes a duty, up to the point when the decision on policy is made, to draw attention to all relevant considerations and to advise honestly on a proposed policy. His duty demands this. Active co-operation in execution after policy is settled is another matter. His duty is equally clear on this point.

In 1972 the Australian Institute of Political Science held a Summer School on the subject 'Parliament, Bureaucracy, Citizens Who Runs Australia'. It was constantly stated or assumed at that School that the administrators really run Australia. I delivered a paper under the title 'Bureaucracy and Society' in which in the last analysis I sought to argue that although public servants had considerable power they did not run Australia but I am afraid that it is widely thought that they exercise excessive power and seek to do this and to maintain power, including power over Ministers and policies. Mr Whitlam said in his Garran Oration that in the past 'there have been notable cases in Australia of a remarkable lack of Ministerial control over Departments and over policy'.[26]

The view that this is widespread in the public service is inconsistent with the traditional ethics of that service. It is also inconsistent with what I and successive tribunals dealing with Parliamentary and ministerial salaries have found to be the true role of Parliamentarians and Ministers who have both been rewarded by way of salaries on the basis that they exercise true power and responsibility at the policy and political level though doubtless there are sometimes weak Ministers who are sustained in policy matters by their Departments.

In my paper at that School I said

> R.S. Parker, in discussing the responsibility of ministers and the general relations between ministers and officials, has expressed the view that the doctrine of ministerial responsibility is deeply engraved in the consciousness of the Australian senior public servant, that he breathes it in with his daily experience so that by the time he is a permanent head it is an idea fixed; that the whole training and temperament of the official mind condition it to objectivity; that objectivity and the secret pursuit of ambitious policies are like oil and water; and that public servants, although they carry the bulk of the burden of public

[25] Snedden, B.M. "Ministerial Responsibility in Modern Parliamentary Government", paper presented to Third Commonwealth and Empire Law Conference, Sydney, 1965, pp.7–8.
[26] Whitlam, op.cit., p. 15.

> administration, respect the convention of ministerial control and responsibility in the spirit as well as in the letter.[27]

and

> The latter (i.e. the administrators) participate in the making of policy decisions but not as the completely dominant decision-makers. Their professionalism and indeed, in Australian conditions, their own ideology and self-interest lead the bureaucrats to support ministerial responsibility and to accept some responsibility for endeavouring to maintain and support the whole political system.[28]

The new arrangements made by the present government, though stressing ministerial control, do not appear to have changed the ethical approach, long established, of the public service.

There is currently a review by a Royal Commission of Australian Government Administration and doubtless ethical considerations will receive attention. There have been reviews of the British Civil Service over the decades but they have generally, so far as I know, confirmed and restated the traditional ethics whilst recommending various structural, recruiting and other policy changes. Ethical matters are delicate and ethical rules grow and develop within a group over long periods of time. They help to provide certainty, continuity and stability and to underwrite the basic constitutional conventions. Whatever else is touched they should be interfered with only with the greatest caution, though they and their application in changing circumstances should be the subject of constant debate.

There is one matter of ethics not so far covered affecting mainly the public service but also the judiciary though not the executive government or the legislature. Because independence of judgment, decision and, in the case of the public service, advice is important, security of tenure is provided, though with different methods of breaking the security in appropriate cases. Security of tenure is important from the point of view of the community because it not only helps to ensure independence but it encourages, through continuity in office, appropriate professionalism, integrity and a desire to serve with probity. One problem which arises in relation to the short term full-time appointment, or in the case of many statutory authorities is the risk of decreasing independence as the time for reappointment approaches. Officials in this position have a duty of impartiality and independence up to the end of their term and have to resist the temptation to seek reappointment by acting in breach of their duty.

There are some particularly important ethical problems requiring, for their solution, great courage in administrators. It is not easy to stand by a principle when it will cause unpopularity. Moral courage is necessary. Intellectual honesty is necessary. It has been said that there are only three friends of courage in the public service — ambition, a sense of duty, and a recognition that inaction may be quite as painful as action. Part of the loneliness of authority, it has also been said, comes from the fact that the administrator must make relationships impersonal. I have seen this operate with administrators myself and have realised that the ethical demands upon them have forced them to make impersonal, hard and courageous decisions. This is sometimes wrongly inter-preted as arrogance or authoritarianism by colleagues and others who have to accept such impersonal decisions. The courage to be impersonal in complicated organisational performance is valuable as far as the public is concerned and the same applies to proper administrative relations within the public service (see S.K. Bailey 'Ethics and the Public Service' Public Administration Review Vol 24, 1964). I should perhaps repeat, in this context of the ethical duty to be courageous, when necessary, that this particularly applies when administrators have to advise a government or Minister in a way which may conflict with the government's developing views. But in a democracy the final responsibility, as we know, for interpreting the public interest lies with the elected representatives and, accordingly, after undertaking an act of courage, an administrator must accept and apply the decision.

I touched earlier upon ethical duties of public officials to ensure ethical conduct by their subordinates. There are of course correlative ethical duties to subordinates. One should always help others, whether colleagues above or below oneself in one's profession. One should give proper credit, loyalty and protection to one's subordinates and not subject them to improper duress. One must provide leadership. But one should not apply coercion to prevent

[27] Kerr, J.R.: "Bureaucracy and Society", in *Parliament, Bureaucracy, Citizens — Who Runs Australia?*. Sydney, Angus and Robertson, 1972, p. 77.
[28] Ibid, p. 81.

a subordinate expressing his true opinion or advice any more than one should acquiesce in expressing an opinion or advice in response to coercion from above, even from a Minister. There are also problems of loyalty to one's superiors. One should not connive to by-pass them. I am not of course so naive as not to appreciate the ambitions and temptations of office. Some of the obvious ethical principles, I suppose, often are observed in the breach, but when this happens a sense of shame accompanies the act and a fear of ultimate accounting before one's peers. Other sanctions will be mentioned later.

One particular ethical problem arises for specialist-administrators, such as lawyers, doctors and engineers, in cases where their professional conscience as specialists conflicts with official policy. Sir Garfield Barwick has said that in such a case there is a duty to be loyal, to obey the commands and instructions, and to observe the interests and the policies of the government. The professional cannot, within government employment, oppose government policies or fail to be loyal in a service which requires the professional to further such policies. He cannot turn to an ethical code of his own profession, outside the area of administrative ethics, as a justification for a failure to perform his employment and to be faithful to his Government employer.[29] If a problem of conscience between conflicting ethical systems becomes too acute, resignation alone may be the way to resolve it.

Another ethical problem has to do with past employment and its loyalties and future employment and its inducements. There can be awkward decisions to be made but they must be made under the guidance of general ethical principles stated early in this paper. The problem can be an acute one for part time public officials and for those on short term appointments. In his Garran Oration the Prime Minister said

> It is in Australia's interest and in the interest of the Public Service itself that there should be greater mobility between business and the Universities and between the Federal and State Public Services. For a job in the public administration to be done competently it is not always necessary that the appointment be for life or until retirement on reaching a certain age. Clearly many valuable men and women will be unwilling or unable to accept appointment on those terms. Sometimes a specific task involved is of limited duration. The task should be undone, or the skills lost, through inflexibility in the Public Service structure.

Accepting this, the proposition is consistent with the applicability generally of the traditional ethical principles to such people whilst serving the Government.

One area in which the Australian public servant appears to be somewhat different from his United Kingdom counterpart is the degree to which he may engage in political activity and belong to political parties. Much of what has been said in this paper proceeds upon the basis that in his work as a public official he must eschew political activity and motivation. But as a citizen and an individual, outside his public office, his rights should be restricted as little as possible. His private life is his own but he must be subject to some restraints in acting politically in the area covering that in which he works. He can belong to a political party and be active in that party and subject to certain conditions laid down in the law can stand as a candidate for Parliament whilst reserving certain rights to apply for employment in the Public Service, but if he elects to announce such a candidature it is a widely held view that the need for the public to have confidence in his impartiality as a public servant makes it unacceptable that such an officer, if he has declared an interest in defeating the policies of an elected government, should continue to have access to, and the opportunity of using for his own self-interest and advantage, the materials from which government policies are made. (Sir Paul Hasluck, 'The Public Servant and Politics', Garran Oration 1968). Whether the same rule applies to a person whose candidature supports the Government in power raises different ethical questions and may not attract the same judgment.

Most public servants keep out of parties and active politics and, although doubtless holding private political opinions, stay away from political action and this must be generally prudent, especially for those at the top, but there is no general ethical or legal requirement to this effect in Australia and some public servants join parties and are active in them. The 1902 Public Service Regulation 41 forbade public servants in any way 'to promote political movements' but it was repealed in 1908. There does not seem to have been any full inquiry into the problem of political party participation in Australia though there are overseas writings.

[29] Barwick, Sir Garfield: "Some Legal Aspects of Professional Ethics", *Journal of the Institute of Engineers*, July-August, 1960.

I mentioned earlier the question of sanctions for breach of ethical rules. In some professions these sanctions exist. There are legal rules and regulations applicable to the public service but, in the case of public officials, as with some other professionals, the informal sanctions are very significant and are, I believe, sufficient. Career prospects are affected by reputation and conduct. The judgment of one's peers is important. Scrutiny by Parliamentary Committees and in due course by Ombudsmen and Administrative Review Tribunals vigilance by the media, publicity in general, especially release of information about governmental actions, all help to keep the administrator within proper ethical bounds.

I also should say something about the written statement of an ethical code for public servants. On the whole I feel that, in the area of public administration in Australian conditions, as in the case of the judiciary, we do not need a code because the principles are really well understood. Provided they are instilled by proper instruction and by the example and the judgment of one's colleagues, the administrator will know and apply them. There doubtless should be provision for advice and counselling as there always is, informally, in all true professions.

I have already said that continued debate is essential. If from the debate a set of guidelines could emerge in written form this would be helpful but so much has been said and written, that it is by instruction as to basic ethical principles, in-Service education, counselling and example rather than by a written code that real ethical quality is produced and preserved.

Underlying the great changes outlined by the Prime Minister in this place last year the ethical principles guiding those in public office remain unchanged and applicable.

My subject has been a difficult one. I have tried to confine myself to ethical questions and to avoid politics and have undertaken the task in the belief that it is especially important to examine ethical principles when great changes are occurring in the system in which they operate. As with all ethical questions the ultimate authority is the personal judgment of the individual professional person, in this case the public official. He has to answer to himself and will know if he has departed from the unwritten code. If he has any doubt he should seek advice. If still in doubt he should disqualify himself. The real sanction is continued interest in all these questions amongst administrators, continuing debate amongst them and in Government and legislative circles and in the community generally. In the last analysis, community interest in and awareness of what goes on is basic.

ANNEXURE A

Extract from a Report of the Board of Inquiry Appointed by the Prime Minister to Investigate Certain Statements Affecting Civil Servants, Cmd 3037, February 1928.

His Majesty's Civil Service, unlike other great professions, is not and cannot in the nature of things be an autonomous profession. In common with the Royal Navy, the Army, and the Royal Air Force, it must always be subject to the rules and regulations laid down for its guidance by His Majesty's Government. This written code is, in the case of the Civil Service, to be found not only in the Statutes but also in Orders in Council, Treasury Circulars and other directions which may from time to time be promulgated: but over and above these the Civil Service, like every other profession, has its unwritten code of ethics and conduct for which the most effective sanction lies in the public opinion of the Service itself, and it is upon the maintenance of a sound and healthy public opinion within the Service that its value and efficiency chiefly depend.

The first duty of a Civil Servant is to give his undivided allegiance to the State at all times and on all occasions when the State has a claim upon his services. With his private activities the State is in general not concerned, so long as his conduct therein is not such as to bring discredit upon the Service of which he is a member. But to say that he is not to subordinate his duty to his private interests, nor to make use of his official position to further those interests, is to say no more than that he must behave with common honesty. The Service exacts from itself a higher standard, because it recognises that the State is entitled to demand that its servants shall not only be honest in fact, but beyond the reach of suspicion of dishonesty. It was laid down by one of His Majesty's Judges in a case some few years ago that it was not merely of some importance but of fundamental importance that in a Court of Law justice should not only be done, but should manifestly and undoubtedly be seen to be done; which we take to mean that public confidence in the administration of justice would be shaken if the least suspicion, however ill-founded, were allowed to arise that the course of legal proceedings could in any way be influenced by improper motives. We apply without hesitation an analogous rule to other branches of the public service. A Civil Servant is not to subordinate his duty to his private interests; but neither is he to put himself in a position where his duty and his interests conflict. He is not to make use of his official position to further those interests; but neither is he so to order his private affairs as to allow the suspicion to arise that a trust has been abused or a confidence betrayed. These obligations are, we do not doubt, universally recognised throughout the whole of the Service; if it were otherwise, its public credit would be diminished and its usefulness to the State impaired.

It follows that there are spheres of activity legitimately open to the ordinary citizen in which the Civil Servant can play no part, or only a limited part. He is not to indulge in political or party controversy, lest by so doing he should appear no longer the disinterested adviser of Ministers or able impartially to execute their policy. He is bound to maintain a proper reticence in discussing public affairs and more particularly those with which his own Department is concerned. And lastly, his position clearly imposes upon him restrictions in matters of commerce and business from which the ordinary citizen is free.

We content ourselves with laying down these general principles which we do not seek to elaborate into any detailed code, if only for the reason that their application must necessarily vary according to the position, the Department and the work of the Civil Servant concerned. Practical rules for the guidance of social conduct depend also as much upon the instinct and perception of the individual as upon cast-iron formulas; and the surest guide will, we hope, always be found in the nice and jealous honour of Civil Servants themselves. The public expects from them a standard of integrity and conduct not only inflexible but fastidious, and has not been disappointed in the past. We are confident that we are expressing the view of the Service when we say that the public have a right to expect that standard, and that it is the duty of the Service to see that the expectation is fulfilled.

ANNEXURE B

Extract from "Ethical Standards in Government", Report of a United States Sub-Committee on Labour and Public Welfare, U.S. Senate, Washington 1951

Involvements which it is generally agreed must be avoided include salaries, fees, and other compensation from business concerns, direct or indirect ownership of concerns doing business with the Government, speculation in securities or commodities in a field touching that in which the public servant has official functions. Somewhat less clear but also coming under the taboo for administrators is substantial investment in an industry affected by his official functions. How much is 'substantial '? That probably depends in part on its ratio to the individual's total investments. On these points there is not much disagreement. There is some feeling that public officials should be permitted to own businesses which do not concern their official function in any way and which they can operate through an agent or employee. But this, too, is frequently forbidden by law, perhaps to make sure that his official duties will have a public servant's full attention.

The line between the proper and improper begins to be less certain when one looks for a consensus of opinion: as to favours, gifts, gratuities, and services. The exchanging of gifts and favours is reported to be rather general in the business community. What is it proper to offer public officials, and what is it proper for them to receive? A cigar, a box of candy, a modest lunch (usually to continue discussing unfinished business)? Is anyone of these improper? It is difficult to believe so. They are usually a courteous gesture, an expression of good will, or a simple convenience, symbolic rather than intrinsically significant. Normally they are not taken seriously by the giver nor do they mean very much to the receiver. At the point at which they do begin to mean something, however, do they not become improper? Even small gratuities can be significant if they are repeated and come to be expected. But here, too, convention must be considered: gifts to school teachers are now generally forbidden by law, but a Christmastime present for the postman, usually on engraved green paper, is almost as well established as holly.

Expensive gifts, lavish or frequent entertainment, paying hotel or travel costs, valuable services, inside advice as to investments, discounts and allowances in purchasing are in an entirely different category. They are clearly improper. On this, there is substantial agreement in the governmental community, and any one who thinks them proper must have already lost his perspective. The difficulty comes in drawing the line between the innocent or proper and that which is designing or improper. At the moment a doubt arises as to propriety, the line should be drawn. Innocence is perhaps lost when one is conscious that it exists.