

## WHERE LIES THE ETHICS OF PUBLIC SERVICE?

JOHN J. CARROLL, S.J.

*Director, Institute on Church and Social Issues  
Ateneo de Manila University  
Loyola Heights, Quezon City*

### ABSTRACT

The paper explores the official content of the ethics of public service as reflected in Philippine law, the Constitution, and the nation's international obligations, and the fundamental basis for all of these in the natural law. It then discusses well-known deviations from this ethics, and proposes that these stem from a weak sense of the common good in Philippine culture. Following Durkheim, it notes the great importance which he assigns to penal law or the punishment of malefactors in affirming the common good, and in this context draws some possible lessons from the Italians' recent war on corruption.

### INTRODUCTION

"Where lies the ethics of public service?" The wording of the topic assigned me suggests an epitaph, "Here lies the ethics of public service" as though we were here gathered around a grave, holding a necrological service to commemorate a departed friend. So I should like to begin by saying that, in my mind, the ethics of public service is still alive and well in such people as SPO 2 Eduardo de los Reyes who exposed the rubout of the Kuratong Baleleng gang members; it lived on in the person of schoolteacher Filomena Atienza Tatlonghari who gave up her life defending the ballot boxes after the May election. It survives in the nameless policemen, teachers, health personnel, forest guards, and other public servants who carry on, performing their duties and serving the public to the best of their ability despite low pay, lack of support from superiors and even pressure to conform to their crooked ways, personal inconvenience, and sometimes danger to life itself. Thus, before beginning academically to dissect the problems in this area, it is important that we pay humble tribute to the unsung heroes whose lives – and sometimes deaths – have lighted the way for the rest of us.

**REPUBLIC ACT NO. 6713**

Where lies the ethics of public service? One very detailed version of this ethic may be found in R.A. No. 6713, approved on February 20, 1989, entitled as follows.

ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES.

There follows an impressive list of norms of conduct: commitment to the public interest, professionalism, justice and sincerity, political neutrality, responsiveness to the public, nationalism and patriotism, commitment to democracy, and simple living. The Civil Service Commission is enjoined to promote these standards of behavior. In their turn, public officials and employees are enjoined to act promptly on letters and requests, to submit annual performance reports, to process documents expeditiously (normally no more than three signatories required), to act immediately on the public's personal transactions, and to make documents accessible to the public on request.

The list is indeed impressive, even inspiring; moreover, it is backed up by a section proposing incentives and rewards such as bonuses and citations, directorships in government corporations, scholarship grants, paid vacations, and the like, as well as promotions, for outstanding performance.

Next are the prohibited acts and transactions, involving conflict of interest, improper disclosure or misuse of confidential information, solicitation or acceptance of gifts. Then the obligation to make available to proper authorities and ultimately to the public their assets and liabilities, and to divest themselves of private business interests and stockholdings where a conflict with the public interest could arise.

All in all, R.A. 6713 presumes a bureaucracy very much in line with the analysis done early in this century by the sociologist Max Weber: a corps of officials, carrying out specific tasks efficiently and impersonally and according to predetermined rules oriented toward the objectives of the organization, not allowing their personal concerns to intrude on their official performance except to the extent that proper performance of their duties will ultimately bring promotion and advancement in their careers.<sup>1</sup> It goes beyond Weber in its strong and explicit emphasis on service to the public.



## BEYOND THE WEBERIAN BUREAUCRACY

The fact that R.A. 6713 goes beyond Weber's concept of bureaucracy in insisting on service and responsibility to the public is important. The ethics of a Weberian bureaucrat, after all, could be limited to implementing faithfully the orders and directives coming to him from above, and the German military and civil officials who participated in the extermination of perhaps nine million Jews claimed that they were doing exactly that. The same excuse has been given since in many countries, including the Philippines, by soldiers and government agents responsible for the "disappearance" or "salvaging" of opponents of the regime.

Nevertheless, the norm of service and responsibility to the public is very general, and by no means a full and adequate statement of the ethics of public service. For that we must look beyond R.A. 6713 to the Philippine Constitution, to the international covenants of which the Philippines is a signatory, and to basic moral principles. These direct our attention beyond the *execution* of directives, beyond generalities about service to the public, to the *policies* and *principles* which should govern the directives and should determine what services are due the public.

The Philippine Constitution has more than ample material for a regular "examination of conscience" on the part of the nation's officials. There is no time here to go into detail but I would simply call attention to Article XIII, "Social Justice and Human Rights". It begins as follows (Sec. 1).

The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

The same article speaks of regulating the acquisition, ownership, use, and disposition of property (Sec. 2), the rights of labor (Sec. 3), agrarian and natural resources reform (Secs. 4-8), urban land reform and housing (Secs. 9-10), health (Secs. 11-13), women (Sec. 14), and people's organizations (Secs. 15-16). Moreover, it sets up an independent Commission on Human Rights (Sec. 17) with a broad mandate including the responsibility to "Monitor the Philippine Government's compliance with international treaty obligations on human rights" (Sec. 18, No. 7).

In addition to the constitutional responsibilities, as if these were not heavy enough, are the international treaty obligations mentioned above - including the Covenant on Civil and Political Rights and the Covenant on Economic, Social, and Cultural Rights to which we shall return.

Finally, there are the basic moral principles themselves, on which all of the above rest. In this century particularly, we have come to realize that ethics cannot be based on legality alone. The crimes of the German Nazis against the Jews and



others were all *legal*, according to the laws which the Nazis themselves had passed. At the Nuremberg trials, therefore, in order to prosecute those responsible, it was necessary to fall back on a notion of "crimes against humanity" which was not found in any law book.

All of this occasioned some anguished rethinking among cultural relativists: they had gone along with infanticide among primitive peoples because "that is their way of doing things, and who are we to judge"? But that the killing of millions of people simply because they were of a different "race" was simply part of the Nazi culture and "who are we to judge?" was too much. I remember a professor of mine, herself a secularized Jew, putting it bluntly. "Don't ask me to prove human dignity; I can't prove it. I just feel it in my gut." Her gut-feeling was, I would argue, an instinctive awareness of what the "natural law" which - while very general in its details - affirms the dignity of every human person and binds us all in conscience, before God, independently on any civil or criminal law. And here we reach the rock-bottom foundation of an ethics of public service.

### AND THE REALITY

So much for the theory: the ethics of public service can be found in R.A. 6713, in the Philippine Constitution and the international covenants to which the Philippines is a party, and most fundamentally in the natural law itself which asserts among other things the dignity of every human person.

And what of the reality? We are painfully aware of failures at all levels, among public officials and public "servants" with regard to the ethics of public service: from the arrogance and venality of policemen as well as customs officials and minor civil servants in dealing with the public, through the violation of human rights by law-enforcement officers, the organized corruption within government agencies, junkets abroad for legislators and officials, lavish expenditures on their offices, callous treatment of our OCWs by Department of Foreign Affairs personnel both at home and abroad, the use of public money to promote one's reelection prospects, extortion from private firms for the same purpose, to the massive electoral cheating which makes a mockery of the sacrifices of people like Evelio Javier and Filomena Atienza Tatlonghari.

The matter of conflict of interest among legislators may deserve special mention since it is cited explicitly in the law and has been documented with regard to the recently concluded Ninth House of Representatives. While acknowledging that the House has adopted a liberal interpretation of the law which makes it difficult to penalize these acts, Eric Gutierrez has produced a long list of legislators who serve on committees which deal with their own economic interests, or have authored bills favoring those interests.<sup>2</sup> In a similar vein, Alfred W. McCoy points out a pattern of "rent-seeking provincial entrepreneurs" seeking national political office as a way of defending and enhancing their business interests.<sup>3</sup>



Allow me here to remind you that I am not accusing all officials or civil servants of infidelity in the performance of their duties. I spoke earlier of the many - whether a majority or a minority I cannot say - who have been and are faithful even unto death. Nevertheless, in many cases the facts are well known. The rot is found at the very base of the system, and it would be hard to argue that in one form or another it does not reach the top as well. In fact, the pattern is an old one - going back at least to Senator Avelino's "What are we in power for?" - though constantly updated and "improved" over the years. It has been the main issue of almost every presidential campaign since independence, but still it survives.

What I have spoken of thus far is failures to meet the standards of R.A. 6713. Beyond that are the failures on the policy level, failures to meet the mandates of the Constitution and the nation's commitments before the international community to respect commonly recognized civil, political, economic, social, and cultural rights. In this connection, I would like to refer to the "Concluding Observations of the Committee on Economic, Social and Cultural Rights" of the United Nations, sitting in Geneva, dated 19 May 1995. These observations were based on the Committee's study of a report on these matters submitted and presented by Philippine Government representatives headed by the Philippine Ambassador to the United Nations Lilia Bautista.

The "Concluding Observations", while acknowledging some positive steps and also the difficulties faced by the Philippine government in implementing the Covenant on Economic, Social and Cultural Rights, are very critical of government performance in several areas: preventing the economic and sexual exploitation of children; the practice of detaining juvenile offenders together with adults; the situation of Filipino overseas workers; and particularly the use of criminal law (PD 772) in dealing with the problem of "squatting". It notes that the latter stems from government failure to adopt measures which would make legal housing available to its citizens, and expresses particular concern about the number of forced evictions and demolitions of squatters' homes - said to have affected hundreds of thousands of persons since the ratification of the Covenant by the Philippines. Moreover,

The Government itself acknowledges that planned forced evictions may affect up to 200,000 families, and that the Government has identified only 150,000 relocation sites. If these estimates are correct a very significant number of persons currently threatened with eviction will not receive adequate resettlement. Such a situation would not be compatible with respect for the right to housing.

The document goes on to point out failures in the implementation of agrarian reform. It also warns the government against attempting to escape from its obligation to provide adequate health services, especially to the poor, by privatization and decentralization; and it notes that "[t]he Committee was unable to receive any assurances from the Government that its current plans have sought to address this



issue adequately". Finally, it makes a series of very precise and pointed recommendations, particularly with regard to illegal and forced evictions and relocations.

Lest it be thought that the United Nations is here interfering improperly in the nation's domestic affairs, it should be noted that the nation voluntarily signed the Covenant, and that in most cases the latter merely restates principles already enshrined in the Philippine Constitution. That the United Nations should have to point out to Philippine officials their failures in these areas is thus doubly embarrassing.

### A DAMAGED CULTURE?

Faced by the shocking contrast between the expressed ideals of public service and the reality, some are tempted to fall back on the "damaged culture" thesis of James Fallows:<sup>4</sup> things are as they are because that is the way Filipinos are; the people's traditional values have been destroyed by the cultural domination of the West, and nothing has taken their place. "We have met the enemy and he is us."

Personally I am dissatisfied with the Fallows thesis, in part because it leads to no practical remedy while at the same time, as my colleague Bishop Claver likes to point out, providing a convenient scapegoat for the people's resentments. I find far more illuminating the analysis of Emile Durkheim, published 102 years ago and translated as *The Division of Labor in Society*. In that work he has an extended discussion of penal law - the law which punishes infractions of certain rules of conduct. He argues that we can identify the "common conscience" of society, what we would call today the shared culture or values of a community, by *what it punishes and how severely it punishes it*. Durkheim insists that the punishment of crime is very different from personal revenge, and far more important than the latter; nor is it simply a way of deterring further crime. It is society's defense of its commonly held values when these are violated; the community realizes that when its fundamental values are challenged, not only in word but in deed, then the very existence of the community is at stake, and it acts to reassert these values by punishing the criminal. Indeed, the act of punishing crime, he notes, often takes on a ritual, quasi-religious aspect - one thinks here of the British judge donning his robes and wig before pronouncing a death sentence - because it is seen as a defense of the "sacred" values of the community.<sup>5</sup>

Here we may recall that, in ancient Rome, it was believed that the virginity of the Vestal Virgins who tended the sacred fire was essential for the survival of the State. If, as sometimes happened, one of the Vestals was found to have lost her virginity, the man involved was summarily executed. The Vestal herself, however, according to the ancient historian Plutarch, was entombed alive, buried in a tiny underground room with only a lantern, a few provisions, and a jug of water. Earth was piled on the spot and she was left to die alone.<sup>6</sup> A barbaric and savage



punishment indeed, but it dramatized the supreme importance which the Romans assigned to the welfare of the State.

Contrast this with current practice here in the Philippines. Muntinlupa is full of thieves, robbers, rapists, those who make us feel personally unsafe in our homes and on the street. But how many are there for offenses against the *common good*? Despite the massive damage inflicted on society by the kleptocracy of President Marcos, the only Marcos crony who ever saw the inside of a prison did so not in the Philippines but in Italy (Ambassador Bienvenido Tantoco Sr., convicted there for illegal possession of firearms). An attempt to overthrow the government by force was punished by push-ups, as we all remember. Derelictions of duty in the civil service were "punished" by reprimand, transfer, or at most dismissal – not by prison terms.

In the area of electoral politics, key cronies and members of the Marcos family have run for high office, even the highest in the land, and have garnered millions of votes. The man who led the disastrous coup attempt of 1989 has now been elected to the Philippine Senate, while former General Biazon who by his loyalty, leadership, and personal courage under fire was most instrumental in defeating the coup, and who as Senator showed great personal integrity and social concern, has lost his bid for reelection to the same body. If this outcome is a result of an honest counting of the ballots, it says something about the people's sense of the common interest; if, as some suggest, it resulted from mistabulating of votes, it raises the question why anyone should give his or her life in defending a ballot box when the tabulating will be subject to "bawas-dagdag" in favor of someone's favorite candidate, and for money.

We could go on to ask about those who have plundered the nation's natural resources, deprived cultural minorities of their heritage, enriched themselves while in office. But it would be too depressing. The main point is that, at the heart of the problem of failures in public service at all levels there lies apparently a weak sense of the common interest as shown by a disinterest in pursuing and punishing violations. The "common conscience" of which Durkheim spoke would seem to be in tatters. I would only note here the suggestion that it all began with General MacArthur: that his exoneration of Manuel Roxas on charges of collaboration with the Japanese made it impossible thereafter to prosecute any collaborator and created the impression that it was not worth the trouble trying to distinguish the patriots from the traitors. The common good and the public interest were not that important after all, and one had to get on with the business of living.

### A WAY OUT?

But is it really that bad? And is there no way out of this morass? I would like to think that there is a way out, a way suggested by our analysis as well as recent history both in the Philippines and abroad. Put very briefly, I would argue that



there is a sentiment among substantial numbers of the Filipino people that are repelled by the corruption and failures of the ethics of public service, that appreciates the heroism of people such as S.P.O. 2 de los Reyes and schoolteacher Tatlonghari, and that is ready to *demand* integrity of its public servants.

What this sentiment lacks is the opportunity to manifest itself in meaningful ways. Or to put it in sociological concepts, the cultural values cannot express themselves except in unorganized grumbling and letters to the editor because in too many cases the levers of power are held by those who profit from the evil. But occasionally an event triggers an explosion which takes the power-holders by surprise: the protest at EDSA against a stolen election and all that is symbolized; the protests at the seeming negligence of consular officials in the Flor Contemplacion case; the storm occasioned by the revelations of de los Reyes on the rubout of the Kuratong Baleleng gang.

Here I would like to recall the *mani pulite* or "clean hands" investigations which occasioned a political earthquake in Italy two years ago. Massive corruption in public works contracts involving the major political parties had long been a way of life in Italy. This was the major source of funding for the parties, and it was estimated that, of fifty million Italians, one million were on the payrolls of the parties. It seemed so deeply entrenched that nothing could be done about it, until a courageous public prosecutor in Milan named Antonio di Pietro began looking into a small case involving a cleaning contract for a public building. The more he pulled at the loose thread, the more the whole system began to unravel; other prosecutors joined in, and eventually some 5,000 public officials, businessmen, bankers, and the chief executives of some of the largest firms in the country, had been arrested.<sup>7</sup> Mafia links were exposed as well, tying it all together in a criminal network that was bleeding the economy, the taxpayer, and the consumer.

Those under investigation or indictment included about 25% of members of Parliament and two former Prime Ministers. In some cities at one point the local governments could not function because all of the officials were in jail. It was called "the French Revolution without the guillotine", although in fact a number of the accused actually committed suicide. And the people cheered, not at the suicides, but at the fact that punishment was finally being meted out to those who had violated public trust; in one town, after the mayor was imprisoned, the people gathered outside the prison, opened bottles of wine and celebrated. The two major political parties which had ruled Italy since the end of the Second World War collapsed, and Italians are still trying to sort out the trouble. Nevertheless, two years after the investigations had begun, of small businessmen surveyed, 39.7% expressed the belief that corruption had decreased "slightly", 41.9% that it had decreased "drastically", and 5.5% that it had "disappeared".<sup>8</sup>

What were some of the elements that made this all possible? Part of the story was the power to investigate, charge, and imprison while awaiting trial which is vested in the magistrates. Another element was the independence of the latter from politicians, including the Minister of Justice who himself resigned while under



investigation. A third, I was told, was that many of these magistrates were men from the Italian south, who had grown up with a deep awareness of what the Mafia was doing to their country, and a determination to fight it even at risk of their own lives.

Finally, there was the support of a people fed up with corruption – so fed up that there was fear of rioting in the streets or an army coup when Parliament at one point refused to lift the parliamentary immunity from prosecution of two former Prime Ministers. And this, in turn, I would argue, was based on the sense, the common conscience if you like, that the public interest had to be upheld, that standards of public service had to be reaffirmed, and that this could be done by the punishment of those who had betrayed the public trust.

Whether something like this could take place in the Philippines, and how, are interesting questions which I shall leave to the open forum.

### ENDNOTES

1. Weber, Max. 1947. *The Theory of Social and Economic Organization*, translated by A. M. Henderson and Talcott Parsons (Free Press). 329-41.
2. Gutierrez, Eric. 1994. *"The ties that bind: a guide to family, business and other interests in the Ninth House of Representatives"*. (Philippine Center for Investigative Journalism and the Institute for Popular Democracy). 10-14.
3. McCoy, Alfred W. 1994, *"An anarchy of families: The historiography of state and family in the Philippines."* in *An Anarchy of Families: State and Family in the Philippines*, (Ateneo de Manila University Press). 13-19.
4. Fallows, James. 1987. *"A damaged culture"*, *The Atlantic Monthly*, 260: 1933, 5-87.
5. Durkheim, Emile. *The Division of Labor in Society*, translated by George Simpson (New York: Macmillan). 96-110.
6. Morton, H. V. 1957 *A Traveller in Rome*. (New York: Dodd, Mead and Company). 57-81.
7. *"Send for the magistrates"*, *The Economist*, September 17th-23rd, 1994, pp. 55-58.
8. *"Italy: Still crooked"*, *The Economist*, February 5th-11th, 1994, pp. 53-54.

