ETHICS IN THE CIVIL SERVICE

The 2014 Quinlan Lecture

Gus O'Donnell, 30th April 2014

(This version is a little longer than the one delivered in the lecture.)

1. It is a great honour and a privilege to deliver a lecture bearing the name of one of the greatest civil servants I knew. Michael Quinlan personified the Civil Service values of honesty, objectivity, integrity and impartiality. Yet he was also a man of passionate beliefs. He was absolutely clear that there were two distinct streams of ethics: first, the basic moral requirements of any human behaviour, "however we may believe them to be derived", as he put it[1], and second, the imperatives that flow from our role in life, as a civil servant, or a lawyer, or a politician. And he was absolutely clear that there should not be trade-offs between these streams. "I am the King's good servant – but God's first" as Sir Thomas More put it. I am not qualified to add anything on the basic moral issues. My own rule was always to treat others as you would have them treat you and that covered most problems. But after over thirty years as a civil servant I hope I have something to add about the ethics of the role.

2. The role of civil servants is to give honest, object and expert advice to Ministers. Note that they are required to provide expert advice but that does not mean they always have to be the experts. Indeed, in this information rich world, their job will invariably involve synthesising what others have discovered. This is a difficult task and the What Works Centres will help in the areas they cover. Their values require them to do this objectively: to tell truth unto power. Outsourcing the provision of giving advice is dangerous because it risks giving the job to a body that is not objective.

3. Michael rightly emphasised there will be many times when Civil Servants might believe that Ministers have made the wrong decisions, either ignoring the evidence or deciding that their beliefs trump what will normally be inconclusive evidence, but it is their job to get on with implementing the decision to the best of their abilities. For example, Michael disagreed strongly with some policy decisions: he did not favour devolution, fearing it was a slippery slope. [God knows – and is probably being lectured on the subject by Michael at the moment – what he would have made of a referendum on Scottish independence]. But he realised that it is the job of the Civil Service to implement decisions as efficiently as possible. In terms of who actually delivers the policy, then it

makes sense to choose whoever will do it best. This could be the private sector, a mutual or civil servants.

4. In addition to giving honest, objective advice – talking truth unto power – civil servants must operate with integrity and impartiality. Those are their traditional, cherished values. So does the Civil Service live up to these high ethical standards? As a firm believer in evidence based policy, I would like to start by looking at the available evidence. Transparency International publishes corruption indices based on surveys, which look at whether the public, or certain elites, perceive their governments to be corrupt. The UK comes 14th. The Scandinavians, New Zealand and Singapore are at the top of the table and few would be surprised by those at the bottom, like North Korea, Somalia, Haiti, Syria and Yemen. But these refer to governments, not the civil service and they measure perceptions.

5. You can also look at the evidence on trust. The percentage of people who say they trust the Civil Service has more than doubled since 1983 but is still only at 53%. The figures for Government Ministers are worryingly low at 17%, virtually unchanged since 1983. Yet this is again asking us questions rather than looking at how we act. In fact, governments over the long term – and I am talking here about many decades - are taking on more and more roles and responsibilities. The Scandinavian countries have very high government spending to GDP ratios and even in the home of the free market, the US, government spending is now around 40% of GDP. This is presumably in response to public demand for governments “to do something”.

6. It is also useful to look at the evidence as to whether civil servants know what is expected of them and know how to raise ethical concerns. The Civil Service Code is now a clear, straightforward document. It is encouraging that 9 out of 10 civil servants say they are aware of it and two thirds know how to raise concerns and are confident that any concerns will be investigated properly.

7. But most senior civil servants do not reach for their copy of the code when a difficult ethical problem emerges. They use their judgement. The black and the white are straightforward and usually sorted out very easily: It’s the dreaded shades of grey that are the real problem. This is where everybody needs a Sue Gray. She is the head of ethics in the Cabinet Office and has seen it all. (Her memoirs would outsell 50 Shades as the raw material is far more intriguing). She has helped Prime Ministers and Cabinet Secretaries as they have struggled with the ethical issues that arise in Government. The increased transparency expected now helps to police behaviour, but it also drives some

practices into the darkness, as nothing gets written down. Getting the balance right is one of the key tasks for ethical governments in the twenty first century.

8. Overall, we are left with more questions than answers, but I believe, and agree with Michael Quinlan, that the British Civil Service has high ethical standards and lives up to them. There are relatively few examples of financial corruption, measured in terms of successful prosecutions. Of course, this could be because it has not been detected, but that will always be a problem.

9. I remember a trip to Afghanistan where I met senior Ministers and they asked me how I stopped corruption in the British civil service. It was a difficult question to answer because it is something we rather take for granted. In general, there are standard prescriptions, like reasonable pay, appointment on merit, independence of the judiciary, good audit systems, a free press and well informed scrutiny from Parliament[2].

10. I would add two more requirements to Nield's list. First, the need for the right culture. The Civil Service is still very successful in attracting the best graduates and part of the attraction is the desire to make the world a better place- the public sector ethos if you like – which is encapsulated in the values and culture of the Service. Second, is the need to design policies to minimise the possibility of corruption. If the system requires you to get a licence from a bureaucrat and you can pay cash, then you are asking for trouble. Of course some governments deliberately use such designs and pay the civil servants very little assuming they will top up their meagre earnings with bribes. Interestingly, this suggests more market based systems may have ethical advantages, encouraging honest behaviour. The defenders of non- market systems tend to worry about distributional consequences of market solutions but it is usually possible to design systems that are both efficient and equitable.

11. Consider privatisation as an example. The government may have decided that it is important to give small investors a chance to invest, yet it is nervous about achieving a successful sale. One solution is to allocate a large chunk of shares to the wholesale sector, pension funds for example, and then in the retail sale to give preference to small bids. I regard this as a very non market solution. We learned from the sale of 3G spectrum that the honest answer to the question, what is this worth, is we don't know. In my experience civil servants should give this answer far more often. But they should add we know how to find out and that is often by means of clever auctions (by which I mean auctions that Paul Klemperer has approved.) Then you can allocate whatever share you want to the retail sector and, say, let them have small chunks at a small discount to the

auction price. Equity and efficiency, and the only losers would be investment banks- what could be better than that. This is an interesting example as it shows that policy design involves ethical decisions and it is important to give Ministers options. All too often we have been too conservative in these areas with odd distributional consequences, for example handing large capital gains to overseas pension funds.

12. What are the other difficult ethical problems faced by today's civil servants? I want to highlight three that have troubled me during my career in the Service. First is the need simultaneously to provide privately very robust internal advice stating all the pros and cons of a policy and publicly to provide a defence of the policy which is much more partial. We are required publicly to be "economical with the actualite" whilst ensuring we never mislead Parliament. That is no easy task.

13. A second challenge to that trust is to turn the other cheek when criticised by politicians unattributably. Flagrant abuses do need to be answered but in general I favour not being drawn into such battles. Two wrongs don't make a right and civil servants should not generally respond to off the record criticisms from allegedly Ministerial or political sources.

14. A third challenge concerns the need to improve the commercial skills of the Service. All agree this is desirable. This is a practical problem that is made intractable by so called ethical objections. In my view, we will only be able to attract good commercial negotiators, for example, if we pay much closer to the going private sector rate and allow more movement between the public and private sectors. Yet our media criticise people who leave the public sector to work in more lucrative private sector jobs as somehow acting unethically and attack paying the salaries needed to attract the best. Please can we have a grown up debate on this subject.

15. This is an example of a much broader theme that needs more debate. Many argue that our Civil Service is honest but inefficient. Yet I believe that public servants have an ethical duty to use taxpayers money wisely. Hence I strongly support the application of lean techniques- I wish more Ministers and Civil Servants would visit Unipart U, read Michael Barber's excellent books on delivery and John van Reenan's work on principle-agent problems in the public sector. All these are attempts to bring efficiency into areas which are monopolies and hence more inefficient than would result from a competitive market. It is also worth noting an area where the UK is ahead of many countries. As I look at the way utilities are provided in many countries, including ones with higher per capita GDP than us, I am surprised by the inefficiencies in their systems. The UK is a global

leader in working out how to get the private sector to provide these utilities in a regulated way, thus combining efficiency and equity.

16. This is also a consequence of civil servants concentrating exclusively on the traditional values of honesty, objectivity, integrity and impartiality. I suggested adding my 4 Ps: pride, passion, pace and professionalism. These bring in the need to care about how well customers are served and how efficiently taxpayers money is spent.

17. I have spent my time since retiring as Cabinet Secretary working in what I believe to be the two most important areas of public service reform, namely the Wellbeing and Behaviour Change agendas. Put another way, the key issues are precisely what is government trying to achieve and how should it do so. These subjects are posing new ethical questions with which the twenty first century Civil Service will have to grapple. For example, governments need to be more explicit about what they are trying to achieve. Is it maximising GDP or GDP per capita, or Wellbeing as I have argued in the Wellbeing and Policy report[3]. This will require civil servants to improve their skills in measuring subjective factors. It will also require them to broaden their skill set to understand more of the ethical and psychological issues raised by these approaches.

18. One obvious example is the growing need to advise Ministers on the distributional implications of various policy options. The growth in inequality makes this one of the most important issues of this century and it is starting to get the attention it deserves in books like Angus Deaton's The Great Escape, and Thomas Piketty's Capital in the Twenty First Century. At the moment, most standard policy analyses implicitly assume that the current distribution of income is perfect. No one believes that, so is it ethically right to use this as the basis for assessing policy options?

19. Is it right for governments to override individuals' judgements about what is in their own best interests? At the moment, government does this all the time. We impose a school curriculum, we pass legislation saying what is and is not lawful. We justify these decisions by saying they are in Society's best interests and are needed to stop some using personal freedoms in ways that restrict the freedom of others. For example, the government has banned smoking in pubs, restricting the freedom of smokers as it believes the freedom of non-smokers to unpolluted air is more important. That is an ethical judgement. Recently the government announced it would stop requiring retirees from having to buy annuities. This was an extremely paternalistic policy and it has been replaced by a very liberal one. But, as Sunstein and Thaler pointed out[4], sometimes we need a little libertarian paternalism. The argument is that people are not the best judge

always of what is in their own long term interests and governments should help them to make better decisions. They stress that their approach is not to force people into different decisions but to organise the so-called “choice architecture” to help them. Thus we know that on retirement, many people have purchased the wrong annuities by too frequently staying with the company that has their pensions savings. This suggests that when we stop forcing people to buy annuities, there is no guarantee they will make the ‘right’ decisions, in the sense of ones that they will not later regret. I believe the Civil Service has an ethical duty to examine the choice architecture in all aspects of policy to see if it is helping people to make the right decisions for themselves. At the moment, most public administration has been organised to ensure that it meets legal requirements and the needs of government, rather than the needs of the individual. This involves a profound change in the way governments operate. It is not a matter of just looking at how best to frame letters to people who owe tax. It is about all government’s communications with the public. This requires a wellbeing framework to be in place to assess success and widespread understanding of the latest developments in behavioural economics and psychology.

20. In the standard neo-classical economic model, everyone makes the right decisions to maximise their wellbeing. Again, a standard utilitarian model, and as such subject to all the criticisms that have been levelled at this approach[5]. For public policy purposes, we need to consider a world inhabited not by the neo-classical “econs” but real humans: people who make mistakes, are short sighted, influenced by irrelevant factors and prone to changing their minds about what they really want. In this world, is it ethical for governments to override individual preferences? Should civil servants take such preferences as given? Should we let people make decisions they will later bitterly regret as they might learn a lot from their mistakes? These seem to me the difficult ethical issues facing today’s civil servants and Ministers. So what are the answers?

21. First we need to realise that governments are constantly manipulating people. Every communication from government, either consciously or frequently unconsciously, affects the behaviour of the respondent. The question therefore becomes how should such choices be framed. At the moment, we are for the most part paying no attention to the psychological impact of how government frames its dealings with the public (and companies). This is why the scope for applying behavioural insights is so huge. So we need to replace this ‘ignorant vacuum’ with a principle or principles for deciding what is the best way to communicate with the public, or in the jargon, what is the best choice

architecture. My proposal is that we should choose to frame decisions so that they lead people to make the choices that are in their own best interest and in society's best interest. Ideally, we could find out what is in people's own best interest by asking them, having provided objective evidence of the likely impacts on them of different choices. Of course, there may well be times when there is a conflict between what is best for the individual and what is best for society. This is the kind of trade off that democratically elected politicians are paid to make. This is why any proposed 'nudges' that have such an effect should be signed off by Ministers, not Civil Servants.

22. How do we counter the argument that by biasing choices towards the "right" one, we are behaving like parents and "infantilizing" people? Of course, the best solution is to give people all the important information and hope that this induces "better" decisions. It is better as such changes of preferences may well carry over into other decisions made by the individual. (By having an opt out system for pensions, we might induce people to think more carefully about how much savings for old age they really want). But if it is not practicable to give people that information, then other options need to be considered. For example, some would claim that, by stating all the terms and conditions in advance and requiring a box to be ticked, all relevant information has been provided. Yet we all know we tick the box and rarely read the small print.

23. Of course it matters who is doing the nudging and why. I see no problems in individuals nudging themselves, for example by signing up publicly to do a charity run to force themselves to get fit. I believe governments have the right to nudge as long as they follow the principles I laid out in my SundayTimes article[6].

24. This brings to a final ethical challenge for today's civil servants. How can we ethically experiment on people to find out what works? Doctors have struggled with this dilemma for years and have by and large sorted out how to answer this question. In public policy we have strong concepts of fairness. Very often "fairness" has been used to justify having a single policy throughout the United Kingdom. Devolution, both to nations and regions, has led to far more diversity with different policies operating in different parts of the UK. Of course this gives rise to different outcomes, or so called postcode lotteries, but we are learning that there is nothing unethical about giving more weight to local preferences.

25. Should we follow the medical profession and adopt more widely their use of randomised control trials (RCTs) to learn about what works? The nudge unit has been doing this with very positive results. In general, I strongly favour testing policies first. RCTs are very powerful but we need to be aware of their statistical limitations. I hope to work

with Professor Deaton to explore this area further In the future. But tonight I want to consider the issue of whether it is ever right to use them with the public as some people are getting a different policy to others and that" can't be fair". The whole idea of an RCT is to work out which policy is better. Quite often the results are not as expected. If you do not test the options you risk missing the best policy. And since the policy will eventually be rolled out more widely, the costs of missing the best policy can be high. I realise there are political problems associated with testing but we have been using pilots for many years which have similar problems and may not generate as good evidence. I hope that, as it becomes ever more common to question the evidence base behind policies, we get better at deciding how to create evidence and interpret it.

26. To conclude, twenty first century civil servants face numerous ethical challenges. To succeed they will need good judgement, understanding of the values of the Service, and a detailed awareness of the ethical issues underlying policy advice and delivery. They need to be able to draw on people with skills in business, economics, psychology, political science, sociology and philosophy. In particular, the next few years will be dominated by calls for the public sector to be more efficient but also to cope with a society where inequality is rising rapidly. My overwhelming conclusion is that this is an ideal time to be an ex civil servant, standing on the sidelines offering lots of advice!

Thank you

Notes

[1] Michael Quinlan , Professional Ethics: Where should Civil Servants draw the line?, 12 March, 1994.

[2] Professor R.Nield, Public Corruption: the dark side of social evolution.

[3] Wellbeing and Policy, report commissioned by the Legatum Institute

[4] Sunstein and Thaler, Nudge: improving decisions about Health, Wealth and Happiness, 2011.

[5] See for example, Smart & Williams, Utilitarianism: For and Against, 1973

[6] Article by Gus O'Donnell, News Review, Sunday Times, 26 April, 2014.