

Public Values , Public Functions, and the Oath of Office

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- draft – please do not quote -

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“If, in these reflections of mine, there are some ideas which throw light on the true public interest, I beg my reader to set them against the rough, unfinished elements he will find here, and forgive me for these.”

Pietro Verri (1772)¹

1. Introduction

It is an old idea and ideal: ‘to run government like a business.’ The idea predates modern business administration.² Interestingly, the notion of a businesslike management of public organizations didn’t necessarily imply the idea that public functionaries and civil servants do or should have the same status or hold the same values as private employees. However, the differences are eroding, if not in theory, then in practice. To consider public function and private employment as fundamentally equal is a relatively new idea, and actually seems at odds with the contemporary rise in attention for ‘public ethics’ as a special concern for public functionaries. Working as a public functionary does seem to include specific demands, i.e. a different ethos, or doesn’t it? Put differently, do public values reflect on public servants? Or is work just work irrespective of purpose, order, or payment for a job? People should act morally and have integrity, so can there be a different requirement between public and private employees? Most authors reflecting on public

¹ I apologize by means of this quote from the 1771 foreword by Verri for this paper being in a fairly unfinished state.

² Ironically management theory actually originates in ideas on state administration in 18th century Cameralism. By the way, even if we could ‘run government like a business,’ that doesn’t imply it should be run by businessmen. Already in 1786 the highest civil servant in the Netherlands warned in that the businessmen of the day - merchants - were not good administrators because their perspective was too limited, and not keeping an eye on the common good²; in fact ‘the general interest needs to put limits on the business perspective’ (Van de Spiegel, 1786).

values, in particular public ethics, poses such differences. For instance Menzel points at the possible tension between ‘managerial’ values and public values that may require priority: “Getting things done and staying competitive can be but are not necessarily compatible with high ethical standards” (2007: 4). These high ethical standards concern demands following from the status of being a public functionary.

If, as probably most will agree upon, public administration does have specific values - or even ‘only’ a different hierarchy of values – it is likely that will have consequences for the demands of public functionaries. This is perhaps the best captured by the traditional requirement of an oath of office in public service; an unknown ritual in a private setting. It signifies that the public official is required to include and exclude specific values and accordingly appraise facts and values in her/his daily work.

This paper focuses on this very specific demand for public officials: the oath of office. Where does it come from, what does it signify, what is its relevance? First the links between public values and the oath of office is explored, indicating the latter is a prime symbol for the special relation between the two within a state. Next a brief outline is presented of the origins of the oath of office, and a tentative ‘theory’ as to understand its meaning. A third step concerns a discussion of then oath of office in the work of John Rohr in relation to the (autonomous) ethical stance required from public officials. Finally, the previous issues are more or less integrated in trying to understand the constitutional and symbolic nature of then oath of office.

2. Values for Public Functionaries

“Public service values, such as integrity, transparency, accountability, and incorruptability should be recognized in every public employee.” (OECD, 2002: 4)

Is there a special moral or ethical stance required of public functionaries? The quote from the OECD suggest so, and most of us will probably agree that there are special demands. Traditionally these involve ideas on ‘public interest’, the constitution,’ ‘public responsibility,’ and the like. But how does this relate to the trend to regard public functionaries and civil servants as ordinary employees? A Dutch government report on the future of employment in government stated: “The value civil servant attach to their special status (loyalty, support to the public cause, integrity, and so on) is a small offer that has to be made” (*Buitengewoon normaal*, 2004-2005).³ This is entirely at odds with the quote from the OECD. It has even been suggested to drop the very terms ‘civil or public servant’ to get rid of the ‘illusion’ of some special status. Even authors arguing for the importance of integrity in the public sector do state that public functionaries are no different from other employees/citizens, only the employer - government - is regarded special (cf.. Niessen, 2003). To argue for special obligations, duties, and rights for people working as public functionaries is limited to professional qualifications, and should be a matter of ‘contracts’ and ‘codes’, other arguments are quickly identified as emotional or ideological. The rejection of any special status is fed by two related or mutually supportive ideas: from a management perspective and its contemporary variants of ‘New Public Management’, as well as,

³ “De waarde die ambtenaren hechten aan hun speciale status (trouw, dienstbaarheid aan de publieke zaak, integriteit, etc.) is een klein offer dat gemaakt moet worden.”

from a political and/or opportunistic inspired mix of arguments in favor of ‘small government’, ‘anti-state’, low taxes, and the like. Some of these arguments are very strong indeed.

The Dutch case

In the Netherlands there has been a debate going on since the early 1990’s on changing the status of civil servant, i.e. the labor relationship traditionally differs from the private sector, such as appointment not being a mutual contractual affair, limits on some civic liberties and on employee representation, strike rights, as well as the government not being obliged to get dismissal approved (as is the case in the private sector), and having a special administrative court and jurisdiction. The differences have diminished over the years, thus the limits of strike rights (which had already earlier been granted), have been delineaeted by the courts over the years, and employee representation and influence on policies (with possible consequences for personnel) has been formally made identical to the private sector, but in practice quickly limits had to be (re)installed,⁴ clearly indicating that civil servants could not be granted all democratic and legal liberties available to other employees. The most striking development, entirely at odds with these developments is that an addition was made to the civil servants law implying that starting March 2006 every civil servant in the Netherlands has to take an oath of office. Leaving aside that this obligation actually existed since one of the earliest constitutions of 1815 and can be traced to 1656, this reaffirming seems entirely at odds with the attempts to abolish any distinction between civil servants and citizens. It signals that public functionaries are expected to let public interests prevail over private concerns. What is more, a high demand for ‘(public) integrity’ is made, that appears of unknown magnitude compared to the private sector:⁵ what firm would require an oath of loyalty to its very ‘constitution’ or to the interest of its shareholders? It seems to me, we would probably consider such an oath immoral.⁶

A value univers

Let us take a brief look at values that apply to public functionaries in general and civil servants in particular. This may help us assess whether or not we can and need to distinguish between ‘ordinary’ or private employee and public functionary.

It may not seem a promising beginning by pointing out that the provision of commodities, services, or broadly speaking, of public values is not limited to the public sector or the government apparatus. That something is regarded a public value, doesn’t imply a statement who is to provide for it (cf. Bozeman, 2007: 17). Bozeman’s Public Value Perspective takes as its starting point that everything within the state is relevant, not just the specific government and (its) administration. This could easily be interpreted as resulting in universal values for employees. Public administration in the broad sense concerns the construction and maintenance of what is ‘public’ and ‘private’ as well, including what public goods are to be provided for

⁴ as almost any politically decided upon policy change may have impact on working conditions of civil servants and would require their consent otherwise, which clearly is at odds with democracy: it proved that democratic rights of civil servants have to be limited

⁵ Most certainly in general, but even in the case of professions where integrity is important, such as psychotherapists, and layers, integrity primarily seems to concern the relation between professional and a specific patient, not towards citizens in abstracto, i.e. the general interest.

⁶ It should be noticed, however, that oaths of loyalty are know to be used in illegal and criminal syndicates.

'publicly' or collectively, and what 'privately'. Aspects of this encompassing arrangement within a state include ownership (legally public or private). Availability (free, limited), costs (publicly funded, market price), and so on. It implies that 'public values' are the very reason why the state exists. To give a simple example, a private firm may provide a public good, but strictly speaking, that is not the prime reason for its existence: profit is. Even a private philanthropic organization exists for a specific purpose. It is from a 'state perspective' that the provision of public values is arrived at: 'state failure' implies that such provision by either 'market' or 'government' is lacking.⁷

In this sense a public value perspective is a state perspective for it is from this view that we can try and change arrangements and bring to fore the importance of public values. How does the state or rather its actual governmental structure, ensures the best provision of public values and, what kind of 'governance' does this call for? In this perspective public administration is important as it is involved in major part of the provision of public values, as well as, in formulation policies and preparing lawmaking that result in a specific 'governance arrangement' of a society. Public officials have a specific legitimate power to be involved in the preparation and execution of fundamental decisions, even though they are ultimately made by politicians.

If we take a look at the overview of the 'public values universe' presented by Jørgensen and Bozeman (2006), it is striking how many values can be regarded as constituting specific values for public functionaries. They distinguish seven 'constellations' of public values.⁸ The first of these sets of values provide a general 'mind set' or value orientation for the public functionary: the common good, the public interest, altruism, regime stability, will of the people, citizen involvement, and the like provide a prime orientation. The third set, concerns the loyalty and accountability to politics. The fourth set contains some specific double edged demands: compromise, balancing, of opposing values ('openness-secrecy' and 'advocacy-neutrality'). The public administrator has to appraise values in the light of the previous general value orientation. The interorganizational values appear faire universally applicable to working conditions, although in the light of the previous values (!) values such as 'robustness' take precedence over 'innovation' and 'risk taking.' Also the values concerning behavior of public sector-employees seems pretty universally, at the same time it should be noted that fighting corruption and abuse of power is an age old topic for public functionaries.⁹ Finally the last set concerning the

⁷ It should be noted that we are concerned her with 'the idea of the state' (cf. Steinberger: x), not some specific realization of the state by means of a specific constitution and/or government apparatus (i.e. the realization of the state).

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1. the public sector's contribution to society
2. the transformation of interests to decisions
3. the relationship between the public administration and politicians
4. the relationship between public administration and its environment
5. intra-organizational aspects of public administration
6. the behaviour of public-sector employees
7. the relationship between public administration and the citizens

⁹ We may end up in a circle, however, as corruption is generally defined as a misuse of public means for private purposes, and as such not applicable to the private sector (where 'fraud' is the relevant negative value).

values in relations to the citizens, reflects a lot of what we encountered before, in particular equality, fairness, and responsiveness.

In all cases specific public values do imply specific demands for public functionaries, in fact they do result in priorities, i.e. public values take preference above private and individual values. A major difference between general or private employment and public employment resides in the orientation on 'the common good'. The importance of this is that values such as 'fairness' and 'friendliness' get their specific meaning from a public perspective: it is not just a general human value, nor instrumental to making profit, but a moral demand for being employed in the public sector. Fairness, for instance, may take precedence over all other values. Put differently, even though it is clear that most values somehow apply to all kinds of human behavior and social contexts, the public sector requires a different order and priority of values: i.e. the 'public' takes precedence. But there is more.

Legitimacy and Ethical pluralism

The dominant opinion nowadays is that ethics are universal in command. This monistic approach fits the liberal tradition with its focus on individualism, universal rights, and equality. In its most extreme interpretation it is the moral duty of every individual to maximize one's own interest, as this will promote the general interest best. 'New managerialism' seems to fit this tradition, as it also relies on an individualistic image of humanity and in essence tries to reduce all organization and management to a single pattern. However, even within a liberal tradition a common or general interest is presupposed: in the margins of an individualistic (egoistic) universe people have to be prepared to stand for collective values that transcends individual interest. Some kind of regulative collective or public authority seem inevitable, even though it results in internal tension within the liberal perspective (cf. Pesch, 2005).

There is also an even older, tradition that takes not the individual, but the continuity and development of the collective as its starting point. Instead of arguing from the perspective of the individuals to arrive at safety, liberty, and so on, the collective is taken as the focal point and sphere that has to ensure life and liberty for the individuals. Whereas the liberal perspective doesn't really seem to allow for special ethics for a category of individuals, what we might call the 'state tradition' has a long standing argument for specific public ethics. Its origins are in Plato's call for a specific 'guardian class' loyal to the state. Another key author in this tradition is Hegel who regarded a specific 'universal class' entirely devoted to the general interest necessary to preserve the bourgeois state.¹⁰ This is closely linked with Hegel's notion of the state as the highest, encompassing moral sphere ('Sittlichkeit'), also a Greek legacy. The state tradition also has its problems, and the disadvantage of appearing obsolete. However, ideas about the importance of a *civil society* rely on the notion of citizenship, i.e. someone with state rights. Even references to public functionaries as guardians do pop up (cf. Fox & Cochran, 1990).

Most importantly, the liberal and the state tradition differ in the legitimacy public functionaries have: The liberal tradition doesn't really allow for any particular or specific legitimacy for public administration. The authority of public administration entirely relies, directly or – more problematic – indirectly on politics and on the

¹⁰ Hegel wasn't aware that the (national) state could become dominated by a specific class. Realizing this, Marx drew the concluding that the state should disappear all together.

(majority) vote of the individual citizens. Loyalty to the elected representative of the people ('primacy of politics') is central. The state tradition on the other hand, provides public functionaries with their own legitimacy as representatives of the state. Within the state, politics ensures the formulation of 'the ever changing will of the nation', and administration ensures the execution of this will, as well as constitutes the continuity of the state (and thus of society). In this sense both politicians and public administrators represent the general interest within the state (i.e. 'change' and 'continuity'). In this image it is understandable and legitimate that there can be tensions between politics and administration: next to the primacy of politics, stands a second primacy of the states continuity giving legitimacy to administrative autonomy.¹¹

Of course I have stipulated an over simplified picture here. The two traditions are certainly more complex and diverse and also share values, thus it is striking that both the liberal and state tradition call for the civil service to be neutral and objective. What is more, both traditions recognized that this is not attained easily, if at all, as public functionaries do have specific individual and group interest. But a core difference is the appreciation of specific values for the public sector. Thus the state tradition stipulates a fundamental difference between public and private, whilst the liberal tradition rejects or marginalizes such differences, or regards them as gradual, not substantial in nature. This reflects the many attempts to identify different values for the public and private sphere. Empirical research indicates that there are differences, if not substantial, at least in priority and in perception (cf. Van der Wal & De Graaf, 2007).

From an ethical perspective it isn't that self-evident that we can arrive at some overarching value sphere. In fact, it is even unlikely from a more empirical, practical perspective as no religious or philosophical system has succeeded in acquiring universal agreement in the past couple of millennia. Philosophers such as Berlin (1998) and Hampshire (1989), or within the field of public administration, Harmon (1995), explicitly argue we should take ethical dilemma's serious and not discard them as resolvable by finding or posing a superior value. These considerations indicate that we can take serious the possibility of specific values, i.e. a set of values, for public functionaries, as opposed to other social spheres. What is more, if ethical dilemma and value conflicts are important to deal with for public functionaries, and these are not to be resolved from the perspective of a self-interested individual, there seem to be all the more reason to specify what is demanded of a public functionary. This brings us to the unique phenomenon of the oath of office; the 'ultimate' demand.

3. The Origins of the Oath of Office

Obviously, everybody has to behave properly, do his/her job and duties, and have integrity; but do we demand more so of public functionaries? I would argue this is the case, there is a demand 'to behave as a good public functionary or civil servant should', that goes beyond the everyday professional activity and applies 'out of office'. As such, this may not seem so special, for the old 'is there a doctor in the hall' also indicates we expect a doctor to act in his professional capacities at any moment.

¹¹ Not so much a 'raison d'état' as a 'raison d'administration'

Yet, in case of a public function, the demand usually not only concerns professional actions, but also personal actions ‘out of office’, possibly even the behavior of family and friends. Of course there is a strong tendency to create for instance ‘morally en ethnically sterile’ public managers, but this has resulted in counter movements. Menzel (2007) explicitly points in this respect to counter movements against New Public Management. It implies we are concerned with a moral claim on the public functionary; one that does not stop at the office door, and that implies that behavior in conflict with the law may result in being fired. An example of this 24/7 dimension of public office is provided by the Dutch military professional code introduced 2007. In the explanation of the statement ‘I am aware of my responsibilities’ it reads: ‘We do realize that for the rest of society we are 24 hours a day and 7 days a week military functionaries.¹² The ‘for the rest of society’ stresses that we are not dealing with formal-legal demands being made here, but with the perception of society of public functionaries as such, even in their spare time. Morality is more than legality, and includes the judgment of others of one’s behavior. We expect a public functionary not only to act professional, but it has an impact on his/her lifestyle (up to some extend). It is important to note, that this includes a restriction on civil rights, such as political activity, striking, and the like. The special nature of public office is perhaps best captured by the oath of office. It indicates that public office traditionally is placed in a moral, even religious, context. As indicated in the introduction, it is remarkable that in a time of so called ‘normalisation’ of employment relations an oath of office is even reaffirmed by law in the Netherlands. Taking an oath is a relatively rare requirement in modern society, usually limited to the courts and to the acceptance of a public function (be it as representative, executive or civil servant). An oath of office doesn’t fit private work conditions. Why then is the oath of office being used in the first place?

A brief history

The origins of the oath of office are in prehistory.¹³ They predate contract and replaced the use of ‘hostages’ in interactions between groups. The prime function is to provide security or trust: by invoking the gods as witnesses and avengers, oaths provide the much needed guarantee that the truth is spoken and a promise will be met. Oaths were a core social phenomenon for the Greeks, in fact oaths were regarded the foundation of democracy. Nevertheless, already in classic times the oath is partly replaced by contract, and, for instance in the context of the courts, an oath no longer was excepted as the truth, i.e. as constituting the verdict. Despite a recurring warning

¹² Gedragscode Defensie, *Defensie Krant*, 5 april 2007, nummer 14, p. 5. In ditzelfde nummer wordt op pagina 1 de gedragscode formeel als ‘dagorde CDS’ bekendgemaakt.

¹³ The main sources for the following account are:

Bauer, B. (1884). *Der Eid. Eine Studie*. Heidelberg: Carl Winter’s Universitätsbuchhandlung.

Ernste, G.W. (1895). *Eed of verklaring*. Amsterdam: H. Eisendrath

Friesenhahn, E. (1928/1979). *Der politische Eid*. Darmstadt: Wissenschaftliche Buchgesellschaft.

Hirzel, R. (1902). *Der Eid. Ein Beitrag zu seiner Geschichte*. Leipzig: Hirzel.

Kolmer, L. (1989). *Der promissorische Eid im Mittelalter*. Regensburger Historische Forschungen 12, Regensburg: Kallmünz.

Plescia, J. (1970). *The Oath and Perjury in Ancient Greece*. Tallahassee: Florida State University Press.

Prodi, P. (Ed.) (1993). *Glaube und Eid. Treueformeln, Galubensbekenntnisse und Sozialdisziplinierung zwischen Mittelalter und Neuzeit*. München: Oldenbough.

Tyler, J.E. (1834). *Oaths; their origins, nature, and history*. London: J.W.Parker

Van den Doel, H.W. (1989). Geschiedenis van de ambtseed, *Bestuur*, 8(7), 220-22

Van Leeuwen, E.H. (1881). *De eed en de moderne staat: eene studie*. Utrecht: C.H.E. Breijer

that people may not stick to their oaths,¹⁴ it can hardly be underestimated how important the oath was for our forefathers well into the nineteenth century. Interestingly, its use became more and more limited to public settings and functions, where in the private sphere legal contract became regarded adequate warranty. What stayed were oaths in courts and oaths of office. The oath of office was from early on demanded of (political) leaders and judges in particular. In the high middle ages they were widely used. Thus in the towns, everyone that did something important for the public - i.e. was involved in providing public value - had to take an oath: butchers, gate keepers, doctors, apothecaries, as well as brothel keepers (Kolmer, 1989: 118). The prime aspect of the political oath is that it demands loyalty (to the monarch, the lord of the town, and /or the town council). Over time next to the oath of loyalty a special oath of office developed concerning the duties of a member of a collegium (Friesenhahn, 1928/1979: 64).¹⁵ Both political and administrative functionaries were in fact required to take a double oath: an oath of purification, implying that one swears to have received the appointment in a fair manner, and an oath as to promise to carry out the office properly. This double oath, an oath of purity preceding an oath of loyalty (and more) as the actual oath of office, is still kept in tact in contemporary oaths.¹⁶

Originally a 'true' oath was required, i.e. a solemn promise involving a reference to a transcendental being (God or gods) as witness and avenger. Apart from a rare exception on religious grounds (for instance for Mennonites and Quakers), it is in the course of the 19th and early 20th century that the choice between oath and solemn affirmation becomes standard in the Western world. For the purpose of this paper I will not reflect on the differences and simply refer to the oath of office. The oath of office was important, and remained in general use. How to explain this? Why did the very ancient, highly symbolic, and usually still regarded as very personal, conscience binding ritual perpetuate for public office?

Outline of a theory

The recurring argument for the oath of office boils down to the following: a public function brings with it special responsibilities that warrant to ask the highest security and commitment a person can give. The reason being that a public office has a very special status, unlike any other office in society: someone is allowed to get access to (a part of) the largest powers in society consisting in public authority and the largest economic means in society, i.e. the state powers. These vast powers can be used or abused for one's personal interest¹⁷, rather than for the general interest. The oath of office is a extraordinary, solemn occasion, with obvious moral and/or religious connotations to ensure a person according to honor and conscious perform her/his tasks and use this granted (piece of) public authority. To state it even a bit more dramatic - in line with the state tradition -, someone is allowed to enter the encompassing moral sphere of the state that allows one to authoritatively decide on the life of other citizens, not being one's own kin. This can range from life and death, to parking tickets and building permits. The authoritative part of this state power

¹⁴ Plato, Cicero...

¹⁵ It should be noted that the collegium was the main kind of organization, certainly for the more executive functions, before debates on the 'bureau-system' as an alternative rose late 18th century.

¹⁶ Although they are often conjoined, for instance the Dutch police still has to formally take two oath, the oath of purification being a prerequisite for the oath of office.

¹⁷ I.e. for purely personal gain, for family, friends, one's group and/or class.

implies also that there is no choice on the part of the citizens, i.e. no alternative (apart from the courts, and sometimes emigration¹⁸), as state authority is a monopoly. Leaving aside specific religious and morally existential connotations that are to be regarded inherent in an oath or solemn promise, the oath of office constitutes a double link: a social and moral bond between oath taker and fellow citizens, as well as, aligning the most personal - an individual's consciousness - with the most public - the common good (or the constitution as the procedural and structural expressing of it) - in the use of state authority.

The rudimentary theory of the oath of office implied here is that the oath of office does link conscience and state, and implies that a person is prepared to give the best and highest moral commitment to act in the public interest. In a sense the public realm is thus established: the common wealth and the public good (in the function of the monarch, the president, or the constitution) are accepted as transcending the private (individual, group, class) good and interests. Even politicians, who are elected to represent the interest of their voters, are expected to transcend the specific interest of their supporters for the good of 'the people', 'the common wealth', or 'the state'.¹⁹

Unpersonal loyalty

Central to an oath of office is the loyalty of a person as a functionary to 'the common good.' In one way or another, loyalty figures in oaths of office, for instance in terms of loyalty to a constitution, and/or to the political representatives. Just as much as we expect every citizen to have integrity and to carry out his or her agreed upon function well, loyalty is also expected of everyone somehow: loyalty to one's firm, boss, fellow workers, and so on. Loyalty is in this sense an aspect of trust as the cement (or prerequisite) in social relations. But there is more to what is meant by loyalty of public functionaries. At first glance, we are simply dealing with loyalty to 'politics', i.e. to what is politically decided upon according to the political regime one subscribes to. However, we are not simply dealing with loyalty between a person and another person, but with a more abstract loyalty, as captured in the oath: loyalty to a constitution a state, the public interest. Loyalty of functionaries is not a simple matter of obedience; it is not a matter of loyalty to a specific person/individual, but to a functionary or rather, to 'the hierarchy' and the constitution. The nucleus of loyalty of a functionary is that it is a loyalty to the abstract 'public interest'. A civil servant can therefore never hide behind an order being given, for there is always a personal responsibility towards the constitution/the state.²⁰ It is not at all clear what loyalty means in a specific situation. As is the case with integrity, a person can be confronted with different sets of values. In particular conflicts between one's personal values and what one is expected to do as a public functionary may prove difficult. Carrying out one's duties loyally, implies not doing something with aversion, but doing it with full conviction and dedication even if one would disagree as a citizen.

¹⁸ In case of a refugee, or someone who naturalized, in international law the state where someone resided longest has in principle the prior claim on a person (outside the territory of either state).

¹⁹ Such an acceptance of a modern notion of 'the public' in a democratic setting is visible in the early example of the oath required by the Constitution of Pennsylvania of 1776: "that as a member of this assembly I will not propose or assent to any bill, vote or resolution which shall appear to me injurious to the people; nor do or consent to any act or thing whatever, that shall have a tendency to lessen or abridge their rights and privileges, as declared in the constitution of this state; but will in all things conduct myself as a faithful honest representative and guardian of the people, according to the best of my judgment and abilities." (Friesenhahn, 1928/1979: 66).

²⁰ In Germany this is even explicit in the law.

Here oath and loyalty touch upon what Max Weber called the *honor* of the function: to do as the hierarchical superior demands, to execute laws and regulations, and to suspend one's own norms and values. Based on professional knowledge, one is obliged to point out if a demand or policy is ill advised, yet, when the (political) superior sticks to it, it is the functionaries honor to act accordingly. This doesn't imply a slavish execution, for the loyalty of the functionary is to the 'general interest' or 'the state' and thus can be at odds with a specific demands from a superior. Execution is not a personal favour, but a act in line with the constitution. Max Weber's *Sine ira ac studio* can be interpreted as the moral obligation following from accepting a public function: it is *not* an amoral stance as objectivity and neutrality are moral values, not empirical observations. It is a big thing to ask someone to be prepared to put aside one's personal preferences, and interest, even emotions and morals and make them secondary to the demands of the function.

This is not to deny personal responsibility at all, someone may be in a position where personal moral responsibility has to prevail: in that case voice (whistle-blowing) and 'exit' may be required. This is the counterpart of the protection against political discharge of public functionaries: the duty to perform once function and the responsibility to take the consequences if one cannot or no longer accept the duties required by the function. In the last instance, one concludes not to be able to let the function prevail over personal values. Morally, this is a dilemma, for integrity is at stake: someone can be blamed or praised for staying in office, as well as for abandoning office. Here we are again amidst of problems traditionally linked to the oath of office: an oath has an absolute nature, but what if conditions change, are we still bound by it? In fact, it is this absolute nature of the loyalty implied in an oath why an oath is asked for in the first place, as much as it is a reason for people to objected to it. This issue is, however, not to be resolved here.

4. The oath of office in administrative theory

The presented rudimentary theory of the oath of office may seem farfetched, and probably is not even on the mind of someone performing an oath of office. Yet, - without empirical backing - an oath of office still seems to have a high moral meaning to most people. To start with, perhaps the oath is not so rare in a public setting: It a prerequisite for political representatives, chiefs executive, and high state employees all over the globe, as well as for judges, military, police officers, as well as for witnesses and experts in the courts. Oaths aren't just symbolic either, i.e. a sworn in police officer's or civil servants statement does count as evidence in the courts, more so than that of others. Only recently in the Netherlands a couple of suspects of violant robbery and even rape had to be released when it turned out a judge involved in warranting their arrest had not yet taken the oath.²¹

The oath is however, rarely discussed in public administration. One of the few in recent times is Menzel: "The oath [of office] guides autonomy and deters public managers from becoming maximizing bureaucrats" (2007: 42). Despite his attention of the oath of office, it clearly lost the deep significance the oath used to have and is more or less reduced to a 'tool' in the set of tools proposed for 'integrity management' in a public organization. Menzel follows closely Rohr's argument of

²¹ The issue was resolved in a few weeks: another court overruled the release as three judges were involved in the original ruling, and just one of them had not taken the oath....

over two decades ago, where the oath acquires a much deeper meaning. Let us therefore take a closer look at Rohr's stance, as he is the most important author on this issue in the field of public administration.

In Rohr's *To run a constitution* (1986) the oath acquires a central role for arguing the special nature of administrative ethics, i.e. of the demands for public functionaries or bureaucrats. Instead of the more abstract or ideal 'state' or 'general interest' and 'common good' with all their difficulties, Rohr sticks to 'The Constitution' (of the USA) as the point of reference – the actual 'state' or 'public order' -, as this is what the oath of office is sworn to in the USA: "The Constitution is the symbol of our common life as a people who are organized for action in history" (1986: 192). Rohr links professionalism and oath: for the public administrator the oath to the constitution implies not simply obedience, but also "an initiation into a community of disciplined discourse, aimed at discovering, renewing, adapting, and applying the fundamental principles that support our public order"(Rohr, 1986: 192). The oath of office has a dual, legitimating function, according to Rohr: it is a guiding principle, as well as justifying autonomy: "The role of the Public Administration is to fulfill the objective of the oath of office: to uphold the Constitution of the United States. This means that administrators should use their discretionary power in order to maintain the constitutional balance of powers in support of individual rights"(Rohr, 1986: 181).

Professionalism implies (some) autonomy, and the oath "legitimizes some kind of administrative independence" (Rohr, 1986: 187). Of course professional autonomy is also wanted in the private sector. But the difference is that, in the public sector, we are dealing with a special responsibilities in opposition to the demand of 'political subordination.' This autonomy relies on an ethical commitment to the public interest, and the nature of the oath is that it is "a profound moral commitment" (Rohr, 1986: ix) legitimating autonomy despite political 'obedience'. The oath reflects the special status of the public service and ensures (or symbolizes) the public functionaries trustworthiness. In secular terms: "Many of us would find the violation of an oath morally offensive, because in terms of a secular ethics we believe that oaths bind in conscience." (Rohr, 1986: 189). It is not required outside the sphere of government in this sense. Thus Rohr notes that, although for instance the influential Brownlow Report relied on the *structure* of the private sector as a model of government: "it wisely abandons this model when it discusses the character of those who make their careers in government." (Rohr, 1986: 151). The oath of office, thus does not simply imply obedience, but provides room for independence, so much needed in the public setting precisely because the public administrators in a sense are as much the guardians of the public interest, with a special responsibility as politicians are: "Oaths, precisely because they are of moral significance, cannot be reduced to an abdication of one's will and judgment in favor of another human being." (Rohr, 1986: 189).

This brings us to the second aspect Rohr links to the oath: loyalty or commitment to act in a specific way: "The moral character of the oath confers *professional* independence, not personal isolation. Ordinarily oaths are social acts. They are recited publicly, and they bring the juror into some kind of relationship with others." (Rohr, 1986: 191). For the public administrator the oath to the constitution implies also "an initiation into a community of disciplined discourse, aimed at discovering, renewing, adapting, and applying the fundamental principles that support our public order"(Rohr, 1986: 192).

The arguments Rohr provides link well with established insights into the importance of administrative discretion. We want and need somehow to check

administrative judgment. This is all the more important in an age of ‘contracting out’: what can be implemented and executed fairly instrumental has been given out of hands of civil servants, what remains is all the more sensitive and important, and thus open to ‘misuse’: the appraisal of information, both in order to ‘control’ implementation, as well as in the preparation of new laws and policies. In these judgments a public functionary, having integrity and honor, has to transcend his own moral opinions. Society has specific expectations of those working as public functionary, bestowed with public authority and paid out of public funds. Where in many cases the ‘ordinary’ private employee can take his self interest as a starting point, the public functionary has to put public interests first.

The previous consideration may seem at odds with the idea that we nowadays prefers values such as flexible, efficient, enterprising, and compassionate, rather than neutral and loyal for public functionaries. But, the existence of double binds, is very much part of being a public functionary. Citizens demands opposing qualities, just as much as civil servants are reviled, envied, and regarded heroes and guardians. The public functionary has to be compassionate, friendly, open to the citizens troubles and interest, as well as treat every body equal and not let his personal opinion intervene with legal rights; they have to be entrepreneurial, but should not risk public money; they have to be efficient, effective, but also promote citizens involvement and uphold the laws and regulations.

The demands for public functions are at odds with values prevailing in other social contexts. Jacobs (1992) even argues ‘deceive for the sake of the task’ as a public value. This brings us to other troublesome issues such as the moral problems of ‘dirty hands’ and of ‘raison d’état’ (cf . Geuss, 2001). Integrity of public functionaries in these contexts doesn’t concern integrity in the sense of ‘personal innocence’: Walzer (1973) argues that public functionaries are confronted with serious moral dilemma’s as action has to be taken (or not) at the expense of some individuals, groups and/or fundamental moral values. This is in line with the ideas of, for insatnce, the philosopher Hampshire (1989) and the theologian Holloway (1999). Both stress that moral dilemma’s demands that public functionaries, in particular those at the top, have to transcend the diverging moral demands around in society, not in the last palce, their own moral velaues, will a peaceful society be possible.

There is no need to agree with all the claims made here in order to acknowledge that there are specific demands for the public sector. Of course all kind of societal spheres have specific moral demands (doctors, psychologist, teachers), but more than other areas there is a 24/7 scrutiny of behavior and even some civil rights have to be sacrificed to the function: Paradoxically certain limitations of civil rights of the public functionary are in the interest of the protection of keeping up the state or the constitution and thus civil rights. This is what is captured in the oath of office.

5. A Demand for All Seasons?

“Some scholars believe that oaths have lost much of their value in the modern age.” (Menzel (2007: 70)

Public values are at the hart of what makes humans human. They are in this sense perhaps primarily ‘general’ values that apply to anything human: life, water, food, safety, up to self attainment (if we follow Maslov’s famous ordering). At the bottom,

we are dealing with the physical survival, rising up to what makes us humans ‘truly’ human: cultured, wisdom, creative, destructive, religious, superstitious, and so on. Although public values are not simply governmental as Jørgensen and Bozeman (2006: 373) point out, in the sense that by no means the public sector has to provide for all possible public values. Yet, this is not opposed to the observation that it is (at least primarily) the public sphere where is decided what is regarded a public value, and how and by whom it should be provided for. All more complex society have established specific orders, i.e. a state with a constitution, that provides arrangements a to the nature and scope of government and of governance in general. This constitutes a practical outline of the contents of the public interest or common good. We do have, as Jørgensen and Bozeman state, ‘characteristic expectations’: “The public sector must not serve special interests, it must serve society as a whole; the public sector is there for everybody, it is not the extended arm of a particular class or group.” (2006: 361). In other words, we have institutionalized the common good and the public interest in Western culture: it is at the very hart of our image of humanity and of our models of society as expressed in centuries of debate on democracy, separation of powers, and the like. In this picture fits also that we have special demands for those working as public functionaries. To consider public functionaries ‘normal’ employees reflects a stance that is just as ideological as a state or public interest perspective. Even the term ‘normal’ reflects this. It is in line with the individualistic stance so much debated by Bozeman and others. The liberal, individualistic tradition cannot be declared sacrosanct without annihilating essential demands of a well functioning public sector. Even hardcore economists such as Von Mises acknowledged the importance and necessity of a well functioning public sector and this is a messages repeated over the years (cf Light, 2008). The other way around, we cannot simply fall back on an unproblematic state perspective (let alone on the idea of a ‘special universal class’), for it has problematic aspects, not in the least the very notion of a public interest.

There is also a difference between the value attached to working in the public and the private sector. Sometimes their values are at odds with one another, as are the expectations of society. What is proper behavior in the one setting, may be absolutely incorrect in the other. It can result in different priorities being attached to general values such as technical efficiency, and it may even imply that an entirely different meaning has to be given to some seemingly universal values, such as loyalty and responsibility.

Another issue concerns the possible tension between personal, organizational, and public demands. From the perspective of the organization ‘integrity’ of functionaries concerns the consistent and coherent behavior in line with the organizations policies: it is the well known issue (cf. Simon, 1976) of aligning individuals behavior and organizational values and norms. From the perspective of the individual functionary, integrity concern ‘wholeness’ of the personal life and identity. Moral problems in this sense are often the result of conflicting demands resulting form the different roles and thus value spheres an individual has to deal with in his life (family, work, profession, party, and so on). So far, no differences seem to exist between public and private employment. However, in the public sector both individual and organization have to deal with integrity in relation to ‘the common good’, ‘the state,’ or whatever denotes the encompassing public sphere. This may imply tensions between organizational values and these more general public values, which both management, and individual functionaries have to use for consideration, not as an ‘after thought’ but as inherent in judgment and legitimacy of public action.

This encompassing public framework lies outside the specific public organization and accounts for the importance, as well as problems of whistleblowers in the public sector. The organizations values are not always the most relevant: a public functionary always has the wider public sphere to include in his value orientation. This is at the hart of Rohr's call to take the constitution as point of reference. In is in line with the previous remarks that loyalty is not personal, but abstract, i.e. to the public cause. This is not as an instrumental or just a legal matter, but very much moral, as is captured by the oath of office.

The need to establish such a moral commitment to the public good and/or the constitution is all the more important if it is realized that public functionaries and civil servants are not just executers or implementers, but in a time of neo-liberal politics and management, they are more and more involved in policy formulation and preparation. Not only is this even more difficult to 'control', but kind of judgments involved are concerning the prime political process of policy and law making. We are dealing with the administrators 'advice and appraisal: "Administrative appraisal is a more complex and elusive process than execution." (Self, 1982: 192).

The oath of office is a key symbol for the special demands made on the public functionary, because of their involvement in state decisions: the oath symbolizes and ensures the need to trust public functionaries because, more than others citizens put themselves in a position of reliance on their actions being in the public interest. An issue that cannot be resolved in the context of this paper is to what extend an oath of office is archaic, or a valuable personal and social act. It is obvious that despite possible reservations the oath is still in use, and that people have always been aware of the dangers of perjury and opportunism. Therefore 'contractual arrangements' can be regarded the everyday replacements of oaths. This became possible because legal arrangements and continuity of social order was achieved, ensuring a secular, i.e. state, witness and avenger over the promises made. The oath of office remained, and interestingly applies precisely to the sphere that has to ensure the very possibility of contractual relations: executive, judiciary, and their administrators. What is more, the oath is used where legal agreement is not regarded adequate as such: vows supplements a marriage contract²², securing the truthfulness of a witness in court²³, and they are symbolic for stressing that a public function requires a special moral commitment.

The oath of office stresses that a contractual, legal approach to public office isn't adequate. As Menzel states (following Rohr): "The point here is that oaths provide officials with the legitimacy and empowerment to carry out their duties in a transcendent manner that is both ethically and morally sound. This approach contrasts significantly with the 'follow the rule' approach that many codes become when transformed into lawlike documents" (Menzel (2007) 72),

Of course one can doubt the status of an oath, i.e. a commitment to try and be loyal to the public cause, to act committed, yet neutral, and so on. However, there is evidence of the very real existence of a specific public service motivation (cf. Bozeman, 2007: 182) indicating that this is not just 'mythical.' Perhaps the biggest thread to the public interest- whatever that is - is a public manager without public ethos. An oath can be regarded as simply a social construct. But that doesn't imply

²² Although hardly a proof for the power of an oath in modern society.

²³ Even though perjury is as such part of the legal system and a punishable crime.

social constructs are not at the heart of social reality. The Thomas theorem ('What men defines as real, is real in its consequences'²⁴) still holds.

But we may object that *even* if this rather philosophical stance sounds interesting, modern employees don't want to be bothered with ethical responsibilities, they 'long' to be utility maximizers, searching for their profit, and not being hampered in doing so by archaic – religious, perhaps even magically tinted – rituals. Well, that's a problem, and one that is fed by stressing that an employee is an employee wherever he or she is working. If we drop the old idea of differences between public and private, what are the consequences? Perhaps, more efficiency, less taxes, and more corruption, less freedom?

To conclude, the special status of public functionaries does not reside in their physical actions as such, but in the moral meaning they have that derives the public authority on which they rely. Some actions are therefore even only allowed by public functionaries, such as the infringement on civil rights of citizens. There are therefore specific expectations of public functionaries. The oath of office is the core symbol for this, expressing we expect a lot; more than is captured in an ordinary contract relation. Being a symbol doesn't imply it will have a direct, reliable, 'measurable' and/or enduring effect on the behavior of individuals. This again is not a new insight, for already in 1817 Jeremy Bentham argued "the utter inefficiency of this instrument"(p.11). Nevertheless, symbols *are* important as they do shape our perceptions and provide legitimation. However, it should be noted that symbols can become meaningless if they are not institutionally embedded and reaffirmed (then they really become just symbolic in the everyday sense). Treating public servants and public organizations as identical to private employees and organizations, will probably result in them accepting similar values, including private profit seeking, which may in fact be a big stimulus for the ultimate misuse of office: corruption. The ideology of neo-liberalism, in particular uniformity of the market is a threat to the very existence of society for a free market and democracy can only exist within the context of a well ordered state. All the more reason to be careful with the status of the public service.

²⁴ "If men defines situations as real, they are real in their consequences" (Thomas, 1951: 81). According to me one of the most important insights in the social sciences/studies.

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