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ETHICS IN PUBLIC LIFE

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Several years ago a former federal politician of some fame wrote an autobiography entitled "*Whatever It Takes*". It is the sort of book which I read, if at all, only after it has been remaindered, but this time curiosity got the better of me. The title of the book is apt because in it former Senator Graham Richardson tells the story of a career dedicated to the acquisition and retention of political power at all costs. Implicit throughout is the notion that ethics have no place in public life.

This is a notion which I challenge tonight. I am honoured to do so in a Lecture which supports the preservation of the Aquinas Collection assembled by Bishop Quinn and by a distinguished member of my profession, John P. Kelly. I also welcome the opportunity to discuss this theme here at a University dedicated to the affirmation of spiritual values in the world of scholarship and in the community, and at a time when there is growing disenchantment among many people about the ways and wiles of those who make our laws and spend our money.

My particular interest in the topic, ethics in public life, was born of painful experience. It goes back to my term as Chairman of the Criminal Justice Commission when, as I once put it, I lived in that dangerous shadowland between law and politics. There was ample opportunity then to observe the behaviour of politicians and others in the public sector. It was quite often an unedifying spectacle, although the personal integrity and courage of some were an inspiration. Like Francis Thompson's "*Hound of Heaven*": "Up vistaed hopes I sped and shot precipitated adown titanic glooms . . .".

When my term of office came to an end last year the hopes were competing stoutly with the glooms, and in that confused but fundamentally optimistic state I still remain. Sir Humphrey Appleby once described his Minister's assertion of a moral dimension in politics as hopelessly self-indulgent, but surely in George Street if not in Whitehall we should argue otherwise. The task is complex and difficult but it is, I

think, possible to foster and to insist upon ethical standards in public life. How can this be done?

In the first place it is necessary to identify the sort of conduct which causes public disgust or cynicism. It is not so much a matter of breaking the law, for example by taking bribes or misappropriating public funds, although obviously that happens sometimes. Rather it is the pervasive influence of a culture which encourages the pernicious notion that public office is a prize rather than a responsibility and which seems to reward deceit and selfishness. This may appear to be a harsh judgement but I suggest that a reading of Hansard amply demonstrates it. Consider how often in the proceedings of Parliament you read personal abuse directed at members of opposing parties, attacks upon citizens outside Parliament who have no effective means of redress, and statements made which are later shown to be lies or, at best, half truths, or strategic misrepresentations or, to use Churchill's euphemism, "terminological inexactitudes". In the United Kingdom Sir Richard Scott's recent Report on the Arms to Iraq Affair provides many examples. That is the sorry story of how over a period of years Ministers and civil servants had colluded in the export to Iraq of machine tools and other equipment then used in the production of arms. This was done in contravention of export guidelines - a fact concealed from Parliament and the public in various ways, especially by a series of misleading responses to questions in the House of Commons. Consider also in our country the promises made by politicians and later casually broken - there have been many of them at both state and federal level in recent years - and the accounts of dubious transactions in which those in power secure favours for themselves or family or friends despite an appearance of a conflict of interest, or conspicuously consume public funds for purposes which are only marginally public or parliamentary.

My purpose in saying this is not to vilify those in public office. That would not be fair because our elected representatives are in general no worse than the rest of us. Indeed, on occasions some of them behave with exemplary courage when, for instance, they follow a course of action which they are convinced serves the public interest despite the abuse and threats of pressure groups. Such conduct deserves high praise. However, my point is that the atmosphere in which people in public life do their work is often inimical to the maintenance of high ethical standards. What then can be done to improve the situation? This is a question which has received much attention in recent times and it is useful to review some of the reforms implemented or proposed.

In our own State there are three recent enactments which have the potential to modify the behaviour of public officers for the better. The first in point of time is the *Criminal Justice Act* which was enacted in 1989. This gave effect to many recommendations of the Fitzgerald Report. In particular, it established the Criminal Justice Commission and invested that body with powers to investigate what is called official misconduct. This means conduct by a public official that involves carrying out the duties or exercising the powers of office in a way that is dishonest or lacks impartiality or involves a breach of trust or breach of confidentiality. The conduct must also be such as to amount to a criminal offence or, alternatively, to a breach of discipline which provides reasonable grounds for dismissal. Obviously this definition comprehends many diverse forms of corruption and abuse of public office. Throughout its short and turbulent history the Commission has attracted a great deal of controversy, but I think there is general recognition in the community that at least in performing the function of investigating official misconduct it has done useful work. For instance, despite some much publicised lapses the Police Service is undoubtedly better now than it was in pre-Fitzgerald Inquiry days. Not merely because corrupt officers have been identified and punished but because corruption is no longer generally tolerated. And the Service is still ably and honourably led by

Commissioner O'Sullivan despite all the recent attempts to subvert him. Once it was anathema for a police officer to report the misconduct of colleagues. Now most officers realise that this should be done for the good of the Service. Furthermore, the very existence of the CJC is a deterrent to those who might otherwise engage in corrupt conduct.

However, one of the weaknesses of the *Criminal Justice Act* is that it does not give the Commission power to investigate the most influential group of public officers, the Parliamentarians, unless there is evidence that they have committed criminal offences. This is because, unlike public servants, they are not bound by any disciplinary code, breach of which might lead to dismissal. Of course, the Legislative Assembly has its Privileges Committee which has the power to investigate alleged breaches of privilege by Parliamentarians and others and to recommend to Parliament the punishment it should impose, including, in the case of Parliamentarians, the ultimate penalty of dismissal. But all this is entirely theoretical. In practice Parliament never imposes any such penalty. The result is that public servants who leak information or do favours for friends or otherwise abuse their office run the risk of investigation by the Criminal Justice Commission, and ultimate dismissal, while Members of Parliament are free to do much the same thing with impunity. No doubt there is a constitutional argument that Parliamentarians are indeed in a special category and that subject to the rule of law they should be amenable only to the jurisdiction of Parliament itself. Nevertheless there is an apparent anomaly. Surely Parliament should show that it takes misconduct seriously by drafting its own modern, accessible code of conduct and prescribing significant penalties for contravention. It is grotesque that the conduct of a Queensland Parliamentarian should be assessed by reference to the arcane learning to be found only in editions of Erskine May's treatise on the practice of the House of Commons.

The second relevant Queensland enactment is the *Public Sector Ethics Act* 1994. This declares certain "ethics principles" as they are called to be fundamental to good public administration. They are specified as respect for the law and the system of government, respect for persons, integrity, diligence, economy and efficiency. These principles, according to the Act, are to be recognised by the imposition of "ethics obligations" on public officials, and those obligations are themselves to provide the basis for codes of conduct. It is the responsibility of chief executive officer of the relevant public sector entity to prepare a code of conduct for that entity. Contravention of the code of conduct may be dealt with as a breach of discipline. The chief executive officer is also required to ensure that officers under his or her authority are given "appropriate education and training about public sector ethics". Some of the ground covered by this Act had already been covered by the *Criminal Justice Act* because the definition of official misconduct extends to the more serious disciplinary breaches, i.e. those which warrant dismissal. However, the *Public Sector Ethics Act* gives explicit recognition to various ethical obligations, breach of which may warrant some other less drastic sanction. That is a useful reform. Furthermore, the reference to ethics training, although vague, is welcome. Of course, it is uncertain what is "appropriate education and training" in this context. I think people learn much more from the good example of others than from formal instruction, but placing ethics on the public service curriculum does at least emphasise the importance of the subject and encourages public officials to consider and reflect about the ethical dimensions of policy decision and execution. The real weakness of this Act is that, like the *Criminal Justice Act* in relation to disciplinary matters, it does not apply to politicians.

Perhaps that deficiency may be repaired by a more recent enactment, the *Parliamentary Committees Act* 1995. This provides, among other things, for the establishment of the Members' Ethics and Parliamentary Privileges Committee which is responsible for recommending to the Legislative Assembly a code of

conduct for members and a procedure for dealing with alleged breaches of that code. It is also responsible for considering complaints and recommending action by the Assembly. The Committee has recently published an Issues Paper inviting submissions from the public about the ways it should do its work. It remains to be seen whether the deliberations of the Committee will lead to any useful results.

At the Commonwealth level also there is increasing official interest in ethics in the public sector. Several months ago the Prime Minister launched a report entitled "Ethical Standards and Values in the Australian Public Service". This had been prepared by the Management Advisory Board, a body which advises the Commonwealth Government on the management of the federal bureaucracy. The report recommends an approach rather different from the Queensland one. Instead of a rule-based regime for public service conduct it suggests that more be done to foster an ethical corporate culture. How this is to be done is not made clear, but it proposes the development of case studies of the sort of ethical problems which actually confront public servants in doing their jobs.

In other Australian States formal mechanisms have been established to improve standards in public life. In New South Wales, for instance, the Independent Commission Against Corruption has been very active in promoting codes of conduct and ethics training. Unfortunately it is all too apparent from the revelations of the Wood Royal Commission that the programme has had little impact on the Police Service in that State. In Western Australia, as a result of the W.A. Inc. Royal Commission, there is now an agency which monitors public sector ethics on a permanent basis. Another somewhat more powerful investigative body is soon to replace it. This follows the publication of a report of a Select Committee of the W.A. Legislative Council which identified serious and systemic corruption in some parts of the Police Service. The other States have adopted or are moving towards the adoption of codes of conduct. Throughout Australia there are also

several other mechanisms to enhance public accountability such as registers of financial interests and freedom of information legislation. These reforms do no harm and may well do some good, but experience has shown that they are not difficult to circumvent. I suspect that the only really effective system would be a regulatory regime which includes two components - firstly, an independent agency like the CJC with wide-ranging powers of investigation and ultimately the power to expose transgressors to the prospect of significant punishment, and secondly, an effective agency inside or outside Parliament to discipline the politicians. The agency must be permanent and it must be guaranteed the resources to do its work.

It is, I think, naive to assume that the promulgation of voluntary codes of conduct will suffice. Self-regulation in the public sector, as in the market place, creates an environment in which the amoral and the predatory will continue to flourish. One does not have to believe in the fallen nature of man - or woman to conclude that while exhortations to be good may be helpful, much more so is a regime in which the temptation to be bad may be more readily resisted. This is when there is a genuine likelihood of being found out and punished.

It is interesting to note that the second proposal (an effective agency to discipline politicians) has also been considered in the Mother of Parliaments at Westminster. A Committee chaired by a senior judge, Lord Nolan, was appointed in 1994 to review and make recommendations for the improvement of standards in public life. A key recommendation was for the appointment of an independent person as Parliamentary Commissioner for Standards empowered to investigate and report on complaints about the conduct of Members of Parliament. The Committee recommended that if the Commissioner decided that there was substance in the complaint he or she should then refer it to a sub-committee of senior members of the Privileges Committee of Parliament for further consideration. Ultimately there would be a report to the Privileges Committee and in serious cases to the House itself for

final adjudication. It is a modest proposal but at least introduces an independent element into Parliament's traditional system of self-regulation.

When Lord Nolan's report was debated in the House of Commons many members railed against it claiming it was an invasion of privacy and an attack on parliamentary sovereignty. However, many others outside Parliament thought otherwise. As was said in an editorial in *The Times*: "Politics has fallen into disrepute, and there can barely be a person outside Parliament who does not believe that more scrutiny and transparency would help to restore confidence in the standards of public life". I think most Australians would share that view.

Undoubtedly one factor which is inimical to the observance of high ethical standards in public life is the existence of a powerful party system which fosters confrontation, insists upon strict party discipline, and discourages the principled exercise of independence of mind. But it is at least a hundred years too late to change that. It was in 1878 in Gilbert and Sullivan's *HMS Pinafore* that Sir Joseph Porter, First Lord of the Admiralty, explained how he had got on in the world by singing the lines:

"I always voted at my party's call
And I never thought of thinking for myself at all."

There are still some members of Parliament like that. However, the present system for all its faults does make for orderly government. Certainly it is preferable to the chaos of shifting coalitions. However, even without radical structural change there remain opportunities for improvement.

The innovations I have mentioned demonstrate that. It is important, however, that public disapproval of abuse of office and lapses from honourable standards of

behaviour be maintained. It is here that the work of the media becomes very important. Lord Nolan acknowledged this in his Report. He wrote:

"While the media's intrusions into personal privacy, and the lives of the relatives of public figures, are much to be regretted, the prospect of full coverage of your actions in the local paper is a strong incentive to good behaviour. As Geoffrey Howe, former British Deputy Prime Minister and Foreign Secretary, told our Inquiry, useful rule of thumb for any politician is this:

"Would you feel happy to see all the relevant facts of any transaction or relationship fully and fairly reported on the front page of your favourite newspaper?"

I suspect that some of the more brazen of our public representatives would not be too worried by this prospect, but others might well be influenced for the better.

The ordinary citizen has an important role as well. There is no point in merely shrugging one's shoulders, referring to the cut and thrust of politics, and saying this is the way it is in what some shallow people call the real world. Every citizen deserves better than that. There is, after all, a higher order of reality in which ethical values do matter. You may remember that in that classic film and instructive moral fable, "High Noon", there is a scene where the old retired sheriff is talking to Gary Cooper who has tried in vain to get the townspeople to help him in the forthcoming battle. The old sheriff says: "People have got to talk themselves into law and order before they do anything about it because maybe deep down they don't care." He was not referring to law and order in the fascist sense favoured by some politicians, but as meaning the rule of law. I suspect the same might be said about the rule of ethics in public life. We don't talk ourselves into it. Surely it is time we did.