

14 A ‘forerunner’ in public service ethics in Europe *A critical evaluation*

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Introduction

In the Netherlands, public discussions on ethics and integrity took a broader direction than in many other countries. Here, the debate focused on holistic discussions about ethics and value-based strategies. One could also say that the Dutch distrust legal or compliance-based approaches. This opens up the horizon for broader discussions. In fact, values, standards, morals, ethics and integrity have been discussed on the political level and in the academic community.

Despite the fact that the Dutch discourse about integrity is less abstract and more political than in other countries, it is still a discussion conducted in niches and amongst elites. Also in the Netherlands, discussions on integrity are rarely linked to power, other politics, justice and organizational issues.

The purpose of this paper is to critically evaluate the role of the Dutch government and Dutch academics in the European debate around ethics and integrity in the last fifteen years, when the subject as such was debated intensively on the EU-agenda.

Comparative ethics in the EU – the role of the Netherlands

Policies in the fight against corruption and supporting public service ethics are not formal competencies of the European Union. However, this lack of formal competencies does not mean that the EU is not active in these fields. For example, the European Union actively monitors the efforts of accession countries in the field of anti-corruption. In fact, intensive discussion on ethics and integrity take place in informal settings: the meetings of the Directors-General of Public Service of the member states of the European Union and the European Commission. These meetings have discussed the issue of ethics and integrity (indirectly or directly) on several occasions within the European Public Administration Network (EUPAN).

The Dutch government played an important role in this context. Initially, under the German EU Presidency, preliminary discussions took place in 1994 on disciplinary rules in the European member states, and the findings were presented in 1994. Subsequently, different questions regarding the ethics of civil servants were discussed during the French Presidency in 1995.

This illustrated that, until 2004, the study of ethics and integrity was associated with normative and theoretical issues and the focus was on compliance approaches or legal matters. No further research in the field of ethics and integrity was conducted at EU level until 2004.

In 2004, the Irish and the Dutch EU Presidencies decided to pursue the issue in greater depth. It was agreed that two studies should serve as discussion documents, and provide common voluntary standards of integrity in the member states of the EU. At the time, one interest of the Dutch Presidency was to win international support for the adoption of an EU-wide informal EU code in the field of ethics and integrity. Ultimately, this initiative failed because of the lack of support from a number of EU member states. However, another initiative was very successful: the Dutch government used political leadership as a supportive platform for a wider European debate in order to professionalize ethics policies in the ten new member states.

Thus, Dutch international leadership has contributed to progress in the field: ethics and integrity became a (politically) popular agenda item. As a consequence, those member states that entered the European Union in 2004 have developed an impressive arsenal of laws, standards and codes after accession to the EU. Overall, in all EU countries, there are more policies, rules, procedures and monitoring procedures in place than ever before (Demmke et al., 2008). In the meantime, ‘achieving an ethos of honesty and transparency becomes the Holy Grail’ (Oonagh 2006: 107). The reasons for these developments are manifold (and cannot be discussed here in full detail). However, it is fair to say that the Dutch initiated a debate on integrity on the EU level that has continued ever since.

In 2006, the Finnish EU Presidency continued working on the subject (Moilanen & Salminen, 2007). In 2007, the European Commission commissioned an empirical study on regulating conflicts of interest for hold-

ers of public office in the EU member states (Demmke et al., 2008) which was supported by the EUPAN network. In 2008, the Slovenian EU Presidency carried out a study on successes and failures in the field of HR management (Demmke, Henökl & Moilanen, 2008) and included a chapter on ethics and public trust. Next, a study on improving trust in government was carried out in 2009 within the informal settings of the European social dialogue for central public administrations (Tarren, 2009).

Finally, in 2011, the Polish EU Presidency commissioned the author of this chapter to undertake a new comparative study and to analyse and compare the effectiveness of various policies, rules and standards of professional ethics in the field of good governance. At this time, countries were eager to learn more about the Dutch National Integrity Office (BIOS), one of the European forerunners as regards a more holistic approach to institutional integrity in government.

Thus, judging by its capacity to initiate an international debate in the field, the Netherlands has been a clear forerunner since 2004. It therefore comes as no surprise that, for 2016, ethics and integrity was again chosen as a priority topic for the Dutch EU Presidency.

The state of affairs in 2015 – one step forward and two steps back?

Today, new ‘austerity’ reforms have supported perceptions of increasing organizational injustice. From what is known in the academic field, current austerity reforms are most probably linked to increased distrust in leadership, misconduct, and less work commitment. In all of these situations the emergence of new dilemmas, value conflicts, abuses of power, conflicts of interest, corruption and fraud are likely to occur more frequently. This again can also result in more ethical violations, such as stealing organisational resources, misconduct at work, inappropriate behaviour, et cetera.

In a study by Demmke/Moilanen (Demmke & Moilanen, 2012), officials from central administrations of all EU member states were asked whether reform policies which were introduced as a reaction to the financial crisis have had effects on workplace behaviour, such as decrease of trust in leadership, less job commitment, lower job satisfaction, anger et cetera. In line with this, Hoekstra reported on negative effects of austerity measures on the Dutch integrity system (Hoekstra, 2016). Official statements take a

more moderate tone. However, the reality seems to be harsh. In fact, the results of the Demmke/Moilanen study show a strong relationship between the introduction of austerity measures and workplace behaviour. Recent data from the OECD (Demmke, 2015) confirm these findings.

Whatever the right interpretation of reform effects, one thing is certain: the impact of austerity reforms is also contextual and – sometimes – contradictory. For example, whereas some countries experience strong decreases in loyalty, unethical behaviour and job satisfaction, in other countries this is not the case. Thus, although it is possible to derive general conclusions as regards the effects of HR reforms on workplace behaviour, the impact of reforms is also influenced by other contextual factors such as culture and parallel developments in the private sector.

Ethics infrastructures – best practices or best fit?

For many years, international research on ethics and integrity has focused on the characteristics and prevalence of high performance ethics infrastructures that are applicable in both the public and in the private sector. This research, which was originally initiated by Transparency International (Pope, 1996), has also been influenced by Dutch scholars.¹

Much of this literature assumes that high performance ethics infrastructures constitute ‘best practice’ and universally applicable management, although a distinction can be drawn between those arguing for a contextual best-fit approach and those arguing for more of a best-practice approach, based on a belief in the more universal advantages of these systems. The best-practice approach (European Foundation for the Improvement of Living and Working Conditions, 2009) is based on the belief that ethics infrastructures can be used in any organisation and the view that all organisations can improve performance if they identify and implement best practices.

In the meantime, there is considerable consensus on what constitutes bad practices, for example, the absence of codes of ethics, poor leadership, unfair HR policies, lack of training, unprofessional performance measurement etc. However, it is much more difficult to identify institutional best practices, although the search for benchmarks is becoming ever more popular.

Still, the search for best ethics infrastructures is confronted with a context and institution-based, fragmented and pragmatic reality. Overall, institutional differences – notably the levels of budgetary resources, social legitimacy, work systems, labour markets, education and training systems, work organisation and the collective organisation of employers and employees – mediate the impact of converging processes.

Consequently, the proposition for implementing institutional and organisational models such as ethics infrastructures is ambiguous. In fact, according to neo-institutional theories, the political and institutional world is currently moving away from universal or even European best-practice institutional configurations towards more specific best-fit context-related models. New developments lean more towards the testing of new organisational models and work systems that fit into the national, regional, local or even organisational and leader-follower context. Best fit schools are associated with this contingency approach and argue that organisations must adapt their strategies and implement reforms to the specific local strategy and to its environment.

In fact, the effectiveness of any particular ethics infrastructure system will be determined by the degree of consistency amongst its constituent elements and the way they fit into the organisation, HR policies, culture and leadership styles.

To conclude, one may agree about the importance of the socio-political-institutional context in the field of building up ethics infrastructures. According to Huberts (2014), it is possible to stress the ‘basics of an integrity system’ (Huberts, 2012: 190). However, whether it is possible to define complex best-practice infrastructures in the field of integrity is another question.

I also claim that the performance of an ethics infrastructure always depends on the management of multiple and conflicting goals. Furthermore, in the future, ethics management strategies will not be associated with any particular philosophy or style of management. Working conditions, leadership styles and work organisations continue to differ, ranging from traditional taylorist models to high-involvement or high-job autonomy models with low hierarchies and high levels of job autonomy. Also, the role of employees varies from very paternalistic to very communicative and

partnership-oriented forms of social dialogue. Consequently, there will be multiple forms of organisational structures, ranging from traditional and bureaucratic working systems to innovative workplaces and learning organisations within different governmental organisations and even within the same organisations (OECD, 2010).

All the same, it is important to continue the work on ‘common elements’, ‘best practices as regards the effectiveness of instruments’ and ‘suggestions for ethics infrastructures that really work’ in the field of ethics. In this regard too, the Dutch have advanced progress in the field.

The Dutch and the value based approach

Rightly or wrongly, the Dutch like to see themselves as modern, dynamic, innovative, individualistic and tolerant. In the field of public management, the Dutch were indeed one of the first to abandon a classical Civil Service System and – within the process of ‘normalisation’ – aligned the working conditions of civil servants and private sector employees. Unlike their neighbours (Germany, Belgium and Luxemburg), they were also much more supportive of the introduction of New Public Management (NPM) trends.

In the field of ethics, together with the British, the Dutch were also the first to call for an alternative to the ‘compliance-based’ ethics model. As a consequence, discussions on the need for an alternative model (the ‘value based’ model) were highly influential and successful. Many countries started to move away from legal, top-down approaches.

For a number of years, changes have been in progress. In fact, while past reform trends were characterized by a move away from the ‘old-fashioned’ compliance model, current reforms do not indicate convergence towards a new value-based model. Let us take a step back to look at these interesting trends. According to Max Weber, the essence of administrative behaviour is to follow legally given orders. Following this, at a minimal level, administration was considered to be good and ethical if it achieved the implementation and enforcement of the existing laws and policy goals of the government of the day. Moreover, ethically good or acceptable behaviour was also defined in terms of obedience to the law, impartiality and standardization. The purpose of rule-orientation was also to achieve fairness and equity, to implement the merit principle, to allocate rights to citizens

and to protect public employees against arbitrary administrative decisions. Thus, 'the ethics of neutrality and structure' (Thompson, 1985: 555-561) is the cornerstone of the traditional bureaucracy. From the ethical point of view, following the law or the superior's orders is usually not problematic, as long as obedience and excessive adherence to rules do not become absolute values.²

However, the problem with the weberian concept is that as an ethical guideline it is simply too narrow for today's multi-level governance. Today, the level of awareness is growing that work in the public sphere is much more complex and no longer dominated by the principle of rationality as Weber predicted. In reality, work in the public sector is more individual, value-laden, emotional, pluralistic, political and more unpredictable than ever. For example, modern public officials have much more individual decision-making discretion than that predicted by Weber. On the other hand, the rule of law and administrative law as such remain the core principles of all administrative systems in Europe.

The opposite direction

However, with the emergence of NPM euphoria, reform fashions moved in the opposite direction. One reason for this may be that administrative law was mostly seen as a constraint that blocks policy choices and reform policies. Traditional administrative behaviour was held to be rigid, rule-bound, centralised and obsessed with dictating how things should be done – regulating the process, controlling the inputs – but totally ignoring the end results. As a consequence, NPM theories dominated from the 1990s onwards and the compliance approach was seen as old-fashioned and ineffective. Suddenly, the focus was on codes of ethics, training, leadership, decentralisation, delegation and flexibility, instead of on law.

The Netherlands was a forerunner in this field. The Dutch perception was that the field of anti-corruption and ethics and conflicts of interests was defined too narrowly and should be complemented by more discussions on a broader concept: integrity! The term ethics was seen as too narrow and negative in terms of avoiding wrongdoing. Overall, the Dutch position was also that there was too little focus on ethics management and shortcomings in implementation, especially in the new EU member states. Consequently, the Dutch call (within the EUPAN network) in 2004 for a broader approach and a focus on soft and value-based instruments (such as

ethics codes, better training, awareness raising and a more positive understanding of integrity) was instantly met with strong support.

As a result, discussions focused on the adoption of new codes of ethics and more countries followed the Dutch call for modernisation of ethics policies, evaluations and informal approaches and a move away from regulatory approaches.

A survey carried out under the Dutch Presidency (Demmke, 2004) concluded with a number of optional solutions and strategies to maintain high standards of integrity in the national administrations of the EU member states. When looking at this list from some distance (i.e.: ten years later), it is striking to see that suggestions for better ethics policies have not changed much since then. But this also relates to the existing challenges.

The circle of new ideas and concepts has started again

On the other hand, today, academic discussions have turned away from the 'grand old' dichotomy: value-based approaches versus compliance-based approaches. This can best be seen in the field of conflicts of interest, where countries have started to realise that the management of conflicts of interest does not work without clear rules, formal procedures, and strong enforcement mechanisms but also not without awareness raising, strong leadership, independent ethics committees, registers of interest and more and better management capacity. Most 'compliance-based' countries such as Germany no longer focus entirely on rules and trust in the effectiveness of sanctions. However, the focus on both concepts has lost much of its appeal, since the focus on NPM theories (and an excessive focus on rational choice theories and soft-instruments) as much as on classical bureaucratic approaches is in both cases also revealing many negative effects.

This means that the circle of new ideas and concepts has started again. Here, the focus is no longer on private sector models, or on new soft-managerial models. Instead, it is about the search for more efficiency, effectiveness, quality, better outcomes and citizen-orientation. In fact, it is all about better administration and the ongoing search for new good-governance models.

Unfortunately, the concept of good governance and good administration is becoming broader and broader and includes different things, such as the call for reduced administrative burdens, better quality of service, higher levels of citizen satisfaction, more transparency while enhancing efficiency and levels of public trust. Likewise, discussions on effective ethics policies are also becoming more complex and have expanded from an early focus on rules, sanctions, anti-corruption and fraud to many other fields, including ethical leadership and the development of new incentive policies, such as ‘nudging policies’ (Thaler & Sunstein, 2008).

Moreover, our moral understanding is also becoming more complex. Concepts such as good government, values, moral, ethics and integrity are teeming with good intentions, but also with conflicting intentions, with some unintended results. We want better governance, better leadership, representative and diverse administrations, more flexibility, less hierarchy, more job autonomy, participatory management, effective anti-discrimination rules, more performance, better accountability structures, more transparency, more openness and more citizen-orientation. All of these requests produce new unintentional effects.

According to Salminen et al. we are moving from a minimalist concept to a maximalist concept of good and ethical governance (Salminen (ed.), 2010). Thus, the increase in complexity in the society correlates with the increase in the complexity of morality and ethics as such. Neither the compliance-based nor the value-based approaches give an answer to the question how ethics can be integrated into the different system logics. Likewise, the search for new ethics policies, ethics management and ethics instruments has become more complex and situative.

The state of research in Europe

In Europe, for a long time, literature on ethics focused on legal, abstract and philosophical concepts. Parallel to this, the focus of attention was on the fight against corruption. It is still astonishing to see that interdisciplinary publications in the field of ethics and integrity appeared very late and, if so, were almost entirely discussed in the private sector and, mostly by US and Canadian experts. Debates on the relationship between NPM and ethics also started on the other side of the Atlantic.

Overall, Dutch academics changed the focus of attention in the field of ethics and integrity. As long ago as 2002, Van den Heuvel, Huberts and Verkerk broadened the discussions with the publication of ‘The moral face of the Government’ (Van den Heuvel et al., 2002). Dutch scholars were also the first to suggest a move away from a focus on fraud and corruption towards ethics, integrity (Van den Heuvel, Huberts & Muller (eds.), 2012) and the integrity of governance (Huberts, 2014). Thus, whereas in most countries, interdisciplinary academic discussions were almost completely missing, Dutch (and, to some extent, Belgian³) scholars filled this gap.

Moreover, for a long time, only a few publications existed on the ‘output’ side and the impact of reform policies on workplace behaviour, the institutionalisation of ethics committees and agencies, the effectiveness of ethics policies and the relationship between good governance and ethics policies. The same can be said of literature on managerial ethics – and more concretely on ethics infrastructures, integrity systems and institutional ethics. One of the greatest strengths of the Dutch academic discourse in the field of public sector ethics lies in the diversity and interdisciplinarity of approaches which, mostly, focused on the (above mentioned) third trend in the literature.

Where else could we find more empirical and analytical studies and publications and where else more leading ethics experts, public management scholars, political scientists, moral philosophers, psychologists, criminologists, organisational sociologists and behavioural economists who are all addressing the subject of ethics from different angles?

Next, many of these experts carried out (empirical) research, which so far has often been a subject of fashionable thinking: for example, as regards the effects of NPM reforms on value conflicts and unethical behaviour. In the past, the debate about NPM and ethics had an ideological tone, as many experts offered (often, simplistic) explanations about contradictions between public and private sector values. Overall, the mainstream argument was that NPM would lead to more ethical challenges (For example Frederickson, 2005). In contrast to this, a Dutch scholar (Emile Kolthoff) was the first to address this issue from an empirical angle and discussed the effects of NPM reforms on ethics in a more systematic way. His conclusions were more pragmatic and balanced (Kolthoff, 2007).

Dutch researchers were also forerunners in other fields such as ethical leadership. According to Lasthuizen, ‘there is little empirical data on the extent to which different leadership approaches contribute to organisational and employee integrity and discourage different types of integrity violation within an organisational context’ (Lasthuizen, 2008: 149). Consequently, Lasthuizen’s work on ethical leadership was the first to show that not only is ethical leadership complex, but that different leadership styles are needed in different situations (Lasthuizen, 2008: 149). This important piece of research put an end to the rather superficial and simplistic discussion to which ethical leadership is regarded as the most important instrument in the fight against unethical behaviour.

Nevertheless, defining and measuring ethical leadership remains just as difficult as auditing ethics or measuring corruption.

Next, publications on managerial ethics, the institutionalisation of ethics and integrity policies have advanced since the work carried out by Hoekstra and Kaptein (Hoekstra & Kaptein, 1998, 2013, 2014). Also, the first international comparative study on local integrity systems which devoted attention to the policies, practices and actors at the local government level was published, including important Dutch input from Anechiarico, Huberts and Six (Huberts, Anechiarico & Six (eds.), 2008).

One could easily continue along these lines. Of course, there is no space here to mention the important contributions of Dutch scholars in academic networks such as the European Group of Public administration (EGPA). It is therefore certainly no exaggeration to say that, while the field was dominated by US and Canadian scholars (see Menzel, 2005) for many decades, in recent years, Dutch scholars such as Huberts, Kaptein, Hoekstra, Lasthuizen, De Graaf, De Boer and Van der Wal have also greatly influenced the field, worldwide. Interestingly, many experts are from the VU University Amsterdam.

Quo vadis integrity policies – some tentative conclusions

Today, compared to the situation in 2004, the context of ethics policies has dramatically changed, but whether it has changed to the better is not easy to say. Is this the case in the former fifteen EU member states? In the ten new member states that have since joined the EU?

Recent trends also indicate a growing interest in evaluating the effectiveness of ethics policies, powerful forms of institutionalisation of ethics and in the right design of ethics infrastructures. This trend is also consistent with important work already carried out by Dutch scholars.

Obviously, there is still too little evidence regarding the outcomes and effects of ethics policies. There is still no objective answer as to whether we have too much or too little ethics or what the precise impact of specific instruments is on trust, democracy, effectiveness, efficiency, performance and behaviour.

The concept of ‘Integrity of Governance’ is more complex than ever. Progress in the field is combined with new challenges, conflicts and dilemmas. In his publication *What money can't buy* (Sandel, 2012), Sandel suggests that the ‘marketisation’ of societies leads to ever new forms of moral and ethical dilemmas and conflicts. On the other hand, other experts believe that trends are moving towards the end of the ‘secular state’ and a return to ‘moral politics’.

Certainly, governance trends towards more decentralisation and individualisation in the field of social policy and HRM (recruitment, pay and promotion) are changing perceptions of fairness, attribution and justice: ‘The age of standardisation and the decline of patronage government were well suited for the belief in and practice that equal treatment for all is fair treatment. Postmodern societies along with ethnic, racial, gender, and age diversity have challenged elected officials and administrators around the world to rethink how to treat people unequally and yet to be fair’ (Menzel, 2011).

In the field of governance, this is one of the biggest challenges as new ways of conceptualizing merit and fairness are also creating new dilemmas, flaws and fairness issues. One example is the abandonment of the standardised and seniority-based pay system observed in many member states. Today, these systems are seen as being in conflict with our modern understanding of merit and fairness. In addition, the case law of the European Court of Justice is addressing the question of whether seniority-based pay systems are in conflict with the principle of anti-discrimination in relation to age.⁴ Thus, countries have become more meritocratic but, at the same time, more polarized. This also relates to the situation in the Netherlands.

There is no space here to elaborate on these lines. In Europe, Mark Bovens from the University of Utrecht (see amongst many others Bovens, 2006) was one of the first to discuss the ambivalence of new merit and accountability conceptions. Swierstra and Tonkens continued along these lines in ‘De beste de baas?’ (Swierstra & Tonkens (eds.), 2008).

Overall, it seems, the increasing interest in public-service ethics has not necessarily produced more clarity and consensus on the effectiveness of ethics policies in different contexts and the right choice of policy instruments within the best-fit organisational design of ethics infrastructures. More work is also needed as regards ‘what types of rewards or penalties work best to create incentives for responsible and accountable behaviour, including the search for improvement’ (Jarvis/Thomas, 2009: 11).

As long ago as 2000, Paine published ‘Does Ethics Pay?’ and discussed the added value of ethics (Paine, 2000). While evidence is indeed mounting that ethics are related to organisational performance, significant methodological and theoretical challenges still exist. Consequently, European (and Dutch) research is still relatively silent in this field, although it is badly needed. Methodologically, there is no consensus regarding which practices constitute a theoretically complete set of ethics policies, how to conceptually categorise these practices; the definition of ethical performance, the link between ethics and organisational costs/benefits, discussions on the effectiveness of incentives; or how ethics and ethical leadership are to be measured. Theoretically, there is still no consensus regarding the mechanism by which ethics might impact on outcomes. Therefore, we argue that more empirical studies and more non-ideological deliberations in the field of ethics are badly needed if we are to better understand ethical promises, challenges and limitations.

Thus, ethics and integrity policies will never achieve a state of perfect integrity. Values as such are ambivalent (Seel, 2011). As a consequence, a ‘bit of integrity’ should not be an objective (*een beetje integer kan niet*) but nor should a state of full integrity. In the above mentioned Demmke/Moilanen study (2012), only one country reported that ethics policies are mostly value-driven. That country was – the Netherlands!

However, a value-driven approach is not enough. Past experience shows that the best integrity policies can only fill the gaps that other policies produce. Many countries are good at filling some gaps, or even many. The Dutch are equally good, or even better at filling many gaps.

However, ethics should not be a ‘plug-in policy’ that fills the gaps that other policies and other governance logics produce. It is time to acknowledge that ethics is not only a normative question. It is a practical, daily-life issue that is everywhere. It is therefore ‘our mission to relate the significance of our topics to power and power politics, to organisation and management logics, and to other logics and rationalities of governance’ (Huberts, 2014: 200).

Notes

- 1 Slingerland, Six & Huberts, 2012; Huberts, Anechiarico & Six (eds.), 2008; Huberts & Six, 2012.
- 2 Adams & Balfour, 2008; Zimbardo, 2008.
- 3 See especially publications by Jeroen Maesschalck.
- 4 See the ECJ cases C-17/05 (Cadman), C-184/89 (Nimz), C-243/93 (Hill and Stapleton), C-109/88 (Danfoss) and C-297/10/298/10.

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