The Office
Ethos and Ethics in Migration Bureaucracies[1]

Julia Eckert

What do they think they're doing?

All the contributions to this book engage with this particular question. Following the intricate analyses of what bureaucrats do,[2] we now wish to consider what they *think* they're doing. While their answers might be inter-

2 Rather than "bureaucracy", it might be better to speak of "administration", as the term bureaucracy is often used in the context of criticism. (I am grateful to Pascale Cancik for alerting me to this with her wonderful historical research on the subject. See Cancik 2004.) As we noted, people never call themselves bureaucrats. Instead, they employ terms such as civil servant, state servant, state official and social worker. The use of bureaucracy as a term of criticism alerts us to deliberations of the value of different types of skills and knowledge, the aloofness attributed to law and knowledge of procedures, contrasted with "knowledge of reality". At the same time, the reliance on references to "legality" or procedural correctness and consistency provide an insight into competing scales of value. This question of terminology is not merely a matter of the self-denomination of officials, but also the search for an appropriate analytical term that might encompass the open bound-

preted as neutralisation strategies – ex post justifications for actions that
are shaped by a myriad of concerns – we hold that tracing what bureaucrats
think they are doing is worthwhile for two reasons. First, we believe that
what they think they *should* do shapes what they actually do as much as other
constraints, whether this concerns their efforts (successful or unsuccessful)
to act in what they consider an ideal manner or the formation of rationales
for diverging from ideal behaviour. Second, we claim that their thinking is
shaped by notions of the "office", i.e., the duties and obligations of an admin-
istration related to specific political projects. Exploring what bureaucrats
think they do tells us about the delineation and definition of the moral com-
munity that a bureaucratic apparatus is concerned with.

To explore what *they* think they do, we employ the concept of ethics as
the basis for investigating the value rationality of bureaucratic practice and
its normative orientations. We see a lacuna of research on ethics in bureau-
cracy. Recent critiques of bureaucracy have focussed on the instrumental
rationalities of bureaucratic practice, considered its orientation towards
extra-bureaucratic normative demands, or posited that bureaucracies are
fundamentally amoral in character (Bauman 1989; Graeber 2015; Herzfeld
1992). While some critics have attended to the wider ideological frames
within which "anethical" bureaucracies are embedded, and, as in the case
of Michael Herzfeld, explored the effects of an anethical role on affects
(indifference or aversion), most have not examined the ways in which an
ideological frame is (re-)produced in the specific narratives, categorisations
and normative orientations that shape bureaucratic practice. One could say
that they have fallen victim to an inflated Weberian image of rational legal
rule that considers ethics and bureaucracy to be antithetical, and restricted
their critical impetus to this horizon. These critiques echo early criticisms of
bureaucracy, which actually coined the term (Cancik 2004), by caricaturing
bureaucrats as "automatons" that stick to the rules, the letter of the law, and
are indifferent towards and ignorant of the world's true problems.

Other studies of civil servants have examined the various concerns and
normative orientations that shape bureaucratic practice, be it career orien-

---

aries of state administrative services. Such services often include organisations paid for by
the state, but not staffed by civil servants employed by the state, to perform tasks that are
interrelated with state administrative services. This also includes "civil society" organisa-
tions that are funded independently, but form part of the institutional assemblage around
issues defined by state administrative concerns, such as "refugees".

tation; intra-administrative competition; extra-administrative obligations towards kin, neighbours or dependants; or simple economic interests. This laudable attention to the multiplicity of concerns that shape the practice of civil servants has introduced diversity to the image of the bureaucrat as a rule-following automaton and brought to the fore the multifarious normative orders that civil servants often operate within. What has disappeared from view, however, is how the practice of civil servants might be shaped by ideas of their "office", their "volitional allegiance" (Gill 2009: 215) to their entrusted tasks (see also Bierschenk 2014: 237-238). The ethics of office generates a specific notion of the commonweal, which structures the proper application of rules in bureaucratic practice. I use the term "commonweal" to signal a confluence between a vision of community and the goods that a community shares in. It encompasses both "commonwealth" and "common good". Neglect of this dimension of normative bureaucratic orientation has been detrimental to our understanding of how particular ideological projects, inherent in specific delineations of the commonweal, are actually translated and produced in administrative practice.

Here, we propose that ethics are intrinsic to bureaucracy. This does not make bureaucracy "good", "benevolent" or "democratic", as Du Gay (2000) suggests. Our notion of ethics is empirical (see also Fassin 2012: 4), not normative. To understand how "rule following" works, we need to attend to the ethics of office, because bureaucratic ethics defines how a specific idea of the commonweal is served. It delineates moral communities composed of those abiding in the common good from others who are excluded. In order to understand how certain political projects of specific governmentalities are put in place, we must heed the ethos and ethics at play at specific historical points in the administrative apparatus.

Contributions to this volume follow what Wedel et al. (2005: 34) suggested were a necessary focus of anthropological research on policies, namely "understanding the cultures and worldviews of those policy professionals and decision makers who seek to implement and maintain their particular vision of the world through their policies and decisions". To overcome the individualist bent often implicit in analyses of bureaucratic discretion, which might be entailed in the examination of personal worldviews, we go further by linking such worldviews to notions of "the office", and focusing on relations among political projects entailed in specific notions of the common-

weal, understandings of professional roles and bureaucratic practice.[3] Such professional worldviews are shaped by the structural position of particular offices at specific moments, and their designated roles within a hierarchy of offices are geared towards maintaining the good of the commonwealth.

Our aim is thus twofold. First, we introduce the notion of ethics in order to argue against the stereotype of the bureaucratic automaton, which does not account for the way normative frameworks impact on administrative conduct. Second, we address bureaucratic ethics as a means of overcoming the individualistic bent in examinations of bureaucratic discretion, and relocating the duty or obligation of the "officium" in particular relations of domination in particular historical situations.

Our analyses centre on migration bureaucracies. Here, the production and management of categories of difference, which delineate the right to partake in the commonweal, are particularly visible. All bureaucratic agencies engage in differentiating and delineating the eligibility of access to goods and services and participation in decision-making. Migration bureaucracies are not specific in this regard, but in the contemporary world of nation states where the "right to have rights" (Arendt 1968: 177) is dependent on citizenship status, they distinguish most clearly between who can partake in the commonweal and who cannot. "In contrast to other bureaucracies, (return) migration bureaucracies govern utopian social orders not through the governance of a common good, but through the shaping of the community itself," as David Loher writes in this volume. More than a territorial line separating two polities, borders differentiate access to the rights and goods within a polity. They define the moral community with which a bureaucratic ethic is concerned. Inasmuch as borders differentiate access, migration bureaucracies comprise all state agencies involved in such an endeavour. We hold that, through their work, migration bureaucracies actually produce these borders (see also De Genova 2016). A vast array of different agencies engage in delineating differential access to the specific services they administer among citizens, various categories of legal migrants and the equally numerous categories of illegalised migrants. It is not as though the assemblage of administrative actors managing differential access to rights

---

3 Heyman has earlier engaged with what he calls the "thought-work" of bureaucrats and held that "observations on thought […] can be used to characterize the society, polity, and economy that have produced specific 'thinking situations'" (1995: 264).

and resources is a coherent and coordinated apparatus; instead, practices in these diverse "bureaus" are shaped by the diverse bio-political or disciplinary efforts they are tasked with. As they follow specific goals and logics, they are shaped by their specific role in serving the commonweal as it is defined at a particular place and time.

Such matters of definition and interpretation are intrinsic to bureaucratic work, as they establish how a specific bureaucratic agency can best serve the commonweal. We are concerned here with more than merely an extra-bureaucratic, ethical definition of the commonweal, as has often been proposed. Rather, narration, interpretation, contestation and affirmation define and interpret the commonweal in relation to the specific tasks an agency performs, and also determine who legitimately shares in the common good. Thus, close attention to ethos and ethics in the orientation of civil servants can elucidate changing understandings of the commonweal, and articulate shifting delineations between legitimate members and those defined as illegitimate.

Bringing ethics back in (to the study of the state)

Ethos and ethics: Both terms go back to Weber. For bureaucracy, only the bureaucratic ethos seems to have survived in our academic memory. But Weber distinguished between the two terms. Ethos denotes the assemblage of values that underpin procedures, such as, for example, rule orientation, consistency, efficiency, efficacy, equality before the law and depersonalisation. Today we often include transparency, and participation. Weber had a particular assemblage in mind when delineating his ideal type of rational-legal rule. We might consider this a historically specific snapshot of the values supposedly underpinning bureaucratic procedures that shaped his ideal type, albeit one that corresponds surprisingly often with bureaucrats' descriptions of what and how they want to be (Affolter 2016; Eckert 2005; Lentz 2014), and what so often they know they are not. Whatever its heuristic worth, the ideal type is frequently a standard against which civil servants measure their duties, goals and failures: it shapes expectations, claims and demands, evaluations, disappointments and resistances.

Such assemblages are specific to a time and place. The relevance of transparency today makes this clear. Entering bureaucratic ethos only in the late

20th century, transparency is not relevant everywhere to the same degree, not in each bureaucratic sector (where, e.g. street-level bureaucracies vs. pure desk jobs, or output-oriented bureaucracies vs. accounting, etc. might differ), nor in each institutional system. At least formally at specific times and places, different agencies probably share some of the values of their procedures, i.e. elements of their ethos (but see Olivier de Sardan (2009) on the role of practical norms).

Ethics, on the other hand, concerns orientation towards "the good". In the case of bureaucratic ethics, values and norms associated with the substantive goals of a bureaucratic apparatus are geared towards ideas of a good society, a good life, welfare or justice.[4] State bureaucracies, as one specific type of bureaucratic assemblage, do not merely execute bureaucratic procedures. Rather, they embrace a purpose, a *raison d'etre*, whether we actually observe a common conception of this purpose, or see several conflicting ones. Such purposes entail an ethical core (Du Gay 2000; Osborne 1994: 302). Goals and projects attributed to "the state" at a historical moment by bureaucrats, citizens and subjects alike relate to the notion of a public, a commonweal. "Their legitimacy rests on claims made manifest in a constitutional agreement and they exist for the public good," as Laura Bear and Nayanika Mathur claim (2015: 18).[5] State standards and norms are pragmatic conventions that also express notions of justice. They articulate theories of a just social order: what categories of people are eligible to benefit from what service, how much is allotted to whom, what is subsidised, what is taxed, and what can be bequeathed, etc. all relate to specific notions of justice. Bureaucratic ethics concerns each and every administrative act that declares a specific vision of social order to be "just" or "proper". In fact, the bureaucratic term for justice might be adequacy: proper, justifiable, appropriate. If conditions are appropriate to standardised needs, average situations, the proper relations of a commonweal are established.

The extent of the commonweal with which a particular bureaucratic apparatus is concerned depends on the jurisdiction of the agency in question and its degree of integration into the larger bureaucratic structure. Precisely

---

4 This distinction between ethos and ethics corresponds to Weber's definition of both; see Swedberg 2005.

5 Bear and Mathur use the term the "public good". I prefer to use the term "commonweal" to distinguish it clearly from a much narrower notion of "public goods",.

because bureaucracies are bound to their jurisdiction, inclusion and exclusion are intrinsic to any bureaucratic work (see also Handelman 1981). Jurisdiction introduces the "nationalistic logic" that Michael Herzfeld pointed to, which serves to "distinguish between those included and excluded from the national order and to represent these distinctions as given by nature – rather than cultural or historical contingencies" (Herzfeld 1992: 174). The reformulation of jurisdiction as a *moral community* is what matters here. This reformulation, i.e. the moralization of jurisdiction, is currently prevalent in national notions of commonweal and arises from the intrinsically ethical character of any conception of a "good order". Whether someone or something deserves moral regard is shaped by norms implicit in the notion of a "good order" that a specific vision of commonweal asserts. The substantive content of visions of good order, of "the common good", introduces hierarchisation that differentiates those needing protection and support from those considered detrimental or even dangerous to maintaining the commonweal. Common good (*Gemeinwohl*) is not identical to commonwealth (*Gemeinwesen*).

How the public good is imagined, how the commonweal is conceptualised, and how those defined as outside the commonweal's moral community are treated is a matter for enquiry. The general purpose of serving the common good is made manifest in the practices, expectations, claims and disappointments related to such service. Bureaucratic ethics – like any other ethics – concerns questions of how to act in the service of these values. Thus, ethics is intrinsic to bureaucratic institutional assemblages, not merely external to them.

Often, the ethics of bureaucratic practice have been perceived to arise from extra-bureaucratic social realms, and conflict with the bureaucratic ethos as caused precisely by an incompatibility between the ethical and social realm and the rational and legal realm of bureaucracy. In particular, anthropology has long interpreted conflicts between "formal rules" and informal practices as arising from the demands of conflicting normative orders. Such normative orientations have been considered to arise "outside" the office, emanating from social relations in which office holders are embedded. Obligations to acknowledge these relations give rise to deviations from official procedure. Inevitably, this leads to analyses that establish a dichotomy between society and the state, or between an intra-bureaucratic ethos of indifference and an extra-bureaucratic realm of moral normativity.

At the same time, much critique of bureaucracy has focused precisely on assumptions of its anethical nature. Many analyses encounter "Frankensteins: the rules guiding them can overwhelm the goals they are supposed to serve and the missions 'creep' continually outward. Bureaucrats […] are at once inanimate – lazy automatons, blindly serving larger powers – and animate – nefarious, self-interested obstructionists" (Hoag 2011: 82). In his book on the Indian welfare bureaucracy (2012), Akhil Gupta, while acknowledging the ethical orientation of governmental programmes and individual civil servants, has advanced the thesis that the failures of the Indian state are found not in the divergence of state bureaucratic practices from proposed formal procedures, but within formal procedures that engender indifference towards the arbitrary outcomes they produce.[6] This echoes other critiques that consider bureaucratic practice to produce indifference (Herzfeld 1992), or point to the violence inherent in bureaucratic classification (Graeber 2015) or to the loss of moral responsibility (Bauman 1989). These analyses locate bureaucratic violence in excessive orientation towards bureaucratic procedures (rather than in the corruption of those procedures) and consider bureaucratic state apparatus a form of domination that rules according to instrumental-rational criteria dissociated from moral evaluation. For Bauman, the absence of moral evaluation in bureaucracies results from functional divisions of labour and the substitution of technical for moral responsibility. Functional division of tasks within and between bureaucratic authorities undermines the assumption of moral responsibility for the outcome of a collective activity, a phenomenon that Matthew Hull superbly demonstrated by tracing the erasure of individual authorship on administrative decisions (Hull 2003).[7] A system of fragmented responsibility allows the construction of holocaustic apparatus (Bauman 1989: 98), making possible the banalisation of evil.

---

6   Unlike others who point to the anethical nature of the administrative apparatus, Gupta claims that indifference to the arbitrariness of outcomes prevails despite the existence of ethical concerns on the part of individual civil servants and the overall goals of the administration.

7   Hull's examination is based on material from Pakistan's civil service. The erasure observed here, and the dissolution of attributable responsibility, has particular contextual reasons, as erasures of authorship are deeply entangled with civil servants' fear for their professional careers, a fear largely shaped by the politics of transfer in South Asia. This might take entirely different forms in other contexts, or be less pronounced in other administrations.

Could and should one read Hannah Arendt's thesis of the banality of evil as the possibility of a murderous ethic's normalisation and routinisation, rather than the anethical nature of bureaucracy? This reading might not accord with Arendt's notion of morality, since her normative concept of morals stressed the residual freedom of choice against obedience to the law. If, however, we ask whether the banality of evil did not necessitate first a *banalization* of evil,[8] we come to an empirical notion of ethics. Using an empirical notion of ethics enables us to differentiate between various co-existing ethics; it does not negate the possibility of moral resistance to public ethics, since public or bureaucratic ethics do not determine value orientations by obliterating all other moral or ethical norms. Rather, the ethics inherent in the substantive goals and purposes an "office" is tasked with impact the practices of office holders by shaping their "ideologically affected desires" (Gill 2009: 215).

Our approach to the ethics of office is akin to that of Didier Fassin in his recent discussion of "the heart of the state". He holds, and we agree, that state agents "work in reference to a certain professional ethos, to a training they have received, to an idea they have of their actions, and to a routine they develop. The principles of justice or of order, the values of the common good and public service, the attention to social or psychological realities [...] all products of their professional habitus, influence the way they will respond to state injunctions and behave towards their publics," (Fassin 2015b: 6-7). Fassin complicates analyses of the bureaucrat as "automaton" (Herzfeld 1992: 1) that often prevails in critiques of bureaucracies. Whereas he stresses the interrelation of professional ethics and affects (Fassin 2015a; Fassin 2015b: 10), we concentrate on the interrelation of the ethics of office and bureaucratic practice.

Employing this focus on the ethics of office also avoids the individualist bent implicit in many analyses of bureaucratic discretion. Anthropologies of bureaucrats often produce implicit assumptions about discretionary "freedom" simply by *not* focussing on precisely how discretion is *practised*, or rather, how it is shaped and structured in itself. Thus, ethnographic bottom-up perspectives on administration, policy or the state suffer from a lack of attention to the impact of formal rules and public ideologies – often due to the attempt to overcome reductionist top-down analyses that do not attend

---

8 Roland Eckert in a conversation in October 2018.

to variation in bureaucratic practice (see also Fassin 2015b: 5). In order to understand the particular sociality of bureaucratic discretion, and to understand "interpretation", "subsumation" and "application", I suggest that discretionary practices are informed by the ethos and the ethics that pertain to a specific bureaucracy at a given time and place, and that are trained and cultivated formally and informally in bureaucratic sociabilities, as Laura Affolter shows in her contribution to this volume (also see Affolter (2016) where she develops the term "institutional habitus" for this phenomenon). The "bureaucratic ethic" guides the application and interpretation of rules. Only with such an ethical basis, as Thomas Bierschenk and Jean Pierre Olivier de Sardan have also stressed (2014: 13), can discretion be exercised. "Worldview directs thought-work such as case interpretations. Therefore, organizational worldview fosters the subtle coherence of decisions over a wide variety of cases," Heyman says (1995: 265). Individual segments of bureaucracies relate interpreting their tasks to their specific role in achieving overall goals. Tasks precisely shape how rules are interpreted and implemented to serve these ends. They suggest which division of labour best aligns with an overall goal. They outline what responsibilities follow from ascribed competences, and which attribution of responsibility is "rational", questions that arise in relation to such quotidian matters as budget allocation, agency competition or assigning "cases" to specific bureaucratic agencies or "desks". What it is to do a job well, to be rule oriented (i.e. to interpret the rule), to be consistent, effective or efficient, these ambitions can only be achieved in the light of the broader ethical goals. Such matters of definition and interpretation are intrinsic to bureaucratic work; they establish how the commonweal is best served by a specific bureaucratic agency.

I want to hold on to the distinction described above that Weber made between ethos and ethics rather than merging the two terms, as might be possible through the notion of moral economy as used by Didier Fassin (2009). I find it useful to retain distinct notions of ethos and ethics as possible aspects of a moral economy of state bureaucracies at a specific time in a specific place, because they are not the same and they can be in tension with each other. Images of the state, as Klaus Schlichte and Joel Migdal noted (2005: 14), encompass both the substantive promise inherent in the purpose attributed to that state, which I call "bureaucratic ethics", and the procedures deemed "state-like" and proper that the state bureaucracy can use to fulfil that promise, which I call "bureaucratic ethos". Both are situated in the

same historical moment and hold for the same social realm. They are inextricably linked, but can conflict, as I will explain below.

The moral community

Visions of what public goods the state is responsible for, and what procedures are appropriate for it to use to accomplish them, are subject to change. A state may be defined by goals of autonomy, modernization, equality or equity, competitive military or economic power or welfare; and its bureaucratic procedures judged by their efficacy, transparency, participatory nature or cost efficiency. Fundamentally, changes in ethos and ethics are expressed in how the moral community a bureaucracy is concerned with is differentiated and delineated, and how its relations to, and differential obligations towards its members and non-members are defined.

Contemporary visions of the commonweal of European nation states are entangled in contradictory imperatives. Deep tensions exist among the prerogative of the nation state to distinguish between insiders and outsiders, humanitarian appeals to broaden definitions of the greater good, and the global interdependencies that are a requisite for any common good. These simultaneous imperatives produce institutional contradictions, the resolution of which demands differential prioritisation.

In his contribution to this volume, David Loher shows how, in Swiss asylum procedures, the notion of voluntariness serves to align the imperative of the exclusionary nation state with humanitarian delegitimisation of state violence: the best and most ethical (but also the cheapest) way to exclude is when the excluded leave voluntarily. This ethical stance impacts the way officials who organise voluntary return migration understand their task, and how they go about achieving it. The notion of "voluntariness" discussed by Loher is central to current conceptualisations not only of human agency, but also of fairness, efficiency and efficacy.

Contradictions between imperatives of the nation state, the national economy and humanitarian ideals often come to the fore in competitions between bureaucratic agencies, particularly between those charged with bio-political duties and those with disciplinary and security tasks (see also Schiffauer in this volume; Fassin 2015b: 6).

Simon Affolter's chapter describes a smooth negotiation between the contradictory imperatives of upholding immigration law and labour law standards, on the one hand, and ensuring the ongoing provision of cheap migrant labour on which the Swiss commonweal depends, on the other. Cheaper labour is less regulated labour, particularly in an agricultural sector that has symbolic significance for Swiss national identity. Institutional inconsistencies arising between these principles are functional, Affolter shows us, in relation to the prioritisation of efficiency in Swiss agriculture, and as a means to preserve a symbol of national autarky. Enforcement of both labour law and immigration law is subordinate to the economic viability of Swiss agriculture (see Heyman 1995 for a discussion of the US situation). Thus, labour law and its enforcement has little relevance for serving the national conceptualisation of the commonweal. Individual officials situationally enact this hierarchisation of laws (and of administrative bureaus) by relying on the overall goal of serving a specific delineation of the Swiss common good.

Mediations between the diverse priorities of different state agencies are contingent upon many factors. The dominance of one discourse or one agency, which directs how best to secure the commonweal, might give way to other strategies and other agencies once economic or political expediencies change. Yet, prioritisations among contradictory imperatives of the commonweal remain embedded in historical legacies and influence contemporary functions.[9] The memory of "Weimar" as a frail state legitimises contemporary ethics of defensive democracy ("*wehrhafte Demokratie*"); this forms the horizon and legitimatory repertoire for many a bureaucratic norm in Germany, as Werner Schiffauer shows in his analysis of the symmetri-

---

9 Ethos and ethics change in shorter intervals in relation to mediatized events – but relations between media representations and public ethics appear to be somewhat dialogical, as media representations not only respond to but also shape public ethics. In what was called the "refugee crisis" we could observe daily shifts between a humanitarian perspective on the refugees from Syria struggling at eastern European borders, and a security perspective, ever differentiating the criteria for legitimate mobility, targeting both Syrian and less officially legitimate refugees (see also De Genova 2016). With such short term shifts, it is not always possible to tell whether a shift is relevant to ethical values, or whether it affects what, or how something can be legitimately addressed, i.e. a shift in rhetoric. Yet, shifts in rhetoric, taken "at their word", can trigger shifts in practice. Rhetoric sets standards and defines the norm or the normal, the way to view an issue.

cal construction of different "extremisms" in German security agencies. Chowra Makaremi employs the notion of memory to show how political considerations connected to both post-colonial memory and contemporary power relations shape the French asylum system. She highlights the colonially informed political stakes that underpin the selection of those who possess rights to national protection and others, as well as the ramifications of diplomatic affinities and tensions in the arena of asylum (e.g. France's position of withdrawal from regional issues in West Africa). Makaremi shows how the national host community is redefined, first literally through a process of filtering and excluding those who do not belong to it, and then figuratively, through affirmation of common rationalities and moral values, such as democratic assistance or protecting the welfare state against abuses and false refugees.

Knowing like a state

In many ways, ethos and ethics are intrinsic to administrative categorisation procedures. Bureaucracies process cases according to given (legal) categories of difference, so that differential access to rights defines multifaceted cases for singular purposes, and boundaries are set within the gradual, continuous character of difference (see Handelman 2004: 23). More importantly, bureaucracies create categorical differences according to their specific tasks and the perceived needs of the commonweal.

Thus, administrative categories are deeply ingrained in the way the state knows. Classificatory practices are based on knowledge, and at the same time shape what can be known. Knowledge is purposeful. Its selection is shaped by the problems that an agency is supposed to address. In his contribution, Werner Schiffauer examines the creation of task-specific categories and the kinds of functional blindness they produce. Schiffauer points out how a degree of "decisionism" inheres in the creation of any category.[10] At

10 Decisionism is the term employed by Carl Schmitt, who proposes that norms gain validity only through decisions (by the proper authority). These decisions are, at their core, unjustifiable as they can never be entirely explained by logical or ethical criteria (Schmitt 1922). For Schmitt, the validity of law was not inherent in its principles but made fact by the proper authority. Max Weber used the term slightly differently to seek a solution to the problems of rational legal rule. To him, legality alone could not set goals or make value

some point on the boundary between one category and the next, the differences between two cases in the same category might be greater than between two cases flanking both sides of the arbitrary divide. This ultimate arbitrariness defines administrative exercises in classification precisely because the boundary of a category cannot be logically or ethically explained in its entirety, but arbitrarily delimits gradual difference at a specific point. This decisionism is complemented by the "discretion" exercised in the application of categories of difference (see, e.g. Lipsky 1983), as to subsume a specific "case" under a categorical rubric necessitates interpretation by those who perform this application to such situations.

It might appear contradictory to claim that the categorical differentiations of (migration) bureaucracies are decisionist in nature, and hence not justifiable by logical or ethical norms, and yet that this decisionism is shaped by a bureaucratic ethic. In fact, this is precisely the point. Bureaucratic ethics "rationalise" the decisionism of bureaucratic categories because arbitrariness is anathema to rational legal rule. This is evident in Schiffauer's analysis of the categories of danger developed and continually differentiated by the German Office for the Protection of the Constitution as it struggles to keep up with the intellectual dynamics of Islamic communities. What is also evident is the futility of these efforts. Bureaucrats are usually aware of the poor fit of these categories with actual "cases" they work on. In response to tensions between category and case phenomena, new categories are created with even finer differentiations. But they remain anachronistic snapshots of an intrinsically dynamic field. Nonetheless, even failed categories are often highly productive of social order. As Schiffauer shows, they gain a truth-value beyond their specific purposes.

Everyday states of exception, or: Does it really matter what they think they do?

While the norms of ethos and ethics are both intrinsic aspects of bureaucratic practice, ethos and ethics are not the same. They can conflict, especially when shifts in fashion affect proper procedure (such as the introduc-

---

decisions; only a leader's decision(-ism) could save modern society from the iron cage of rationalisation (Weber 1919).

tion of public management techniques; see Bear and Mathur 2015) or when changes occur in public ethics.

This tension comes to the fore in the reasoning of the return migration bureaucrats to whom David Loher spoke. Their defence of rule-orientation rests on the principle of equal treatment, without implying approval of the substantive ethics behind the rules they enforce. They prioritise "rule-following – and therefore procedural or formal justice – over substantive justice" Loher continues: "Identification of the principle of rule-orientation with fairness indicates that there is more at stake than concern about pure procedure" (Loher, this volume). He holds that, in this case, ethos is ethics.

However, when the norms of ethos are perceived as hindering service to the commonweal, ethics sometimes trumps ethos. Just as substantive goals and values can be overridden by procedural concerns – as in "automaton" accounts of bureaucracy – so can procedural ethoses be overridden by adherence to substantive ethics. As Fassin also observes: "whether through over zealousness or conviction the agents often extend the realm of policies well beyond what is requested" (2015b: 5). Bureaucrats might believe in their office. They might believe in ethos and ethics alike, or they might prioritise ethics, i.e. specific orientations towards the commonweal, over procedural concerns. Bureaucratic ethics import the Dirty Harry problem (Klockars 1980) into governmental apparatus.[11] To put it another way, ethics in tension with ethos calls forth a myriad of situational states of exception.

Everyday states of exception, when law is suspended in order to safeguard the legal order (Schmitt 1922) are particularly evident in Nicholas De

---

11 It is important to point out the possibility of prioritisation to complement the image of "the automaton", and bring to light bureaucrats' commitment to their offices, the "volitional allegiance" that Gill spoke about (2009: 215). Furthermore, dedication in pursuit of the larger goals an office is tasked with to the detriment of procedural rules can be no less problematic than mere rule orientation. This is why Du Gay (2000) praises the democratic potentials of bureaucratic rule orientation. Detecting everyday states of exception in the Dirty Harries of bureaucratic practice, tension between ethos and ethics in bureaucracies might come down to an image of the heroic civil servant acting solely in an attempt to serve the goals he or she is tasked with. This critical point was made by Klaus Schlichte in discussion of a draft version of this article. I consider ethical orientations towards an office to be far more quotidian than any notion of heroism would imply. Such an ethical orientation is not "exceptional", but rather, a matter of work ethics, and of labour explored as practice, which encompasses habits, routines, skills, value orientations, decision making, etc.

Genova's examination of "detainability". De Genova shows how "the lowest level enforcers of the law must constantly exercise their own discretion and routinely decide on a case-by-case basis on the 'state of exception' between the abstraction of the law and the fact of violence that enforces it, in the putative interest of 'order' or 'security'" (this volume). Everyday states of exception are equally present in Affolter's Swiss agricultural sector, where labour officers establish a situational hierarchy of legal norms (only some of which are enforced) related to their orientation towards serving the commonweal of Switzerland. The systematic and systemically related violation of labour and immigration law is a functional prerequisite of serving the commonweal as currently defined.

Evident in both examples is how everyday states of exception are governed by many rules. This echoes what Nasser Hussain has called "hyper-legality" (2007). Hussain responded to the easy Agambian assumption of "law-less" or extra-legal spaces of exception, and showed how the rule of law actually made possible and regulated such exceptions. This insight is important for us insofar as it demands a process-based approach to the exploration of ethos and ethics, one that can bring to light how, in the continuously alternating prioritisation of one over the other, institutional change is produced. In quotidian states of exception, such as the cases discussed above, changes in the image of the state, in its ethics and its proper procedures, also encompass a complicated relation between legality and legitimacy. Changes in legitimacy occur at different rhythms than changes in legality. More importantly, legal procedures considered inappropriate for reaching certain state goals can lose legitimacy, whereas illegal procedures and practices can become legitimate when perceived as effective in fulfilling state promises. Small discrepancies might lead to incremental shifts in the interpretation of legal rules by state officers; stark discrepancies might lead to an open departure from legal rule and legitimate practice (as perceived by office holders).

Prioritisation of substantive goals over procedural norms is often followed by procedural adjustments. Legal reform realigns the legality and legitimacy of administrative practice. The discretionary margin is widened and executive powers are enhanced (see e.g. Eckert 2012). Central to realignments of legitimacy and legality are notions of threat and crisis (see also Fassin 2015b: 2) that justify drawing lines between those considered to belong, and enjoy specific protections, and those outside the moral community that a bureaucratic ethic is concerned with. This is why paying attention to the

dynamic tension between bureaucratic ethos and ethics is important, and why acknowledging their distinction has heuristic value.

Conclusion

While acknowledging the myriad constraints, diverse goals and contradictory logics bureaucrats are entangled in, as well as the possible influence of personal and public morals (Fassin 2015), the point here is to refocus attention on the ethics of office. Dynamics born of relations between ethos and ethics, and their impact on bureaucratic practice, have not been adequately addressed in recent literature on the anthropology of bureaucracy or policy. Too focussed on either rule-orientation or discretionary freedom, many approaches have overlooked the way interpretations of the commonweal shape bureaucratic practice. We stress that such interpretations cannot be considered extra-bureaucratic ethical concerns, but are intrinsic to the profession (see also Bierschenk and Olivier de Sardan 2014: 12-13; Lentz 2014). Certainly, situations exist where orientation towards the public good is not of great importance in the conduct of public servants; in such situations many factors possibly contribute to a minimal identification with the job (see, e.g. Bierschenk 2014: 222). In many other situations, however, viewing oneself as a public servant who serves a public good is fundamental to the way people conduct their work. This holds true, I would claim, in such diverse situations as in the Indian police service (Eckert 2005), among Ghanaian public servants (Lentz 2015) or in the situations explored in the contributions to this volume. However, where such orientations hold sway and how they develop or diminish is an empirical question. Differences might arise not only in accord with the states in question and the historical moments of analysis, but also in different areas of state administration. Ethos and ethics are highly contextual, and so is their relevance for bureaucratic practice.

At the same time, attention to the ethos and ethics of office is as essential to understanding bureaucratic practice as attention to extra-bureaucratic expediencies. The notion of the office, of professionalism in civil service, even of ubiquitous laments about failure, corruption or inadequacy confirm the relevance of the ethics of office to understanding the work of bureaucracies. They define the ways a commonweal is best served and delineate its moral community. Furthermore, differentiating between the ethos and

ethics of bureaucracies and investigating the dynamics that arise from their relations can provide insights into institutional and legal change. Bureaucrats' quotidian struggles to align ethos and ethics, or to justify their divergence, bring about incremental changes that sometimes need normative acknowledgement to effect legal reform.

Bibliography

Affolter, Laura. 2016. *Taking Decisions in a Swiss Asylum Administration. 'Institutonal Habitus' and Patterns of Practice.* Manuscript, on file with the author.

Arendt, Hannah. 1968. *The Origins of Totalitarianism.* New York: Harcourt.

Bauman, Zygmunt. 1989. *Modernity and the Holocaust.* Ithaca: Cornell University Press.

Bear, Laura, and Nayanika Mathur. 2015. Introduction. Remaking the Public Good – A New Anthropology of Bureaucracy. *The Cambridge Journal of Anthropology*, 33(1): 18–34.

Bierschenk, Thomas. 2014. Sedimentation, Fragmentation and Normative Double-Binds in (West) African Public Service. In Thomas Bierschenk and Jean-Pierre Olivier de Sardan, eds, *States at Work. Dynamics of African Bureaucracies.* Leiden: Brill: 221–247.

Bierschenk, Thomas, and Jean-Pierre Olivier de Sardan. 2014. Studying the Dynamics of African Bureaucracies. An Introduction to States at Work. In Thomas Bierschenk and Jean-Pierre Olivier de Sardan, eds, *States at Work. Dynamics of African Bureaucracies*. Leiden: Brill: 3–34.

Cancik, Pascale. 2004. "Selbst ist das Volk" - Der Ruf nach "Volkstümlichkeit der Verwaltung" in der ersten Hälfte des 19. Jahrhunderts. *Der Staat*, 43: 298–327.

De Genova, Nicholas. 2016. The 'Crisis' of the European Border Regime. Towards a Marxist Theory of Borders. *International Socialism. A Quarterly Review of Socialist Theory*, [online] 150, available at: http://isj.org.uk/the-crisis-of-the-european-border-regime-towards-a-marxist-theory-of-borders/ [accessed 6 Jan 2017].

Du Gay, Paul. 2000. *In Praise of Bureaucracy; Weber, Organisation, Ethics.* London: Sage.

Eckert, Julia. 2005. The Trimurti of the State. *Sociologus*, II: 181–217.

Eckert, Julia. 2012. Theories of Militancy in Practice. Explanations of Muslim Terrorism in India. *The Social Science History Journal*, 36(3): 47–72.

Fassin, Didier. 2009. Les économies morales revisitées. *Annales Histoire, Sciences sociales*, 6: 1237–1266.

Fassin, Didier. 2012. Toward a Critical Moral Anthropology.. In Didier Fassin, ed., *A Companion to Moral Anthropology*. Oxford: Wiley: 1–17.

Fassin, Didier. 2015a. Can States Be Moral? In Didier Fassin, ed., *The Heart of the State*, London: Pluto, ix–xi.

Fassin, Didier. 2015b. Introduction. Governing Precarity. In Didier Fassin, ed., *The Heart of the State*. London: Pluto: 1–14.

Gill, Nick. 2009. Presentational State Power. Temporal and Spatial Influence Over Asylum Sector Decisionmakers. *Transactions*, 34: 215–233.

Graeber, David. 2015. *The Utopia of Rules; on Technology, Stupidity, and the Secret Joys of Bureaucracy.* New York: Melville House.

Gupta, Akhil. 2012. *Red Tape. Bureaucracy, Structural Violence, and Poverty in India*. Durham: Duke University Press.

Handelman, Don. 1981. Introduction. The Idea of Bureaucratic Organization. *Social Analysis*, 9: 5–23.

Handelman, Don. 2004. *Nationalism and the Israeli State*. Oxford: Berg.

Herzfeld, Michael. 1992. *The Social Production of Indifference. Exploring the Symbolic Roots of Western Bureaucracy.* New York: Berg.

Hoag, Colin. 2011. Assembling Partial Perspectives. Thoughts on the Anthropology of Bureaucracy. *PoLAR, Political and Legal Anthropology Review*, 34(1): 81–94.

Heyman, Josiah. 1995. Putting Power in the Anthropology of Bureaucracy. The Immigration and Naturalization Service at the Mexico-United States Border. *Current Anthropology*, 36(2): 261–287.

Hull, Matthew S. 2003. *Government of Paper. The Materiality of Bureaucracy in Urban Pakistan.* Berkeley: University of California Press.

Hussain, Nasser. 2007. Beyond Norm and Exception: Guantánamo. *Critical Inquiry*, 33(4): 734–753.

Klockars, Carl. 1980. The Dirty Harry Problem. *Annals of the American Academy of Political and Social Science*, 452: 33–47.

Lentz, Carola. 2014. "I Take an Oath to the State, Not the Government". Career Trajectories and Professional Ethics of Ghanaian Public Servants. In Thomas Bierschenk and Jean-Pierre Olivier de Sardan, eds, *States at Work. Dynamics of African Bureaucracies*. Leiden: Brill: 175–204.

Lipsky, Michael. 1983. *Street Level Bureaucrats*. New York: Russel Sage Foundation.

Olivier de Sardan, Jean-Pierre. 2009. Practical Norms. Informal Regulation Within Public Bureaucracies (in Africa and Beyond). In Tom De Herdt and Jean-Pierre Olivier de Sardan, eds, *Real Governance and Practical Norms in Sub-Saharan Africa. The Game of the Rules*. London: Routledge: 19–62.

Osborne, Thomas. 1994. Bureaucracy As a Vocation. Governmentality and Administration in Nineteenth-Century Britain. *Journal of Historical Sociology*, 7(3): 289–313.

Schlichte, Klaus and Joel Migdal. 2005. Rethinking the State. In Klaus Schlichte, ed., *The Dynamics of States*. Aldershot: Ashgate: 1–40.

Schmitt, Carl. 1922. *Politische Theologie. Vier Kapitel zur Lehre von der Souveränität*. München und Leipzig: Duncker & Humblot.

Swedberg, Richard. 2005. *The Max Weber Dictionary; Key Words and Central Concepts*. Stanford: Stanford University Press.

Weber, Max 1919. *Politik als Beruf.* München und Leipzig: Duncker und Humblot.

Wedel, Janine R., Cris Shore, Gregory Feldman and Stacy Lathrop. 2005. Toward an Anthropology of Public Policy. *Annals of the American Academy of Political and Social Science*, 600: 30–51.