

行政问责的

伦理研究

伍洪杏◎著

By Wu Hongxing

Ethical
Research

on Administrative Accountability

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内容简介

责任政府既是各国行政改革的重要目标，也是理论研究的重要主题，而责任政府的落定取决于行政问责的长效机制。行政问责正成为中国新一轮政治体制改革的亮点与难点，其理论研究也成为一個紧迫而现实的课题。本书从行政问责的理论基础与实践依据入手，分析了行政问责是行政伦理建设的内在要求，阐述了行政问责的伦理价值诉求，挖掘了问责困境背后的伦理缺失，结合问责的发展趋势，从伦理的视角探讨创新行政问责机制的路径，以期达到建设责任政府的目的。本书试图用伦理的优势来弥补管理、政治和法律等路径的潜在不足，以伦理的特殊功能来超越问责困境，为完善我国行政问责制寻找新路径，以提高行政问责的实效性，督促政府及其行政人员切实履行好职责，从而为责任政府构建提供伦理支撑。

行政问责的理论基础有契约理论与责任伦理理论。契约论是联结权力行使与责任担当双向依存关系的基础，为行政问责实践提供了理论支撑；当代责任伦理提供了行政问责的直接理论资源，契合了行政问责的实践需要。为了更好地指导实践，本书追寻了行政问责的实践依据和基本原则：即价值依据、事实依据和法理依据，权责一致原则、正当程序原则、过罚相当原则和个人负责与集体负责相统一原则等。

行政问责不是超伦理的纯治理机制，在其运行中无不渗透

着深刻的伦理精神，体现出责任伦理的落实与践行。行政问责具有弘扬责任美德，推行责任行政；规范权力运行、实现权力向善；尊重“民意”、实现公共利益；提升道德修养、塑造行政人格等伦理价值。

行政问责必须落实到问责的每一个实践环节。行政问责实践的困境主要有谁来问责、问谁之责和何种问责等。谁来问责困境表现为“自上问下”与“自下问上”的矛盾和“同体为主”与“异体为主”的冲突；问谁之责困境主要是“直接责任（人）”与“间接责任（人）”的躲猫猫和“领导责任（者）”以“组织责任”为护身符；何种问责困境主要体现为“法理问责”与“情理问责”的纠结和“公开问责”与“秘密查处”的博弈。其间分别蕴含了行政价值迷失、德性伦理欠缺和制度伦理缺位的深层原因。可从公民伦理的培育，德性伦理的培养和制度伦理建设等方面超越问责困境。

问责官员复出不仅事关问责制的实施效果，而且关涉群众对党和政府的信任。然而现实中，由于缺乏刚性的制度约束，“可以”复出异化为“必然”复出，“应当”复出中的“正当”缺位，“正当”复出偏离“善”价值等失范现象时有发生。这消解了行政问责制的权威，滋长了暗箱操作的腐败空间，削弱了政府的公信力。规范化、制度化的官员复出机制是解决问责官员复出困境的根本路径，也是完善行政问责的有效途径。构建完备的制度体系是规范官员复出的基础，建立规范的复出程序是规制官员复出的关键，构建健全的监督机制是规范官员复出的保障。

Abstract

Responsible government is an important goal of administrative reform for all countries and also a major subject of theoretical study in this field. Whether a responsible government can be built depends on the long-term mechanism of administrative accountability. Administrative accountability is becoming one of the highlights and difficulties in China's new political reform. The theoretical study on it has become an urgent and realistic task. Starting from the theoretical and practical basis of administrative accountability, this book analyzed that administrative accountability is the internal requirement of administrative ethics construction. This book also elaborated the ethical value appeal of administrative accountability; and discussed the underlying deep-seated ethical deficiency behind the dilemma of accountability. Then, based on a thorough consideration of the development trend of accountability, this book discussed an innovative route of administrative accountability mechanism from the perspective of ethics in order to achieve the goal of building a responsible government. This book attempts to make up for the potential deficiencies in managerial, political and legal approaches with the advantage of ethics; overcome the dilemma of accountability depending on the special functions of ethics; and seek a new path for the improvement of the

administrative accountability in China so as to improve the effectiveness of administrative accountability and guide and urge the government and the public servants to earnestly fulfill their duties, and further provide ethical support for the construction of a responsible government.

The theoretical bases of administrative accountability are contract theory and the ethics of responsibility. Contract theory is the foundation for the mutual dependence relation between exercise of power and assumption of responsibilities, and provides theoretical support for practices of administrative accountability; the contemporary ethics of responsibility provides direct theoretical resources for administrative accountability and meets the practical requirements. In order to better guide practices, this book elaborated the practical bases and fundamental principles of administrative accountability, namely value basis, factual basis and legal basis and the principle of integration of power and responsibility; due process responsibility, fault and penalty equivalence principle and the principle of integration of individual responsibility and collective responsibility.

Administrative accountability is not a pure administration mechanism beyond ethics. Instead, profound ethic spirit exists throughout its operation, which embodies implementation and exercise of ethics of responsibility. Administrative accountability has the ethical values of carrying forward the virtue of responsibility and promoting responsible administration; regulating power operation and realizing the goodness of power; respecting "the will of the people" and realizing public interests; enhancing moral cultivation and building up administrative personality, etc.

Administrative accountability must be implemented at each step

of accountability practices. Three main problems that exist in administrative accountability are by whom, on whom and with what. The first problem, “by whom” embodies in the contradictions between top – down accountability and bottom-up accountability and between internal accountability and external accountability. The second problem, “on whom” mainly embodies in the avoidance of both “the directly responsible (person)” and “the indirectly responsible (person)” and “the leader in responsibility” takes “organizational responsibility” as a shield. The third problem, “with what” is mainly about whether to choose “law – oriented accountability” or “sensitivity – oriented accountability” and whether “transparent accountability” or “secret investigation”. There are deep – seated reasons behind them, such as lost administrative values, lack of virtue ethics and absence of institutional ethics. In order to solve the above problems, it’s essential to cultivate civic ethics and virtue ethics and build up institutional ethics.

Reinstatement of the officials who have been accountable for certain events not only matters for implementation effects of the accountability system, but also concerns people’s trust for the party and the government. However, in practices, due to lack of rigid system, “may reinstate” has been distorted into “must reinstate”; some officials’ reinstatement lacks “rationality”; and the so – called “rational” reinstatement deviates from the “good” value. As a result, anomies occur from time to time. They have weakened the authority of administrative accountability, have encouraged corruption space of black case work and have impaired credibility of the government. A standard and institutional official reinstatement mechanism is the fundamental route to solve this problem and also an effective way to im-

prove the administrative accountability. A well-established institution is the basis for regulating official reinstatement. Moreover, setting up standard reinstatement procedures, clarifying key steps of official reinstatement and establishing a sound supervisory mechanism can guarantee sound regulation of official reinstatement.

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第一章 绪论

近年来，随着民主政治的不断推进，从中央到地方都在积极开展行政问责的实践。特别是自2003年“SARS”事件以来，一场场“问责风暴”在中国掀起。“有权必有责、用权受监督、侵权要赔偿”是对推行问责制、打造责任政府作出的精辟概括。确实，行政问责能够督促政府及其行政人员更好地履行职责，从而真正做到“情为民所系，权为民所用，利为民所谋”，建立廉洁、高效的责任政府。2006年3月5日，时任总理温家宝在《政府工作报告》中强调要建立健全行政问责制，提高政府执行力和公信力；2008年行政问责制写入《国务院工作规则》和《国务院2008年工作要点》；2009年党中央和国务院联合印发了《关于实行党政领导干部问责的暂行规定》，是中央首个以问责为名的正式文件，具有较高的层次性和权威性，把行政问责制以及政府责任理念推向了一个新的高度。但是，冷眼观之，当前的行政问责实践尚存诸多不足，如问责立法滞后、问责制度供给不足等。分析其原因，主要是行政问责的理论研究滞后于问责实践的开展。应用伦理学是从伦理视角审视社会中发生的现象和存在的问题，以引起人们的关注并予以解决，从而推动社会的发展和人类的进步。而行政问责的伦理研究就是从伦理的视角对行政问责进行理论研究，找出行政问责中存在的问题，发挥行政伦理的独特功能，为解决现实问题和完善行政问责作伦理支撑。在我国，无论是从问责实践还是研究现状来看，行政问责的理论研究都已成为一个紧迫而现实的课题。

第一节 选题背景与意义

一 选题背景

历史和现实的经验昭示，人类社会的政治文明越是发达，政府的工作就越是具有挑战性，且越是要在更大的范围和更深的层面受到来自公众和社会的监督与审视。而高度的责任心和负责精神、完善的责任机制和问责机制，无疑是公信政府所必需的品格及其活力的源泉。本书的研究主要基于以下几个方面的背景因素。

（一）以德治国的理念指引

人无信不立，国无德不强。早在 2001 年，江泽民同志就指出：“我们在建设有中国特色社会主义、发展社会主义市场经济的过程中，要坚持不懈地加强社会主义法制建设，依法治国，同时也要坚持不懈地加强社会主义道德建设，以德治国。”^①“德治”的核心是“德惟善政，政在养民”。孔子认为：“道之以政，齐之以刑，民免而无耻；道之以德，齐之以礼，有耻且格。”（《论语·为政》）^②可见，道德作为一种内在的约束机制，在管理中发挥着独特的作用。中华民族历来崇尚道德，并形成了优良的道德传统；我党历来注重思想道德建设，且涌现出了一批批具有良好“官德”操守的楷模。而对于行政组织和行政人员而言，贯彻“德治”的执政理念，就要在继承我国传统德治执政理念的基础上，在依法治国方略指引下，树立行政道德在行政领域内的地位，充分发挥行政道德的作用，从而达到行政权力为增进社会公益服务的目

^① 《江泽民文选》第 3 卷，人民出版社 2006 年版，第 200 页。

^② 杨伯峻：《论语译注》，中华书局 2012 年版。注：以下引用《论语》皆用此版本，只随文注出篇章，不再出注。

的。本书从行政伦理的视角审视问责中存在的问题，力荐发挥行政伦理的独特作用，对行政权力进行规范和约束，对政府失责行为进行责任追究，促使公共行政权力更好地为社会公众服务。

（二）频繁“问责”的理性追问

2003年，张文康和孟学农两位部级官员被查处。随后，在重庆开县井喷事故、北京密云踩踏事故、阜阳劣质奶粉事件、吉林中百商厦火灾以及松花江水污染等重大事件中已有诸多政府官员被追究责任。2008年更是被誉为“行政问责年”，仅前九个月就有19名高官被免职：石家庄市市长冀纯堂因三鹿奶粉事件被免职；山西省省长孟学农、山西省副省长张建民因“9·8”襄汾溃坝事故被免职；深圳市龙岗区副区长黄海广因“9·20”火灾被提名免职；石家庄市市委书记吴显国被免职；国家质检总局局长李长江去职……一系列由于公共事故频发而造成的官员去职引发了问责的高峰。这说明我国的问责日趋严格、严厉。但冷静思考，此类问责的政治合法性何在？道德合理性又如何？都有待我们进行理论探讨。

（三）问责失范的伦理救治

中央领导集体整肃“吏治”作风果敢，批批官员纷纷落马。但冷静观察，行政问责尚存诸多不足，其中突出问题之一就是行政问责还未走向规范和常态。一方面，一些地方政府在民愤大、社会关注度高的公共突发事件上搞“火线问责”，甚至是“丢卒保车”，致使有的行政问责存在“失范”现象。如“4·28 火车相撞事故”源于列车超速，却因另类“超速”而引起广泛关注。相撞事故发生于凌晨4点多，仅仅4小时之后，也就是早上8点多，铁道部就宣布免去济南铁路局局长的职务。有人质疑：超高速的官员撤职，是有规则的吗？如此规模的人