

AMERICAN PUBLIC SERVICE

Constitutional and Ethical Foundations

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American Public Service

Constitutional and Ethical Foundations

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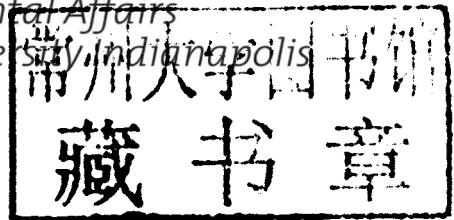
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DEDICATION

To all of the students who, over the years, have asked hard questions and who have thereby challenged us to provide deeper explanations of the ethical obligations of public administrators.

Questions of public administration ethics occur with increasing frequency in the news. The stories range from questions about the personal integrity of public officials such as President Bill Clinton, New York Governor Elliot Spitzer, and South Carolina Governor Mark Sanford, or the ethics of President George Bush, Vice President Dick Cheney, and others who perform public duties. Commentators, whether on Fox News, MSNBC, CNN, talk radio, blogs, or other media formats both traditional and new, seem to rejoice in the skewering of public officials, pointing out their misdeeds and raising charges of unethical if not illegal behavior. All too often, however, this scrutiny of public officials seems curiously detached from the sources of those ethics and the rules for their application to current political conflicts. David Rosenbloom, one of the leading scholars of public administration, once argued that the US Constitution and Bill of Rights are the sources of a set of values framing an ethics for public sector managers (1992). John Rohr, another eminent scholar of public administration, has insisted that public administration begins with the constitution, and that, stripped to its essence, the job of public officials is to “run a constitution” (1986).

We take Rohr’s and Rosenbloom’s arguments seriously. This book examines public administration ethics within the context of the constitutional, legal, and political values of the United States, and uses the American system’s constitutional values as the lens through which we might examine both the specific duties of government managers and the appropriate resolution of many contemporary issues confronting (and confounding) public sector officials.

Public administration and service delivery are increasingly being challenged by new and emerging trends in American society. Those challenges have polarized citizens’ expectations of government’s role and they threaten to undermine the capacity of government workers to serve citizens in a neutral and unbiased fashion. Many of these threats come from external pressures, such as interest groups pressing specific religious or discriminatory preferences. Others are internal, such as decisions to privatize or contract out programs for delivery by outside vendors, or to change administrative practices to respond to post-9/11 security needs. Additionally, as American social demographics change, public administrators are increasingly being asked to adopt new practices to address the needs and desires of

emerging and new constituencies. All of these are occurring in the midst of rapid technologic and global changes that present yet another challenge to public service.

Despite these increased demands for changes in service delivery, at least one important question remains constant: What should government do, and what are the values that anchor or define how public administrators should do it?

American Public Service: Constitutional and Ethical Foundations will address this question by illuminating the ways in which the Constitution, Bill of Rights, and court decisions define both the types of decisions that can be made by the government and the processes through which those decisions must be made. We will discuss the ways that these texts, incorporating as they do values such as political and religious neutrality, civil equality, transparency, and respect for individual rights, are core to the practice of public administration. We will also indicate where each of these values fits in a framework for moral decision making in the public sector.

Laurence Lynn, Jr., reminded readers of the centrality of public law to public administration in the introductory paragraphs of an important article:

Although the rule of law is universally regarded as a fundamental principle of democratic governance, the field of public administration continues to exhibit the “anti-legal temper” that emerged in the 1920s, when Leonard White’s managerialism largely displaced Frank Goodnow’s emphasis on the intimacy of law and administration. Although administrative law is a distinguished sub-field of scholarship and practice within public administration, the consensus view within the profession seems to be that law is one of many constraints on administrative discretion rather than its source, a challenge to administrative leadership rather than its guiding principle. In addition to unacceptably narrowing the range of values infusing public administration, such a view undermines the profession’s ability to contribute to the design of our governance arrangements at a time when constitutional institutions are being seriously challenged. To fulfill its constitutional role, public administration must commit itself to the rule of law as an institution that secures its legitimacy. (2009)

The authors of this textbook emphatically agree. It is our hope that the following explication of what we call “the constitutional ethic” will encourage public servants to recognize the importance of what Lynn calls the “intimacy” of the relationship between the Constitution and public administration, and return to the source of the values that animate American public service.

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A C K N O W L E D G M E N T S

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PART 1

Defining the Constitutional Ethic



CHAPTER OBJECTIVES

- 1 Place the issue of public service within its Constitutional context.
- 2 Make explicit the underpinnings of the American approach to governing.
- 3 Identify the connections among ethical public service, the US Constitution, and America's founding political philosophy.

The Constitution, Law, and Public Service Ethics

Every society must address the most basic questions of governance. These questions are: How should people live together? Who should exercise power and how? What limits should authority respect? What is the proper role of the state? What is legitimacy? And what duties do those who serve in government owe to the people? The cultural roots of a society will obviously influence the answers to those questions; the behavior of public managers in regimes rooted in notions of personal liberty will differ rather significantly from the behavior of officials in theocratic or authoritarian regimes. The ethics of public management in systems founded on a belief in the equal status of citizens is going to be different from systems reflecting traditions of aristocracy or caste.

Any study of public policy and administration requires that we examine and analyze management of the public's business *as that business is defined by a particular society at a particular time*.

Every society also creates rules to support its chosen system of governance. As private citizens, those rules will limit and control our actions in a number of ways. (The most obvious: We cannot freely engage in actions the government has labeled criminal.) If we become government employees or lawmakers, our ability to do our jobs well will depend upon how well we understand what the rules are; why we have these particular rules rather than others; and why we choose to solve some problems collectively through government action, while we choose to leave other problems to individuals or to voluntary associations and nonprofit organizations.

A genuine familiarity with constitutional principles is important to all of us, however, and not just to government workers and lawmakers. It is certainly true that our elected officials and legislators cannot make intelligent public policy decisions unless they understand our constitutional framework, because, as we shall see, government legitimacy and the rule of law require that our laws and policies be consistent with that framework.