

Thirty Years of Public Management Scholarship: Plenty of “How” Not Enough “Why”

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Abstract

Purpose: The purpose of this paper is to determine the overarching lessons to be gleaned from 30 years of public management literature.

Design/methodology/approach: The methodology was simple: review the professional literature generated during that time period.

Findings: Despite important contributions to our understanding of everything from bureaucratic motivation, public budgeting processes, the promises and pitfalls of contracting out and identification of the skills needed to be an effective public manager, to the scientific arcana of sustainability and the respective responsibilities of public administrators and elected officials, the profession would benefit greatly from more sustained emphasis upon the history and philosophy of the constitutional choices made by those who framed America’s original approach to governance.

Originality/value: The lack of a common understanding of America’s legal culture, or even a common vocabulary for exploring our differences poses immense challenges to public administrators, whose effectiveness requires a widely shared, if necessarily superficial, agreement on the purposes of America’s governing institutions and an ability to recognize the bases of government legitimacy. In the past 30 years, however, literature that addresses the important connections between constitutional theory and management practice, between the rule of law and the exercise of public power and discretion, has been all too rare. Let us hope that the next 30 years corrects that deficiency.

Keywords: Democracy, Accountability, Constitution

Article

Reflecting upon thirty years of scholarship in any field is a daunting assignment. When the field is public management, there is much to applaud: scholars have made important contributions to our understanding of everything from bureaucratic motivation, public budgeting processes, the promises and pitfalls of contracting-out, and identification of the skills needed to be an effective public manager, to the scientific arcana of sustainability and the respective responsibilities of public administrators and elected officials. These and other insights into what we might call the “nuts and bolts” of managing government operations are valuable and the copious research that has produced them has been both instructive and worthwhile.

That said, as I have surveyed the public management literature over these years, I have become increasingly convinced that the profession would benefit greatly from a much more sustained emphasis upon the history and philosophy of the constitutional choices made by those who framed America’s original approach to governance. I remain persuaded of the validity of the following observation from a 2003 review of several public administration textbooks:

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Before there was public management, there was political theory: what should government do? What actions by the state are to be considered legitimate? What is justice? What is public virtue? As Thomas Barth reminded us in this journal last October (Barth, Thomas J. "Reflections on Building an MPA Program: Faculty Discussions Worth Having," *Journal of Public Affairs Education*, Vol.8 #4), those of us who teach public management too frequently neglect these seminal questions for the necessary but inevitably more mundane skills of the profession—budgeting, planning, human resources management, policy analysis. But these practical subjects did not emerge from a void; they are inextricably bound up with our constitutional system, and that system in turn is the outgrowth of great philosophical debates about the proper ordering of human communities. It can be extremely rewarding for students to visit those debates. (One would love to say "revisit" but that would be inaccurate; virtually none of them have any familiarity with this intellectual history.) (Kennedy 2003)

In 1986, well before the beginning of the thirty-year survey of literature with which this journal issue is concerned, John Rohr published his seminal *To Run a Constitution*, in which he emphasized the link between public management ethics and constitutionalism. He revisited that connection in 1998, in *Public Service, Public Ethics and Constitutional Practice*. Rohr has long argued that the central theme of public management, and the most important challenge facing civil servants, is how to ensure the responsible exercise of administrative discretion. That "responsible exercise" requires familiarity with the constitution that administrators take an oath to uphold, and an understanding of the philosophical underpinnings and constitutional context of our particular approach to governance. Rohr noted the tensions between the culture of the administrative state and that of constitutionalism, and in language pertinent to both the opening quotation and the focus of this journal issue, noted that the "culture of the administrative state is managerial. It stresses achievement and performance; its watchwords are efficiency and effectiveness. The latter is cautious and legalistic. It limits government, checks tyranny, and provides the blessings of liberty." (Rohr, p.38)

It is inarguable that the literature of the past thirty years has been concerned primarily with efficiency and effectiveness; there has been much less research into the ways in which those constitutional "limitations on government" and "checks on tyranny" affect the management of public agencies. Among other things, the search for cost-effectiveness and efficiency has prompted substantial growth in comparative research; scholars increasingly investigate public management practices in other countries in order to identify useful alternative approaches to common public administration issues. There is no doubt that management regimes benefit greatly from research on such common challenges as waste disposal, public transportation, pollution reduction and the use of new communication technologies, among other tasks; however, no matter how useful and transferable such practical insights are, we must not lose sight of the fact that the rules and underlying assumptions governing management of public affairs will inevitably be particularistic. Public officials must manage the public's business as that business is defined by a particular society at a particular time. In the United States, that imperative requires a more than passing familiarity with constitutional assumptions about the roles, rights and respective responsibilities of government and its citizens.

Constitutions are the original declarations of public policy. They embody a society's fundamental philosophical assumptions about law, legitimacy and the proper exercise of government power. Constitutions and the legal and administrative systems they establish dictate the ways in which we frame public problems and they effectively foreclose exploration of certain policies that may be employed in other countries or at other times. To cite some rather obvious examples, the United States

Constitution does not permit American officials to impose martial law when burglary rates get too high, or to censor music lyrics when some citizens find them too suggestive. It does not permit government to reduce welfare rolls by refusing to feed Hispanic children, or to combat civic unrest by criminalizing political demonstrations or marches. Understanding the constitutional bars to these and other governmental measures, and the reasons for them, is critically important to the proper discharge of a public manager's duties.

Constitutional provisions not only circumscribe and prescribe the arena within which public policy debates may legitimately occur, they also provide us with a common language, something that is required for meaningful democratic dialogue. Public managers don't need to agree with every choice made by the nation's founders, but they do need to understand what those choices were, why they were made, and why they matter today. Without that essential background, many public management issues cannot be properly framed or the political passions they sometimes arouse clearly understood; they will tend to be viewed as isolated and unconnected problems to be addressed by the appropriate technocrats. With constitutional literacy comes recognition that certain underlying principles will be as applicable to discussions of welfare reform, tax policy and land use as they are to school choice or public health or gay rights.

A case in point: An issue that has generated a great deal of public management research over the past thirty years is the issue of privatization, more accurately described as "contracting out." The practice of providing public services through third-party surrogates, both non-profit and for-profit, has grown considerably over the past three decades. Public administration scholars have studied the practical and fiscal challenges of the practice (Cooper, 2002; Greene, 2002; Kettl, 2000; Sclar, 2000; Brudney, Hebert and Wright, 1999; Starr, 1987) ; nonprofit scholars have addressed concerns about sectoral blurring and its effect on nonprofit and voluntary organizations [Milward, 1994; Gronbjerg, 1993; Smith and Lipsky, 1993; Milward and Provan, 1993; Milward, Provan and Else, 1993]; and both have examined the mechanics and challenges of what has been called the "contract state." (Hall and Kennedy, 2008; Marvel and Marvel, 2007; Light, 2006; McGuire and Agranoff, 2003; Perry and Wise, 1990) The scholarship examining contracting is copious and growing, and over the years, as researchers have explored the civic and monetary costs of these arrangements, those analyses have become more fine-grained and illuminating. Even today, however, despite significant academic interest in most aspects of the practice, there is a paucity of literature examining the sometimes troubling effects of these arrangements on constitutional accountability, and a limited recognition of the different constitutional implications of different public-private relationships.

The terms "public affairs" and "public management" reflect the existence of both public and private sectors, and different constitutional cultures define those spheres differently. In the United States, we have drawn a distinction between the public sector, by which we mean government and its agencies, and civil society, by which we mean the multitude of nongovernmental, voluntary communal and religious associations through which individuals may act and connect. That distinction is a critical element of constitutional analysis. It is extremely dispiriting to encounter public officials who are simply unaware of the concept of state action, who have never been taught that the constraints of the Bill of Rights limit *government only*, and that as a consequence, we must ask different questions when we are proposing government interventions than when we are contemplating other kinds of collective social action.

Contracting out can make it difficult to distinguish private from public activity, a distinction critical to constitutional analysis. On the one hand, if a government agency engages in traditional procurement activities, if, for example, it buys computers or automobiles or other products from a private company, the vendor of those goods will not and should not be considered by virtue of that transaction to be a part of the public sector. But what is the result when a city or state engages a for-profit company or nonprofit organization to deliver services that are government's responsibility and that were previously delivered by government employees? During the discharge of those contractual duties, can the private-sector company or non-profit organization legally engage in practices that would be unconstitutional if done by government? The case law to date suggests that the answer to this question is sometimes yes, and that is a very troubling conclusion. (Kennedy, 2001) Even more troubling is a lack of clear guidance from the courts to public managers that would assist them in distinguishing between situations in which a non-governmental partner will be held constitutionally responsible and those in which it won't. (In *Lebron v. National Railway Passenger Corporation*, a 1995 case, Justice Scalia memorably conceded that "It is fair to say that our cases deciding when private action might be deemed that of the state have not been a model of consistency.")

Nevertheless, though the public management literature dealing with normative constitutional issues over the past thirty years is thin, it is not non-existent. This essay previously referenced John Rohr's foundational contributions to the literature in *To Run a Constitution*. His later *Public Service, Ethics & Constitutional Practice* brought together a series of lectures addressing the same concerns, given over a period of twenty-plus years. Publication of the book, according to Rohr, had three goals: to remind public servants of the nobility of their calling; to stress the importance of the constitutional dimension of their work; and to encourage public managers to make greater use of constitutional language to describe their everyday activities. In connection with the third goal, he reiterated his belief that "one of the most fundamental problems with the public management movement" is its failure to emphasize that the job of the public manager is to implement the Constitution.

David Rosenbloom has been one of the most important and consistent scholars amplifying Rohr's insistence upon the essential relationship between constitutional principles and the everyday decisions of public managers. (Rosenbloom 1971, 1983, 1987, 2002, 2003; Rosenbloom, Carroll and Carroll, 2000; Rosenbloom and Kravchuch, 2005; Rosenbloom and McCurdy, 2007) In 2000, together with James and Jonathan Carroll, Rosenbloom published *Constitutional Competence for Public Managers*, intended as a textbook for those teaching public administration. The book provided a highly readable combination of public administration theory and constitutional case law, including several issues raised by contracting and the Reinventing Government movement. The authors explained the book's objective in their introductory chapter as an effort to provide students and practitioners of public management with knowledge needed to make them "constitutionally competent."

Given the number of articles and research studies that have been devoted to the New Public Management (NPM) over the past three decades, it is worth quoting a particularly cogent analysis from Chapter Six of *Constitutional Competence for Public Managers*, addressing the conflicting philosophies of NPM and the Constitution. Noting the NPM emphasis on employee empowerment, the authors began by quoting Al Gore:

"...people—in government or out—are, for the most part, neither crooked nor stupid. Most people want to do the right thing, so long as the right thing makes sense. Perhaps the most important thing about the

reinvention initiative, and its regulatory reform work in particular, is that it is based on a new assumption: that people are honest and that if you tell people what needs to be done, and let them get on with doing it, the chances are it will be done better—and more cheaply—than if you tell them how.” (127)

As the authors observe, this statement may or may not be an accurate view of human nature, but it is inconsistent with both the “underlying premises of the Constitution and the received political culture in the United States” (127)

Furthermore, they point out that one person’s prudent precautions against corruption and overreaching are the next person’s red tape. Deregulation and employee empowerment will inevitably create tensions with provisions of a constitutional structure designed to encourage accountability and discourage administrative capriciousness—especially the separation of powers and due process.

The importance of Separation of Powers to the field of public management was also the subject of a book written in 1995 by Michael Spicer, *The Founders, the Constitution and Public Administration*. In that book, Spicer made a strong case for the importance of constitutional values to public administration. (Indeed, he began the book with the assertion that public management that is not rooted in the Constitution lacks legitimacy, a view that both Rohr and Rosenbloom would almost certainly endorse.) “The purpose of this book,” Spicer says in his introduction “is to examine the worldviews underlying public administration and the Constitution. It is also to see how our vision of public administration might be modified so as to render it more compatible with the worldview of the Founders.”(10)

Spicer argues that public administration, with its early roots in scientific management, has focused almost exclusively on such specific areas as policy analysis, management science, and systems analysis in public administration, and more recently on the public management uses of computers, management information systems and the various techniques for reinventing or streamlining government. The Constitution, in contrast, is concerned with broader philosophical questions about the proper use and reach of government power. Spicer cites Madison’s abiding concern over the abuse of state power by officials responding to popular passions, as well as his belief in the importance of checks and balances, and his conviction that “ambition must be made to counter ambition”(36). He quotes from Hamilton to underscore the Founders’ conviction that it is better for government to do too little than too much, better to regret that good laws didn’t pass than to regret that bad laws did.

Spicer argues that because public administration has concentrated on the need to legitimize the administrative state, it has found itself at odds with a central Constitutional concern, the need to limit power. He suggests that for public administrators intent upon steering the ship of state, the Constitution is far too often seen as a problem to be circumvented, rather than a basis upon which to build legitimacy.

In the first decade of the 21st Century, there has been an uptick, however slight, in publications meant to underscore the importance of constitutional competence in public administration. In 2006, Anthony Bertelli and Laurence Lynn published *Madison’s Managers: Public Administration and the Constitution*, in which the authors challenged public management scholars and professionals to recognize the importance of constitutional foundations to the actual and perceived legitimacy of public administration; in the book, the authors explored the specific implications of that insight for managerial

practices. Also in 2006, Bertelli and Lynn published an abbreviated version of their argument, titled “Public Management in the Shadow of the Constitution” in *Administration and Society*.

In 2009, Robert Christensen emphasized the connection between public law and public management in an article published by *Public Performance and Management Review* titled “Running the Constitution: Framing Public Administration,” and in 2010, Stephanie Newbold provided an important overview of the (scant) literature and argued for renewed emphasis upon the constitutional roots of public management. Newbold’s article in *Public Administration Review* was titled “Toward a Constitutional School for American Public Administration,” and in it she made the case for the establishment of a “constitutional school,” which she defined as a “loose confederation of public administration scholars and practitioners” who would connect the U.S. Constitution with all aspects of American public administration theory and practice. In her introduction, Newbold cited David Rosenbloom (2002, 2003) for the proposition that the Constitution is “the normative base for our scholarship, and it demands that we reemphasize and reestablish a greater commitment to how the rule of law pervades public administrative management in its entirety.”

Newbold credited Michael Spicer and Larry Terry for the term “constitutional school,” which they coined in 1993 in a *Public Administration Review* forum on public administration and the Constitution. Terry believed that public administrators’ oath to uphold the Constitution should be seen as a “moral commitment” requiring fidelity to the values embodied in the nation’s charter. Newbold also cited Terry Cooper (1991, 1994; Cooper and Wright 1992), Rosemary O’Leary (O’Leary and Wise 1991, 2003) John Rohr (1986, 1998, 2002) David Rosenbloom (2002; Rosenbloom, Carroll and Carroll 2000), Larry Terry (2003), and Dwight Waldo (1948), among others, for their efforts to focus awareness on the importance of public law and constitutionalism to the field of public management. She described them as scholars who have

championed the notion that it is often just as important, and perhaps even more so, for government to implement public policies and rely on managerial techniques that demonstrate values associated with responsibility, representativeness, responsiveness, rule of law, and especially constitutional competence (p. 540).

Newbold rests her argument for a constitutional school on three grounds: first and most importantly, she echoes Rohr’s conviction that the legitimacy of the administrative state requires fidelity to the constitution. Second, she notes the importance of a consistent terminology with which to define, discuss and advance scholarship devoted to issues of constitutional adherence. And finally, she emphasizes the need to extend scholarly discourse on these issues beyond the narrower academic silos within public management.

To say that an increase in research emphasizing the constitutional context of public management has failed to materialize would be an understatement, despite the advocacy of scholars like Rohr, Rosenbloom, Newbold and others. The anemic response is dispiriting for several reasons, not least because more attention to the constitutional and legal imperatives of public management would provide an appropriate and overdue rebuttal to the repeated, thoughtless and widely accepted mantra that government should be “run like a business,” with its unmistakable implication that specialized knowledge or skills are unnecessary to successful public administration. The assumption is apparently that anyone possessing “common sense” business skills is thereby equipped to capably manage the

operations of government agencies, no matter the agency's mission or the complexity of its assignments.

When significant segments of the population do not know the history, philosophy or contents of their country's Constitution, they cannot judge the propriety of public administrators' behaviors. When public managers are uncertain of the professional or ethical behaviors required by the Constitution, they may find themselves obeying or enforcing Congressional or Administrative mandates that contravene constitutional values and erode democratic norms. In the wake of the 2016 election, public debate over the constitutionality of several actions taken by the new Trump Administration has become ubiquitous; unfortunately, that debate has also placed the public's widespread lack of civic literacy on prominent display. That lack of basic civic and constitutional knowledge is apparently shared by a depressing number of public officials, both elected and appointed.

The Journal of Public Integrity recently published an article in which I explored the importance of grounding public management ethics and performance in a deep understanding of the constitutional culture, especially in a country as diverse as America:

Unlike citizens of countries characterized by racial or ethnic homogeneity, American identity is rooted in allegiance to a particular worldview; it is based upon an understanding of government and citizenship originating with the Enlightenment and subsequently enshrined in the U.S. Constitution and Bill of Rights. Understood in this way, "constitutional culture" has a considerably broader scope than law and policy; it is an expression of the ongoing dialectic between a society's legal norms and the broader culture within which those norms are situated and must be understood. The American "constitutional culture" arises from the operation of our constitutional values in a radically heterodox culture, and the effects of that interaction on policy choice and contestation.

Decisions made by those who designed America's constitutional architecture have shaped contemporary definitions of public and private, notions of governmental and personal responsibility, and conceptions of human rights. They dictate the manner in which we frame and understand civic responsibility, and allocate collective social duties among governmental, nonprofit and private actors. In short, those initial constitutional choices have been constitutive of a distinctive American culture. What Kennedy and Schultz have called "the Constitutional Ethic" is behavior grounded in, and compatible with, the American Constitution (2011). (Kennedy 2012)

Survey research offers substantial support for the proposition that American voters believe our national government is broken. The just-concluded presidential campaign made it abundantly clear that we lack a common understanding of what it is that government should do, and disagree rather strongly on the methods elected officials should employ in the discharge of their duties. That lack of a common understanding of America's legal culture, or even a common vocabulary for exploring our differences, is exacerbated by the internet and social media, which enable citizens to live within information "bubbles" consistent with their worldviews. This state of affairs poses immense challenges to public administrators, whose effectiveness requires a widely shared, if necessarily superficial, agreement on the purposes of America's governing institutions and an ability to recognize the bases of government legitimacy.

It is not the job of public management scholars to provide the broader American public with the requisite levels of civic knowledge, but those scholars can examine the causes and consequences of the

public's anger with its governing institutions, and the degree to which that anger might be ameliorated by changes in the ways in which public managers communicate or operate. Researchers can assess the extent to which the practical imperatives of the administrative state have suffocated or displaced the constitutional norms to which they should be subservient, and offer correctives where appropriate. Even the necessary "nuts and bolts" literature can remind the profession of its constitutional roots. In the past thirty years, however, literature that addresses these important connections between constitutional theory and management practice, between the rule of law and the exercise of public power and discretion, has been all too rare. Let us hope that the next thirty years' literature corrects that deficiency.

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