

Honor, Ethics, and Accountability

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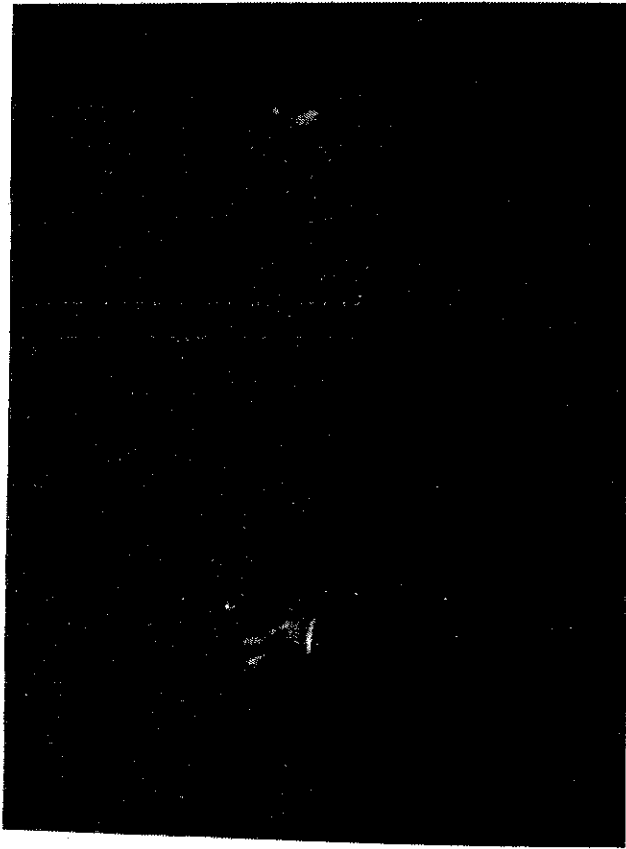
KEYNOTE: Niccolò Machiavelli, the Preeminent Public Administration Ethicist

It has been more than five centuries since his birth, but Niccolò Machiavelli (1469–1527) remains the most quoted, most read, most interpreted, and most misunderstood public policy adviser who ever lived. By the time William Shakespeare wrote *Richard III* in 1592, he could assume that his audience would be familiar with Machiavelli's diabolical reputation. Thus Shakespeare could have his title character introduce himself as being so evil that he could "set the murderous Machiavelli to

school." Similar references to Machiavelli as the personification of evil abound in the plays and literature of Shakespeare's time and have continued ever since.

But it's a bum rap. Machiavelli was really a nice guy. Indeed, he is an exemplar as a public administrator and policy analyst. Born into a family of ancient nobility but persistent impoverishment, he was educated well enough to become a civil servant and sometime ambassador for Florence beginning in 1498. He was an honest, truthful, and competent employee. But his was a patronage position (there being no merit system then), and he lost his job and nearly his life with a shift in the political winds of 1512. Thereafter, he eked out a living on a meager farm left to him by his father.

His greatest desire was to go back to work for his beloved Florence, now in the control of the Medici family. So, like many a high-level political appointee out of power, he wrote a book (indeed several) to demonstrate his usefulness to potential employers. In his most famous private letter (dated December 10, 1513), quoted by biographer Giuseppe Prezzolini, he expresses hope that "if it [his book *The Prince*] were read, they [the Medici] would see that for . . . fifteen years I have



Why is this man smiling? Princeton professor Maurizio Viroli titles his biography of Machiavelli *Niccolò's Smile* and then goes to great length—indeed, book length—to explain how the smile in this portrait is indicative of the subtlety of his mind. But because the portrait was painted several years after Machiavelli died, we may surmise that this is not necessarily his real smile. Enigmatic smiles are a hallmark of old portraits. (Remember the *Mona Lisa* by Leonardo da Vinci.) Then remember the reason that practically none of these old portraits have toothy smiles as is common today: bad teeth. Until modern dentistry, even the richest people had terrible teeth—not to mention breath. So it is reasonable to conclude that Niccolò's smile is more dental than mental.

Source: Wikimedia Commons.

been studying the art of the state." He even offers proof of his honesty as a past and potential employee: "As a witness to my honesty and goodness I have my poverty" (Prezzolini, 1967).

Because Machiavelli, despite constant efforts, never did get the government job he so coveted, after working on his farm all day, he spent his nights working on the most enduring books of political philosophy produced during the Italian Renaissance. *The Prince* (1532) and *The Discourses* (1531) were important political and military analyses that led to the use of the term Machiavellianism to refer to cunning, cynical, and ruthless behavior based on the notion of the end justifying the use of almost any means. What Machiavelli actually noted in *The Prince* was that a ruler would be judged by results—and through this—his methods will always be judged positively. Machiavelli, as one of the first policy advisers, developed a set of prescriptions and proscriptions for his prince that were designed to ensure that the prince would flourish politically. Machiavelli offers a set of axioms and ideas about obtaining power, holding on to power, and using power to gain advantage:

- Men should either be treated generously or destroyed, because they take revenge for slight injuries—for heavy ones they cannot. [Potential organizational or political rivals should be either made part of your team or "destroyed"—fired or killed—because if left in place, they will, like a snake, bite you in the rear when you least expect it.]
- Princes ought to leave affairs of reproach to the management of others, and keep those of grace in their own hands. [The good news a leader delivers with a maximum of publicity; the bad news is quietly announced by a low-level assistant.]
- It is necessary for him who lays out a state and arranges laws for it to presuppose that all men are evil and that they are always going to act according to the wickedness of their spirits whenever they have free scope. [It is as James Madison, a reader of Machiavelli, wrote in *The Federalist*, No. 51: "Ambition must be made to counteract ambition." To this extent the US Constitution with its system of checks and balances is reflective of Machiavelli.]
- Princes who have achieved great things have been those who have given their word lightly, who have known how to trick men with their cunning, and who, in the end, have overcome those abiding by honest principles. [This advice may sound familiar to anyone who has been deceived by a leader, such as when President Richard Nixon said, "I am not a crook," or when president Bill Clinton told the nation, "I did not have sexual relations with that woman."]

If lying politicians have a patron saint, it must be Machiavelli, who wrote in *The Prince*, "It is necessary that the prince should know how to color his nature well, and how to be a great hypocrite and dissembler. For men are so simple, and held so much to immediate necessity, that the deceiver will never lack dupes." Machiavelli's ideal prince would not be a traditional man of honor; his word would not be his bond. Machiavelli's advice was "not to keep faith when by so doing it would be against his interest and when the reasons which made him bind himself no longer

exist" (Machiavelli, 1532, pp. 64–65). This was the kind of thing that made people suspect that not only was Machiavelli not a gentleman, but his books were not fit reading for gentlemen either.

Machiavelli, in his advice, disregarded the issue of morality—apart from those circumstances where it was prudent or necessary for the prince to appear to be moral. Yet this was essentially ethical because the lying was for the good of the state. Machiavelli's theory of lying was a restatement of Plato's noble lie from Book 3 of *The Republic*, in which he asserts that the guardians of a society may put forth untruths necessary to maintain social order.

But, alas, Machiavelli's books failed in their initial purpose to get him into a job and out of poverty. While his manuscripts circulated privately among his friends, *The Prince* was not published until five years after his death. Only then did it become a sensation. Posthumously, Machiavelli has been a great success. Much like a modern rapper who becomes more and more famous as critics denounce his vile lyrics, Machiavelli became notorious because he was denounced by all three of the major political factions of his time: the Roman Catholics, the Protestants, and the Republicans. Because it was so widely denounced, *The Prince* became all the more widely read—or, rather, misread. Readers seeking to find evil found it. But a more subtle and modern reading finds it less and less evil and more and more practical. Machiavelli's book of advice to would-be leaders is the progenitor of all "how-to-succeed" books that advocate practical rather than moral actions.

For Discussion: *Why is Machiavelli still so critically important for understanding the mechanisms of power in public policymaking and administrative practices? What current public figures have followed Machiavelli's example and have written articles and books specifically so they could influence public policies and/or gain public office?*

THE ORIGINS AND NATURE OF HONOR

Our modern concepts of honor have their origins in ancient Greece and Rome. The classic example of honorable public service was Lucius Quinctius Cincinnatus, the Roman patrician who has become the symbol of republican virtue and personal integrity. In 458 BC, when Rome was threatened with military defeat, Cincinnatus, a farmer, was appointed dictator by the Senate to deal with the emergency. Legend has it that he literally abandoned his plow in midfield to take command. Within 16 days he defeated the enemy, resigned from the dictatorship, and returned to his plow. Ever since, politicians have been insincerely asserting how much they yearn to give up power and return to the farm, as Cincinnatus did. This is a very strong theme in American political history. Until the twentieth century, it was thought politically indecent to publicly lust after political power. Politicians were expected to sit contentedly on their farms, metaphorically behind their plows, until they were called to service.

George Washington is one of the few genuine Cincinnatus figures in world history. Indeed, Lord Byron (George Noel Gordon) in his 1814 *Ode to Napoleon Bonaparte*, called Washington "the Cincinnatus of the West." Garry Wills writes

in *Cincinnatus: George Washington and the Enlightenment* (1984), [On December 23, 1783, at the end of the Revolutionary War, General George Washington] “spoke what he took to be his last words on the public stage; ‘Having now finished the work assigned me, I retire from the great theater of Action . . . I here offer my commission, and take my leave of all the employments of public life.’ At that moment, the ancient legend of Cincinnatus—the Roman called from his plow to rescue Rome, and returning to this plow when danger had passed—was resurrected as a fact of modern political life” (Wills, 1984).

The example of Cincinnatus is still with us today. It is even unconsciously evoked for a modern public that never heard of the ancient Roman. For example, Ronald Reagan is quoted by E. G. Brown in *Reagan and Reality*: “One thing our founding fathers could not foresee . . . was a nation governed by professional politicians who had a vested interest in getting reelected. They probably envisioned a fellow serving a couple of hitches and then looking forward to getting back to the farm.” The modern term limits movement is at its core an effort to legislate Cincinnatus-type behavior—to send them back “to the farm” (Brown, 1970, p. 51). Of course, both Cincinnatus and Washington were not merely farmers. They both had major estates with slaves to do the heavy lifting. Modern political leaders not only lack slaves, but they also do not even have farms anymore. Having no honorable and luxurious place to which to retreat when recalled from public life, they fight all the harder to stay in the game.

Shakespeare’s Marc Antony was right. We are “all honorable men”—and women. Our culture inculcates us with concepts of honor from childhood. Much of our sense of honor comes from observing the actions of family and neighbors. The rest comes from the media. Many people get their first conscious lessons in honor from movies. Westerns directed by John Ford and others taught Americans the “code of the West.” They taught you that one’s word was sacrosanct and thus was not given lightly, taught you when an insult was so bad that it warranted violence, and taught you, above all, to protect the weak—all notions from medieval chivalry.

Later, space “westerns” such as *Star Trek* and *Star Wars* taught a new generation the intergalactic concept of honor, which, of course, was no different from the medieval concept. Some things have not changed in a thousand years. Thus young people still learn what it means to be honorable by listening to (and watching) the sagas of their culture. *Star Trek* as a transmitter of notions of honor is just a modern version of the eighth-century *Beowulf* or the eleventh-century *Song of Roland*. Honor has been and remains one of the core influences of human behavior. It is often more important than life itself. The founders of the United States in the last sentence of their 1776 Declaration of Independence stated, “And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor.” Their lives were not sacred. Their fortunes were not sacred. But their honor was.

National Honor

Once reserved for the nobility, since the eighteenth century honor has become increasingly democratized. As absolutist governments declined, national honor (once solely the concern of individual monarchs) became a factor that influenced

whole peoples. No less a pragmatist than President Woodrow Wilson felt the pull of national honor. In 1916 he asserted that "the nation's honor is dearer than the nation's comfort; yes, than the nation's life itself" (Wilson, 1916, p. 28). Thus a collective democratic citizenry, no less than a defenseless maiden, may espouse the motto "death before dishonor." This notion is more than melodramatic hyperbole. During World War II, the French dishonored themselves by surrendering so quickly to the Germans in the spring of 1940. They were not willing to fight the Nazis in the streets of Paris and see their beautiful city destroyed. But the British, expecting an invasion soon afterward, were willing to sacrifice London.

When Winston Churchill told the House of Commons on June 4, 1940, immediately after the Dunkirk evacuation that "we shall defend our island, whatever the cost may be, we shall fight on the beaches, we shall fight on the landing grounds, we shall fight in the fields and in the streets, we shall fight in the hills; we shall never surrender," he meant exactly that. Indeed, he later wrote in his postwar memoirs, *Their Finest Hour* (1949), that "we were prepared to go to all lengths. I intended to use the slogan 'you can always take one with you.'" Suicidal? Perhaps—but honorable all the same. When General Charles de Gaulle fled to England rather than surrender, he was asked why he was there. He replied, "I am here to save the honor of France." There is still debate about whether he succeeded or not. (At least he tried!)

The US involvement in the Vietnam War can also be viewed through the perspective of national honor. As the costs of the war became more than the American public was willing to bear, the nation's leaders struggled to find a way for the United States to leave Vietnam while maintaining its appearance as a strong and proud world power. Even when the chances of military success in Vietnam became remote, the United States continued to send troops into the field, as diplomats tried to negotiate an acceptable peace. In 1973 President Richard M. Nixon addressed a national audience that he had concluded an agreement to end the war and bring peace with honor in Vietnam. Ultimately, it can be argued that Nixon's agreement brought neither real peace nor real honor to the United States, yet the importance of maintaining an appearance of honor was essential to any plan that extricated the United States from its involvement in Vietnam.

As the United States scaled down its military operations in Iraq in 2008, the issue of maintaining national honor was once again playing a significant role in the decision-making process on the removal of combat troops. During the 2009 presidential campaign then candidate Barack Obama was adamant that if elected he would have American troops out of Iraq within 16 months. Like Nixon before him, Obama would not declare victory in Iraq, but instead attempted to preserve American honor while recognizing the limited success of our efforts there. Still, the US completed its final withdrawal of American military forces by the end of 2011.

Why Honor Precedes Ethics

Honor comes before ethics because a person without honor has no moral compass and does not know which way to turn to be ethical. Honor goes to the essence of public affairs; since ancient times only individuals perceived to be honorable could be trusted with the public's business. Of course, honor always has a context, and it is

always influenced by the prevailing organizational and political culture. Melvin M. Belli, the American attorney, relates a story that illustrates this point. In the early 1950s Belli traveled to Paris to represent his client, movie star Errol Flynn, who had a legal tangle with a French firm over the profits from a movie. When Belli arrived, the French lawyer on the case advised him that there was nothing to worry about: "We have given the judge 200,000 francs and the case is in the bag." When Belli wondered aloud what would happen if the other side were to give the judge 300,000 francs, his French associate became indignant and replied, "But Monsieur, we are dealing with a respectable judge. He is a man of honor. He would not think of taking from *both* sides" (Belli, 1976, p. 130). This French judge's concept of honor was quite unlike the apocryphal American judge who, after taking bribes from both sides in a dispute, decided to try the case on its merits. Which judge is more ethical?

Dimensions of Honor ✓

Honor has many dimensions. The most obvious and superficial kind is *ex officio*. This is the Latin phrase meaning "by virtue of the office." Many people hold positions on boards, commissions, councils, and so on because of another office they occupy. For example, the mayor of a city may be an *ex officio* member of the board of trustees of a university in that city. Thus "honorable" is the form of address used for many public officials, such as judges, mayors, and members of the US Congress. Here honorable does not necessarily imply personal honor or integrity; it merely signifies current (or past) incumbency. Consequently, even after Richard M. Nixon disgraced himself and was forced to resign as president in 1974, he was still formally "The Honorable" in terms of formal address.

Honor is also a function of the outward perception of one's reputation. Reputation in business, whether of an individual or an organization, is a highly valued asset. Indeed, when businesses are sold, they often sell for sums far in excess of their book value because of their intangible goodwill or reputation in the community.

True honor begins with personal integrity and honesty. It goes beyond Benjamin Franklin's famous admonition from his *Poor Richard's Almanac* that "honesty is the best policy." Think how cynical Franklin's statement is—it seems to have been derived from Cervantes's *Don Quixote*, anyway. Honesty is not worthwhile for its own sake; it is simply the optimum policy—one choice from among many. But true honesty, as opposed to policy honesty, is the essence of a person of honor. Such people act with integrity. This is at the core of honor. Those who have integrity live up to their stated principles, values, and most importantly, their word. A person whose word is his or her bond gives the full faith and credit of his or her whole being to keeping commitments.

Sometimes this is almost frivolous, as it was when the legendary Abraham Lincoln walked miles through the snow to return a book by a promised date. But far more often one's word is the coin of the administrative realm. Things happen because one person tells something to another. This integrity of communication is essential for the smooth functioning of organizations that, in essence, are merely information-processing structures. This is why codes of honor (or integrity) first evolved among the military. Because lives, indeed whole battles, depended on the

Goodwill ■

The reputation and built-up business of a company. It can be generally valued as what a company would sell for above the value of its physical property, money owed to it, and other assets.

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accuracy of information sent up the chain of command, it was imperative that an ethic of honesty be instilled. This is still true today. If the word of an officer is not known to be good, that officer has lost his or her effectiveness to his or her superior.

A second but more subtle meaning of integrity is integrated strength or character. A building that holds together is said to have structural integrity. Individuals, who have character, as demonstrated by an observable long period of acting with integrity, are said to have gravitas, or as the British put it, "stability"—meaning that they are seated firmly enough in their convictions that they are not easily swayed. Thus those who have integrity have a sure sense of right from wrong; they know what their core beliefs are, and what they will or will not do, no matter what the pressure.

Gravitas ■
Intellectual weight.
A politician must exhibit a certain degree of gravitas if he or she is to be taken seriously for high office.

Regime Values

Administrators with integrity understand that they have a special moral obligation to the people they serve. They take seriously what John Rohr calls the "regime values" of their jurisdiction. In constitutional systems these values are established by the constitution, whether written, as in the United States, or unwritten, as in the United Kingdom. To a person of honor, an oath to "defend the Constitution of the United States against all enemies, foreign and domestic" is a serious matter. Thus, according to Rohr, the Constitution "is the moral foundation of ethics for bureaucrats" (Rohr, 1986, p. 70). Those senior administrators who gain reputations for being ethical and honorable abide by a new-fashioned *noblesse oblige*. Originally the "nobility obliged" by leading in war and demonstrated their honor and valor by taking physical risks to prove their courage—to demonstrate on the field of honor (a battlefield) just how honorable they were.

Lacking a traditional nobility, republican governments give leadership roles to senior bureaucrats and elected officials. Once in office, their fellow citizens rightly expect them to take moral and career risks, parallel to the traditional risks of combat, to protect their fellow citizens, the regime, and their constitution. And they must be heroic enough to risk not just their lives but their livelihoods as well. Louis Brandeis, later to be an associate justice of the US Supreme Court, argued in the 1910 *Glavis-Ballinger* case that public administrators "cannot be worthy of the respect and admiration of the people unless they add to the virtue of obedience some other virtues—virtues of manliness, of truth, of courage, of willingness to risk position, of the willingness to risk criticism, of the willingness to risk the misunderstanding that so often comes when people do the heroic thing" (McCulloch, 1952, p. 2). It is often said that managers are paid more than their jobs. Public managers live in an even riskier environment. Not only must they take normal management risks, but they must also risk their careers, their reputations, sometimes even their lives, to protect the values of the regime. It is simply a matter of honor.

All too often managers and employees fall from honor—or it may be that they never had it in the first place. Lapses take many forms. The two most common lapses of honor and honesty are corruption and lying.

TABLE 5.1**American Government Officials Charged/Convicted of Public Corruption under Federal Law**

	1993	1997	2001	2005	2009	2014	1993-2001 Totals	2005-2014 Totals
Federal Officials								
Charged	627	459	502	445	425	364	4983	8886
Convicted	595	392	414	390	426	364	4511	8148
Awaiting Trial				118	107	1131		
State Officials								
Charged	113	51	95	96	93	80	936	2065
Convicted	133	49	61	94	102	109	845	1860
Awaiting Trial				51	57	33		
Local Officials								
Charged	309	255	224	309	270	231	2515	5387
Convicted	272	169	184	232	257	252	2136	4690

This kind of corruption makes a mockery of economic considerations. The few that greedily feed at the public trough deny the rights of others to enter a fair system of economic competition.

Of course, viewed systemically, bribery is an important element in any political system. It supplements the salaries of various public officials. This is especially true in societies where public sector salaries are unreasonably low. Some police officers, customs agents, and building inspectors, for example, would be unable to maintain their standard of living if it were not for such informal salary increments. Additionally, such income supplement programs forestall the need for politically unpopular, precipitous tax hikes that would bring the legal wages of such officers up to reasonable levels. Systematic bribery allows business operators, dependent on the discretionary powers of public officials for their livelihood, to stabilize the relationships essential for the smooth functioning of their businesses. After all, many regulations that govern safety or conditions of business operation may not be universally applicable, reasonably enforceable, or economically feasible. Bribery's occasional exposure by the press serves to foster the political alienation of the electorate, which in turn encourages cynicism and reduces support for the democratic processes of government. While it is possible to quibble over the particulars of any given instance or non-instance of bribery, its pervasiveness in too many communities is generally not contested except by the most naive or the most corrupt. Bribery is even an important and time-honored tool of foreign policy. Of course, the United States does not have to bribe a foreign government to influence its support on some international issue. It can achieve the same effect by granting or withholding military or economic aid.

Watergate

A society's humor is a good indicator of its political corruption. For example, many analysts predicted that President Nixon would eventually be forced from office because of the Watergate scandal once Johnny Carson, the most popular, most mainstream, and most middle-of-the-road of American comedians, started telling jokes on his *Tonight Show* that were premised on the belief that the president of the United States was dishonest. The jokes were a bellwether because most of the audience—that is, most of mainstream America—accepted the premise. Comedians do not lead public opinion, but they certainly reflect it. The same is true today in Russia. *New York Times* columnist Thomas L. Friedman wrote that "corruption reaches right into the leadership." His indicator of this is the often told joke "about a man who drives into Moscow from the countryside and parks his new car right outside the Kremlin's Spassky Gate in Red Square. A policeman comes along and tells the man, 'Look, you can't park here. This is the gate all our leaders use.' The man answers 'Don't worry. I locked my car.'"

LYING FOR YOUR COUNTRY

The public officials who have the greatest reputation for lying are ambassadors—the highest ranking of all diplomats, sent as the personal representatives of one head of state to another. Sir Henry Wotton (1568–1639), Queen Elizabeth

WHISTLEBLOWING

Protecting the Public's Right to Know

Whistleblowing refers to what happens when an employee decides that obligations to society come before obligations to an organization. Thus, a whistleblower is an individual who believes the public interest overrides the interests of his or her organization and publicly blows the whistle on—exposes—corrupt, illegal, fraudulent, or harmful activity. Whistleblowers in our society are not well received. Children have long been taught not to be a “squealer”. Whistleblowers run the risk of being ostracized by their co-workers, losing their job, and being blacklisted in their field. Two famous early whistle-blowers were A. Ernest Fitzgerald and Daniel Ellsberg.

Fitzgerald was a senior career executive who was the Deputy for Management Systems in the Office of the Assistant Secretary of the Air Force, who in 1968 testified before a congressional committee about cost overruns on the Air Force's giant C-5A military cargo plane. The Air Force, which had not acknowledged the cost overruns, stripped him of his primary duties of overseeing cost reports on the major weapon systems and assigned him to essentially clerical tasks. A year later the Air Force reorganized Fitzgerald's office and abolished his job. Fitzgerald appealed the Air Force action. After almost four years of litigation, Fitzgerald was reinstated to his original civil service position and given back pay.

In the case of Daniel Ellsberg, even greater stakes were involved. Ellsberg was a former Defense Department employee who leaked the Pentagon Papers to the media. The Pentagon papers were an unedited and unexpurgated record of the step-by-step judgments that brought American involvement in Vietnam to its peak point by the end of the Johnson Administration. A historian's dream because of the raw data involved, this essentially shapeless body of material was destined to become a cause celebre when Ellsberg turned over 47 volumes of these officially classified documents to the *New York Times* and the *Washington Post* in 1971.

The Nixon Administration got an injunction to prevent their publication but the US Supreme Court would later dissolve the injunction in its ruling (*New York Times v. United States* [1971]) allowing the papers to be published. Ellsberg was then charged with espionage, but the case was dismissed when it was shown that the Nixon administration authorized a burglary to steal Ellsberg's medical records from his psychiatrist's office. The then chairman of the Senate Foreign Relations Committee, J. William Fulbright said of the papers: “Most of the material should not have been secret in the first place . . . I still do not see the harm that came from it, other than the fact that there is a violation of the law . . . I can disapprove of the leaking of the documents, but at the same time I disapprove just as heartily of the abuse of the classification power.” Ellsberg wanted the truth about US policy in Vietnam to be revealed to the American public. Thus he was willing to risk jail to expose the incompetence (and deception) he believed existed at the highest levels.

The Fitzgerald and Ellsberg affairs triggered a great deal of discussion in the media and government about the need to protect whistleblowers. When the Civil Service Reform Act was passed in 1978, it included provisions to protect

whistleblowers—primarily employer retaliation—among its list of prohibited personnel actions. The Civil Service Reform Act defined whistleblowing as revealing illegal actions, mismanagement, waste of funds, abuse of authority, or danger to the public's health or safety.

These provisions were the culmination of a 20-year history of encouraging and safeguarding public disclosure. In 1958, Congress had passed a Code of Ethics of Government Service, which exhorted federal employees to expose corruption and to place loyalty to the highest moral principles above loyalty to their agencies. The impact of this was negligible.

Another step forward involved the Freedom of Information Act of 1966 which provided for the public availability of information, unless the information falls within one of the specific categories exempt from public disclosure. Exempt records are those whose disclosure would impair rights of privacy or national security. Virtually all agencies of the executive branch of the federal government have issued regulations to implement the Freedom of Information Act. These regulations inform the public where certain types of information may be readily obtained, how other information may be obtained on request, and what internal agency appeals are available. The Freedom of Information Act provided ~~would be~~ whistleblowers with a statutory justification for exposing misconduct. After all, such disclosures were vindications of the public's right to know.

Two years later, in 1968, the US Supreme Court gave whistleblowers some constitutional support. The Court held in *Pickering v. Board of Education* that when public employees' right to freedom of speech are in question, the special duties and obligations of public employees cannot be ignored; the proper test is whether the government's interest in limiting public employees' "opportunities to contribute to public debate is . . . significantly greater than its interest in limiting a similar contribution by any member of the general public." But in 2006, the Supreme Court narrowed the freedom of speech principle for public employees in *Garcetti v. Ceballos*, ruling when they made statements as part of their work duties, their speech did not exempt them from disciplinary action or even dismissal.

In 2014, the Court ruled again on the matter of freedom of speech for public employees. In *Lane v. Franks*, the court protected an employee who had testified in a criminal prosecution case where a legislator had set up a ghost job position for herself. The state legislator was ultimately convicted, but the public employee was terminated from his employment. The court's newest member, Justice Sotomayor, wrote the short unanimous opinion that "the first amendment protects a public employee who provided truthful sworn testimony, compelled by subpoena, outside the course of their ordinary job duties."

Protecting Whistleblowers

But Congress has long recognized that there is more to protecting the public's right to know than simply guaranteeing freedom of speech. There has always been a special interest in encouraging employees to disclose information about illegal and wasteful activities—something more would have to be done to make employees feel safe from retaliation. There were only a few anti-retaliation statutes in effect—basically limited laws that made it illegal to take punitive actions against employees for such

things as testifying before Congress or for assisting in civil rights investigations. To provide comparable protection to whistleblowers for federal employees, the Civil Service Reform Act empowered the newly created Merit System Protection Board with authority to reverse the removal, demotion, or suspension of employees who had been the victim of retaliation. Even more importantly, the act authorized an Office of Special Counsel to prosecute any official responsible for acts of unlawful retaliation.

TABLE 5.2

Federal and State Laws on Whistleblowing

Federal

The Occupational Safety and Health Act (OSHA) protects employees from retaliation if they reveal safety and health issues, environmental hazards, other public safety problems—along with fraud or criminal acts in the workplace. Employers may not demote, cut wages or hours, or terminate employees who have lodged whistleblowing complaints. While OSHA covers more than 60% of whistleblowing complaints among private sector employees, there are 16 other industry-specific whistleblowing protections in other statutes from Health Care (The Affordable Care Act) to Finance (Sarbanes-Oxley).

Federal workers are covered by the Whistleblower Protection Act of 1989 that amended the Civil Service Reform Act. These initial protections were upgraded with new legislation—the Whistleblower Protection Enhancement Act of 2012.

States

States with Laws Protecting Both Public and Private Sector Employees	States with Laws Protecting Public Employees (All Public)	States with Laws Protecting Public Employees (State only)	States with Laws Protecting Private Sector Employees	No Laws
California	Alaska	Alabama	North Dakota	Arkansas
Connecticut	Arizona	Colorado		DC
Florida	Delaware	Indiana		Georgia
Hawaii	Illinois	Iowa		Idaho
Louisiana	Pennsylvania	Kansas		Maryland
Maine	South Carolina	Kentucky		Mississippi
Massachusetts	Utah	Missouri		Montana
Michigan		Oklahoma		Nevada
Minnesota		Washington		New Mexico
Nebraska		West Virginia		North Carolina
New Hampshire				South Dakota
New Jersey				Texas
New York				Vermont
Ohio				Virginia
Oregon				Wisconsin
Rhode Island				Wyoming
Tennessee				

Since 1978, whistleblowing protections have grown considerably. Following the federal model, at least 35 states have enacted their own statutes with various provisions protecting employees.

And state courts often have found it unlawful, even without the existence of statutory protections, for an employer to terminate someone's contract who has made a disclosure that serves the public interest. Congress has also enacted additional laws that provide whistleblowing protections—regardless of whether the employee is in the private or public sector, to protect specific disclosures of violations in health care, work safety, environment, transportation, finance, etc.

For federal workers, Congress has now acted twice to strengthen and improve the safeguards included in the Civil Service Reform Act of 1979. In 1989, it enacted the Whistleblower Protection Act, which first created and entrusted a separate US Office of Special Council (outside of the USMSPB) to enforce whistleblowing protection laws. The act allowed federal employees to appeal to the Merit Systems Protection Board (MSPB) to seek redress for alleged acts of retaliation involving previously non-appealable personnel actions, such as undesirable reassignments and poor performance ratings. Whereas the CSRA listed protections for whistleblowing by enumerating various prohibited personnel actions, the new act gave whistleblowers special rights of action or appeals, allowed them to seek injunctions against what they felt were punitive actions, and lowered the burden of proof to the personnel action taken against whistleblowers, as opposed to having to demonstrate intent to retaliate.

More recently, in 2012, The Whistle Blower Protection Enhancement Act revisited and strengthened some of the 1989 protections. The law simplified taking punitive actions against supervisors who were found to engage in retaliation and shifted the burden of proof to the organization to show it hadn't retaliated in personnel actions taken against whistleblowers. The right to contact and communicate with Congress was strengthened. Another provision eliminated the "first whistleblower loophole" which had limited protections to just the employee who first disclosed the issue—and extended them to other employees who reported misconduct after the first reported instance.

But despite the existence of these many whistleblowing laws, whistleblowing is not primarily a legal matter. The existence of legal protections alone will not encourage employees to disclose information. Surveys by the Merit Systems Protection Board have shown that employees primary concern in confronting fraud, waste, abuse is whether there is someone somewhere who will be willing to receive this information—which is inherently "bad news"—and be prepared to help correct the problem.

The MSPB revisited the state of whistleblowing in the federal government in a 2011 report and noted that not much has really changed in terms of employee perceptions. While perceptions among employees (comparing surveys from 1992–2010) show a decrease in "perceived wrongdoing", there was no change in the percent of employees (about one-third of employees who "believed that they had been identified as the reporter of wrongdoing indicated that they subsequently experienced or been threatened with reprisal." The MSPB surveys showed the following reasons that employees considered in making a decision to blow the whistle on their employer.

TABLE 5.3**Factors in Deciding Whether to Report Wrongdoing**

Factors in Deciding Whether to Report Wrongdoing	Percentage agreeing
Activity might endanger people's lives	97%
Activity was serious in terms of costs to Government	92%
Something would be done to correct the activity	90%
Protection from any sort of reprisal	85%
Activity was serious ethical violation, although the associated monetary costs were small	82%
Identity would be kept confidential	80%
The wrong doers would be punished	71%
Positive recognition by management for a good deed	34%
Eligible to receive a cash award for making report	16%

Source: US MSPB Report: research Highlights 2013 www.mspb.gov/studies

THE CHALLENGE OF ACCOUNTABILITY

Accountability is the extent to which one must answer to higher authority—legal or organizational—for one's actions in society at large, or within one's particular organizational position. Elected public officials are theoretically accountable to the political sovereignty of the voters. In this sense, appointed officials—from file clerks to cabinet secretaries—are less accountable than elected officials. The former are accountable mainly to their organizational supervisors, while the latter must answer to the people of their jurisdiction.

Administrative accountability is that aspect of administrative responsibility by which officials are held answerable for general notions of democracy and morality as well as for specific legal mandates. The two basic approaches to administrative accountability were first delineated by political scientists Carl J. Friedrich (1901–1984) and Herman Finer (1898–1969). Friedrich argued that administrative responsibility can be ensured only internally, through professionalism or professional standards or codes, because the increasing complexities of modern policies require extensive policy expertise and specialized abilities on the part of bureaucrats. Finer, on the other hand, argued that administrative responsibility could be maintained only externally, through legislative or popular controls, because internal power or control would ultimately lead to corruption. The tension between these two approaches continues today. Thus the challenge of accountability is to find a balance between completely trusting government officials to use their best professional judgment in the public's interest, and watching them so closely through legislative committees or executive review agencies that it inhibits their ability to function.

Because we aspire to a democratic form of government, we need to consider how the links between democratic government and public administration work. What are the things we do, must do, and indeed must avoid if we are to be public

administrators in a democracy rather than cogs in a despotic mechanism? Under the totalitarian communism of the former Soviet Union, the Russians had a word for people who served the apparatus of state without question. They were called *apparatchiks*—a term implying that the individual mindlessly follows orders. What stops us from being *apparatchiks* in all but name?

The answer to this question is that public administrators in a democracy work within the rule of law—a governing system in which the highest authority is a body of law that applies equally to all (as opposed to the rule of men, in which the personal whim of those in power can decide any issue). The idea of the desirability of a “government of laws, and not of men” can be traced back to Aristotle. The earliest American reference is in the 1779 Massachusetts Constitution. John Marshall also used this succinct legal description in *Marbury v. Madison* (1803): “The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.” The rule of law and the concomitant notion that no one is above the law have been continuously critical concepts. When Ford succeeded Nixon (who was forced to resign because of his illegal activities during the Watergate scandal), he told the nation right after taking the oath of office (August 9, 1974), “My fellow Americans, our long national nightmare is over. Our Constitution works; our great Republic is a government of laws and not of men” (Ford, 1987, pp. 40–41). This was difficult for many citizens to reconcile with his pardon of Nixon one month later, and was viewed as a major factor in Ford not being elected in the 1976 President’s race.

In democratic societies, we require our administrators to work within a system of democratic accountability, respond to a complex system of checks and balances, and be subject to scrutiny by official auditors, by the media, and by community watchdogs and whistleblowers (as Finer advocated). But in the end, they are individually responsible for their own ethical and honorable behavior (as Friedrich believed). We often (but not always) remove from office those public administrators who seek to ignore their responsibilities to democracy. Occasionally, as in the case of J. Edgar Hoover of the FBI, there will be public administrators in democratic societies who seem to be above the law. But they, too, will fall from power in the end.

Sometimes we purposely create public institutions that seem to have an “above the law” status. Security organizations sometimes seem to have this characteristic, best exemplified by the fictional British secret agent James Bond’s “license to kill.” Intelligence agencies have always had a certain mystical quality—perhaps because they are so associated with fictional exploits. This even affects presidents. Arthur M. Schlesinger Jr., in *A Thousand Days* (1965), quoted President John F. Kennedy: “If someone comes in to tell me this or that about the minimum wage bill, I have no hesitation in overruling them. But you always assume that the military and intelligence people have some secret skill not available to ordinary mortals” (Schlesinger, 1965, pp. 258–259). The review of the policies and activities of US intelligence agencies by appropriate legislative review committees was not formally done by the Congress until the 1970s, when reports of FBI and CIA abuses of their operating mandates encouraged both houses of Congress to create committees that would systematically and formally watch over the intelligence operations of the executive branch.

Apparatchiks ■

This Russian word for a bureaucrat is now used colloquially to refer to any administrative functionary.

Pardon ■

An executive’s granting of a release from the legal consequences of a criminal act. This may occur before or after indictment or conviction. The US president’s power to pardon people for federal offenses is absolute except for convictions in impeachment cases. A pardon prior to indictment stops all criminal proceedings. This is what happened when President Gerald Ford pardoned Richard M. Nixon in 1974 for all offenses that he “has committed or may have committed or taken part in while president.”

Arbitrary ■

Decided on the basis of individual judgments that do not meet commonly understood rules of procedure and hence may not appear justifiable to those seeking to explain them to others or to replicate them in similar circumstances.

Parliamentary systems, which are used in most of the world, have far less opportunity for comparable oversight because prime ministers, who ultimately direct intelligence agencies, lead both the executive and the legislative branches of government.

More generally, however, abuse of authority in public administration is a central target for condemnation in democratic societies and a likely route to disgrace and dismissal. Yet, in many societies around the world, to hold official office, to be a public administrator, is to be able to take arbitrary decisions, to confer benefits on family and friends, and to be open to corrupt, unethical—even inhuman—behavior. So we must ask, what legal and institutional arrangements, conventions, and ethical values essentially distinguish democratic from despotic public administration? In truly democratic societies—as opposed to those that are democratic in name only—there is a framework of constitutional, legal, and procedural requirements that subjects public administrators to rigorous monitoring and oversight by a democratic legislature, independent courts, and other institutions at arm's length from the government. This leads to the expectation on the part of public administrators that, for the most part, they must work in the open, not only expecting, but also welcoming the scrutiny of elected representatives and the others whose task it is to make public accountability work.

Constitutional and Legal Constraints

Like it or not, public administrators always work within some kind of legal framework. In Europe, particularly in Germany, the legal setting of public administration is so all-encompassing that a senior official normally cannot be appointed without a formal law degree. In other parts of the world, a law degree is usually not required, but some understanding of constitutional and administrative law is. For American public administrators, the Constitution serves as an invisible fence surrounding their field of operation. Specific laws deriving from it delineate and regulate in finer and finer detail what public administrators can do to whom, and when, and how, they can do it.

David H. Rosenbloom states that there are three reasons why public administrators should understand the Constitution:

1. Public administration must have democratic policy very much at heart so that managerial and political approaches are taken that are compatible with constitutional principles and values.
2. Many public administrators in America take an oath to support the Constitution, and this may be more important than routine administrative functions.
3. Public administrators may be personally liable for civil damages if they act in contravention to the Constitution.

(Rosenbloom, 1993)

As Rosenbloom emphasizes, it is no easy task to achieve the necessary understanding of the Constitution, because its contemporary meaning extends not only to the letter of the document, but also to case law and extensive interpretation, derived from legal, philosophical, moral, and political considerations as to how the law should be applied.

Case law ■

All recorded judicial and administrative agency decisions.

Public administrators in each policy domain—health, civil defense, education, or whatever it may be—need to maintain an awareness that the Constitution impacts what they can do by virtue of specific judgments and case law in the past, or alternatively because in a general sense what they propose to do may be seen to conflict with the Bill of Rights or some other fundamental constitutional precept. For example, in *Wood v. Strickland* (1975) the US Supreme Court held that a school board member (and by implication other public employees) is not immune from liability for damages “if he knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the students affected, or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury to the student.”

Obsessive Accountability

It was Napoléon's foreign minister Charles-Maurice de Talleyrand who is usually credited with first warning of “too much zeal” in matters of administrative affairs. Yet it is an excess of zeal, in the form of obsessive attention to minor details, that so often leads to incompetence in modern organizations. Some of this dysfunctional zeal is caused by aberrant personalities, but the real culprit is the formally mandated zeal of governing rules and regulations. Much required zeal is good. No one can argue with requirements for punctuality. But once organization-wide standard procedures are established for major functions, there is an inevitable tendency for minutiae to be covered as well. These minutiae then, quite literally, take more time than they are worth.

For example, in 1993 the US GAO (Now the Government Accountability Office) reported that “each year the military spends some \$20 million moving and storing a half-million items worth less than the cost of processing.” Thus a US base in Europe returns a few dollars' worth of metal bolts or nylon cord to a Defense Department warehouse in Ohio. But because it costs \$40 to process these small items, it would have been far less expensive to give or throw away the stuff. However, there is no provision in the rules for disposing of unneeded items in this way. Such practices would give too much discretion to individual employees. The formal organization, in its zeal to prevent theft, mandates many such wasteful practices.

Peter Drucker maintains that organizations, most typically governments, that are obsessed with accountability are inherently less competent than they might be. New procedures are created in response to possible or previous abuses. Because individuals once showed themselves incapable of being responsible for specific

entire polity. To fear such corruption is quite rational. Consequently, government "bureaucracy" and its attendant high costs cannot and should not be eliminated.

While the high costs of accountability can never be totally eliminated, some of the dysfunction of its associated procedures can be mitigated. Such mitigation frequently has organizations bending, ignoring, and subverting regulations in the interests of good management. The discretion that the regulations deny to the executive may be restored by the machinations of administrative operatives. When the flexibility deemed essential for mission accomplishment is formally denied to line managers, it is almost invariably obtained informally through administrative finesse. This is an idea that has not only been demonstrated in countless empirical studies, but also sanctioned and revered in American popular culture. The nation has a tremendous appetite for movies and television programs about war and other violent escapades. As any aficionado with sufficient exposure to this genre of entertainment can explain, you cannot have a successful military operation without a scrounger in your unit—at least not according to Hollywood's version of World War II. A scrounger was that member of the team who was assigned to obtain all the essential requirements of the mission that could not be obtained through official channels. It hardly mattered what methods the scroungers used to secure the needed supplies as long as they succeeded—and there were no official complaints.

When mandates from on high reflect neither administrative wisdom nor experience, they are viewed as barriers to managerial effectiveness—which must be overcome. There is even significant evidence that organizational superiors discourage subordinates from reporting fully just how they have accomplished their missions because of concerns for formal or legal culpability. According to public administration scholar Herbert Kaufman, executives "may resort to the strategy of discouraging feedback about administrative behavior because they privately *approve* of the behavior they know they should, according to law and morality, prevent" (Kaufman, 1975, p. 65). Thus rookie police officers are told by their more experienced associates that they will have to forget what they learned at the police academy before they can operate effectively—and survive—in a real-world situation. Any new public manager must suffer through an on-the-job acquisition of administrative *realpolitik*. They learn by the unfortunate consequences of violating norms that are discovered only when they are breached.

Realpolitik ■

A German word, now absorbed into English, meaning the politics of realism; an injunction not to allow wishful thinking or sentimentality to cloud one's judgment. At its most moderate, the word is used to describe an overly cynical approach, one that allows little room for human altruism, that always seeks an ulterior motive behind another actor's statements or justifications. At its strongest, it suggests that no moral values should be allowed to affect the single-minded pursuit of one's own self-interest or patriotism. It also makes an absolute assumption that any opponent will certainly behave in this way.

Avoiding Accountability

The public rightly expects an executive to be accountable for the actions of the subordinates he or she has selected, whether or not the executive had actual knowledge of the actions. It is based on the belief that the selection of subordinates and the monitoring of their behavior is an executive responsibility. Nowhere is primitive ritual or Machiavellian feigning more apparent than in the periodic assumption of full responsibility by an organization's chief executive. Although one of the advantages of delegating a problem is the ease with which the cunning leader can shift the blame for the situation if it sours, modern executives are seldom so crude as to lay blame. The appropriate tactic is to assume full responsibility for the situation. Paradoxically, in assuming full responsibility, the executive is seemingly relieved of it. Political scientist Murray Edelman observed that whenever this ritual is enacted, all of the participants tend to experience "a warm glow of satisfaction and relief that

responsibility has been assumed and can be pinpointed. It once again conveys the message that the incumbent is the leader, that he knows he is able to cope, and that he should be followed" (Edelman, 1967, p. 79). In reality, however, this ritual proves to have no substance. It "emphatically does not mean that the chief executive will be penalized for the mistakes of subordinates or that the latter will not be penalized."

This is the tactic that President Richard M. Nixon employed when he first addressed the nation concerning the Watergate scandal in the spring of 1973. He boldly proclaimed that all of the possibly illegal actions of the White House officials were his responsibility and that he fully accepted that responsibility. Certainly, Nixon did not mean to imply—at that point in time—that he should be punished for the transgressions of his underlings. Nor did Ronald Reagan in 1987 when he took full responsibility for the Iran-Contra affair. Bill Clinton, during an August 17, 1998, television address to the nation, took full responsibility for lying to his wife, his cabinet, his staff, and his nation about his affair with White House intern Monica Lewinsky. But his hopes that this would be enough to stop an impeachment inquiry were short-lived. Government officials of lesser rank are no less sophisticated with their manipulations of the ritualistic and symbolic aspects of their offices. Of course, the risk they take is that the legislature will investigate the situation thoroughly enough to expose any wrongdoing.

LEGISLATIVE OVERSIGHT

While constitutional and legal frameworks themselves amount to a passive exercise of democratic control over the discretion of public administrators, there is no substitute for active control through energetic elected representatives. The main reason the US Congress (or a state legislature or a city council) monitors the activities of executive branch agencies is to determine if the laws are being faithfully executed. After all, the president has the constitutional obligation (given in Article 2, Section 3) to "take care that the laws be faithfully executed." Congressional oversight is designed in our system of "checks and balances" to check that he does.

Hearings

Oversight takes many forms. The most obvious are the annual congressional hearings on agency budget requests, in which agency activities have to be justified to the satisfaction of the Congress. Both the House and the Senate hold budget hearings. But only the Senate holds hearings on the confirmation of major appointees such as cabinet secretaries and Supreme Court nominees.

Any member of Congress can instigate an investigation. Many of these investigations are small matters concerning the interests of a single constituent (see the following section on casework). But if something significant turns up worthy of a larger inquiry, an appropriate committee or subcommittee always has the right to initiate a further examination. The oversight function is primarily implemented through the process of hearings that often call for sworn testimony from officials, through consultancy reports, and through the publication of findings. Committees that have investigated scandals such as Watergate and the Iran-Contra affair, and issues such as whether gay people should be permitted to serve in the military, illustrate how important and central a role this aspect of democratic government

