Developing a workable system of public service ethics is difficult owing, to a fundamental tension between law (public duties) and ethics (private duties). This article surveys the literature on legal ethics to observe how a well-defined public service profession has reconciled this tension, to some extent, through the adoption of a "legalized" code of ethics that also allows professionals to step from behind the prescribed system of rules and engage his or her individual ethical sense in appropriate instances. The article then surveys the literature on administrative ethics and concludes that contrary to current trends aimed at deprofessionalizing the field, public administration would benefit from creating a new profession of public administrators that could adopt a code of ethics similar to the legal profession's code of ethics, thus allowing for a fusion of legalized rules (public duties) and individual ethical precepts (private duties).

LAW VERSUS ETHICS Reconciling Two Concepts of Public Service Ethics

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The title of this article, "Law Versus Ethics: Reconciling Two Concepts of Public Service Ethics," highlights a tension between law and ethics that has been recognized in the western intellectual tradition since the time of the ancient Greeks (Aristotle, trans. 1980; Jones, 1970; Plato, trans. 1979). Articulating the tension is relatively straightforward; developing a workable, consistent system of public service ethics in the face of such tension, however, is an exceedingly difficult matter. What makes the endeavor so difficult is that an individual public servant (in this context, any private individual such as a lawyer or public administrator who engages in

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professional and policy-making activities that affect the political values and traditions of the regime) has developed, during the course of a lifetime, a private sense of ethics based on many particularized factors, including education, habits, and experience. In some instances, a public servant's social role as someone charged with a duty to uphold and, to some extent, to legitimize the shared democratic values of the regime (including, but not limited to, adherence to political pluralism and a belief in the primacy of "one man, one vote" representativeness, for example) may conflict with his or her private sense of ethics (Richardson, 1997). When an individual public servant's public and private ethical precepts conflict, this clash of values reflects the tension between law and ethics, that is, the tension between public and private duties.

In an effort to reconcile the tension between law (public duties) and ethics (private duties) for public servants seeking to develop a system of ethics, this article will (a) survey the literature on legal ethics to observe how a relatively well-defined public service profession has dealt with this tension, (b) suggest ways in which lessons from the legal profession can be applied to the field of public administration, and (c) argue in favor of a system of public service ethics where legalistic rules of conduct are a necessary, but insufficient, component of such a system. Similarly, an individual's sense of ethics alone is insufficient. A combination of the two, however uneasy the marriage, allows for the development of a system of public service ethics that, although not wholly satisfactory, is an improvement over an either-or approach. Moreover, to achieve the goal of fusing codified rules of conduct with an individual sense of ethics, the article will suggest ways in which public administrators can be made to respond more like members of a distinct profession, arguably a necessary first step in establishing a workable system of public service ethics.

DISTINGUISHING LAW FROM ETHICS

It is axiomatic that law is, or should be, universally applied within a democratic regime. Even common law rules that regulate private transactions (e.g., contracts, torts, and family law) are universal because the rules governing those situations apply to everyone in more or less the same manner. Thus, under the rule of law, like cases are to be treated alike based on a known and knowable system of rules. This modern notion of law, which encompasses at least a rudimentary concept of equity, depends on the application of general legal principles to specific factual situations

without regard to a particular person's wealth, social status, or family position. Classifications are made only on the basis of reasons that can be articulated and defended against a charge of capriciousness or, in egregious cases, invidiousness (Black, 1979, pp. 484-485).

In addition to the modern fusion of legal and equitable principles, law is defined in the western tradition as "[t]hat which must be obeyed and followed by citizens subject to sanctions or legal consequences" (Black, 1979, p. 795). In Blackstone's (1818) parlance, law is the result of society's contractual obligation to citizens "in exchange for which every individual has resigned a part of his natural liberty" (p. 34). Recognizing the power of law to command citizens to behave in ways deemed "right" by the sovereign, Hobbes (1958) defined positivist law as "to every subject those rules which the commonwealth has commanded him, by word, writing, or other sufficient sign of the will, to make use of for the distinction of right and wrong" (emphasis omitted; p. 210). With some exceptions, Locke (1947) concurred with Hobbes's definition, adding that law is the result of democratic processes "In assemblies impowered to act by positive laws, where no number is set by that positive law which empowers them, the act of the majority passes for the act of the whole" (p. 169). In his landmark work *Taking Rights Seriously*, Ronald Dworkin (1978) defined the positivist view of law predominant in modern democratic regimes as special rules enforced through the use of public power, which are distinct from rules that dictate acceptable social interaction, that is, moral rules that a community follows but does not enforce through the use of public power (p. 17).

Dworkin's (1978) distinction between legal and social (or moral) rules highlights the difficulty in reconciling law and ethics. Under a strictly positivist sense of legal rules, public power generally is not used to sanction lapses of a purely moral or private nature. How could it be otherwise? If public servants acted solely on their own often ill-defined, perhaps inarticulable, private ethical precepts, society would lose the great virtue of positivist legal rules, namely, their well-defined, explicated characteristics. Moreover, private ethical lapses by public servants would be difficult or impossible to identify or, for that matter, rectify.

Implicit in Dworkin's (1978) definition is the notion of ethics as involving purely private concerns, because an ethical standard is an individual's *particular* code of conduct separate from society's enforceable rules of *universal* conduct. (In its modern sense, divorced from Aristotle's understanding of ethics as virtue, the term *ethics* often refers

to individual morality, what Martin Diamond [1992] called "'thou shall nots'. . . Puritanical or Victorian 'no-no's'" [p. 296]. The terms ethics and morals often have been used interchangeably, although "Modern use might distinguish the two in that 'ethics' has become associated with both philosophical inquiry and professional standards, while morals continue to hold the connotation of 'right rules of conduct'" [Denhardt, 1988, p. 31]. However the terms ethics and morals might be distinguished technically, the terms often are used synonymously or in conjunction with one another.)

As for the differences between law and ethics/morality, Mark Lilla (1981) observed that an ethical system is not an abstract justification for actions or a series of propositions that can be applied with legal precision to fact situations that arise. A system of ethics, an ethos, is something that is lived and practiced. An individual's sense of ethics is "anthropological . . . a way of learning virtue which is time-tested and subtly complex," developed through a lifelong association with families, churches, peers, and schools (p. 14).

Thus, in contrast to the clearly defined, generally accepted characteristics of positivist or black letter law designed to cover analogous factual situations, a system of ethics envisions the particular context-specific dilemmas that confront individuals who must respond in part based on virtues and habits. One commentator further highlights the differences between law and ethics:

> Whereas moral decisions are value-based decisions that are content- and context-specific, legal decisions are just the opposite: procedure-based decisions that are dependent upon historical precedent. Generally, a law is born as a response to a peculiar (atypical) behavior that exceeds the bounds of social acceptability, even where those bounds might not be representative of the society as a whole. Thus, the specific exception gives rise to the general rule, which thereafter provides the basis for countering comparable exceptions. This process of codification and standardization serves to define situations that the moralist would view as unique according to some generic structure. The ultimate effect is to reduce environmental uncertainty, to narrow the gauge of interpretation, by delimiting the number of unique situations possible. (Foster, 1981, p. 31)

Owing to a lack of legal precision and the absence of a "process of codification and standardization" in all areas of public service as well as the possibly irrational features of ethics, the question arises: Can the tension between law and ethics be resolved, perhaps by asking recognized

leaders employed in public service to articulate an agreed-on concept of private ethics and, afterwards, codify the resultant list so that all public servants will have a guide by which to judge their actions? This leads to a second question: If it is desirable, how would this codified system of rules be implemented since public administrators, unlike the legal profession, are not members of a clearly defined profession regulated by an occupational or licensure organization that exercises a gatekeeping function and commands the power to impose sanctions?

The answer to the first question suggested herein is that such a codification of rules is desirable. Indeed, it is a necessary, albeit insufficient, component in developing a system of public service ethics. The codification, although not perfect, would be a compromise embodying the best features of both worlds. A list of ethical precepts would retain the redeeming features of positivist law (it would be agreed on, written down, known and knowable, and taught to students of the profession) while also incorporating a sense of private morality at its core. The "moral distance" between law and ethics would be minimized, although not completely abolished (Postema, 1980, p. 65).

The second question is more difficult to address because the literature on whether a profession of public administration currently exists or is even possible is varied and inconclusive (e.g., see Streib, 1992). Suffice it to say that the argument here is in favor of both the possibility and desirability of developing a stronger professional public administration. Much can be learned, for example, from the legal profession's quest to develop professional rules of conduct while concomitantly leaving room for lawyers to rely on their private ethical precepts to augment their professional responsibility.

Generally, lawyers have focused their efforts on incorporating ethical concepts into codified standards of conduct for all members of the bar. Because lawyers traditionally have been cast in the role of protectors of the regime, the public has expected lawyers to practice "better" ethics. The legal profession has responded to such expectations by adopting stricter rules governing lawyers' behavior, instituting more comprehensive professional responsibility requirements in many jurisdictions, and providing enforcement mechanisms such as formalized grievance procedures and rules for undertaking disciplinary hearings. At the same time, however, recent efforts to reform legal ethics have recognized the importance of combining codified rules of professional conduct with individual ethical precepts (Hazard, 1991, p. 1240).

LAWYERS AND THE LEGAL PROFESSION: AN IMMORAL UNIVERSE?

THE PRACTICAL NATURE OF LEGAL-RATIONAL AUTHORITY

Of the three types of governmental authority identified by Max Weber, the "legal-rational" tradition (the rule of law) is the generally accepted basis for legitimizing power in stable, ongoing democratic regimes (Weber, 1992, p. 274). According to this view, the rule of law operates through the existence of a body of clearly defined, generally accepted rules characteristically found in bureaucratic states (H. Hart, 1961, 1963). Authority attaches to the political office, not to the individual, hence the maxim "a government of laws and not of men" (Heywood, 1994, p. 108).

Lawyers, purveyors of law in democratic regimes such as the United States, understand their duties from a predominantly legal-rational perspective, sometimes with little regard for philosophical abstractions divorced from practical applications. One respected commentator on legal ethics, Professor L. Ray Patterson (1984), has explained the perspective of the American bar as a preference for rules of professional conduct that are pragmatic rules of law and not merely philosophical ruminations on behavior that ought to be encouraged (p. 11). By considering rules of professional responsibility as legal rules with clearly prescribed sanctions for persons who engage in prohibited behavior, the bar has established a means for controlling the conduct of members of the profession that falls below a certain standard. Although this may seem to be a base approach to ethics because it focuses only on negative behavior, it reflects a fundamental concept in American government, namely, a mistrust of power exercised by persons such as lawyers in positions of authority. Perhaps the most famous example of this concern with potential abuses of power was articulated in "Federalist No. 51," when Publius observed that "If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary" (Hamilton, Madison, & Jay, 1961, p. 322). Because divine intervention cannot be counted on to control human behavior, ethical rules of conduct must "have teeth," such as enforceable sanctions, if they are to serve as an effective means of regulating professional behavior.

The bar's perspective—that ethical rules are legally enforceable external controls—may strike nonlawyers as troubling, owing to the positivist

approach to questions that initially appear to be normative. But the approach should not be surprising since lawyers analyze factual situations in relation to their duties to their clients and to the legal profession. As one commentator has observed, "Insofar as lawyers design the rules of legal ethics to protect themselves from *legal* mishaps, 'defensive ethics' is a species of legalism" (Schneyer, 1989, p. 725). Patterson has defended the reasons for this pragmatic focus as an understanding of the lawyer's duty as a professional. Ethical analysis, according to this perspective, is an analysis of a person's duty to himself or herself as a private individual: How should I behave? What are my rights and obligations to myself in relation to the rest of society? Because lawyers are concerned with their duty not just to themselves but to their clients and the courts as well, they must look beyond rules that encourage individual ethical behavior. They must look to rules that encourage—and, if necessary, punish—an individual's performance of his or her duty as a professional. In other words, a professional code of ethics is concerned with a professional's performance as someone who, by virtue of his or her role, affects other people within the regime. Rules of professional conduct for lawyers are not concerned with individuals acting as private citizens; they are concerned with lawyers acting as public servants (Patterson, 1984, p. 11).

The emphasis on a lawyer's legal, or fiduciary, duty to the client has led, first, to the development of canons of ethics and, later, to the adoption of disciplinary rules and model codes of conduct that specify permissible and impermissible behavior and provide sanctions for the latter (American Bar Association [ABA], 1983). In the wake of adopting legalized codes of conduct, lawyers sometimes have found themselves, ironically, representing clients and causes they believe to be morally objectionable. This paradoxical position—the lawyer entertains ethical qualms but is bound by codified rules of legal ethics to provide zealous representation for the client—illustrates the occasional divergence of law and ethics and contributes to the popular image of a lawyer as a "hired gun." As commentator Richard Wasserstrom (1975) has observed, "At best the lawyer's world is a simplified moral world; often it is an amoral one; and more than occasionally, perhaps, an overtly immoral one" (p. 2).

CONCEPTIONS OF LEGAL ETHICS

If legal-rational authority, which is universally applied within a regime, occasionally is insufficient to guide the particular conduct of individuals, ethical guidance is needed. Judging by the available literature, the legal

profession long ago recognized the need for integrating ethics into the profession (Abel, 1981; Fiss, 1981; Fletcher, 1981; Fried, 1976; Hazard, 1991; Luban, 1988; Lumbard, 1981; Morgan, 1977; Shaffer & Shaffer, 1991; Shuchman, 1968; Simon, 1978; Wasserstrom, 1975; Wolfram, 1978). However, the question remains: By what method and to what extent should legal ethics be understood, taught, and applied?

Two approaches readily come to mind. First, lawyers might seek a casuistry for ethical problems facing them and then incorporate general principles into ethical canons, codes, and rules. This approach, which describes the standard conception of ethics integrated into legal-rational authority, requires an understanding of the lawyer's role morality, discussed later in this article. The second approach is to develop an understanding of general ethical principles and use this understanding systematically as a guide for resolving particular situations as they arise (general moral philosophy).

Each of these approaches has severe drawbacks. Casuistry provides answers if the particular ethical difficulty can be placed into a category covered by the canon, code, or rule. If the difficulty is unique or ambiguous, a codified rule may be only of limited use. The second approach, relying on general moral philosophy, may be even more difficult because the body of work on ethical philosophy spans the entire scope of western civilization and often is open to a variety of conflicting meanings and interpretations (Postema, 1980, p. 67).

This does not mean, of course, that the legal profession has not tried to develop ethical rules through both methods, especially the former. As early as the late 19th century, for example, legal scholars and members of the bar called for canons to guide the conduct of practitioners, albeit canons were not seen as enforceable legal standards but as "admonitions emanating from a merely private organization" that "had no direct legal effect, either in grievance proceedings against lawyer misconduct or in civil actions for legal practice" (Hazard, 1991, p. 1250). The first canons, the Canons of Professional Ethics, were adopted by the ABA on August 27, 1908. They had their origins in the Alabama Association's 1887 Code of Ethics as well as Judge George Sharswood's lectures titled *Professional Ethics* and David Hoffman's *A Course of Legal Study* (cited in ABA, 1983, p. ix). In time, however, the bar transformed the canons into a series of disciplinary rules. This transformation was accomplished, in large measure, with the adoption of the ABA's Code of Professional Responsibility in 1970. The legalization of the bar's ethical precepts continued after 1970

and later resulted in the adoption of the Model Rules of Professional Conduct in 1983 (ABA, 1983).

Role Morality

Before lawyers are condemned as hired guns who are immoral and utterly unredeemable, as in Wasserstrom's (1975) ruminations, their functional role in society should be considered. As advocates of their client's interests, regardless of their personal opinion of the client or the client's cause, lawyers perform a valuable service to society by standing in the client's stead. A lawyer's representation "does not constitute an endorsement of the client's political, economic, social or moral views or activities" (ABA, 1983, p. 16). Thus, a lawyer must separate personal feelings from professional responsibility when and if a conflict exists. This bifurcation of the lawyer's personal opinions and the client's interests ensures that even unpopular causes are championed and controversial cases receive their day in court (Fried, 1976). Although a particular individual may feel uncomfortable divorcing his or her individual feelings from the role he or she plays as a public servant, society benefits from the division of legal and moral duties. Social institutions within a democratic regime are designed so that individuals who interact with those institutions promote social values. If an individual working within an institutional setting decides to promote his or her personal values above the values of the institution, the democratic processes that created, or at least championed, those social values are circumvented.

An individual is free, for example, to oppose the death penalty on ethical grounds as long as he or she is acting as a private individual. However, if that same individual holds a position within a prosecutor's office that has responsibility for prosecuting death penalty cases, the individual must refrain from refusing to carry out the prosecutor's mission of prosecuting death penalty cases even though the person's private objections to the death penalty will not necessarily change. If the individual cannot reconcile his or her personal objections to the death penalty with the prosecutor's public responsibility for prosecuting death penalty cases, then the individual must leave the prosecutor's office. He or she is then free to object to the death penalty without fear of compromising his or her public duties. As one commentator has observed, "social and professional roles" create a special duty for individuals serving in those roles. The individual has, in effect, become a public servant owing to the division of labor between private individuals and individuals acting as

decision makers within the regime. This social role requires that the individual consider his or her duty as a public servant above his or her individual feelings, except in rare instances discussed later in this article (Postema, 1980, p. 72).

In addition to the role of lawyers as defenders of democratic social values within an institutional setting, private lawyers often serve an important role as "mitigators of the destructive tendencies of democracy" (Hazard, 1991, p. 1241). Geoffrey C. Hazard Jr. (1991), a frequent commentator on legal ethics, has written that the legal profession serves society in another useful, albeit often unpopular, manner. The public generally hates lawyers, often ridiculing the profession with lawyer jokes and rating lawyers in public opinion polls next to used-car salesmen in terms of honesty and social utility. Hazard has suggested that much of this scorn and derision can be attributed to the profession's historical role in "counterbalancing the vagaries of popular government with the pressures of the market" (p. 1241). Because lawyers often assist the business community and established political leaders through litigation, the contract process, corporate law, and political maneuvering, the public views the profession as protectors of the status quo—antidemocratic defenders of elite privilege. In Hazard's (1991) view, this image of lawyers as "unpopular and morally suspect" is an understandable perspective in light of the populist sentiments shared by large segments of the population. Nonetheless, by aiding "the development and protection of business property within a political system committed both to popular government and constitutional restraints on government," lawyers have allowed the regime to function and, to some extent, they have served as a check on the destructive nature of unfettered democracies. This view of democratic government as potentially destructive was Publius's concern when he observed in "Federalist No. 10" that "democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths" (Hamilton et al., 1961, p. 81). By protecting personal security and rights of property from a tyrannical majority or a destructive minority faction, lawyers have served an important social function, even though they have been paid for their service with a tarnished image (Hazard, 1991, p. 1241).

Lest one think the lawyer a hapless victim in the public relations wars, it is good to remember that the negative image of the lawyer as hired gun, inhabitant of a singularly immoral universe, has been mitigated in the popular consciousness by a contrary view through the heroic narrative of

a courageous lawyer standing up for unpopular causes at great personal sacrifice. This view is reflected throughout the American experience: Fictional Atticus Finch in *To Kill a Mockingbird* (Lee, 1960) readily springs to mind, as do historical examples including Clarence Darrow at the Scopes "Monkey Trial" of 1925 (Dershowitz, 1990); the courageous lawyers who finally defended the infamous "Scottsboro Boys" in *Powell* v. *Alabama* (1932); the American prosecutors at the Nuremberg Trials led by U.S. Supreme Court Justice Robert Jackson (Tusa & Tusa, 1986); Joseph Welch's attack on the scare tactics of Senator Joseph McCarthy in the 1950s (Hazard, 1991, p. 1243); and Abe Fortas's defense of Clarence Earl Gideon in *Gideon* v. *Wainwright* (1963; Lewis, 1991), to name a few. Arguably, these examples illustrate the positive features of a lawyer's role morality. Advocates in those cases may have harbored personal reservations about the rightness of the cause, but they set aside those reservations and advanced their clients' interests, nonetheless. Even Shakespeare's famous line "The first thing we do, let's kill all the lawyers" is not the antilawyer invective it initially appears to be since the words are spoken by one coconspirator to another as they plot to undermine the stability of an existing regime by disposing of the guardians of justice (Shakespeare, 1904, p. 55).

This emphasis on role morality, however, is not without its critics. The problem with recognizing the existence of a role morality is that it requires lawyers to compartmentalize their private and public personas, to ignore their "off-the-job values," which may have the unintended effect of blocking "the cross-fertilization of moral experience necessary for personal and professional growth" (Postema, 1980, p. 64). Because rational human beings often make decisions based on a variety of factors including a sense of morality that they might be hard-pressed to articulate, it is questionable whether lawyers can satisfactorily and consistently divorce their private and public selves, even if this act is considered a desirable component of the lawyer's role morality (Schneyer, 1989, p. 731). Critics charge that by creating a "moral distance" between "ordinary morality" and professional responsibility, the legal profession has diminished the "moral universe" of the lawyer (Postema, 1980, p. 65).

Ironically, the perception of a lawyer as "an instrument of both liberty and political justice," as illustrated in the famous cases cited above, is probably no more accurate than the image of a lawyer as an amoral, or immoral, hired gun (Hazard, 1991, p. 1244). Yet, the existence of a role morality has been valuable for another reason. Owing to lawyers' unique role in modern society, the legal profession always has insisted that

laypersons should not develop rules of behavior governing lawyers because nonlawyers could not possibly understand, and therefore could not effectively regulate, the conduct of lawyers facing ethical dilemmas in the course of practicing law (Lumbard, 1981; Wolfram, 1978). Indeed, in the early years of the American legal profession, the bar was more or less self-policing. Canons of ethics were not promulgated by third parties but by lawyers themselves (Hazard, 1991; Schneyer, 1989). This fraternal "old boy's club" was based on a simple assumption; Leaders of the bar "presupposed that right-thinking lawyers knew the proper thing to do and that most lawyers were right-thinking" (Hazard, 1991, p. 1250). The concept of a special role morality protected lawyers from the vagaries of an interfering, possibly ignorant, laity.

In the ensuing years, however, the call for improved ethical rules was issued in response to several factors, including the perceived litigation explosion associated with allegedly frivolous claims, the concern for equal access to the judicial system, increased industrialization and advances in technology that led to increasingly complex conflicts and injuries, newly recognized rights often associated with government largess, and the recognition of lawyers' "great temptations to shoulder aside one's competitors, to cut corners, to ignore the interests of others in the struggle to succeed" (Bok, 1983, p. 575). This required the development of an improved understanding of the lawyer's role in society. (The public administration field faces similar attacks on its proper role within the regime.)

A Recourse Role

Moral philosophers have expressed concern that the standard conception of ethics embodied in a role morality envisions a fixed role for lawyers. That is, "as far as the individual practitioner is concerned, the moral universe of his role is an objective fact, to be reckoned with, but not for him to alter" (Postema, 1980, pp. 82-83). Codes of conduct are outcome determinative; they require practitioners to adopt one particular role according to the situation under consideration and then behave in accordance with codified rules of conduct. By contrast, a recourse role allows a lawyer to act, if necessary, apart from the legalized duties of his or her role morality.

Moral philosophers have pointed to Aristotle to illustrate their point. For example, in *The Nicomachean Ethics*, Aristotle contended that the distance between general theories and action can be bridged by "practical wisdom," which is another way of saying that "Our ability to resolve

conflicts on a rational basis often outstrips our ability to enunciate general principles" (Postema, 1980, p. 68). In Aristotle's words,

> Practical wisdom is the quality of mind concerned with things just and noble and good for man, but these are the things which it is the mark of a *good* man to do and we are none the more able to act for *knowing* them if the virtues are states of *character,* just as we are none the better able to act for knowing the things that are healthy and sound, in the sense not of producing but of issuing from the state of health. (Aristotle, trans. 1980, p. 154)

Ethical action is not the result of good character alone (private morality) just as it is insufficient to know general principles without acting on those principles (casuistry). Practical wisdom allows human beings of good character to exercise judgment in adapting general principles to specific situations. It is the combination of a person's character, knowledge of ethical principles, and his or her exercise of judgment through practical wisdom that results in just acts. Aristotle also observed,

> As we say that some people who do just acts are not necessarily just, i.e., those who do the acts ordained by the laws either unwillingly or owing to ignorance or for some other reason and not for the sake of the acts themselves (though, to be sure, they do what they should and all the things that the good man ought), so it is, it seems, that in order to be good one must be in a certain state when one does the several acts, i.e., one must do them as a result of choice and for the sake of the acts themselves. (Aristotle, trans. 1980, pp. 155-156)

Private morality alone is insufficient. Knowledge of rules of professional conduct, especially if undertaken owing to a fear of legal sanctions, is insufficient without a method of bridging the gap between positivist legal rules and a private sense of ethics. In the Aristotelian sense, a flexible "recourse role" is necessary. Such a recourse role forces the lawyer to step from behind the shield provided by a codified system of rules and engage his or her own system of ethics. In this view, a lawyer cannot claim that he or she was acting merely as a technician or an agent of the client. The lawyer must engage his or her moral judgment in representing a client (Postema, 1980, p. 83).

The Model Rules of Professional Conduct

Partially in response to continued concerns about the fixed and legalistic nature of the 1970 Code of Professional Responsibility, the ABA

adopted the Model Rules of Professional Conduct in 1983 (Hazard, 1991, p. 1251). The new rules allowed room for a recourse role and were heralded by many commentators within the legal community as a satisfactory compromise between casuistry and general moral philosophy. Indeed, by specifying the appropriate conduct of a lawyer acting as advocate (Rules 3.1-3.9), advisor (Rule 2.1), intermediary (Rule 2.2), and evaluator (Rule 2.3), the Model Rules set forth a series of black-letter rules, certainly an advantage of positivist law, and specified the myriad circumstances facing the lawyer, depending on his or her role, and taking into account the difficulties associated with establishing standards of professional conduct from a single perspective. One commentator observed,

> The moral philosophers' "hired gun" criticism of the earlier ABA codes seems largely inapplicable to the Model Rules. That criticism asserted that legal ethics rules have forced lawyers into an advocate's role that places client interests above all others, and have done so by forbidding lawyers to let their own values or the interests of third parties affect their decisions about whom to represent and how to represent them. Yet the Model Rules recognize that lawyers play several roles, not just that of advocate. They also invite lawyers in *any* role to take their own values into account. They permit lawyers to refuse on moral grounds to represent would-be clients, authorize lawyers to "limit the objectives" of representation by excluding client aims they find "repugnant or imprudent"; and in a remarkable concession to lawyers' sensibilities allow them to withdraw whenever "a client insists upon pursuing an objective the lawyer considers repugnant or imprudent"—even if the client's interest will be "adversely affected" by the withdrawal! These rules are meant precisely to resolve the "potential conflict between the lawyer's conscience and the lawyer's duty to vigorously represent a client." (Schneyer, 1989, p. 736)

With the adoption of the Model Rules, some members of the legal profession were distressed by what they saw as the continued legalization of the bar. For example, the Model Rules no longer used the term *canons* when discussing professional ethics, instead referring to the rules as *authoritative,* with accompanying comments "intended as guides to interpretation" (ABA, 1983, p. 13). The Model Rules emphasized in a dramatic way that the legal profession was no longer simply an informal, cohesive group of peers who trusted one another to "do the right thing" by honoring a gentleman's agreement with a handshake. In effect, the heroic narrative had been reduced. In Max Weber's (1992) parlance, a traditional institution had been transformed into a bureaucratic institution. As a member of a traditional institution, a lawyer might think immediately in terms of what

he or she could do as a creative, problem-solving member of the profession. As a member of a bureaucratic institution, a lawyer might be forced to think immediately in terms of what he or she could not do as a regulated member of the profession (Hazard, 1991, pp. 1254-1255).

Whether the Model Rules entirely bridge the gap between the two conceptions of legal ethics depends on one's point of view. The rules certainly can, and should, be improved as new circumstances warrant, but in the meantime they represent a marriage of both worlds—a legalized approach and a philosophical approach, a joining of public and private duties. They also hold valuable lessons for the field of administrative ethics.

PUBLIC ADMINISTRATION: A WORK IN PROGRESS

THE NATURE OF ADMINISTRATIVE ETHICS

The public administration literature has seen a call for improved ethics within the field, especially, although not exclusively, in the wake of government scandals and public concern for integrating ethical precepts into the public service (Cody & Lynn, 1992; Cooper, 1987, 1990; Davis, 1969; Devine, 1972; Friedrich, 1972; Golembiewski, 1965; Gortner, 1991; Holmes, 1996; Leys, 1952; MacIver, 1947; Mosher, 1982; Okun, 1975; Redford, 1958; Schubert, 1960; Sheeran, 1993; Thayer, 1973; Weisband & Franck, 1975; Wildavsky, 1980; J. Wilson, 1985; Wise, 1973; Wolin, 1960). Some works that delve into public administration ethics have even been recognized as modern classics in western political thought (Arendt, 1972; Dewey, 1927; Hayek, 1944; Waldo, 1948).

As the concern with improving ethics arose, Paul Appleby (1952) urged caution in reacting to perceptions of "crude wrongdoing" as the sole motivation for adopting a system of public service ethics. "More complicated and elevated" ethical issues such as the nature and scope of bureaucratic discretion should be the focus of ethics in public administration (p. 56). The challenge, of course, is in identifying appropriate ethical precepts, especially because the field of public administration is comparatively new, still evolving, and may lack the cohesiveness of many professions (e.g., law and medicine) (Streib, 1992, p. 134).

As in the legal profession, the public administration literature has recognized the bifurcation between the concepts of ethics as a series of codified rules and as general moral philosophy. Nonetheless, the literature

has concluded that the necessarily individualistic character of ethics does not preclude teaching public administrators about regime values through the case method or through an emphasis on understanding the higher law background of American government (Catron & Denhardt, 1994; Corwin, 1969; Hejka-Ekins, 1988; Kavathatzopoulos, 1994; Marini, 1992; Pratt, 1993; Richardson & Nigro,1987; Rohr, 1989; Taylor, 1992; Tocqueville, 1969; Torp, 1994).

Compared with the materials on legal ethics, the administrative literature has been late in recognizing the need for integrating concepts of ethics into public administration. This may be the result of the different emphases in the legal and public administration fields. As recounted above, the law has been viewed as a profession with a unique role morality. The recognition of public administration as a distinct profession where politics and administration are not divided spheres, on the other hand, has been a comparatively recent phenomenon and not altogether uncontested (Rosenbloom, 1989; J. Wilson, 1975). Accordingly, issues of ethics and accountability have not been discussed in the public administration literature to the extent that they have been discussed in the literature on the legal profession, although valuable lessons may be learned from the bar's efforts. Perhaps the most important lesson is the relative clarity of lawyers' general ethical obligations (although their application in individual cases may still give rise to ambiguity). Members of the legal profession share an understanding of what it means to be a legal professional and what makes lawyers different from nonlawyers. Public administrators, to a large extent, do not share this same understanding of their place in the public sector (Rosenbloom, 1989, p. 483).

Reflecting, in part, the lack of understanding about what it meant to be a public administrator participating within the realm of public policy making, the early literature discussed ethics from a practical perspective. Values such as economy and efficiency were considered paramount objectives for supposedly politically and morally neutral public administrators. This perspective gradually changed, especially with the rise of the administrative state in the 1940s and the realization that public administrators exercise a significant policy-making role (Chandler, 1983; Gawthrop, 1984; Lowi, 1969; Marini, 1971; Rosenbloom, 1989; Waldo, 1948).

A more sophisticated understanding of public administration's role within the regime developed in the 1930s and 1940s. Gone was the politics and administration dichotomy, and with it the simplistic notion that the only ethical requirement for public administrators was that they implement the will of elected officials with as much economy and efficiency as

possible. In its place was a new dilemma: How can public administrators in a large bureaucratic state be held politically accountable given the reality of bureaucratic discretion? Stated another way, how can the polity ensure that public administrators will behave in ways that support democratic principles given the diverse work performed in public agencies and the lack of a centralized profession of public administration?

THE FRIEDRICH-FINER DEBATE

The most cogent discourse on this new dilemma occurred in the famous Friedrich-Finer debate that originated in the 1930s and focused on the differences between internal and external bureaucratic controls. In a series of essays, Carl J. Friedrich argued strongly for the development of an individual sense of moral responsibility as an internal control on behavior in addition to the traditional emphasis on placing external controls on public administrators as a means of ensuring accountability to elected leaders. Friedrich contended that psychological factors, such as the willingness of individuals to behave responsibly, are the paramount considerations in ensuring administrative responsibility. In fact, "Responsible conduct of administrative functions is not so much enforced as it is elicited" (Friedrich, 1990, p. 43). In other words, the quest for public accountability should not ignore the role of moral or religious responsibility in ensuring that public administrators behave in an ethical manner.

Friedrich was writing at a time when the Wilsonian politics-administration dichotomy was still recognized as axiomatic in the public administration literature (Gulick, 1937; W. Wilson, 1941). If the exercise of political power and the performance of administrative functions were not separate and distinct endeavors, the ethical implications were enormous. Public administrators did not exercise policy-making authority according to the old school of thought; thus, their ethical duty required only that they achieve technical competence and remain accountable to elected officials who instructed them on the mechanics of implementing policy. Recognizing a changing view of bureaucratic politics, Friedrich was troubled by the suggestion that the actions of public administrators did not hold repercussions for policy making. He attempted to move away from an artificial distinction between politics and administration in discussing ethics. His argument was similar to F. M. Marx's (1940) contemporaneous contention that no matter how detailed statutes and legislative grants of authority to public administrators appeared to be, their implementation was "a creative act, separate and apart from the making of the law itself"

(p. 237). In other words, no matter how tight the external controls, public administrators ultimately must rely on an individual sense of ethics in performing their duties as public servants because they must exercise discretion.

In response to Friedrich's arguments, Herman Finer (1990) argued that only external controls such as codes of ethics and legal rules could ensure public accountability. "Moral responsibility is likely to operate in direct proportion to the strictness and efficiency of political responsibility, and to fall away into all sorts of perversions when the latter is weakly enforced," he wrote (p. 44). Relying on the individual conscience of a particular public administrator, no matter how well meaning he or she may be in performing his or her duties, will always lead to abuses of power. Individuals will either misunderstand democratic values or they will pursue their own interests. Although Finer later acknowledged that public administrators may enhance their accountability by educating themselves to appreciate public opinion and technical and professional standards, the paramount issue in ensuring ethical conduct is to improve external controls to the extent possible (Cooper, 1990, pp. 128-132). In many ways, Finer was echoing Weber's (1992) positivist arguments in *Selections From Politics as a Vocation* (pp. 273-283). Democratic government operates best when behavioral controls are external and ethical behavior is clearly defined in a codified, rule-based system that is known and knowable beforehand.

THE "NEW PUBLIC ADMINISTRATION"

Although the Friedrich-Finer debate continued to be discussed in subsequent years, it was Friedrich's emphasis on the importance of internal controls that gave birth to the movement often referred to as the "New Public Administration," which initially grew out of the 1968 Minnowbrook Conference (Cooper, 1990, p. 148). H. George Frederickson (1980) is perhaps the most famous adherent of the New Public Administration approach. Proponents of this new school argued that the field of public administration had come a long way since the days when Woodrow Wilson insisted that politics and administration could, and should, be separated. New public administrators recognized that they exercised bureaucratic discretion, which invariably meant that they were involved in some aspects of policy making. They further contended that although external controls are a valuable means of ensuring political accountability, they can only go so far toward ensuring that public administrators behave

ethically and appreciate the importance of "social equity" in making administrative decisions (Marini, 1971).

Proponents of the New Public Administration quickly issued a call for inculcating concepts of social equity into the public administration field to augment traditional goals of efficiency and economy. This appreciation of social equity perhaps reached its apex in the mid-1970s when one issue of *Public Administration Review* was devoted exclusively to an extended discussion of the topic (Chitwood, 1974; Harmon, 1974; D. Hart, 1974; McGregor, 1974; Porter & Porter, 1974; White & Gates, 1974). In 1976, Susan Wakefield of Brigham Young University, recognizing the variety of means available for teaching ethics and the latent difficulties of incorporating ethics into the curricula, concluded that "There exists a strong case for individual responsibility as both primary and ultimate sources of public service ethics. External controls become a necessary and secondary support system" (p. 662).

The New Public Administration has been criticized for its idealistic goals and its lack of accessibility to most public administrators. Because empirical evidence suggests that some public administrators lack a commitment to public service, owing in part to their failure to recognize themselves as public administration professionals with a duty to uphold the public interest, it is possible that an overreliance on an individual's private sense of ethics can circumvent democratic values. Gregory Streib (1992), for example, has observed in a different context that government professionals must demonstrate "respect for the democratic process" over and above their "reverence for their own expertise" or secondary considerations such as their individual opinions on social and political issues (p. 123). In the quest to become champions of social equity, new public administrators may consciously or unconsciously substitute their own values for the values of the democratic regime. Their zeal to become social reformers may put them ahead of, and out of touch with, the public they ostensibly serve as public servants.

COMBINING SUBJECTIVE AND OBJECTIVE APPROACHES TO ADMINISTRATIVE ETHICS

As was the case with the legal profession, public administrators have come to understand that recent debates on developing a workable system of public service ethics necessitate reconciling, to some extent, individual concepts of ethics (a subjective approach) and legalistic ethical codes (an objective approach). Accordingly, recent works on public administration

ethics generally have avoided the either/or approach illustrated by the Friedrich-Finer debate, choosing instead to argue for a reconciliation of the two concepts into a workable, systematic ethical system for the public service. The difficulty for scholars has been in developing an appropriate model that applies to substantially all public administrators.

Recognizing the importance of philosophical and psychological conceptions for ethical foundations, John Rohr (1989) concluded in his influential work *Ethics for Bureaucrats: An Essay on Law and Values* that public administrators will rely on their individual understanding of ethics in the context of specific, real-world situations. Yet, not surprisingly, they will also need to look to an outside source for guidance on how to exercise individual discretion in accordance with democratic principles. It is simply too much to expect that students and practitioners of public administration will consult great works of philosophy and discern practical information for resolving ethical dilemmas. Rohr wrote that "A haphazard perusal of the works of the great philosophers will yield nothing more than a gentleman's veneer" (p. 67). Moreover, even if public administrators want to understand democratic values, it is difficult to find consensus on those values. Thus, he argued in favor of examining "regime values" expressed through opinions of the U.S. Supreme Court, that is, "the values of that political entity that was brought into being by the ratification of the Constitution that created the present American republic" (Rohr, 1989, p. 68). In Rohr's view, the fusion of an individual's ethical sense and the democratic values of the regime can be accomplished when public administrators enrich their own individual understanding of ethics with an appreciation of the principles of the polity, as explicated by an authoritative source, and use their discretion accordingly.

Rohr's (1989) work may be seen as a search for positivist explications of the regime's moral and legal rules. Unfortunately, in some cases, positivist legal rules and underlying regime principles may not be identical. Moreover, Rohr's approach "tends to assume that regime values and morality will coincide. In the past, however, regime values condoned slavery, racial segregation, and the denial of full political rights and equal protection of the law for women, despite opposition on moral grounds from many quarters" (Rosenbloom, 1989, p. 483).

By contrast, Terry L. Cooper (1990) discussed the practical ethical challenges that confront public servants on an almost daily basis without consulting an outside authoritative source for "in-the-trenches" guidance. "The central thesis of this book," Cooper wrote, referring to *The Responsible Administrator*, "is that it is through the process of defining profes-

sional responsibility in specific, concrete administrative situations that an operational ethic is developed" (p. 5). Cooper thus examined the process of ethical decision making in lieu of searching for authoritative regime values or refining the specific content of ethical codes. Although he called Rohr's search for regime values "an excellent example of a treatment of values that a public administrator ought to internalize and reflect upon," Cooper disagreed with Rohr's narrow focus (Cooper, 1990, p. 166). In *The Responsible Administrator*, for example, Cooper observed that regime values are broader than Rohr's emphasis on constitutional values articulated by the U.S. Supreme Court:

> Taking this general approach, but extending it beyond Rohr's specific focus on the U.S. Constitution, we might note these regime values associated with the American tradition: the beneficial aspects of pluralism of interests, the creative possibilities in conflict, the sovereignty of the public, the rights of the minority, the importance of citizen participation in government, the societal values of freedom of expression. These are but a few exemplary values that might emerge as important in such a broadened study. (Cooper, 1990, p. 167)

Cooper (1990) contended that public administrators do not need a "substantive ethic" to govern their behavior because they will take their cues on ethical behavior from their respective organizations. This is not to suggest that an individual public administrator can avoid individual responsibility for his or her actions by placing blame on the organization. If the organization does not function properly, the public administrator owes a higher duty to the public to act in an ethical manner based on the administrator's private ethical sense. In most cases, however, it is a combination of two concepts—acting in accordance with a properly run organization's central tenets and exercising individual notions of ethical behavior—that results in a responsible administrator. The organization, an external control, sets the standard of behavior and the individual seeks to understand and comply with that standard. If the individual considers the standard deficient, then he or she has a duty as a citizen (an internal control) to ensure that the organization does not undermine democratic principles (Cooper, 1990, pp. 226-232).

Other public administration theorists have followed Rohr and Cooper in attempting to fuse subjective and objective approaches (internal and external controls). In *The Ethics of Public Service*, for example, Kathryn G. Denhardt sought to bridge the gap between philosophical and practical ethics based on "a better-developed theoretical framework . . . more

grounded in philosophy, and . . . ultimately more practical in that it considers and accommodates the exigencies of the environment in which public administrators must practice—the modern public organization" (Denhardt, 1988, p. ix). She stopped short of listing the philosophical standards that should be used to ground her system.

Patrick J. Sheeran (1993), on the other hand, chose to reject what he viewed as the legalistic approach advocated by Rohr (1989) and the duality approach advocated by both Cooper (1990) and Denhardt (1988), focusing instead on the philosophical aspect of public service ethics.

> The conflict between the objectivist and subjectivist approaches, coupled with the difficulties raised by Rohr and Cooper, is a poor excuse for failing to develop and implement ethics courses in schools of public administration. . . . This book begins by developing the philosophical "dimension" that Denhardt "left to other works." It marks a departure from Rohr by claiming that ethics, though based on a "smattering of philosophy," is not only important in developing public administration courses in ethics but also in its application to other courses in public administration. . . . Courses in philosophy, whether complete or partial, are important for not only public administration but, as Denhardt points out, almost every science. (Sheeran, 1993, p. 11)

Sheeran (1993) raised an interesting point: A grounding in philosophy ensures that public servants will have a sense not simply of the values underlying decisions affecting the public but the reasoning behind those values as well. A well-developed, philosophically based, reasoned sense of justice is an important prerequisite for a public servant who will exercise considerable bureaucratic discretion. Many works of philosophy, including the contemporary theories espoused by John Rawls (1971) and Robert Nozick (1974), provide the concerned public servant with philosophical food for thought. William K. Frankena's (1963) classic work, *Ethics*, also provides a contemporary view on ethical behavior. Sounding remarkably like a modern utilitarian writing in the language of theology or morality, Frankena posited that human beings need to act with beneficence. "The principle that we ought to do the act or follow the rule which will or will probably bring about *the greatest possible balance of good over evil* in the universe" (p. 37). Unfortunately, the philosophical approach to ethics may be unworkable in practice. The burden of identifying, mastering, and internalizing a consistent philosophy of public service in the fast-paced, ever changing context of a public organization virtually guarantees that public servants will not develop the necessary skills with

which to resolve ethical problems encountered in the course of a long career.

Recognizing the difficulty of requiring that public administrators engage in a broad-reaching philosophical inquiry at the time they enter the public service, William D. Richardson (1997) has argued that the search for an appropriate ethical system for public administrators begins at the earliest stages of an individual's moral and intellectual development. Moreover, the quality of a citizen's character within a regime is important in understanding how an individual will incorporate democratic values into his or her activities as a public servant. "If it is to thrive or prosper," Richardson wrote, "a commercially oriented regime must more or less successfully inculcate among its citizenry such traits as rudimentary honesty, a desire for wealth, pacific habits (war consumes wealth), and some respectable degree of what we call the Protestant work ethic" (p. 16). The development of good moral character, with a concomitant appreciation of civic virtue, can be encouraged, to some extent, by educating individuals in democratic values from infancy. The reliance on good character as an important component in developing civic-minded citizens, which in turn leads to a characteristic way of behaving, an ethos, is what Diamond (1992) meant when he referred to "the American way" in his famous article on ethics and politics.

The different approaches to ethics in the public administration literature reflect the debate that has occurred in the legal literature, which focuses on two primary questions. First, Should ethics be codified as a legalistic system of rules that applies to everyone in a given profession or should public servants be left to their own individual senses of morality to resolve ethical questions? Alternatively, Can and should the two approaches be combined?

CONCLUSION

RECONCILING LAW AND ETHICS

Not coincidentally, the literature on legal ethics and public administration ethics presents the same dilemmas. How can the individual nature of ethics be reconciled with the universal requirements of public service? In other words, how can law and ethics be reconciled? An individual's sense of ethics that is championed above codified rules leads to definition and

enforcement problems. Alternatively, if codified ethical rules are preferred, they can lead to rigid, formalized prescriptions that leave little room for an individual to rely on his or her sense of ethics while acting in various public service roles.

A combination of personal ethics and codified rules is the only marginally satisfactory compromise for what may be an intractable problem. "I contend that a sense of responsibility and sound practical judgment depend not only on the quality of one's professional training, but also on one's ability to draw on the resources of a broader moral experience," one commentator has written (Postema, 1980, p. 64). Even if ethical theorists call for a bifurcation of codified rules and private morality, "The fact is that there is no way of avoiding the introduction of personal and private interests into the calculus of public decisions" (Bailey, 1965, p. 286). Cooper (1990) states it another way,

> This process of interpreting and applying the specifications of ethics legislation and codes of ethics should be informed by the core values that represent the foundations of the political tradition, sometimes referred to as regime values, as well as by the developed conscience of the administrator. These encourage compliance with the spirit of the law and codes rather than merely the letter. Also, internalized political values and developed conscience provide a check on self-protective and self-serving codes, which professional associations have been known to adopt. They also establish a broader point of reference from which to evaluate the legitimacy of any particular piece of ethics legislation. (p. 227)

It is true that the fusion of codified rules with private concepts of ethics does not completely bridge the gap between law and ethics. The general (law) and the particular (ethics) always will be different, by definition. One might go so far as to say that the gap between the (ethical) spirit and the (positivist) letter of the law will never be closed. Yet, perhaps, the uneasy reconciliation of the two, in Aristotle's words, may be achieved through the exercise of practical wisdom. "It is clear, then, from what has been said," he observed, "that it is not possible to be good in the strict sense without practical wisdom, or practically wise without moral virtue" (Aristotle, trans. 1980, p. 158). Thus, whereas combining the particularity of ethics and the universality of law might complicate efforts to punish those public servants deemed to be unethical because the actions undertaken will depend in part on potentially unique circumstances, ultimately such a union allows for a broader concept of public service ethics than is possible in choosing one approach over another.

SUGGESTIONS FOR RECONCILIATION

At the outset, this article suggested that it was an exceedingly difficult matter to develop a workable, consistent ethical system from disparate elements of the public service, owing to the fundamental tension between law (public duties) and ethics (private duties). To reconcile this tension, to the extent possible, the body of the article was devoted to a discussion of the various theories and efforts that were established to harmonize those disparate elements in the legal profession, which culminated in support for a recourse role through the adoption of the Model Rules of Professional Conduct. The article concluded that the comparatively new field of public administration could learn much from the efforts of the legal profession in crafting a system of ethics. The question naturally arises at this point: How can this goal be realized? As with implementing any plan of reform, the devil is in the details.

Rehabilitating the Image of Public Administration

It is nothing new to call for an improved system of ethics for public administrators. The literature abounds with such calls to action (e.g., see Chandler, 1983; Cooper, 1990; Ostrom, 1974; O'Toole, 1984; Streib, 1992). Unfortunately, this call to action is easier said than done. Yes, educating tomorrow's leaders in the appropriate democratic values is extremely important (Pangle & Pangle, 1993; Richardson, 1997). Yes, professional associations such as the American Society for Public Administration (ASPA) can be called on to lead reform efforts such as sponsoring study committees on revitalizing public service ethics, hosting conferences to discuss the appropriate components of an ethical system, and passing resolutions urging public administrators to comply with ethical standards. These are important first steps and, for the most part, have already been undertaken in the past. Moreover, formalized codes of ethics such as the ASPA Code of Ethics and Guidelines, the International City Management Code of Ethics with Guidelines, the National Contract Management Association Code of Ethics, the U.S. Code of Ethics of 1980, or any of the state codes of ethics can be touted as precursors to the development of a uniform code of ethics for the field. But these external controls will only have a limited effect until the image of the average public administrator as a nameless, faceless, dispassionate bureaucrat improves.

Use of the term *image* is not meant to imply that the task of improving the public administration field is merely an exercise in public relations. It is not. The only realistic way to improve the image of the public admin-

istrator is to make individual administrators happy to be public servants, to make them proud of telling their fellow men that "yes, I am a public administrator," the way lawyers proudly boast of their courtroom prowess and legal acumen. Although it is unlikely that the heroic narrative will ever develop around most public administrators, perhaps the public will regard the work of bureaucrats with less disdain when, and if, the field is rehabilitated.

In an effort to rehabilitate the field, recent scholars have defended the need for public administration on many grounds (Goodsell, 1983; Rohr, 1986). One scholar has suggested that the continued denigration of public administrators may lead to a loss of valuable personnel as individuals flee public service careers in search of more money, honor, and prestige (Adams, 1984). Encouraging honor and the esteem of fellow men, even more than paying higher wages, is the paramount issue in reinvigorating public administration (McDonald, 1985). This is a crucial first step in transforming the field into a true profession and, afterwards, in establishing a workable code of ethics.

This gargantuan task can be accomplished, if no less an authority than Tocqueville (1969) is to be believed, by relying on "self-interest properly understood." In other words, a concerted effort to increase the prestige and approbation of public administrators can be achieved if reformers do more than simply call for reform. First, public administrators must be made to see that it is in their best interests to join a genuine profession of public administration, just as lawyers join the legal profession after passing the bar examination in a particular jurisdiction.

By modeling a new profession of public administration on the legal profession, reformers can ensure that the professionalization of public administrators does not pose a threat to democratic values. This could happen when the gatekeepers of the profession insist on adopting a code of ethics that encourages members of the new profession to act on democratic values as a fiduciary obligation to the public. Although the identification of those values will never remain free of controversy, at least the development of an ethical code for a professional group of public servants based on democratic values will resolve some ambiguity that currently exists about appropriate ethical standards.

Professionalizing Public Administration

The field of public administration must become a genuine profession. Far-reaching efforts are needed to achieve this goal. It will not be easy. In

addition to educating students about democratic values beginning in infancy, it will require other incremental steps, first at the federal level and later in states and municipalities. Reformers ideally should lobby Congress to enact legislation creating a new federal class of public administrators. Similar to the Senior Executive Service, but broader and available at all levels of government, this new class of public administrators would be granted a new title, perhaps Certified Public Guardian, or something similar. Individuals would enter the profession through a licensing procedure, say, an examination governed by an independent board of public administrators. The board would serve as the gatekeeper for the new profession. (Provisions could be adopted to allow for public representation on the board to placate members of the public who undoubtedly would lobby for citizen participation in such a gatekeeping activity as a means of ensuring that the profession would not become too self- serving and elitist.)

Within a given agency, certified public guardians would be paid a larger salary and assigned greater responsibility than their nonlicensed counterparts, who would still work within the agency but in a lesser capacity. This new class of certified public guardians would be expected to serve the public in a fiduciary capacity, just as lawyers serve clients in their profession, in lieu of slavishly adopting the goals of a particular organization.

Is this a lofty goal with little chance of being implemented? Perhaps. Is the call for greater professionalization within the public administration field contrary to current trends such as the desire to deprofessionalize public administration by "reinventing government" and engaging in similar smoke-and-mirror "innovations"? (Gore, 1993; Osborne & Gaebler, 1992). Certainly. For the reasons discussed below, greater professionalization of the field, on balance, will ensure greater accountability among public administrators than will efforts to decentralize government operations and parcel them out among private entities who are not subject to the same controls that apply to the public sector. Deprofessionalizing the field may (or may not) lead to gains in efficiency, but this change will necessitate less governmental accountability and all the constitutional and operational problems attendant thereto. Is this a price worth paying? Ultimately, this is a question for policy makers considering privatization and similar proposals, although the position herein is that the price is too high. In the meantime, the issue remains: How can public administrators be made more accountable? Consider the option of greater, not lesser, professionalization, as discussed below.

Implementing Enforceable Codes of Ethics

Voluntary adherence to a code of ethics, although admirable, is not sufficient to ensure that all members of a field are held to the standards contained in the code. Moreover, as long as public administrators generally do not view themselves as guardians of a sacred public trust, they will not look to a voluntary code of ethics as a standard for judging their service to the public. In a best-case scenario, if public administrators see themselves as part of a voluntary paraprofessional group, perhaps some administrators will follow the ethical guidelines of their professional association. Yet, the number of participants will be fairly small, as Streib (1992) has indicated. In addition, the consequences of noncompliance with a voluntary code remain largely inconsequential.

What is needed, then, is a code of ethics for this new group of professional public administrators that will require group members to follow the codified rules of the profession or risk the imposition of sanctions. Again, this is a lesson learned from the legal profession. Of course, this is not to say that strict codes of ethics can always force individuals to behave ethically if they are predisposed to behave otherwise, but certainly, enforceable codes of ethics provide incentives for correct behavior in a way that no voluntary code can.

At a minimum, a strong code of ethics must require, with appropriate enforcement mechanisms (i.e., private and public letters of reprimand, monetary fines, and expulsion from the profession in rare, egregious circumstances), that public administrators act in accordance with the public interest and *democratic values* as those ambiguous terms are defined through codified rules and guidelines published by the independent board of public administrators in consultation with practitioners, scholars, and the public. In short, a code of ethics "with teeth" that also allows for a private sense of ethics is the most practicable means of ensuring that public servants behave responsibly.

Role Morality and a Recourse Role for Public Administrators

In addition to a legalized system of rules, however, the new class of public administrators must recognize its unique role morality within the regime. This is where lifelong education in democratic values is important. Public administrators serve an integral role as guardians of the regime and its values. In adopting a recourse role, administrators are held to the

standards of the new public administration profession contained in the code of ethics. Beyond the legalistic standards of the code, an individual public administrator should rely on his or her understanding of democratic values to fill the gaps in responding to real-world situations not covered by the code. In the event that an individual public administrator believes that the work he or she is called on to perform violates a fundamental precept central to the democratic process, he or she will have the right, indeed the duty, to act in the role of public citizen in placing the interests of the regime over and above the interests of the profession or the agency. The fact that this calculation will be made infrequently, even in cases where it should be made, is acknowledged. Nonetheless, the rarity of an individual public administrator acting in his or her recourse role as a public citizen over and above his or her professional role does not obviate the necessity of providing for a recourse role.

The tension between law and ethics, between general and specific duties, will continue to confound scholars and practitioners, owing to fundamental differences in the two concepts. Despite this tension, it is incumbent on citizens of the regime to seek a marriage of law and ethics, the public and the private. Perhaps it is the effort of continually wrestling with ethical issues, and not the development of a particular code of ethics, that leads to what Aristotle deemed "practical wisdom."

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