

No Time Like the Present: Making Rule of Law and Constitutional Competence the Theoretical and Practical Foundation for Public Administration Graduate Education Curriculum

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ABSTRACT

Most Master of Public Administration (MPA) and Master of Public Policy (MPP) programs across the United States focus extensively on policy analysis, management, and leadership, because organizations like the National Association of Schools of Public Affairs and Administration (NASPAA), the American Society for Public Administration (ASPA), and the Association for Public Policy Analysis and Management (APPAM) have determined that these areas comprise the core intellectual and practical dimensions of the MPA and MPP degrees. The omission of required curricula that emphasize the legal and constitutional basis of public administration theory and practice should be of central concern to the public administration education community. Constitutional competence as well as a wide understanding of how the rule of law affects nearly every dimension of public administration is not optional for effective and responsible democratic governance in the 21st century. If MPA/MPP graduates enter the public sector workforce without the knowledge that they can be held personally and professionally liable if they violate citizens' constitutionally protected rights, public administration educators have not provided them with some of the most important skills necessary for constitutionally competent public sector management.

ESTABLISHING THE AMERICAN CONSTITUTION AND RULE OF LAW AS THE FOUNDATION FOR MPA/MPP CURRICULUM

In 1982, the United States Supreme Court reiterated in *Harlow v. Fitzgerald* that public administrators can be held personally liable if they violate citizens' constitutionally protected rights for which a reasonable person would have

known. Title 42 of the United States Code section 1983, which emphasizes the types of civil action that can occur if public servants deprive citizens of their constitutional and individual rights, states explicitly:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.¹

Of all the lessons public administration faculty teach their MPA/MPP students, this should be a significant and essential priority. We need to instruct our students specifically on how best to avoid being sued for management practices that run counter to the rule of law.

David Rosenbloom (1983) maintains that public administration can be understood from three distinctive lenses: managerial, political, and legal. While the legal approach to public administration is often marginalized when compared to management studies, policy analysis, and tools for advancing leadership skills, it by no means is subordinate to these areas of scholarly interest and practical investigation. It emphasizes procedural due process; substantive rights, like those found in the Bill of Rights and the Fourteenth Amendment; and values associated with equity and fairness (Rosenbloom, 1983, p. 223). Dwight Waldo once argued a noteworthy point that is too often overshadowed by the overwhelming dynamics affecting the public policy process: "*Government is a tool to be used in the services of the individual*" (1948, p. 71; emphasis added). But civil servants cannot perform this role efficiently, effectively, or responsibly without a clear, concise understanding of the relationship between the appropriate application of the rule of law and the public goods and services provided by the administrative state to its citizens.

The American Constitution and the rule of law legitimate public administration and its democratic institutions in their entirety (Campbell, 2009; Cook, 1996; P. Cooper, 1997, 2007; Henry, Goodsell, Lynn, Stivers, & Wamsley, 2009; Lee & Rosenbloom, 2005; Richardson, 1997; Rohr, 1986, 1990, 1998, 2002; Rosenbloom, 2003; Rosenbloom, Carroll, & Carroll, 2004; Rosenbloom & O'Leary, 1997; Spicer, 1995; Terry, 2003; Wamsley, 1990). Despite strong scholarly support for

this fact, however, the historical, political, and institutional development of the field, led by the collective works of Woodrow Wilson (1887), Frank Goodnow (1900), and Leonard White (1927), primarily emphasized the managerial component of public administration at the expense of all other approaches associated with administrative management. In more contemporary times, the scholarship associated with the New Public Management (NPM) movement has also emphasized economic values at the expense of democratic, constitutional norms (Considine, 2001; Gore, 1993; Light, 1997; Loeffler, 1997; Osborne & Gaebler, 1992; Peter, 1992; Terry, 1998, 2006). John Rohr (1986) has correctly pointed out the noteworthy consequences of these movements and how they have transcended the focus of public administration both theoretically and practically:

The moral force of the founding period explains why it also was so unfortunate for American Public Administration that Woodrow Wilson was unable or unwilling to ground his theory of administration in American constitutional principle and why it is so unwise for his intellectual progeny in the field to call for fundamental constitutional changes to accommodate administrative needs. (pp. 8–9)

Rohr's argument is significant in a variety of intellectual and institutional contexts, but especially for NASPAA and its continual efforts to maintain the highest curriculum standards for MPA/MPP accreditation and education. Currently, NASPAA, ASPA, and APPAM maintain that policy analysis, management, and leadership represent the foundational educational elements of the MPA degree,² but this is insufficient. If the historical, political, intellectual, and institutional legitimacy of the American administrative state is found *only* within the nation's constitutional heritage, then the core curriculum of an MPA/MPP education *must* have a legal and constitutional foundation course as a degree requirement.

Members of the NASPAA leadership team have worked diligently to provide greater clarity and focus on this area of public affairs education. NASPAA's 2009 *Commission on Peer Review and Accreditation* addresses some of these concerns. In its preconditions for accreditation review, the Commission devoted important attention to public service values and strongly maintained:

Public service values are important and enduring beliefs, ideals and principles shared by members of a community about what is good and desirable and what is not. They include pursuing the public interest with accountability and transparency; serving professionally with competence, efficiency, and objectivity; acting ethically so as to uphold the public trust; and demonstrating respect, equity, and fairness in dealings with citizens and fellow public servants. (NASPAA, p. 2)³

The components of this recommendation hold the potential to improve MPA/MPP curriculum and education because they demonstrate how to connect important democratic constitutional values with public sector management.

Updating the MPA/MPP curriculum to require a legal foundations course supports Rosenbloom and O’Leary’s (1997) argument for how and why we should “retrofit the administrative state into the constitutional scheme.” Without grounding American public administration in constitutional tradition and the rule of law, practitioners would apply policy analysis, management, and leadership tools in completely different contexts and forms because there would be no administrative state, like the one we know of today, to govern or manage the public sector. As I argue in defense of establishing a constitutional school for American public administration, the field needs to pay more attention to how the Constitution and its democratic institutions work to preserve and maintain the republican and democratic values embedded within the founding documents of the American state (Newbold, 2010). Simply put, NASPAA should consider adopting this area of study to its curriculum requirements or at the very least incorporate this recommendation within its accreditation standards, which specifically define the criteria for quality in public service education. It should also take very seriously the core recommendations from the *Task Force on Educating for Excellence in the Master of Public Administration Degree of the American Society for Public Administration*, which suggested three specific ways to improve MPA education (Henry et al., 2009):

1. Reassert and re-clarify the mission and values of an MPA education, which includes training students in how to exercise delegated public authority wisely, effectively, and lawfully;
2. The U.S. Constitution and the 50 state constitutions must be the core of MPA education;
3. Create an evaluative tool that mirrors or complements NASPAA’s accreditation process.

CORE AREAS OF EMPHASIS WITHIN THE LEGAL ENVIRONMENT OF PUBLIC AFFAIRS

Rule of Law and Constitutional Competence

Recommending additions or modifications for MPA/MPP graduate curriculum is relatively easy; implementing possible curriculum changes and modifications is considerably more challenging. This section, therefore, describes the types of legal and constitutional issues MPA/MPP programs should possibly consider engaging as part of this suggested curriculum change.

The core of NASPAA’s educational philosophy should embrace Rosenbloom, Carroll, and Carroll’s position:

American public administration is based on the proposition that government decisions and activities should follow the rule of law. As the authors of the Declaration of Independence, the Constitution, and the *Federalist Papers* repeatedly emphasized, government under law is the basis of liberty. (2004, p. xv)

The opinions of the federal courts, especially the Supreme Court, are illuminating for public administration students because they demonstrate in concrete terms when, where, and how public administrators protected citizens' constitutional rights and when they did not. The U.S. Supreme Court, furthermore, has made it clear that a lack of knowledge for judicial precedent is not an excuse for public servants to infringe upon citizens' legally protected rights. In short, it is not possible in the American administrative state to separate the rule of law with the preservation of liberty; one is intrinsically connected with the other. This is precisely why constitutional competence for public managers is essential for public affairs education. If civil servants are unaware, misinformed, oblivious, or even negligent when it comes to their individual and professional responsibilities to protect the rights of citizens, then they face the likelihood of having civil or criminal charges brought against them in a court of law.

The Constitutional Legitimacy of American Public Administration

John Rohr's emphasis on how the American separation of powers regime directly affects the roles and responsibilities of civil servants is particularly insightful:

The courts must be considered serious competitors for the favorable exercise of administrative discretion. This is because the overwhelming majority of claims of individual rights begin and end with administrative agencies. It is not enough for public administrators to obey court orders; they should also take seriously the judicial values that are revealed in court opinions. They should learn to think like judges as well as legislators and executives, because they are all three of these. (1990, p. 83)

As public administration educators, we have the responsibility of instructing our students on how the core governing principles of American republicanism pervade administrative management at all levels of government. The incorporation of "constitutional and legal conversation," therefore, should occur in most of our MPA/MPP classes and seminars. In discussing how and why organization theory should be taught from a constitutional perspective, for example, I (Newbold, 2008) suggest that public administration curriculum should

underscore how the constitutional principles of federalism and separation of powers demonstrate how the Constitution serves as a

reference point for all areas of study in public affairs education, and not simply those that emphasize ethics or the legal environment. (p. 337)

Larry Terry also championed many of Rohr's ideas on this subject matter and argues that working to conserve American constitutional principles "gives public administrators an active leadership role in governance ... the ongoing process of choosing which constitutional master to favor to maintain the constitutional balance of power in support of individual rights is anything but passive" (2003, p. 19). Terry's argument illuminates one of the great challenges associated with public sector management. If the primary goal of American public administration is to uphold the Constitution and defend the rule of law,

then administrators should use their discretionary power to maintain the constitutional balance of powers in support of individual rights ... the public administration, like Congress, president, and courts is an institution of government compatible with the constitutional design of the framers. (Rohr, 1990, p. 80)

This task becomes increasingly challenging, however, when public administrators, and the bureaucracy at large, are constantly being targeted by the president, Congress, and the courts as a justification for many of the inefficiencies and wasteful practices commonly equated with American government (Wamsley, 1990, p. 45).

It is imperative for quality public affairs education that students understand why civil servants answer to each branch of government, as a means to help them develop a distinctive awareness for how to accommodate the bureaucratic realities and expectations of serving three constitutional masters. We must begin to recognize more comprehensively that this is a critical element of administrative management, policy analysis, and leadership as well as for public administration education more broadly defined. One of the most productive ways to accommodate the subordinate status of public administration, in comparison to the three constitutionally created branches of government, is to instruct students

that the Public Administrator acts in a professional manner in the sense of a concern for the development of competence and standards, an orientation towards service, and a set of values that regards the broadest possible definition of the public interest as a real although problematic trust, and, above all, which holds the maintenance of the constitutional order as a fundamental duty. (Wamsley, 1990, p. 47)

If these arguments carry the type of institutional and intellectual legitimacy that many highly respected constitutional and legal scholars in public administration associate with them, then at some point they *must* become part of the core

curriculum of MPA/MPP education, not only in terms of how civil servants *practice* public administration but also with regard to how NASPAA defines quality public affairs education.

DIRECTLY CONNECTING CIVIL SERVANTS TO THE AMERICAN CONSTITUTION

The Oath of Office

Civil servants have a direct link to the United States Constitution. Federal civil servants and elected officials take an oath swearing or affirming their allegiance to protect and defend the supreme law of the land. This oath is vital in terms of how it practically connects the individual civil servant to the government he or she serves. Rohr argues,

The oath to uphold the Constitution legitimates some kind of administrative independence; but precisely because it is an oath to uphold *the Constitution*, it has the potential to tame, channel, and civilize this independence in a way that will make it safe for and supportive of the founding principles of the Republic. (1986, p. 187; emphasis in original)

It cannot be overstated how important it is that we teach public administration students that their professional loyalty as public servants is not to a political party or to a policy issue; rather, it will always remain to the maintenance and preservation of both the United States Constitution and the rule of law.

Terry (2003) worked to advance the practical importance of the oath of office for American civil servants in his work on administrative conservatorship. He asserted with great diligence:

When public administrators take an oath to uphold the Constitution, they are making a moral commitment to the continuance of constitutional processes that encompass particular values, beliefs, and interests. This commitment is expressed in practical terms through their fidelity to duty in the administration of governmental institutions, including the values embodied in the Constitution. (p. 28)

Moral commitments should not be taken lightly. They require the type of continued dedication that few are willing to give of themselves for something larger than themselves, which indeed was one of James Madison's great themes in *Federalist 51*.

Lee and Rosenbloom (2005) also point to the precise meaning of the oath of office for public service management. Their analysis is quite helpful in terms of drawing practical lessons for what this type of responsibility will entail once administered:

The oath-taking has at least two specific meanings. For one, it means that they will perform the duties of the office vigorously; for another, it means that they will be responsible, personally or officially, for the constitutional or statutory torts that they might cause within or without the scope of their authorized duties. (p. 234)

We should value the collective scholarship of Rohr, Terry, Lee and Rosenbloom, Cooper, and Cook, among others, who consistently emphasize that the American Constitution serves as the foundation for public administration theory and practice; therefore, how we teach the application of constitutional governance and rule of law is vital to the distinctive value of an MPA/MPP education. This frame of reference is precisely what differentiates schools of public administration and policy from business administration programs regarding how we approach, study, and practice dynamics affecting policy analysis, management, and leadership style.

Public Sector Decision Making in a Separation of Powers Regime

In addition to emphasizing the oath of office, critically examining the use and misuse of administrative discretion is another way public administration curricula should advance the positive relationships between connecting sound constitutional principles and rule of law with competent public sector management techniques. As Lee and Rosenbloom observe:

The reasonably competent public servant has to integrate the ever-changing constitutional law into his or her job performance. This can present a daunting challenge. Books can explain constitutional law. Public service jobs can be learned and mastered ... The reasonably competent public servant has to look for creative solutions to these conflicts and tensions. (2005, p. 15)

Part of public administration education, then, is to help students understand what it means to become a “reasonably competent public servant.” We can do this in a number of creative ways, some of which include using applicable case studies when appropriate, incorporating various management scenarios that might arise in the public sector workplace, inviting practitioners into our classrooms to discuss some of their experiences in public sector management, and especially by reading and analyzing relevant Supreme Court cases that purposively illustrate the need for civil servants to use their discretionary judgment in defense of the Constitution and the rule of law.

While the oath of office affirms civil servants’ commitment to maintaining and defending the United States Constitution, the use and misuse of administrative discretion is often guided by a person’s understanding of where the boundaries of the Constitution reside. This is a point Supreme Court Justice Stephen

Breyer (2005) makes regularly, but also one that many public administration scholars have long argued is essential to constitutionally responsible public management. Without being educated in the legal environment of public administration, it becomes increasingly challenging for future civil servants to understand how they will use their discretionary authority in responsibly sound, legal manners.

At the same time, public administrators are constantly struggling with how to balance values of economy, efficiency, and effectiveness with the need to maintain responsibility, responsiveness, and representativeness in their respective agencies and with the public programs they manage (Bowman & Menzel, 1998; T. Cooper, 1998; Newbold, 2010; Rosenbloom et al., 2000; Wamsley, 1990). This task becomes increasingly challenging in a separation of powers regime where each branch of government may require a different course of action from the same civil servant and/or administrative agency. The Framers, of course, were decidedly in favor of this form of representative government and championed it in defense of liberty and for the protection of individual rights. In short, there is a method to the madness, and our job as educators is to instruct public administration students on how and why the madness leads to a specific type of government.

If MPA/MPP programs ground themselves in courses and curricula that highlight the responsibility of civil servants to the Constitution and to the rule of law, when managerial problems arise for future civil servants, they will have a more appropriate skill set to balance efficiency needs with responsible governance, effectiveness with an understanding of how to support equity and equality in terms of representation, and economy with responsiveness to the immediate and future needs of the citizenry, and many other iterations of these possible scenarios. Madison's observation in *Federalist 51* speaks directly to this point and provides important guidance for how to maneuver administratively in a separation of powers regime as a means to ensure that one branch of government does not become more powerful than another. In addition, administrative agencies are one tool each branch relies upon not only to advance its own power but to check the powers of the other two:

This policy of supplying by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power; where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other; that the private interest of every individual, may be a centinel [*sic*] over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the state. (quoted in Cooke, 1961, p. 349)

Public administration students should be taught how to understand Madison's point with clarity so that they can not only enhance their historical knowledge of the field but also learn how to adapt more efficiently and effectively to the practical realities of public sector management in a separation of powers regime.

Case in Point: The Treatment of Enemy Combatants in the War on Terror

The George W. Bush administration's treatment of enemy combatants raises alarming questions regarding how far an administrative agency, like the CIA, can apply its discretionary judgment within the confines of both the rule of law and the boundaries Congress set forth regarding captured suspects in the war on terror. As Greenberg, Dratel, & Grossman highlight in their extensive examination of the enemy combatant papers, they found that the previous administration asserted they had "the power to make decisions without consulting or even informing either Congress or the Courts" (2008, p. ix).

In *Hamdi v. Rumsfeld* (2004), the Supreme Court addressed the constitutional question of whether the president could detain an American citizen (Hamdi), whom the government captured in Afghanistan and subsequently classified as an enemy combatant, and then hold him in custody for an indefinite amount of time—without charging him formally or providing him with a formal hearing—until members of the executive branch decided, if at all, to allow him legal counsel. The Court fiercely maintained that the president does not possess *all* the power in the War on Terror, because a separation of powers system of government that relies on checks and balances precludes this from happening. As Justice O'Connor wrote for the Court:

We take Hamdi's objection to be not to the lack of certainty regarding the date on which the conflict will end, but to the substantial prospect of perpetual detention. We recognize that the national security underpinnings of the "war on terror," although crucially important, are broad and malleable. ... Certainly, we agree that indefinite detention for the purpose of interrogation is not authorized. Further, we understand Congress' grant of authority for the use of "necessary and appropriate force" to include the authority to detain for the duration of the relevant conflict, and our understanding is based on longstanding law-of-war principles.

These are the types of lessons and examples of discretionary judgment that need to be integrated within the required curriculum of public administration graduate education: how public administrators fit within the continual and constant power struggles between the three constitutionally created branches of government is vital to the maintenance, preservation, vitality, and legitimacy of the American administrative state.

The Court's opinion in *Hamdi* also speaks directly to Rosenbloom's (2000) argument that administrative agencies are extensions of the legislative branch and that the president and courts must be responsive to that institutional dynamic. Public administration students need a firm knowledge base of how the legislative, executive, and judicial branches work within the confines of American government. They need to understand that civil servants answer to all three branches of government, as previously mentioned. They need to comprehend how Congress, as Rosenbloom argues, works to check the powers of the executive in order to have a more active, concerted role within the administrative state. If public administration students and practitioners lack this specific type of knowledge, they are substantially more likely to use their discretion unwisely or unknowingly make decisions that are contradictory to the rule of law and possibly undermine various precedents the Court has issued, Congress has established, or the president has demanded concerning constitutional governance within the administrative state.

While the *Hamdi* case provides one example of how the Court limited the powers of the executive branch, the judiciary as a whole also works as an institution of governance to guide the legal authority of the administrative state. As Rohr asserts:

The judiciary can restrain, structure, and refine administrative power when it says the one who decides must hear; but it can uphold the "appropriate independence," expertise, and integrity of agencies when it asserts that courts must not probe the mental processes of the administrator. (2002, p. 82)

One of the key lessons public administration faculty should be instructing MPA/MPP students is how the courts work to shape the administrative state in its own vision. The way the courts use the power of judicial review when examining how administrative agencies apply constitutional and statutory law, regulations, rules, executive orders, and other forms of decision making demonstrates the need for MPA/MPP programs to focus more extensively on how these dynamics will affect their decision-making capacity as public sector managers. Relying on relevant Supreme Court cases as well as paying close attention to the Court's current docket provides another important way to educate students on how the judiciary shapes American public administration.

Conservators of Public Bureaucracies

Larry Terry (2003) makes a convincing case that public servants are conservators of the nation's constitutional heritage and democratic institutions. He views the role of public servants as conservators and protectors of the distinctive institutional integrity of administrative agencies. "From an institutional perspective, administrative conservatorship is an active and dynamic process of strengthening and preserving

an institution's special capabilities, its proficiency, and thereby its integrity so that it may perform a desired social function" (2003, p. 25). If public administrators are conservators of their agency's institutional missions, they are actively working to achieve Alexander Hamilton's vision for what would become the administrative state: "[The people's] confidence in and obedience to a government, will commonly be proportioned to the goodness or badness of its administration" (quoted in Cooke, 1961, p. 172). Stated succinctly, it is the role of a constitutionally competent civil servant to conserve the institutional values of the administrative state in a way that advances good administration.

Waldo shared a similar vision for the field. He was particularly cognizant of the need to maintain a distinctive set of institutional priorities for public servants.

We need administrative leadership that is vital, intelligent, creative, and democratic. The administrative expert must be able at once to satisfy the requirements of democratic control and of responsible unified administrative direction. They are to be, as the phrase is, "specialists in generalization," and in capacities special to democratic leadership. (1948, p. 95)

The idea that quality and competence in administrative leadership will ultimately lead to democratic leadership is central to the argument at hand. This is why the Fourteenth Amendment's Equal Protection Clause is vital to civil liberties; it ensures that all citizens are treated equally under the law. Legal equality infers, if not inspires, integrity within the political, managerial, and legal dynamics of the administrative state.

Writing on this very subject matter, Patrick Dobel (1999) argues that the first power associated with public office is that "public officials should act in accord with the basic principles or regime values that legitimize the authority of the constitutional government. Officeholders are expected to see all citizens as possessing dignity, basic rights, and equality under the law" (p. 7). Such efforts serve as the foundation for how public administrators work to conserve the nation's constitutional heritage and protect the legitimacy of its democratic institutions, and since leadership is an important goal that NASPAA associates with MPA/MPP education, we should build on this requirement to connect it with the need to advance democratic principles, the rule of law, and the institutional integrity of public agencies into the public administration curriculum. No one, however, spoke of this requirement or necessity in government better than James Madison in *Federalist 68*:

It will not be too strong to say, that there will be a constant probability of seeing that station filled by characters pre-eminent for ability and virtue. And this will be thought no inconsiderable recommendation

of the constitution, by those, who are able to estimate the share, which the executive in every government must necessarily have in its good or ill administration. Though we cannot acquiesce in the political heresy of the poet who says—

“For forms of government let fools contest—
That which is best administered is best.”

—yet we may safely pronounce, that the true test of a good government is its aptitude and tendency to produce a good administration. (quoted in Cooke, 1961, p. 461)

Publius’s⁴ understanding of the relationship between sound government and effective administration laid the foundation for William Richardson’s (1997) astute observation:

There is reason to conclude that many of the most influential delegates to the Constitutional Convention believed that the character of public administrators was an important part of the foundation upon which they hoped the American regime would securely rest. (p. 35)

Quite simply, good administration in the United States is dependent on the complementary relationship between public and constitutional law and the theory and practice of administrative management.

EMBRACING A NEW INTELLECTUAL, PEDAGOGICAL RESPONSIBILITY FOR MPA/MPP EDUCATION

As professors of public administration, it is our responsibility to instruct MPA/MPP students on where the boundaries of the United States Constitution lie so that our students can use their discretionary judgment as future public managers to serve the citizenry in constitutionally competent manners (Richardson, 1997; Rosenbloom et al., 2004). As Madison observed in *Federalist 51*: “The interest of the man must be connected to the constitutional rights of the place” (quoted in Cooke, 1961, p. 349), and such a monumental perspective provides the intellectual and constitutional foundation for why MPA/MPP programs must instill within their students’ educational curriculum the value of how the rule of law will affect nearly every aspect of their public management decision making.

Newbold and Terry (2008) defined *democratic governance* as “the historical, political, institutional, and constitutional foundations that enable government to exist and function within the boundaries established by the United States Constitution” (p. 34). For those of us who agree that the American Constitution is the legitimating force behind the administrative state, the National Association of

Schools of Public Affairs and Administration *must* at least begin thinking about ways to add a legal environment of public administration course to its curriculum requirements. As Moe and Gilmour (1995) correctly assert:

The distinguishing characteristic of governmental management, contrasted to private management, is that the actions of government officials must have their basis in public law, not in the pecuniary interests of private entrepreneurs and owners or in the fiduciary concerns of corporate managers. (p. 135)

Public administration educators, and likewise public administration students, should think of courses that focus on the rule of law and constitutionalism in the same positive manner that is consistently afforded to subjects that focus on management, policy analysis, and leadership. If not, are we really that different from our peers in the private sector who also focus on these very same educational criteria?

FOOTNOTES

- 1 Section 1983 applies at the state and local levels, but not to the federal government. The Supreme Court has applied the *Harlow* standard to violations of Fourth, Fifth, and Eighth Amendment rights by federal officials and employees. See *Correctional Services Corp. v. Malesko*, 534 U.S. 61 (2001), for a review of the Court's reasoning regarding federal employees' liability for constitutional torts.
- 2 www.publicservicecareers.org/index.asp?pageid=572; PublicServicesCareers.org is supported by NASPAA, ASPA, and APPAM.
- 3 Retrieved from www.naspaa.org/accrediation/standard2009/docs/NS2009FinalVote10.16.2009.pdf
- 4 Publius is the pseudonym used by Alexander Hamilton, James Madison, and John Jay when they wrote *The Federalist Papers*.

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