



CHAPTER ONE

WHAT IS IMPORTANT IN PUBLIC SERVICE?

In an examination of ethics and the profession, Part One asserts that ethics and genuine professional success go together in public service. It is the job itself—the ambiguous, complex, pressured world of public service—that presents special problems for people who are committed to doing the public’s work and who want to do the right thing. Facing up to the ethical demands on public managers starts with biting the bullet: public service ethics is different from ethics in private life. The reason is that democracy is sustained by public trust—a link forged by stringent ethical standards. This chapter concludes with a diagnostic exercise and a case study; both serve to clarify the contending values and cross-pressures pressing on everyday judgment calls.

Public managers’ morale, identity, and capacity for decision making and innovation are entangled in ethics, and rightly so, because public service is our society’s instrument for managing complexity and interdependency. The concern with ethics and demands on managerial responsibility extend beyond academic halls to government corridors, public interest groups, and professional associations. Much of the action in the past thirty years—for example, the race to adopt or tighten ethics codes by many jurisdictions and professional associations—translates into new challenges for the public manager. Public expectations and formal standards today demand that managers undertake sophisticated ethical reasoning and apply rigorous ethical standards to decisions and behavior.

Why Me?

Ethical concerns target public managers for two main reasons. One is that having public power, authority, and accountability in a democracy means that the public service's smooth functioning depends on trust. That trust has declined. The second reason is the higher standards earmarked for public service and the public perception of pervasive shortfall.

Need for Public Confidence

“Public service is a public trust. If there is anything unique about public service, it derives from this proposition” (Lewis and Catron, 1996, p. 699). This proposition can be traced back, in the United States at least, to Thomas Jefferson and is the very first provision in the federal Principles of Ethical Conduct for Government Officers and Employees (first issued by executive order in 1989). It can be identified at other times and in other cultures. According to the Organization for Economic Co-operation and Development (OECD, 2000), with its thirty member countries,

Public service is a public trust. Citizens expect public servants to serve the public interest with fairness and to manage public resources properly on a daily basis. Fair and reliable public services inspire public trust. Public service ethics are a prerequisite to, and underpin, public trust, and are a keystone of good governance.

The relationship between ethics and trust is so widely presumed that it is written directly into professional codes, law, and regulations at all levels of government. (It is also a fruitful area of current policy research.) Our hunch is that public confidence in government is grounded in ethics, carrying with it broad acceptance of public activity. An instrumental approach cultivates ethics as politically useful because it makes collective action possible, desirable, and legitimate. According to the INDEPENDENT SECTOR (2004), for example,

As a matter of fundamental principle, the nonprofit and philanthropic community should adhere to the highest ethical standards because it is the right thing to do. As a matter of pragmatic self-interest, the community should do so because public trust in our performance is the bedrock of our legitimacy.

Public agencies rely on trust as the foundation for our ability to govern effectively through the voluntary compliance we in democracies prefer to compulsory obedience. All mainstream segments of the political spectrum in the United States share this

preference and assume that ethics, trust, and government power are linked. President Ronald Reagan affirmed his faith in this proposition in 1987 by declaring,

The power of the presidency is often thought to reside within this Oval Office, yet it doesn't rest here. It rests in you, the American people, and in your trust. Your trust is what gives a president his powers of leadership and his personal strength.

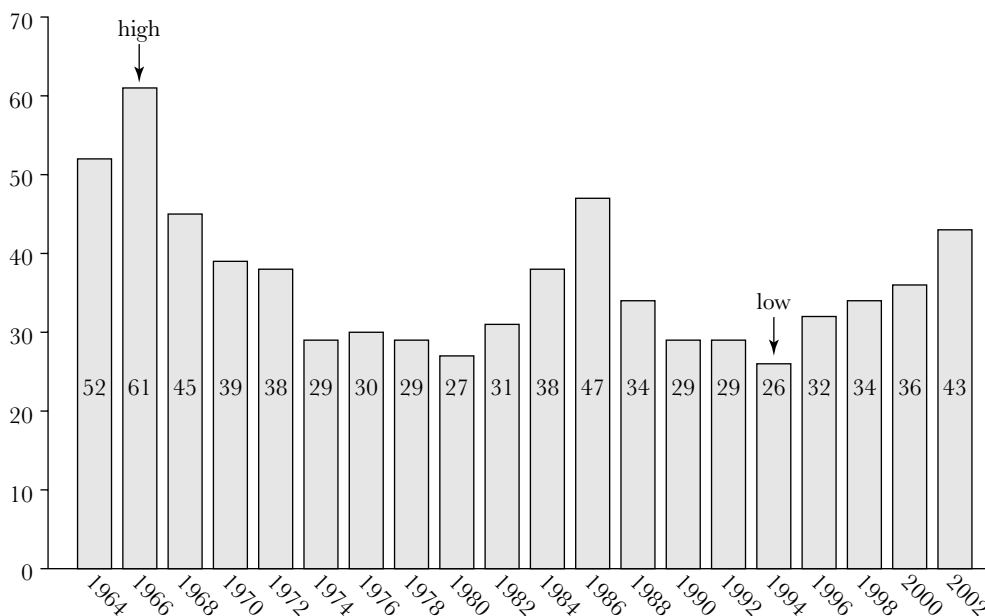
Recognized years ago, the “confidence gap” came to symbolize a pervasive erosion of confidence in government and public trust of public institutions, paralleling attitudes toward all institutions (Lipset and Schneider, 1987). The public assessment is that perceived wrongdoing plagues society, from Wall Street to Main Street, from academia to the media, and from evangelical tents and churches to popular charities. No segment is immune.

Public confidence started its downturn in the early 1960s. As shown in Figure 1.1, it continued its plunge through the 1970s and the events of Watergate that climaxed in August 1974, when for the first time an incumbent president resigned. The spirit was dubbed “moral malaise” in the Carter administration. The celebrated turnaround in the early years of the Reagan administration was modest compared with the earlier, precipitous decline, and ultimately many high-level officials left the Reagan and ensuing administrations under an ethics cloud.

This public attitude (coupled with scandal in places high and low) catapulted ethics into a national concern. National Gallup polls have long asked, “What do you think is the most important problem facing this country today?” From April 1990 through April 2004, usually less than 10 percent of respondents have answered with some variant of “ethics/moral/religious/family decline, dishonesty, lack of integrity.” Given the circumstances surrounding presidential impeachment, it is not surprising that responses peaked in excess of 15 percent in 1998 and then returned to their usual level. These data suggest that when the noise of scandal subsides, our attention turns to business as usual, meaning concerns such as jobs, prices, and national security.

Attention to ethics, predictably, is scandal-driven and short-lived. In a national poll, 34 percent of respondents replied “restoring moral and family values” when asked, “Which do you think should be a greater priority for the Bush Administration—maintaining economic growth or restoring moral and family values?” (45 percent responded “maintaining economic growth” and 19 percent “both” [NBC News/*Wall Street Journal* Poll, 2001]).

Seasoned political veterans habitually moderate their distress by allowing for the political mileage gained by bemoaning moral deterioration. It is a favorite pastime. (Every administration since Harry Truman has run, at least in part, on cleaning up the ethics mess of its predecessor.) Yet even the most cynical among us must admit that the nationwide, overall decline in trust in government is part and parcel of discussions

FIGURE 1.1. TRUST IN GOVERNMENT INDEX, 1958–2002.**Trust Index is constructed using data from four questions.**

- Q1: "How much of the time do you think you can trust the government in Washington to do what is right — just about always, most of the time, or only some of the time?"
- Q2: "Would you say the government is pretty much run by a few big interests looking out for themselves or that it is run for the benefit of all people?"
- Q3: "Do you think that people in the government waste a lot of money we pay in taxes, waste some of it, or don't waste very much of it?"
- Q4: "Do you think that quite a few of the people running the government are (1958-1972: a little) crooked, not many are, or do you think hardly any of them are crooked (1958-1972 at all)?"

Source: The National Election Studies, Center for Political Studies, University of Michigan. The NES Guide to Public Opinion and Electoral Behavior, Table 5A.5. Internet [<http://www.umich.edu/~nes/nescguide/nescguide.htm>] (accessed June 10, 2004).

of contemporary ethics. Low evaluations on ethical dimensions such as honesty and integrity sounded the alarm as the end of the last century neared (Lipset and Schneider, 1987). The alarms continue to ring into the twenty-first century.

There simply are not enough hard data to separate the ratings of those in public service from elected officials and those in state and local service from federal and

nonprofit service. (Most available data describe opinions about elected officials but rarely refer specifically to career professionals.) There is evidence that public confidence is associated with the public's overall feeling about the state of the nation (Pew Center for the People and the Press, 1998). In a national survey conducted in 1998, "Three in four said the country's values and morals are in serious decline." Nearly two in three said they were dissatisfied with the "honesty and standards of behavior of the people in this country." The survey also found, "Large majorities of men and women, Democrats and Republicans, liberals and conservatives, blacks and whites, young people and old, the wealthy and the poor sense something has gone terribly wrong with the country's moral compass" (Morin and Broder, 1998, p. A1).

Public confidence in and experience with government's ability to perform and handle problems are different from its confidence in government when ethics is the issue. Performance ratings outstrip ratings on ethics (Goodsell, 2004; Pew Center for the People and the Public, 1998). As a result, the data shown in Figure 1.2 speak to efficiency and competence and are the basis for the following conclusion:

Today, more people trust their state and local governments than trust the government in Washington. But, it was not always that way. Twenty-five years ago people were more confident in the federal government than in those closer to home. Since then confidence in Washington has eroded, while faith in state and local government has actually grown (Pew Center for the People and the Press, 1998).

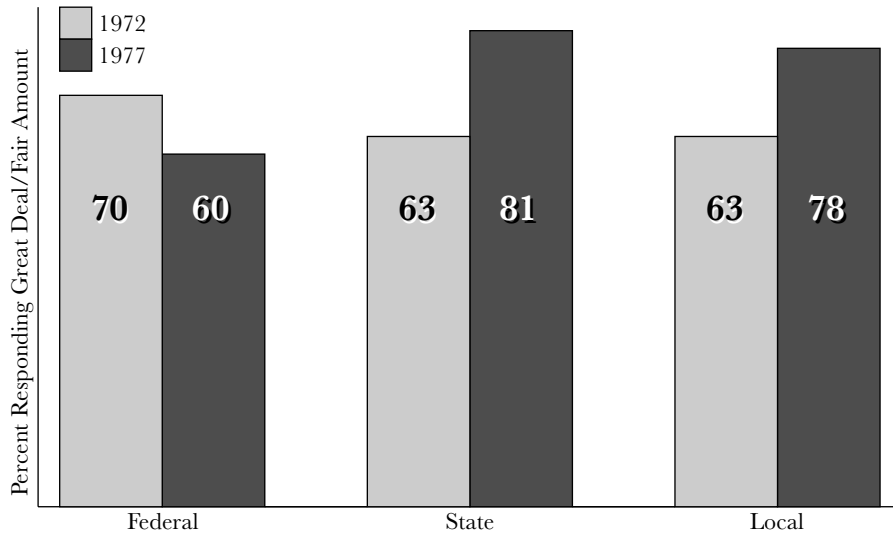
Because public confidence is believed to be related to public perceptions of ethical practice, energies shift to improving the ethical posture and reputation of public service in order to increase public trust. Fundamentally, public service is and must be an ethical enterprise. There is and must be an ethical core to public service. Given the resources, power, and uneven sharing of benefit and harm in the governmental enterprise, we cannot afford to lose sight of what is right.

Need for Higher Standards

Despite the ballyhoo, public opinion usually judges public service on the whole as no worse than other segments of society. Of course, there are differences, depending on the field or function (Pew Center for the People and the Press, 1998; Figure 1.3). Sparse data indicate that people in public service are usually seen as about average, meaning no worse but also no better than others. The problem is that average is just not good enough. (See Exhibit 1.1.)

In reality, *average* is not the public's, the profession's, or the public employee's expectation. Falling short of a higher expectation arouses a sense of ineptitude, even betrayal. Whatever the actual or perceived incidence of either corruption or fairness, the

FIGURE 1.2. CONFIDENCE AND TRUST IN GOVERNMENT TO HANDLE PROBLEMS.



Source: Pew Center for the People and the Press, "How Americans View Government: Deconstructing Distrust." 1998. Internet [<http://people-press.org>].

simple fact is that public service is expected to operate on a higher ethical plane than other, more garden-variety activities. Decades ago, an eminent practitioner-academic testified at Senate hearings (Appleby, 1951, p. 166):

It is significant, too, that the American people generally seek and expect from the [g]overnment of the United States higher standards than they expect elsewhere. And on the whole they do receive from elected and appointed officials generally a return of extraordinary devotion, even though the weighing of value questions is so complicated and difficult as to make the judgments reached highly controversial.

Appleby's words ring true for all of public service.

The Latin word *virtu* means *excellence* and summarizes the demands made on those in public service by public opinion, philosophical tradition, historical experience, and professional identity. In actuality, as a special endeavor, public service operates on distinctive standards that reflect particular values.

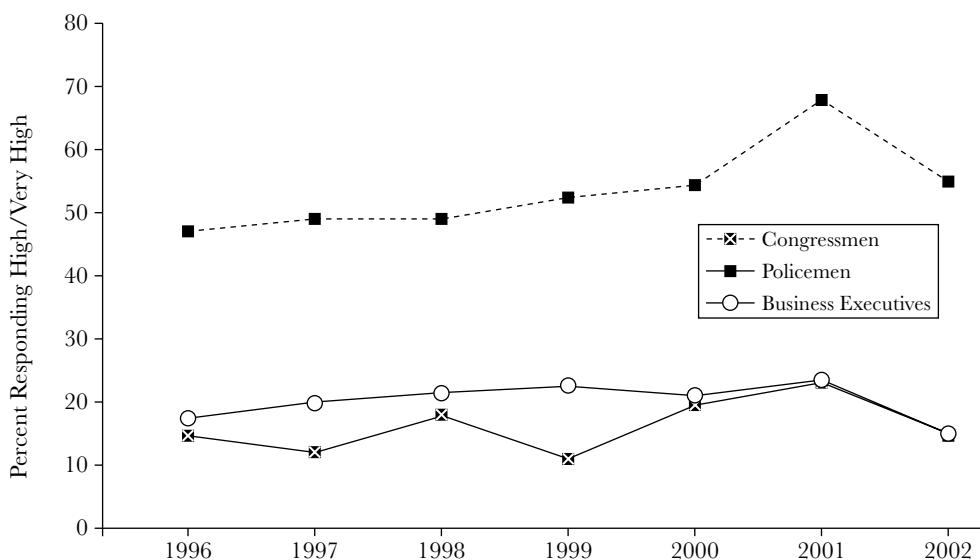
The proposition is this: public officials and employees truly are expected to conform meticulously to standards higher than those aligned with strictly personal morality

or standards associated with the private sector (see Figure 1.3). Both the nobility and the burden of public service are that it strikes a different chord.

The American political tradition resounds with this refrain. It is sounded in the well-known words of Thomas Jefferson: "Where a man assumes a public trust, he should consider himself a public property." Henry Clay echoed it: "Government is a trust, and the officers of the government are trustees; and both the trust and the trustees are created for the benefit of the people."

The interaction of trust, confidence, and governmental integrity is evident in law and regulation. It is conspicuous in governmental codes across the nation. For example, in Austin, Texas, the human resources Web site [<http://www.ci.austin.tx.us/hr/policy.htm>] announces, "*Citizens must have complete confidence in the integrity of their public servants. The aim . . . is to provide guidance to employees on upholding the public trust through ethical standards and expectations.*" The ASPA's code forges the same link: "Demonstrate the highest standards in all activities to inspire public confidence and trust in public service."

FIGURE 1.3. RATING ON HONESTY AND ETHICAL STANDARDS.



Question: "How would you rate the honesty and ethical standards of people in these different fields?"

Source: Gallup, Nov. 1996, 2002. Data provided courtesy of the Roper Center for Public Opinion Research, University of Connecticut. Internet [<http://roperweb.ropercenter.uconn.edu/>] (accessed Oct. 17, 2003).

EXHIBIT 1.1. AVERAGE IS NOT GOOD ENOUGH.

2002

“For each of the following, please tell me how you would rate their moral and ethical standards—as excellent, good, fair, or poor . . . members of the Bush Administration.”

8%	Excellent
38	Good
34	Fair
17	Poor
3	Not sure

Source: Time/CNN/Harris, 2002

1992

“How would you rate the moral and ethical standards of most . . . members of the Bush administration . . . excellent, good, fair, or poor?”

2%	Excellent
27	Good
48	Fair
22	Poor
1	Not sure

Source: Harris, 1992

1988

“Do you think the moral and ethical standards of the Reagan Administration are higher than those of other recent administrations, lower, or about the same?”

17%	Higher
23	Lower
56	About the same
4	Not sure

Source: NBC News/*Wall Street Journal*, 1988

Data provided courtesy of The Roper Center for Public Opinion Research, University of Connecticut. Internet [<http://roperweb.ropercenter.uconn.edu>] (accessed June 11, 2004).

Values in Public Service

Ethical values are beliefs about right and wrong. These yardsticks for ethical behavior draw on feeling and thinking. Sentiment and reason combine into predispositions or inclinations to act (Cooper, 1987). But not all values are the same; neither are they necessarily associated with ethical behavior. Some are virtues—the habits of ethical action embedded in moral character that underlie ethical behavior and translate abstract, ethical values into customary, observable behavior. Many ancient traditions stress personal virtue, and Plato wrote of four: courage, wisdom, justice, and moderation.

In Buddhist teachings, “Good men and bad men differ from each other in their natures. . . . Wise men are sensitive to right and wrong” (Bukkyo Dendo, Kyokai, 1987, p. 264). In Exodus 18:21, when Moses sets about forming his administrative hierarchy for the tribes of Israel newly liberated from slavery, his father-in-law, Jethro, advises him to “provide out of all the people able men, such as fear God, men of truth, hating covetousness; and place such over them, to be rulers.”

Because not all values are ethical values, contemporary observers of the managerial scene draw up their own lists of requisite values and virtues. Some relate to modern business management, others more directly to democratic ideals. Among those drawn upon in this book, Laura Nash (1981, 1990) and Michael Rion (1990) figure among the former; John Rohr (1989), Michael Josephson (1989), Josephson Institute (1990), and Terry Cooper (1987) are among the latter. Also in the democratic mode, Stephen Bailey—an influential figure in public administration—selected optimism, courage, and “fairness tempered by charity” (1964, p. 236).

The point is that in public service, particular values are of special concern. They are part of the answer to the question, “Why me?” These values support principles of action that distinguish public service from other endeavors.

Why not select a single roster of ethical values? A list—plain-dealing and direct—would be more compelling and maybe even more appealing. The answer lies in what ethics itself is all about:

- Ethical action is reflective; it is based on thought and reason.
- Ethical action is principled; it draws on sound values.
- Ethical action means making normative judgments, and that means choice.

For Adults Only

The hallmark of adulthood is the capacity to tolerate ambiguity, uncertainty, and complexity. Not necessarily liking it, mind you. Just tolerating it. This is the decision-making context of public service, and it demands ethics, maturity, a solid sense of self, and a receptive frame of mind.

Competing Ethical Claims

Rival claims devour a public manager’s time, attention, and loyalties. Competing obligations in modern life pull everyone in different directions, while physical mobility disrupts ties that, once upon a time, lasted a lifetime. Ask the city manager or field agent whose career requires periodic relocation. Ask a ranger for the National Park Service who gets transferred from Yellowstone to the Statue of Liberty. The Internet, fax machines, cellular phones, and other technological comforts let competing

calls invade every arena, every moment. These demands fragment thinking and can even shatter an undisciplined manager who exercises no selectivity.

Discriminating discipline is imposed by the manager's priorities; they specify what is important to attend to, and when. Choices among priorities and responsibilities are made with an eye to roles—the sources of operative ethical responsibilities—that define one's own behavior and that of others in different circumstances. The demand to play multiple roles causes many of the pressures associated with contemporary public service. By contrast, the acknowledged driver in business is the “bottom line.” A business either makes a profit or it doesn't. The public sector's multiple “bottom lines” are far harder to measure than profit. The reality is that “the end of the government-centered public service and the rise of a multisectoral service to replace it” has made the public sector's new reality even more complicated (Light, 1999, p. 1).

Different perspectives stress different concepts and responsibilities, but all envelop numerous and varied roles and responsibilities. For example, Dwight Waldo (1981, pp. 104–106) encompasses just about all of them in his unranked catalogue of twelve spheres of ethical claims on the public servant: the constitution; the law; nation; country, or people; democracy; organization-bureaucratic norms; profession and professionalism; family and friends; self; middle-range collectivities such as class, party, race, union, interest group, and church; public interest or general welfare; humanity, world, or future; and religion or God.

This is a lot to absorb all at once, and an analytic handle may be useful. Michael Harmon's “theory of countervailing responsibility” organizes opposing aspects of administrative responsibility into three types: the political, professional, and personal. “Action that is deemed correct from the standpoint of one meaning might very well be incorrect or irresponsible from the standpoint of another” (1990, p. 154); therefore, tension is built into administrative life. Harmon (p. 157) defines each type:

Political Responsibility: “Action that is accountable to or consistent with objectives or standards of conduct mandated by political or hierarchical authority.”

Professional Responsibility: “Action that is informed by professional expertise, standards of ethical conduct, and by experience rooted in agency history and traditions.”

Personal Responsibility: “Action that is informed by self-reflexive understanding; and emerges from a context of authentic relationships wherein personal commitments are regarded as valid bases for moral action.”

Competing claims and interests are inevitable once the public service role is defined as distinct and different from other roles. The distinction—the separation itself—is what induces conflict. As the National Municipal League points out, “Having a conflict is not, in and of itself, evil, wrong or even unusual. Conflicts may be ethnic,

cultural, emotional, nostalgic, regional, financial or philosophical” (Weimer, 1990, p. 16). This realistic perspective suggests that we also take just as realistic a look at multifaceted public managers who inhabit a rich, complex environment and enjoy job, family, friends, community, and other attachments.

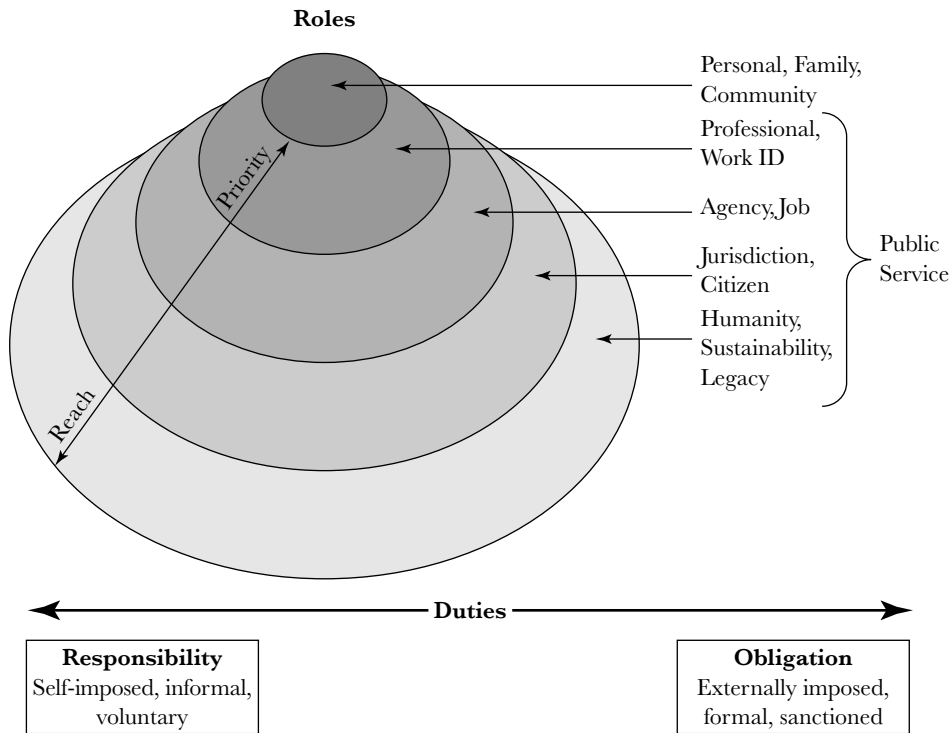
The Ethical Claims of Five Different Roles

Figure 1.4 shows the five primary clusters of roles with which managers cope. A role defines the capacity in which the public manager is acting and the behavior suitable to it. Each role signals different bundles of concerns, values, and standards of behavior; each is marked by a mix of ethical claims, or *duties*. Some duties are *responsibilities*, meaning self-imposed, voluntary, and informal; others are *obligations*: formal, externally imposed, and legally or otherwise sanctioned. The fact that both types of claims confront managers invokes the distinction between legality and ethicality, which is explored in the next chapter. (By contrast, Cooper [1990, p. 60] distinguishes obligation as responsibility *for* a task or goal from accountability as responsibility *to* someone.) Responsibilities tend to be broad, even diffuse; obligations, if only for enforcement purposes, tend to be narrow and clearly defined.

The personal role involves self, family, personal beliefs, and community affinity and is the stuff of daily life and emotional bonds. Although its ethical claims are self-imposed, they are still typically compelling. Sometimes this personal role is conceived as an arena protected from intrusion, regulation, or scrutiny and thereby is confused with “the private” and privacy. This confusion breeds misunderstandings about role boundaries (which we examine in Chapter Three). To illustrate, President Chester A. Arthur is quoted as saying, “I may be president, but my private life is nobody’s damned business” (Hochschild, 1998, p. 76). Although many Americans value privacy and stress the informal responsibilities associated with the personal role, the equation of personal and private simply does not hold up either historically or contemporarily. Individual, familial, and community obligations have long been written into law and backed by serious sanctions, from the ancient Code of Hammurabi and the Book of Leviticus through today’s inheritance, divorce, child abuse, right-to-die, and other laws.

By comparison, the bundle of claims evoked by one’s part in humanity is more abstract, by definition more inclusive, usually self-generated, and often less forceful. Figure 1.4 shows the reach or scope of duties as inversely related to their priority and depicts the typical pattern of behavior: the more immediate and personal claims are more compelling (or salient to behavior).

This line of reasoning emphasizes the distinction between the formal obligations imposed by virtue of working in public service and the responsibilities customarily associated with roles outside the profession, agency, or jurisdiction. This emphasis is important because of the cross-pressures induced by the many and often complex roles public managers play in their daily and professional lives. Figure 1.4 depicts public

FIGURE 1.4. ROLE DIAGNOSIS.

- Begin by assessing the roles you play and the seriousness of competing ethical claims. A role defines the capacity in which one is acting and the behavior befitting it.
- No simplistic trump, please; while there may be strong reasons for opting for one role over another, they need not be ethical reasons.

Graphic courtesy of Brian Baird, doctoral student in engineering at the University of Connecticut and research assistant in the Connecticut Center for Economic Analysis.

service as potentially including all but the personal domain—a core distinction discussed in Chapter Three.

A public service role often invokes legal obligations, in the sense that minimum claims are explicitly specified in written rules and enforced through legal provisions and penalties. Commonly formalized through accountability mechanisms, serving the public interest and legal compliance are central, recurring, but by no means the only ethical claims in public service. Some professional associations, such as the ICMA and American Institute of Certified Public Accountants, self-police members' adherence to formal obligations; other associations, such as ASPA and the GFOA, reject

enforcement while articulating relatively broad obligations. The current trend in public service, as discussed in the Introduction, is toward transforming responsibilities into obligations and obligations into legal requirements through the adoption of enforceable standards of conduct.

Given the differences between public service and other roles, as well as among ethical claims, conflicts are bound to provoke pressure at times. Each of the five primary role clusters has numerous facets, and all five are interrelated, sometimes directly; other times they are filtered or mediated through intervening claims. For example, accountability as a formal obligation imposed by the jurisdiction is related to the “appearance” standard of professional public service; asking whether a manager would be comfortable explaining a decision to family members (see the end of Chapter Three) calls on family claims as a support.

Following the trail to its primary source is an instructive exercise for understanding and meeting different claims. For this reason, Figure 1.4 can serve as a tool for role diagnosis. The many different parts we play in our daily lives create many responsibilities and obligations; cases in point include parent, spouse, friend, neighbor, patriot, and professional and public servant. These sometimes conflict. For example, did you ever have to be in two places at the same time?

A public servant is a fiduciary or *temporary* steward of public power, resources, and trust. Although public leaders cannot reasonably be required to abandon other relationships and affiliations, they nonetheless are obliged not to use public positions to serve their personal role. This is what conflict of interest is all about. For example, being a parent does not make nepotism right; owning a business does not wipe out obligations to the town. The separation of public from personal life in modern organizations reinforces a central ethical duty to avoid conflict of interest that injures or appears to undercut independent, impartial, objective judgment. (The positive version of this is *serve the public interest*, which is discussed in Chapter Three.)

Role diagnosis stands guard against conflict of interest. This tool asks, “What hat am I wearing” and “What are my obligations?” It is a good first cut into a dilemma. But beware! Role diagnosis is too crude to be used alone. Ethical problems are *not* solved by a simple-minded winner-takes-all approach. One role may not automatically and thoughtlessly cancel all others without seriously damaging them. (See by way of illustration the case, “The Contract,” in Chapter Four.)

Getting It Together

Evidence of the strains caused by vying and often incongruent claims is all around us, especially when it comes to family. Sura IV of the Koran (iv. 1–14) opens with an appeal to the unity of mankind and respect for mutual rights; it goes on to speak of sacred family relationships and their implications for rights, property, and inheritance.

The Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations on December 10, 1948, as “a common standard of achievement for all peoples and all nations” identifies rights and responsibilities on many levels, including the individual, family, community, society, state, and humanity. According to Article 16(3), “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” Clashes are predictable with Article 29(1), which declares, “Everyone has duties to the community in which alone the free and full development of his personality is possible.”

Almost forty years ago, Kenneth Boulding (quoted in Boling and Dempsey, 1981, p. 13) charged that our ethical thinking lags behind social realities. “We are still . . . thinking in terms of a society in which organizations are rather small and weak, and in which the family is the dominant institution.” Although the family remains a forceful institution in the United States, extended families, tribes, and even nuclear families are no longer the sole or even dominant relationship in which one lives one’s full life. The market economy, physical mobility, geriatric medicine, and many other developments have seen to that. Other institutions, relationships, and roles exert a strong pull on the modern manager, who must either find a way through the maze of competing claims and loyalties or be immobilized.

Override

Fixing exclusively on a single value or role-generated ethical claim is a simple way out but may do serious damage to excluded contenders. “It is unusual that one value or duty obviously ‘trumps’ another” (Kernaghan and Langford, 1990, p. 30). The tragic tale of Pavlik Morozov, one-time hero of Soviet communism, illustrates the friction between family and public service obligations and between abstract justice and personal compassion. As a youth, Pavlik denounced his father for aiding kulaks when the Stalinist regime of the early 1930s considered it treason to help these rich peasants. They were blamed for Pavlik’s murder after he informed on his father and testified against him in court. Pavlik’s example became a fable by which to teach children an overriding devotion to law and society.

However, over time the moral changed, and the assault on family allegiance lessened. Although Pavlik’s story now is more a cautionary model of ordinary virtues that are unobjectionable even to a Boy Scout, the original version had betrayal distorting relationships and loyalties. Sacrificing individuals to overriding abstract concepts and all values to the public good contributed to developments like the infamous gulags (labor camps) and, according to a Soviet historian, to “deep psychological and moral deformation” (Barringer, 1988, p. A1).

This story warns of the danger of justifying an action *in the name of* a greater good or higher authority rather than taking action *for the sake of* that purpose. The first invokes

authority in order to empower the doer and fails to distinguish the deed done from the good being sought. The second pursues the good by exercising its spirit. Doing your duty with public power behind you is heady enough.

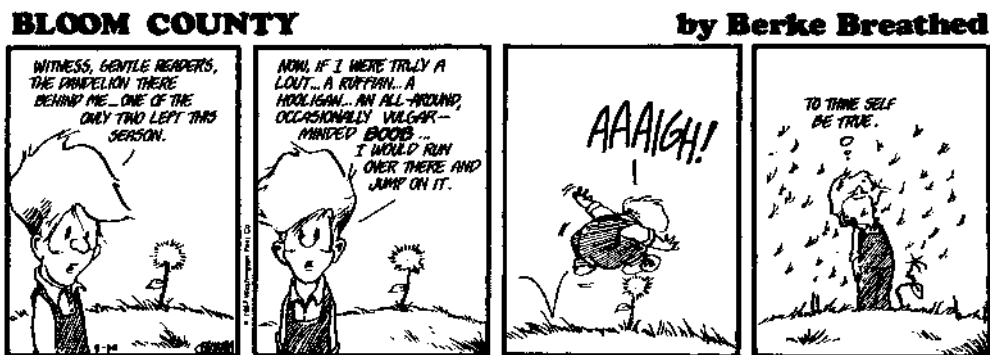
Personal Integrity

The tensions aroused by competing ethical claims jeopardize personal integrity, that is, keeping oneself integrated and whole, in balance, and ethically sincere. The cartoon shown in Figure 1.5 makes the point that the core of personal integrity is ethical values, not self-indulgence.

Supporting authentic, unbiased convictions—holding the high ground—is a measure of a manager’s administrative skill (Appleby, in Bailey, 1964, p. 237). In President Kennedy’s pointed formulation, people of integrity “never ran out on either the principles in which they believed or the people who believed in them . . . whom neither financial gain nor political ambition could ever divert from the fulfillment of our sacred trust” (quoted in Richter, Burke, and Doig, 1990, p. 291). A manual for local administrators-magistrates in seventeenth-century China advises, “An official’s first consideration is maintaining his integrity” (Huang Lie-Hung, 1984, p. 141).

J. Patrick Dobel (1990, p. 355) offers an inclusive view of ethical integrity that suits managerial realities in public service. “The ideal of personal integrity describes a condition where individuals can hold multiple realms of judgment in tension while keeping some coherence in their actions and lives.” Integrity is more like a web than a hierarchical structure, which is “too static and rigid to account for the way individuals live their lives and keep moral coherence” (Dobel, 1990, p. 355).

FIGURE 1.5. ETHICAL VALUES ARE THE CORE OF PERSONAL INTEGRITY.



In a national poll, 57 percent of the respondents disagreed strongly or somewhat with the statement, “The world is always changing and we should adjust our morals and values to those changes.” Fully 70 percent agreed strongly or somewhat that, “We should be more tolerant of people who choose to live according to their own moral standards even if we think they are wrong” (*Washington Post*/Henry J. Kaiser Family Foundation/Harvard University, 1998). These responses reflect the widespread recognition that integrity requires neither uniform nor static perspectives.

Finally, we are left with ambiguity and choice, which is precisely the point of ethics. Normative rules of ethics help us make choices that demand the exercise of judgment.

Mapping Ethical Obligations

Professional public administration in the United States is more than a century old, and over that time it has adapted to new demands, adjusted to new truths (social, economic, organizational, and technological), and absorbed new values. By way of example, turn to the U.S. Constitution and compare the dissonant definitions of what is *fair* in the Fourteenth Amendment (equal protection clause) and the Sixteenth Amendment (income tax). In the former, *fair* means treating everyone identically, but in the latter, it had come to mean treating people in different circumstances differently.

Today public service is an amalgam of often-discordant values and the action principles they underwrite. All operate at the same time and in tension with one another. Because managers—and services and policies—cannot and should not swing like a pendulum from one to the other, managers daily find themselves reconciling the values and balancing the claims.

Ethics, Democracy, and Professionalism

A public position itself is ethically neutral—used for good or bad, right or wrong—until people use it or, rather, abuse it for something other than solving “people problems” and meeting the mission. To the question, What is important to an *ethical* public manager? we propose three core answers: (1) ethics, (2) democracy, and (3) professionalism. These combine to protect and promote individual and institutional integrity. Exhibit 1.3 lists the many values and virtues associated with each.

Of course, let us not use the formula to misdirect us into rigidity. The point here is to reflect on the many demands made on public managers, not to fix them in place once and for all time for all of public service. In fact, the many alternatives invite you to add your own preferences, delete ours, or shift choices to other categories.

Among the alternatives is the OECD’s roster of values. “All OECD countries publish a set of core values for guiding their public servants in daily operations, and they

draw these values from the same substantial sources, namely social norms, democratic principles and professional ethos” (Organization for Economic Co-operation and Development, 2000). The eight most frequently cited core values for public service in the OECD countries were, in numbers of countries: impartiality (24), legality (22), integrity (18), transparency (14), efficiency (14), equality (11), responsibility (11), and justice (10). Another option is the list of values approved by the INDEPENDENT SECTOR in January 2004. These include the following:

- Commitment to the public good
- Accountability to the public
- Commitment beyond the law
- Respect for the worth and dignity of individuals
- Inclusiveness and social justice
- Respect for pluralism and diversity
- Transparency, integrity, and honesty
- Responsible stewardship of resources
- Commitment to excellence and to maintaining the public trust

Why do we incorporate democracy in this formulation of public service ethics? Because democracy is the operational framework for public service in the United States. Democracy calls on the values of impartiality, justice, the rule of law, liberty, equality, and human dignity. It also points to the importance of accountability and transparency. ASPA’s code urges, “Recognize and support the public’s right to know the public’s business” and “Promote constitutional principles of equality, fairness, representativeness, responsiveness and due process in protecting citizens’ rights.”

Professionalism is also part of the answer because credentials and expert knowledge are so important in modern life and to our image of who we are. How many of us think of ourselves as a professional in one walk of life or another? Does anyone we know admit to setting the personal goal of acting *unprofessionally*? Professionalism calls on the values of excellence, quality, competence, and merit.

What is ethics that it checks self-serving or arbitrary behavior and substitutes instead so many obligations? Ethics is about having an independent place to stand. It is the capacity for making systematic, reasoned judgments about right and wrong and to take responsibility for these judgments. Ethics is about decisive action; it is no armchair activity. But it is a special kind of action, rooted in moral values and principles expressing what is right and important—values and virtues like justice, compassion, honesty, loyalty, and even old-fashioned ones such as humility, temperance, and prudence. Ethics is action that you can defend publicly and comfortably, and the action should be something you and the community can live with.

Because (as the Introduction’s cutback exercise illustrates and Chapter Two argues), public service is about power. It is also about survival. The key to the ethical

professional's survival is personal integrity, that is, taking a sincere and principled ethical stand. Integrity is important for its own sake, yes! But it is important also because it is necessary as a building block of public confidence and trust in a democracy. And a public servant's own integrity is one of the few things he or she can take away from the halls of public service and into "civilian" life.

So now we have the formula shown in Exhibit 1.2: $D+P+E=I_{ii}$ (institutional and individual).

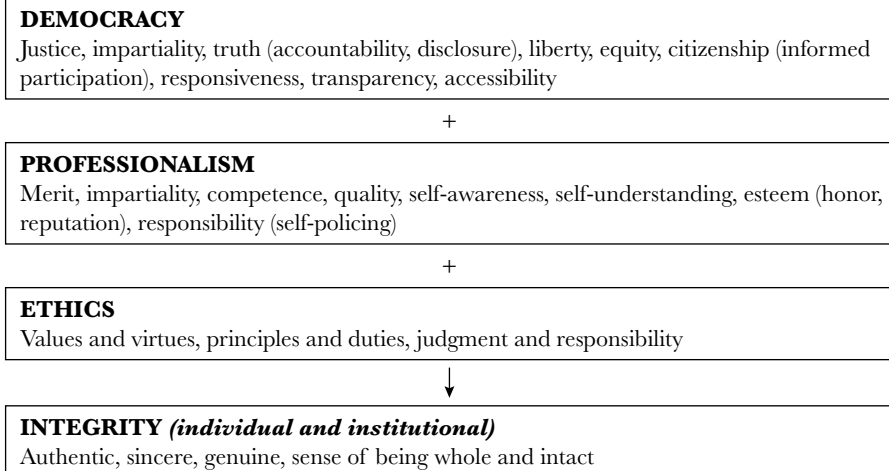
Here are so *many* values and principles, and they surely lead responsible leaders to different conclusions and contradictory actions. That is what a dilemma is all about. The burden and beauty of ethics is that there is no user-friendly computer program to substitute for personal judgment and responsibility.

So the bottom line is clear. For public managers, the formula means exercising public power as a temporary trust, without privilege, and with an eye on personal and organizational integrity. This power is cut off from personal benefits and perks so that *public* interest dominates. (The next two chapters develop this line of reasoning further.)

A Diagnostic

A roadmap, or diagnostic, is helpful in laying out the numerous, often competing values, standards, and obligations cluttering modern public service and tugging at its members. Exhibit 1.3 and Figure 1.6 impart a sense of what is right and important to us and how that fits into public service generally.

EXHIBIT 1.2. $D+P+E=I_{ii}$



These values and obligations are classified in Exhibit 1.3 into four multidimensional arenas. Each is illustrated by a single dimension depicted as a continuum with the extremes identified. Overlaid on an ambiguous and untidy world, this map is not a universal taxonomy. (We want to be the first to observe that the categories are neither discrete nor comprehensive; classification in particular applications may be problematic.) We oversimplify here for the sake of clarification.

The arenas include (1) types of values and standards, capturing the manager’s and government’s goals and illustrated by a democracy-productivity continuum; (2) the manager’s worldview or units of analysis, with an illustrative continuum running from the general to the individual; (3) a justice-compassion continuum that illustrates the arena focusing on how people are treated and the manager’s preferred means, and (4) the manager’s own conduct, as shown on a public service–personal continuum that identifies the primary role that generates dominant obligations.

EXHIBIT 1.3. VALUES AND STANDARDS IN PUBLIC SERVICE.

Each of the four arenas listed below is multidimensional and illustrated by a single selected dimension depicted as a continuum with extremes identified.

What counts?	Types of Values and Standards
PRODUCTIVITY “Hard,” economy, efficiency, competence, expertise, merit, Hamiltonian bureaucracy, technical implementation	DEMOCRACY “Soft,” accountability, representativeness, citizen access, policy advocacy, Jeffersonian bureaucracy, volunteerism, public demand
Counting others?	How Individuals Are Treated
JUSTICE Uniformity, standardization, rules, neutrality, stability, precedent, 14 th Amendment to U.S. Constitution	COMPASSION Responsiveness, equity, circumstances, flexibility, 16 th Amendment
Who counts?	Units of Analysis for Identifying and Ranking Interests/Stakes
GENERAL Rights, overarching public good, cost-benefit analysis, allocational issues, future generations, global ecology	INDIVIDUAL Liberty, client claims, majority interest, distributional issues, private property, privacy
Counting source?	Primary Role Generating Obligations
PUBLIC SERVICE Law, public interest, regulations, chain of command	INDIVIDUAL Self-interest, career, family

The map points to many different issues and values. That is its purpose. Efficiency is an enduring core value in public administration; social equity was added later. After suffering some depreciation, values associated with compassion were condoned rhetorically by President George H. W. Bush in his inaugural address on January 20, 1989, when he identified the national purpose as “to make kinder the face of the Nation and gentler the face of the world.”

Used to organize and make sense of the many different managerial and democratic values mentioned earlier in this chapter, Exhibit 1.3 and Figures 1.4 and 1.6 help us translate abstractions into meaningful, realistic guidelines for public management. (For example, Rion’s “avoid harm” principle emerges from humanity as a source of ethical claims in the Role Diagnosis graphic by Brian Baird; Josephson’s “excellence” relates to Exhibit 1.3’s first category (Productivity). Together, these can be used to probe any proposed litany of public service values and standards.

In this way, we accept public administration’s messy inclusiveness and the sundry values that push and pull on public managers. (See the case concluding this chapter for an example of all this in play.) The end-point on each continuum represents legitimate, authoritative positions, but each derives its meaning in actual practice from its position in tension with the other end-point on the continuum. Practical conflicts such as between rights and liberties or freedom and justice are familiar examples built directly into modern democratic political systems.

“The questions that now urgently confront us are as old as the Republic itself. How can we maintain a government structure and administrative system that reconcile liberty with justice and institutional and personal freedom with the general welfare?” (Seidman and Gilmour, 1986, p. 29).

The many values are modified by contending values on the same continuum. “Only from the clash of opposites, contraries, extremes, and poles can come from the accommodations that are themselves American public service ethics” (Chandler, 1989a, p. 613).

The four arenas in Exhibit 1.3 depict not an either-or choice but efforts to moderate the extremes and reconcile different value dimensions. This reconciliation is at the heart of ethical decision making in public service because a complete rejection of other values on the continuum distorts a democratic polity. Pavlik’s story warns against a pathological goal displacement that exaggerates solitary values and excludes all other points on the continuum.

Figure 1.6 uses the four continua for a quick diagram of strengths, weaknesses, deficiencies, and excesses. (Dwight Waldo called for mapping public service values in 1981 in *The Enterprise of Public Administration*.) The method here begins with laying out the four continua on a circle. The next step is to identify the approximate location on each continuum that best describes the actual or preferred position, as we see it. The third and last step is to connect the points and show the diamond pattern.

FIGURE 1.6. DIAGNOSTIC: WHAT SHAPE ARE WE IN?

Mapping Public Service Ethics

P — D (Productivity — Democracy)

J — C (Justice — Compassion)

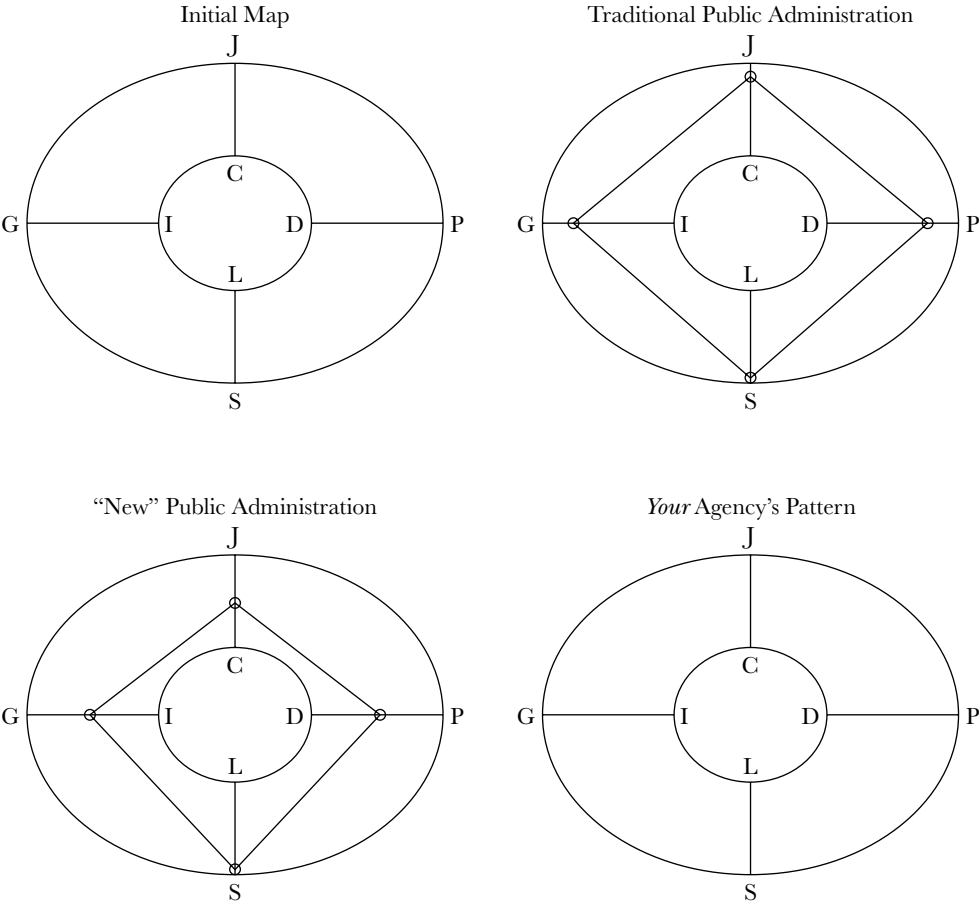
G — I (General — Individual)

S — L (Public Service — Personal)

Step 1: Use four continua of values and standards in Figure 1.6.

Step 2: Locate approximate point on each continuum for best fit or description.

Step 3: Use straight lines to connect points and show pattern.



This is an exploratory device, and public service, *not* personal values, is the object of exploration. Figure 1.6 shows four sets of values and standards of behavior:

1. Types: captures the leader's and the government's goals, illustrated by democracy-productivity
2. Public manager's worldview or units of analysis, illustrated by continuum from general to the individual
3. A justice-compassion continuum that puts the focus on how people are treated and the leader's preferred means and style
4. The manager's own conduct, as shown on a public service-personal continuum that identifies the primary role that generates dominant duties

The map points to many different issues and values; that is its purpose. It helps us accept public service's messy inclusiveness and ambiguity and see that we move along a continuum. The mapping is designed for a quick diagnosis of strengths, weaknesses, deficiencies, and excesses.

1. What shape are you in?
2. How does it match up against what you hope is in store for public service's next generation?
3. If there's a mismatch, what should and can you do about it?
4. If there is a match, how can you preserve the current shape as a legacy? Should you?

A radical, ungainly shape is a warning signal that something is wrong, and an exercise in ethical fitness—shaping up—may be in order. That is up to the manager. Despite the kite shape and the fact that managers do not operate at a single discrete point but move along the continuum, the intent of the exercise is to survey the present and anticipate the future with both feet firmly on the ground.

Figure 1.6 prompts managers to describe their agency as it is, but it is also interesting—and challenging—to plot two other maps: (1) the manager's preferred pattern for public service generally and (2) the pattern predicted for the next generation in public service (pushing us to think as stewards, taking care for future generations). A mismatch between the two sounds an alarm. Over the years, public service paradigms have shifted or absorbed new values, and public administration has been *refounded* (Wamsley and others, 1990). Moreover, public outrage over recurring scandals and countless ethics initiatives hint that another shift is in the wind. That is the reason for displaying the “*new* public administration” and for encouraging the mapping of a “*new* public service” (Denhardt and Denhardt, 2003).

Of course, the shape of public service is molded by the larger society, and career professionals in public service are not a group apart. They inevitably reflect the moral tone of the society in which they live and the institutional contexts in which they work. The problems and challenges are neither light nor likely to disappear. Indeed, public accountability is being reshaped by new technologies, new public disclosure

standards, and new demands on ethical professionals in public service. We predict that this development will expand rather than curtail individual responsibility and managerial integrity.

We agree with President John F. Kennedy's message to Congress on April 27, 1961: "The ultimate answer to ethical problems in government is honest people in a good ethical environment." He called on government leaders "to develop in all government employees an increasing sensitivity to the ethical and moral conditions imposed by public service."

Case: Right at Ground Zero

Passed just eleven days after the terrorist attacks on September 11, 2001,¹ the Victim's Compensation Fund (VCF) is the first of its kind.² It aimed to protect the airlines (and, by extension, their suppliers and subcontractors) by limiting their liability and providing "a no-fault alternative to tort litigation for individuals who were physically injured or killed as a result of the aircraft hijackings and crashes on September 11, 2001."³ Victims or their beneficiaries who are willing to waive their right to sue may be compensated for economic and noneconomic loss related directly to physical injury sustained at the World Trade Center, Pentagon, or Shanksville, Pennsylvania (see Exhibit 1.4).

Kenneth R. Feinberg, the unpaid and highly credentialed⁴ special master appointed by Attorney General John Ashcroft to oversee the multi-billion-dollar fund, described the VCF as "an unprecedented expression of compassion on the part of the American people to the victims and their families devastated by the horror and tragedy of September 11th." He goes on, "While there is no amount of compensation that can replace a human life, our goal is to aid those who have so greatly suffered as a result of this horrendous act" (U.S. Department of Justice, 2001). The fund surely is a gesture of the American people's compassion and a symbol of the value they place on human life.

A mix of corporate protection and public compassion, the VCF is associated with different and sometimes incongruent goals and values, seemingly inconsistent promises, and, therefore, some misunderstandings and misguided expectations. The contradictions led one legal scholar to plead that we "not continue to confuse the tort system and the inspiring charitable impulses that infuse both private and public compensation initiatives" (Culhane, 2003, unpaginated). One newspaper headline aptly defines *disaster aid* as "the mix of mercy and politics" and quotes the 1996 congressional testimony of the director of the Federal Emergency Management Agency (FEMA): "Disasters are very political events" (Rosenbaum, 2003).

This is not the first public policy or first governmental process to be grounded in competing values. Contradictions are built right into the federal regulatory process, for example.⁵ In fact, a whole literature has developed around the tensions among

EXHIBIT 1.4. WAIVING THE RIGHT TO SUE.



**September 11th Victim Compensation Fund of 2001
Compensation Form for Deceased Victims
Part III - Attestations and Certifications**

OMB 1105-0078

Victim's SSN or Nat'l ID #

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Personal Representative's SSN or Nat'l ID #

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Part III. b - Privacy Act Notice

The Department of Justice is authorized to collect this information by the September 11th Victim Compensation Fund of 2001, Title IV of Public Law 107-42, 115 Stat.230 ("Air Transportation Safety and System Stabilization Act"). The information you submit in your claim is for official use by the U.S. Department of Justice for the purposes of determining your eligibility for and the amount of compensation you may receive under your claim to the Victim Compensation Fund. Provision of this information is voluntary; however, failure to provide complete information may result in a delay in processing or a denial of your claim. Information you submit regarding your claim may be disclosed by the Government only in accordance with the provisions of the Privacy Act.

Part III. c - Certification of Dismissal of any Legal Action

Have you or any dependent, spouse, or beneficiary of the Victim filed a civil action (or been a party to an action) in any Federal or State court relating to or arising out of damages sustained as a result of the terrorist-related aircraft crashes of September 11, 2001 (other than civil actions to recover collateral source obligations or a civil action against any person who is a knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act)?

Yes ☐ No ☐ If Yes, has such action(s) been dismissed as of March 21, 2002? Yes ☐ No ☐

Initial here _____

(please attach proof of dismissal if applicable)

Part III. d - Acknowledgement of Waiver of Rights

I hereby acknowledge that by submitting a substantially complete Compensation Form for Deceased Victims I am waiving the right to file a civil action (or be a party to an action) in any Federal or State court for damages sustained as a result of the terrorist-related aircraft crashes of September 11, 2001.

Please note this Waiver of Rights could apply to the rights of individuals other than the Personal Representative. This waiver does not apply to a civil action to recover collateral source obligations or to a civil action against any person who is a knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act.

Signature of Personal Representative

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

Date (mm/dd/yyyy)

caring and compassion (Gilligan, 1982; Noddings, 1984), social equity associated with the *New Public Administration*, and justice (Frederickson, 1974; Frederickson and Hart, 1985; Nozick, 1974; Rawls, 1981; see Resource A). The contradictions also explain why some decision makers, beneficiaries, or even the public may feel swindled or betrayed. Competing values are an inescapable feature of public managers' workaday world, so much so that many seasoned managers think it is prudent to anticipate allegations of hypocrisy or unfairness.

Opposing values mean that different people, with different ideas about what is fair and right, see the VCF in different lights. A leading advocate for victims and their families and self-described as one of Feinberg's "sharpest critics," Charles Wolf, points out that one thing that makes the VCF different is that it is very much in the public eye and the public is not used to seeing such a calculation with disparate valuations (Wolf, personal communication, Sept. 20, 2003; see also <http://www.fixthefund.org>).

Believing that the principle of compensation means making up for actual loss rather than serving as political symbolism, some claimants advocate steep differences in awards that reflect the wide variations in victims' earnings ("vertical equity," in economic jargon). After all, what's fair is fair, one can almost hear them say, and this is what Congress enacted and the president signed.

Believing that there are some circumstances, such as the events of September 11, when market-based calculations seem inappropriate—even offensive—others argue for equal compensation for all victims suffering similar harm (horizontal equity). A mother who lost her son—a firefighter—says, "It's not about the money. This is not ever about the money" (Belkin, 2002, p. 92). A father protests, "The value of a life is certainly not determined based on earnings. We're talking about my son" (Glaberson, 2001, unpaginated). "Mr. Feinberg, they say, you have undervalued our loss, your cold calculations have come up short" (Chen, 2003, unpaginated). "I don't care how much money it is. I just want fairness" (Chen, 2003, unpaginated).

An argument grounded in the inherent value of all human life would have everyone treated about the same, or at least awards would have been kept within a narrow range. (Others argue on behalf of the value inherent in all life, human or otherwise.⁶)

Still others object to valuing life in dollars. "But the very idea of giving human life a monetary value has struck many as not merely difficult but repugnant" (Kleinig, 1991, p. 147). Rejection of any monetary valuation at all on human life would have shifted the public purpose from compensation to providing a measure of financial security.

Assigning a monetary value to life is part and parcel of standard evaluation techniques such as cost-benefit analysis and environmental assessments in the United States and elsewhere (Gillette and Hopkins, 1988; Linnerooth, 1975). For example, in considering road construction,

[T]he monetary value of fatalities . . . is what the economist means by "the value of life." The term is almost a joke, a bit of gallows humor to exorcise the ghoulishness that inevitably clings to analysis of life and death in monetary terms.

The problem is unavoidable. The road will be built or it will not be built, and a decision either way is a statement about the value of life. . . .

Governments cannot avoid the trading of lives for money, but they may establish the terms under which that trade takes place. The trade is unavoidable because governments take responsibility for activities—health, transport, environmental protection, civil order, and especially national defense—where lives can be saved at a price (Usher, 1985, pp. 168, 185).

In an interview with Feinberg, it was noted that the Federal Aviation Administration's cost-benefit analyses (for deciding on safety procedures) uses a value of a life saved at \$2.7 million (Public Broadcasting Service, 2002). This is also the approach taken in tort claims.

For centuries, civil lawsuits have tried to answer such questions in dispassionate economic terms. . . . In measuring the value of a lost life, lawyers often say that dollars are inadequate, but that they are all there is. In addition to damages for economic losses, intangible things, like the suffering before an inescapable death, are given a price tag (Glaberson, 2001, unpaginated).

Objecting to computational methods derived from tort law and thereby undervaluing nonmonetary aspects of a human life, some might argue that "someone's own worthwhile life is a good thing in itself, not merely an instrument for creating benefits for others" (Rhoads, 1980, p. 242).

Despite the different views, it is the statute that defines the fund. The statute directs the special master to devise all the rules and procedures governing the fund's administration, to determine awards, and oversee appeals. Wolf (undated) notes,

With a sparsely written law, Feinberg was forced to write most of the details himself in the form of regulations. Then, he has to implement what he just wrote, pointing back to those same regulations as unbendable rules. Finally, he is the final adjudicator as the law prohibits judicial review by the courts. Feinberg has the power of King George III; he is lawmaker, administrator, judge and jury.

Asked how he calculated the value of life for purposes of compensation, Feinberg replied, "We went to the Bureau of Labor Statistics and the Bureau of the Census, and we developed a methodology . . . based on salary, age and number of dependents, came up with presumptive awards. . . ." (Public Broadcasting Service, 2002).

Although the awards themselves are not subject to judicial review, the rules for making them can be contested in court. With the power to make irreversible multi-million-dollar decisions, Feinberg exercises extraordinary discretion: "The buck stops with me, and me alone" (Chen, 2002a).

Yet the statute constrains Feinberg in at least three fundamental ways. First, the fund's method of valuation is specified by statute and mimics the assessment of economic and noneconomic loss associated with tort awards. The special master is directed to consider economic loss, defined by statute as "any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable [s]tate law." When making awards, he is obligated to consider noneconomic loss, statutorily defined as "losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life" and all other "nonpecuniary losses of any kind or nature."

Second, the statute stipulates that the award shall be reduced by collateral compensation, defined as "including life insurance, pension funds, death benefit programs" and governmental payments associated with the terrorist-related airplane crashes. Third, the deadline for filing a claim was set at two years from the promulgation of regulations, which occurred on December 21, 2001.


Most simply, awards are based on actuarial estimates of lost income over one's lifetime, minus likely living expenses and collateral compensation. "Over the years, Feinberg has worked out a method for dealing with sprawling, complex cases, the key element of which he describes as stripping away the complexities. Under this method, individual circumstances are reduced to numbers, so that the whole settlement can be expressed in a set of tables" (Kolbert, 2002, unpaginated). According to Feinberg, "The way you divvy up the money is to come up, to the extent you can, with an objective allocation formula" (Kolbert, 2002, unpaginated). (See Exhibit 1.5.) Because the fund has no statutory cap, the special master in effect "has been granted what amounts to a blank check on the federal Treasury" (Kolbert, 2002, unpaginated).

Numerous complaints and objections have arisen over Feinberg's methodology and other aspects of the fund. Compensation for economic loss means that low-income earners are eligible for lower awards. "At first glance, the tables defy most notions of equity; the more needs a family is likely to have, the less well it fares" (Kolbert, 2002, unpaginated). A minimum award adopted by the special master addresses this concern to some small degree. At the same time, the special master has so far refused to compensate the beneficiaries of the highest-income earners with full economic compensation that would amount to tens of millions of dollars each. "Feinberg counters that Congress vested him with enormous discretion in making payment decisions, and that he is striving for a more democratic apportionment of the taxpayer money that funds this compensation initiative" (Culhane, 2003, unpaginated).⁷

A strict application of the rules that contain neither minimum nor cap (and therefore do not set limits on outcome) would lead to a large disparity among awards. The special master appears to have opted for compressing the range of awards.

Some beneficiaries decry the collateral offsets, which strike them as unfairly penalizing the family of a victim who conscientiously and responsibly paid life insurance premiums or pension contributions. Appealing an offset, one attorney protested, "This

EXHIBIT 1.5. EARNINGS FIGURE INTO CALCULATION.



September 11th Victim Compensation Fund of 2001
Compensation Form for Deceased Victims
Part II - Compensation

OMB 1105-0078

Victim's SSN or Nat'l ID #

Personal Representative's SSN or Nat'l ID #

Part II. f - Compensation Information

Compensation typically includes base salary and wages as well as other sources of earned income such as commissions, bonuses, incentive pay, etc. Please provide the Victim's complete compensation history below. Please note that passive sources of income, such as income from rental properties or investments, are not considered in the calculation. For salaried victims please provide their base salary at the end of each listed year. If the victim was both employed and self-employed complete both lines. For 2001, indicate salary for period up to September 2001. If additional amounts were due please describe at part II.k.

Compensation Amount
(Please provide currency if other than US Dollars _____)

	2001 (to 9/2001)	2000	1999	1998
Was the Victim self-employed? If yes, enter total yearly compensation amount here.	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>
If not self-employed, enter Base Salary/Wage information here.	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>

Indicate whether figure provided is a yearly, monthly, bi-weekly, weekly, or hourly figure.

Additional Compensation - Please provide information for all other compensation including, but not limited to, incentive pay, bonuses, overtime, commissions, tips, shift differentials, longevity, and honoraria. For 2001, indicate salary for period up to September 2001. If additional amounts were due please describe at part II.k.

For Victims who were in the armed forces - Please include housing, subsistence, TAD, re-enlistment, and other compensation by each category. However, if you want the Special Master to rely on published compensation and benefit scales please check the box at the end of this statement. If you do so, there is no need to complete this section, but please attach a copy of the Victim's Military Leave and Earnings Statement indicating the pay level and benefit information. ☐ I wish to rely on published data regarding U.S. military compensation.

	2001 (to 9/2001)	2000	1999	1998
Other Compensation (Please describe)	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>
Other Compensation (Please describe)	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>
Other Compensation (Please describe)	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>
Other Compensation (Please describe)	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>
Other Compensation (Please describe)	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>

is about the principle of fundamental fairness" (Chen, 2003, unpaginated). Some refuse to file because they thereby lose their right to sue the airlines or governmental entities involved. These issues are dictated by the statute, not the award regulations or methodology, and are not subject to the special master's discretion.

Perhaps the most fundamental questions are built right into the fund by the statute and center on the very spirit of the fund. They have to do with fairness and how justice and compassion push in different directions. In Feinberg's words, "What you're really asking is: All lives are equal, why isn't everybody getting the same amount of money? A very fair question, ladies and gentlemen. The answer is: Congress told me that is not the way to compute these awards. Congress said you must take into account the economic loss suffered by the victim's death" (Kolbert, 2002, unpaginated). When asked in the spring of 2003 how he would change the fund, Feinberg responded, "Give everyone the same" (Culhane, 2003, unpaginated). This solution certainly would have made his job easier (and suggests that public managers may pay a price for broad administrative discretion).

All told, almost 3,000 people died at the three sites; there is no official tally for the number of injured. More than 2,830 applications for deaths and more than 3,600 injury applications met the midnight deadline on December 22, 2003. A last-minute surge pushed the application rate up more than 30 percentage points, to a 95 percent rate (and rising) and well above the 90 percent mark Feinberg set as the program's goal. The jump in applications in part is attributable to "a massive turnaround in the popularity of the fund, which had drawn applications from fewer than half of the eligible families as recently as the second anniversary of the terrorist attacks" (Hirschhorn, 2003, unpaginated).⁸ About seventy-three families have opted to file lawsuits against the airlines (Barrett, 2003, unpaginated). The average lump-sum, tax-free⁹ award for a death claim stands at \$1.8 million, with "the highest award, about \$7.9 million, going to one of the badly injured victims who survived" (Barrett, 2003, unpaginated).

The public certainly has a stake in the fund and in other governmental and non-governmental responses to the events of September 11. (See the case featuring the Red Cross in Chapter Three.) After all, the public is who public managers are supposed to serve, and the public is at the heart of the definition of democratic accountability. But the public's responses to the VCF reveal the fundamental problem: contending values confound simple solutions and offer little or no clear-cut direction. When asked in January 2002 whether the offsets for insurance and pensions should reduce awards, 35 percent of the respondents said yes (thereby agreeing with the statutory requirement), but 59 percent said no, and 6 percent were not sure (*Time/CNN/Harris*, 2002). When a national sample of registered voters was asked in February 2002 how awards should be structured, 15 percent opted for potential earnings (the statutory criterion), 32 percent chose families' needs, 50 percent responded that all "should get about the same, and 4 percent gave no answer or did not know (Quinnipiac, 2002). Neglected is the question of whether government should compensate victims in these sorts of circumstances.

The tensions among values emerge in nonmonetary ways as well. A poll released in September 2003 shows that 54 percent of registered voters in New York City believe that the names of all victims of the attack should be displayed together on the memorial at Ground Zero in New York City. However, 38 percent responded that there should be a separate listing differentiating uniformed emergency workers. Their losses were so great: 343 firefighters, 23 city police officers, and 37 Port Authority police. Although taking no position on the matter, New York Governor George Pataki observes, “It’s one thing to deal with the tragedy as America had to after September 11. It’s another to run into the buildings while they’re still burning” (Hirschhorn, 2003, unpaginated). It also is true that fewer than 300 bodies were recovered from Ground Zero, and the remains of 1,521 victims have been identified by the city medical examiner’s office (Hirschhorn, 2003).



Discussion Questions

1. In your opinion, is it possible to avoid a clash of values in public service? Is it desirable?
2. If you were the special master, would you compress the range of awards? How would you justify your answer *in ethical terms*? (See Chapter Five.)
3. Sometimes a professional in public service has to implement an imperfect law. Is this ethical? Does compliance with statute trump every other consideration? (See Chapters Four and Six.)
4. The case suggests that public managers may have to pay a price for broad administrative discretion. What price? Does the exercise of public authority carry with it any ethical obligations? What objections to administrative discretion should a prudent public manager anticipate?
5. Should public opinion influence ethical professionals in public service? Why? (See Chapter Three.) Explain your answer *in ethical terms*.
6. Take the NYC poll. How would you have responded, and why? What should you think about as a citizen? As a professional in public service?

Note: Exhibit 5.3 examines alternative ethical perspectives that help sort out the different objections to the VCF as a public policy and to decisions made by the special master.



Notes

1. The fund was signed into law by President George W. Bush on September 24, 2001, as a subsection of the Air Transportation Safety and System Stabilization Act (P.L. 107-42).

2. A 1986 federal statute provided compensation in the amount of \$50 per day plus interest to military and civil service members held hostage in Iran from November 4, 1979, to January 21, 1981. See National Victim Assistance Academy by Internet at http://www.ojp.gov/ovc/assist/nvaa2002/chapter22_9.html (accessed Nov. 13, 2003).

Although numerous support, insurance, and disaster mitigation programs exist, governments in the United States ordinarily do not compensate for natural disasters, contagious illness, or other socially shared risk.

3. For a synopsis of the VCF, see <http://www.usdoj.gov/victimcompensation/faq1.pdf> (accessed Sept. 12, 2003). For the law, final rule, and other documents, see http://www.usdoj.gov/victimcompensation/civil_01.html (accessed Sept. 13, 2003).
4. Among Feinberg's credentials are his settling the Agent Orange case for Vietnam veterans and the suits against the Dalkon Shield IUD and Dow Corning over breast implants.
5. Executive Order no. 12866, issued on September 30, 1993, by President William Jefferson Clinton directs, "When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, distributive impacts, and equity." See <http://reginfo.gov/eo12866.htm> (accessed Sept. 10, 2003). On an overview of the federal regulatory process, see http://www.archives.gov/federal_register/tutorial/tutorial_000.pdf (accessed Sept. 15, 2003). On the value of statistical life, evaluation of life-saving benefits, and federal environmental, health, and safety rules, see, for example, Shogren and Stamland, 2002, and Viscusi, 1993. For the most comprehensive federal study yet of the cost and benefits of regulatory decision making, see OMB's 2003 report to Congress (Office of Information and Regulatory Affairs, 2003).
6. This perspective is associated with, for example, Deep Ecology, commonly dated to 1976. See <http://www.cyberus.ca/~sustain1/deepE.html> (accessed Aug. 3, 2003). See also Resource A.
7. This hits hardest the beneficiaries of deceased employees of Cantor Fitzgerald, the brokerage firm whose casualties represent nearly a quarter of all those killed in the attack on the World Trade Center (Chen, 2002b and Cantor Fitzgerald, 2002).
8. Attributing his change of heart to Feinberg's own changes in the program and attitude, Charles Wolf submitted his application to the VCF in November 2003 (Wolf, 2003b). Over 97 percent of the World Trade Center families applied, compared to 70 percent of Pentagon families and 30 percent of Shanksville families (Hirschhorn, 2003). "Plaintiffs' attorneys have said the Pentagon and Shanksville families would have stronger wrongful death claims against the airlines and would be impacted less by the legislative cap on damages per airplane" (Hirschhorn, 2003, unpaginated).
9. See Victims of Terrorism Tax Relief Act (P.L. 107-134, 115 Stat. 2427), at http://www.usdoj.gov/victimcompensation/civil_01.html (accessed Sept. 12, 2003).