Following the Deepwater Horizon spill in 2010, wildlife specialists worked on the beaches to save animals coated with oil. The natural disaster caused by the oil spill required a large scale government response.
Americans have always had an uneasy relationship with their government. The nation was born in revolution, a very long time ago, and to a truly remarkable degree that shadow of the American Revolution continues to hang over our views toward government and the rules we use to guide it. We have very high expectations. Our founding documents are always worth rereading, not as sacred texts but as political statements, and they are full of soaring aspirations. Our Declaration of Independence asserts that “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.” Stop and think—the revolutionaries who founded our government wanted to protect their liberty—and they wanted a government that would allow them to be happy. When was the last time you thought about “happiness” and “government” in the same sentence? Then there’s our basic framework, captured in the Constitution. It starts with a foundation in “We the People” and pledges justice, domestic tranquility, defense, the general welfare—and “the Blessings of Liberty to ourselves and our Posterity.”

We’re the “posterity,” living and walking today, but we’re often not feeling especially happy about our government. The revolutionary DNA is still in our body politic. We have tea parties trying to shrink government’s size and power and activists pushing hard for a strong governmental role in climate change. We quite deliberately put opposing forces into office to balance power and then complain very strongly about government’s ability to get anything done. We are often a marvel to people in other parts of the world, who admire our freedom and our vast progress since our founding—and we are a puzzle to people who are amazed at the battles we wage in governing ourselves. Those who view us from afar struggle to capture what we know intuitively: both our progress and our battles flow from our uneasy relationship with government, from our simultaneous efforts to empower and control it, and from our ceaseless struggles to figure out how to secure justice, defense, and the general welfare while seeking tranquility and happiness. We struggle to balance our lofty expectations for government with our deep distrust of it.

That struggle becomes most real in the politics of our administrative process. It’s one thing to argue the case for justice, but it’s another to make our state prisons secure without abusing inmates. It’s one thing to argue for domestic tranquility, but it’s another to determine how much force local police should use in fighting neighborhood crime. It’s one thing to pursue defense, but it’s another to find just the right balance of weapons to protect the country without bankrupting it. It’s one thing to advance the general welfare, but it’s quite another to decide which citizens whose homes are destroyed by a superstorm should get federal aid. The basic administrative questions, on the front lines of government, are how we really set the balance and define what government is. No matter how bold or simple our policies, very little in government has any meaning until we seek to administer them.

For example, we have a clear national policy about the many oil drilling platforms in the Gulf of Mexico. When companies extract the oil, our laws and regulations say, they should keep their workers safe and ensure that their practices don’t pollute. But on the evening of April 20, 2010, everything went tragically wrong. Workers on the Deepwater Horizon, a highly specialized drilling platform—part boat, part oil rig—noticed a highly explosive burst of methane gas moving up the pipes. One crew member raced to trigger the blowout preventer, a massive device on the ocean floor a mile below designed to seal the drilling pipe in
case of trouble, but it failed. Explosions rocked the rig and the decks became sheets of flame. Some workers scrambled for the lifeboats. Other workers, facing a choice between the flaming cauldron and the dark sea 75 feet below, took the seven-story dive into the inky water. Rescuers fished some of the crew out of the water, but the Deepwater Horizon's accident cost the lives of eleven crew members. The massive fire burned for a day and a half until the rig sank to the bottom, leaving oil gushing from the broken pipes. More than 4 million barrels of oil flowed into the Gulf, contaminating beaches, marshes, and wetlands in the largest oil spill in history.

One worker later reported, “There was no chain of command. Nobody in charge.” It quickly became clear that BP was in the midst of an epic disaster. No one really knew what was happening on the floor of the Gulf of Mexico, so deep that only unmanned submarines could reach the source of the spewing oil, so dark that submarines had to bring their own lights to see anything, and pressure so great that awkward remote-control arms proved the only way workers could work to contain the spewing oil.

At first, BP assured everyone that it would get the spill under control and that it would deal with the environmental damage. At every step, though, television coverage undermined the corporation’s pledge of quick, effective relief. Video of the out-of-control fire gave way to new shots of oil slicks on the water’s surface and sludge-coated birds on the shoreline. Exasperated by the intense news coverage, BP’s chief executive, Tony Hayward, told reporters, “I would like my life back.” That only infuriated Gulf residents. Tom Young, a Louisiana fisherman devastated by the fishing ban imposed after the explosion, told a reporter, “Our way of life is over. It’s the end, the apocalypse and no one outside of these few parishes really cares. They say they do, but they don’t do nothing but talk. . . . Where’s the person who says these are real people, real people with families, and they are hurting?” BP didn’t seem to know how much oil was flowing out of its well, and state and local governments pleaded for help.

BP called the spill “a well control event” that “allowed hydrocarbons to escape.” In plain English, the spill was the result of a blowout caused by the failure of private companies to manage their operations safely—BP and its two major contractors: Transocean, the world’s largest ocean drilling company and the operator of the Deepwater Horizon, and Halliburton, a company that supplies a wide range of support services including, in this case, cementing the well on the floor of the Gulf. It was a private sector failure—but congressional investigators began asking whether the federal government was doing enough. President Barack Obama appointed Coast Guard Commandant Admiral Thad Allen as the “national incident commander” to coordinate the response. A tough and burly commander who had distinguished himself in leading the government’s response to Hurricane Katrina five years earlier, Allen had become the federal government’s go-to leader for impossible jobs. In the months that followed, Admiral Allen struggled to pull together the many players—and the thousands of workers—who were involved in the response effort. Complicating the damage control process was simply determining how much oil was flowing from the well.

In short order, a failure by a private company to manage its drilling operations became an inescapable demand for a government response. The government response, in turn, became not just a program to be managed but a vast, complex, interconnected web across many government agencies, levels of government, and public-private connections that all had to unite to overcome the spreading ooze. It was a tale of enormous political pressure, as
fishermen fearful of going out of business and a Republican governor with political ambitions, Louisiana’s Bobby Jindal, had to join with the Democrats in the Obama administration. BP worked hard to contain the oil, repair its image, and fend off the inevitable lawsuits. Residents along the Gulf just wanted the assault on their lives and their beaches to stop.

The story of the BP spill is the essence of modern government: We the people identify problems that we expect the government will solve, to promote the general welfare. How does it do so? Government, on behalf of us all, sets goals, and then it creates complex organizations to meet those goals. In short, it creates public administration. And running throughout public administration are three enduring themes.

The first theme is politics. Many people often see administration as the business of the detail, which can't possibly be interesting. In reality, because no decision—especially no political decision—has any value except in the way it's implemented, public administration inevitably shapes and is shaped by politics. Politics (and, therefore, public administration) is about the choices among values, including which values get emphasis and which don't. That is the very fabric of public administration. Which neighborhoods get extra police protection? Who gets the preferred line through airport screening? When it snows, which highways are plowed first? Each of these is a matter of detail richly wrapped in politics.

The second theme is performance. Public administration exists to get things done. How well does it work? How long does it take to respond to a house fire or report of a mugging? Do Social Security recipients get their checks on time and in the right amounts? Do state prisons keep prisoners inside, protecting citizens outside without abusing inmates inside? We expect public administration to work well, delivering effectiveness (high-quality goods and services) and efficiency (goods and services at the lowest cost to taxpayers).

The third theme is accountability. The prospect of a powerful bureaucracy out of control rightly terrifies citizens. The fear of a despotic government, after all, drove colonial Americans to revolution against the king. It brought down the Nixon administration in 1974. Worries that Obamacare will unleash a powerful, out-of-control bureaucracy have plagued the administration throughout Obama's time in office. Accountability is a relationship. It is about answerability to whom, for what. When we debate whether public administration is accountable, we are asking to whom individual administrators must answer (legislative bodies like the city council, state legislature, and congressional committees, as well as administrative superiors up the chain of command) and for what activities they must answer (including the value judgments they make and the performance they demonstrate).

These three themes shape the big debates about public administration, because they all frame the big debates about the power of government. In 2013, for example, Louisiana Governor Bobby Jindal attacked the Obama administration for what he labeled the “two central philosophies of the Obama administration—the massive expansion of the size and power of the federal government and a lack of trust in the American people.” What evidence did he present? Conflicting stories he said that the administration had presented about the attack on the American mission in Benghazi, Libya; mismanagement within the Internal Revenue Service; and “disastrous attempts to enforce Obamacare,” the administration’s health care reform.\(^3\) And what does this evidence have in common? The use of administrative agencies to exercise power on behalf of government. Jindal suggested that the agencies were unaccountable to the people, that they were not performing on behalf of the public interest, and
that they were the focus of administration decisions that, in Jindal’s view, represented the wrong political decisions. Of course, Jindal’s attack was itself political. In these cases, as well as in so much of what government does, political decisions take their meaning in the ways public administrators carry them out. Government’s power takes its form through public administration.

These themes also capture the inevitable tradeoffs at the core of government power. More steps to increase accountability, including more rules to restrict administrators’ power, can reduce efficiency by multiplying red tape. Streamlining government to make it more efficient can risk making administrators less accountable. At every stage, these basic questions frame the size and role of government, and there’s nothing more fundamental to politics than that.

Public administration is about everything that’s important about government, and everything that’s important about government touches on or flows through public administration. Those twists and turns are often hidden, and the issues can be subtle. If we care about government—especially if we care about making government work better—we need to pay very careful attention to the politics of the administrative process. And that’s the mission of this book.

For example, consider the mundane problem of plowing snow from city streets. Could it possibly be about politics? Just ask former New York Mayor John Lindsay. Following a blizzard in February 1969, much of the city was impassable for days. Almost 40 percent of his snow removal equipment was sidelined because of poor maintenance, and the borough of Queens was especially isolated. When he used a four-wheel-drive vehicle to make his way to the snowbound residents, they booed him and called him a bum. He managed to win reelection, but the story haunted him for the rest of his career and undermined his 1972 presidential campaign.

A 1979 storm in Chicago torpedoed the campaign of Chicago Mayor Michael A. Bilandic. Washington Mayor Marion S. Barry Jr. suffered for years after a blizzard hit his city while he was enjoying sunny weather in Southern California, where he was attending the Super Bowl. A senior official in a Midwest city once confided in me that there was a special snow removal plan for election day, to ensure that the precincts most likely to vote for the mayor got plowed out first. It’s not especially surprising to discover that officials use government power to advance political purposes—or that administrative failures have political consequences. This is an echo of a great scene in the movie Casablanca, which might well be the best film of all time. Police Captain Louis Renault loves Casablanca’s nightlife
but the Nazis who occupy the city expect him to enforce public order. When the Nazis insist he crack down on his friend Rick's casino, he picks an ironic pretense. “I'm shocked, shocked to find that gambling is going on in here!” he tells everyone—just before his favorite dealer hands him his own winnings. We should be no more shocked to discover that politics surrounds the exercise of public power through public administration.

**HISTORICAL ROOTS**

These tensions and tradeoffs have deep roots in American history. We don't much like politics or government, but we like bureaucracy even less. The United States is a country born of revolution. Our founders rebelled against King George III, but the prime complaints were against his administrators. The Boston Tea Party was a public act of rebellion against the king's tax collectors. (For a small historical tidbit, check the modern heritage of colonial brewer Sam Adams, who was a ringleader of the Tea Party.) The Declaration of Independence specifically condemns King George III, saying, “He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people and eat out their substance.” Signing the document required tremendous bravery on the part of the signatories, but declaring independence was the easy part. First they had to win the war against the world's most powerful army, and then they had to make independence stick by learning how to govern. The new government, in fact, failed an early test of governing, when it stumbled in putting down a rebellion in 1786, led by Daniel Shays in western Massachusetts. The founders concluded that protecting their hard-won democracy required a stronger government. That led in 1787 to another major Philadelphia conference, this time to write a constitution.

Determining the role of administrators in the new constitutional system, however, proved difficult. No one wanted to recreate the tyranny against which the Founders had rebelled, but a weak government risked inviting invasion and conquest. The Founders famously and delicately balanced government's power through the legislative, judicial, and executive powers. They finessed the tough question about how to exercise those powers, especially the administrative powers. Article II of the Constitution vests “the executive power” in the president, but the definition of executive power is fuzzy and the founders carefully balanced the exercise of this power through the powers given to the other two branches. Trying to define executive power further risked fracturing the fragile coalition that brought the new country together. What they left out couldn't draw political fire, and they left to future leaders how to administer the nation they worked so hard to create.

There is profound irony here. The Founders were determined to prevent a recurrence of the abuse of power that prompted the revolution, but when they had the chance to define the power of the new government, they sidestepped the question. From its first moments, American public administration was grounded in politics—the political battle against the king, followed by the delicate political balance to get the Constitution ratified. The political issues about public administration colored Washington's two presidential terms, as John Adams and other Federalists battled with Thomas Jefferson and his Democratic-Republican colleagues about how far the government's power should go. Defining the nature of executive power produced the first big divisions in the new nation, fueled a feud that cost the life of the Secretary of the Treasury in a duel, and fed the creation of political parties with very different
views on how that power ought to be exercised. The discovery that government power was about public administration and that public administration was about politics was about as surprising as Captain Renault’s discovery that there was gambling—gambling!—going on in the casino where he did his betting.

The struggles change with the times, but the basic issues are as old as the United States: creating an administration strong enough to do the public’s work but accountable enough to prevent the tyranny that the nation’s Founders sought to guard against. That leads us to a more detailed examination of the puzzle of accountability.

THE MEANING OF ACCOUNTABILITY

We use the word accountability a great deal, but we rarely stop to ask ourselves what it means, how it works, what we seek to control, or who controls whom. Let us examine these issues in turn.

What Is Accountability?

Accountability is a relationship between people (who is accountable to whom?) about actions (what are they accountable for?). It is the foundation of bureaucracy in a democracy, because accountability depends on the ability of policymakers to control administrators’ actions. Control, in turn, can be either positive (requiring an agency to do something it ought to do) or negative (seeking to prevent an agency from doing something it should not do). Sins of omission as well as acts of commission are subject to investigation, criticism, instructions, and sanctions. The principal focus of control is on discovering bureaucratic errors and requiring their correction—a largely negative approach that tends to become dominant for several reasons. First, it is easier to see—and to criticize—sins of commission, for they tend to be the stories that attract media attention; the more intense the news coverage, the stronger the policymakers’ reaction is likely to be. In 2004 the abuse of Iraqi prisoners by a small group of American soldiers drew media coverage for months, while the effective military service—and considerable suffering—of other American troops in Iraq got little attention in comparison. Second, an external control body (such as Congress or a state legislature or a city council) can more easily identify specific problems to be solved than it can devise a broader strategy to be followed. Oversight hearings promptly focused on the behavior of that handful of troops, but Congress struggled to sort out the far more complex issues underlying American policy in the region. Our discussion focuses on efforts of policymakers to shape administrative behavior. It therefore focuses primarily on the negative aspects of external control: correcting bureaucratic behavior that policymakers believe is not in the public interest. But we must explore that issue also in the context of the often confusing dynamics of the underlying policy.

But do policymakers actually want to control administrators? Often they do not. If policymakers specify policy goals very carefully, that would in turn make them more directly responsible for the results. Policymakers often like to keep some distance between the decisions they make and the consequences that flow from them. When problems occur—from accidents in the space program to slow response time of fire trucks—reporters and
top officials like to prowl for someone to blame. If control were an unbroken chain from policymakers to administrators, the links of accountability would lead directly to the top and blame would land in the laps of elected officials. Top officials certainly do not want to encourage problems, but they also do not want the finger of blame pointing directly at them when problems inevitably occur. When the independent commission investigating the September 11, 2001, al Qaeda attacks set out to identify those responsible for preventing the attacks, its members discovered that the patterns of responsibility were so unclear that it was impossible to fix the blame. Despite heavy pressure to hold someone accountable for failures in intelligence and security, no one was fired. When Hurricane Katrina in 2005 produced the worst administrative failure in American history, only the administrator of the Federal Emergency Management Agency, Michael Brown, lost his job, despite manifest problems throughout the federal, state, and local policy system.

Even if elected officials actually wanted a clear chain of accountability, it would create a “gotcha” effect: if administrators knew they would have to answer for every problem, they would have to work in a demoralizing climate of distrust. In many cases, good administration requires the exercise of professional judgment. How likely is it that some drugs will cause deformities in humans, or that landing an airplane in a thunderstorm is likely to be unsafe? How can a dangerous chemical dump best be cleaned? When a storm wobbles between snow, ice, and rain, when is it best to plow the roads, and how many chemicals should be applied to keep them clear (and what damage to the environment and to the roadway might the chemicals cause)? If we create a climate that punishes risk-taking, we are likely to get too-safe decisions that interfere with getting government’s job done. Excessive controls increase red tape and delay action. Finger pointing leads to administrators digging deep foxholes instead of taking risks to achieve high performance. So much energy can be spent attempting to control administrative activities—and filing the paperwork to document that the control standards have been met—that there may be little money or time left to do the job. Controls that are too tight, therefore, may actually reduce administration’s responsiveness to its public. Indeed, as British scholar Peter Self put it, “The tensions between the requirements of responsibility or ‘accountability’ and those of effective executive action can reasonably be described as the classic dilemma of public administration.”

Discretion is inevitable—and desirable—in administrative action. The process of filling in the gap between broad policy at the top and specific actions on the front line requires the
constant exercise of judgment. Legislators can never specify all the factors that administrators must weigh in making decisions; even if they could, the necessity of reaching legislative compromise typically produces vague, sometimes even conflicting guidance. Not all circumstances are the same, and good administration requires adapting general policies to special needs. When first responders arrive on the scene of a serious traffic accident or a building collapse, what should they do first? Every accident is different, and effective response depends on good training and professional judgment. That always requires discretion. We want to give administrators enough room to make the right decisions, yet we want to hold them accountable. Administrators must follow the law and meet the goals of public policy—at the same time.

Who ultimately is accountable for what? That, in fact, is a question that stretches back centuries. The Roman satirist Juvenal asked two millennia ago: “Quis custodiet ipsos custodes?”—“Who is to watch the watchers?”6 Who will control the controllers, to ensure that they get the balance right? We all want accountability, but there is no absolute standard for accountability, and a large number of hands tussle over what it ought to look like. Accountability thus is not only a relationship. It is also an uneasy one, with the balance among competing forces constantly in flux.7

Underlying the accountability debate is the responsibility of individual administrators. Can—should—must administrators follow the orders of top officials? Or: can—should—must they become “whistleblowers,” divulging to the public activities that they believe are wrong? On one hand, the answer seems clear. The post–World War II war crimes trials established that following orders was no defense against administrators who committed heinous acts. It’s clear that administrators must exercise their own judgment. On the other hand, if administrators each exercised their own individual judgment as they went about their daily work, coordination would evaporate, the work wouldn’t get done, and there would be little meaning to accountability.

Over the years we’ve had a very mixed view of whistleblowers—individuals who take it on themselves to disclose activities they believe are wrong. In a fascinating background story, Wall Street Journal reporter Ben Zimmer explains that the phrase “blowing the whistle” seems to have entered American language in the early part of the twentieth century, when fans expected sports officials to blow their whistles to stop play. If a football player committed a penalty or a boxer had beaten his opponent, fans called on referees to blow the whistle. A few decades later, during the 1930s, a new meaning crept in. “Blowing the whistle” took on the meaning of someone revealing a dramatic secret, often breaking a code of silence to authorities as a “snitch” or a “rat.” In the 1970s, consumer advocate Ralph Nader deliberately changed the meaning. He challenged those with important information on misconduct, in either private companies or the government, to stand forward, even if that meant “blowing the whistle against the system.”8

This raises a fundamental question about accountability. How much obedience do government officials owe to organizational superiors and elected officials—and how much discretion should officials exercise on their own? Because there is no firm answer to that question, there is no single, clear approach to accountability. Accountability is, at once, the bedrock on which administrative power in a democracy builds and a puzzle that requires endless work in search of solutions.
Chapter 1 Accountability

Approaches to Accountability

In the United States, the effort to resolve this dilemma has focused on three big issues: the search for legal boundaries to constrain and channel administrative action, what we call the rule of law; the political challenges that have surfaced when administrative realities stretch those legal boundaries; and evolving policy problems that increasingly confound the strategies and tactics to hold governmental power accountable and to ensure that administration serves the public interest.

Legal Boundaries

The problem of balancing governmental power with individual freedom, of course, is nothing new. When King John met England’s nobles in 1215, they pledged him fealty—but only after the king agreed to limits on his power. For generations, historians have worked to disentangle the long roots and lasting impact of the Magna Carta, but two things are clear. One is that the uneasy pact forged at Runnymede helped establish the basis for the modern state. The other is that the rule of law emerged as the guide for setting the balance between governmental power and individual liberty. Kings (and later queens) found power useful to work their will. Citizens sometimes found the exercise of that power overbearing and expensive.

From the Headlines...

A Bad Week for the IRS

It had been one of the worst weeks ever for the Internal Revenue Service, perhaps the least-loved bureaucracy in government. Senior official Lois Lerner disclosed that the IRS had singled out dozens of organizations for extra review to see if they were violating their nonprofit status, on the grounds of their political affiliation. Putting “patriot” or “tea party” in the application triggered extra attention and, Lerner acknowledged that this was wrong. Then, speaking words no one could recall ever coming from an IRS official, she apologized for the agency’s actions.

In trying to insulate the White House from the fallout, President Obama said that the IRS is an independent agency. His press secretary Jay Carney reinforced the message by telling reporters that the IRS was an independent agency with only a pair of political appointees at the top.

The White House reaction raises a very tough question. If the IRS is “independent,” to whom is it accountable? Everyone, including the manager in charge of the operation, acknowledges that using politics to enforce the tax code was wrong. What does accountability mean if an agency and its employees are “independent”?

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Across a wide range of issues, King John and his successors agreed to accept legal limits on their power, even though the British monarchs claimed that their power flowed from divine right.

The *rule of law* thus became enshrined in English common law. In practice, the rule of the sword often pushed aside written agreements, and it took centuries for kings to realize that modern government required real accountability to the people. It's not surprising, therefore, that the story of the rule of law is the story of struggle and conflict.\(^{10}\) The rule of law seeks to define and protect the basic rights of citizens against a too-powerful government, even though claims for its historical impact have been much exaggerated.\(^{11}\) It helps frame a system where everyone knows the rules and where the rules apply to everyone. Finally, the rule of law creates the foundation for administrative accountability. Since government in action is often the action of administrators, the rule of law provides the mechanism for constraining how administrators exercise their power. It tells them what they can do and what will happen to them if they step beyond their boundaries.\(^{12}\)

This basic outline, of course, is far clearer in theory than it ever was in practice, but the rule of law provided at least a basic blueprint for the Founders of the United States. In *Common Sense*, Thomas Paine wrote that "a government of our own is a natural right," with that right protected by the law, because

> in America the law is king. For as in absolute governments the king is law, so in free countries the law ought to be king; and there ought to be no other. But lest any ill use should afterwards arise, let the crown at the conclusion of the ceremony be demolished, and scattered among the people whose right it is. (1791)

The rule of law was central to the colonial Founders as they tried to create their new government. Paine, and others, argued that citizens could establish that government because they would also bind its power.

The Articles of Confederation, the principles that guided the nation in the uneasy days between independence from the British crown and the adoption of the 1787 Constitution, proved a clumsy first effort. But the Constitution that followed is a web of crosscutting restraints on government and the basic strategy for administrative accountability in American government: give the government power but set legal bounds to limit the dangers of its use. In the United States, the Founders did not trust a single check. Multiple backstops, through separated institutions sharing authority, provided the extra insurance that the wary Founders wanted. But this balance of powers was an unsteady deal. In the nation's first decades, officials created a national bank only to close it; they tried a second time and closed it again. Hamilton's powerful argument for government's help in promoting the economy repeatedly encountered a hurricane of citizen opposition.

The conflict became razor sharp during the Progressive Era, toward the end of the nineteenth century. In tackling the problems of rising corporate power and the enormous potential of the industrial age, the *Progressives* faced a dilemma. They were convinced that stronger government, with new programs and stronger agencies, was necessary to drive the country forward and to constrain the giant private companies. But they also knew that citizens would be nervous about a more powerful government, for the American Revolution
against King George III’s tyranny remained in the country’s collective consciousness. How could the government grow without creating bureaucratic tyrants? For the Progressives, the answer lay in the rule of law. Before being elected president, Woodrow Wilson, then a political scientist at Princeton University, famously sketched a solution:

If I see a murderous fellow sharpening a knife cleverly, I can borrow his way of sharpening the knife without borrowing his probable intention to commit murder with it; and so, if I see a monarchist dyed in the wool managing a public bureau well, I can learn his business methods without changing one of my republican spots.13

Wilson, along with his fellow Progressives, contended that government administrators could be empowered to do government’s work without threatening individual rights because the rule of law would hold them accountable. Delegation of power to administrators from elected officials and hierarchical control through authority controlled the use of power within administrative agencies. Separating politics from administration, in what became known as the politics-administration dichotomy, was their strategy for an effective administrative state in a modern democracy: politicians would determine policy, and administrators would carry out that policy within the bounds set by elected officials.14

The Progressives’ reliance on the rule of law was an elegant solution to a very tough problem. As they contemplated the twentieth century, they concluded that government would have to become far stronger. Caught between the growing corporate power of the railroad barons and captains of industry and the limitless opportunities of industrial and territorial expansion, the reformers found in the rule of law a way to fit old theories to the new prospects. The rule-of-law formulation was not the last word for the Progressive movement, any more than it was for King John, but it licensed the expansion of government in the twentieth century while holding it accountable.

Political Challenges

Of course, big problems soon strained this neat formula. Herbert Hoover and his advisors fumbled in their response to the 1929 stock market crash. When Franklin D. Roosevelt launched the New Deal to attack these problems, critics complained it was a vast and unconstitutional overreach of power. The rule of law had real appeal, both because of its common law and historical roots and because it provided a logical answer to the nation’s pragmatic problems. But the theory inevitably collided with politics, as John M. Gaus reminded everyone: “A theory of public administration means in our time a theory of politics also.”15 Not only did the rule of law fit uneasily between governmental power and individual liberty, it rested on the inescapable reality, captured so well by Gaus, that administration has always been about politics. Political pressures maneuvered King John into putting his seal on the Magna Carta, and they have swirled around the rule of law since.

In his 1936 essay “The Responsibility of Public Administration,” Gaus noted that cracks had appeared in the rule of law from the earliest times. He described a replica of a Babylonian
monolith, which displayed a carving of the Code of Hammurabi from 2000 B.C. Above the code is a relief of Hammurabi receiving the command to establish a just law from the sun-god, Shamash. That, Gaus pointed out, established the “earliest conception of political responsibility”: “Somewhere in the wisdom of God was to be found the absolute code, the fixed standard, which the ruler was to follow.” However, he continued,

the inadequacy of such a conception of responsibility is obvious. Responsibility is accountability, but who, under such conditions, could call power to account? Is God’s will always so clear? Should not, then, His vicar interpret him? But can one be sure that the vicar is correct in his interpretation?16

Therein lies the core conundrum of administrative accountability and the rule of law. It’s hard to beat an accountability system coming directly from God. But it’s also impossible to translate, with complete transparency and total predictability, the rule of law into administrative action. As administrators interpret the rule of law to bring the law to life, the law slips in its hold on their rule. Gaus concluded in his essay that “neither the electorate nor the legislature can express in concrete detail the specific policy which it desires the administrative organization to enforce,”17 so administrative discretion is the inevitable result of any administrative act. Indeed, the dilemma of building sufficient capacity to allow Congress to oversee executive branch actions is a puzzle that has echoed through the American Political Science Association lectures given in Gaus’s name.18

What solution does Gaus offer? If forces external to the administrator cannot adequately shape the exercise of discretion, then democracy must necessarily rely on the administrators’ professional norms. Gaus’s argument set the stage for one of the most trenchant battles of public administration theory, the 1940 debate between Herman Finer and Carl J. Friedrich on whether professional training or external controls could best hold administrators accountable.19 The battleground was the rule of law, as Finer made the case for the long tradition of administration held accountable by legal standards. But Friedrich echoed Gaus in making an inescapable point: if the law cannot fully control administrative action, then how can administrators be held accountable? For Gaus and Friedrich, the case for relying on professional norms was the inescapable conclusion. They argued that government had to rely on what it had at its disposal. That, in turn, not only makes public administration about politics, since it brings the value judgments of administrators squarely into the process; it also brings in the question of whose political values shape administrative action.

**Evolving Policy Problems**

Resorting to pragmatism beyond the law was perhaps inevitable, but it also set the stage for a fierce debate about administrative theory and practice. The Magna Carta was important because it established the premise that law could limit the king’s power, but the Runnymede meeting did not erase the enormous pressures on the exercise of political power that came before or after. The United States relied on the rule of law to define and protect individual rights, but few rights have ever been absolute and the debate over how to shape them has
always involved substantial cross-pressures. As governmental programs became more complex in the first half of the twentieth century, and especially as more public programs involved partnerships with the multiple levels of government and with the private sector, strains on the rule of law hit the breaking point. Gaus argued:

In a state in which the powers of government intermesh widely with those of industry, commerce, and finance the traditional restraints upon the discretion of the administrator through making him responsible to the electorate, the courts, and the legislators are inadequate.20

Although Gaus wrote this in 1936, he could easily have been describing BP: big problems that blur the legal boundaries in ways that make it hard to define who is responsible for what action.

Those changes in the complexity of governmental programs accelerated during the 1930s. Franklin D. Roosevelt’s New Deal programs, in particular, not only reinforced the challenge of politics in accountability and pushed more reliance onto the professional norms of administrators, they also brought more players from a wider variety of organizations into the pursuit of public policy. World War II, as it spawned a massive network of private contractors to help the war effort, accelerated the trend. These steps, in turn, had two effects.

First, it became far more difficult to rely on any single rule-of-law standard to guide administrative action. There was a theoretical simplicity in the basic model—policymakers could track the exercise of discretion by administrators through the hierarchy and through the rule of law. Complicating that chain through new partnerships, where each member operated inside its own traditions, made it much harder to define and enforce a single rule of law to guide that partnership.

Second, different governments—and different government agencies—have very different cultures, and that makes it hard to ensure that any single set of professional norms can shape administrative behavior. The federal government has a different culture than its state and local partners, and the cultures of each government agency often have surprising variations. Professionals in the government’s private and nonprofit partners often live by far different cultures that stretch far beyond the typical profit-making or public good motives presumed to be at the core of their missions. Community-based organizations are very different than

In 1933, President Franklin D. Roosevelt signed a law creating the Tennessee Valley Authority, which for the first time brought inexpensive electric power to many in the nation’s South.
international environmental protection organizations, and they differ tremendously from defense contractors and road builders. There have even been famous squabbles at the scene of local incidents, where police officers and firefighters have thrown punches over who was in control. In fact, when Tony Hayward complained in the BP case that he wanted to “get my life back,” he demonstrated the frustration of a private-sector executive operating within the realm of public policy, in harsh public light. Combining private actors and public expectations created a very nasty mix.

The rule of law, of course, was always more powerful in theory than in practice. But the rise of such mixed federal-state-local-public-private actions further undermines the theory’s applicability. Since no single model of accountability is likely to work, how can government be effective, efficient, responsive, and accountable in the world of twenty-first century politics?

**Elements of Accountability**

When we look at how well government works, we focus on three elements of accountability: fiscal, process, and program. In fiscal accountability, we seek to ensure that agency officials spend money on the programs they are charged with managing—and only on those programs. This issue cuts both ways. On the one hand, we want to make sure that, in fact, the money is spent. A recurring complaint in the early 2000s was that the Department of Homeland Security failed to distribute quickly enough to state and local governments the funds that Congress had appropriated to support their security efforts. On the other hand, we want to make sure that the money is spent according to the law and is not wasted. In 2011, for example, Fox News pundit Bill O’Reilly and The Daily Show host Jon Stewart tangled over charges that the U.S. Department of Justice paid $16 for each muffin served at a Washington conference. A vast number of very senior Obama administration officials spent a huge amount of time tracking down the story, which turned out to be “mostly untrue,” according to a later Politifact analysis. In reality, the $16 muffin included beverages, some fruit, a fee for the meeting space—and the muffin. Not cheap, but certainly not a vastly overpriced baked good. But the tale underlines the fact that there’s nothing like a headline on wasted government money to stir political conflict.

Process accountability is concerned with how agencies perform their tasks. While we often argue about the meaning of procedural fairness, government agencies regularly find themselves charged with unfair treatment. Massive problems in the 2000 presidential election focused national attention on the voting machines that many state and local governments used and whether problems with those machines had prevented some votes from being counted. Those complaints about process led to a massive investment in new machinery for future elections. Despite the investment, however, many voters waited hours after closing time in the 2012 presidential election to cast their ballots.

Program accountability is the newest and most difficult objective of control systems. Is a public program achieving its purpose, as defined in law? The U.S. Government Accountability Office (GAO), the investigative arm of Congress, has increasingly conducted program analyses to measure how well federal agencies answer this question. At
the local, state, and federal level, governments have developed sophisticated performance-measurement systems to gauge how well programs met their goals. These new systems increasingly try to put hard numbers on the tough question of whether programs actually work.

Everyone agrees that citizens deserve accountability for their hard-earned tax dollars. But we tend to measure accountability in these three different ways—sometimes relying more on one standard than another and rarely trying to reconcile all three into an overall picture of an agency’s performance.

**Holding Administration Accountable**

The related problems of making administration work efficiently and ensuring it is democratically accountable are deep and lasting. Administrators can follow the basic doctrine of accountability, through the hierarchical system of delegated authority. When that leaves gaps, they can use their best judgment to discover the intent of the policy, rely on their professional judgment to determine how best to achieve that intent, and consult with the controllers to resolve uncertainties.23

But this is certainly not a magic solution. Administrators may face multiple controllers, and these controllers may not always agree on an agency’s priorities. A congressional statute may suggest a set of priorities that conflicts with the president’s, leaving agency heads, appointed by the president, to choose which to obey; appointees who choose the legislature’s course could find themselves replaced by appointees more willing to follow the president’s wishes. Moreover, when an agency head seeks clarification of Congress’s priorities, there is no “Congress” to talk to—only a congressional committee or its chair, whose interpretation may not conform to the view of Congress as a whole. And with many agency heads answering to multiple committee and subcommittee chairs, uncertainty often multiplies, and Congress often does not speak clearly to begin with. At the state and local levels of government, of course, the same problems ripple through the system.

These real-world conflicts leave administrators responsible for resolving many uncertainties, for which they must rely heavily on their own internal compasses—their personal character, professional training, devotion to the public service, and respect for faithful execution of the law. When controllers give conflicting directions or confusing signals, administrators face a conflict of loyalties. In the classic collection of options, they can choose **voice:** remaining in their positions and fighting for what they think is right, even if that risks dismissal. Or they can choose **exit:** resigning, possibly with a public attack on the controller whose mandate they condemn.24 But they know that the exit option may put the policies they care about at even greater risk, for they can be replaced by people who will bend more easily to the very pressures they have battled against. In fact, the idea of a conscience-driven exit from government is more popular in the press than in reality, because civil servants often have families to support, college tuition to pay, and relatively few available job options. In contrast, most high-level political appointees, cushioned by established reputations and extensive contacts outside government, can often exit to private-sector jobs at higher salaries. Furthermore, an attack by a resigning official is
usually only a one-day media event, so anyone deciding to resign in protest must weigh the short-term political effect against the long-term personal impact.

In the end, the solution to the problem of accountability hinges on the balance between forces that come from outside administrators, including efforts by outside controllers, and forces that emerge from administrators themselves, including their character, background, and training. Theorists for generations have debated which forces are—and should be—more important. Should we assume that external controllers can never know enough about an administrator's actions and that setting the administrator's internal compass is most important? Or should we insist on extensive external controls to compensate for the tendency of administrators sometimes to stray off course?

Friedrich and Finer were unable to resolve this debate in the 1940s. Subsequent scholars and practitioners have not done any better. Accountability, in the final analysis, is a fine balance between external and internal controls. This balance, in turn, depends ultimately on ethical behavior by administrators.

GOVERNMENTAL POWER AND ADMINISTRATIVE ETHICS

Citizens and elected officials alike demand a higher standard of ethics than typically prevails in the private sector. Indeed, that ethical upgrade often comes as a shock for political appointees who come to government from the private sector. As Calvin Mackenzie writes,

At one time or another in their work lives, most business leaders have found jobs in their own companies for family members or friends, have entered into contracts with firms in which they had a financial interest, or have accepted substantial gifts from people with whom they regularly do business. . . . When public officials engage in similar activities, however, they break the law.

The pursuit of high ethical behavior in government raises a different tradeoff. On the one hand, we want skilled employees who can ensure that government's work is done well.
In particular, we don't want to make the process of screening and hiring officials to be so burdensome, in the pursuit of high ethical standards, that we drive away good people. On the other hand, the public expects that those who exercise the public's trust will meet high standards and that, in particular, they will not use their power to line their own pockets, advantage their friends, or trade in the future on the relationships they developed in public service.

The issue crosses all governmental boundaries. Philadelphia Mayor Michael A. Nutter emphatically made the point in his January 2008 inaugural address. “There is nothing government does that cannot be done ethically and transparently,” he said. His goal, he told Philadelphians, was “a government that serves all of us, not a few.” Nutter's speech underlined the recurring central themes of public administration: creating governmental power to serve citizens; holding that power accountable to elected officials and ultimately to voters; exercising power ethically, according to high standards of public service; and ensuring accountability through transparency.

THE PUBLIC SERVICE

In the end, the quality of government's work depends on the quality of the individuals recruited and retained in the public service, on their respect for bureaucratic accountability and ethical behavior, and especially on their commitment to the constitutional, democratic system. Instilling such values is a societal task; it depends on communication by family, schools, and peers. It also depends on creating a system that is accountable within our political system—especially since, in so many ways, the politics of the administrative process shapes the performance of American government.

Those capabilities encompass much more than they did in the past. Public administration is no longer primarily the direct execution of governmental programs. Much of it now is administration by proxy, with complex partnerships among government agencies, for-profit companies, and nonprofit organizations responsible for the implementation of government programs. That, in turn, multiplies the problem of public ethics, since many private and nonprofit employees find themselves doing the public's work, during at least part of their time, but often without a clear signal that they are entering the public realm.

An ethical government begins with ethical public servants—public servants devoted to the fundamental challenge of helping “to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, and secure the blessings of liberty to ourselves and our posterity.” Encouraged by such possibilities, they will recognize that the public service, as President George H. W. Bush said, is “the highest and noblest calling.” In running for the presidency in 2008, Barack Obama was more direct. His goal, he said, was “to make government and public service cool again.” Few vocations offer greater promise for improving the lives of so many of the world's citizens. Charting the course is the fundamental challenge of this book.
In July 2013, U.S. Department of Homeland Security employees received a message warning them not to use their home computers or personal smartphones to look at an article on the Washington Post website. The website, it turns out, contained a “top-secret” slide leaked by former intelligence analyst Edward Snowden. If an agency employee viewed the top-secret material from an unclassified computer, it would constitute “classified data spillage,” which had to be reported to supervisors like a toxic chemical spill.

Here’s the email, as the Post reported it:

From: [REDACTED]
Sent: Friday, July 12, 2013 9:50 AM
Subject: SECURITY ALERT ***Washington Post Article***
Importance: High
FYSA . . . From DHS HQ
Per the National Cybersecurity Communications Integration Center:

There is a recent article on the Washington Post’s Website that has a clickable link titled “The NSA Slide you never seen” that must not be opened on an Unclassified government workstation. This link opens up a classified document which will raise the classification level of your Unclassified workstation to the classification of the slide which is reported to be TS/NF.

If opened on an Unclassified system, you are obligated to report this to the SSO as a Classified Data Spillage (Opssecurity@hq.dhs.gov). Again, please exercise good judgment when visiting these webpages and clicking on such links. You may be violating your Non-Disclosure Agreement in which you sign that you will protect Classified National Security Information. You may be subject to any administrative or legal action from the Government.

What caused all the fuss was a PowerPoint slide revealing the basic structure of the federal government’s PRISM program. No one but highly placed insiders had previously even known about the program. Through PRISM, the National Security Agency (NSA) worked with a wide variety of information technology companies, including Apple, Google, Skype, Yahoo, and Facebook, to collect information on the communications of individuals that the NSA wanted to investigate. The companies shared the information with NSA, which then put its analysts to work to determine whether any of the communications constituted a threat to national security. How many “targets” was NSA investigating? At the time of Snowden’s leak, there were 117,675 targets. Other Americans, however, might have had their communications shared with NSA “incidentally,” as a result of the agency’s work.

So if you have a top-secret security clearance and if you read this case, you must immediately go to your supervisor to report a “classified data spillage.” If you don’t have a top-secret clearance, you’ve just read something you weren’t
Questions to Consider

1. What do you think about this government surveillance program, which allows the NSA to work with popular service providers like Facebook, Google, and Skype to collect personal information without the user's knowledge? On the one hand, terrorists frequently use the Internet to plan attacks. On the other hand, such surveillance is clearly an invasion of individual privacy.

2. The memo to employees might seem silly to some. But the government has a broad policy on not allowing users to look at classified information on unclassified computers. Why? Unclassified computers can be infiltrated by viruses and spyware, which allow others to capture anything that goes across the screen. (The CIA and the NSA do not allow cell phones inside their buildings' secure zones.) If you were a manager, how would you handle this situation?

3. Perhaps nothing more sharply frames the problem of accountability in modern government than determining how to safeguard the personal communications of individual Americans while preserving national security. What kind of accountability system would you design to find the balance?

NOTES


2. To view the slide, go to http://www.washingtonpost.com/business/economy/the-nsa-slide-you-havent-seen/2013/07/10/32801426-e8e6-11e2-aa9f-c03a72e2d342_story.html
“are working as hard as they possibly can.” She explained, “I understand people are frustrated. . . . Obviously we know we have work to do and we’re trying . . . just as hard as we can. We want to go home.”

In nearby Arlington County, across the Potomac River, county officials pointed to their snow removal priority plan with a sophisticated map that charted which streets the plows worked on first. Plowing starts when the snow becomes two to four inches deep. The snow crews focus on priority areas: snow emergency routes marked with bright signs, main arteries, roads leading to hospitals and fire stations, and the areas around subway stations and police stations. Crews work twelve-hour shifts, get twelve hours off for food and sleep, and then come back to work again. Even that effort struggled to keep up with 2010’s blizzards of the century, and for months afterward residents complained about being marooned. Why, they asked, couldn’t the government plow them out faster?

Questions to Consider

1. Assume you are the head of the department of public works of your county. You’re in charge of snow removal. What streets would you plow first?
2. What would you say to residents whose streets end up at the bottom of the plowing priority list? After all, they will tell you: they pay taxes, too!
3. Following the blizzard, Arlington County considered an ordinance that would require local residents to join with the county in the snow removal effort. In particular, “the ordinance first would require all property owners to remove snow and ice adjacent to their property, creating a path that is a minimum of thirty-six inches wide (to accommodate wheelchairs, strollers, and adults with children in hand) within twenty-four hours after the snow stops falling, when accumulations are less than six inches, and within thirty-six hours when six or more inches of snow accumulate. Failure to comply with the ordinance could result in a civil penalty.” Would you favor the passage of such an ordinance, which brings individual citizens into a partnership with government in providing public services? What would you do for older and disabled residents, who might not have the physical strength to shovel their sidewalks? Just how far should a government’s reach into an individual’s property go?
4. One official of a Midwest town once admitted that the town had a special snow removal plan for election day. If it snowed, he said, there was a plan to make sure that the “right” neighborhoods—those most likely to vote for the mayor—were plowed first. The other neighborhoods—those most likely to vote for the mayor’s opponent—would have to wait much longer. Do you think that this is a proper use of government’s power, of the way that administrative decisions shape values in society?

NOTES
In Riverhead, New York, town officials launched an aggressive campaign to find backyard swimming pools whose owners hadn’t obtained the required permits to build them. As the town’s chief building inspector, Leroy Barnes Jr., explained, “It’s a safety issue more than anything else.” Faulty plumbing could cause water damage to neighboring properties. If electrical wiring for lights or filters were installed improperly, someone could be electrocuted. In addition, the town’s ordinance required pool owners to install a fence around the pool to prevent small children from wandering in and accidentally drowning. The campaign, in this small town near the tip of Long Island, found 250 pools that had been constructed but whose owners had not received the requisite permits. In addition, the aggressive inspection program produced $75,000 in fees from violators.\(^1\)

Barnes, however, quickly found himself under fierce attack, from the American Civil Liberties Union (ACLU) and scores of angry townspeople. It wasn’t because of the campaign to find violators, at least on the surface. Rather, it was because Barnes had cleverly used the Google Earth search program to find pools, identify the address, check the address against the town’s database of permits, and find pools that did not have the permits required by law. Town officials wondered what all the fuss was about. After all, Google Earth is available to any user, on any computer. It doesn’t show anything that anyone anywhere can’t see. Why can’t the town use publicly available information to enforce its laws?

“Technically it may be lawful,” replied Donna Lieberman of New York’s ACLU, “but in the gut it does not feel like a free society kind of operation.”\(^2\) Some local residents complained that it felt creepy to know that the town was peeking into their lives via satellite. Critics pointed out that the Fourth Amendment to the Constitution prevents government officials from conducting unlawful searches. Using remote satellites without a search warrant crossed the line, they argued.

Just how far should government go in combining emerging technology with its vast power? In Greece, as well as New York, government officials are using Google Earth to track down pools without permits to collect fines. Enterprising private citizens are also making innovative use of satellite surveillance. Thieves in the United Kingdom are using the technology to identify backyard ponds stocked with exotic fish, which they steal and sell for large sums. A private company is already using private satellites to photograph the parking lots of Wal-Mart stores. Counting the cars tells analysts which communities have the fastest-growing economies. If private companies are doing it, should government be handcuffed in using the same readily available technology to enforce its laws?

It’s easy to see even bigger issues in the future. If governments pass aggressive energy-saving laws to restrict backyard barbecues (too many hydrocarbons being released) and to require better insulation of homes (to prevent energy from being wasted), should the government be able to use remote-sensing devices to detect heat emissions? Private companies are now trying to sell special vans to local police that provide a comprehensive scan of every car passing by. It can detect illegal items onboard without a search warrant. Should local police...
buy these disguised vans to locate contraband and possible terrorist threats—and deploy them without search warrants? What about anti-terrorism forces in the FBI? The federal government’s Transportation Security Administration is deploying new scanners that can look through an airplane passenger’s clothing to see, well, just about everything. Passengers boarding planes know that they are subject to searches, though there’s always a debate about just how intrusive those searches ought to be. But should drivers steering their cars past a van parked at the side of the road have any expectation of privacy, even if they are carrying something under the seat or in the trunk that is illegal?

Public complaints in Riverhead forced town officials to end the Google Earth project, even though the information was available to everyone on the web and it was used to find people who had broken local ordinances. But it raised very tough questions about how government officials should exercise discretion in doing their jobs—and how they should wield their power.

Questions to Consider

1. Do you think there was anything wrong with the town’s decision to use Google Earth to detect individuals who had broken local laws by installing pools without obtaining the required permits?
2. How should local officials, like Leroy Barnes, be held accountable for their actions?
3. Sam Adams, in addition to brewing beer, also helped lead the revolt that culminated in the Boston Tea Party, during which colonists tossed tea into the harbor to protest the power of the English king. What do you think he and his fellow revolutionaries would think about the use of Google Earth to detect lawbreakers?

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2. Ibid.

KEY CONCEPTS

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FOR FURTHER READING


SUGGESTED WEBSITES

Extensive discussion on federal ethics laws and policies can be found on the website of the U.S. Office of Government Ethics, www.usoge.gov. More broadly, the Council on Governmental Ethics Laws, www.cogel.org, tracks policies on ethics. In addition, many state and local governments have their own sites—which search engines can readily locate—detailing laws and regulations on ethics.