

Ethics for Bureaucrats: An Essay on Law and Values

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Regime Values

As an alternative to political philosophy and humanistic psychology, I would suggest "regime values" as the most appropriate method for integrating the study of ethics into a public administration curriculum. At the outset, let us clarify the word "regime." As indicated earlier, it is not used here in the journalistic sense of the "Nixon regime," the "Carter regime," and so forth. Rather it is proposed as the most appropriate English word to suggest what Aristotle meant by "polity."¹ More specifically, "regime values" refer to the values of that political entity that was brought into being by the ratification of the Constitution that created the present American republic.

The method of regime values rests on three considerations:

1. That ethical norms should be derived from the salient values of the regime
2. That these values are normative for *bureaucrats* because they have taken an oath to uphold the regime²
3. That these values can be discovered in the public law of the regime³

The remainder of this chapter will be devoted to explaining and justifying these statements. The explanation and justification can be presented most coherently by recalling that the term "regime values" describes a method that addresses the ethical dimensions

of professional education for bureaucrats. Let us begin by analyzing the implications of the three words "professional," "bureaucrats," and "education."

Professional Education for Bureaucrats

Professional If "professional" education means anything at all, it implies a narrower and more focused academic enterprise than education in general. Schools of law, for example, are not trade schools, but neither are they liberal arts colleges. The same can be said of schools of medicine, divinity, architecture, engineering, and so forth. These institutions, in conferring professional expertise and credentials, necessarily exact a price. The price is the relative narrowness of the curriculum. The narrowness will be reflected throughout the curriculum—including the treatment of professional ethics if it is taken seriously as part of the professional preparation of the student. In narrowing the curriculum to suit the goals of a professional school, certain questions that may be of *themselves* far more important than anything in the curriculum are nevertheless quite properly ignored. For example, a course in medical ethics would probably devote very little time to discussing whether life is better than nonlife or sickness better than health.⁴ From an *absolute* point of view these questions are undoubtedly more important than the medical ethics of eugenics or practicing "defensive medicine" to avoid malpractice suits. However, one could hardly blame medical students who would prefer to learn more about ethical problems relating directly to their profession than about questions that in an *absolute* sense may be more important to them as human beings. Nor could one blame professors of medical ethics who conducted their courses on the presupposition that all their students believed that health is better than sickness

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and life better than nonlife. In a word, professional education necessarily involves a canon of selectivity appropriate to its peculiar goals even at the expense of ignoring questions that may be inherently more interesting and important.

For Bureaucrats Because students of public administration either already hold or aspire to positions of leadership within the bureaucracy of a particular regime, the values of that regime are the most likely starting point for their ethical reflections. This is especially true in countries like our own where bureaucrats are expected to take an oath to uphold the Constitution. An oath is an important moral event in the personal history of an individual. This is especially true in a pluralistic society like the United States where there are myriad philosophical and religious starting points from which people derive their ethical norms. Pluralism of this nature makes it almost impossible to hope for an operational understanding of the public interest derived from some common metaphysical premise. Despite our pluralism, however, I think it is safe to assume that most of us would agree that one should adhere steadfastly to the oaths one has taken.⁵ Because the Constitution of the United States is the preeminent symbol of our political values, an oath to uphold the Constitution is a commitment to uphold the values of the regime created by that instrument. Thus the oath of office provides for bureaucrats the basis of a moral community that our pluralism would otherwise prevent. It is the moral foundation of ethics for bureaucrats.⁶

In arguing the normative character of the values of the regime, we are, of course, avoiding the more important question of the fundamental justice of the regime itself.⁷ Before one asks oneself, "How can I reinforce the values of the regime?" one should first ask, "Is the regime fundamentally just?" That is, "Can I be a good human being and a good citizen at the same time?" Although this is the more important question, it cannot be the focus of the course in ethics unless this course is simply to collapse into political phi-

losophy. To say the justice of the regime cannot be the focus of the ethics course, however, does not mean the question is simply ignored. An argument might be made that one should not enter a career in government unless one is first convinced that the regime is fundamentally just. Once he or she is so convinced, the public servant can then investigate the full implications of the values of the regime whose justice he or she acknowledges.

Unfortunately, however, the moral universe is never this tidy. The very nature of judging the justice of a regime is an ongoing process rooted in contingency. Such a judgment cannot be made once and for all unless, of course, one is willing to acquiesce in the moral abdication symbolized by "my country right or wrong." Any serious consideration by a bureaucrat of how he or she might further the regime's values will continually invite higher questions of the moral authenticity of these values, and, therefore, of the justice of the regime itself. Nevertheless, the justice of the regime cannot be the focus of the course if it is to retain its identity as a course in ethics for bureaucrats. It must, however, remain the backdrop against which the course in ethics examines the less majestic questions of regime values.

The price, then, that the professional study of ethics for bureaucrats exacts from the curriculum is that questions of political philosophy ("Is the regime just?"⁸) must yield to less fundamental questions such as "How can I promote the values of the regime?" The method of regime values eschews metaphysics and addresses the students in the existential situation in which it finds them—persons who have taken or are about to take an oath to uphold values of a particular regime. It admonishes them that taking such an oath presupposes an acceptance of the fundamental justice of the regime⁹ but does not inquire into how the students arrived at the conclusions that the regime is just.¹⁰

Education Certain consequences flow from the fact that the method of regime values deals with education. As indicated earlier, the word "education" is used in this book in

such a way as to include most forms of management training as well. It will be helpful, however, to distinguish between inter- and intra-agency training. The former is more closely related to what is attempted in schools of public administration. Academic courses in the schools prepare students for careers in a wide variety of agencies. Similarly, interagency training sessions bring together practitioners with remarkably diverse working experiences. Both of these activities can be contrasted with intraagency training where relatively narrow and specific issues can be examined. As far as the study of ethics is concerned, it is only intraagency training that can afford to be specific, concrete, and directly operational in its objectives. Interagency training and the formal teaching of the schools must necessarily emphasize broad and general principles at the expense of concrete directives pertinent to one or only a few agencies. They should stress values rather than behavior and should aim at inviting reflection rather than providing answers.

Because of the broad and general nature of education, we must shift the direction of the argument we have developed up to this point. Hitherto we defended a relatively narrow focus for a course in ethics for bureaucrats as a consequence of the career orientation of education in public administration. This was the reason for rejecting political philosophy and humanistic psychology as foundation for a course in ethics. Now we must confess to the practitioner of public administration that the method of regime values is not "practical" in any immediate or operational sense. It is offered as an educational device and as such is necessarily somewhat removed from the "real" world of government.

There are several good reasons why the study of ethics for bureaucrats must not become too practical. We have already discussed the obvious consideration that the student population either already is or soon will be employed in many different agencies. The *practical* problems they will face are so varied that it would be impossible to discuss them seriously in a way that would be perti-

nent to all the students. Hence, it seems wise to retreat from the concrete problems in the agencies to the higher ground of regime values that cut across the entire administrative process—for example, "equality" as a salient value of the American regime should be of normative interest to any American administrator.

Secondly, an emphasis on practical ethical problems runs the risk of educating tomorrow's leaders with today's answers. Military academies have often been accused of preparing young officers to fight the last war rather than the next one. The same mistake could be made in the area of ethics. For example, if a course in ethics today tried to "solve" the problems associated with affirmative action, its educational value would be quite questionable. The student who completes the course in ethics with a "position" on affirmative action really has little to show for his or her efforts. For one thing, the student may find that this "position" is utterly unworkable and must be drastically revised (or even abandoned) in the light of what he or she learns at the experiential level after graduation. The student may also find that within a few years of graduation affirmative action is no longer a serious issue. By the time he reaches the middle-management level and begins to have a substantial impact on policy, his "practical" position on affirmative action will be hopelessly passé and he will not have developed the skills in ethical reflection that will enable him to address the new problems of the day. Had the student spent his time in school reflecting on affirmative action as an indicator of the meaning of equality as a regime value, he would be far better prepared to meet the short-term problems of affirmative action and the long-term problems of whatever lies ahead.

To conclude this discussion of professional education for bureaucrats, let us consider a brief example of the kind of ethical behavior we might hope the method of regime values would encourage once the student had begun to advance in his career.

Chester A. Newland served as director of the Federal Executive Institute (FEI) in

Charlottesville, Virginia. The purpose of FEI is to provide intensive, high-level training for federal executives (GS-16 then GS-18). On occasion during Newland's tenure, prominent political figures would be invited to FEI to address the executives on matters of administration policy and management. As the details of such visits were being worked out, the prominent guests would sometimes request accommodations outside the institute. Occasionally, they would ask for reservations at a nearby private club that excluded blacks.

Part of the training program at FEI was intended to ensure that the executives were made sensitive to the needs and feelings of minority groups. If FEI were to arrange accommodations for some of the top officials in government at an all-white club, the institute would undercut part of its own mission.

The problem was delicate. The racial exclusionary policy of the club broke no laws. An appointed official's choice of where he might want to spend the night was, at least ostensibly, a private matter. FEI was acting merely as a conduit of the VIP's personal choice. Those VIPs unfamiliar with the details of the institute's program—particularly its emphasis on human dignity—might have some difficulty seeing just how the choice of a night's lodging could harm FEI's mission.

Newland's solution was simple but effective. Whenever a visiting VIP asked for accommodations at the segregated club, Newland instructed his staff to reply along the following lines: "Oh, I'm sure the assistant secretary [or whoever] is not aware of the club's racial policies. We wouldn't want to cause him any embarrassment by booking him there." This solved the problem. No one ever replied that he knew perfectly well the club was segregated and wanted to stay there anyway.

This simple narrative illustrates several points developed previously in this book. First, Newland's decision was clearly discretionary; he could have ignored the whole problem. Second, the situation confronting Newland involved a *regime* value, equality, rather than values related to purely personal

preferences. Thirdly, the ethical dimensions of the problem were positive rather than negative—that is, in classical terms, the decision involved an opportunity to "do good" rather than the necessity of "avoiding evil." Finally, the decision involved a routine matter of no dramatic significance. The fate of the Republic did not turn on Newland's decision but it was the kind of situation that occurs thousands of times every year through government at all levels. The sheer volume of such decisions made in routine situations influences at least the dominant tone, if not the ultimate fate, of the Republic.

A course in ethics for bureaucrats might well aim at developing in the student above all an ability to recognize the sort of problem Newland recognized and, second, an ability to evaluate the discretionary options available for solving the problem in a prudent and effective manner.

Law and Values In describing the method of regime values above, we stated that the values of a regime could be discovered in its public law and that this was particularly true of the United States. In developing this point we shall comment briefly on American values and then show how the study of Supreme Court opinions offers interpretations of values that are useful for our purposes. Before pursuing this matter further, two caveats are in order.

First, it should be recalled that no question can have an answer that is more precise than its subject matter admits. For example, a question asking the product of four and eight requires far more precision than a question calling for an explanation of the difference between jazz and rock, and both these questions require more precision than a question about the meaning of beauty.

In questions of ethics, classical moral doctrine has always recognized that reasoned judgments by the practical intellect become less certain as they become more specific: "*Quanto magis ad propria descenditur, tanto magis invenitur defectus*" ("The more we descend to particulars, the more defects we discover").¹¹ In contemporary

terms, it is much easier to make the moral case for racial equality than for "forced" busing.

One who ignores the difference in the degree of precision demanded by different questions invites Procrustean solutions to his or her problems. In constructing an ethic for bureaucrats, it is imperative that differences in degree of precision be kept in mind. Our purpose is to enable the bureaucrat to respond to the values of the American people. It is simply in the nature of things that such a response cannot be rigidly programmed into behavioral categories. Bureaucrats must not become discouraged if reflection on the values of the people in whose name they administer public affairs fails to yield the precise directives of a conflict-of-interest statute.

Secondly, bureaucrats should be cautioned against letting their consideration of American values harden into a rigid political orthodoxy. Reflection on salient values must not be used to justify a witch hunt for those who do not share these values. The point developed in the three previous paragraphs should safeguard against a quest for values degenerating into a witch hunt. One need only recall the imprecise nature of the questions involving American values to vanquish the temptation to become an arbiter of political orthodoxy. It should be clear that a bureaucrat's reflection on American values will not and should not lead to a dogmatic assertion that "the following are the values of the American people and this is what they must mean for all bureaucrats." Our concern is not to persuade bureaucrats that they should act in a certain way in the light of certain values. On the contrary, it is to provide them with a *method* for discovering these values themselves and putting them into practice as they see fit.

The starting point of such a method is the simple assertion that the American people have some values. I include earlier generations as well as our contemporaries within the term "American people." By "values" I mean beliefs, passions, and principles that have been held for several generations by the overwhelming majority of the American

people.¹² A good example of what I mean appears in the final paragraph of the concurring opinion of Justice Frankfurter in *Cooper v. Aaron*. The case involved the painful experience surrounding the racial intergration of Little Rock's Central High School in the mid-1950s. The Supreme Court upheld a federal court order that had been defied by Governor Faubus. In closing his concurring opinion, Frankfurter said:

Lincoln's appeal to "the better angels of our nature" failed to avert a fratricidal war. But the compassionate wisdom of Lincoln's First and Second Inaugurals bequeathed to the Union, cemented with blood, a moral heritage sure to find specific ways and means to surmount difficulties that may appear to be insurmountable.¹³

The "moral heritage" to which Frankfurter refers is an example of what I mean by a value. It is vague and imprecise but by no means meaningless unless one chooses to identify the meaningful with the empirically verifiable. In citing the moral heritage bequeathed by Lincoln's inaugural addresses, Frankfurter offers the nation a standard to which it can rally in a period of unrest.

The method of regime values involves two tasks. The first is to identify American values and the second is to look for meaningful statements about them. The first of these tasks is much easier than the second, provided one is content to identify just *some* values rather than attempting to provide an exhaustive list. Indications of the values of the American people can be found in a wide variety of sources. Among these are the writings and speeches of outstanding political leaders, major Supreme Court opinions, scholarly interpretations of American history, literary works of all kinds, religious tracts and sermons, and even the rhetoric of standard Fourth of July oratory. For example, it would seem that one could safely assert that freedom, property, and equality are values of the American people.¹⁴ To be sure, these three are not *the* values of the American people but are simply among our many values. To safeguard their widespread appeal,

they must be presented without any gloss on their meaning. The equality affirmed in the Declaration of Independence may be quite different from the equality underlying the equal protection clause of the Fourteenth Amendment, but we shall get ahead of ourselves if we make such distinctions now. For the present it is sufficient to offer freedom, property, and equality as examples of American values. Most Americans would have little trouble in saying they "believe" in such values as long as they were not pressed to say just what these values mean.

Far more difficult than simply *naming* some values of Americans is the task of infusing them with meaning suitable for ethical reflection. A good starting point might be to dwell on the fact that values like freedom, property, and equality command almost universal allegiance among our people. Perhaps this might be the beginning of a moral consensus. One might object, however, that splendid generalities like freedom, property, and equality are universally accepted only because they mean nothing. I do not think such an objection is sound. There is a difference between a word or a symbol that is vague and one that is meaningless. For example, the three symbols of the French Revolution, *liberté, fraternité, égalité*, are vague and indeterminate. They have been invoked by French citizens of remarkably diverse political persuasions for nearly two centuries. For many years these symbols appeared on French coins, but during the years of Marshall Pétain's Vichy regime the customary symbols disappeared from the coins and were replaced with *travail, famille, patrie*. These symbols, like the ones they replaced, were vague but they were not meaningless. They said something about the character of the Vichy regime. To be sure, a French citizen could be quite devoted to work, family, and fatherland without being a Nazi sympathizer. Nevertheless, the change in symbols had some significance. It represented an attempt by the Nazis to signal the arrival of a new order in France with a consequent change in traditional French values.

When Americans invoke symbols such as freedom, property, and equality—both in serious and trivial discourse—there is some minimal content to which these symbols point, and this content embodies some of the values of our society. These values may not be the highest values to which a regime might aspire, but nevertheless they carry some normative weight for American bureaucrats precisely because they are values of the American people. These values are normative because they are regime values, and bureaucrats have taken an oath to uphold the Constitution that brought this regime into being and continues to state symbolically its spirit and meaning.

The search for meaningful statements about our values is a more difficult task than simply naming them. At this point the consensus that would support certain values in a general, abstract way begins to fall apart. For example, some of those who would agree that equality is a fundamental value of the American people might not agree that this value should govern the relationships between the sexes as well as among the races and economic classes. Or, for some, equality might mean no more than equality of opportunity, while others would insist it means equality of income as well. Property might mean "big business" to one person, a modest dwelling to another, and a right to gainful employment to a third. Freedom could mean freedom for a woman to have an abortion on demand or Exxon's freedom from government regulation.

Thus, as the general values of the regime become sufficiently specific to have a practical effect on bureaucratic decision making, bureaucrats will have to decide which of many interpretations they will take seriously in their efforts to respond to the values of the American people. This is a very difficult undertaking. Eminent scholars after years of research reach very different conclusions on the "meaning of America."¹⁵ This would seem to suggest that there is no one interpretation of the American tradition so compelling as to win the assent of all thoughtful persons. Further, we must recall that we are dealing with bureaucrats and

not academicians. Bureaucrats are busy men and women whose energy and attention are focused primarily on the practical tasks of daily governmental routine. It would be unrealistic to expect them to interrupt their careers to undertake a profound study of American institutions and values. Students preparing themselves for careers in government could do more along these lines, but even for them other professional considerations will almost surely preclude a solid mastery of the American tradition.¹⁶

NOTES

1. For those who distinguish state and society, "regime," as used in this essay, is closer to society than state. Although the distinction of state and society is a philosophical question of the first order, I do not think it makes any difference for the purposes of this book just where one stands on this great issue. Those who, like Aristotle, do not distinguish state and society may perhaps feel more comfortable with the words "regime" or "polity" than those who make this distinction. The latter may prefer the somewhat ambiguous term "society values." It is important to note, however, that I am not talking exclusively about the values of the "state"—the authoritative and coercive agent of a political society.
2. I have not investigated just how widespread is the American custom of requiring an oath to uphold the Constitution. In nations where no such oath is required, I presume that some sort of adherence to the primary political symbols of the regime is implied in accepting public office.
3. This point is simply a corollary of the principle that laws reflect the values of the regime. Obviously, laws are not the only repository of public values. As political scientists have recognized for centuries, the study of a regime's laws must be supplemented by empirical findings—see Aristotle's *Politics*, Book 2. In the case of bureaucrats, it seems safe to assume they have some empirical awareness of public values.
4. Yet the issue of the relative importance of life and death is in itself of profound practical importance to many people. It is not uncommon to hear persons with serious religious beliefs say of a deceased loved one that "he is happier now." One can acknowledge the importance of such questions without dropping all other questions until the most important ones are solved.
5. Even Hobbes goes this far. See *De Cive* 3, 3.
6. It is unfortunate that the oath of office is administered in such a perfunctory way in most agencies. While not everyone can be sworn into office by the chief justice of the United States on the steps of the Capitol, it does seem a bit more imagination could be shown in accommodating the profound, human need to surround moral commitments with appropriate symbol and ritual. The failure of government to provide an appropriate ceremonial milieu may help to explain why the oath is seldom regarded as a moral commitment. Although ceremony and ritual can neither confer nor substitute for moral vigor, they can at least remind us of what it is we are becoming by our pledged word. Despite the sterility of the atmosphere in which the oath is administered, it can become meaningful after the fact when one is reminded of the pledge one has given. This is true of any ceremony that surrounds a moral commitment. Marriage vows are often given in a shallow and sentimental way, but after many years of loving dedication they become in retrospect the symbol of something that is now abiding and profound.
7. I must beg the readers' indulgence for continually repeating the word "fundamental." It is very important, however, that we distinguish between a regime that is fundamentally just and one that is perfectly just. To attempt to defend a theory of the meaning of fundamental justice would require nothing less than a recapitulation of the history of political thought.

To give the term some content, let me simply assert that the following questions might help one decide whether he or she considers a particular regime fundamentally just: (1) What are the professed values of the regime? (2) Are the professed values consistent with one's personal values? (3) To what extent does the regime achieve its professed values? (4) To the extent that it falls short of its professed values, are there corrective mechanisms that offer some hope of reform? It should be noted that these questions will lead to no more than a subjective understanding of justice that falls far short of the questions that philosophers have raised over the centuries.

8. Obviously, there are other questions in political philosophy, but few, if any, are more salient than the character of regimes. The fact that authors as diverse in time and content as Aristotle and Rawls are concerned primarily with the justice of regimes is a sound indication of the perennial importance of this issue.
9. If I may be permitted a personal aside, I have found that by simply announcing that I shall presuppose that the students in my course have settled to their own satisfaction the question of the fundamental justice of the regime, many students are sufficiently provoked (and at times outraged) that they soon find themselves giving serious thought to what they were told was presupposed.
10. See Abraham Kaplan, *American Ethics and Public Policy* (New York: Oxford University Press, 1963), pp. 8–10, for an argument that in matters of public values a conclusion is more important than the principles on which it is based. See also Maritain's position on Christian and secularist support for the Universal Declaration of Human Rights, *Man and the State*, p. 77. For a more recent and somewhat different approach to the same issue, see Albert R. Jonsen and Lewis H. Butler, "Public Ethics and Policy Making," *The Hastings Center Report* 5 (August 1975);

19–31. The authors attempt to rescue the ethics of policy choices from "metaethical" issues that necessarily spill over into epistemology and semantics.

11. Thomas Aquinas, *Summa Theologiae*, I–II, 94, 4c.
12. The definition of "values" given in the text is admittedly a bit thin when one considers the staggering quantity of literature available on this topic. A discussion of value theory, clarification of values, and so forth, is beyond the scope of this book. For a brief but lucid discussion of values, see Irving Kristol, "Can Values Do the Job Morals Used to Do? Namely: Keep People Moral," *Dividend*, Spring 1976. *Dividend* is the magazine of the Graduate School of Business Administration of the University of Michigan. The article consists of excerpts and summaries from an address given by Kristol at the business school's "Values Week" program. Kristol maintains the reason we speak of "values" rather than "morals" today is because the modern understanding of morality is divorced from religion. The word "morals" is just "too objective" for most moderns. "Values" is more subjective and creative. Instead of having his morality handed to him authoritatively, modern man prefers to "invent his own, individual, unique, appropriate morality." Kristol does not think this can be done. For him the urgent, practical question is given in the lengthy title of the article.
13. 358 U.S. 1 (1958).
14. I do not believe that anyone would contest the presence of freedom and property among American values. Equality might be somewhat controversial. See Willmore Kendall and George W. Carey, *The Basic Symbols of the American Political Tradition* (Baton Rouge: LSU Press, 1970).
15. Take, for example, the differences among scholars like Turner, Beard, Parrington, and Boorstin. On February 22, 1976, the *Washington Post's* "Book World" section featured an article in which six leading American historians were asked the