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*the premier journal of
public administration*

Theory to Practice

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Public Administration Review

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Reinventing Administrative Prescriptions: The Case for Democratic-Constitutional Impact Statements and Scorecards

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David Rosenbloom has devoted a lifetime of scholarship to bringing clarity in the field of public administration for academics. He is now proposing to do the same for practitioners. His general proposal for governments to assess both proactively and retroactively their reform initiatives will probably come across as a reasonable idea to practitioners interested in good government. Heaven knows, there have been enough "flavor of the day" reform efforts that could have used some analysis up front and along the way!

I would argue, however, that his underlying assumptions and supporting arguments may not

be effective in selling his general proposition in the world of public administration practitioners, and his specific proposals may not be practical to implement, at least not as described in this article. Taken together, these factors may make it difficult to find someone (i.e., a politician) who finds his proposal compelling enough to champion it. This doesn't mean that his proposal to assess reforms is without merit; it just means that its application may need to be placed in a broader context of how best to ensure that enduring values are preserved, while at the same time ensuring that innovative approaches can still be developed to address pressing challenges facing our country.

January | February 2007

Volume 67 | Number 1

To show how and why this is the case, I begin the remainder of my commentary with a critique of what I see as shortcomings in Professor Rosenbloom's underlying assumptions in proposing impact statements and scorecards for democratic-constitutional values. Next, I explore what I see as major problems hindering both the attractiveness to practitioners and the feasibility of implementing his proposals in federal agencies and programs. These include imprecise definitions of both terms and the scope of his proposals, as well as a failure to consider the non-statutory elements of reform proposals. I conclude by suggesting why the proposals he outlines in his article will not have political "legs" to travel on until their utility to policymakers is demonstrated, and I offer one approach for doing so.

Rosenbloom's Underlying Assumptions

Rosenbloom's general proposition seems to be that administrative reformers consistently slight democratic and constitutional values, and that safeguards—in the form of impact statements and scorecards—are needed. But are these values as presented concrete enough to be assessed administratively? In the world of public administration practitioners, there is a constantly shifting emphasis among value sets, largely because these values depend on where stakeholders stand. In addition, management values are seen as being politically determined and evolving over time.

Rosenbloom's article assumes they are well-defined absolutes, which may be true for academics. However, practitioners tend to see them as relative or context-dependent. For example, Charles Goodsell (2006) notes that public administration can be viewed from at least three different contexts—the state, the market, and civil society—and that

stakeholders within these contexts have different expectations of how government should do its work. They also offer different prescriptions of how to do it. Similarly, assessing 50 years of federal reform efforts in his book, *The Tides of Reform*, Paul Light (1997) found that they were based on four different and largely conflicting management philosophies. Yet political leaders insist that agencies simultaneously implement each of these reforms. At the same time, one management perspective or philosophy may be in ascendance (or not) depending on the political trends and values in either the White House or the Congress.

Academics may argue about which perspective and which philosophy is "right," but in practice public administrators have to live with them all. Once a law is passed, it is rarely repealed, even if there are obvious conflicts between management philosophies in vogue over time. For example, the Paperwork Reduction Act requires agencies to construct a "budget" of the amount of burden-hours their actions impose on the public, and to reduce that burden by a set amount each year. It further requires that any surveys taken to access these burdens be accounted for in that budget. Meanwhile, the Government Performance and Results Act (GPRA) requires that citizen satisfaction be measured (which is generally done through surveys), but the burden-hour budget is largely consumed by other programs that are implementing new statutory mandates (chiefly those administered by the IRS and EPA). An "impact assessment" might have picked up this conflict, but this interaction between the two laws was not well understood until GPRA was being implemented. In fact, the existing interagency legislative clearance process run by the Office of Management and Budget (OMB), which is de-

signed to surface such conflicts, failed to do so. In any case, Rosenbloom's assessment is for "democratic-constitutional" impacts, so this conflict may not have been detected under his proposal either.

The bottom line, though, is that there is already a lack of philosophical consistency in existing management laws. Historically, there has been an inherent lack of political consensus about what is the "right" set of underlying management values and principles. And these values and principles seem to evolve, ebb, and flow over time. Given this, can there be a consensus around what would be the underlying values in any assessment process, either via an impact statement or a scorecard?

Questions About Implementation Feasibility

In addition to the broader question of which set of underlying values and principles should be used to conduct an assessment, there are a series of more mundane—but equally critical—issues that need further definition if Rosenbloom's proposal were to be seriously considered for adoption. These include defining terms, defining scope, and accounting for significant administrative actions that may be more significant than those that might be covered by the assessment process.

Defining Terms

Rosenbloom proposes the preparation of an impact statement and/or scorecard on administrative reforms that would focus on the impact of these reforms on the protection and promotion of "democratic-constitutional values." These values are defined as including (but not limited to): "individual rights, constitutional integrity, transparency, and rule of law." These are further deemed to be "...central features of U.S. democratic-constitutional government..." These terms

are not clearly defined, nor are they sourced or grounded in academic, legal, or other citations. As a result, anyone wanting to support such a proposal could read anything into it. While these "central features" seem worthy, are they universally accepted by others as really being those that are central?

Rosenbloom defines "democratic-constitutional" as "...those aspects of U.S. government and politics that have democratized the original constitutional design, as amended." While this may hold clear meaning to academic scholars, it would have to be defined in far more precise terms in order to be used in the implementation of either an impact statement or scorecard. For example, Robert Dahl (2001) created criteria for evaluation of a constitutional democracy in terms different from—but not inconsistent with—those offered by Rosenbloom. Similarly, Ronald Moe (2004) defines evaluation criteria that differ as well. Having a clear, bounded definition, which is commonly seen as legitimate, is a crucial first step to creating an impact statement or scorecard that can be impartially implemented. However, creating a definition for administrative implementation efficiency may be counter to political values—defining and bounding "democratic constitutional values" may inadvertently begin to limit those values commonly seen as inherent. In other words, some ambiguity may be healthy for democracy. But it's not healthy for an administrative program requiring precision in order to prevent misuse by partisans.

Rosenbloom does further describe four democratic-constitutional values, but these descriptions are themselves similarly limited in scope, or open-ended in nature. In describing the value "protecting individual rights," he refers to government employees, not the general citizenry. He writes that if public employees' jobs are privatized, they would

lose "constitutional rights" that private sector workers do not have. The implication is that if government workers' jobs are shifted to the private sector, there would be a diminishment of individual rights and that this would be counter to "democratic-constitutional" values. If that's the case, then should everybody be a government employee?

In describing the value "constitutional integrity," Rosenbloom specifically cites examples of balance-of-power issues. Those examples are a clearer explanation of what he is seeking to address, but the broader term "constitutional integrity" would need to be further defined to be useful to practitioners. This term may be further defined in the academic literature, but a definitive set of agreed-upon elements, such as a list of constitutional checks and balances, would be needed so an impartial analyst of a management reform proposal would know what "counts" in relation to a program or policy review.

In describing the value "transparency," Rosenbloom concludes that "...when government work is outsourced, the public loses the right to know how it is being performed." In practice, though, that right can be preserved in the written terms of any contract. The types of transparency desired just have to be written into a contract by the government contract officer. Outsourcing itself doesn't result in the lack of transparency. Rosenbloom also expresses concern over how GPRA contributes to a lack of transparency. Again, it depends on relative values—there are always tradeoffs among the levels of enforcement of different laws that are rooted in different philosophical values. GPRA has led to increased transparency in what agencies do and the results they produce. Yet it may have indirectly contributed to decreased funding for non-mission functions—such as the Freedom of Information

Act. But could this tradeoff have been predicted in advance via an impact statement?

In describing the value "rule of law," Rosenbloom offers that, "From a legal perspective, discretion is generally viewed as antithetical to the rule of law, tending toward tyranny and even 'evil.'" Wow! I didn't know that giving an office manager the discretion to keep an IRS office open past 5 p.m. on the day before April 15th was "evil." Obviously, some level of discretion is needed; the real issue is to define clearly the scope and level of what that discretion should be. In the National Performance Review case that he describes, that discretion was actually confined to waivers of agency internal rules, like timecard submissions and travel, not administrative rules or statutes, which probably are not a threat to the public.

Defining Scope

In his discussion of the misuse of the Department of the Interior's contracting authority to hire private interrogators for the military, Rosenbloom poses a question: "Could a democratic-constitutional impact statement for contracting out work...." have prevented this misuse? This instance of abuse was a contracting decision, not a conscious policy action. Administratively, is Rosenbloom recommending that all individual contracts be subjected to his proposed impact statement requirement? In FY 2004, the federal government awarded nearly 1.7 million contracts valued at nearly \$311 billion. This might create a major bottleneck in the government's ability to deliver services. For example, in 1995, the then-General Accounting Office found that it took federal agencies 669 days on average to award contracts totaling \$25 million or more. Again, the question is a tradeoff in priorities. And again, this is a value judgment by political leaders. A related "scope" question is whether the intent of the impact statement is to conduct an

assessment on the *process* of reform or on its *results*? If the assessment is on the process, then it might be more akin to the President's Management Agenda. If it is on the impact, it might be more like the Government Performance Project sponsored in years past by the Pew Charitable Trust.

Accounting for Non-Statutory Elements

Some of the most important administrative changes occur without being announced. A good example, which Rosenbloom mentions, is the increased use of signing statements by President Bush. This constitutes an indirect form of a veto that Congress cannot override, and is probably far more important than many other announced administrative reform initiatives. Similarly, in the Clinton administration, a number of unannounced administrative reform actions were taken. For example, after an in-depth survey of the number of their field offices, agencies were encouraged to close those where citizens could be served by other offices or over the phone. No closure announcements were made. For most small offices, when staff retired, they just were not replaced. How would Professor Rosenbloom's democratic-constitutional assessment proposals account for these types of actions?

Finding Someone Who Cares

Public administrators love to propose rules and administrative processes as a solution to problems—it is in their genetic code. However, an educated citizenry and a caring political and career leadership are probably more effective means of providing oversight of activities, such as reforms, that could affect national values. "Caring leadership" is critical to sustaining important values. Proposals to create legislatively permanent administrative institutions such as a permanent National Performance Review or a separate Office of Federal Management have been re-

jected historically because it was clear that they would not be effective absent a political leader who cares. Currently, the OMB's Program Assessment Rating Tool (PART) is an administrative initiative President Bush uses to assess the performance of programs. It is effective because he cares, and his staff uses it to make decisions. If it were required in legislation, a future president may not be committed to its use, and it would become another useless compliance requirement that agencies would have to go through the motions of completing—at some cost to program performance.

Given the political dynamics in any reform effort, the best one can hope for is that the people involved care about the same values. An imposed process may create the *opportunity* for a dialogue, but not produce one. Moreover, from a practitioner's perspective, outside efforts to pre-assess a reform initiative (impact statements) would be perceived as slowing things down and reducing the power of the person(s) proposing the initiative (most likely the president). And a post-reform assessment (scorecard) would be perceived as unwanted interference (most likely, again, by the president).

Assuming there is a political champion for the idea of conducting assessments, who could develop and apply criteria that would be seen as credible by the public, the politicians, and the agencies and programs assessed? This is not an insignificant question. The constitutional role for oversight of the executive branch resides with the Congress. Would Congress be interested in such assessments? So far, it has expressed anywhere from mild to no interest in other forms of assessments, such as GPRA or PART scores. Members of Congress even tend to minimize the impact assessments they impose on themselves, such as the in-

tergovernmental mandate and fiscal impact assessments conducted by the Congressional Budget Office.

Professor Rosenbloom offers several options, including the Government Accountability Office (GAO), the OMB, the Congressional Research Service, the National Academy of Public Administration, and inspectors general in affected departments and agencies. But each of these (and other) institutions could be perceived as biased, and would tilt the balance of power either toward one branch of government or the other (which undermines one of his earlier-stated values). How would legitimacy and consensus be created around appropriate values and principles? Would scoring be seen as politically influenced? These are similar questions to those asked of other scoring efforts, such as PART, without resolution.

Even with the concerns I have raised, I do believe that conducting periodic assessments of the implementation of any set of administrative reforms makes sense. These could be self-assessments or external evaluations. An external assessment could be conducted by GAO or a third party, or by Congress (which has a constitutional responsibility to conduct oversight). The question is: What should be the underlying set of values for such assessments? It may be appropriate that different institutions, representing different values, should conduct such assessments. The question is, however, whether there should be a standard format (like a scorecard) or whether each assessment should reflect the perspectives of different stakeholders.

In any case, such assessments shouldn't wait for legislation. The tables accompanying Professor Rosenbloom's article are a good start. Maybe he should start a blog and invite others to contribute who share his concerns. My advice would be to "Just do it!" If

it makes sense, public administrators, politicians, and the public would buy in and lend it increasing credibility. If it really resonates, it may be cited by caring leaders, such as presidents or in congressional hearings. If fabulously successful, it may actually influence management policy development in the future. If not, then no amount of legislation will make it work.

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