

**Reconciling Ethical Asymmetry in Agency
Oversight: Striving for Eudaimonia Among Legislative
Staff in West Virginia**

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Abstract

This paper applies the Constitutional School of American Public Administration to inform the ethical context of legislative auditing in West Virginia's state government. In smaller state governments, bureaucrats have minimal ethical training that infrequently extends beyond understanding their formal organizational roles and preventing the appearance of corruption. This orientation towards preventing conflicts of interest and away from the constitutional role of bureaucrats leads to problems with the assertion of legislative influence. This leads to role confusion among legislative auditors as they seek to reconcile political and ethical conflicts. The orientation of legislative auditing towards program evaluation and away from ethical and narrative types of analysis can lead to a stalemate between legislative actor and audited agency. The asymmetric expectations on the part of each group (agency and auditor) in the oversight process leads to chronic ineffectiveness and stymies the supposed functions of oversight within the polity. This analysis considers the public-interest conception of ethics to be the embodiment of the eudaimonia of virtue ethics. This research should contribute to the emerging body of literature regarding the constitutional school's applicability to all levels of government.

Introduction

In Aristotle's Nicomachean Ethics (Aristotle 2012), he argues that the highest responsibility for a polity is to encourage its people and its functionaries to live well. He refers to this responsibility as the “εδαμονία” (*eudaimonia*) (Aristotle 1962).” More recent psychological and philosophical research has extended this concept to include the functions of personality even roles (Maslow 1943; Anscombe 1967). According to these interpretations of Aristotle, in order for a person to “do well” they must virtually fulfill their purpose. In order for a public administrator to fulfill their purpose, they must exercise their discretion to act in the public interest (Rohr 1986).

There are many challenges to the achievement of the *eudaimon* among the polity and more precisely administrators. Contrary to Woodrow Wilson's admonition that, “The field of administration is a field of business (Wilson 1887),” there has been considerable tension created by the intrusion of business values into the field of public administration. Nowhere is this more obvious than in the small state governments within the United States. These states tend to have less expertise and professional staff who have the ability to formulate complex policy statements and defend the ethical positions of agencies (Rosenson 2006). Furthermore, these states are more likely to have part-time legislatures and small legislative staffs. Additionally, these implications lead to higher numbers of politicians with business backgrounds engaging in the oversight of executive agencies (Moncrief 2001).

This dynamic creates an ethical asymmetry that inhibits agential ability to achieve *eudaimonia* as agency and legislative staff view organizational behavior through

different lenses. The fields of business and government operate in vastly different ethical contexts (Rohr 1986; Rohr 1998). Business students, including those studying accounting, are trained in a competitive environment that, at least, tacitly accepts some levels of dishonesty (Wart 1996; McCabe, Butterfield et al. 2006). While bureaucratic behavior requires, at some level, self deprecation and an understanding of the complex constitutional context within which administrators operate (Rosenbloom, 2000 #18; Stivers 2008).

In many ways, the conflicts between legislative auditing staff and bureaucrats in executive agencies is a microcosm of the debates between the fields of business and public administration that extend to the Progressive era (Dubnick ; Lerner 1999; Barzelay 2001; Dubnick 2005; Moynihan 2008; Joaquin & Greitens 2011). Despite the fact that this debate may never be conclusively settled, examining the impact of ethical asymmetry within a smaller state could lead to a greater knowledge of the political understanding of ethics and how this impacts agency behavior.

This study is designed to analyze ethical asymmetry among legislators and bureaucrats through an analysis of West Virginia's state government. Discussing the institutional context of West Virginia's state government at length allows for greater understanding of the idiosyncrasies relating to legislative oversight within its government and apply Aristotle's concept of the barriers to achieving *eudaimonia*. This section is followed by a discussion of possible remedies to help mitigate ethical asymmetry. Foremost among these is the constitutional school of American public administration, which appeals to constitutional values for governmental actors. Finally, the study concludes by analyzing the likelihood of effectively

implementing constitutional values to remedy ethical asymmetry between legislators and bureaucrats.

Understanding the Institutional Context of West Virginia

The institutional context of legislative oversight in West Virginia is a complex mix of satisfying corporate influence in a state that culturally undervalues education (Ambler 1940; Rice & Brown 1993). The institutional context for legislative oversight in West Virginia has created regulatory problems, particularly relating to managing task complexity among agencies. The inability to manage complex tasks can render regulatory efforts ineffective (Katzmann 1980; Meier 1985; Eisner 2000). The most public and perhaps best example of this ineffectiveness relates to West Virginia's inability to effectively regulate its mining industry (Tams 1983; McAteer 2011).

The nexus of the institutional interactions between the West Virginia Legislature and the bureaucracy is the state's legislative auditor. Program evaluations of agency operations generally occur in the legislature's Performance Evaluation and Research Division (PERD). In order to better understand the role of the legislative auditor in overseeing agencies, we will analyze the context of legislative auditing at the federal level.

Much of the academic research on legislative auditing has been centered on academic descriptions of the constitutional role of auditors. Early analyses focused on the shortcomings of Congress and, engaging in ex-poste

oversight, the Government Accountability Office was envisioned as an agency that could decrease the reliance of the legislative branch on the expertise of the executive branch (Mansfield 1939; Brown 1970). More recent research attempted to understand the evolution of the power of legislative auditing. Rather than focusing solely on budgetary issues in the 1970s, legislative auditors began to engage in program evaluations of executive agencies for oversight purposes. This change in role was sometimes difficult for auditing personnel to accomplish (Mosher 1979; Pois 1979). Finally, recent research into the process of auditing has brought into question the effectiveness of financial auditing and legislative auditing in the policy process (Power 1997).

Weber (1999) addressed several topics that are salient to this analysis. First, he posits that state legislatures frequently legislate on topics with which they have a noted self-interest (cite this). This includes setting the ethical context for their staffers and research functionaries. Weber's solution to this problem is that state legislatures should only legislate in areas where they can act as disinterested parties. While the feasibility of this solution may be questioned, the issue illuminates the reasons why legislative auditors function in their current ethical context. State legislators have little interest in understanding the policies that administrators implement. Rather, they view their role in a hierarchical capacity of attempting to rein in or control rogue administrators. Furthermore, West Virginia's political climate does not force transparency. Weber (1999) found that the campaign disclosure requirements for the state of West Virginia ranked 36th among the 50 states.

As Rosenson (2005) documents, ethics commissions and state government are largely ineffective.

She concludes that ethics reforms are generally externally driven. Certain groups such as prosecutors, the media, public interest groups, and governors generally tend to be most effective at reforming state legislatures. Attention on ethics issues also impacts reform and state (fragment, consider revising). She finds that change comes at varying levels throughout the state with little regard for a concerted and regular attempt at improving ethics regulations and enforcement. Frequently, ethics reforms are undertaken because of intense external scrutiny. Rosenson (2005) also found that self-regulation among legislative orders is generally ineffective. Furthermore, when legislators undertake ethics reform they are careful to maintain their own interests.

Some have researched whether or not professional state legislatures are more diverse than their part-time counterparts. The authors determine that West Virginia's level of professionalization was 40th out of the 50 states. Squire determines that the more amateur a legislature, the more likely it will contain homemakers, students, or retired citizens (Moncrief 2001). Professional legislatures tend to have more attorneys and insurance agents. This directly impacts the operation of committee staff serving under amateur and professional legislatures. The self-selection that occurs among amateur and professional legislatures, with a heavy reliance on independent business owners and attorneys, will lead to analyses that are structured to that cater toward a particular legislature's experience. This might explain why the accounting profession is relied upon heavily for the process of legislative oversight among state governments (Mosher 1979; Pois 1979; Power 1997; Potoski 2002). Rosenson (2006) also analyzed the relationship between ethics laws in candidate recruitment state legislatures between 1976 and 1995. She concluded that the effects of ethics laws on candidate recruitment are

sometimes positive. This may mean that political systems with stringent ethics laws may improve candidate selection (Rosenson 2006).

The Constitutional School of American Public Administration posits that ethical behavior by administrators should be understood within the context of regime value. According to Rohr (1986) these regime values are best represented by Supreme Court interpretations of statutes and the Constitution. However, if administrators are using this standard to gauge their actions, and legislative oversight mechanisms misunderstand this ethical structure, does it place agency staff in management peril? Administrators acting ethically according to regime values may quickly find that legislators and staff may wish to refocus their behavior for partisan gain. Furthermore, externally judging agency decisions using fundamentally different criteria from the internal processes places agency staff in a difficult position.

There are several reasons why the values and ethics of legislative oversight differ from bureaucratic values and ethics. First, there is a noted lack of ethical analyses, one of the primary sources of policy research for legislators among legislative auditors. This is in part due to the heavy reliance among legislative auditors on accountants for research. Legislative auditors are overwhelmingly trained in program evaluation and policy analysis with an economic or accounting perspective (1).

In West Virginia's fiscal year 2011, appropriation request instructions from the state budget office, performance measures are driven by financial accounting standards and programmatic outputs. These instructions serve as the template for agencies within state government to determine performance-based budgeting targets. The

guidance from the state budget office mentions nothing about ethical criteria or other holistic types of outcome measures. Agency staff is expected to “choose measures that can be used for planning, to quantify the performance of the agency, as well as to monitor and evaluate the degree of success in achieving results...” (WV Budget Website). Furthermore, the guidance states that “... agencies are not obligated to use the same performance measures of the previous year and as goals and objectives change and improve, then the performance measures change and improve. The concept of a workload measure, as opposed to a performance measure, is also addressed. This criterion states that workload measures “... are not likely to be viewed by the public as a benefit”. This is a post-performance measure, which makes the argument to the public that a program is accomplishing its goals. For the sake of simplicity quantified performance measures should be included. Quantified measures are likely to be viewed by legislators as being objective, and therefore better understood. However, large-scale ethical questions may be omitted where narrow types of oversight analysis exist (Moynihan 2008).

While many legislatures have been “professionalized” in recent years, the West Virginia Legislature exists as a relic to the rotation system of Andrew Jackson whereby entrenched governmental interests are discouraged through low pay and party pressure (Rosenthal 1993). Brisbin et al. (2008) argued that the West Virginia Legislature attempts to attract “average” people who are “...in touch with the public’s needs.” This perspective argues that the legislature was originally planned as an amateur-driven institution. A compelling argument is that the structure of the legislature is inherently oligarchic. Rather than being representative of the citizen legislature that Brisbin et al. (2008) contended, the

institution exists more as an extension of governance by “courts and parties” as documented by Skrowonek (1982).

Brisbin et al. (2008) documented the relatively low legislative salaries, small staff, high turnover, and poor facilities that typify West Virginia’s legislature. Furthermore, the legislature is chronically under-staffed. The average legislature employs 561 full-time staff, while the West Virginia Legislature only has 195 (Legislatures 2005). Typically, the state legislature hires upwards of 200 people as temporary staff, as opposed to an average of 136 in other states (NCSL 2003). As Brisbin et al. (2008) documents, the ramification of the culture of rotation among legislative staff and legislators is that professional staff wield relatively little power (consider revising). While keeping the center of power among elected officials, this dynamic also serves to impede informed decision-making among legislative staff. The West Virginia Legislature also has high membership turnover. Generally, one in four senators and one in three delegates leave the legislature every four years. This could be because of the considerable professional strain that serving in the legislature puts on Senators and delegates. Few politicians view the legislature as a viable career option; furthermore, most legislators are white, male, and come from the business or legal fields (al 2008).

The amateur quality of the legislature leads to self-selection for professions that allow for greater flexibility in legislative service. This means that the legal profession and business are over-represented among legislators. Serving in the legislature is more likely to further the careers of attorneys and businessmen than in other fields. The legislature’s amateur culture also explains why the legislature is comprised of such high numbers of these fields. Teachers are also over-represented within the

legislature. This is in spite of a constitutional prohibition on the holding of office by anyone employed by the state (Barber 1965).

The high turnover amongst both legislative houses generally serves to strengthen the elected leadership of the institution. This generally occurs in non-professional legislatures where members are more attuned to adapting to legislative life rather than attempting to assert control over an agenda. The vacuum of experience allows leadership to have a virtual “free hand” in crafting policy (Rosenthal 1989). The high turnover rate among legislators does not appreciably affect committee expertise, however. As Oxendale (1981) notes, there is a longstanding tradition of members of the West Virginia Legislature serving on committees where less committee changing occurs than in other states, allowing some expertise to be housed among the legislators on particular committees.

Although the legislature is handicapped by a noted lack of resources and expertise, it still attempts to engage in targeted oversight of the executive branch. Brisbin et al (2008) conclude that “...evidence indicates that the legislature understands its oversight responsibilities and pursues them in a moderately vigorous way.” However, in order to effectively gauge and understand how agency operates, one must be familiar with more than the rules as established by the Government Accountability Office. In fact, some may contend the most important aspect of bureaucratic behavior is the ethical grounding that guides administrative discretion when implementing delegations of authority. Therefore, legislative auditors frequently overlook a fundamental aspect of agency behavior at the state level (Barzelay 2001; Joaquin and Greitens 2011).

In order to understand the context of West Virginia's bureaucratic ethics, one must first delve into the manner by which the administrative capacity of government fits into the constitutional structure of the state. The origins of the administrative state rest dubiously on Article section 3 of the Constitution, which states that the people may abolish the government if that is their will. Article 3 section 20 states that free government can only exist with a "...firm adherence to justice, moderation, temperance, frugality and virtue, and by a frequent recurrence to fundamental principles."

The Constitution largely remains silent on explicit topics relating to the state's administrative capacity. Much of the legal context within which, state employees operate is framed by the West Virginia Code, including the extension of legislative immunity to legislative staff (WVC §4-1A-12). However, the West Virginia Code continues to greatly narrow the immunity acts that are only legislative in function. In WVC §4-1A-10, it states that administrative acts are not immune from prosecution. The definition reads:

If the underlying facts on which a decision is based are legislative facts involving establishment of a general policy or state of affairs, then the decision is legislative. If the facts used in the decision making are more specific, such as those that relate to particular individuals or situations, then the decision is administrative.

This apparent dichotomy only serves to muddle the ethical responsibilities of executive agency employees, vis-à-vis legislators and legislative staff. This identification of a compromised ethical position that underscores agential responsibility is most likely the result of the political

orientation of the legislators who codified it (revise wording) (Bowman & Menzel 1998). Furthermore, WVC §4-1A-9 states that acts that are to be considered “political” are not privileged. Among these actions that are not immune are:

Assisting a constituent or supporter through constituent services, including, but not limited to, making appointments with government agencies, attempting to influence discretionary acts of a government officer or providing assistance in securing government contracts.

This omission is due at least in part to the complexity and subjectivity that underpin any ethical analysis. Program evaluations that focus on financial audit and performance measurement with measured outcomes of agency behavior allow for a quick understanding of compliance. While more in-depth and narrative analyses of mission are objective, they can still be quantified through the constituencies served and programs offered by an agency. However, ethical analysis would entail a specialized level of training that is rare in auditors offices (Mosher 1979; Dubnick 2005; Rosenbloom 2007).

The manner by which the field legislative auditing came into being was based purely on economic policy analysis and accounting (Mosher 1979). More recent changes to narrative and public law types of policy analysis have largely been unnoticed by legislative auditors, especially at the state level. Since legislative auditing is far from a priority to many cash-strapped states, the offices frequently go undermanned and engage in limited and superficial types of analyses (Radin 2000).

There is another dynamic that explains the type of analysis that legislative auditors frequently undertake. Audits are frequently geared towards increasing the understanding of the bipartisan audience that will read the legislative analyses (cite). The committees to which legislative auditors present often have existing and contentious partisan divides. The divides are based on different values among committee members. In order to avoid being labeled as a partisan researcher, legislative auditors attempt to stay clear of value judgments and their analyses and tie conclusions to empirical data (consider revising). While this is an effective tactic to maintain the legitimacy of the legislative research, some objective analysis could serve to inform the decision-making of the legislators to a greater detail (Dubnick).

State and federal administrators at the highest levels of operation are commonly tasked with interacting with congressional staffers and legislative auditors. However, as a principal agent problem illustrates, these ex-post and ex-ante oversight mechanisms operate under a different goals than agency operation (cite). This information asymmetry can be exacerbated by different expectations regarding ethical behaviors. In fact, in some states there is very little ethical training for administrators. Legislative auditors may be trained in professional ethics relating to the field of accounting, but often have little understanding of the ethical context in which administrators operate. This paper argues that this dynamic leads to an over-reliance by legislative oversight mechanisms on performance measurement when evaluating programs at the expense of more ethical and narrative type of analyses (Dubnick).

West Virginia code section 6B -1-3 defines a public official as "...any person who is elected or appointed to any state, county or municipal office or position and who is

responsible for the making of policy or taking official action which is neither ministerial or non-ministerial, or both.” The code defines a government officer or employee in WVC section 6-B-3-1 as a “... public employee under the legislative or executive branch of state government who is empowered and authorized to make policy and perform non-ministerial functions.” These narrow definitions appear to omit the employee the legislature hires to engage in administrative oversight (2).

The West Virginia Code’s strict reliance on policymaking responsibilities as the key to the definition of government official and public employee serves to exclude a large number of administrative tasks, including the writing of performance audits as performed by the legislative auditor’s office. Therefore, committee staff may not fall under legal protections granted to government officials and employees under this Code. This hampers the ability of agency employees to act in the “public interest” by strictly making them accountable to political authority (Box 1992).

The Eudaimonia and Legislative Oversight

With the ethical asymmetry between legislative employees and bureaucrats established in the regulatory and administrative context within West Virginia, the question should be asked: what can be done about this? The answer could be in changing the ethical context for both bureaucrats and legislative employees in West Virginia. Currently, the employees of executive agencies within the state have loose civil service protections. However, these protections have been violated and gone largely unchallenged (Kabler 2007). Legislative employees within the state have minimal training in ethical issues. This allows the “vacuum” in ethical training to be filled with

either personal or political loyalty. In order to reconcile these differing attitudes towards ethics this study argues that a higher order of ethical values based in the United States and West Virginia's constitution should be stressed (Commission 2011).

By stressing the virtues of public service through ethical training, the state could allow civil servants to act in the public interest and fulfill their *eudaimonia*. The tension that prevents government functionaries from achieving a purposeful life has long been an issue. This is particularly apparent among the administrative ethics in American public administration. Lower order ethics have focused on removing the appearance of conflicts of interest and transparency for administrative decision-makers. Higher order types of ethics have focused on interpreting and applying regime values in the constitutional context within which administrators operate (Rohr 1998). There are many noteworthy approaches to ethical decision-making. However, few of them substantively account for conflicts in ethical structures between agencies and their principals. This analysis does not pretend to espouse that ethical conflicts should be universally understood. However, in order to allow agency employees to exercise their constitutional power (and fulfill their *eudaimonia*), a more uniformed ethical structure should exist between legislators and agency personnel. Much research has documented the complex ethical position of public employees and how that differs from private sector or political operatives (Applebaum & Lawton 1990; Gutmann and Thompson 1997; Geuras & Garafalo 2002), nevertheless, the solution to this problem has been insufficient. Performance management has attempted to extend the values of business and the political communities by increasing the accountability of agency staff.

This interpretation of ethics is based in Waldo (1984), advanced by Rohr (1986) (Rohr 1986) and refined by Wamsley et al. (1990), Spicer (1995), McSwite (1997, 1981), and Rosenbloom (2000). Recent contributions have been made by Green (2002), Bertelli & Lynn (2006), and Newbold (2008, 2010). The Constitutional School of American Public Administration argues for public problems to be solved through broader grants of administrative discretion to skilled bureaucrats who have an ethical responsibility to act in the public interest. This school also argues that legitimacy and effectiveness are enhanced when legislators allow administrators to act more independently within the confines of their constitutional role (Rohr 1986). This study argues, in part, that legislators and legislative employees should also be looking to the regime values in order to make policy decisions. By extending this ethical responsibility to political functionaries, it allows for a common ethical language between legislators and the agencies they oversee rooted in an understanding of public interest rather than political calculus.

Administrative ethics generally take a normative perspective on bureaucratic behavior. Ethicists advocate for openness and transparency in order to legitimize the field of public administration. Decisions made in open view of the public, while scrutinized, are better understood by those being governed. However, administrators are not narrowly accountable to their constituencies. A more recent trend in the study of ethics has focused on governance that is contingent on empowering bureaucrats to interpret society's values for use in solving problems within the ethical context of their regime's social contract (Rohr, 1986).

A persistent criticism of the constitutional school has centered on the ability of state and local governmental bureaucrats to interpret and apply regime values in a useful manner. The effective normative application of this ethical structure is contingent upon (1) an individual understanding by bureaucrats of their constitutional role as the functionaries of a system of shared powers and (2) an acknowledgement by other executive branch and legislative branch actors of this responsibility (cite). If either of these qualities is not present, the constitutional school's ability to be successful is challenged by bureaucrats in state and local government.

VanWart (1996) wrote many of the ethical situations that arise in public administration relate to balancing competing values from legitimate interests. Despite the optimism relating to ethics that occurred in the 1990s (Williams 1997), administrators have still struggled with incorporating ethics into their professional lives at the state level. Huckshorn (1985) looks at the enforcement of campaign finance laws in the states. Huckshorn (1985) finds that ethics rules are frequently too complex, and difficult for legislative staff and elected officials to understand. Furthermore, ethical enforcement is often contingent upon publicity. Finally, state legislatures are the primary means by which ethics complaints are levied, placing them in the position of policing themselves and their staff.

Meier and Holbrook (1992) find that political corruption among the states is associated with historical cultural forces, turnout, party competition and government size, and bribe opportunities. The commissions that determine whether or not political corruption should be investigated often have a partisan undercurrent.

There are a couple of reasons why information is structured as it is for legislative audit. First, most state legislators come from a business background. Moncrief, et al. (2001) analyzed the people who run state legislature and found that business employees account for 16% of candidates, while business owners account for 13.7%. Furthermore, real estate and insurance employees account for another 4.4% of the total number of candidates. Private sector employees encompass 48% of the total percentage of candidates, while public sector employees and nonprofit account for 17.8%. The remaining percentage of candidates are retired (15.4%) or classified as “other” (18.8%). In light of this, it may be implied that legislative oversight is oriented towards a private sector understanding of organization and behavior, rather than public sector values. By focusing the organization of oversight away from virtue and public interest, administrators face a significant hurdle in fulfilling their *eudaimonia*.

Radin (2000) noted in her study of the changing field of policy analysis that legislative research at the state level should be stated more simply for it to be useful and understood by decision-makers. This leads to an over reliance on quantitative research because a legislator attempting to understand agency behavior can view performance targets and determine whether or not they were met by agency staff. Subjective types of analysis are less concrete and able to be understood within the context of an oversight committee meeting.

The GAO has been reliant on accountants throughout its history. Of the eight men who have served as Comptroller General, four have come from an accounting background. Only one (Elmer Staats) has come from an economic or political science background (see **Figure 1** below)

Figure 1: Professions of the Comptrollers-General of the United States

Comptroller General	Date of Service	Appointing President	Education Background
John R. McCarl	1921 – 1936	W. G. Harding	Attorney
Fred H. Brown	1939 – 1940	F. D. Roosevelt	Attorney
Lindsay C. Warren	1940 – 1954	F. D. Roosevelt	Attorney
Joseph Campbell	1954 – 1965	D.D. Eisenhower	Accountant
Elmer B. Staats	1966 – 1981	L. B. Johnson	Economics & Political Science
Charles A. Bowsher	1981–1996	R. W. Reagan	Accountant
David M. Walker	1998 –2008	W.J. Clinton	Accountant
Eugene Louis Dodaro	2010 –present	B. H. Obama	Accountant

Source: <http://www.gao.gov/about/history/index.html>

Since 1898, the GAO and its predecessors have produced 190 reports and publications that include the term “ethics” in the title. Of these publications, 41 are decisions or legal opinions concerning government operations, while 53 are considered letters or reports regarding ethical issues. Contrast this to a search for the word “accounting” over that same period and it generated 11,498 documents.

The National Conference of State Legislatures has attempted to set a universal standard for program evaluators in state government. In its model code of conduct for legislative staff it defines a legislative staff member as a public servant rather than as a political functionary. Furthermore, the code of conduct states, “the broad purpose of (a legislative staffer’s) work is to assist the state legislature in promoting the common good of the citizens of the state.” The code continues to enumerate that “a trustworthy legislative staff member provides objective

advice, information, and alternatives to legislators, independent of the staff member's personal beliefs or interests or the interests of third parties. A trustworthy staff member avoids activities that conflict with objectivity or give the appearance of conflict." This higher order of ethical responsibility holds legislative employees to the standards of a public servant much in the administrative guise.

Seligson (2002) analyzes Latin American countries, while controlling for socioeconomic, partisan, and demographic variables. He finds that corruption in the political system has considerable impact on trust among citizens and belief in the effectiveness of government. Therefore, the administrative agencies among states have a vested interest in the stringent enforcement of ethics rules to prevent malfeasance that impact their ability to govern. Others have studied the delegation of autonomy by state legislatures to agencies in policy arenas that are technically complex. The study concludes that politicians are less aware of political control in agencies offering a wider range of policy prescriptions (Potoski 2002).

Essential to an understanding of the ethical responsibilities of employee the state legislature are the definitions of public official and public officer. Black's Law dictionary defines a public official as "one who holds or is invested with a public office; a person elected or appointed to carry out some portion of government sovereign powers." According to the National Conference of State Legislatures, less than half of the states include agency employees in their definition of "public official." Generally, those included are only the highest-level employees.

Conclusion

This study concludes that in state legislatures, there should be greater awareness of the regime values with which administrators are compliant in order to be effective and ethical legislative functionaries. By merely treating legislative oversight as a political tool or toll of personal loyalty, legislators and legislative staff undermine the nonpartisan ability to analyze and evaluate programs in agencies. By adding an ethical dimension to legislative analyses, legislative auditors may be more effective at influencing policy and better enable agency performance to be more holistically understood by legislatures.

Of importance to the application of constitutional ethics (and the achievement of *eudaimonia* among administrators) is an understanding of legislative oversight in state government as an extension of shortcomings in ethical education. West Virginia's legislative employees are narrowly focused on lower order ethical values such as transparency and preventing the appearance of conflict of interest. However, elected members of the legislature are frequently tasked with self-enforcement of ethics, which leads to ethical shirking. This culture extends to the perception that legislative employees have regarding loyalty. Often employees view their highest order of ethical reasoning to be loyalty to a supervisor.

Legislative employees' understanding of ethics and loyalty colors their ability to oversee agencies. The lack of complexity that legislative employees and legislators tend to have regarding ethical issues hampers their ability to effectively understand agency operation. Therefore, a more far-reaching understanding of legislators, their staff, and agency staff ethical responsibilities to the constitutional

regime would allow for more effective oversight (Rosenson 2005).

Ethical accountability in its most basic form is a question of accountability. Political constructions of accountability focus on personal loyalty (Lawson 2009), while institutional structures of accountability focus on regime values (Rohr 1986). The concept of loyalty and ethics is not a new one in public administration. Kohlberg (1981) views the concern for enduring personal relationships as being imperative to understanding moral reasoning. However, when viewed as ethical behavior this could be the lowest form of loyalty. The analysis also incorporates concern for law and duty at the fourth stage of moral reasoning followed by the highest, which is considered “principled reasoning”. Both of these are underpinned by ethical concerns and may be tied to the concept of loyalty and argue that a narrow understanding of loyalty hampers public interest reasoning and the achievement of *eudaimonia* (Anscombe 1967).

Other public administration scholars have diagnosed the similar barriers to the purposefulness and effectiveness of administrators. Wildavsky (1979) contended that loyalty for public administrators should be a higher order than to a supervisor or organization. This is the beginning of understanding the normative loyalty framework that is presented to complement the constitutional school. Hirschman (1970) views loyalty as a limiting factor on preventing exit from an organization. However, in the public sector, especially where civil service rules are pervasive, this is insufficient. The employees of the West Virginia Legislative Auditor’s office are at will political employees. Therefore, understanding their system of loyalty may be illuminated

by the concept of “exit” and “voice.” If an organization tolerates feedback from employees and learn and correct organizational faults, than the tactic of voicing concern could be effective. However, if the organization is unresponsive and loyalty does not exist, then a civil servant’s best option maybe to “exit” the organization.

In order for loyalty to be understood from the perspective of the constitutional school, it must be analyzed through regime values. The highest order of loyalty is to the constitutional regime. As Kohlberg (1958) states, law and duty are a higher stage of moral reasoning. The constitutional school seeks to infuse the principled reasoning of Kohlberg’s example with an understanding of law and duty. Constitutionlists would contend that any principled reasoning is based on the individual administrator’s firm understanding of constitutional law and duty (Kohlberg 1958).

This study argues for a normative re-education in ethics among the legislators and bureaucrats within West Virginia. However, in order for this to happen there would probably have to be a focusing event or political corruption of a large scale. Legislatures are notorious for ignoring problems with political and administrative ethics. In this sense, the future prospects for ethical change within West Virginia are not good. However, a change in legislative or gubernatorial leadership could create an opportunity to change the political and administrative cultures and have sweeping effects on regulatory performance.

End Notes

- 1) It was not so long ago that the federal legislative auditor was the General Accounting Office.

- 2) Article 6-13 of the West Virginia Constitution States “No person holding any other lucrative office or employment under this state, the United States, or any foreign government; no member of Congress; and no person who is sheriff, constable, or clerk of any court of record, shall be eligible to a seat in the Legislature.” While teachers are paid by and bargain collectively with the state, for the purpose of eligibility for elections, they are treated as county employees.

References:

- Ambler, C. (1940). *West Virginia: The Mountain State*. New York, Prentice-Hall.
- Anscombe, G. E. M., Ed. (1967). *Thought and Action in Aristotle*. New Essays on Plato and Aristotle. London, Routledge and Kegan Paul.
- Applebaum, D. and S. V. Lawton (1990). *Ethics and the Professions*. Englewood Cliffs, NJ, Prentice-Hall.
- Aristotle, Ed. (2012). *Nichomachean Ethics*.
- Barzelay, M. (2001). *The New Public Management: Improving Research and Policy Dialogue*. Berkeley, University of California Press.
- Bowman, J. and D. Menzel (1998). *Teaching Ethics and Values in Public Administration Programs*. Albany, NY, State University of New York Press.

- Box, R. C. (1992). "The Administrator as Trustee of the Public Interest: Normative Ideals and Daily Practice." *Administration & Society*. 24(32): 3-34.
- Brisbin. et. al. (2008). *West Virginia Politics and Government*. Lincoln, NE, University of Nebraska Press
- Brown, R. E. (1970). *The GAO: Untapped Source of Congressional Power*. Knoxville, TN, University of Tennessee Press.
- Commission, W. V. E. (2011). *The WV Ethics Act: A Code for Public Servants*. W. V. E. Commission. Charleston, WV, West Virginia Ethics Commission.
- Dubnick, M. (2005). "Accountability and the promise of performance: In search of the mechanisms." *Public Performance and Management Review* 28(3): 376–417.
- Dubnick, M., & Fredrickson, H.G. "Accountable agents: Federal performance measurement and third-party government." *Journal of Public Administration Research and Theory* 20(Supplement 1).
- Eisner, M. A. (2000). *Regulatory Politics in Transition*. Baltimore & London, The Johns Hopkins University Press.
- Geuras, D. and C. Garafalo (2002). *Practical Ethics in Public Administration*. Vienna, VA, Managemnt Concepts.

- Gutmann, A. and D. Thompson (1997). *Ethics and Politics: Cases and Comments*. Chicago, Illinois, Nelson-Hall Publishers.
- Joaquin, M. E. and T. J. Greitens (2011). "The Accountability-Performance Link." *Public Performance & Management Review* 34(3): 323-349.
- Kabler, P. (2007). Longtime State Archives & History Director Dismissed Without Warning. *West Virginia Gazette*. Charleston, WV.
- Katzmann, R. A. (1980). *Regulatory Bureaucracy: The Federal Trade Commission and Antitrust Policy*. Cambridge, Mass, MIT Press.
- Kohlberg, L. (1958). *The Development of Modes of Thinking and Choices in years 10 to 16*. Chicago, University of Chicago.
- Lawson, L. (2009). "The politics of anti-corruption reform in Africa." *The Journal of Modern African Studies* 47(1): 73-100.
- Legislatures, T. N. C. o. S. (2005). 50 State Staff Count. Denver, CO.
- Lerner, J. S., & Tetlock, P.E. (1999). "Accounting for the effects of accountability." *Psychological Bulletin*. 125(2): 255-275.
- Mansfield, H. C. (1939). *The Comptroller General: A Study in the Law and Practice of Financial Administration*. New Haven, CT, Yale University Press.

- Maslow, A. (1943). "A Theory of Human Motivation." *Psychological Review* 50(4): 370-396.
- McAteer, J. D. (2011). Upper Big Branch: The April 5, 2010, Explosion: A Failure of Basic Coal Mine Safety Practices. Charleston, WV, Governor's Independent Investigation Panel.
- McCabe, D. I., K. D. Butterfield, et al. (2006). "Academic Dishonesty in Graduate Business Programs: Prevalence, Causes, and Proposed Action." *Academy of Management Learning and Education*. 5(3): 294-305.
- Meier, K. J. (1985). *Regulation: Politics, Bureaucracy and Economics*. New York, St. Martin's Press.
- Moncrief, G., Peverill Squire, and Malcolm E. Jewell (2001). *Who Runs for the Legislature?* Englewood Cliffs, NJ, Prentice Hall.
- Mosher, F. C. (1979). *The GAO: The Quest for Accountability in American Government*. Boulder, CO, Westview Press.
- Moynihan, D. (2008). *The Dynamics of Performance Management: Constructing Information and Reform*. Washington, DC, Georgetown University Press.
- Pois, J. (1979). *Watchdog on the Potomac: A Study of the Comptroller General of the United States*. Washington, DC, University Press of America.
- Potoski, M. (2002). "Designing Bureaucratic Responsiveness: Administrative Procedures and

Agency Choice in State Environmental Policy." *State Politics and Policy Quarterly* 2(1): 1-23.

Power, M. (1997). *The Audit Society: Rituals of Verification*. Oxford, Oxford University Press.

Radin, B. (2000). *Beyond Machiavelli: Policy Analysis Comes of Age*. Washington, DC, Georgetown University Press.

Rice, O. K. and S. W. Brown (1993). *West Virginia: A History*. Lexington, Kentucky, The University Press of Kentucky.

Rohr, J. A. (1986). *To Run a Constitution: The Legitimacy of the Administrative State*. Lawrence, KS, University Press of Kansas.

Rohr, J. A. (1998). *Public Service, Ethics, and Constitutional Practice*. Lawrence, KS, University Press of Kansas.

Rosenbloom, D. (2007). *Revisiting Waldo's Administrative State: Constancy and Change in Public Administration*. Washington, DC, Georgetown University Press.

Rosenson, B. (2005). *The Shadowlands of Conduct: Ethics and State Politics*. Washington, DC, Georgetown University Press.

Rosenson, B. (2006). "The Impact of Ethics Laws on Legislative Recruitment and the Occupational Composition of State Legislatures." *Political Research Quarterly*. 59(4): 619-627.

- Rosenthal, A. (1989). "A Vanishing Breed." *State Legislatures*. Nov-Dec 30-34.
- Rosenthal, A., Ed. (1993). *The Legislative Institution-Transformed and at Risk*. The State of the State. Washington, DC, CQ Press.
- Stivers, C. (2008). "Public Administration's Myth of Sisyphus." *Administration & Society*. 39(8): 1008.
- Tams, W. P. (1983). *The Smokeless Coal Fields of West Virginia: A brief History*. Morgantown, WV, West Virginia University Press.
- VanWart, M. (1996). "The Sources of Ethical Decision Making for Individuals in the Public Sector." *Public Administration Review*. 56(6): 525-533.
- Williams, J. B. B. a. R. L. (1997). "Ethics in Government: From a Winter of Despair to a Spring of Hope." *Public Administration Review*. 57(6): 517-526.
- Wilson, W. (1887). "The Study of Administration." *Political Science Quarterly*. II(June): 197-222.

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