ABSTRACT: As public administration develops in the twenty-first century, we continue to grapple with century-old questions that are fundamental to the field of study and practice of public management. How does the administrative function relate to the political function? How does a public administrator satisfy conflicting managerial and legal imperatives? In this short essay, I argue that Wilson’s 1887 essay holds an unrealized vision for public administration. The unrest over some of public administration’s fundamental questions can be partly remedied by framing public administration in its functional home: the execution of public law. I use an institutional framework to illustrate my argument and underscore the conceptual arrangement of politics, law, and management that I read in Wilson’s vision.

KEYWORDS: constitution, institutional framework, public administration, public law

One hundred and twenty years ago Woodrow Wilson (1887) noted: “It is getting harder to run a constitution than to frame one.” In that same essay Wilson notably distinguished public administration, the practice of running a constitution, a function existing since ancient times (Rabin & Bowman, 1984, p. 1), by arguing the politics/administration dichotomy. Since that time many scholars have wrestled the relationship between politics and administration with a number of objectives in mind. These objectives include resolving the conflict inherent in managerial discretion and public accountability; professional expertise and public participation; authority and legitimacy; and market-like efficiency and public purpose. Indeed, Waldo (1980, pp. 65, 67) observed, “No problem is more central to public administration . . . than the relationship of politics and administration,” further observing that Wilson’s 1887 essay is “the most important document in the development of the field.” While others (Van Riper, 1983) may rightly question Wilson’s role in the early development of contemporary public administration, scholarly attention to the Wilsonian politics–administration dichotomy since the 1950s has been both influential and prolific. Nevertheless,
relatively little consideration has been given to the utility of Wilson’s observation, in the same 1887 essay, that the public administrative function is the “detailed and systematic execution of the public law” (p. 212).

The argument in this short paper is that Wilson’s (1887) essay holds an unrealized vision for public administration. The conflict embodied in Wilson’s dichotomy prescription can be partly remedied by framing public administration in its functional home: the execution of public law. The essence of my argument is that framing public administration in public law is not only important as a normative principle of governance (Moe & Gilmour, 1995), legitimizing public administration in our constitutional democracy (Rohr, 1986; Rosenbloom, 2007), but so doing also offers an approach that resolves some of the conflict inherent in the politics—administration dichotomy.

I begin by noting that amongst the competing perspectives/principles of public management—politics, law, and management (Rosenbloom, 1983)—there has been an early and strong pull from law toward management. Leonard White (1926, pp. vii–viii), in his seminal Introduction to the Study of Public Administration, prefaced each edition with the following observation: “The study of administration should start from the base of management rather than the foundation of law, and is therefore more absorbed in the affairs of the American Management Association than in the decisions of the courts.” While there have certainly been several calls (Bertelli & Lynn, 2006; Moe & Gilmour, 1995; O’Leary & Wise, 1991; Rohr, 1986; Rosenbloom, 1987, 2007) to restore a legal foundation to public administration, the managerial focus has arguably continued through New Public Management/privatization and performance-centered models of administration. Renewed focus on governance models of public administration recall the importance of law, but the legal principle is far from integral in most models of public management.

Certainly one reason for “law-less” public administration stems from the notion that rules and statutes form legal thickets that distract and impede administrators in pursuit of efficient and effective performance (reviewed in Kassel, 2008). Another related reason might be the cognitive difficulty (Rosenbloom, 1983) of theorizing (and practicing) administration under the multiple and often conflicting constraints of politics, law, and management. White’s (1926) concern also reflects a desire to keep administration as a single process in the hands of trained managers and not lawyers. White’s unitary administrative approach has perhaps unintentionally led to a blurring of the lines between private and public administration, leading some to espouse a “management is management” approach.

Adding politics to the legal and managerial relationship discussed thus far, Simon, Smithburg, and Thompson (1950) observed that the “greatest distinction

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between public administration and other administration is . . . to be found in the political character of public administration.”

Whether one subscribes to the view that public administration is rooted in politics (Riggs, 1989), theorists such as David Truman (1951) observe that one way a public administrator uniquely serves the public interest is to mediate the political conflict in which the administrative function operates (Long, 1949).

If public administration is simultaneously a creature of political, managerial, and legal values (Rosenbloom, 1983), herein lies the utility of framing public administration in law. Public laws embody an interpretable settlement, while admittedly not always a permanent one, of political conflict; a statement imbued with administration’s authority, accountability, and performance expectations. Sound managerial decisions couched in such settlements simultaneously transcend the conflict inherent in the politics–administration dichotomy. So framed, public administrators can be, at once, politically sensitive and managerially savvy.

This is not to say that public law is without ambiguity. As Truman (1951) described the public administrator’s role in mediating political conflict, he noted, “It is not the ambiguities in the law that make difficult the question of what groups shall have privileged access to an administrator. Almost all legislative declarations are ambiguous in part. It is rather the causes of the ambiguity that make the difference.”

Framing public administration in public law does not necessarily resolve the causes of ambiguity. However, a legal framing makes possible managerial decisions that are politically informed within a particular institutional arrangement. Administration informed by such a political settlement embraces the Wilsonian dichotomy by transcending it. Law in this view is not a separate set of constraints, but the simultaneous embodiment of public administration’s political nature and normative requirement to conform to public law in a constitutional democracy.

Expounded in this way, I do not believe my critique to be beyond White’s own conception of public administration and the law.

Law provides the immediate framework within which public administration operates, defining its tasks, establishing its major structure, providing it with funds, and setting forth rules or procedure. . . . Legality therefore becomes a primary consideration of administrators, and legal advisers acquire an importance, which far outweighs their strictly administrative contribution . . . Public administration is embedded in law, and the student of the subject will often be with the statutes (Storing, 1965, citing White’s 2nd ed., pp. 11, 32).

What I am suggesting here is a slight departure from calls to re-found public administration on the basis of public law. Perhaps past calls to re-found administration legally have been less than productive because they are somewhat contrary to White’s, and to a lesser extent, Wilson’s vision of public administration founded on management. Rather, what I suggest here is a legal framing versus a legal founding. My recommendation allows a base of management centered within the
Legal framework for public administration

Political conflict and settlement yield Meta Constitutional, Constitutional and Collective laws/rules-in-use. These institutional boundaries frame public administration. They comprise the laws/rules-in-use that Prescribe, Invoke, Monitor, Apply, and Enforce Public Administrative Functions.

Managerial Base of public administration

Operational Rules-in-Use concerned with the public administrative functions of Provision, Production, Distribution, Appropriation, Assignment, Consumption.

Figure 1. Public administration within its legal/institutional framework

institutional context of public law.

To illustrate within an existing corpus of theoretical work the functional relationships implicit in my recommendation, I have adapted Ostrom’s (2005, p. 59) Institutional Analysis and Development (IAD) Framework (see Figure 1). The figure conceptually demonstrates the institutional relationships and functions of public administration framed by law. Future work might explore the influence public managers have in shaping the political and legal context in which they work, suggesting that the relationship arrow in the figure is bidirectional.

In its present iteration, however, the framework illustrates an institutional arrangement where management is the focal—even foundational—activity of public administration,\(^4\) but a foundational activity that exists within a legal context\(^5\) that significantly shapes the functions of the administrator. To ignore the legal and political aspects (nonshaded frame) of administration’s institutional context is to permanently insulate administration from law and politics. A politics–administration dichotomy on these insulated terms was never Wilson’s intent, and his observation that the essence of public administration is the detailed and systematic execution of the public law has never been more relevant to a field of public administration still beguiled by administrative paradigms and expediencies\(^6\) that do not firmly frame public management in law.

Notes

1. Lynn, Heinrich, and Hill (2001, p. 7, emphasis added) defined governance as those “regimes, laws, rules, judicial decisions, and administrative practices that constrain, prescribe, and enable the provision of publicly supported goals and services.”

2. However, Kassel’s (2008) article offers qualitative evidence to the contrary, that compliance “with rules for contracting and competitive selection of contractors can be an essential element of both a project’s success and its accountability.” <<AU: Provide page number.>>

3. I note here that the institutional causes leading to legal ambiguity are likely most at
home in the constitutional and meta-constitutional action situations described in Figure 1 and
are largely beyond the purview of the typical public administrator to manage or influence.
4. Just as operational situations are foundational activities in Ostrom’s (2005) IAD.
5. This is similar to meta-constitutional, constitutional, and collective choice situations in
the IAD framework.
6. For example, governance replacing the notion of government (Rosenbloom & Naff,
2008; see also, Newbold, 2008; Rohr, 2008).

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