

Context Matters: Pedagogy and Comparative Public Administration

*Sheila Suess Kennedy**

UDK 37.01:35.072
Preliminary scientific report / prethodno znanstveno priopćenje
Received / primljeno 3. 12. 2012.
Accepted / prihvaćeno 25. 3. 2013.

Those who teach public management increasingly encourage students to consult resources from countries other than their own, and to look around the globe as well as around the corner for answers to local problems of service delivery and agency administration. While the reference to »best practices« has much to recommend it, it should not be allowed to obscure important differences in national legal and constitutional cultures – differences that reflect the specific value criteria and political framework within which each country's citizens evaluate their government's performance. The challenge for public administrators and those who teach them is to distinguish between the areas that can benefit from best practices, and those where a nation's distinctive history and culture make importation of a practice problematic.

Key words: Best practices, comparative public administration, legal systems, legal and cultural context

* Sheila Suess Kennedy, Professor of Law and Public Policy at the School of Public and Environmental Affairs, Indiana University-Purdue University, Indianapolis, USA (profesorica prava i javnih politika, Škola za javne i okolišne poslove, Indiana Sveučilište-Purdue Sveučilište, SAD, e-mail: shekenne@iupui.edu)

1. Introduction

In recognition of the increasingly global nature of the economic, ecological and social challenges facing governments, the field of public administration has gradually been embracing a more comparative and international approach (Pierre, 1995; Heady, 2001; McGrath et al., 2010). Scholars engage in comparative public administration research for two broad and related reasons: the first is scholarly interest in the varieties of institutional approaches to governance, and the consequences of similarities and differences between bureaucracies and political systems. Investigations of those differences allow researchers to draw lessons about governance from an analysis of varying patterns of organization and control.

While the conclusions drawn from such studies eventually make their way into the literature, and hence into the classroom, the second reason is more practical and pedagogical in orientation. This approach involves an examination of the day-to-day, largely technocratic challenges faced by public servants around the globe in an attempt to translate and apply in our own countries the best practices and most effective solutions to those common challenges that have been adopted by others. Those who teach public management increasingly encourage students to consult resources from countries other than their own, and to look around the globe as well as around the corner for answers to local problems of service delivery and agency administration.

This latter approach, while it has much to recommend it, should not be allowed to obscure important differences in national legal and constitutional cultures – differences that reflect the specific value criteria and political framework within which each country's citizens evaluate their government's performance. As Christopher Pollitt has noted:

To take the first point further, the whole *idea that there is one model or set of principles that can or should be applied everywhere is suspect*. As many scholars and some practitioners have been observing for decades, there is no 'one best way'. The whole exercise of reform should begin with a careful diagnosis of the local situation, not with the proclamation of a model (or technique) which is to be applied, top down. 'No prescription without careful diagnosis' is not a bad motto for reformers. (Emphasis in the original.)

Pollitt's point is that, while the increase in collaboration between public managers internationally is generally beneficial, it is important to distinguish between service delivery modalities that can be improved and in-

formed by reference to broader international practices and those that are rooted in and shaped by the disparate histories, cultures and constitutions of particular nations. As another scholar has noted:

»The comparative study of public administration is, as Heady (1990) argues, struggling to accommodate two seemingly inconsistent tendencies. One tendency is to try to 'generalize by making comparisons that are as inclusive as possible, and by searching for administrative knowledge that transcends national and regional boundaries' (Heady 1990, p. 3). The other tendency is that toward case-specific or idiosyncratic analyses 'with only scant attention, or none at all, to foreign experience.' (ibid.) Clearly, public administration has never experienced the same significant orientation toward comparative, cross-national analysis which characterizes most other fields of political science. Therefore, in some ways, the field of comparative public administration brings the study of public bureaucracies closer to political science and policy analysis (Peters 1992), a development which will probably infuse energy into this research. (Peters 1988 p. 189)« (Pierre, 1995).

Admittedly, there are many public administration challenges that transcend political systems, or are only tangentially affected by political culture. Basic public services typically fall within this category. How public managers assure water quality, provide transportation modalities, approach economic and community development, pick up and dispose of waste – these and many similar functions performed by a nation's bureaucracy will be largely unaffected by differences in historical and constitutional norms. Even some public safety and criminal justice methods and technologies, which are more likely to reflect national understandings of what constitutes crime and what procedures are required by due process, fall into this category. When tasks are largely methodological and managerial, the sharing of »best practices« can help us learn from each other, to the benefit of all. As Alberi and Bertucci (2006) have noted, however, although the concept of best practice is widely used to distinguish exemplary or improved performance in organizations, the term can be problematic in relation to governance and public administration. This is true for a number of reasons, including the legal and cultural context of the practices being evaluated.

The challenge, for public administrators and those who teach them, is to distinguish between the areas that can benefit from best practices and those where a nation's distinctive history and culture make importation of a practice problematic. Those who teach public administration need

to take care lest emphasis upon cross-cultural commonalities in certain of these large areas of everyday practice end up obscuring important differences in public administration that are rooted in very different approaches to the role of government – differences that reflect nations' particular histories, philosophies and governing structures. Pedagogy of public administration that focuses solely on surface similarities and ignores these deeply rooted underlying distinctions short-changes students and produces public managers who are ill equipped to deal with important issues in ways that will enhance rather than undermine administrative legitimacy.

A number of scholars from a number of countries have cautioned against such mechanical transfers of administrative practices. (Taube, 2002; McGrath et al., 2010; Lynn et al., 2000). Alberti and Bertucci (2006) advise developing »a set of tools and methodologies to identify the validity and transferability of national practices and experiences«. Cortazar (2006) has been even more direct:

»Given the focus on learning about best practices in a specific context in order to transfer lessons learned to another context at a later date, the reader may think that what is most important would be to evaluate the results actually obtained. But is it possible to apply what is learned about one practice in another context without a prior understanding of how and why the practice was able to develop and operate appropriately in its original context? We do not think so. Because the contexts are not equivalent, it does not make sense to merely copy a practice, which is why Bardach (2004) proposes to extrapolate it, that is, to apply our conclusions about a practice in its original context to a different context.«

2. »Best Practices« in the Classroom

In a very real sense, the study of public affairs and public management will always be particularistic. The field of public administration, after all, is defined as analysis and management of the public's business *as that business is defined by a particular society at a particular time*. Efforts to study or replicate »best practices« without due regard for the governing premises of the society within which those practices occur are at best inexact and at worst, counterproductive.

The importance of context presents educators with a significant challenge: how do we learn from each other while recognizing and respecting the effects of cultural distinctions bearing upon governance? The ongoing de-

bate over the proper approach to comparative public administration pedagogy raises both normative and technical questions about what we teach our students. Several such questions come immediately to mind: How do we teach students to approach public policy with an informed sensitivity to the operation of national norms? How do we identify and assess the function and relative importance of mediating institutions – non-profits and NGOs – in countries with very different understandings of the roles such organizations should fill? How do we ensure that students will recognize and accommodate the systemic structures that empower or constrain public managers in different constitutional contexts? In short, how do we marry citizenship education to public management skills, so that public policy and administration will be informed by both sets of competencies? A well-regarded American introductory public affairs text describes the policy process as a series of eight steps: 1) establish the context; 2) formulate the problem; 3) specify project objectives; 4) explore alternative solutions; 5) set the policy; 6) develop an implementation plan; 7) monitor and evaluate; and recycle the process (Bonser et al., 1996). This prescription and sequence, beginning as it does with an understanding of the context, seems right.

When we talk about »establishing the context«, we necessarily start with national histories, constitutions and legal systems, because they shape distinctive national cultures and establish a large part of that context. Where they exist, constitutions are controlling declarations of public policy, embodying a society's fundamental philosophical assumptions about law, legitimacy and government power. Constitutions dictate the ways in which we »formulate the problems« and effectively foreclose exploration of certain »alternative solutions«. To take illustrative examples from America, the United States Constitution does not permit officials to entertain the »alternative solution« of imposing martial law when burglary rates get too high, or the »alternative solution« of censorship when music lyrics are deemed to be too suggestive. It does not permit American deficit hawks to reduce welfare rolls by feeding only Caucasian children, or to combat pollution by appropriating privately owned property. The U.S. Constitution, and especially the jurisprudence it has generated, controls how Americans »set the policy« and how we proceed with the »implementation plan«. In civil law countries, where case law does not constitute legal precedent in the same way court decisions do in common law countries, the guidance provided by the Constitution is textual rather than jurisprudential, but that document nevertheless requires managers to discharge their responsibilities within the framework of rules provided.

Failure to follow those rules, failure to operate within the appropriate constitutional context, undermines legitimacy – the very definition of which is »operational rules rooted in constitutional or societal norms«. A legitimate exercise of authority, no matter how coercive, is different from the exercise of raw power unrestrained by adherence to codes rooted in normative values, and members of the polity can be counted on to see it differently. Being perceived as legitimate is especially critical to the continued effectiveness of those in local government agencies who must make and implement policies having an immediate and concrete impact on citizens with whom they regularly interact.

If constitutions circumscribe the arena within which public policy debate may legitimately occur in a given society, familiarity with applicable constitutional principles and the culture they have shaped also provides a common language enabling meaningful democratic dialogue. Students need not agree with every choice required by a nation's constitution, but they do need to understand what those choices are, why initial constitutional decisions were made, and why and how they continue to matter (or not). Without that essential framework, public policy issues cannot be properly framed or their significance clearly understood; they will tend to be viewed as isolated and unconnected challenges rather than aspects of a coherent approach to the use of state power. With constitutional literacy comes recognition that certain underlying principles will be as applicable to discussions of welfare programs and land use as they are to public health or the civil rights of religious minorities.

It is important to recognize that unless they are trained to look for inconsistent assumptions, inhabitants of different cultures will take for granted the universality of their worldviews. This is true even of countries that all consider themselves democratic. For example, the term »public affairs« implies the existence of both public and private realms. A generally underappreciated reality is that different legal and constitutional systems define those spheres very differently. In the United States, the legal system draws a constitutionally significant distinction between the public sector, defined as government and its agencies and officials, and civil society, defined as the multitude of nongovernmental, voluntary communal and religious associations through which individuals may act and connect. That distinction is a crucial, if unarticulated, element of most U.S. policy decisions, because only government actors can violate the American Bill of Rights, which limits government actions but not private behaviours. (Kennedy, Schultz, 2010; Hartmus, 2008; Cross, 2001; Kennedy, 2006). Based upon this particular understanding of the relationship of public and

private behaviours, the American Constitution does not grant affirmative rights; it limits the power of the state to infringe private ones. This is not the case in many other Western democratic states, where it is common to have a constitutional system that both restrains and empowers government (Cross, 2001), and where social entitlements are frequently embedded in the constitution. As a consequence of these differences in legal context, public managers working in different countries must confront a different set of questions when they are contemplating collective social action.

3. Exemplary Cases

An example of the practical significance of such legal worldviews can be seen in the responses of different systems to efforts to privatize previously governmental functions. The move toward greater privatization has gained popularity in a number of countries over the past quarter-century, despite considerable confusion over the precise meaning of the term. Although »privatization« literally means ceding government-run enterprises to the private sector, much as Margaret Thatcher did in England, most of these arrangements are more accurately described as »contracting out«. The government continues to determine the need for the program or service, funds it, and remains ultimately responsible for its management; however, the relevant agency enters into an arrangement – typically a contract, but sometimes a grant or other partnership arrangement – with a private or non-profit organization to deliver the service or otherwise perform the designated function. In the United States, during the past century, these arrangements have fundamentally transformed governance. The scope of government action has increased at all levels of our federal system, but the means through which agencies of government address service delivery and public problem-solving have changed radically (Kennedy, 2006; Kennedy, Jensen, 2005; Salamon, 2002; Fredrickson, 1993; Kettl, 2002). In the U.S., this transfer of sovereignty to nongovernmental agents is more than merely a management problem, as it is in many other countries, because constraints on the use of public authority are fundamental to the United States' political and constitutional order. The Bill of Rights restrains only *government* action, making it essential that citizens and public managers alike are able to identify when government has acted. The growth of contracting arrangements has made that identification increas-

ingly problematic, blurring the boundaries between private and public action and making it difficult in many situations to determine whether a particular action or decision can fairly be attributed to government. The result, in the opinion of many scholars (Metzger, 2003; Kennedy, 2001; Gilmour, Jensen, 1998) has been a loss of essential governmental accountability. Note, however, that this is not an accountability issue in countries with constitutions that do not rest on foundations of »negative liberty«. In those regimes, public service delivery by private contractors or NGOs raises management issues, not constitutional ones. Different systems embed different concepts of accountability.

Similarly, most European governments routinely contract with religious organizations; separation of church and state, if it exists at all, is framed very differently than in the U.S. American courts have long held that, whatever else the First Amendment's Establishment Clause may mean, it definitely precludes the use of tax dollars to advance religion or support religious endeavours. On the other hand, faith-based and religious organizations remain free to contract with agencies of government to provide secular services, and local units of government fund thousands of them to provide job training, childcare, adoptions, homeless interventions and a plethora of other human services. Legally, public managers must ensure that the contracting organizations providing these services are not engaging in constitutionally prohibited activities, i.e., that they are not proselytizing clients, requiring their attendance at church services or engaging them in prayer. The ability of cash-strapped government agencies to assure compliance with these constitutionally required prohibitions is virtually non-existent; as a result, the propriety of governmental partnerships with religious organizations has from time to time become a heated and bitterly contested political issue. (Kennedy, Bielefeld, 2006; Lupu, Tuttle, 2003, 2004; Lynn, 2002).

These outsourcing issues are far from trivial. They do not simply reflect different ways of delivering social services. Instead, they implicate the previously referenced, normative understandings of *accountability* – a concept absolutely integral to public administration theory and practice. In an important article on outsourcing and the New Public Management, Peters, Guy and Pierre (1998) made precisely this point.

»The basic problem in both theories [outsourcing and NPM] is that the linkage between control and accountability – the heart of democratic theory and a democratic system of government – has been confused. Both models of public administration seek to replace political power derived

from legal mandates or elected office with an entrepreneurial style of leadership or – with NPM – a remote and indirect model of leadership. This creates two different problems, derived from different perspectives on governance and citizenship. First, if elected political leaders have such limited control over public administration, is it reasonable to hold them accountable for the decisions and actions of the public service, and if elected officials should not be held accountable, then who is accountable?«

Contracting with a third-party surrogate for service delivery is simply one example of the complex interplay between basic governmental institutional theories and managerial efforts to improve service delivery. Peters, Guy and Pierre quite accurately note the problem with assigning accountability – the problem with determining who is responsible for what. There is, however, an even more foundational accountability issue, and it brings us back to the central concern of this article, the role of national political culture in determining accountability. It is necessary, but not sufficient, to identify the person or institution that is responsible for a particular government action. It is even more critical to ask the question »accountable to what«? What is the system of rules, what are the normative expectations, against which we are to measure action and determine accountability? If we do not understand that legal and cultural context, we cannot form a coherent theory of accountability, and without a coherent theory of accountability – a theory that is grounded in normative expectations and transparent enough to allow citizens to identify responsible actors – we simply cannot teach a discipline called public administration. At most, we can offer technocratic skill training.

4. Instructional Tools and Approaches: Some Conclusions

Unfortunately, conscientious public affairs instructors who understand they must begin any comparative exercise with an introduction to the basic assumptions of a society do not have a wealth of pedagogical materials available to them. Too many books dealing with comparative public administration ignore or slight foundational social and contextual differences, preferring to highlight the more technocratic issues common to public administrators everywhere. There are, however, a few scholars who have argued for the importance of grounding public management pedagogy in

the relevant political theory. Michael Spicer's book, *The Founders, the Constitution and Public Administration*, published in 1995, made a strong case for the importance of a public management rooted in a nation's constitution. »The purpose of this book«, Spicer noted in his introduction »is to examine the worldviews underlying public administration and the Constitution«. Although Spicer directed his attention to the U.S. Constitution, all legal systems are constitutive of national cultures to a greater or lesser extent, and they all shape the worldviews of those who operate within them. Differences in those worldviews can be seen in the varying attitudes toward government that characterize different countries, even when the countries being considered are all constitutional democracies. In the U.S., as public administration has concentrated on the need to legitimize the administrative state, it has found itself at odds with a polity fixated on the need to limit government power, a central U.S. Constitutional concern. As a result, administrative actions that are taken for granted in European countries with strong administrative traditions often generate accusations of illegitimacy in highly individualistic America.

Constitutional cultures not only dictate perceptions of legitimacy, they also provide the framework within which a polity defines ethical public service. John A. Rohr, one of the pre-eminent American scholars in the field, insisted, »the job of the public manager is to implement the Constitution«. (Rohr, 1998). Perhaps the most eloquent statement of this theme occurs in Rohr's essay entitled »A Constitutional Theory of Public Administration.« After noting that adherence to constitutional principles is independent of partisan ideology, and that »The Constitution transcends a given tax policy, a weapons system and food stamps«.

Rohr's insight extends beyond constitutional issues, just as context includes more than a nation's founding documents and/or assumptions. Measurements of legitimacy and accountability are necessarily contextual, and public administrators focused upon the importation of »best practices« need to preface that exercise with a review of the nature of the practice at hand and the extent to which its success or failure requires an administrative context within which it makes sense. Unfortunately, there is no simple test for appropriateness; each case must be assessed on its merits. What we can do, however, is highlight the issue and its significance.

All constitutions and legal systems rest upon considered normative judgments about the conduct of public affairs, judgments that have their roots in the particularities of that country's history and experience. Trying to

teach public administration without constant reference to those foundational judgments is like trying to teach reading without reference to the alphabet.

References

- Alberti, A., G. Bertucci (2006) *Replicating Innovations in Governance*. In: *Innovations in Governance and Public Administration: Replicating What Works*. New York: United Nations, pp. 1–25
- Bonser, Charles F., Eugene B. McGregor, Jr., Clinton V. Oster, Jr. (1996) *Policy Choices and Public Action*. Upper Saddle River: Prentice-Hall
- Cortazar, Juan Carlos (2006) *Learning from Best Practices in Public Management: A Methodological Approach*. In: Alberti & Bertucci (eds.) *Innovations in Governance and Public Administration: Replicating What Works*. New York: United Nations
- Cross, F. B. (2001) *The Error of Positive Rights*. *UCLA Law Review* 48: 857–924
- Frederickson, H. George (1993) *Ethics and Public Administration: Some Assertions*. In: H. George Frederickson (ed.) *Ethics and Public Administration*. Armonk: M. E. Sharpe
- Gilmour, Robert S., Laura S. Jensen (1998) *Reinventing Government Accountability: Public Functions, Privatization, and the Meaning of 'State Action'*. *Public Administration Review*
- Hartmus, D. M. (2008) *Teaching Constitutional Law to Public Administrators*. *Journal of Public Affairs Education* 14(3): 353–360. Retrieved from <http://www.jstor.org/stable/40215822>
- Heady, F. (2001) *Public Administration: A Comparative Perspective*. New York: Marcel Dekker, Inc.
- Kennedy, Sheila Suess (2006) *Checks and Balances? Or L'etat, C'est Moi? The Remnant Review* 2(1): 65–78
- Kennedy, Sheila Suess (2001) *When is Public Private? State Action, Privatization and Public-Private Partnerships*. *George Mason Civil Rights Law Review* 11(2)
- Kennedy, Sheila Suess, Wolfgang Bielefeld (2006) *Charitable Choice at Work: Faith-Based Job Programs in the States*. Washington: Georgetown University Press
- Kennedy, Sheila, David Schultz (2011) *American Public Service: Constitutional and Ethical Foundations*. Jones & Bartlett Learning
- Kettl, Donald F. (2002) *The Transformation of Governance: Public Administration for Twenty-First Century America (Interpreting American Politics)*. Johns Hopkins Press
- Lupu, Ira C., Robert W. Tuttle (2003) *The State of the Law 2003: Developments in the Law Concerning Government Partnerships with Religious Organiza-*

- tions. Roundtable on Religion and Social Welfare Policy. Albany, NY: Rockefeller Institution of Government
- Lupu, Ira C., Robert W. Tuttle (2004) *The State of the Law 2004: Developments in the Law Concerning Government Partnerships with Religious Organizations*. Roundtable on Religion and Social Welfare Policy. Albany, NY: Rockefeller Institution of Government
- Lynn, Laurence E., Jr. (2001) *Social Services and the State: The Public Appropriation of Private Charity*. *Social Service Review*
- Lynn, L. E., Jr., C. J. Heinrich, C. J. Hill (2000) *Studying Governance and Public Management: Challenges and Prospects*. *Journal of Public Administrations Research and Theory* 10(2): 233–262
- McGrath, C., D. Moss, P. Harris (2010) *The Evolving Discipline of Public Affairs*. *Journal of Public Affairs* 10: 335–352. doi: 10.1002/pa.369
- Metzger, Gillian E. (2003) *Privatization as Delegation*. *Columbia Law Review* 103: 1367–1502
- Pierre, J. (1995) *Bureaucracy in the Modern State: An Introduction to Comparative Public Administration*. Northampton: Edward Elgar Publishing Limited
- Peters, G. B., J. Pierre (1998) *Governance without Government? Rethinking Public Administration*. *Journal of Public Administration Research & Theory* 8(2): 223–243
- Pollitt, Christopher (2011) accessed at <http://blogs.worldbank.org/governance/30-years-of-public-management-reforms-has-there-been-a-pattern>
- Rohr, John (1999) *Public Service, Ethics, and Constitutional Practice*. University of Kansas Press
- Salamon, Lester M. (ed.) (2002) *The Tools of Government: A Guide to the New Governance*. New York: Oxford University Press
- Spicer, Michael (1995) *The Founders, the Constitution, and Public Administration: A Conflict in Worldviews*. Georgetown University Press
- Taube, C. (2002) *Baltic Diversity: Comparing Constitutions*. *Jurisprudencija* 30(22): 42–46

CONTEXT MATTERS:
PEDAGOGY AND COMPARATIVE PUBLIC ADMINISTRATION

Summary

The pedagogy of public administration is concerned in significant part with measurements of legitimacy and accountability. Such evaluations, however, are necessarily contextual. Public administrators focused upon the importation of »best practices« need to preface that exercise with a review of the nature of the practice at hand and the extent to which its success or failure requires an administrative context within which it makes sense. Unfortunately, there is no simple test for appropriateness; each case must be assessed on its merits. What we can do, however, is highlight the issue and its significance. All legal and administrative systems rest upon considered normative judgments about the proper conduct of public affairs, judgments that have their roots in the particularities of a country's history and experience. Trying to teach public administration without constant reference to those foundational judgments is like trying to teach reading without reference to the alphabet.

Key words: Best practices, comparative public administration, legal systems, legal and cultural context

KONTEKST JE VAŽAN: PEDAGOGIJA I KOMPARATIVNA JAVNA UPRAVA

Sažetak

Pedagogija javne uprave u značajnom se dijelu bavi mjerenjem legitimiteta i odgovornosti. Takve su ocjene, međutim, nužno kontekstualne naravi. Oni u javnoj upravi koji su prije svega usredotočeni na uvoz »najbolje prakse« moraju prije no što učine takvo što razmotriti o kakvoj se praksi radi te u kojoj mjeri njezin uspjeh ili propast ovisi o upravnom kontekstu u okviru kojega ista ima smisla. Nažalost, ne postoji jednostavan test primjerenosti; svaki se slučaj mora razmatrati i ocjenjivati ponaosob. Ono što možemo učiniti jest skrenuti pozornost na problem i njegovu važnost. Svi pravni i upravni sustavi počivaju na promišljenim normativnim prosudbama o tome kako pravilno voditi javne poslove, prosudbama koje se temelje na povijesnoj i iskustvenoj posebnosti neke zemlje. Pokušati podučavati javnu upravu bez stalnog referiranja na spomenute temeljne prosudbe isto je kao da pokušavamo podučavati čitanje bez referiranja na abecedu.

Ključne riječi: Najbolja praksa, komparativna javna uprava, pravni sustavi, pravni i kulturološki kontekst