

# report PUBLIC JUSTICE

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## **Governing for Public Justice Guideline #2 for Government and Citizenship**

by  
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The second of the Center's *Guidelines for Government and Citizenship* (<http://www.cpjustice.org/guidelines>) focuses on the task of government. It follows naturally from the first, which is on the nature of the political community in which government bears its responsibility.

The first proposition (1) of the second guideline should not sound unfamiliar or problematic to any American citizen: "The government of a political community bears responsibility to legislate, enforce, and adjudicate public laws for the safety, welfare, and public order of everyone within its jurisdiction. The guiding norm, or principle for such laws is public justice." But what does this entail?

On the one hand, we distinguish legislative, executive, and judicial functions of government and we emphasize three all-embracing purposes of those functions, namely the safety, welfare, and public order for citizens of the political community. One could sum up all three with the phrase "the common good" as long as one keeps in mind that this is the good of the commons under public law, not the good of all of human life and society. The responsibility for many human goods does not rest with government but with other institutions, organizations, and individual persons.

Next (2) is the statement that the limited purpose and the accountability of government "should be articulated in a basic law or constitution," whether or not that constitution is a written document. This is all part of the meaning of "the rule of law." Going as far back as the "law of the king" in Deuteronomy 17:20, the principles of government's limited purpose and its accountability to a law above it have been articulated. Put in contemporary English, government should not become totalitarian (without a limited, defined responsibility) nor should it be arbitrary and accountable only to itself. This is what we say in the next statement (3), namely, that for government to be "under law" "means that it is not authorized to do whatever it wishes, but may

exercise its power only within the boundaries of the political community's constitution, laws, and court rulings."

In addition to government's accountability to the constitution and laws, it must also be held accountable (statement #4) by its citizens through means such as "free elections, courts of law, and freedom of speech through independent media and associations." By this statement the implication is clear that people and nongovernment institutions exist outside of government and that government both answers to and addresses people in those capacities.

And this leads to something that is very ambiguous in the American system. The next two propositions (5 and 6) bring God into the picture: "While government and citizens hold one another accountable under the law and to the law, the ultimate accountability of both is to God." "Governments may never act as if their authority is limitless or omniscient, because humans also have a wide variety of God-given, non-political responsibilities."

The ambiguity of our American system in this regard is that the U.S. Constitution makes no mention of human accountability to God. The ultimate sovereign to which it refers is "the people." At the same time, Americans have traditionally accepted the idea articulated in the Declaration of Independence that certain rights of individuals come from God—that we are endowed by our Creator with such rights. You can see, then, the lines of connection here: God endows individuals with rights, individuals create government in a way that is supposed to protect those rights, and government is accountable to the people to do what they have sovereignly established it to do. God is in this picture only in relation to individuals and only as the grantor of rights. God is not directly related to government, nor does government have any direct accountability to God.

The resolution of this ambiguity cannot come simply by making a statement in the Constitution, for example, that governments are ultimately accountable to God. That would do no more than the Declaration's statement does with its assertion that humans have been endowed by their Creator with rights. There is nothing in such statements that could be adjudicated in a court of law or used to show a legislator how to write a law that God would approve. Nor should we try to settle the matter of government's accountability to God by making government answerable to a church or to a body of clerics who can supposedly read the divine law or the divine mind to know what that accountability would mean. Government is a human responsibility, and if the citizens and government officials of any political community do not fill their offices in accountability to God by doing justice, then all the statements that might declare them accountable to God would mean little if nothing. In the end, the statement that public offices are accountable to God is a confessional statement, precisely the kind of confessional statement that the Center for Public Justice should make, since that is what we believe.

Working out in practice what it means that public officials are ultimately accountable to God will have to be demonstrated in the actual laws and functions of government in relation to citizens and society. It will mean doing justice and overcoming injustice by showing in actual practice the difference between them. It will mean protecting and not violating the responsibilities of nongovernment institutions and organizations that have their own direct accountability to God. “The proper exercise of governmental authority in the political community, therefore,” (the 6th statement goes on to say) “must include the legal recognition and impartial protection of human rights and responsibilities—both individual and institutional—that belong to the people and not to government.”

In sum, the next proposition (7) articulates two things government must do to uphold public justice:

- uphold the common good of the political community in its own right, which includes protecting citizens from domestic and foreign injustice, and
- recognize in law the non-political responsibilities that belong to those who live in the territory of government’s jurisdiction.

This brings us back to government as limited in its responsibility and as responsible to fulfill its own calling, which is to uphold the common good in a public-legal way.

Finally, and heavily loaded, is the statement’s final proposition (8): “Upholding public justice for a political community must include responsiveness to a variety of interrelated principles, such as *distributive justice*, which holds for the way government allocates benefits, and *retributive* and *restorative justice*, which hold for the way government punishes offenses and seeks restitution and reconciliation. The diverse demands of justice come to light as governments act, for example, to collect taxes, fund education and welfare services, punish violators of the law, distinguish civil from criminal penalties, and withstand domestic and foreign aggression.”

The point of #8, in other words, is that government’s fulfillment of its limited purpose will come only through the actions of making laws, enforcing them, and adjudicating them. And in that process, citizens and public officials will be involved in all kinds of ways heeding different dimensions of what justice demands.

Let me offer two examples of how the task of government can be understood by what it does.

First, consider the access of poor people to legal assistance. A 2005 study by the Legal Services Corporation (reported in *The Washington Post*, 10/15/05) concluded that “80 percent of low-income Americans who need civil legal assistance do not receive any, in part because legal aid offices in this country are so stretched that they routinely turn away qualified prospective clients.” Now, one might say that the U.S. Constitution does not guarantee to its citizens access to legal aid. It may guarantee a fair trial and many other rights, but not “civil legal assistance.” If someone is too poor to pay a

lawyer for legal assistance, that may be too bad, in the same way that it is too bad if someone cannot afford a television set, or a new car, or graduate-level education. But none of those insufficiencies is an injustice that government is obligated to do something about.

We would argue, however, that a society in which almost every activity and responsibility is connected to civil law is a society in which citizens deprived of legal assistance cannot function as full citizens. Signing a contract for a job, or in order to be able to rent an apartment, or in order to buy a car means that one is functioning in a society built on legal processes. Not having access to legal aid is something like not having access to education unless one can pay for it oneself. While a citizen may not have a constitutional *civil right* to legal assistance or to an education, distributive justice demands of government in a society such as ours certain assurances of the common good of all citizens and thus of the common good of the republic as a whole. This is not to say that there is only one way for government to assure citizens of access to legal assistance. Perhaps legal-assistance vouchers, like food stamps, could be made available to those in need, to be used at any law office. Perhaps greater public funding of legal aid offices is the way to do it. The question of *how* to assure the aid is secondary. The primary issue is government's responsibility to do justice to all citizens as part of upholding the common good of the political community.

A second example of government's responsibility comes from the current American engagement in Iraq. Most of our involvement in Iraq has been by military means. The original aim of the Bush administration was to overthrow Saddam Hussein so the Iraqi people could form their own democratic government. When that did not happen as easily or as quickly as the administration had hoped, it became obligated, as the occupying government, to fulfill the responsibility of governing Iraq until a capable Iraqi government could be established. Yet in case after case the United States and its few allies did not establish, and still have not, established just governance in Iraq. Instead, the administration moved as quickly as possible to set up a so-called interim Iraqi government and, "on paper," transferred sovereignty to it. But that government had little control over police and security forces and little means of conducting ordinary civil government throughout the country. Next, the U.S. pushed a few elected leaders from some parts of Iraq to draw up a constitution. But that constitution did little to assure the creation of a workable national government. And in order to get the constitution approved, American officials allowed and helped the Iraqis to write such a weak document that it all but solidified the independence of Kurds and Shiites while leaving open the most important questions of national governance. Today, even after national elections, there is very little that American citizens would recognize as adequate national governance in Iraq.

Most of what Americans hear from our government today is about how our military is continuing to try to build up Iraqi military and security forces so that the insurgency can be held in check and a new Iraqi government can be given responsibility to enable U.S. military forces to exit. But the work of the American military is only part

of the responsibility the U.S. assumed when it destroyed the government of Saddam Hussein. And to this date, we have almost entirely failed to establish security for citizens, access to courts, the foundations for economic recovery, and much more. To be sure, these are all things for which an Iraqi government should eventually assume responsibility, but insofar as it is unable to do so because the American occupation has not laid the foundations for it to do so, criticism must fall first on the U.S. government.

No society can be sustained or continue to function without a government that can, to some extent, fulfill its limited and accountable purpose to enable citizens to exercise their civic and non-governmental responsibilities. The Center's second statement, on "Government," in its series of *Guidelines for Government and Citizenship* is an attempt to articulate some of the basic principles that must be heeded if governments are to fulfill their responsibilities.