

## **CHAPTER 2**

### **LEGITIMACY: LITERATURE REVIEW**

In this chapter, I review the literature on sociological, political, and administrative legitimacy. To do so, I proceed in four steps. First, I review scholarship on legitimacy in disciplines outside Public Administration. Second, I review scholarship on legitimacy within Public Administration. Third, I present and defend *my definition of administrative legitimacy*. Finally, I examine the *practical consequences* of an illegitimate administrative state.

### **SCHOLARSHIP ON LEGITIMACY IN DISCIPLINES OUTSIDE PUBLIC ADMINISTRATION**

At this point, I review literature on legitimacy from disciplines outside public administration. First, I examine the literature in Sociology to see how that discipline's scholars define "legitimacy." While doing so, I examine two Dictionaries of Sociology and Kathi Friedman's *Legitimation of Social Rights and the Western Welfare State: A Weberian Perspective* (1981). Second, I use the Encyclopedia of the Social Sciences to see how it defines the term; this I discuss under the "legitimacy in Sociology" section. Third, I review Thomas Nagel's *Equality and Partiality* (1991), Seymour Lipset's *Political Man: The Social Bases of Politics* (1960), and an article from Bogdan Denticich's edited volume, *Legitimation of Regimes: International Frameworks for Analysis* (1979) to show how political philosophers define the term. Fourth, I review James Freedman's *Crisis and Legitimacy* to show how a leading scholar of administrative law defines the term.

#### LEGITIMACY IN SOCIOLOGY

In the *Penguin Dictionary of Sociology*, legitimacy is defined as "a modern problem . . . of political representation and consent" (Abercrombie, Hill, & Turner 1984 p. 119). It argues further:

The issue of political legitimacy emerges with the disappearance of direct political relationships in small-scale societies; the modern problem thus centres on which individuals are legitimately entitled to act as representatives of political power. Legitimacy is consequently bound up with the nature of political leadership (Abercrombie, Hill, & Turner 1984 p. 119).

"In classical civilization," there was "no essential difference between lawfulness and legitimacy." Power was legitimate, therefore, if it was "lawful power." When we discuss political legitimacy now, "law and morality have been partially separated." After all, the "positivist definition of law treats law as a command supported by appropriate sanctions, and the moral content of law is secondary." So today's governments can possess "legal authority without being morally just governments" (Abercrombie, Hill, & Turner 1984 p. 119).

“Modern theories of legitimacy,” the encyclopedia continues, are “often subjectivist in defining legitimate power as power which is believed to be legitimate” (Abercrombie, Hill, & Turner 1984 p. 119). Max Weber emphasized how important followers’ beliefs were to the concept, discussing three “ideological bases of legitimacy”: the traditional, the charismatic, and the legal-rational. The authors continue:

Since Weber thought that the state could not be legitimated by any absolute standards based on natural law, the modern state has a “legitimation deficit”; its operations are extended beyond the scope of public consent. Notions of legitimation deficits and crises have become common in political sociology (Abercrombie, Hill, & Turner 1984 p. 119).

Legal-rational authority, Weber argued, is the “characteristic form of authority in modern society” (Abercrombie, Hill, & Turner 1984 p. 119). In a bureaucracy, commands are “held to be legitimate and authoritative” if they have been “issued from the correct office, under the appropriate regulations and according to appropriate procedures.” An official’s authority “depends, not on tradition or charisma, but on a consensus as to the validity of rules of procedure” (Abercrombie, Hill, & Turner 1984 p. 119).

In *A New Dictionary of Sociology*, which was edited by G. Duncan Mitchell and published in 1979, legitimacy *per se* is not defined. Under “legitimacy of authority,” we are referred to “authority” in general, where “legitimation of authority” is defined [my emphasis]. “Authority,” Mitchell observes, is “one of the major forms of power through which the actions of a plurality of individual human actors are placed or maintained in a condition of order or are concerted for the collaborative attainment of a particular goal or general goals” (Mitchell 1979 p. 12). (In addition to authority, actions can be “ordered” or “concerted” through principles of “exchange,” “common interests,” or “solidarity or consensus”)

Making the connection with legitimacy, Mitchell says authority is “that form of power which orders or articulates the actions of other actors through commands which are effective because those who are commanded regard the commands as *legitimate*” [his emphasis]. He continues:

Authority differs from coercive control, since the latter elicits conformity with its commands and prescriptions through its capacity to reward or punish. The distinction is an analytical one, since empirically authority and coercive control exist together in many combinations. Authority is therefore by definition legitimate authority (Mitchell 1979 p. 13).

Mitchell emphasizes how subjective legitimacy is. “The legitimacy of authority,” he says, is “ultimately a matter of belief concerning the rightfulness of the institutional system through which authority is exercised, concerning the rightfulness of the

exerciser's incumbency in the authoritative role within the institutional system, concerning the rightfulness of the command itself or of the mode of its promulgation" (Mitchell 1979 p. 14).

While discussing the legitimacy of authority, Mitchell examines the work of Max Weber. In the traditional mode of legitimation, according to Weber, legitimacy is derived from one of three beliefs. First, legitimacy can be based on the "belief that the institutions of authority are continuous with institutions which have existed for a very long time." Second, legitimacy can be based on the belief "that the exerciser of authority has acceded to the authoritative role by a procedure and in accordance with qualifications which have been valid for a very long time." Third, legitimacy can be based on the belief that "the commands . . . are either substantially identical with commands which are believed to have been valid for a very long time or are exercised . . . in accordance with a discretionary power which the incumbents, or the predecessors with whom he is legitimately linked, have possessed for a very long time" (Mitchell 1979 p. 14).

In the charismatic mode, legitimacy "rests on the belief that the exerciser of authority and the rule or command which he enunciates possess certain sacred properties" (Mitchell 1979 p. 14).

In the rational-legal mode, legitimacy "rests on the belief that the institutional system of the exerciser of authority, the accession of the incumbent to the authoritative role, and the substance and mode of promulgation of the command (or rule) are in accordance with a more general rule or rules" (Mitchell 1979 p. 14).

Regardless of which mode is used, the legitimacy of authority is "imputed on the basis of beliefs about some direct or indirect connection with some ultimate legitimating power" (Mitchell 1979 p. 14). Ultimate legitimating powers could be "the will of God, the founders of the dynasty or society, natural law, the will of the people," and so on (Mitchell 1979 p. 140). Even the traditional and rational-legal modes "rest on beliefs about some imputed connection with a sacred," charismatic, source (Mitchell 1979 p. 140). Where the two differ from the charismatic mode is "their *indirect or mediated* connection with the sacred source," the charisma [my emphasis] (Mitchell 1979 p. 14).

In contemporary societies, both rulers and subjects—whom Mitchell defines as the "exercisers and the objects of authority," respectively—have "a need to believe in the legitimacy of the authority which they exercise or to which they are subject" (Mitchell 1979 p. 14). Consider the rulers, for whom legitimacy is important for two reasons. For one, legitimacy can strengthen their powers. For another, legitimacy allows them "to believe that what they are doing is right," in "accordance with some higher law" (Mitchell 1979 p. 14). In the end, the rulers "need to justify themselves" (Mitchell 1979 p. 14).

Now consider the subjects. They, too, seek to legitimate authority, so they can "see order in the universe in which they live which will render meaningful, and therewith acceptable, their position." In the process, subjects are able to accept "the deprivations,

which are entailed in that subordinate position, by fitting them into a larger pattern” (Mitchell 1979 p. 14). Mitchell continues:

Partly from the cognitive need for order, partly from the need to see meaning in their own position in the world and in their own share of the good and evil things offered by life, they must believe in a pattern in the world’s affairs. This is why they wish to see power exercised legitimately rather than illegitimately (Mitchell 1979 p. 14).

Despite the need to see power as legitimate, it is “often looked upon as illegitimate by those over whom it is exercised” (Mitchell 1979 p. 14). Many see power, for example, as “coercive control rather than as legitimate authority.” “To be legitimate,” power “must be subsumable under a more general pattern or order of meaning.” If it “obviously fails to conform with that order its claims to legitimacy are refuted” (Mitchell 1979 p. 15).

Power may be regarded as coercive control rather than legitimate authority if it “acts unjustly”—that is, contrary “to the highest general rules regarding the distribution of roles, reward, and facilities” (Mitchell 1979 p. 15). Authority can lose legitimacy, too, “when its effectiveness in the maintenance of order and in the distribution of roles, rewards . . . weaken or fail” (Mitchell 1979 p. 15).

Considering the subjective nature of legitimacy, it is no surprise to learn that in “no society is there a universal attribution of legitimacy to power.” Different “gaps in solidarity”—divisions by ethnicity and ideology, for example—cause “the attribution of legitimacy” to be withheld (Mitchell 1979 p., 15). At the same time, those who exercise power and those who feel its effects often have different interests, which “can also inhibit the attribution of legitimacy.” If a regime’s rulers do not “establish or maintain” their legitimacy, social order becomes less stable. By not maintaining legitimacy, both the rulers and their regime are more likely to be replaced (Mitchell 1979 p. 15).

The *International Encyclopedia of the Social Sciences*, edited by David L. Sills, contains an extended discussion of legitimacy. In this encyclopedia, the term is defined as “the foundation of such governmental power as is exercised both with a consciousness on the government’s part that it has a right to govern and with some recognition by the governed of that right” (Sills 1968 p. 244). Because the “desire for legitimacy is so deeply rooted in human communities,” Sills explains, it is difficult “to discover any sort of historical government that did not either enjoy widespread authentic recognition of its existence or try to win such recognition” (Sills 1968 p. 244).

Sills distinguishes *numinous legitimacy*—essentially a theological justification for government—from *civil legitimacy*, which is a secular justification. With civil legitimacy, the system of government “is based on agreement between equally autonomous constituents who have combined to cooperate toward some common good” (Sills 1968 p. 245). In constitutional democracies, public offices are “ordered by trust rather than exercised by dominion, and that “explains the importance of popular

elections. In fact, popular elections have “become so predominant a criterion of legitimacy that almost every nation feels obliged to pay lip service” to them, “no matter what its system of government” (Sills 1968 p. 245).

In *Legitimation of Social Rights and the Western Welfare State: A Weberian Perspective*, Kathi V. Friedman argues that “legitimacy inheres in a relationship of congruence between two sets of politically relevant variables.” Accordingly, a regime’s legitimacy “rests upon a congruous relationship between (1) political principles and political practices, and (2) the rulers and the ruled” (Friedman 1981 p. 16). “Definitiveness regarding the *elusive concept* ‘legitimacy’ has not been achieved, yet the phenomenon is most commonly analyzed in terms of these two broad sets of variables” [my emphasis] (Friedman 1981 p. 16).

A regime’s political theory includes its “political principles, values, ideals, valued objectives, and the like.” When a regime’s political theory conflicts with its political practices, a “sense of *inappropriateness*” results; this “undermines the image of the legitimate use of authority in a regime” [my emphasis]. A regime’s legitimacy may be undermined, too, when the rulers and the ruled have different views about “either the principles or the practices guiding the exercise of authority” (Friedman 1981 p. 16).

#### LEGITIMACY IN POLITICAL PHILOSOPHY

In an article published in *Philosophy and Public Affairs*, “Liberalism, Samaritanism, and Political Legitimacy,” Christopher H. Wellman presents the “problem of political legitimacy” and attempts to resolve it. For my purposes here, I want to know how he defines the problem, not how he solves it. So I will not examine his solution, only his discussion of the problem.

The problem of political legitimacy arises, Wellman argues, because “[p]olitical states coerce those within their territorial borders.” While you are in a country, it “threatens to punish you if you disobey its legal commands” (Wellman 1996 p. 211). To show “why this coercion is permissible” is to provide an “account of political legitimacy,” explaining “why the state has a right to coerce its citizens and, correlatively, why its citizens have no right to be free from this coercion” (Wellman 1996 p. 212). For liberals, political legitimacy is a problem because “they place a premium upon individual liberty, and states necessarily employ coercive measures that restrict this personal dominion” (Wellman 1996 p. 212).

In *Political Man: The Social Bases of Politics*, Seymour Lipset argues that legitimacy “involves the capacity of the [governmental] system to engender and maintain the belief that *the existing political institutions are the most appropriate ones for society*” [my emphasis] (Lipset 1960 p. 77). Legitimacy, according to Lipset, is an “evaluative” concept, so “[g]roups regard a political system as legitimate or illegitimate according to the way in which its values fit with theirs” (Lipset 1960 p. 77). The evaluative nature of legitimacy distinguishes it from effectiveness, for effectiveness analyzes performance and is judged by instrumental criteria (Rothschild 1979 p. 38).

After explaining what legitimacy is, Lipset discusses crises of legitimacy, which are “primarily a recent historical phenomenon.” In contemporary society, we have “sharp cleavages among groups.” With mass communication, they can “organize around different values than those previously considered to be the only acceptable ones” (Lipset 1969 p. 78). “A crisis of legitimacy is a crisis of change,” Lipset asserts. During a “transition to a new social structure,” crises of legitimacy may develop under two conditions. For one, crises of legitimacy occur when “the *status* of major conservative institutions is threatened during a period of structural change” [his emphasis]. For another, crises of legitimacy occur when “all the major groups in the society do not have access to the political system in the transitional period, or at least as soon as they develop political demands” (Lipset 1960 p. 78).

In “Political Legitimacy in Contemporary Europe,” Joseph Rothschild expands Lipset’s argument, maintaining that legitimacy can be completely distinguished from effectiveness “for analytical and heuristic purposes only.” In real-world politics, the two “interact organically,” with public perceptions that “a system is legitimate” sometimes compensating for “erroneous, inefficient, and ineffective performance.” If the system is highly effective, this can “purchase at least some legitimacy for an initially illegitimate, revolutionary system” (Rothschild 1978 p. 39). Additionally, the legitimacy of even “traditionally fully legitimate system[s]” can be eroded if they become “chronically incompetent or ineffective” (Rothschild 1978 p. 39).

Because legitimacy and effectiveness—in the real world—are not completely separable, some social scientists have argued that legitimacy “is merely a dependent function” of effectiveness, and governments should “educate public opinion to accept this sequence” (Rothschild 1978 p. 39). When governments follow this advice, however, they produce “essentially a shallow and even desperate perspective because such a pseudo-ideology, which holds legitimacy to be a mere function of effectiveness, leaves them naked and without principled authority if their efficiency declines.” Effectiveness, in short, is not “a short cut to legitimacy” (Rothschild 1978 p. 39).

Another “more subtle and sophisticated” line of reasoning holds that “the political system is so autonomous that it creates its own legitimacy simply through longevity, clarity, economy, and enforcement-capability in administration.” In the process, the political system does not need “reference to normative principles beyond itself or to an independently critical public” (Rothschild 1978 p. 40). But Rothschild, who dismisses this argument, recognizes that such a regime ultimately finds “itself delegitimated through its own performance” with “no normative restraints within itself against the temptation to resort to coercion and repression” (Rothschild 1978 p. 40).

In *Equality and Partiality*, Thomas Nagel reports that “discovering the conditions of legitimacy is traditionally conceived as that of *finding a way to justify a political system to everyone who is required to live under it*” [my emphasis] (Nagel 1991 p. 33). Ideally, the “search for legitimacy is a search for unanimity—not about everything but about the controlling framework within which more controversial decisions will be made.” This unanimity is not “actual unanimity among persons with the motives they happen to

have”; nor is it “the kind of ideal unanimity that simply follows from there being a single right answer which everyone ought to accept because it is independently right.” To the contrary, the unanimity required for legitimacy is “something in between” these two possibilities. According to Nagel, it is “a unanimity which could be achieved among persons in many respects as they are, provided they were also reasonable and committed within reason to modifying their claims, requirements, and motives in a direction which makes a common framework of justification possible” (Nagel 1991 pp. 33 – 34).

Discussing legitimacy, Nagel presents a more objectivist view than others do, distinguishing the personal from the impersonal standpoint. “Even theories which direct their justification exclusively to the personal standpoint,” he argues, must “say something about why legitimacy is desirable, and it is difficult to this without appealing to impersonal values of some kind.” He assumes, as a result, that “some form of impartiality enters into the pursuit of legitimacy at its foundation” (Nagel 1991 pp. 34 – 35).

Admittedly, the quest for legitimacy can be difficult—but it is not a search for a utopian arrangement. Justifying the political system’s right to govern, quite simply, means that “no one will have grounds for moral complaint about the way it takes into account and weighs his interests and point of view.” When living under a legitimate political system, people “have no grounds for complaint against the way its basic structure accommodates their point of view.” Under such a system, “no one is morally justified in withholding his cooperation from the functioning of the system, trying to subvert its results, or trying to overturn it if he has the power to do so” (Nagel 1991 p. 35).

But an illegitimate political system “treats some of those living under it in such a way that they can reasonably feel that their interests and point of view have not been adequately accommodated.” If the system is illegitimate, it is not—as a general rule—“wrong for them to withhold their cooperation from it, try to subvert its results, or replace it with one more favorable to their interests if they were able to do so” (Nagel 1991 p. 35).

In the end, Nagel argues that the “search for legitimacy can be thought of as an attempt to realize some of the values of voluntary participation, in a system of institutions that is unavoidably compulsory.” Regardless of how liberal a political system is, it cannot make subjection voluntary.

Even if some people can leave, that is very difficult or impossible for most of them. In any case all people are born and spend their formative years under a system over which they have no control. To show that they all have sufficient reason to accept it is as close as we can come to making this involuntary condition voluntary. We try to show that it would be unreasonable for them to reject the option of living under such a system, even though the choice cannot be offered (Nagel 1991 p. 36).

## ADMINISTRATIVE LAW

In *Crisis and Legitimacy: the Administrative Process and American Government*, James O. Freedman provides a perspective on legitimacy grounded in administrative law. “In virtually every relevant respect,” he insists, the administrative state “has become a fourth branch of government.” The administrative state is, for example, “comparable in the scope of its authority and the impact of its decision making to the three more familiar constitutional branches” (Freedman 1978 p. 260). Framing the issue of administrative legitimacy, Freedman asks three questions. “What justifies the exercise of such extensive lawmaking powers by groups that lack the political accountability of the legislature?” “What justifies the exercise of such decisive adjudicatory powers by groups whose members lack the tenure and independence of the judiciary?” “What explains the failure of the administrative agencies, as the recurrent generalization would have it, to achieve a significant measure of effectiveness in performing their regulatory tasks?” (Freedman 1978 p. 6).

Historically, the question of administrative legitimacy has been an important one. “Virtually every President since the period of the New Deal,” Freedman observes, “has been sufficiently disturbed by the functioning and status of the federal administrative agencies in order to at least one major study seeking recommendations for improvement.” Since so many Presidents have expressed so many concerns about administrative agencies, elected officials seem to have “a persisting sense of uneasiness and concern about the problematic place of administrative agencies in the machinery of modern government” (Freedman 1978 p. 9).

Freedman distinguishes attacks on Congress, the courts, and the Presidency from attacks on administrative agencies. With the three branches, the challenges have been concerned primarily “with questions concerning the proper limits of their undoubted powers, the wisdom of particular decisions as a matter of policy or the national good, and the efficiency of the processes by which they reach their decisions.” In other words, criticisms of the three branches have taken place “at the margins of institutional power, at temporary aberrations and *malfunctions rather than at the legitimacy of institutional power*” [my emphasis] (Freedman 1978 pp. 9 – 10). “On those few occasions when the criticism has been directed at the legitimacy of the institutional power itself, the power has survived intact, its legitimacy undiminished,” Freedman asserts (Freedman 1978 p. 10).

Yet with administrative agencies, the criticism “has been animated by a strong and persisting challenge to the basic legitimacy of the administrative process itself” (Freedman 1978 p. 10). Legitimacy examines “popular attitudes toward the exercise of governmental power”; those who question administrative legitimacy deny agencies’ powers are “being held and exercised in accordance with a nation’s laws, values, traditions, and customs.”

Institutional legitimacy is an indispensable condition for institutional effectiveness. By endowing institutional decisions with an inherent capacity to attract obedience and respect, legitimacy permits an



institution to achieve its goals without the regular necessity of threatening to use force and creating renewed episodes of public resentment. Since the authority of any institution, as Max Weber so effectively argued, rests ultimately upon a popular belief in its legitimacy, substantial persisting challenges to the legitimacy of governmental institutions must be regarded with concern, for such challenges threaten to impair the capacity of government to meet its administrative responsibilities effectively (Freedman 1978 p. 10).

According to Freedman, “four principle sources of legitimacy” are relevant for “the role that administrative agencies play in American government.” First, administrative legitimacy “may be supported by public recognition that administrative agencies occupy an indispensable position in the constitutional scheme of government.” Second, the “policies and performance of administrative agencies may further be accepted as legitimate to the extent that the public perceives the administrative process as embodying significant elements of political accountability.” Third, the “effectiveness of administrative agencies in meeting their statutory responsibilities may enhance their legitimacy by strengthening public support in a nation that always has been impressed by effective performance.” Finally, administrative legitimacy “may be enhanced by the public’s perception that its decision-making procedures are fair” (Freedman 1978 p. 11).

### **SCHOLARSHIP ON LEGITIMACY WITHIN PUBLIC ADMINISTRATION**

In this section, I discuss the literature on legitimacy within public administration. When determining which studies actually deal with administrative legitimacy, scholars in our field are not always as clear as we should be—which raises questions about why I included certain studies and excluded others. Overall, I evaluated studies in public administration using four criteria. Two were requirements; the others were preferences. If a study does not meet the first two requirements, it is not about administrative legitimacy, so it will not be reviewed. As a general rule, studies that meet the first two criteria but not the last two will not be reviewed, though there are a few important exceptions. What are these criteria?

First, to be part of my literature review, the concept of legitimacy must be *the major focus* of the research. It cannot constitute a minor issue, receive a brief citation, occupy a few pages, or the like. With few exceptions, the focus on legitimacy should be explicit.

Second, the research must have made a *major contribution* to scholarship on legitimacy. To be included, the literature must have made an original contribution to our understanding of legitimacy or provided an important “new twist” on an older way of studying it or something similar.

Third, the research should have dealt explicitly with legitimacy. In their work itself, authors should acknowledge that they are studying legitimacy—and that this is a major focus for them. John Rohr’s *To Run A Constitution: the Legitimacy of the Administrative State*, for example, addresses the issue explicitly; so does Michael Spicer’s *The*

*Founders, the Constitution, and Public Administration*, which devotes the first chapter to legitimacy.

One exception is the debate between Friedrich and Finer. Although neither explicitly acknowledged that they were addressing legitimacy *per se*, other scholars of public administration have used the Friedrich-Finer debate to frame the issue itself. And it is reasonable to assume that Friedrich and Finer really were debating legitimacy, even though they did not use the term in their famous exchange. In *Legitimacy in Public Administration: A Discourse Analysis*, O.C. McSwite identifies the Friedrich-Finer debate as the traditional way the issue of legitimacy is framed. “Framing the issue in terms of this debate creates a distortion that makes it seem that administrative officials could be legitimate agents of democratic government if only the conundrum of accountability and discretion could be resolved,” McSwite argues (McSwite 1997 pp. 28 – 29).

Fourth, I would prefer that the study explicitly *define the term* legitimacy. As far as I know, all studies in public administration that have done so are included. In the end, however, this is not an absolute requirement, so some studies that have not explicitly defined the term will be reviewed anyway.

#### CARL FRIEDRICH: INTERNAL COMPASS

In “Public Policy and the Nature of Administrative Responsibility,” Carl Friedrich argued that traditional views of administrative responsibility were inappropriate for a modern constitutional democracy. Public administration, he claimed, had become the “core of modern government,” so administrative officials necessarily exercised much discretion. As I interpret Friedrich’s arguments, he was addressing the issue of legitimacy—though implicitly, not explicitly. In the end, Friedrich grounded administrative discretion in two standards: technical knowledge and popular sentiment. If administrators make any policy that “violates either standard, or which fails to crystalize in spite of their urgent imperatives,” they are acting irresponsibly. So long as administrators observe these two standards, it seems that their power is legitimate.

Friedrich is serious about the *dual* nature of administrative responsibility. “[T]echnical responsibility,” he believes, “is not sufficient to keep a civil service wholesome and zealous” (Friedrich 1940 p. 232). Political responsibility, therefore, is “an essential part of administrative responsibility.” “[T]o produce truly responsible policy in a popular government,” Friedrich says, “political responsibility is needed” (Friedrich 1940 p. 234). Because contemporary public policy does not adhere to these standards, such “truly responsible policy is a noble goal rather than an actual achievement at the present time, and may forever remain so” (Friedrich 1940 p. 234).

Perhaps most importantly, Friedrich argues that career civil servants should speak to elected officials and the general public about policy issues. When considering “matters of vital importance,” society is “entitled to the views of its permanent servants” (Friedrich 1940 p. 244). When administrators speak on policy issues, government can benefit greatly. When career executives, especially, express their opinions publicly, they

“provide a salutary check on partisan extravagances” (Friedrich 1940 p. 244).

Analyzing the rhetoric of Friedrich’s position, McSwite argues that his “central rhetorical device” was “an appeal to the contemporary” (McSwite 1997 p. 33). By the 1940s, when Friedrich was writing, political systems faced new challenges, which required new approaches to government and new views of administrative responsibility. Because of “modern conditions,” McSwite observes, Friedrich believed government action must “be informed by expertise.” In the process, it is the civil servant who emerges as “the mainspring of the new society,” someone responsible for “suggesting, promoting, advising at every stage” (McSwite 1997 p. 33).

Under the press of coping with modernity, it is backward to worry about administrators and to hold a simplistic faith that by making them maintain the confidence of a parliament, the public interest will be protected (McSwite 1997 p. 33).

HERMAN FINER: STRICT POLITICAL, LEGAL, AND ADMINISTRATIVE ACCOUNTABILITY  
In “Administrative Responsibility in Democratic Government” (1941), Finer responds to what he sees as the antidemocratic heresy of Friedrich—who encourages administrators to respond to both technical knowledge and popular sentiment when making policy. Finer forcefully rejects Friedrich’s views, arguing instead for strict administrative subservience to elected officials. To Finer, public administration is seen in an instrumental rather than a constitutive way.

At the beginning of his article, Finer credits Friedrich with making “several interesting and sagacious contributions,” thus deserving “our gratitude for having reintroduced its discussion among primary problems” (Finer 1941 p. 335). Yet many of Friedrich’s propositions, Finer insists, “must arouse earnest dissent” (Finer 1941 p. 335). Unlike Friedrich, Finer defines responsibility as “an arrangement of correction and punishment even up to dismissal both of politicians and officials” (Finer 1941 p. 1).

In his mind, Finer is a defender of classical democratic ideals; he says most of his points are “*extremely elementary*” [my emphasis] (Finer 1941 p. 335). From the very beginning, Finer polarizes the issue into a simplistic dichotomy. Either the “servants of the public” will “decide their own course,” or “their course” will “be decided by a body outside themselves” (Finer 1941 p. 335). “[T]he servants of the public,” he insists, “are not to decide their own course.” Instead, they must be “responsible to the elected representatives of the public.” So responsible should administrators be that elected officials must “determine the course of [their] action . . . to the most minute degree that is technically feasible” (Finer 1941 p. 336).

To Finer, responsibility is not just external to the public administration, but must be enforced in a hierarchical way. Achieving Finer’s ideal requires democratic regimes to use the courts and “disciplinary controls within the hierarchy of the administrative departments” (Finer 1941 p. 336). Additionally, they must exert authority over administration “based on sanctions [against top officials] exercised by the representative

assembly” (Finer 1941 p. 336).

To hold administration accountable to the elected officials, who are then accountable to the people, a democratic government must enforce “three doctrines” (Finer 1941 p. 337). First, the public is the government’s master. Public officials—elected or appointed—are to give the public what it *wants*, not what it *needs*. Second, the public requires elected institutions to both express and enforce its authority. And, finally, the public not only informs its servants, but also has “the power to exact obedience to [its] orders” (Finer 1941 p. 337).

When governments are not subordinate—in the strictest sense—to the public, they do one of three things, each of which is bad. Government may be “guilty of nonfeasance,” where it does not do what “law or custom” requires because of “laziness, ignorance, or want of care for their charges, or corrupt influence” (Finer 1941 p. 337). Government may be guilty, too, of “malfeasance.” Here its duties are carried out, but resources are wasted and damaged “because of ignorance, negligence, or technical incompetence” (Finer 1941 p. 337). Or government may be guilty of “overfeasance.” In this instance, it carries out a duty “beyond what law and custom oblige or empower,” possibly due to “dictatorial temper, the vanity and ambition of the jack in office, or genuine, sincere, public-spirited zeal” (Finer 1941 p. 338).

To deal with these problems, democratic governments have “devised the responsible executive and an elected assembly which enacts the responsibility” (Finer 1941 p. 338). In parliamentary systems, officials should be subservient “to the legislature, ultimately through ministers and cabinet in a cabinet system” (Finer 1941 p. 338). In separation of power systems, officials should be subservient to “the chief executive” (Finer 1941 p. 338). Professional careerists, Finer believes, should demonstrate “not technical capacity per se, but technical capacity in the service of the public welfare as defined by the public and its authorized representatives” (Finer 1941 p. 338).

#### O.C. MCSWITE: A POSTMODERN VIEW

Offering a postmodern perspective is O.C. McSwite, who has addressed the issue in *Legitimacy in Public Administration*. In an earlier article entitled, “Postmodernism, Public Administration, and the Public Interest,” McSwite observes that public administration has not solved the “problem of finding a legitimate place for itself in the American scheme of government” (McSwite 1996 p. 198). Most often, both scholars and practitioners have ignored the issue altogether, with the “founding myth” hoping “to eliminate the question itself.” Even subsequent generations have largely ignored the issue, though McSwite acknowledges the Blacksburg Manifesto “and the writings that have flowed from it” as an exception to this neglect (McSwite 1996 pp. 198 – 199).

In *Legitimacy in Public Administration*, McSwite focuses on the “theory discourse of public administration”—specifically, the “legitimacy of administration as a part of democratic governance.” At present, the discourse about administrative legitimacy is distorted, McSwite argues. This distortion has a serious effect on administrative

legitimacy, as it “strikes at the center of our collective ability to encounter one another over the basic issues of how we wish to live together” (McSwite 1997 p. 13).

McSwite examines the Friedrich-Finer debate, which has “paradigmatically framed the discourse on the legitimacy of administrative institutions in democratic political systems.” Most people, after reading the exchange between Friedrich and Finer, believe their perspectives are very different—maybe incommensurable. In McSwite’s view, though, the most important aspect of the debate is how both are “grounded in a common set of assumptions and share a purpose” (McSwite 1997 p. 15).

The debate creates a curious reverse effect by framing the problem of administrative legitimacy in such a way as to make it irresolvable—thereby, in a sense, “institutionalizing” it and making it *constitutive* of theory dialogue. The debate in turn provides a crypto-legitimation for a certain pattern of elite domination. This pattern I label the “Man of Reason” theory of governance. In other words, the persistence of the legitimacy problem makes it seem as if it is necessary that we entrust governance to a revered elite who act on the basis of “objective” empirical and “principled” moral considerations [McSwite’s emphasis] (McSwite 1997 p. 15).

Governance by “men of reason,” which is required by the way Friedrich and Finer have framed the legitimacy issue, has created a crisis in American public administration and American society. To respond to the legitimacy problem, McSwite believes we must develop a “facilitative public administration, one that involves itself with citizens not through the application of expertise as much as through efforts at collaboration” (McSwite 1997 p. 18). It is, however, doubtful that this response will succeed, for it “takes place *within* the conventional framework set by the legitimacy issue.” Such a response, then, may perpetuate governance by “men of reason” rather than end it (McSwite 1997 p. 18).

Despite McSwite’s initial pessimism, there is an “optimistic case” that can be made. Perhaps important change can occur, considering the “postmodern attitude” that is “grounded in the same kind of suspicion of philosophical absolutes that inspired pragmatism originally” (McSwite 1997 p. 18). Pragmatism, according to McSwite, is the “true foundation” of public administration. With the social and the political changes taking place now, scholars and practitioners may be able to *refound* our field in that philosophy.

The starting point of this refounding is *to let go of, get over, and leave behind the pointless discourse on the legitimacy problem*. We must realize that *by constantly posing answers to this issue, we have institutionalized and maintained it* and the structure of government that produced it. It is the continued existence of the issue itself that establishes the legitimacy of the pattern of governance we

have—governance by Men of Reason [my emphasis] (McSwite 1997 p. 19).

#### JOHN ROHR: CONSTITUTIONALISM

In *To Run A Constitution: the Legitimacy of the Administrative State*, John Rohr seeks “to legitimate the administrative state in terms of constitutional principle” (Rohr 1986 p. ix). Legitimacy, Rohr emphasizes, is more than mere legality, since what’s legal may still lack legitimacy—which forces scholars of public administration to face “the troubling questions of legitimacy that survive the resolution of a legal controversy” (Rohr 1986 p. x). To make his point, Rohr discusses three legal, but illegitimate, parts of American society: the “American Nazi party, the Flat Earth Society, and *Hustler* magazine” (Rohr 1986 p. x). “All three,” he observes, are “quite legal, but they lack legitimacy.” While we “acquiesce in their presence as the price we pay for living in a free society,” we “refuse to take them serious as legitimate expressions of political action, scientific inquiry or literary endeavor” (Rohr 1986 p. x). By legitimacy, Rohr means “more than a grudging acceptance of the inevitable.” *To be legitimate, rather, is to inspire “at least confidence and respect and, at times, warmth and affection”* [my emphasis] (Rohr 1986 p. x).

For Rohr, the administrative state is legitimate because it “is consistent with the Constitution, fulfills its design, and heals a longstanding major defect” (Rohr 1987 p. 13). In Rohr’s theory of administrative legitimacy, the Constitution is extremely important. He emphasizes, for example, that “public administrators at virtually all levels of government take an oath to uphold the Constitution of the United States,” which is “a profound moral commitment” (Rohr 1986 p. ix). Accordingly, that Oath “justifies the administrator’s claim to a certain professional autonomy in choosing among constitutional masters.” While justifying professional autonomy, the Oath constrains administrators, for the Constitution itself can “tame, channel, and civilize this independence” (Rohr 1986 p. 187). Overall, public administration can legitimately serve as a “balance wheel,” maintaining the constitutional balance in favor of individual rights.

Administrative agencies with legislative *and* executive *and* judicial authority do not violate the separation of powers—at least as understood by the Constitution’s Framers. The Framers, Rohr observes, did not believe that the separation of powers had to be complete. According to Publius, the “accumulation of *all* powers, legislative, executive, and judiciary, in the same hands may justly be pronounced the very definition of tyranny” [my emphasis] (Rohr 1986 p. 18). Obviously, the understanding of Publius does not “mean that these departments ought to have no *partial agency* in, or no *control* over, the acts of each other” (Rohr 1986 p. 18). What separation of powers prevents, according to James Madison, is “the *whole* power of one department” from being exercised “by the same hands which possess the *whole* power of another department” (Rohr 1986 p. 18).

Indeed, the Framers mixed the government’s three powers in their design of the Constitution itself. The United States Senate exercises executive power when confirming Presidential appointees, legislative power when passing legislation, and judicial power when conducting impeachment trials. The President exercises executive power when

serving as Commander-in-Chief and legislative power when vetoing Congressional legislation. The federal courts exercise judicial power when they say what the law is and executive power when Congress lets them appoint administrative officers.

Public administration, Rohr claims further, corrects a major constitutional defect—inadequate representation—which the Antifederalists were extremely concerned about. (They believed that the Constitution provided inadequate representation for citizens.) Without administrative agencies, citizens would have much less representation in government.

Examining the Founding debate, Rohr finds that the Senate was seen as “part of an executive establishment,” not simply a “legislative body vested with certain executive powers in order to hold the president in check.” The Founders expected the Senate to have four important attributes. First, Senators would bring duration and stability as well as expertise to their office. Second, the Senate would be a continuing body. Third, Senators would have responsibility for personnel management. Fourth, Senators would possess a “due sense of national character” (Rohr 1986 pp. 33 – 37).

Over time, these attributes have virtually disappeared. With the Seventeenth Amendment, Senators are directly elected, so popular whim rather than technical expertise largely determines who serves. Such innovations as “executive agreements in foreign affairs and a merit system in personnel administration,” Rohr reports, have “reduced the Senate’s executive powers.” As the nation has developed, then, the Senate “is not the sort of institution the Federalists wanted and the Anti-Federalists feared” (Rohr 1986 p. 39). Because the career civil service is the “closest approximation to such an institution today,” contemporary public administration fulfills the Founders’ original expectations of the Senate—another reason to believe the administrative state is legitimate (Rohr 1986 p. 39).

Continuing with the Anti-Federalists, the administrative state responds to their concerns about the Presidency. Although some Anti-Federalists believed the President would not be powerful enough—he may be unable, some feared, to “resist the aristocratic tendencies of the legislature”—that was a minority opinion. Instead, most Anti-Federalists expressed “a rather pedestrian hostility to a strong executive” (Storing 1981 p. 49). Many Anti-Federalists, so concerned were they about the Presidency, supported “a plural executive or an executive council . . . to avoid the danger of monarchy and dominance by one section” (Storing 1981 p. 49). Similarly, many believed that the President’s veto power, responsibilities as Commander-in-Chief, powers of appointment, and authority “to see that the laws are faithfully executed” would let the President do whatever he wanted to do (Storing 1981 p. 49).

If the Anti-Federalists were that concerned about the Presidency of the 18<sup>th</sup> century, imagine what they would think of the Presidency of the 20<sup>th</sup>. For the Presidency has become more and more powerful—largely because the federal government itself has become more powerful, and the United States has assumed more importance internationally. Regardless of *why* the Presidency’s power has increased, public

administrators often “check and balance” those who hold that office, which responds to Anti-Federalist concerns. Writing on the Constitution’s appointment and removal provision, the Federal Farmer foresaw department heads as “well-informed men in their respective branches of business.” The Federal Farmer, in fact, hoped that these department heads would appoint those who work for them. *Most importantly, the Federal Farmer believed that through these administrators “an executive too influential may be reduced within proper bounds”* [my emphasis] (Rohr 1990 p. 65). By checking the power of the Presidency, the administrative state responds to the Anti-Federalists’ concerns about that institution—concerns expressed as much today, if not more, than then. This is yet another reason to believe the administrative state is legitimate.

#### MICHAEL SPICER & LARRY TERRY: THE SOCIAL CONTRACT VIEW

Although many scholars of public administration have attempted to define the legitimacy problem, Michael Spicer, author of *The Founders, the Constitution, and Public Administration: A Conflict in World Views*, provides the clearest explanation of it. Like Rohr, Spicer sees legitimacy as “more than simply conformity to law.” That term, Spicer argues, “also means conformity to the broadly accepted principles or rules and customs of a political and social order” (Spicer 1995 p. 2).

According to Spicer, Americans do not “know or agree on what it is that we want public administrators to do within our system of government” (Spicer 1995 p. 2).

Unfortunately, the legitimacy problem is easier to state than to resolve: Citizens seem “unable to accept, in principle, the notion that an unelected body, apart from the courts, should have the authority to exercise independent discretionary power over others” (Spicer 1995 p. 2). Public administrators, of course, *do* exercise power over citizens—power that is not only independent of elected officials, but also discretionary. Although our elected officials and courts are seen as legitimate when they exercise independent discretionary power over citizens, public administrators are not (Spicer 1995 p. 2). “Observers of government recognize and often accept the existence and even the inevitability of independent administrative action, but they rarely defend it or endorse it on normative grounds,” Spicer observes (Spicer 1995 p. 2).

Using the logic of social contract, Spicer & Terry wrote the lead article for a *Public Administration Review* symposium, where they examined why rational people form political communities. They want to know, in particular, the “reason or reasons why a community of rational individuals would agree in the first place to develop a constitution to guide their political order at all” (Spicer & Terry 1993 p. 242). A Constitution, Spicer & Terry conclude, should “check the abuse of political power” (Spicer & Terry 1993 p. 243). Certainly Spicer & Terry’s approach is different from other public administration scholars, most of whom “have either tended to deemphasize the role of the Constitution in checking power or have been critical of it” (Spicer & Terry 1993 p. 244).

For Spicer & Terry, an “active role for public administration” is legitimate if it restrains political power: Administrative discretion “may be justified on the constitutional grounds that it sometimes enables public administrators to modify, delay, or resist the directives of political leaders in a lawful manner” (Spicer & Terry 1993 p. 244). But if



constitutionalism is about checking power, as they argue, the “exercise of administrative discretion must itself be subject to limits.” Although administrative discretion may check political leaders’ power, it is “subject to abuse and error” as well. To check administrative discretion, bureaucratic rules and regulations—commonly attacked as “red tape”—as well as funding restrictions are among the most important tools of elected officials. So public administration can constrain political leaders, Spicer & Terry believe, while being constrained itself.

#### KENNETH WARREN: LEGALISM

In the 1993 *Public Administration Review* symposium on “Public Administration and the Constitution,” Kenneth Warren argues that the administrative state is legitimate—but he differs from many other scholars about *why* it is legitimate. To Warren, administrative legitimacy is not a problem, for the issue “was pronounced dead by a host of scholars, practitioners, judges, and even the general public a long time ago” (Warren 1993 p. 250). Because of the “practical necessity of the administrative state,” it was “accepted as legitimate” (Warren 1993 p. 250).

According to Warren, the term legitimacy has “been interpreted to mean so many different things in our field that it has lost any common or useful meaning” (Warren 1993 p. 251). Warren believes that administrative legitimacy “has no clear or practical meaning,” so whether the administrative state is legitimate depends “upon each individual’s uniquely developed value system” (Warren 1993 p. 252).

At first, Warren seems to recognize the inevitable subjectivity of legitimacy, but then he tries to make it an objective concept—claiming that the “administrative state is legitimate because the law says it is” (Warren 1993 p. 252). Not since 1936, Warren observes, has the Supreme Court “questioned the legitimacy of the administrative state” (Warren 1993 p. 252). In *United States v. Curtiss-Wright Export Co.*, which was decided that year, the Court “legitimated the administrative state by upholding a significant delegation of law-making powers by Congress to the administrative branch” (Warren 1993 p. 252). That decision has never been reversed.

Warren emphasizes, too, that the administrative state is legitimate because it has been “democratically sanctioned” (Warren 1993 p. 252). The Congress, the Courts, the President, and Administrators themselves have accepted the administrative state’s legitimacy—and, Warren claims, so has the public. To determine whether administrators exercise legitimate power, Francis Rourke posed the question: “Is the power that bureaucracies wield legitimate power, in the sense that it is accepted by those subject to it as being rightfully exercised?” According to Warren, the “answer is a resounding, Yes” (Warren 1993 p. 253). In the end, Americans favor “an almost endless list of governmental programs, which require big bureaucracy, and generally support maintaining or increasing current funding levels of these programs” (Warren 1993 p. 253).

#### GARY WAMSLEY: THE AGENCY PERSPECTIVE

In *Refounding Public Administration*, Gary Wamsley wrote an article entitled, “The Agency Perspective: Public Administrators as Agential Leaders.” Wamsley offers the Agency Perspective as a “normative guide” for public administration. From the very beginning, Wamsley recognizes the *subordinate role* administrative institutions play in American government.

Clearly this normative guide should *not* be something that suggests that public administrators should be anything more than a subordinate of other actors in the governance process. The guide *should* be something that conceptualizes the public administrator as an agent acting on behalf of others, yet doing so in a vigorous and thoughtful manner (Wamsley 1990 p. 115).

To be “legitimate agents” of democratic government, Wamsley argues that administrative institutions must “stand for” two important principles. First, each agency must stand for “the broadest possible definition of the public interest derivable from its statutory mandate, requirements for fiduciary responsibility, and consistent with the Constitution.” Second, each agency must demonstrate “a sincere search for a consensus on the ‘common good’ within the realm of the substantive policy concerns that fall within the agency’s ambit” (Wamsley 1990 p. 117).

Public agencies, on this view, should do much more than promote the interests of society’s most powerful groups; they must move beyond interest group liberalism. In its place, public agencies must “pursue a common good—one that is distinguishable from what a society (even one faithfully represented) thinks it wants” (Wamsley 1990 p. 117).

Like other scholars writing on administrative legitimacy, Wamsley recognizes the *discretion* administrative institutions and their officials have. Administrative discretion is inevitable because administrative institutions have three constitutional masters: the Congress, the President, and the Courts.

Discretion is an inevitable consequence of guidance coming from three or more sources; some of it is bound to be contradictory. This clearly gives the public administration a strategic position at the confluence of powers and functions that the Constitution spread among the branches . . . (Wamsley 1990 p. 118).

More than anything else, the Agency Perspective views public administration as “subordinate, autonomous, agential, responsive, and responsible to the President, Congress, the courts, and the people.” For many, the idea of an *autonomous subordinate* may sound paradoxical—but Wamsley gives two examples: the top Sergeant in the military and the secretary of an academic department. Each, by necessity, exercises discretion. Each, however, remains a subordinate actor in the military and the academic department respectively (Wamsley 1990 p. 119).

Using the Agency Perspective, public administrators should “along with others” serve “as an active catalyst for purposive, systematic direction in government.” This direction, Wamsley asserts, should promote the common good, not the “vector-sum direction implied by interest group theory” (Wamsley 1990 p. 119).

One of Wamsley’s most important insights, which is similar to Rohr’s, is showing how the “administrative presidency . . . distort[s] our Constitution” (Wamsley 1990 p. 135). Neither the Framers who drafted the Constitution nor the citizens who ratified it wanted “one branch or institution” to “provide sole policy direction to administration.” Whether we look at the federal or the state or the local level, we find governments with “separate institutions with shared powers intended to make clear policy development and implementation a complex and conflict-ridden process” (Wamsley 1990 p. 135).

As for political appointees, Wamsley sees them not as mere agents of the President, but “a tentative and lonely ambassador appointed to a beleaguered foreign outpost” (Wamsley 1990 p. 136). As soon as they are appointed, political appointees receive “some sobering institutional lessons on the shared aspects of power” through their confirmation hearings. As soon as they begin working, Cabinet Secretaries learn that *Congress*—especially its committees and subcommittees—controls their fate more than either the President or the White House staff does (Wamsley 1990 p. 136).

When Wamsley discusses *legitimacy*, he draws on Weber’s and Friedrich’s work—hoping both to develop and to nurture *legitimate authority* (Wamsley 1990 p. 145). Because agencies have “the capacity to act as an agent for all of us,” their legitimacy is important to all of us. Legitimacy, as Wamsley understands it, is “the entitlement to govern,” with agencies receiving “positive authority . . . from attitudes on the part of governors and the governed” (Wamsley 1990 pp. 151 – 152).

To sum up, the Agency Perspective urges administrators not only to promote the “broadest possible definition of the public interest,” but to “create and nurture legitimate reason-giving authority” too. By using this perspective, we can “drastically alter our conceptions of public administrative leadership *whether by career civil servants or political appointees*” [my emphasis] (Wamsley 1990 pp. 151 – 152).

#### DOUGLAS MORGAN: RESULTS-ORIENTED & PROCESS-ORIENTED APPROACHES

In “Administrative Phronesis: Discretion and the Problem of Administrative Legitimacy in Our Constitutional System,” which was published in *Images and Identities in Public Administration*, Douglas F. Morgan compares the problem of administrative legitimacy with that of judicial legitimacy. Examining the extremely active judiciary of the 1950s and 1960s, Morgan observes that “the question was frequently asked: By what right do nine appointed judges who hold positions for life play so large a role in a country that calls itself a democracy?” Opponents of “judicial activism” wondered whether it was “appropriate for members of the Supreme Court, rather than elected legislators, to reform the country’s criminal procedures, its race relations, and its electoral processes” (Morgan 1990 p. 70).

Similar questions have been asked of public administration: administrative institutions, like the courts, consist of government officials who are both unelected *and* powerful. Morgan's analysis, though confined to *career administrators*, also applies to the members of the Board of Governors, since the Governors—with fourteen-year terms and insulation from direct political interference—are not typical political appointees. (At the very least, they are not what scholars of public administration normally think of as political appointees.) Morgan's discussion of attacks on the administrative state's legitimacy continues:

By what right do tens of thousands of career administrators play such a large and seemingly independent role in our democratic society? Is it appropriate that they should reform land and water practices, reverse environmental policies of yesteryear and oppose many of the forces set in motion by the Warren Court? Of course, it is only when such changes have been made in the absence of clear political directives from above, or have been made in response to the directives of one branch against the other, that any question is raised about the proper exercise of discretionary authority (Morgan 1990 p. 70).

Morgan presents “two approaches to legitimacy”: results-oriented and process oriented, modeling each after defenses of the federal courts. On the one hand, scholars who use a *results-oriented* approach to defend the federal courts look to the “substantive advantages” they bring (Morgan 1990 p. 71). To some, the courts' main task is “to defend the First Amendment rights of the minority against a tyrannical and oppressive majority.” Others, taking a “somewhat broader set of purposes,” argue that the federal courts “can often provide a forum for the despised and rejected who have no effective voice in the legislative chamber.” Still others, looking at the “broadest substantive level,” believe the federal courts are a “safety valve, relieving intolerable social pressures that build up when legislatures are unresponsive to urgent needs” (Morgan 1990 p. 71).

On the other hand, scholars who use a *process-oriented* approach “identify a variety of unique characteristics of the [judicial] process that set our courts and judges apart from other institutions of governance.” Consider how different the courts and the political branches are. In the courts, the concern is with “concrete controversies between individuals, a partial responsibility of each judge to respond to the claim that is raised, a search for principle, a need to give reasons for one's judgments, and, finally, the need to make these reasons available in a published opinion” (Morgan 1990 p. 73). For the most part, these do not apply to the Congress or the President.

With results-oriented approaches to administrative legitimacy, scholars primarily view “the bureaucracy as a facilitator of humane values.” The New Public Administration scholarship, Morgan believes, is similar to the “substantive due process tradition” of those who defend (on results-oriented grounds) judicial activism. “For those who take the position that administrators, like judges, should use their discretion to promote substantive values, there immediately arises the question, which values?” For some

scholars, public administrators should promote “universal human values like benevolence.” For other scholars, public administrators should promote “humanism” and equity. For still other scholars, public administrators should promote “those values to which a constitutional system of government is especially partial, such as liberty, property, equality, and so forth” (Morgan 1990 p. 72).

With process-oriented approaches to administrative legitimacy, scholars “look beyond the substantive contributions of career administrators to the unique characteristics of the administrative process itself.” Accordingly, these unique characteristics allow “career administrators to make a distinctive contribution to the governing process.” Traditionally, scholars have “focused on the rational/legal characteristics of bureaucratic forms that enable administrators to be guardians of efficiency and procedural equity.” Career administrators, for example, can guarantee “consistency of treatment for the clients being served,” help “determine the correct fit between organizational means and ends,” and help citizens “understand the complexity and urgency of problems” (Morgan 1990 p. 73).

More recent scholarship, however, focuses less on *technicism* than on “what is likely to work”—practical wisdom, hence *administrative phronesis*. When deciding what will work, administrators should “put the pieces of a policy puzzle together,” so action “will accomplish its intended policy objectives.” While so doing, administrators should “be sensitive to the limits of popular acceptability.” “In a system ultimately governed by the consent of the governed,” Morgan insists, “rationally, crafted policy implementation is a starting point not an ending point” (Morgan 1990 p. 74). Most notably, administrators who either make policy or implement it must justify their action as “consistent with the larger backdrop of constitutional principles and values” (Morgan 1990 p. 74).

I

In administrative agencies, Morgan argues, the decision-making process is “more forward-looking and more attentive to the long-term social complexities and interplay of public problems” than it is in “either a legislature or a court.” Because our system of government “mixes, checks, and balances powers,” administrators must “understand the problematic character of democratic government.” They must, too, “instruct those they serve in the nature of these problems” and “use their discretionary authority to ameliorate them (or at least not make them worse)” (Morgan 1990 p. 77).

#### THEODORE LOWI: LEGISLATIVE SUPREMACY

In “Legitimizing Public Administration: A Disturbed Dissent,” Lowi argues for *legislative supremacy*. Recognizing that “legitimizing public administration is something every regime has to do,” he first discusses the historical development of administrative legitimacy. When the Federalists controlled the national government, they “probably saw administration legitimized as long as ‘a few good men’ were in place to make a few good decisions.” When the Jacksonians controlled the national government, they “had a theory of legitimate administration that was, in fact, a general theory of government within which administration was legitimated.” For them, government “should not only be small within a strict construction of the Constitution,” but “it should never be involved in any

activity that is beyond the ability of the common person to administer” either (Lowi 1993 p. 261).

What the critics eventually called the “spoils system” was actually a quite sustainable and logical argument that administration was legitimate as long as it was consistent with democracy, and it was consistent with democracy as long as it was accessible to the common person (Lowi 1993 p. 261).

During the late 19<sup>th</sup> century, “meritocracy” was the “middle-class answer to the highly successful legitimizing theories of the Jacksonian democracy.” The merit argument, Lowi believes, is based on a “principle of neutrality.” Public administrators received “great powers and responsibilities of government” because they not only “were trained in their craft” and spent “a lifetime in the agency,” but also were willing “to subordinate their abilities to the wishes of elected officials.” Being a neutral civil servant “was the key to legitimacy, not the professionalism itself” (Lowi 1993 p. 262).

After examining the historical arguments over administrative legitimacy, Lowi argues that “through the 19<sup>th</sup> century and well into the 20<sup>th</sup> century . . . the theories legitimizing public administration kept well within the original position of the Constitution,” which was ‘*legislative supremacy*’ [my emphasis] (Lowi 1993 p. 262). Amazingly, Lowi presents legislative supremacy as unchallenged fact. “It does not take an idealized or romanticized view of the founders,” Lowi believes, “to appreciate the fact that *all of the powers of the national government are contained in the first article, which deals with the legislative branch*” [my emphasis] (Lowi 1993 p. 262).

What about the separation of powers? For Lowi, the Constitution nowhere establishes “an explicit theory of separation of powers as a basic principle of limitation on the national government.” Instead, our beliefs about separation of powers come from “writings *about* the Constitution and its virtues” [his emphasis] (Lowi 1993 p. 262).

From his thesis about legislative supremacy, Lowi concludes “the executive branch, including the presidency, was to be *an institution of delegated powers*” [his emphasis] (Lowi 1993 p. 262). Ironically, Lowi presents legislative supremacy as the very definition of the rule of law. Under the Constitution, he insists, the “presidency is an office of delegated powers, and delegated powers alone.” Even the Constitution’s designation of the President as Commander-in-Chief merely provides him with independent power “during time of war,” making the executive the second branch. As the second branch, the executive is “constitutionally an institution of delegated powers, powers delegated to it by the legislature.” Only war is an exception to this principle (Lowi 1993 p. 262).

What does this mean for administrative agencies? If legislative supremacy is correct, how can we legitimate them? A “general source for legitimizing public administration in America,” Lowi asserts, “must come from the authority delegated to administration’ and

‘from nowhere else.’ In other words, scholars should simply look at what authority the Congress has given to specific agencies.

From this standpoint, public administration as a general institution would have no general legitimacy and need none, except within the context of the status of administrators as public employees. All of the legitimacy within public administration would come from the specific grants of authority in statutes adopted through due legislative process in Congress, explicitly granting authority and jurisdiction to specific agencies to carry out specific tasks. This is the unvarying constitutional position (Lowi 1993 p. 262).

#### EVALUATING THE SCHOLARLY POSITIONS

To what extent have these proposals succeeded? To what extent have they failed?

Friedrich’s internal compass view has its advantages. First, he recognizes how inevitable administrative discretion is, attempting to ground it in two standards: technical knowledge and popular sentiment. By emphasizing technical knowledge, Friedrich recognizes that *technical expertise* is essential to the proper exercise of administrative discretion. His emphasis on *popular sentiment*, too, gives public administration a democratic identity, justifying discretion so long as the people approve the way it is used. But Friedrich’s perspective has two problems. It provides no guidance to administrators when the two standards conflict. And it offers a very *scientific* view of technical expertise—which is not surprising since he was writing in the 1940s. Not all issues in public administration and policy, however, can be solved in a scientific way, so what *values* should administrators use to make their decisions? Unfortunately, Friedrich does not answer that question.

Consider a practical issue—monetary policy—where what is technically correct may conflict with what the public wants. According to the Humphrey-Hawkins Act of 1978, the Fed should promote “full-employment,” while minimizing the rates of inflation and interest. That is a difficult task, and it calls for substantive value judgments. What does “full employment” mean? Does it depend on the structure of the economy? (Maybe the strength of unions and extent of government regulation plays a role.) At what point are the rates of inflation or interest excessive?

Assume that there are technical answers to these questions. What if the answers themselves conflict with what the public wants? And how would we know what the public wanted? (Does Congress express the public’s will? Does the President? Do opinion polls?) Perhaps Congress, assuming *it* expresses the public’s will, wants lower unemployment—even if that leads to higher rates of inflation and interest. Perhaps Fed officials disagree with Congress because of their technical expertise, so what should Fed officials do?

Nor is this the only problem with Friedrich’s analysis, for McSwite argues that Friedrich “misplays one of the more powerful cards given to his position in the debate—namely,

the inherent deficiencies of democratic process as a device of ongoing governance” (McSwite 1997 p. 34). Although he recognizes that legislatures may “rubber-stamp administrative actions out of considerations of party politics or their own political security,” he does not extend this critique as far as he should. After all, democratic processes often have trouble “producing even a partially accurate image of the will of the people at a given time” (McSwite 1997 p. 34).

Not that Finer’s approach is any better than Friedrich’s. Finer’s view, in reality, has much more serious problems: he places too much emphasis on the role of external authority in administrators’ professional lives. Even in British government—where Parliament is sovereign—it is unreasonable to assume that administrators can be so tightly controlled. In this sense, Finer is simply unrealistic, unwilling to address the very real issues Friedrich raises. Just the same, Finer’s perspective has much less relevance for the United States, which separates the legislative and the executive and the judicial authorities, than it does for Britain. In a separation of powers system, Finer believes, public administrators should be responsible to the President. No doubt this is true, but administrators must be responsible to the Congress and the courts as well. And authorizing statutes are often vague, so administrators have discretion in determining what to do and how to do it. Finer’s approach, I think, may work for the introductory textbooks, but it does not work in the real world.

Now consider McSwite’s perspective, which is grounded in postmodernism. If nothing else, postmodern social theory shows how important language is. By speaking to one another in certain ways, by assigning certain meanings to words, by using certain words in one way instead of another: these linguistic matters, seemingly so technical, have a powerful effect on social reality. To see the importance of language, one must understand postmodern social theory.

Ultimately, however, the problem with McSwite’s argument is the problem of postmodernism. No matter how much we may learn from postmodernism, postmodern social theory provides little help in dealing the legitimacy issue. If everything is a language game, as postmodern social theory claims, it is very difficult to create *positive theories* of legitimacy. How do you construct a theory of legitimacy if nothing can ever represent something “out there,” outside us?

Maybe this explains why McSwite wishes the problem away. By not talking about legitimacy, McSwite seems to argue, we will no longer have to deal with the issue. Yet this is postmodern social theory at its least convincing, for it presumes what needs to be proven—that is, no underlying reality exists; there is only language and the manipulation of words. From a postpositivist standpoint, the legitimacy problem is not *created* by language. All language does is *reflect* the underlying dilemma that public administration in democratic systems of government face.

Because most Western democracies, especially the United States, struggle with administrative legitimacy, McSwite is too hard on Friedrich and Finer. It may be true that Friedrich and Finer framed the issue incorrectly. Yet neither distorted it as much as



McSwite believes—both were truly struggling, I think, to find a legitimate place for administration in democratic government. (For postmodernists to claim that a debate is “distorted” is ironic at best. How can something be distorted if nothing could be right in the first place?) We may disagree with Friedrich’s solutions or Finer’s solutions or both of theirs, but if they had not addressed the issue someone else would. Neither Friedrich nor Finer is to blame for our continual struggle with legitimacy.

No matter what we think of postmodernism, though, we can learn a great deal from McSwite’s discussion of technical expertise. Founding public administration “as a professional rather than a popular, collaborative mode of governance,” they assert, “entailed the creation of a selective and biased discourse” around administrative institutions. Due to this misfounding, our discourse has “perpetuated legitimacy as its central constitutive element.” What our field has created, therefore, is a circular problem for itself. When asked what justifies public administration’s role in American governance, scholars and practitioners answer “technical expertise.” When asked why technical expertise is so important in public administration, they answer, “it’s necessary to justify public administration’s role in governance.” And so the questions continue—back and forth, feeding on each other.

But technical expertise remains extremely important, even if it helps to perpetuate the legitimacy problem. Rather than disregarding technical expertise altogether, which I do not believe McSwite advocates, we should *combine it with the collaborative effort McSwite supports*. Apparently, the Environmental Protection Agency’s “Commonsense Initiative” has been successful in doing just that.

Of all the approaches to legitimacy, I think that Rohr’s is one of the best, since American society is very heterogeneous—with different religions, cultures, ethnicities. Because Americans are united, if at all, through our Constitution, using *it* to legitimate public administration is more meaningful than using philosophical abstractions, legalistic interpretations, and the like. And because the *Constitution’s values* can guide administrative discretion, we need not pretend (as Friedrich does) that *scientific solutions* exist for the issues facing public administrators. Instead, we can encourage administrators to reflect on core Constitutional values, using them to make decisions.

Some important criticisms, however, have been made of Rohr’s approach. In *Postmodern Public Administration: A Discourse Analysis*, Fox & Miller fault it for being “too conservative.” By invoking the Founders and the founding argument, Rohr “looks back instead of forward” (Fox & Miller 1996 p. 28). Using constitutional inquiry to defend the administrative state, they fear, may lead us to “affirm many arrangements” that should be changed (Fox & Miller 1996 p. 29). But this criticism can be answered: Rohr’s argument does not presuppose that the administrative state continues exactly as it is. Certainly many changes could be made to public administration, none of which would prevent us from accepting Rohr’s views. So long as the *essential features* of today’s administrative state continued—its ability to represent citizens, its consistency with the Constitution, and its capacity to serve as a balance wheel—Rohr’s argument remains valid.

In my view, a much more important criticism is that Rohr’s Constitutional case is too weak. It is not, as Fox & Miller observe, that “the Constitution founds the Public Administration”—only that public administration, as it exists today, “is not inconsistent with it.” If so, Rohr’s claim is extremely modest, since we can apply it to many modern arrangements. Taking Rohr’s logic seriously, the administrative state “is no less legitimate than . . . the imperial presidency, an activist judiciary, or, heaven forbid, the corps of Washington lobbyists” (Fox & Miller 1996 p. 29).

How can we respond to Fox & Miller’s criticism? To do so, we first should recognize how serious it is. Then we should say that Rohr’s case, however modest it may be, does respond to important attacks on the administrative state’s legitimacy. By invoking the separation of powers, for example, critics have claimed that the administrative state is incompatible with the Constitution. By showing what the Founders really believed about the separation of powers, Rohr has helped us respond to these criticisms.

Rohr’s argument shows us, too, how the administrative state responds to the Anti-Federalists’ concerns. Unlike the administrative state, neither the imperial presidency nor the activist judiciary responds to the Anti-Federalist’s concerns about insufficient representation. That the Presidency or the Judiciary could become too powerful, in fact, was a reason *why the Anti-Federalists feared the Constitution did not provide enough representation*. Regarding the Washington lobbyists, Fox & Miller’s claim misses the point. True, lobbyists can provide additional representation to citizens, but all too often they represent the rich and the powerful instead of common people. Most importantly, because the Washington lobbyists are not a government institution, they do not raise the same legitimacy questions administrative institutions do: public administrators, we should never forget, exercise the *coercive power* of the state.

And Wamsley’s agency perspective is important. It provides normative guidance to public administrators while affirming their subordinate status. Even more important, the Agency Perspective reinvigorates the concept of *public service*, viewing administrators as agents acting legitimately on behalf of citizens.

Still, Wamsley’s perspective has some problems, with some more important than others. From the beginning, he takes a somewhat elitist position—encouraging administrators not only to educate citizens about the common good, but also to promote this good even when a “faithfully represented society” disagrees. No matter what perspective you have on public administration theory, the Agency Perspective raises concerns that public administrators could become a very elite group. Admittedly, this criticism can be overstated: Wamsley acknowledges that administrators must follow both Constitutional and statutory law. But the law is rarely crystal clear, so administrators using the Agency Perspective could dominate citizens by default.

In a response to the Blacksburg Manifesto, Philip Cooper criticizes the Agency Perspective as contradictory. On the one hand, it argues against a “bottom-line” approach to program administration and evaluation. On the other hand, it claims administrative agencies have a “special competence” to “legitimate authority” (Cooper

1990 p. 311). Yet the supporter of the Agency Perspective, Cooper asserts, cannot “both claim legitimacy by virtue of expertise and experience and simultaneously assert a superior capacity for broad spectrum integrative understanding of the public interest.” Even worse, the Agency Perspective “necessarily entails a kind of agency pluralism, the governmental analog of interest-group liberalism” (Cooper 1990 p. 311).

At first glance, this sounds like an important criticism. On closer examination, however, it appears rather weak. Since the values of government go far beyond economics, I think that agency programs should not be evaluated solely on a “bottom-line” basis. But this belief does not affect my views on administrative legitimacy. Obviously, even when we do not evaluate an agency’s programs *solely* on such bases as cost-benefit analysis and the like, we can legitimate the administrative state through the Agency Perspective. How we evaluate a public program and how we legitimate the administrative state are two different issues.

As for interest group liberalism, I oppose it as much as other scholars do. But *agency pluralism*, which Cooper sees as analogous to interest group liberalism, is *not a necessary result of the Agency Perspective*. Far from it: by encouraging administrators to take a serious, broad-based look at the public interest, Wamsley makes agency pluralism less likely rather than more so. In fact, his article condemns interest group liberalism. It was written, at least in part, to counteract the effect interest group liberalism has on administrative agencies.

Although Lowi’s position is extreme, even it has some advantages. By making Congress the center of government, Lowi counteracts our field’s extraordinary executive bias. In the Orthodox view of public administration, Congress and the federal courts practically disappear. Public administrators, this view holds, work for the President, to whom they are responsible. However popular it may be, neither Constitutional theory nor administrative practice supports this approach. Congress matters, and so do the courts; any theory of administrative legitimacy must account for them.

But the Constitution does not, as Lowi argues, establish a regime of legislative supremacy. When interpreting the Constitution, scholars always risk placing so much emphasis on one Article, one provision, or one principle that they ignore equally important ones. To be sure, the Constitution provides Congress with a great deal of authority. All Constitutional authority to govern, though, does not belong to Congress. We can discover this by examining the Constitution itself as well as the *Federalist Papers*—which are essential to jurisprudence. What is most interesting about Lowi’s view, I believe, is how he undermines his own argument by acknowledging Article II’s provision for a Presidential veto. Article II, too, provides the President with appointment power, subject to Senate approval. (If the requirement for Senatorial approval restricts the President’s authority, the requirement for Presidential appointment restricts the Senate’s. Either way, the Congress does not have exclusive jurisdiction over this area, so legislative supremacy is a false doctrine.) Article III, which establishes the judicial power, provides the federal courts with authority to decide “cases and controversies.” All in all, Lowi is simply incorrect to stress “the relative silence about the existence of the

second and third branches as significant limitations on the first branch” (Lowi 1993 p. 262).

What about Lowi’s approach for legitimating public administration? His emphasis on *specific administrative agencies* is extremely important, as scholars all too often focus on a supposedly monolithic “administrative state.” Regarding his emphasis on Congressional statutes, this is necessary but not sufficient. Perhaps these agencies are legitimate because Congress has given them authority to govern, yet *that argument* will only convince citizens who believe the agencies are legitimate in the first place.

Because Spicer & Terry’s approach is based on contractarian philosophy, their analysis suffers from the defects of that view. First, neither people nor institutions are bound by hypothetical contracts—so the claim that “rational citizens” *would* agree to certain conditions says little, if anything, about legitimacy. What does *that* tell us about how public administration should operate? *How can we legitimate public administration with a hypothetical contract?* Second, rational people may not do what Spicer & Terry think they would. Rational individuals might choose a “nondemocratic and illiberal regime,” since “mere reasonableness” is an easy criterion to meet, something constitutional scholars are well aware of. And, finally, Constitutions (as John Rohr observes) are not only about checking power, but authorizing it too. Spicer & Terry’s perspective, then, places too much emphasis “on constitutionalism as a means of limiting power and not nearly enough on establishing the institutions and powers of government” (Rohr 1993 p. 247).

Morgan’s approach is impressive. Not only does he clearly relate the problem of administrative legitimacy to the issue of administrative discretion; he analogizes the issue of administrative legitimacy to that of judicial legitimacy as well. Unfortunately, Morgan’s approach is confined to career administrators, which means he does not recognize how administrative legitimacy applies to political appointees. (In chapter four, I argue that administrative legitimacy is an issue for both political and career executives.) And his distinction between results-oriented approaches and process-oriented ones may be too sharply drawn.

Despite these limitations, Morgan’s analysis contributes to the scholarship on administrative legitimacy, and it is relevant to the “real world” of politics. After all, many elected officials and political activists who support the administrative state’s legitimacy do so because of either the results agencies achieve or the processes agencies use. At the same time, they support grounding administrative discretion in practical wisdom. Public administrators, on this view, should respond to their daily challenges pragmatically, determining *what works* in a specific instance.

Warren’s argument, I believe, is the least convincing. At first his approach seems promising, for he recognizes how subjective legitimacy is. But then he tries to make it an objective concept—claiming that the administrative state is legitimate because both the law and the democratic process have sanctioned it. Yet something can be legal, though not legitimate. Certainly *Hustler* magazine and the Flat Earth Society are perfectly legal,

but most people neither see *Hustler* as a legitimate form of literary expression nor the Flat Earth Society as a legitimate form of scientific inquiry (Rohr 1986 p. x). Regarding democratic processes, not all citizens believe that the administrative state is legitimate. In fact, some believe that the administrative state is illegitimate because it conflicts with a constitutional democracy’s core values. Still others believe that some agencies—though not all—are illegitimate. Those who hold such views may, of course, be incorrect in their sentiments. Warren’s approach, however, assumes their beliefs away.

### WHAT IS ADMINISTRATIVE LEGITIMACY?

One of the major weaknesses in our field’s scholarship on legitimacy is our inadequate definition of the term. Even the scholar who best conceptualizes the issue—Michael Spicer—is not as clear as he should be about its meaning. Although sociologists and political philosophers have developed important literature on legitimacy, scholars of public administration have not used it.

How can we better conceptualize the issue? Administrative legitimacy, I believe, is an evaluative (or subjective) concept consisting of two beliefs: first, administrative institutions have a *right* to govern; second, they are *an appropriate* way to handle public tasks in a constitutional democracy. Based on my definition, people can challenge an administrative institution’s legitimacy by denying *either* claim. The administrative institution, they can argue, has no right to govern, whether on normative or constitutional grounds. *Or* even though they acknowledge the institution’s right to govern, the challengers still may claim that it is *inappropriate* in a constitutional democracy like ours. Yet when making this second claim, the institution’s challengers must connect the inappropriateness to some (generally accepted) political value. People can *defend* an administrative institution’s legitimacy, by contrast, only by making *both* claims—so they must believe that the institution not only has a right to govern, but is appropriate in a constitutional democracy as well.

How does my definition relate to the literature I reviewed in Sociology, Political Philosophy, and Administrative Law? Based on the literature in Sociology, I do not adopt a purely legal definition of legitimacy. (The first part of my definition includes constitutionality, but this is not the sole criterion for legitimacy.) I recognize, too, how subjective or evaluate the concept of legitimacy is—another theme from the Sociology literature.

From the literature in Political Philosophy, I apply the traditional notion of *political legitimacy* to administrative institutions. Just as political legitimacy examines why the state has a right to govern, administrative legitimacy examines why administrative institutions have a right to govern. In my definition of administrative legitimacy, then, the *right to govern* is crucial. From the literature on Political Philosophy, however, I also use Seymour Lipset’s concept of *appropriateness*. According to Lipset, political legitimacy is the ability of a government “to engender and maintain the belief that the existing political institutions are the most appropriate ones for society.” Requiring institutions to be the *most appropriate* ones is extremely stringent—especially for administrative institutions, which are easier to reform than entire systems of government

are. I have developed a lesser standard: so long as administrative agencies are *appropriate for a constitutional democracy like ours*, they are legitimate. They need not be the *most appropriate*. Nor need they be appropriate for *all constitutional democracies*, only ours.

From the literature on Administrative Law, where I discussed James Freedman's *Crisis and Legitimacy: the Administrative Process and American Government*, I take seriously the question he raises: "What justifies the exercise of such extensive lawmaking powers by groups that lack the political accountability of the legislature?" By connecting administrative legitimacy to the right to govern, I have incorporated the issues Freedman raises.

After using the literature to develop my definition, I am ready to use it when examining the *public argument* about a particular administrative agency—in this case, the Federal Reserve System. Before beginning my literature review on the Fed, I conclude this chapter by examining the practical consequences of an illegitimate administrative state.

### **THE PRACTICAL CONSEQUENCES OF AN ILLEGITIMATE ADMINISTRATIVE STATE**

So much for theory: Why is administrative legitimacy important to the daily practice of public administration? Above all, administrative legitimacy is important for five reasons. First, American government in the 1990s (and throughout the 20th century) is best described as an administrative state. Despite unprecedented attacks over the past two decades, the administrative state continues to exist. Most likely, it will exist in the future as well. As Rohr argues, "we live in an administrative state and will continue to do so in the foreseeable future" (Rohr 1986 p. x). If the administrative state is an integral part of our political system, isn't legitimating it *inherently important*? Regardless of the consequences of administrative illegitimacy, we should legitimate the administrative state if we can. Following this reasoning, it is the fact of illegitimacy rather than its consequences that matters.

Much of consequence is at stake anyway. It is "degrading for administrators to govern and for citizens to be governed by institutions that are deemed illegitimate" (Rohr 1986 p. xi). Remember that public administrators are citizens. Given the importance of work to people's lives, do we want some citizens—public servants—to be tarred with illegitimacy as they perform their daily tasks?

But what if we do not care about the dignity of "bureaucrats?" Even then, another reason to be concerned about legitimacy is that *private citizens*, no less than administrators, suffer when administrative institutions are perceived as illegitimate. "If the administrative state is both inevitable and illegitimate," Rohr argues, "our dignity as citizens of a constitutional republic is in jeopardy" (Rohr 1986 p. xi).

Since administrative illegitimacy is harmful to constitutional government, scholars should care about legitimacy. Alexis de Tocqueville, author of *Democracy in America*, said the following about legitimacy:

Men are not corrupted by the exercise of power or debased by the habit of obedience, but by the exercise of power which they believe to be illegitimate, and by obedience to a rule which they consider to be usurped and oppressive (Rohr 1986 p. ix).

Second, when administrative institutions are perceived as illegitimate, it is more difficult to recruit the kind of public servants America needs. Considering the administrative state's responsibilities, citizens need some of the "best and the brightest" to serve as public administrators. No doubt many administrators are part of that elite group, but recruiting new public servants—and retaining older ones—has become increasingly difficult. With an administrative state perceived as illegitimate, the government has difficulty "recruit[ing] and retain[ing] talented young men and women" (Spicer 1995 p. 4). For this reason, the "competence and effectiveness of public service suffers" (Spicer 1995 p. 4). The National Commission on the Public Service, in fact, has shown that "the poor public image of government service has hindered the recruitment and retention of personnel." In their study, the nation's top graduates did not see "the public service . . . as a place where talented young people can get ahead." Nor did they see federal employment as "challenging and intellectually stimulating" (Spicer 1995 p. 4).

Third, when administrative institutions are perceived as illegitimate, it "undermine[s] the morale of public administrators and reduce[s] their productivity" (Spicer 1995 pp. 4 - 5). Here, too, the National Commission on the Public Service's study is important. Much of the increased turnover in federal employment, they found, "may, in part, be a result of the declining image of public service" (Spicer 1995 p. 5). With more turnover, the administrative state loses experience as well as knowledge. Ultimately, this reduces the government's competence and effectiveness (Spicer 1995 p. 5).

Fourth, when administrative institutions are perceived as illegitimate, it may "encourage political leaders to impose overly restrictive controls on public administrators." These restrictions may reduce their discretion, which may increase the public's costs (Spicer 1995 p. 5). Lacking confidence in public administration, elected officials may engage in "heavy-handed . . . micro-management that stifles effective administrative action and is counterproductive" (Spicer 1995 p. 5).

Finally, when administrative institutions are perceived as illegitimate, it "can contribute to the erosion of public respect for the law," causing citizens to resist "paying taxes [or] observing speed limits" (Spicer 1995 p. 5). To many citizens, the bureaucrat is the government. Consider the small business owner. Has the typical small business owner ever met a President, Supreme Court justice, or Congressman? Has the typical small business owner ever met the directors of public agencies like EPA or OSHA? In most cases, the answer is no. But most small business owners know the "street level bureaucrats" employed by the agencies that regulate their business. Indeed, they deal with these employees on a regular basis—listening to their complaints, complying with their orders. In many cases, if not most, these front-line employees come to embody the agencies themselves.

To sum up, when the administrative state is perceived as illegitimate, the government itself may be seen as illegitimate. Although many scholars make sharp distinctions between elected and appointed officials, most citizens do not. Unlike scholars, citizens see the government as the government—whether they are dealing with a street-level bureaucrat, mid-level manager, agency head, or legislator. So citizens' views of "government and law are . . . colored by [their] attitudes toward public administrators" (Spicer 1995 p. 5).



## REFERENCES

- Abercrombie, Nicholas & Hill, Stephen & Turner, Bryan S. (1984). The Penguin Dictionary of Sociology. Great Britain: Allen Lane.
- Fairchild, Henry Pratt. (1970). Dictionary of Sociology. Westport, CN: Greenwood Press.
- Friedrich, Carl J. (1940). Public Policy and the Nature of Administrative Responsibility. In Carl J. Friedrich (Ed.), Public Policy (pp. 221 – 246). Cambridge: Harvard University Press.
- Freedman, James O. (1978). Crisis and Legitimacy: the Administrative Process and American Government. Cambridge: Cambridge University Press.
- Friedman, Kathi. (1981). Legitimatization of Social Rights and the Western Welfare State: A Weberian Perspective. Chapel Hill: University of North Carolina Press.
- Lipset, Seymour. (1960). The Social Bases of Politics. Garden City, NY: Doubleday.
- McSwite, O. C. (1997). Legitimacy in Public Administration: A Discourse Analysis. Thousand Oaks, CA: SAGE Publications.
- Mitchell, G. Duncan. (1979). A New Dictionary of Sociology. London: Routledge & Kegan Paul.
- Morgan, Douglas F. (1990). Administrative Phronesis: Discretion and the Problem of Administrative Legitimacy in Our Constitutional System. In Henry D. Kass & Bayard L. Catron (Eds.), Images and Identities in Public Administration, pp. 67 – 86.
- Nagel, Thomas. (1991). Equality and Partiality. New York: Oxford University Press.
- Rohr, John A. (1986). To Run A Constitution: The Legitimacy of the Administrative State. Lawrence, KS: University Press of Kansas.
- Rohr, John A. (1993). Toward A More Perfect Union. Public Administration Review, 53, 3, pp. 246 – 249.
- Rothschild, Joseph. (1979). Political Legitimacy in Contemporary Europe. In Bogdan Dentich (Ed.), Legitimatization of Regimes: International Frameworks for Analysis, pp. 39 – 58.
- Sills, David L. (1968). International Encyclopedia of the Social Sciences. USA: the Macmillan Co & the Free Press.

Spicer, Michael W. & Terry, Larry D. (1993). Legitimacy, History, and Logic: Public Administration and the Constitution. Public Administration Review, 53, 3, pp. 239 – 246.

Spicer, Michael. (1995). The Founders, the Constitution, and Public Administration: A Conflict in World Views. Washington, DC: Georgetown University Press.

Warren, Kenneth F. (1993). We Have Debated Ad Nauseam the Legitimacy of the Administrative State—But Why? Public Administration Review, 53, 3, pp. 249 – 254.

Wellman, Christopher. (1996). Liberalism, Samaritanism, and Political Legitimacy. Philosophy and Public Affairs, 25, 3, pp. 211 – 237.